



NATIONAL CONGRESS OF AMERICAN INDIANS

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RESOLUTION #MSH-01-017

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Title: Supporting Amendment of S. 212 to Authorize Reimbursement to the Indian Health Service, Indian Tribes, and Tribal Organizations for the Cost of Providing Emergency Care to Ineligible Persons

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest, largest, and most representative national American Indian and Alaska Native tribal government organization; and

WHEREAS, the Indian Health Services (IHS) operates service units throughout the United States in Indian Country that are intended to provide medical care to American Indians; and

WHEREAS, the dramatic increase in illegal alien entries into the United States has forced an ever larger number of non-eligible people to seek medical attention at the Indian Health Service ("IHS") Service Units and medical facilities operated by Indian tribes and tribal organizations ("Tribal Facilities") which are intended to serve members of federally recognized tribes; and

WHEREAS, accredited IHS service units and Tribal Facilities are required by the **Emergency Medical Treatment and Active Labor Act (EMTALA) 42 U.S.C. §1397dd (1992 and Supp. 2000)** to provide medical assistance to non-eligible persons or risk losing accreditation; and

WHEREAS, because IHS service units and Tribal Facilities are not reimbursed for services that are provided through the EMTALA, funds appropriated for medical treatment of Indian patients must in turn be diverted for non-eligible users of these facilities; and

WHEREAS, the United States Congress has found that “the unmet needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States.” 25 U.S.C. §1601(d) (1983 and Supp. 2000); and

WHEREAS, the Tohono O’odham Legislative Council, by Resolution No. 2000-539, requested support from the National Congress of American Indians to provide for the health and welfare of Tohono O’odham people by helping secure reimbursement for the cost of health care expended on non-Indian patients; and

WHEREAS, the National Congress of American Indians did adopt Resolution No. STP-00-051 at its November 12-17, 2000 Annual Session and thereby (1) recognized that other IHS service units and Tribal Facilities also expend already inadequate resources to treat non-Indian patients without reimbursement and (2) urged the United States Congress to appropriate sufficient funds to reimburse IHS service units, tribes, and tribal organizations for the cost of treating non-Indian patients; and

WHEREAS, the Indian Health Care Improvement Act Reauthorization of 2001 (S. 212, 107th Cong., 1st Sess. (2001)) has been introduced in the United States Senate; and

WHEREAS, because Section 411 of S. 212, “Right to Recover from Federal Health Care Programs,” does not adequately address the need of IHS service units or Tribal Facilities for payment or reimbursement when ineligible patients receive treatment, this Section requires amendment.

NOW THEREFORE BE IT RESOLVED, that NCAI supports amendment of Section 411 of S. 212, the Indian Health Care Improvement Act Reauthorization of 2001, or other appropriate legislation to require Federal agencies to reimburse IHS service units, tribes, and tribal organizations (1) when agency personnel transport non-eligible patients to IHS service units or Tribal Facilities for emergency medical treatment or (2) when non-eligible patients receiving such care are in a Federal agency’s custody; and

BE IT FINALLY RESOLVED, that NCAI urges the United States Congress to amend Section 411 of S. 212 to include the following:

Section 411 is amended by-

- (1) Striking the word “Notwithstanding” and inserting, in lieu thereof, “(a) In General.--notwithstanding” and

(2) By adding at the end thereof the following subsection:

“(b) Emergency Care to Ineligible Persons.- A Federal agency shall be liable for the reimbursement of the Service or an Indian tribe or tribal organization for the reasonable charges or expenses incurred in providing emergency medical care to an ineligible person if:

(1) such person is in the actual or constructive custody of an officer, official or employee of such Federal agency, or

(2) an officer, official or employee of such Federal agency, in the performance of official duties, transported or caused to be transported such ineligible person to a health facility of the Service or an Indian tribe or tribal organization for emergency medical care, and

(3) such Federal agency would have been liable for the cost of emergency medical care of such person, if the person was in the legal custody of the Federal agency.

Reimbursements under this subsection shall be credited as provided in Section 407 of the Act.”

CERTIFICATION

The foregoing resolution was adopted at the 2001 Mid-Year Session of the National Congress of American Indians, held at Foxwoods Resort Casino in Mashantucket, Connecticut on May 13-16, 2001, with a quorum present.



Susan Masten, President

ATTEST:

Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2001 Mid-Year Session of the National Congress of American Indians, held in Mashantucket, Connecticut on May 13-16, 2001.