



## AIHC Position Paper: AI/AN Potential Impacts of the Appeal of the Affordable Care Act

**Subject:** Potential impacts of the repeal of the Affordable Care Act on Tribal and Urban Indian Health Programs and American Indians and Alaska Natives (AI/AN) in Washington State.

### **Background:**

When the Patient Protection and Affordable Care Act (ACA) was passed March 23, 2010, it included several provisions for AI/AN to help access specialty care outside the Indian Health Care System (I/T/U) that is affordable for AI/ANs and Tribal and Urban Indian Health Programs (UIHP). One of the most important provisions of the ACA for the Indian Health Care system is the permanent authorization of the Indian Health Care Improvement Act (IHCIA) and expanded provision in the Indian Health Care Reauthorization and Extension Act (IHCREA). Prior to the passage of the ACA, the IHCIA had last been authorized through 2001. Although the programs continued to receive appropriations in following years, this reauthorization has been a relief to the I/T/U.

All the provisions within the IHCIA are important to the Tribes and UIHPs.

### Here are the top provisions:

1. Ability of I/T/U to bill and be paid by both Medicare and Medicaid, including SCHIP and Medicaid expansion, for eligible patients;
2. Authorized the I/T/U programs to pay premiums and cost sharing for alternate resources, such as Medicare B and D, employer insurance and QHP, for I.H.S. eligible in service areas,
3. Authorizes new comprehensive behavioral health and treatment programs. Includes a new subsection authorizing programs related to youth suicide prevention;
4. Established a prescription drugs monitoring program;
5. Established an IHS Director of HIV/AIDS Prevention and Treatment;
6. Added new requirements for the IHS budget requests to reflect inflation and changes in the IHS service population;
7. Expands use community health aides at I.H.S. funded facilities;
8. Authorizes and expands grants to UIOs for health projects to serve urban Indians.

### AI/AN specific provisions in the ACA:

1. Persons eligible to receive care through the Indian Health Care System, are exempt from the tax penalty for not have minimum essential coverage during the year.
2. Enrolled members of Federal Recognized Tribe or Alaska Native Corporation or Village may enroll into a Qualified Health Plan (QHP) in the marketplace, at any time during the year, not just during open enrollment;
3. Enrolled members of a Federally Recognize Tribe or Alaska Native Corporation or Village are eligible for cost sharing reductions:
  - a) If income is below 300% of the federal poverty level, there is zero cost sharing on Essential Health Benefits (EHB) paid by a QHP. The QHP pays 100% of the contract rate to the provider and seeks reimbursement from the federal government quarterly;



- b) If the income is 300% of the FPL and above, there is limited cost sharing. If the enrolled tribal member is referred from and Indian Health Care Provider for an EHB, there is no cost sharing. The QHP pays 100% of the contract rate to the provider and seeks reimbursement from the federal government quarterly.

### **Analysis:**

If the repeal of the ACA is done through budget reconciliation, the authorization of the IHCREA will remain in place, as it is not a budget issue. If a full repeal of the ACA takes place, the IHCREA will also be repealed. This seems unlikely to happen quickly, but would have many negative impacts on the I/T/U nationwide. The I/T/U is currently funded around 32% of need. Many of the provisions of the IHCA and the IHCREA help to relieve the continued underfunding of the I/T/U by providing opportunities to 1) preserve funding through the ability to pay for and reimburse I.H.S. eligible utilizing alternate resources and 2) allowing Indian Health Care Providers (IHCP) to bill for and receive third party revenues from alternate resources. Loss of these two provisions would devastate the I/T/U. Other provisions of the IHCREA that would be lost are funding for behavioral health, youth suicide prevention and HIV/AIDS prevention and treatment programs.

If the ACA is repealed, the loss of Indian provisions related to marketplace (QHP) coverage would increase program costs and decrease clinic revenues at Tribes and UIHP who have implemented Tribal Premium Sponsorship programs.

### Provisions of the ACA that are not Tribal specific but still have tribal implications:

AI/ANs, Tribe's and Urban programs also benefit from general provisions of the ACA.

Loss of the Medicaid Expansion up to 138% of FPL and the use of modified adjusted gross income, or MAGI, to determine Medicaid eligibility will result in the loss of coverage for AI/ANs in our State; some Tribes report this will be up to 45% of the patients they serve. This loss will mean an increased cost to programs when these AI/ANs are referred for care outside of the I/T/U. Coverage by Medicaid for this group of AI/ANs, formerly without coverage, is a major source of third party revenue received by Indian Health Care Providers (IHCP) in an already severely underfunded system.

Protection from being denied coverage or charged higher premiums by insurers because of pre-existing conditions will have an impact of AI/ANs seeking coverage outside of employment and a Tribal or UIH program. AI/ANs suffer some of the highest health disparities in our nation. Prior to the implementation of this benefit under the ACA, pre-existing conditions caused many AI/ANs to be denied coverage by insurers or offered coverage in a high risk pool. In Washington State, the high risk pool premiums averaged over \$1,000 per month, increasing with the age of the participant.

Although coverage through an I/T/U is considered creditable coverage, many Tribal programs purchase Medicare Part D, prescription drug coverage, for their Elders to help save program funds. The closure of the



gap, or “donut hole”, in this coverage is providing savings to these programs. The repeal will bring the gap coverage back to the pre-2011 levels. This will be another costly increase to already severely underfunded programs.

Benefits of the repeal of the ACA:

The ACA is a complicated law that touches every aspect of healthcare in our country. The repeal of the ACA will have some benefits to Tribes:

1. The entanglement of premium tax credits with income tax returns for enrolled member of federally recognized Tribes that are covered under Tribal Premium Sponsorship has been a frustration that won't be missed. When there have been overpayments of tax credits, the repayment is taken from the tax return of the individual, not the Tribal program that has been paying the premium. The converse is true when an underpayment of the tax credit is taken; the reimbursement is made to the individual and not the Tribal program that paid the premium.

2. Tribes and UIHP, as employers, will be relieved by the repeal of the employer requirements of the ACA. Tribes have been advocating at the federal level to be exempted from the reporting and fees, specifically for Tribal Members covered under employer plans. This requirement is inconsistent with the Federal Trust Responsibility to provide health care to Indian people, the individual mandate, and other Indian-specific provisions of the ACA. Tribes have been seeking administrative action to assure that Tribal governments are not forced to further subsidize the Federal Trust Responsibility.

January 21 The best outcome would be that the ACA not be repealed, but congress works together with the new administration to amend the ACA. That seems unlikely. If the ACA is repealed protecting the IHCREA is crucial to the I/T/U and access to healthcare for AI/AN.

<b>Action Required:</b>	<b>By Whom:</b>
Tribal and Urban Leaders to request their Senators and Representatives keep the IHCREA in place regardless of a repeal of the ACA. Tribal and Urban Leaders should also request that instead of repealing the ACA, congress work on amendments to fix the parts of the Act that are not working well.	AIHC, NPAIHB, Tribal and Urban Leaders, Tribal Partners across the State