

# National Indian Health Board

October 28, 2010

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John Berry, Director  
Office of Personnel Management  
P.O. Box 791  
Washington, DC 20044

Dear Director Berry:

These comments are filed on behalf of the National Indian Health Board (“NIHB”) in response to the request for consultation initiated on October 5, 2010, regarding Section 157, Access to Federal Insurance, of S. 1790, as reported by the Senate Committee on Indian Affairs (“SCIA”) in December 2009 and incorporated in the Patient Protection and Affordable Care Act, Pub. L. 111-148, (“ACA”) through Sec. 10221. Section 157 amended the Indian Health Care Improvement Act, Pub. L. 94-437, (“IHCIA”) by adding a new Section 409, also entitled “Access to Federal Insurance.”

Established nearly 40 years ago, the NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments, American Indians and Alaska Natives (“AI/ANs”) for the provision of quality health care to all AI/ANs. The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (“IHS”) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act (“ISDEAA”), or continue to also rely on IHS for delivery of some, or even most, of their health care, NIHB is their advocate.

The NIHB appreciates the presentation made at its recent Annual Consumer Conference in Sioux Falls, South Dakota, by the Office of Personnel Management (“OPM”) and IHS regarding access to the Federal Employee Health Benefit (“FEHB”) program and Federal Employees Group Life Insurance (“FEGLI”) by Tribes, Tribal organizations, and urban Indian organizations for their employees, and the October 5 request for consultation.<sup>1</sup> In the consultation request, a number of questions are asked to assist OPM to implement this new requirement. Much of that information will have to be provided by the individual responders

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<sup>1</sup>Hereafter, we will refer only to “Indian Tribes and Tribal organizations.” We are confident that the urban Indian organizations who are entitled to access under this legislation will comment on their own behalf.



who are eligible for the coverage. However, there are certain issues, that apply universally, to which the NIHB can respond.

Although many Tribes continue to receive some services directly from the Bureau of Indian Affairs or IHS, virtually every Tribe carries out one or more programs under the ISDEAA. Therefore, this provision of the law is particularly critical since it will affect every Tribe in the country.

**Eligibility.** The OPM request for consultation suggests there may be two ways to interpret the meaning of Sec. 157 with regard to which employees the Tribe, Tribal organization, or urban Indian organization is entitled to obtain coverage. We respectfully disagree.

We believe that the plain meaning of the law is that it created an entitlement for Indian Tribes and Tribal organizations “to purchase coverage, rights and benefits for the employees of such Indian Tribe or Tribal organization.” The only limitation on which of these entities have access to this coverage is that Indian Tribes and Tribal organizations must be carrying out programs under the ISDEAA. The only other requirement found in the new law is that sufficient employee deductions and agency contributions must be paid for the coverage.

Tribal leaders first requested the access to the FEHB and FEGLI in 1999 when the National Steering Committee for the Reauthorization of the IHCIA, included it in the draft bill submitted to the House and Senate. Section 157 as it became law nearly eleven years later is identical – word-for-word – to that first request. It was always their intent that the coverage extend to all employees. Nothing else would work organizationally, nor achieve the purposes, which were to assist Indian Tribes and Tribal organizations to be more economically viable by giving them access to benefits for all their employees that would allow the Tribes and Tribal organizations to compete in the marketplace at affordable costs. Employers who cannot provide affordable health coverage are at a decided disadvantage.

No federal policy interest is served by limiting it to just certain Tribal employees. In fact, any limitation would impose a huge administrative burden on both the OPM and the employer Tribe or Tribal organization because it would require them to try to classify each employee as Sec. 157 eligible or ineligible. The impossibility of this becomes apparent when one considers the employees who are supported through a Tribe's “indirect cost pool.” For example is the custodian emptying waste baskets for Tribal offices eligible or not? How about the finance or information technology staff or facility maintenance crew?

This Tribal employer entitlement to purchase coverage is budget neutral. Thus, reading it to exclude certain employees of the Tribe or Tribal organization serves no federal policy interest. The combined contributions of the Tribe and employee will have to cover the full cost (including administrative costs) of the coverage. It is axiomatic in insurance that the larger the pool the better. Therefore, assuming for the moment only that it were legally permissible, trying to exclude certain Tribal employees even though the cost of their coverage would be borne entirely by the Tribe or Tribal organization actually undermines Federal and Tribal interests for no policy



or budget purpose.

Finally, it is fitting that this access to Federal insurance provision became law as part of the Affordable Care Act. The ACA has among its purposes expanding access to health care as widely as possible. Giving Tribes and Tribal organizations the ability to purchase high quality health benefits for their employees supports achievement of the overall goals of the ACA and furthers the government-to-government relationship between Tribes and the United States.

***Current Coverage and Enrollment.*** The NIHB understands that the questions about the term of existing health coverage are intended principally to help OPM assess the timing of the new workload since many Tribes and Tribal organizations would choose to initiate the change in coverage at a point that coincides with the termination of other insurance coverage plans. However, we believe it is critical that Tribes and Tribal organizations not be required to make the decision about when to opt into this coverage at any particular time of year, nor should access to the coverage be delayed to accommodate a set enrollment period by Tribal employers. Access to the new coverage should be made available as soon as possible and Tribes and Tribal organizations should be able to opt in at any time thereafter.

This provision of law has great potential to improve Tribal operations and to increase access by Americans to high quality health care coverage. The NIHB is actively working to encourage Tribes and Tribal organizations to provide their own comments during this consultation period and to respond with the more detailed information necessary for OPM to quickly implement this new provision of law.

The NIHB would like to offer its assistance in working to educate Tribes and Tribal organizations about the options under the FEHB program and FEGLI and to assist Tribes and Tribal organizations in making an assessment as to whether these new coverage options best meet their needs.

The NIHB also encourages OPM to continue to conduct ongoing consultation with Tribes and Tribal organizations on the implementation of the FEHB program and FEGLI. The success of the implementation rests on continuous input from the Tribes and Tribal organizations who best understand their current needs.

We look forward to continuing to work with OPM in its implementation and are available to assist you in any way we can.

Sincerely,



Reno Keoni Franklin  
Chairman  
National Indian Health Board

