



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 22, 2008
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 1200 – Indian Health Care Improvement Act Amendments of 2008

(Senator Dorgan (D) ND and 29 cosponsors)

The Administration is committed to reauthorizing and improving the Indian Health Service (IHS) and to increasing the availability of high-quality health care to eligible American Indians and Alaska Natives. The Administration appreciates that the Senate bill includes certain provisions that maximize the Health and Human Services Secretary's flexibility and strengthen his authority in the administration of the IHS. Such provisions will allow the Secretary, in consultation with Tribes, to prioritize those services and programs that best address the needs of American Indians and Alaska Natives. However, the Administration has serious concerns with numerous provisions in S. 1200 including an expansion of Davis-Bacon Act prevailing wage requirements that would violate a longstanding Administration policy. If this provision is included in the final bill presented to the President, his senior advisors would recommend he veto the bill.

Annually enacted Department of Health and Human Services appropriations bills prohibit Federal funds from being used for abortion except in cases of rape, incest, or where the life of the mother is endangered. The Administration strongly encourages Congress to codify this long-standing policy in the IHS authorizing statute.

As currently drafted, the bill includes irresponsible provisions related to Medicaid and the State Children's Health Insurance Program (SCHIP) which negatively impact those programs' efficiency and quality of care. The bill also expands the use of the term "traditional health care practices," but fails adequately to affirm that the Federal government is not subject to any resulting liability and litigation. The bill weakens Medicaid citizenship documentation requirements, and increases the possibility that unverified tribal documents may be used to access Medicaid benefits. Additionally, the Administration strongly opposes reducing the Medicare Regional Plan Stabilization Fund to help offset the bill's costs. Reducing the Stabilization Fund could increase costs for Medicare beneficiaries, reduce access to Medicare Advantage plans, or both.

The Administration strongly opposes provisions that: (1) authorize and expand authorities for Urban Indian Organizations that are inconsistent with the President's FY 2008 Budget; (2) establish new permissive authorities for new types of services which could detract effort and resources from services delivered by IHS; (3) expand use of the term "traditional health care practices" without language that confirms that the Federal government will not be subject to liability or litigation for any potential injuries or harms related to such activities; (4) override existing authority allocating the cost of providing care to American Indian veterans between the Department of Veterans Affairs and IHS; (5) establish new reporting requirements that restrict the Secretary's flexibility to deliver health care services to American Indians and Alaska

Natives; (6) impose new requirements for negotiated rulemaking that would limit the Secretary's authority to prioritize resources because the Secretary currently has statutory authority to use negotiated rulemaking; (7) establish new requirements for consultation because the Department's demonstrated commitment to ongoing consultation with the Tribes under the Department consultation policy and current Executive Orders render such requirements unnecessary; and (8) include new requirements using "shall" instead of "may" that could limit the Secretary's flexibility to prioritize the delivery of health care.

The Administration objects to provisions related to Medicaid and SCHIP that are unnecessary and do not contribute to program efficiency or quality of care, such as Medicaid cost-sharing and overly prescriptive managed care provisions. Specifically, the Administration strongly opposes the provision that weakens the Medicaid citizenship documentation requirement. This provision would allow Tribal documents to be used in meeting the citizenship documentation requirement, even though many of these documents do not provide sufficient verification of citizenship status. The Administration has already specified which Tribal documents can be used to meet the Medicaid citizenship documentation requirement.

The Administration objects to new permissive authority set forth in "Other Authority for Provision of Services." This authority could expand the scope of individuals eligible to receive services from the IHS to those who would not currently qualify for services. Under current law, IHS and Tribes may provide services to individuals who are not otherwise eligible for health services under limited circumstances. An expansion of this current limitation would extend the mission of the IHS far beyond that which Congress originally intended: to serve American Indians and Alaska Natives living on or near a reservation. In addition, these new authorities would expand IHS activities beyond its current mission, which could divert resources from direct health care provision.

The Administration objects to the establishment of a National Bipartisan Commission on Indian Health Care. Such a provision is unnecessary as the Department and IHS are committed to continually identifying ways to improve the delivery of services to American Indians and Alaska Natives.

The Administration objects to the provisions in the bill that reference "the Secretary, acting through the Service, Indian Tribes, or Tribal Organizations" or "the Secretary, acting through the Service or Tribal Programs." As presently phrased, these provisions raise constitutional concerns about the delegation of executive responsibility, and should be redrafted to avoid any reference to the Secretary "acting through" entities that are not controlled by, or accountable to, the President.

The Administration believes that the legislation raises constitutional concerns to the extent that it provides government benefits to individuals who are not members of, or closely affiliated with, a federally recognized Indian Tribe.

The Administration will continue to work with Congress on a comprehensive approach to reauthorization of the Indian Health Care Improvement Act to address the continuing needs of eligible American Indians and Alaska Natives.

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