Tribal Exemption for the Affordable Care Act Employer Mandate

REQUEST: Co-sponsor the “Tribal Employment and Jobs Protection Act” [S.1771 and H.R. 3080] introduced by Senator Steve Daines (R-MT) and Representative Kristi Noem (R-SD), which would exempt Tribal employers from the Employer Mandate under the Affordable Care Act (ACA).

ISSUE: The Employer Shared Responsibility Rule, otherwise known as the Employer Mandate, states that all employers must offer health insurance to their employees or pay a penalty. Tribal governments are currently counted as large employers for application of this rule.

American Indians and Alaska Natives (AI/AN) are exempt from the Individual Mandate to purchase health insurance. This is in recognition of the fact that AI/ANs should not be forced to purchase healthcare that is obligated by the federal government’s trust responsibility and which is delivered through the Indian Health Service (IHS). Requiring Tribal employers to provide AI/ANs with such coverage anyway, and penalizing them if they do not, functionally invalidates the AI/AN exemption from the individual mandate by shifting the penalty from the individual to the Tribe itself.

TALKING POINTS

Individual Mandate exemption puts AI/ANs in conflict with the employer mandate
- Everyone is responsible for purchasing health insurance on the marketplace
- AI/ANs have an exemption from the individual mandate because of the trust responsibility that the federal government will provide health care (e.g. IHS access)

To encourage AI/AN enrollment in the marketplace, AI/AN have access to a number of tax credits that make purchasing insurance inexpensive
- Employer Mandate Conflicts with AI/AN special provisions because if an employer offers any insurance, even basic coverage, a person voids their ability to get special benefits and protections under the ACA Marketplace
- If the employer doesn’t offer insurance, they will face a penalty, even if their employee is exempt from the individual mandate.
- Tribal government employees are often Tribal members

Many Tribal governments don’t have the resources to purchase insurance for their employees
- Tribal governments often operate on the margins and are the only employer on a reservation
- If an AI/AN employee, with health insurance purchased for them by their employer (often times through federal funding), receives healthcare from the Indian Health Service, Tribes eventually end up paying the federal government to provide healthcare which is violation of their trust obligation
- Tribal governmental funding is a zero sum game, and any funding used to either comply with the mandate or pay the penalties will necessarily come from coffers used to provide what may be the only constituent services for hundreds of miles.
- Unlike a private business, many tribal governments depend of federal resources to perform essential government functions like law enforcement, public health services, and education. They cannot just raise prices or taxes to compensate for the mandate.