



Delegates testify in support of HB 251 requiring NM Human Services follow sovereign Tribal will in IMCE contracts

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SANTA FE, N.M. — The State Government, Elections & Indian Affairs Committee of the New Mexico House of Representatives began review Feb. 18 of House Bill 251, sponsored by State Representative Anthony Allison, that proposes new statutory language requiring the New Mexico Human Services Department (HSD) to respect tribal sovereignty and self-determination in establishing Indian managed care entity (IMCE) contracts.

The Navajo Nation has sought for years to establish the first IMCE in the country that would both help address ongoing federal funding deficiencies at the Indian Health Service and generate revenue to offset declining royalties from natural resources.

In March 2020, Navajo leaders previously called on Governor Michelle Lujan Grisham to respond to the Navajo Nation Council's request for immediate authorization of the Navajo Nation's own IMCE. Once fully implemented, the Navajo IMCE would be able to assist with coronavirus (Covid-19) pandemic response and recovery efforts. No response has been issued by the Governor to the request.

In a Jan. 21 letter sent to Speaker Brian Egolf and Majority Leader Peter Wirth, signed by all members of the Health, Education, and Human Services Committee (HEHSC) and Speaker Seth Damon, Navajo leaders stated: "We have come to an impasse with Governor Lujan Grisham despite multiple attempts to encourage her to follow the sovereign will of the Navajo Nation as expressed through legislation adopted by the Nation's governing body...We request that you include language in your COVID-19 Relief package or general appropriations bill directing the Governor to launch the IMCE as soon as possible."

HB251 would clarify the state's position in contracting with tribally-designated IMCEs, which are managed care organizations (MCOs) authorized to provide Medicaid services. The state facilitates distribution of federal Medicaid funds to qualified IMCEs under federal law.

If approved, HB251 mandates that HSD shall not require tribal nations, as sovereign entities, to be party to IMCE contracts with the state. The HSD will also be required to follow the sovereign will of tribal nations according to their respective laws and processes. Further, HB251 requires HSD to respect the rights of the tribal nations to self-determination and to control their respective health care decisions.

To implement the work of the IMCE, one of the Navajo Nation's own federally-chartered Section 17 corporations was designated to conduct business with the state.

"What really alarms us is the paternalistic and colonialist attitude of the Governor saying, 'before I accept it, I want a joint letter,' and not accepting the fact that the will of the Navajo Nation

Council has been expressed,” said HEHSC Chair Daniel E. Tso (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake) last Wednesday.

During public comment, Torreon/Star Lake Chapter Vice President Mario P. Atencio added the Chapter community’s supporting resolution of HB251. “As a local leader, at the grassroots, we are operating in real-time. We are seeing such a lag in resources hitting the ground level in our local communities.”

Atencio indicated a need for more resources to address the response, mitigation and recovery from Covid-19.

During discussion, committee members received an explanation of how the state will be able to exercise oversight and ensure accountability. The committee further indicated it desired to hear the positions of other tribal nations in New Mexico with respect to HB251.

Responding to committee questions, HEHSC Vice Chair Carl R. Slater (Round Rock, Rock Point, Tséché’izhí, Lukachugai, Tsaille-Wheatfields) stated no other tribal nation in New Mexico has pursued an IMCE contract.

With respect to concerns about the state’s oversight authority, committee members also heard testimony that any disputes involving the Navajo MCO would be resolved in state courts, as with any other managed care organization.

The charter establishing the Naat’áanii Development Corporation, the IMCE designated by the Navajo Nation, allows a mechanism for the state to pursue legal action while preserving the Navajo Nation’s own sovereign immunity.

“We’ve designated NDC to serve as the capacity building entity. We’ve designated someone to take on the risk,” said Slater.

The IMCE has been empowered by the Navajo Nation to waive part of the sovereign immunity it maintains as a federally chartered tribal enterprise without compromising the Navajo Nation’s overall sovereignty.

Members of the committee also questioned why the State of New Mexico was involved in the contract if it concerns federal dollars flowing to the Navajo Nation.

Delegate Slater explained that the Navajo Nation currently does not have a state Medicaid agency to oversee Medicaid dollars and therefore cannot accept and administer such funding independent of the state.

Troy Eid, president of the Navajo Nation Bar Association, indicated the state maintains an interest in Navajo citizens who are also New Mexico citizens. However, state executive offices exceeded their authority under federal statute by requiring a waiver of sovereign immunity from the Navajo Nation government itself to proceed, said Eid.

The committee questioned how state executive offices could be sure the legal documentation provided by the Navajo Nation properly substantiated the legitimacy of the will of the Navajo People.

Eid responded by explaining the legal basis for deferring to tribal nations was established in *Williams v Lee*, a 1959 US Supreme Court case. The Navajo Nation’s legislative process facilitated that decision-making process for the IMCE.

Slater further explained the Navajo Nation completed its internal decision-making process to move forward with the IMCE pilot project in New Mexico and ample evidence of this internal process has been provided to the state.

For the state to ignore the information it requested, including Navajo Nation Council resolutions, opinions of the Navajo Nation Attorney General, and the direct presentation of council delegates before the committee, is 'offensive,' said Slater.

The committee asked Rep. Allison to defer the bill for action at a later date since two hours of discussion passed on HB251. The request was accepted, granting lawmakers and Navajo leaders the opportunity to consult further on the request for additional input on the measure and to answer outstanding committee questions.

Speaker Seth Damon (Bááhaalí , Chichiltah, Manuelito, Red Rock, Rock Springs, Tséyatoh), Naabik'iyáti' Committee State Task Force Sub-Committee Chair Mark Freeland (Becenti, Lake Valley, Náhodishgish, Standing Rock, Whiterock, Huerfano, Nageezi, Crownpoint) also presented support for HB251 during the committee's meeting.

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