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MEMORANDUM

February 21, 2017

To: Tribal Health Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *Health Reform Update: House Republicans Release ACA Repeal & Replace Blueprint; House Democrats Hold Roundtable on ACA's Impact on Indian Country*

On February 16, 2017, House Republicans released a policy brief outlining the broad strokes of their plan to repeal and replace the Affordable Care Act (ACA). The same day, House Democrats prepared to defend aspects of the ACA, with Representative Raul Ruiz (D-CA) hosting a roundtable with tribal leaders to discuss the ACA's impact on Indian Country.

I. Republicans Release ACA Repeal & Replace Blueprint

House Republicans released a 19-page policy brief, which is attached to this memorandum, entitled "Obamacare Repeal and Replace: Policy Brief and Resources." The policy brief provides a very general overview of key health care reforms the Republicans are seeking, saying that they will advance legislation on these issues "in the weeks ahead."

The brief provides that House Republicans will reduce Medicaid costs by transitioning to a per capita allocation formula. Under this new system, payments to states would be capped, and the level of this cap would be based on a formula that takes into account the number of Medicaid enrollees in the state. States would have the option, however, of receiving Medicaid funding in the form of a block grant instead. The level of the block grant funding would be determined using a base year.

House Republicans also propose to modify Medicaid expansion. They would provide an undefined transition period during which expansion states would continue to receive the enhanced federal payments. The brief provides that after a certain date, states that choose to keep Medicaid open to the expansion population would be reimbursed at traditional match rates. The brief also says that non-expansion states could be eligible to receive additional funds during the transition period in order to provide equity between expansion and non-expansion states.

The brief outlines changes to the health insurance marketplace as well. The individual and employer mandates would be repealed, eliminating tax penalties for failure to purchase insurance or to provide insurance to employees. Limits on the types of

insurance that are available would be removed, which would allow the reintroduction of catastrophic insurance plans.

Assistance for purchasing insurance would also be overhauled. Currently, the ACA provides an income-based premium tax credit to assist with the cost of purchasing health insurance. The brief states that this would be replaced with a tax credit that is not tied to income, but that instead increases based on the age of the insured. Tax credits could be deposited in Health Savings Accounts (HSAs), which allow individuals to place money into accounts that are then used to pay expenses under high deductible health plans.

The proposal would also fund state innovation programs, which it says would allow states to use federal monies for high-risk pools, premium assistance, increased access to care, or other innovative health care purposes.

Although the House Republicans' policy brief provides an outline for key elements in ACA repeal and replace legislation, many of the details of these policies remain to be identified. The House breaks for recess the week of February 20, 2017, and House Speaker Paul Ryan (R-WI) says that a bill will be introduced when they are back in session.

II. House Democrats Hold Roundtable on ACA's Impact on Indian Country

On February 16, 2017, House Democrats also addressed health care reform. Representative Raul Ruiz, who sits on the Energy and Commerce Committee, hosted a roundtable entitled "Tribal Policy Discussion on the Affordable Care Act and its Impact on Indian Country." Ranking Member of the Energy and Commerce Committee Frank Pallone (D-NJ) attended as well as Representatives Derek Kilmer (D-WA), Kurt Schrader (D-OR), and Toney Cardenas (D-CA).

Rep. Ruiz opened by expressing concern over what health care reform will look like, while also stating that he was "fired up" to prevent a rollback in the progress that has been made. He stated that he wanted to provide an opportunity for tribal leaders to discuss the importance of the ACA and the Indian Health Care Improvement Act (IHCIA), identify shortcomings in current legislation, and hear how the federal government can better fulfill its trust responsibility.

Rep. Pallone stated that he is very concerned about the possibility of an ACA repeal, noting that a full repeal of the ACA would also repeal the IHCIA. He said that the ACA has been tremendously helpful to Indian Country, including through Medicaid expansion, insurance subsidies, and creating opportunities for third-party billing. He noted that although there are many problems with the Indian Health Service (IHS), repealing the IHCIA could jeopardize IHS funding by reducing Medicaid dollars and third party funds.

Rep. Ruiz asked tribal leaders to identify the largest benefits that the ACA has provided to Indian Country. Several tribal leaders stressed the importance of third-party billing as a way to increase access to care by supplementing inadequate funding for the Indian health system. Tribal leaders also discussed the expansion of behavioral health and substance abuse programs over the past few years, with many stating that their communities were increasingly plagued by meth addiction. Rep. Pallone noted that the ACA includes behavioral health services as an essential health benefit that must be covered by insurance, and he said that he would like to see special behavioral health services developed along the lines of the model provided by the Special Diabetes Program for Indians (SDPI).

Addressing health care reform efforts, attendees stated that in addition to preserving the IHCA, it was important to preserve Indian-specific provisions of the ACA, including provisions making IHS and tribal programs the payor of last resort, permanently establishing the Indian health system's ability to bill Medicaid Part B, and preventing Indian health benefits from being taxed. They also stated the need to preserve 100% Federal Medical Assistance Percentage (FMAP) for American Indians and Alaska Natives in any Medicaid reform and expressed concern with capping Medicaid payments through the implementation of a block grant system.

Tribal leaders made several suggestions for improvements to the ACA, including eliminating the application of the employer mandate to tribes; preserving SDPI; correcting the definition of Indian in the ACA to align with the definition used in other federal programs such as Medicaid; and further supporting behavioral health services. Tribal leaders also stressed the importance of moving forward in a non-partisan fashion to protect and improve the Indian health system.

Representative Ruiz closed by stating he will host additional roundtables on health care reform and its impacts on Indian Country twice a year.

III. Conclusion

We will continue to update you as health care reform moves forward. For additional information, please contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282), Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745), or Akilah Kinnison (akinnison@hobbsstrauss.com or 202-822-8282).