

UPDATE: USET SPF Alert: ACA Repeal Procedural Vote Scheduled for Today (7.25.2017)

Dear USET SPF Board of Directors, DC Tribal Reps, and Health Committee,

As you are likely already aware, over the course of debate on ACA repeal, the Senate voted on a number of proposals to repeal and/or replace without success. The final vote, taken late last night on a "[skinny repeal](#)" [text linked] proposal that would have repealed the individual mandate to purchase insurance permanently and the employer mandate for eight years, among other provisions, failed by a vote of 49-51. Senators Susan Collins (R-ME) and Lisa Murkowski (R-AK) were joined by Senator John McCain (R-AZ) and all Senate democrats in voting no, essentially ending consideration of Congressional ACA repeal and replace proposals for the moment.

An [amendment](#) [linked] to protect cost-sharing health insurance subsidies for American Indians and Alaska Natives, as well as Medicaid payments for services received through the Indian Health System, introduced by Senator Tom Udall (D-NM) gained 10 co-sponsors, but did not reach the floor.

Senate Majority Leader, Mitch McConnell (R-KY), in a [statement](#) [linked], has called for ideas from Senate democrats on a way forward. For now, he has reportedly indicated that, "it's time to move on." The Senate will now consider nominations before adjourning for the August recess.

USET SPF will continue to monitor developments in health care reform and provide updates as they become available.

All the best,

Liz Malerba ~ Mohegan Tribe

Director of Policy and Legislative Affairs

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From: Liz Malerba

Sent: Tuesday, July 25, 2017 3:46 PM

To: Kitcki Carroll; Wanda Janes; Tihtiyas (Dee) Sabattus; Sisy Garcia; Melisa Stephens; Brandy Venuti; 'Elliott A. Milhollin'

Cc: 'USET President Chief Kirk E. Francis, Sr.'; 'USET Secretary Lynn Malerba, Chief Mohegan Tribe of CT'; 'USET Treasurer Chief B. Cheryl Smith'; 'USET Vice President Vice Chairman Robert McGhee'

Subject: RE: UPDATE: USET SPF Alert: ACA Repeal Procedural Vote Scheduled for Today

Importance: High

Please note that the vote on the motion proceed with debate on ACA repeal was successful, passing by a vote of 51-50, with Senator John McCain returning early from surgery to vote yes and Vice President Mike Pence casting the tiebreaking vote. Senators Susan Collins (ME) and Lisa Murkowski (AK) were the only GOP senators to vote no, along with all democrats. The Senate will now consider legislation to repeal the ACA, but it remains unclear what the final product will contain and whether there is enough support to pass it. **USET SPF talking points from earlier today remain relevant.** We continue to encourage member Tribal Nations to contact their Senators and tell them:

- Any full repeal of the Affordable Care Act must protect the Indian Health Care Improvement Act, as well as the Indian-specific provisions of the ACA.
- Any cuts, changes, or new barriers to accessing the Medicaid program would violate the federal trust responsibility to provide health care to American Indians and Alaska Natives and threaten a critical source of reimbursement dollars for the chronically underfunded Indian Health System. Any cuts to Medicaid are cuts to Indian health.
- Special Indian-specific health insurance plans offered under the ACA are another method by which the federal government seeks to meet its trust responsibility to provide care and close gaps in funding to the Indian Health System.
- Please oppose any version of ACA repeal legislation that does not preserve these critical provisions.

In addition, please continue to encourage your Senators to support the Udall amendment to protect Indian health.

USET SPF will continue to monitor the situation and provide new information (as well as resources), as it develops.

Thank you,

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From: Liz Malerba

Sent: Tuesday, July 25, 2017 1:27 PM

To: Kitcki Carroll; Wanda Janes; Tihtiyas (Dee) Sabattus; Sisy Garcia; Melisa Stephens; Brandy Venuti; 'Elliott A. Milhollin'

Cc: 'USET President Chief Kirk E. Francis, Sr.'; 'USET Secretary Lynn Malerba, Chief Mohegan Tribe of CT'; 'USET Treasurer Chief B. Cheryl Smith'; 'USET Vice President Vice Chairman Robert McGhee'

Subject: RE: UPDATE: USET SPF Alert: ACA Repeal Procedural Vote Scheduled for Today

Importance: High

Dear USET SPF Board of Directors, DC Tribal Reps, and Health Committee,

It appears the Senate is moving forward with a vote scheduled at 2:15 pm ET on a motion to proceed on the House passed version of Affordable Care Act (ACA) repeal and replace legislation, H.R. 1628, or the American Healthcare Act (AHCA). The AHCA had previously passed the House of Representatives on May 4, 2017 by a vote of 217-213.

If enacted, the AHCA would have a substantially negative impact on health care for American Indians and Alaska Natives (AI/ANs), including the rollback of Medicaid expansion and the option to impose work requirements on Medicaid beneficiaries, cuts to overall Medicaid spending, the end of cost-sharing subsidies for insurance purchased on the exchanges and Indian-specific health insurance plans, and greater flexibility for states to reduce private insurance benefits.

As previously reported, the AHCA would preserve:

- Indian Health Care Improvement Act (IHCIA) and Indian-specific provisions of the ACA.
- 100% federal match for Medicaid payments made to the states for care received through an Indian Health Service (IHS) or Tribal health program.
- Exemptions for reimbursement for services received through the IHS or Tribal programs from counting toward a Medicaid cap or block grant.

In addition, we have recently become aware of an amendment to H.R. 1628 that Senator Tom Udall (D-NM), ranking member of the Senate Committee on Indian Affairs is intending to offer on the floor. [The amendment](#) [text linked] would protect the special, Indian-specific health insurance plans offered under the ACA as well as confirm that cuts to Medicaid shall not apply for services provided through the Indian Health System.

Senator Udall is currently seeking Senate co-sponsors for this amendment. Please contact your Senators and ask them to strongly consider cosponsoring the amendment to protect Indian health introduced by Senator Udall, as well as encourage Senate leadership to ensure the amendment receives consideration if H.R. 1628 moves forward.

Thank you,

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From: Liz Malerba

Sent: Tuesday, July 25, 2017 11:24 AM

To: Kitcki Carroll; Wanda Janes; Tihtiyas (Dee) Sabattus; Sisy Garcia; Melisa Stephens; Brandy Venuti; 'Elliott A. Milhollin'

Cc: 'USET President Chief Kirk E. Francis, Sr.'; 'USET Secretary Lynn Malerba, Chief Mohegan Tribe of CT'; 'USET Treasurer Chief B. Cheryl Smith'; 'USET Vice President Vice Chairman Robert McGhee'

Subject: UPDATE: USET SPF Alert: ACA Repeal Procedural Vote Scheduled for Today

Importance: High

Dear USET SPF Board of Directors, DC Tribal Reps, and Health Committee,

As you may already be aware, efforts to repeal and replace the Affordable Care Act (ACA) remain active in the Senate. While it seems like enough support to pass the Better Care Reconciliation Act (BCRA, see below) through the Senate has folded, the Senate will be voting today on a motion to proceed to debate on legislation to repeal the ACA. The vote will

almost certainly be along party lines, with 50 votes needed to start debate on legislation (Senate Republicans have a 52-seat majority). However, it remains unclear which health care bill the Senate will even consider.

Previously, Senate Majority Leader Mitch McConnell had been pushing BCRA, a measure that was similar to a bill approved by the House earlier this year, but last week, he signaled the Senate might instead vote on a 2015 bill previously vetoed by President Barack Obama that repeals major pieces of the ACA without a replacement plan. It is still unclear which piece the Senate will consider today. In order to garner additional support, Republican leaders are providing few details about what the final bill to repeal the ACA would include and working behind the scenes with GOP senators, after two recent drafts met fatal opposition.

Both bills may fall short of the 50 votes required for passage. BCRA has drawn opposition from all sides of the Republican Conference. Three senators, Shelley Moore Capito (WV), Susan Collins (ME), and Lisa Murkowski (AK) said they would oppose scrapping the law without a clear alternative.

It is important to note that neither BCRA nor the 2015 repeal bill affect the Indian Health Care Improvement Act (IHCIA) or the Indian-specific provisions within the ACA, though again, it is unclear if either of these bills will be taken up today. USET SPF is continuing to communicate with Senate regarding the priorities of member Tribal Nations. We encourage you to contact your senators, particularly Republican senators, and urge them to oppose repeal legislation.

A repeal of the ACA would impose major cuts and changes to the Medicaid program, which would reduce vital third-party reimbursements to an already underfunded system and create barriers to accessing Medicaid across Indian Country. In addition, it would mean the repeal of language that ensures Tribal Nations have access to special health insurance plans that do not require cost-sharing. This is particularly important for those Tribal Nations that purchase insurance for their citizens on the marketplace.

- To determine your home Senators, please visit www.senate.gov.
- To be directly connected to a Senate office via phone, please call the Congressional switchboard at: 202-224-3121

For your use in conversations with Senate offices, we provide the following talking points:

- Any full repeal of the Affordable Care Act must protect the Indian Health Care Improvement Act, as well as the Indian-specific provisions of the ACA.
- Any cuts, changes, or new barriers to accessing the Medicaid program would violate the federal trust responsibility to provide health care to American Indians and Alaska Natives and threaten a critical source of reimbursement dollars for the chronically underfunded Indian Health System. Any cuts to Medicaid are cuts to Indian health.
- Special Indian-specific health insurance plans offered under the ACA are another method by which the federal government seeks to meet its trust responsibility to provide care and close gaps in funding to the Indian Health System.
- Please oppose any version of ACA repeal legislation that does not preserve these critical provisions.

As always, I am happy to answer any questions you may have.

Thank you,

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From: Liz Malerba
Sent: Monday, July 17, 2017 5:51 PM
To: Kitcki Carroll; Wanda Janes; Tihtiyas (Dee) Sabattus; Sisy Garcia; Melisa Stephens; Brandy Venuti; 'Elliott A. Milhollin'
Cc: 'USET President Chief Kirk E. Francis, Sr.'; 'USET Secretary Lynn Malerba, Chief Mohegan Tribe of CT'; 'USET Treasurer Chief B. Cheryl Smith'; 'USET Vice President Vice Chairman Robert McGhee'
Subject: RE: USET SPF Alert: MONDAY Conference Call on ACA Repeal & Replace Legislation
Importance: High

Dear USET SPF Board of Directors, DC Tribal Reps, and Health Committee,

Thank you again for joining us on this afternoon's call. As promised, we are enclosing a [Better Care Reconciliation Act \(BCRA\) fact sheet](#) [linked] for your use during conversations with Senators. As we noted on the call, the new version of [BCRA](#) [linked] continues to make unacceptable changes to the Medicaid program, including a new provision concerning state reimbursement that would change over 40 years of Indian Medicaid policy without Tribal consultation (see fact sheet).

In addition, we encourage you to write your Senators urging them to oppose BCRA. To assist you with this, we enclose a [Tribal template BCRA opposition letter](#) [linked]. Please be sure to provide copies of any letters sent to the Senate to USET SPF for our awareness.

We will continue to provide updates on the status of the legislation as they become available. Please let me know if you have any questions.

Thank you,
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From: Liz Malerba

Sent: Monday, July 17, 2017 10:06 AM

To: Kitcki Carroll; Wanda Janes; Tihtiyas (Dee) Sabattus; Sisy Garcia; Melisa Stephens; Brandy Venuti; Elliott A. Milhollin

Cc: USET President Chief Kirk E. Francis, Sr.; USET Secretary Lynn Malerba, Chief Mohegan Tribe of CT; USET Treasurer Chief B. Cheryl Smith; USET Vice President Vice Chairman Robert McGhee

Subject: RE: USET SPF Alert: MONDAY Conference Call on ACA Repeal & Replace Legislation

Dear USET SPF Board of Directors, DC Tribal Reps, and Health Committee,

Just a friendly reminder of our call-to-action teleconference scheduled for this afternoon at 2:00 pm EST/1:00 pm CST. We hope that you can join us.

Thank you,

Liz Malerba ~ Mohegan Tribe

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From: Liz Malerba

Sent: Saturday, July 15, 2017 11:06 AM

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Cc: USET President Chief Kirk E. Francis, Sr.; USET Secretary Lynn Malerba, Chief Mohegan Tribe of CT; USET Treasurer Chief B. Cheryl Smith; USET Vice President Vice Chairman Robert McGhee

Subject: USET SPF Alert: MONDAY Conference Call on ACA Repeal & Replace Legislation

Importance: High

Dear USET SPF Board of Directors and DC Tribal Reps,

On Thursday, July 13 2017, Senate Republicans released the second draft of the [Better Care Reconciliation Act of 2017 \(BRCA\)](#) [linked]. The Senate is expected to vote on the legislation next week. This is the Senate's second version of legislation that would repeal and replace the Patient Protection and Affordable Care Act (ACA). Previously, Senate Majority Leader Mitch McConnell had anticipated a vote on BRCA before the July 4th recess but was forced to delay because he couldn't garner the 50 votes needed for passage in the Senate.

Attached please find a [detailed memo](#) [linked] on the latest draft of BCRA as prepared by Hobbs, Straus, Dean & Walker. **In addition, please join USET SPF for a call to action teleconference on Monday, July 17 at 2:00pm EST/1:00 pm CST, to discuss the most recent draft of BCRA and the impacts to Indian Country. To access the call, dial (515) 604-9000, enter the passcode: 984173#**

When it comes to impacts the legislation would have on the Indian Healthcare System, **the new version of BCRA contains a new provision that would amend an Indian-specific Medicaid provision that has been in place for over 40 years.** Currently, the Medicaid law contains a provision that reimburses states at 100 percent of the costs of care provided to American Indians and Alaska Natives (AI/AN) that is "received through" Indian Health Service (IHS) and Tribal health facilities. Section 138 of BCRA would eliminate the "received through" language, which would increase reimbursements to states with no guarantee of additional funding going to IHS or Tribal providers or for care to individual AI/ANs. This provision is of great concern, as it would change over 40 years of Indian Medicaid policy without Tribal consultation and potentially impact the coordination of care for AI/AN patients that IHS and Tribal health facilities provide.

In addition, USET SPF had previously provided the below list of concerns regarding the preceding draft of BCRA. These provisions appear to largely unchanged in the current draft of BCRA. Among these concerns are:

1. **Eliminating Medicaid Expansion:** While the Senate bill takes longer to phase out Medicaid Expansion than the version introduced in the House (2024 vs. 2020), it also phases out enhanced federal funding for the expansion, likely leading to states phasing out the program and/or reducing services in future years.
2. **Cutting and Capping Medicaid:** BCRA imposes a per capita allotment (per person spending) upon the Medicaid program, rather than the traditional entitlement model (fee-for-service) that is currently used. If enacted, BCRA would also cut Medicaid by tying the annual increase to the consumer price index, which is lower than the medical consumer price index used by the House bill. While the cap does not apply to services received through the IHS or Tribal health systems, it would nonetheless result in reduced eligibility and/or services at the state level. AI/AN are still subject to State income and eligibility determinations for Medicaid, and therefore could see cuts in eligibility levels and services, even though the federal funding for those services does not count against the caps.
3. **State Option to Impose Work Requirements:** Section 131 of BCRA allows states the option to impose work requirements on Medicaid recipients. There is currently no exemption from this provision for AI/AN. Medicaid is program that plays a critical part in meeting the federal government's trust responsibility to provide health care to AI/AN. Conditioning eligibility for Medicaid on seeking work would diminish this trust responsibility. Further, it will not work in Indian Country, as AI/AN have access to IHS and little access to work opportunities.
4. **Elimination of Cost-Sharing Protections for AI/AN on Marketplace Plans:** After December 31, 2019, BCRA would eliminate all cost sharing protections in Section 1402 of the ACA. This would include the special cost-sharing protections for AI/ANs in Section 1402(d) of the ACA. These cost-sharing protections are key to making marketplace enrollment accessible to AI/AN, and have allowed Tribal Nations to develop premium sponsorship plans to provide new coverage options for their citizens.

We hope that you will consider joining USET SPF and Tribal Nations and organizations across the United States in opposing the BCRA. As always, I am happy to answer any questions you may have.

Thank you,

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