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SENATE MEMORIAL 98

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Benny Shendo, Jr.

A MEMORIAL

REQUESTING THAT THE HUMAN SERVICES DEPARTMENT RESPOND TO
QUESTIONS AND REPORT ON MATTERS RELATING TO THE PROVISION OF
MEDICAID COVERAGE TO RECIPIENTS WHO IDENTIFY AS NATIVE
AMERICAN.

WHEREAS, Native American tribes exercise inherent
sovereign powers over their members and territory; and

WHEREAS, rooted in federal treaties, laws and court
decisions, Native Americans have a unique relationship to the
health care system, which affords them special rights and
protections; and

WHEREAS, the federal Patient Protection and Affordable
Care Act contains rights and protections specific to Native
Americans, reaffirming the unique relationship of Native
Americans to the health care system; and

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1 WHEREAS, passage of the federal Patient Protection and
2 Affordable Care Act contained the reauthorization of the Indian
3 Health Care Improvement Act, which not only confirms but
4 expands tribal authority to plan and design tribal health care
5 systems; and

6 WHEREAS, the federal Indian Health Care Improvement Act
7 provides tribes the authority to provide services not otherwise
8 offered in the past, such as long-term care, hospice, assisted
9 living and home- and community-based services for disabled and
10 elderly persons; and

11 WHEREAS, federal law allows Native American recipients of
12 medicaid to choose between receiving their medicaid services
13 under managed care or the traditional fee-for-service payment
14 system; and

15 WHEREAS, the New Mexico human services department has
16 implemented a medicaid managed-care system, centennial care,
17 and insists that all medicaid beneficiaries, including Native
18 Americans, enroll in one of four medicaid managed-care
19 organizations; and

20 WHEREAS, New Mexico tribes, nations and pueblos have a
21 substantiated history of having received inadequate and
22 unsatisfactory services under managed-care systems, due to the
23 managed-care organizations' seeming ignorance of tribes',
24 nations' and pueblos' unique and varying health care traditions
25 and health care delivery systems as well as their experience of

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1 inadequate service to geographically dispersed areas of tribal
2 lands; and

3 WHEREAS, Section 5006(e) of the federal American Recovery
4 and Reinvestment Act of 2009 mandates that state plans for
5 medicaid involve extensive and regular consultation with tribal
6 health programs and urban organizations and must include
7 solicitation of advice prior to submission of any plan,
8 amendments, waiver requests and proposals for demonstration
9 projects likely to have a direct effect on Indians, Indian
10 health programs or off-reservation Indian organizations; and

11 WHEREAS, in 2009, the legislature of the state of New
12 Mexico enacted the State-Tribal Collaboration Act, which
13 mandates that the state and New Mexico Indian tribes, nations
14 and pueblos collaborate on a government-to-government basis
15 regarding policies affecting tribal affairs, yet the human
16 services department's collaboration with tribes, nations and
17 pueblos has been ineffective and inadequate; and

18 WHEREAS, in order for consultation and advisement between
19 the human services department and New Mexico tribes, nations
20 and pueblos to be valuable and productive, the consultation and
21 advisement must be based upon verifiable performance and
22 service data that compare the medicaid managed-care and fee-
23 for-service payment systems as they relate to the quality of
24 health care, expenditures for health care items and services,
25 complaints and issues relating to the medicaid program; and

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1 WHEREAS, the human services department and the medicaid
2 managed-care organizations are in a unique position to collect
3 and provide these verifiable medicaid performance and service
4 data;

5 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
6 OF NEW MEXICO that the human services department be requested
7 to publish in print and on its web site in a manner easily
8 accessible to the public, and to disseminate in printed form to
9 each of New Mexico's twenty-two tribes, nations and pueblos, a
10 quarterly report that includes the following data:

11 A. the number of medicaid recipients who identify
12 as Native American who are enrolled in the centennial care
13 managed-care system;

14 B. the number of medicaid recipients who identify
15 as Native American who receive medicaid services through the
16 fee-for-service payment system;

17 C. the total of medicaid expenditures on behalf of
18 medicaid recipients who identify as Native American who receive
19 medicaid services through the fee-for-service payment system;

20 D. the total of medicaid expenditures made on
21 behalf of medicaid recipients who identify as Native American
22 who receive services from Indian health care providers;

23 E. the range amounts, lowest to highest, for the
24 per-member, per-month capitated rate paid to managed-care
25 organizations on behalf of medicaid recipients who identify as

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1 Native American;

2 F. the number and type of complaints and issues
3 reported by medicaid managed-care recipients who identify as
4 Native American;

5 G. the number and type of complaints and issues
6 reported by tribal health units, tribal benefits coordinators
7 or tribal employees, officials or representatives;

8 H. a description of the procedures for receipt and
9 handling of complaints and issues by medicaid managed-care
10 recipients who identify as Native American; and

11 I. the timeliness of reimbursement by the medicaid
12 managed-care organizations to providers of health care services
13 and items on behalf of medicaid recipients who identify as
14 Native American; and

15 BE IT FURTHER RESOLVED that the human services department
16 be requested to report in writing and, through its
17 representative, in person to the legislative health and human
18 services committee by September 1, 2014 the department's
19 responses to the following questions:

20 A. "What hardship, if any, does maintaining the
21 fee-for-service payment system pose for Native American
22 medicaid recipients?";

23 B. "What hardship, if any, does maintaining the
24 fee-for-service payment system for Native American medicaid
25 recipients pose for the human services department?";

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1 C. "Describe the financial risk borne by the
2 medicaid managed-care organizations in providing services to
3 Native American medicaid recipients.";

4 D. "Describe how, if at all, any risk borne by the
5 medicaid managed-care organizations in providing services to
6 Native American medicaid recipients is any greater than the
7 risk borne by Indian health care providers under the medicaid
8 fee-for-service payment system.";

9 E. "What benefits are available under a medicaid
10 managed-care system that cannot be provided through the
11 medicaid fee-for-service payment system?"; and

12 F. "What are the administrative costs to the human
13 services department for the provision of health care services
14 to medicaid recipients who identify as Native American and who
15 are enrolled in medicaid managed care, in comparison to those
16 costs for medicaid recipients who identify as Native American
17 and who receive services through the fee-for-service payment
18 system?"; and

19 BE IT FURTHER RESOLVED that, in order to meaningfully
20 implement the State-Tribal Collaboration Act, the human
21 services department be requested to meet on a quarterly basis
22 with the secretary of Indian affairs, legislative leadership,
23 leadership of New Mexico Indian nations, tribes and pueblos,
24 representatives of off-reservation Native Americans and the New
25 Mexico center on law and poverty to discuss the information

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1 requested pursuant to this memorial and topics related to the
2 provision of medicaid items and services to Native Americans;
3 and

4 BE IT FURTHER RESOLVED that copies of this memorial be
5 transmitted to the governor, the secretary of human services,
6 the secretary of Indian affairs, the legislative finance
7 committee and the legislative health and human services
8 committee and to the president of the Navajo Nation, the
9 president of the Jicarilla Apache Nation, the president of the
10 Mescalero Apache Tribe and the governors of the Pueblos of
11 Acoma, Cochiti, Isleta, Jemez, Kewa, Laguna, Nambe, Ohkay
12 Owingeh, Picuris, Pojoaque, Sandia, Santa Ana, Santa Clara, San
13 Felipe, San Ildefonso, Taos, Tesuque, Zia and Zuni.