



## United South and Eastern Tribes, Inc.

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## **Tribal Relief from the ACA's Employer Mandate**

**In Brief:** The Patient Protection and Affordable Care Act's (ACA) large Employer Mandate, as currently applied to Indian Country, is inconsistent with the federal trust responsibility and Indian-specific provisions of the ACA.

**Issue Summary:** The Employer Mandate is a costly provision of the ACA that requires "large" employers (50 or more full-time employees) to provide affordable health insurance to all full-time employees or face a penalty of \$2,000/per employee. The Mandate does not distinguish between Indian Health Service (IHS)-eligible employees (to whom many Tribes have historically not provided insurance) and non-Native employees. Penalties are scheduled to be assessed for the 2015 plan year in April 2016.

Tribes and Tribal Organizations are urging the Obama Administration and Congress to provide relief from the Employer Mandate to Tribes and Tribal enterprises because:

- Forcing Tribes to pay for health insurance for individuals otherwise eligible for IHS is inconsistent with the federal trust responsibility to provide care at no charge to American Indians and Alaska Natives (AI/AN).
- The Employer Mandate conflicts with other benefits and exemptions for AI/AN in the ACA:
  - AI/AN are exempt from the ACA's "Individual Mandate" to carry health insurance or pay a penalty.
  - AI/AN are eligible for special zero and limited cost-sharing<sup>1</sup> plans on the health insurance marketplaces, as well as tax credits to reduce the cost of health insurance premiums. An offer of coverage from an employer renders individuals ineligible for the tax credits, thereby making the Indian-specific plans unaffordable.
- When faced with providing health insurance or paying the penalty, many Tribes would have no other choice but to spend a significant portion of IHS dollars to absorb this cost, diminishing services to IHS beneficiaries.

**Proposed Administrative Solution:** In the short-term, USET, along with partner organizations, is working with Treasury on an administrative delay in the enforcement of the Employer Mandate for Tribes for an additional year or longer. This will allow the Administration to consult with Tribes on the effect of the Mandate in Indian Country and consider potential solutions. Long-term, USET is advocating for a fix that would eliminate the penalties assessed for not providing insurance to IHS-eligible employees while also allowing these employees to access tax credits through the Marketplace.

**Current Legislation:** On July 15th, Rep. Kristi Noem (R-SD) and Sen. Steve Daines (R-MT) introduced legislation that would provide relief to Tribal employers from the Employer Mandate. The *Tribal Employment and Jobs Protection Act* (H.R. 3080 and S. 1771) would exempt Tribal employers, including Tribal governments and Tribal organizations, from the mandate to provide health coverage to any employee.

*"Because there is strength in Unity"*

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<sup>1</sup> Cost-sharing is defined as co-pays, deductibles, and co-insurance.