



NATIONAL INDIAN HEALTH BOARD

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On December 8, 2006, knowing that S. 1057, Indian Health Care Improvement Act Amendments (IHCIA) of 2006, would not pass the Senate, Senators McCain, Dorgan, Enzi, and Murkowski introduced S. 4122, to amend the IHCIA. S. 4122 reflects last minute changes to the IHCIA that were made to address the Department of Justice and Republic Steering Committee concerns.

The NIHB is currently working on a more detailed side by side of the bills, S. 1057 and S. 4122. However, until that is completed and for purposes of the National Steering Committee conference call scheduled for Tuesday, December 19, 2006, the following is a summary of major changes to S. 1057 as found in S. 4122, with strikeouts indicating deletions and new language in bold font.

Section 213: Authority for provision of other services:

S. 4122 includes revisions to the definition of home and community based services as follows:

(1)~~(A)~~ The term ‘home- and community-based services’ means 1 or more of the following **services (whether provided by the Service or by an Indian Tribe or Tribal Organization under a contract, grant agreement, or cooperative agreement pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)) for which the Secretary has established standards pursuant to subsection (b):**

~~“(i)“(A) Home health aide services.~~

~~“(ii) Personal care services.~~

~~“(iii)“(B) Nursing care services provided outside of a nursing facility by, or under the supervision of, a registered nurse.~~

~~“(iv) Respite care.”“(C) Respite care.~~

~~“(v) Training for family members.”“(D) Adult day care.~~

~~“(vi) Adult day care.~~

~~“(vii) Such other home and community based services as the Secretary, an~~

~~Indian Tribe, or a Tribal Organization may approve.~~

~~“(B) The term ‘home and community based services’ does not include a service provided by an individual that is legally responsible for providing the service.”~~**(E) Such other services identified by an Indian Tribe or Tribal Organization for which the Secretary has established standards pursuant to subsection (b).**

The standards in subsection (b), referenced in the definition of home and community based care, is language from the Manager’s Amendments. However, S. 4122 reflects a revised definition deleting “Personal care services” and clarifies that home and community based services are those for which standards have been established. The Department of Justice (DOJ) had raised concerns regarding government liability for certain home and community based services, especially personal care services which are daily living type services.

Issue: Is there a problem with personal care services being deleted from the definition? Also, is there a concern with defining home and community based services to those where standards have been established by the Secretary. The Secretary may adopt state standards – are there existing standards for these services? Note: Medicaid reimburses for many home and community based services under section 1915 waiver authorities.

Section 314: Tribal Management of Federally owned quarters:

S. 4122 includes revisions to 314 (a) to require that rental rates for quarters be established according to the guidelines in OMB Circular A-45.

Issue: Section 314 is not in current law but has been included in the reauthorization bills to overcome the strict requirements in OMB Circular A-45 and provide tribes with flexibility to establish rental rates to accommodate local community circumstances. Reference to OMB Circular A-45 defeats the purpose of providing tribes with flexibility to set rental rates. What is the NSC’s recommendation as to this new language?

Revisions to section 314(a) (1) in S. 4122:

(a) Rental Rates.—

“(1) ESTABLISHMENT.—Notwithstanding any other provision of law, a Tribal Health Program which operates a hospital or other health facility and the federally-owned quarters associated therewith pursuant to a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall have the authority to establish the rental rates charged to the occupants of such quarters by providing notice to the Secretary of its election to exercise such authority, **provided that the method for establishing such rates be identified according to guidelines (such as OMB Circular A-45) which will ensure that rents shall be collected, that the rents are fair and reasonable, and that the tenants are not treated inequitably relative to other similar quarters, such as for the Bureau of Indian Affairs.**

Section 805: Limitations

This section was revised in S. 4122 to address the DOJ's concerns regarding FTCA coverage of traditional health care practices. Section 805 was revised to add a new paragraph (b) as follows:

(b) No Liability.—Although the Secretary may promote traditional health care practices, consistent with the Service standards for the provision of health care, health promotion, and disease prevention under this Act, the United States is not liable for the acts or omissions of any person in providing traditional health care practices under this Act that result in damage, injury, death, or any other outcome to any patient.

Issue: DOJ has consistently objected to FTCA coverage of traditional health care practices. This language was included in S. 4122 to address DOJ's concerns, but in preparing for introduction of a new bill, what is the NSC's recommendation regarding this language?

Section 814: Bipartisan Commission on Indian Health:

S. 4122 was revised to include the following language (in bold font) to Section 814(b)(1) – Duties of the Commission:

“(A) To the extent necessary to carry out its duties, collect and compile data necessary to understand the extent of Indian needs with regard to the provision of health services, regardless of the location of Indians, including holding hearings and soliciting the views of Indians, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, which may include authorizing and making funds available for feasibility studies of various models for providing and funding health services for all Indian beneficiaries, including those who live outside of a reservation, temporarily or permanently. **The study committee shall also evaluate utilization rates by Indians at Indian Health Programs and Urban Indian Organizations programs, existing or potential disincentives to any over utilization of health care services, existing or potential incentives to spend health care resources prudently, and the concepts of, and potential incentives to, achieving personal responsibility of Indians or a more direct role of Indians in their personal health care management plans or decisions.**

Issue: It is our understanding this language was added to address Republican Steering Committee (RSC) concerns regarding over utilization of Indian health programs. The language regarding studying ways for Indians to assume personal responsibility is troubling but reflects the RSC philosophy that persons, including Indians, should take personal responsibility for their health care.