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SENATE MEMORIAL 33

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

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A MEMORIAL

URGING THE UNIVERSITY OF NEW MEXICO HOSPITAL TO HONOR THE LAW
AND BINDING CONTRACT TO PROVIDE A MINIMUM OF ONE HUNDRED BEDS
FOR NATIVE AMERICAN PATIENTS.

WHEREAS, more than fifty years ago when construction of
the university of New Mexico hospital commenced, the United
States congress conditioned funding for the county hospital on
a commitment to reserve a minimum of one hundred beds for
Native American patients in exchange for land; and

WHEREAS, Public Law 81-438, October 31, 1949, as amended
by Public Law 85-249, August 31, 1957, is still in effect and
it requires that Bernalillo county make available one hundred
beds for Native American patients at the hospital built on land
taken out of trust for the hospital; and

WHEREAS, in the original contract documents, the

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1 Bernalillo county board of commissioners, the state and the
2 board of trustees of the Bernalillo county hospital agreed to
3 guarantee that the hospital would "make available perpetually,
4 when required, not less than one-hundred beds for Indians to
5 provide perpetual general hospital care and medical, surgical
6 and obstetrical care and treatment of the highest medical
7 standard for Indians"; and

8 WHEREAS, the original contract document stated that it
9 "shall be perpetually binding upon the County, the Trustees and
10 their successors, and any authorized successor operator of the
11 hospital"; and

12 WHEREAS, the commissioner for Indian affairs reimbursed
13 the county of Bernalillo and later the board of regents of the
14 university of New Mexico for the costs of setting aside the
15 beds since the hospital was built; and

16 WHEREAS, when the board of regents of the university of
17 New Mexico assumed the federal contract, the board did not
18 repudiate its agreement to reserve the beds for Native American
19 patients; and

20 WHEREAS, the managing entity of the hospital has received
21 more than fifty years of reimbursements from the Indian health
22 service for the care and treatment of Native American clients;
23 and

24 WHEREAS, the board of regents of the university of New
25 Mexico has managed the hospital at least since 1968 and

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1 accepted payments for the Native American set-aside during the
2 years of its management contract; and

3 WHEREAS, the university of New Mexico hospital has decided
4 that the one hundred beds it is contracted to reserve "in
5 perpetuity" for Native American patients may be ignored on
6 grounds that it is fulfilling most of the requirements of the
7 public law and binding contract; and

8 WHEREAS, the university health sciences center, in its
9 defense, has stated "except for the obligation of the
10 university of New Mexico health sciences center to make beds
11 available at the university of New Mexico hospital for the care
12 of Native American patients", the university of New Mexico
13 health sciences center is fulfilling its contract and statutory
14 obligations by providing "access to care and access to
15 financial assistance for that care, for all Indians regardless
16 of their origin, on the same basis as it provides such access
17 to non-Indian patients"; and

18 WHEREAS, under the reimbursement methodology adopted by
19 the Indian health service, the Indian health service reimburses
20 the university of New Mexico hospital for approximately one-
21 half the cost the hospital incurs each year for providing
22 hospital services to eligible Native Americans; and

23 WHEREAS, a perpetual requirement to provide services may
24 become a burden over time, but choosing to ignore the
25 requirement does not provide a good faith resolution to the

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1 problems that arise due to failure to fulfill the requirement;
2 and

3 WHEREAS, no one at the university of New Mexico, the
4 university of New Mexico hospital and the university of New
5 Mexico health sciences center seems to recall that the pueblos
6 generously donated the land to the hospital in exchange for
7 future services, to help the general population of Bernalillo
8 county, and this was and remains a business agreement with
9 legal remedies for its breach, as well as a gracious gift for
10 the public good and a legal requirement; and

11 WHEREAS, it is commendable that the university of New
12 Mexico hospital provides services to Native American patients
13 on the same basis as any other patients, a practice that
14 complies with the United States constitution as well as the
15 constitution of New Mexico, but complying with some of the
16 requirements of a law does not equate to complying with the
17 law; and

18 WHEREAS, it is difficult to understand why the university
19 of New Mexico board of regents, the university of New Mexico
20 hospital and the university of New Mexico health sciences
21 center are willing to risk the scorn of the community and the
22 damage to the image of those institutions by failing to resolve
23 this issue in a reasoned, benevolent and humane manner;

24 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
25 OF NEW MEXICO that the university of New Mexico hospital be

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1 informed that the state expects its agencies and entities to
2 act both in the spirit of as well as by the letter of the law;
3 and

4 BE IT FURTHER RESOLVED that members of the board of
5 regents of the university of New Mexico report to the interim
6 legislative Indian affairs committee by October 2006 its
7 rationale, its legal justification and its ethical obligation
8 and moral responsibility to honor the grant of trust land
9 belonging to the pueblos located in New Mexico for use for a
10 hospital in exchange for the perpetual reservation of beds for
11 Native American patients and its decision to ignore the
12 mandates of the contract that transferred the land out of trust
13 for the state's pueblos and on which the university of New
14 Mexico and the university of New Mexico health sciences center
15 are to this day located; and

16 BE IT FURTHER RESOLVED that copies of this memorial be
17 transmitted to the president of the board of regents of the
18 university of New Mexico, the chair of the Indian affairs
19 committee, the management of the university of New Mexico
20 health sciences center and the university of New Mexico
21 hospital, the Bernalillo county board of county commissioners
22 and the chair of the all Indian pueblo council.