LEGISLATIVE UPDATE

Patient Freedom Act of 2017

January 25, 2017

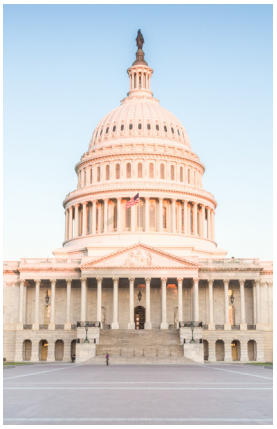
Seattle Indian Health Board
For the Love of Native People

Urban Indian Health Institute
A Division of the Seattle Indian Health Board

On January 23, 2017, Senators Cassidy (LA-R) and Collins (ME-R) introduced the Patient Freedom Act of 2017, to partially replace the Affordable Care Act (ACA). This bill, S. 191, has left the Indian Health Care Improvement Act (IHCIA) untouched, as it only repeals Title 1 of the ACA. We must be diligent to make sure that the congressional delegations of all Urban Indian Health Programs (UIHPs) protect the IHCIA and key American Indian and Alaska Native (AI/AN) provisions created by the ACA at the state and federal levels.

Although the Trump Administration and Congressional Republicans are moving forward with their "repeal and replace" plan, beneficial aspects of the ACA have been preserved in this bill. These benefits were recognized in S. 191, which repeals parts of the ACA while protecting others and promoting "states' right to choose" between the three choices in Section 102 of the bill.[1] The following table provides a preliminary analysis of the impact of key parts of S. 191 on UIHPs:

Provisions[2]	Impact
Sec. 101. Ends the ACA's "One Size Fits All" approach: – Repeals Title I of ACA, including the Individual and Employers mandates, as default options for states. Maintains essential consumer protections. – Protects individuals with preexisting conditions, prohibits annual or lifetime caps, maintains guaranteed issue and guaranteed renewability, prevents discrimination, maintains coverage for mental health and substance abuse disorders, and allows adult children to remain on their parent's health insurance plan to age 26.	The IHCIA is not impacted by the repeal of Title I, it is under Title X, and the special AI/AN provisions (such as Section 2901, payer of last resort; Section 2902, reimbursements for all Medicare Part B services; and Section 9021, health benefits not included as taxable income), in Titles II and IX. By protecting some provisions within Title I, this section protects our AI/AN population that suffer from chronic conditions and co-occuring disorders, in need of both medical and behavioral health services. UIHPs, as employers, will be relieved by the repeal of the employer mandates.
Sec. 102. Lets states choose the best path forward – States may: 1- Opt to reinstate Title I to recreate the ACA.	Option 1 would, to an extent, protect the sustainability of UIHPs in states that elected to expand Medicaid and create and administer state Health Insurance Marketplaces. It is still not clear whether or not the state payment would still be subject to a Medicaid block grant process that is tied to Option 2 in the bill. This could result in the inabililty for Medicaid to be the payer of last resort if the block grant funding runs dry. In this scenario, there is increased pressure for our limited IHS dollars to be our payment of last resort.



References

1) Senators Propose Giving States Option to Keep Affordable Care Act. New York Times. https://www.nytimes.com/2017/01/23/us/politics/senate-affordable-care-act-bill-cassidy-susan-collins-trump.html

2) Patient Freedom Act of 2017 Section-by-Section. Sen. Bill Cassidy for the 115th Congress.

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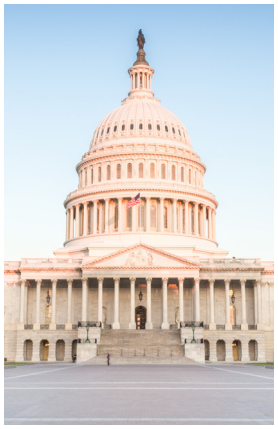
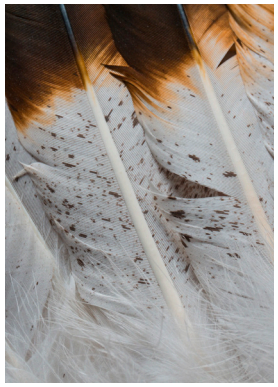
Provisions	Impact
Sec. 102 continued... 2- Adopt a market-based health insurance system (described in section 103 of the PFA) using federally funded Roth Health Savings Accounts. 3- Design its own health insurance system without federal funding. States which do not chose an option within one year of enactment are assumed to have elected Option 2. States may change their election at any time.	Under option 2, UIHPs in states that choose to keep their Medicaid expansion and administer their new system themselves will be able to continue to rely on that stream as they prepare for a capitation payment system. UIHPs in Option 2 states that use Medicaid expansion and insurance subsidy monies to pay for private insurance will have to rely even more on IHS as the payer of last resort. Option 3 would cause states to lose Medicaid expansion and insurance subsidy monies, which would result in UIHPs losing substantial Medicaid revenue, and many AI/AN people losing coverage.
Sec. 106. Returning regulation of health insurance markets to the states– Provides states with the flexibility they need to manage their own health insurance markets.	The federal government's trust responsibility extends to the IHS, Tribal, and Urban Indian health services (I/T/U) system. Without federal oversight, protections for AI/ANs in the health insurance marketplace could be at risk.





While we work to ensure protection of the IHCIA and key AI/AN protections of the ACA, the "repeal and replace" discussion may afford opportunities to improve sections of the ACA that need fine-tuning, or to include additional provisions. Now more than ever, UIHPs need to redouble our efforts to attain 100% FMAP payments for our IHS eligible clients by amending section 1905(b) of the Social Security Act to include UIHPs. Additionally, UIHPs should ask their delegations for a separate I/T/U block granting system if a state does indeed elect to go the way of Medicaid block grants. This will create an I/T/U public health safety net where all AI/ANs in the state have access to culturally responsive and quality health care throughout their state.

This bill seeks to empower a citizen's right to purchase and manage their health insurance while divesting administrative and payment authority to the states. This could result in a Medicaid block granting system as well as increased powers by insurance companies and managed care entities to design service billing profiles. It is imperative that the UIHPs partner with their state's I/T/U representatives to protect the IHCIA and the AI/AN provisions in the ACA as states make decisions on how they deliver health care under the new law.

For more information on current legislation, visit the Govtrack website.