



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SPO-16-031

### **TITLE: Requesting Administration Support for an Exemption for Tribes from Requirements of the Affordable Care Act Employer Shared Responsibility Mandate**

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**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 health, safety and 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 and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the adoption of the Affordable Care Act (ACA) by the United States Congress and President Obama has produced some positive and negative consequences in Indian Country; and

**WHEREAS**, the regional organizations have collaborated on provisions and programs to clarify and maximize the benefits to our Tribes and our Indian citizens; and

**WHEREAS**, there have been many reports of the very positive impacts from the ACA for affordable health coverage for many of our Tribal citizens; and

**WHEREAS**, American Indians and Alaska Natives who are members of Federally-recognized Tribes or shareholders of Alaska Native Claims Settlement Act (ANCSA) Regional Corporations are exempt from ACA-related tax penalties – an exemption that should continue; and

**WHEREAS**, the positive impacts to our local health service providers and clinics are being reported that with additional coverage to medical services and the third party revenue produced, cause additional resources to be freed up for more overall service; and

**WHEREAS**, tribes wish to convey these positive and fundamental improvements to health care and the ever-increasing resources needed to provide the quality of care Indian people deserve; and

**WHEREAS**, while the Tribes acknowledge positives, they have also found a number of negative matters and what they would suggest are unintended consequences under the ACA Employer Shared Responsibility Mandate, Section 4980H of the Tax Code; and

**WHEREAS**, the concerns that have been identified fall into several categories as follows:

1. **High Penalties.** The penalties associated with an oversight of not offering health insurance coverage to full-time employees in excess of 5%, under the Employer Shared Responsibility Mandate, would be catastrophic to the financial well-being of our Tribes. Tribes should be exempted from harmful penalties, particularly as we are striving to be fully compliant, as Tribes are with any and all statutory and regulatory requirements.
2. **Reporting Requirements.** The reporting requirements are an unnecessary burden on the Tribes. Attempting to comply has been costly, time consuming, confusing and difficult. Tribes have had to consult with specialist attorneys to interpret much of the requirements. And, even at this point in time, there is still a great level of uncertainty. A number of Tribes are still waiting for their software vendors to complete the necessary upgrades to file information reporting returns by the June 30<sup>th</sup> deadline.
3. **Employment Complications.** Compliance with ACA has had a detrimental effect on some of our member Tribes, specifically pertaining to the requirement of a 13-week break in order to consider an employee as a new employee when changing jobs. For various reasons throughout Tribally-owned entities, there are many cases where employees who may quit or lose a full-time job and in order to pay their bills, they accept the first part-time position they can find. Often the program or enterprise needing a part-time employee cannot afford to pay the health insurance during the stability period for the temporary employee. In this case, they either don't hire anyone or they choose someone else to do the work. This happens between Tribal government departments but is even more frequent if this rule applies to the collective full-time employees of all independent, Tribally-owned entities.
4. **Trust Responsibility.** Tribes should be exempt from all ACA Employer Shared Responsibility Mandate compliance requirements and penalties. Indians make up a large portion of those employed by all Tribes. To be mandated to provide insurance or face penalties is taking the responsibility away from the Federal government. Health care for our Tribal people has been the Federal government's obligation since signing of treaties and executive orders and it is considered fundamental to the trust responsibility. The choice to provide additional health insurance to our Tribal employees or not should be the Tribes' sovereign decision and not subject to penalty.
5. **Impact on Tribes.** Payment of the tax penalties will be detrimental to Tribes and result in reduced funding for other critical programs and services for Tribal citizens. Tribes have made progress in improving many of the health disparities of their Tribal citizens and a reduction in health programs and services will reverse any of the positive outcomes achieved; now

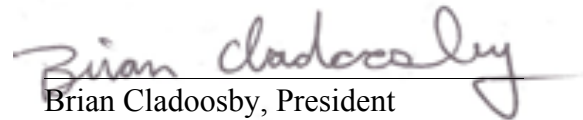
**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians wishes to express gratitude to the President and Congress for adopting the Affordable Care Act, resulting in needy Tribal members obtaining additional health coverage and related benefits to Tribal health care facilities in generating additional third party revenue; and

**BE IT FURTHER RESOLVED**, that NCAI urges the President and the Department of the Treasury to support legislation to exempt Tribes, and Tribal Organizations, as defined by Section 4(1) of the Indian Self-Determination and Education Assistance Act, and Tribally Owned Entities, from the Employer Shared Responsibility Mandate; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2016 Midyear Session of the National Congress of American Indians, held at the Spokane Convention Center, June 27 to June 30, 2016, with a quorum present.

  
Brian Cladoosby, President

**ATTEST:**

  
Aaron Payment, Recording Secretary