



MEMORANDUM

January 17, 2017

To: TRIBAL HEALTH CLIENTS
From: HOBBS, STRAUS, DEAN & WALKER, LLP
Re: ***House Votes to Approve the Senate Budget Resolution in Steps to Repeal ACA and NIHB Holds Legislative Strategy Call on IHCIA/ACA Strategy***

This memorandum reports on the January 13, 2017, House vote on the Budget Resolution to set in motion development of legislation to at the minimum partially repeal the Affordable Care Act. We also report on the National Indian Health Board (NIHB) conference call that took place last Friday on the tribal legislative strategy to deal with the impact of this resolution on the Indian Health Care Improvement Act (IHCIA) and the provisions of specific importance to tribes in the Affordable Care Act (ACA). As you know, the IHCIA is included as part of the ACA.

House Votes to Approve Senate Budget Resolution

The House of Representatives voted on Friday to approve the Senate-approved Budget Resolution, H. Con. Res. 3, which paves the way for enacting legislation to repeal the Affordable Care Act. The final vote was 227 to 198 along party lines, although nine Republicans voted no. We will continue to track this and report in more detail to you about plans as they develop that would repeal and/or replace the ACA. The Resolution requires four House and Senate Committees to report out proposals to make major changes – often in the form of repeals – of the provisions of the Affordable Care Act. Such legislation would be considered on an expedited schedule.

The Budget Resolution, now approved by the Senate and the House, does not require a Presidential signature. Rather, it orders Congressional Committees to develop, in short order, legislative proposals for ACA repeal.

NIHB Legislative Strategy Call

The NIHB held a legislative strategy call on January 13, 2017, on the vulnerability of the IHICIA and ACA. Stacey Bohlen, Executive Director of NIHB, noted during the Congressional consideration of repeal and replace of the ACA, Indian Country needs all hands on deck to ensure that the IHICIA, which is included in the ACA, stays intact. While NIHB has had positive assurance from some in Congress, those aren't meaningful until the last votes are in and the law(s) are signed. NIHB is working closely with the National Congress of American Indians (NCAI) and the Direct Service Tribes organization to speak with a unified voice with clear goals. Protecting Medicaid will be part of this huge fight, as will the protection of the non-IHCIA Indian specific provisions in the ACA (payor of last resort, Medicare Part B billing, and the exclusion of tribal health benefits from taxes).

Caitrin Shuy, Director of Congressional Relations, NIHB, noted that lawmakers have shown a lot of receptiveness to ensure that the IHCIA stays intact. NIHB and NCAI have had several meetings on the Hill since the election to talk about what the new Congress and Administration might mean for the future of the IHCIA and the non-IHCIA Indian specific provisions. Congressman Tom Cole (R-OK) has been supportive, and his staff says that leadership has been receptive.¹ Senator Lisa Murkowski (R-AK) is leading the IHCIA support on the Senate side. NIHB understands from their meetings that the IHCIA could not be part of the reconciliation process because reconciliation provisions are limited to budget-specific provisions, and the IHCIA, with its discretionary funding, does not fall in that category. They are hopeful that it stays intact, but the education campaign remains important.

While NIHB is not yet sure of the form Medicaid reform will take in legislation proposed by the new Congress, they expect it to be closer to block granting at the state level. Ms. Shuy stressed that the importance of advocating for matched funding for IHS and tribal facilities and tribal special protections from work requirements or caps. NIHB has a Medicaid policy group we are participating in that is developing policy papers that will soon be available on the website.

Tribal representatives on the call said they were already having meetings with Senate and House staff and members on the need to preserve the IHCIA. However, some were not aware of the need to preserve the other Tribal provisions that were enacted as part of the ACA, but which are also not related to the ACA. These include Section 2901, which makes the IHS the payor of last resort, Section 2902, which authorizes IHS and tribal hospitals to bill Medicare Part B, and Section 9021, which excludes tribally-provided health benefits from individual income for tax purposes. Another priority issue was to preserve 100 percent FMAP for services received through IHS and tribal facilities in any effort to reform the Medicaid program. Tribal advocates on the call agreed that the focus should not just be on preserving the IHCIA, but also preserving and protecting the other tribal provisions enacted as part of the ACA, as well as 100 percent FMAP for services received through the Indian health system. As discussed above, we are working with the MMPC to develop one page policy positions on these issues that will be distributed to tribal representatives to use with their congressional offices. We will provide those to you as soon as they are finalized.

Ms. Shuy and the tribal participants then went through the key congressional members and assigned individuals or groups of participants to reach out to each lawmaker to talk to them about these issues. The next Legislative Strategy call will take place on January 27, 2017.

Conclusion

Please contact Geoff Strommer (503-242-1745 or gstrommer@hobbsstrauss.com), Elliott Milhollin (202-822-8282 or emilhollin@hobbsstrauss.com), or Karen J. Funk (202-82-8282 or kfunk@hobbsstrauss.com) if we may provide additional information or assistance in drafting an IHCIA letter of support.

¹ Representative Cole sent a letter last month to Speaker Paul Ryan last month regarding the IHCIA. This letter can be viewed here: <https://cole.house.gov/sites/cole.house.gov/files/documents/12.6.16%20IHCA%20to%20Speaker%20Ryan.pdf>.