

Quinnehtukqut Legal News

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INDIAN HEALTH SERVICES

Will the Indian Health Care Improvement Act be reauthorized? Will it matter?

by Derek Dobachesky

After an eight-year struggle, marked by seven years of inaction on Capitol Hill Congress enters the 2008 election year with the fate of health care for Native Americans left hanging in the balance.

The Indian Health Care Improvement Act (IHCIA) provides the framework for delivery of health care to Native Americans and encourages the recruitment and training of Native American health professionals. The IHCIA was enacted by Congress and signed into law by President Gerald Ford in 1976. The goal of the law was to provide "the quantity and quality of health services necessary to elevate the status of American Indians and Alaska Natives to the highest possible level and to encourage the maximum participation of Tribes in the planning and management of those services."

The Indian Health Care Improvement Act provides for the distribution of federal funds to Indian Health Services (IHS), the primary agency that delivers health care to Native Americans. Now, however, the level of funding under the IHCIA and services available through IHS are not meeting the needs of Native Americans. In July 2003, the U.S. Commission on Civil Rights (USCCR) issued a report entitled "A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country." One oft-cited figure from the report is that Native Americans, through the IHS, receive less funds for health care services per capita than inmates in federal prisons \$2,158 for Native Americans, compared to \$3,803 for prisoners. The report found that the majority of IHS clinics operate with only 59 percent of the funding they need to provide adequate health care. A previous USCCR report found that the health status of Native Americans was 20 to 25 years behind that of the general population.

The legislation being considered in Congress, called the Indian Health Care Improvement Act Amendments of 2007 (S. 1200 in the Senate and H.R. 1328 in the House), is the result of an eight-year effort. In 1999, tribal delegates from across the country worked together on proposals for a new law. The IHS then formed a National Steering Committee to incorporate those suggestions into a legislative draft. This draft was completed in October of 1999 and then sent to Congress and the White House. All of this was done to prepare for the expiration of the IHCIA in 2000, which was

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Victories and Set Backs in the Schaghticoke's Struggle For Federal Recognition

The Schaghticoke Tribal Nation is poised on the razor's edge of victory or defeat as it awaits a court decision in its ongoing struggle for federal recognition. The Schaghticoke Tribal Nation (STN) was recognized by the U.S. government as a tribe in January of 2004. Then, in October of 2005, the tables turned, and the Interior Department's Bureau of Indian Affairs reversed the decision to recognize the tribe. The reversal was based upon a finding that STN was not a tribal community continuously from historical times to the present. The Department of the Interior found that there were gaps in the history of the tribal community and its government. The federal recognition of the Eastern Pequots and the Paucatuck Eastern Pequots was also reversed at the same time.

STN appealed the denial of federal recognition. On March 20, 2007 the U. S. District Court for the District of Connecticut decided that the Schaghticoke Tribal Nation could continue to collect evidence in its fight for federal recognition. In the appeal, STN argued to Federal District Court Judge Peter Dorsey that the decision to deny federal recognition was not based on evidence that the tribal community and its political structure did not exist. Rather, STN argued, the denial was based on the fact that wealthy groups living in the region of its reservation influenced the decision of the Interior Department officials. These groups include TASK, a well-funded anti-Indian group in Kent, Connecticut where the Schaghticoke's have a 400 acre reservation. This group does not want a casino built in its neighborhood.

STN got evidence of the alleged improper influence from documents obtained through a Freedom of Information Act request. Based upon this information, STN requested and was allowed to take testimony from the former Secretary of the Interior, Gale Norton, and from her Associate Deputy, James Cason. In her deposition testimony from this past January, Secretary Norton revealed that Congressman Frank Wolf of Virginia had threatened to fire her if she did not reverse her decision. After that happened, Secretary Norton gave the case to her deputy, James Cason, who reversed the decision to recognize STN.

Connecticut Attorney General, Richard Blumenthal, has vigorously fought STN's appeal. He has objected to further requests for documents and depositions by STN. In July, Judge Dorsey decided to deny the Schaghticoke's requests for further testimony and documents from new sources. STN was allowed to finish gathering evidence from TASK's lobbying firm, Barbour, Griffith and Rogers (BGR), an extremely powerful Washington lobbying firm. Now STN must wait for the Judge Dorsey's ruling. If he finds for STN its legal battle can continue. If he finds for the federal government and the State of Connecticut, then another door will close on the tribe's future.

IHCIA

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last reauthorized in 1992 by President Clinton.

Patricia Knox-Nicola, Health Director for the Penobscot Health Department on Indian Island, Maine was part of the consultation and drafting process. "Originally, back in '98 and '99 they asked all tribes from all areas of the United States to come together and have a tribal consultation to discuss IHCIA. We ended up with a drafting committee who actually drafted the language. From my understanding this is the first piece of legislation drafted entirely by Native Americans."

The legislation to reauthorize the IHCIA primarily deals with updating the manner in which health care for Native Americans is delivered and administered. One provision will integrate mental health, substance abuse, domestic violence and child abuse services into a comprehensive behavioral health program, bringing these services "into a system that moves away from treating symptoms and into a synthesized delivery system that treats the whole person," according to the National Indian Health Board (NIHB), an interest group devoted to policy issues relating to Indian health care which has been actively involved at every step of the IHCIA reauthorization process.

Other parts of the bill will prohibit states from requiring co-pays from Native Americans who receive Medicare and Medicaid. Few states, however, require co-pays. The bill also creates a National Bipartisan Indian Health Care Committee to study Indian health care needs and make recommendations to Congress. Most importantly, the bill reauthorizes the IHCIA through 2017 which should include more adequate funding for IHS than it has had over the past 8 years since the law expired.

Attempts to reauthorize the IHCIA have been repeatedly opposed. The latest obstruction was an unidentified Department of Justice "white paper" issued in September of 2006. In it, the Department argued that the bill's definition of "Indian," could make the IHCIA an unconstitutional race-based program. This definition, however, is found in many other federal laws, including the No Child Left Behind Act and the previous version of the IHCIA. The National Indian Health Board promptly responded to the objections and asked the Department of Justice to withdraw them, but, since Congress was in its final hours, the bill died without being voted on.

Throughout the 7 years of trying to get the bill passed in Congress, "the tribes have continually had to write off, sort of go tit for tat, moving things out of the IHCIA to hopefully ensure its passage," reports Sandra Yarmel, health director at Pleasant Point Passamaquoddy Indian Reservation in Maine. Patricia Knox-Nicola of Maine's Penobscot Nation spoke of one particular provision sought in the original draft of the IHCIA that was taken out of subsequent versions. The desired provision would have changed the funding for the IHCIA from "discretionary funding to entitlement funding."

If the funding were changed to "entitlement funding", then the IHCIA would automatically receive funding in the

President's budget each year. As it stands now, Congress must go back after the fact and fund the program each year through discretionary funding. Another problem with the IHCIA is that it does not set specific funding levels to be met each year; rather, it outlines the programs to be funded with "such funding as is appropriate." Thus, the specific funding levels are re-determined each year. "There's a big difference between authorization and appropriation sometimes," recounts Todd Stein, Deputy Chief of Staff at Representative Tom Allen's Washington D.C. office. Reauthorization does not necessarily guarantee adequate funding. However, Carol Francis, Health Director for the Houlton Band of Maliseets, in Maine believes it may help. "When the bill was in place, it was easier to get funding each year."

Sen. Byron Dorgan (D-ND), chairman of the Indian Affairs Committee, has been extremely frustrated with the lack of progress on the Senate version of the bill. On July 31st, he offered the reauthorization of the IHCIA (S. 1200) as an amendment to a bill to expand the State Children's Health Insurance Program. Dorgan withdrew the amendment after Finance Committee Chairman, Max Baucus (D-MN), and Majority Leader, Harry Reid, pledged to have the Finance Committee consider the bill on September 12th. But even a rally held by the National Indian Health Board held a rally on September 12th in the U.S. Capitol Building failed to build enough momentum for reauthorization of the IHCIA. Now with the 2008 election year upon us, the bill continues to languish in Congress. For more information on the progress of the Indian Health Care Improvement Act, visit <http://www.nihb.org>.

A NEW HEADLINE

On 11/24/07 the card dealers at Foxwoods voted to unionize under the United Auto Workers. The Mashantucket Pequot Tribal Nation, which owns Foxwoods, tried to stop the election. The Tribe argued that the UAW should not be allowed to hold an election which would subject the Tribe to the laws of the United States government. The Tribe wanted the card dealers to file a petition to unionize according to Tribal law. The National Labor Relations Board disagreed with the Tribe and ordered that the vote be held. The card dealers voted 1289 to 852 to have the UAW represent them.

The Tribe said that it plans to appeal the ruling of the NLRB. The decision to allow the UAW vote against its wishes could affect many aspects of tribal sovereignty. The Tribe argues that it should be able to run its businesses according to Tribal law. The Tribe has not tried to deny the workers the opportunity to organize, it argued, so it should be able to control the process and maintain its authority as a sovereign nation.

Robert Madore, the United Auto Workers Director for Region 9a, dismissed the Tribe's claims about sovereignty. "I don't believe the issue is sovereignty. I think it's just an attempt on their part to not accept the will of the work force..." he said. Jackson King, the Tribe's attorney, disagreed. "We aren't anti-union," he said. "We believe

New Headline

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employees have the right to form a union and bargain collectively and we asked the employees to file their petition under Tribal law, but they have not done it. This is not about the right of employees to unionize. The is about whether you respect the law or not.” Mashantucket Pequot tribal law includes tribal preference laws, and an employee rights code which could run into conflict with federal labor laws. In addition, other tribal law issues, such as whether the union should be able to sue the tribe under federal law, are at stake.

The Tribe's appeal of the UAW election could likely take a long time. After filing objections to the election with the NLRB, the Tribe could take the appeal to the United States Court of Appeals for the Second Circuit. Another Tribe, the San Manuel Band of Mission Indians brought a similar appeal before the United States Court of Appeals for the District of Columbia Circuit. The Band was also fighting the jurisdiction of the National Labor Relations Board. However, the Appeals Court found that the Band was subject to federal labor law.

One difference between the Mashantucket Pequot's case and the San Manuel Band's is that the Band did not have tribal laws in place that would have allowed a union election. Whether this fact will help the Tribe retain its

The Native American Unit at Pine Tree Legal Assistance

gives free legal help to poor Native Americans. It is located in Bangor, Maine, and its attorneys are not licensed to practice law in Connecticut. However, the Native American Unit may be able to give information and help to low-income Native Americans in Connecticut with federal legal problems, e.g. concerning the Indian Child Welfare Act or the Jay Treaty. Call us at 1-800-879-7463.

The **Quinnehtukqut Legal News** is published by Pine Tree Legal Assistance, Inc. The views expressed by individual authors in this newsletter are not necessarily shared by PTLA or its staff.

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Tax Tips 2007

KEEP YOUR REFUND!

- *Don't pay for "rapid refund" - the interest rate is OUTRAGEOUS*
- *Use FREE tax filing assistance in your area*
- *File for free online*
- *File for all available tax credits including: the Earned Income Credit, Child Tax Credit, and Child and Dependent Care Tax Credit*

AARP Tax-Aide To find the site nearest you, call 1-888-687-2277

IRS-VITA (*Volunteer Income Tax Assistance*)
To find the site nearest you, call 1-800-829-1040
Or for online information and resources visit the website of the State of Connecticut Department of Revenue Services at www.ct.gov/drs

or
www.ptla.org/ptlasite/tax/taxtips.htm

DON'T IGNORE TAX NOTICES!

- *Has the IRS denied your claim for the Earned Income Credit?*
- *Have you been notified of a "tax deficiency"?*
- *Do you have a tax debt that you cannot pay?*
- *Do you and your employer disagree about whether you are an independent contractor?*
- *Are you being audited?*

If you have questions about any of the above call one of the Low Income Taxpayer Clinics in Connecticut:

Quinnipiac University School of Law Tax Clinic,
203-582-3238

University of Connecticut School of Law Tax
Clinic, 860-570-5165 or
www.law.uconn.edu/clinics/tax

Both clinics have interpreting services for non-English speakers

Index of Community Resources

TRIBAL GOVERNMENT AND AGENCIES

SCHAGHTICOKE TRIBAL NATION:

www.schaghticoke.com

Address: 33 Elizabeth Street, 4th Floor, Derby, CT 06418

Telephone: 203-736-0782

THE MOHEGAN TRIBE:

www.mohegan.nsn.us

Address: 5 Crow Hill Road, Uncasville, CT 06382

Telephone: 860-862-6100

Chief of Staff	860-862-6120
Attorney General	860-862-6897
Community Programs	860-862-6277
Public Safety	860-862-6225
Tribal Court	860-862-6342

MASHANTUCKET PEQUOT TRIBAL NATION:

www.foxwoods.com/themashantucketpequots/home

Address: P.O. Box 3060, Mashantucket, CT 06339-3060

Telephone: 860-396-6554

Tribal Court 1-860-396-6156

Museum and Research Center 1-800-411-9671

www.pequotmuseum.org

STATEWIDE CRISIS SERVICES

INFOLINE - 24 hour 211
Community services information and crisis intervention.

Child Abuse and Neglect Hotline 1-800-842-2288
1-800-624-5518 TTY

Elder Abuse and Neglect 1-888-385-4225

Poison Control: 1-800-222-1222
1-866-218-5372 TTY

DOMESTIC VIOLENCE

Connecticut Coalition Against Domestic Violence-Statewide 1-888-774-2900(24 hour)

The Umbrella Project 1-203-736-9944

Ansonia

Center for Women and Families 1-203-384-9559

Bridgeport

Women's Center 1-203-731-5206

Greater Danbury

Interval House 1-860-527-0550

Hartford

Prudence Crandall Center 1-860-225-6357

New Britain

Domestic Violence Services 1-203-789-8104

Greater New Haven

Susan B. Anthony Project 1-860-482-7133

Torrington

Safe Haven of Greater Waterbury 1-203-575-0036

Waterbury

Domestic Violence Program 1-860-456-9476

Willimantic/Wauregan

RAPE CRISIS SERVICES

Connecticut Sexual Assault Crisis Services-Statewide Hotline 1-888-999-5545(24 hour)

Espanol 1-888-568-8332

Women and Families Center 1-860-635-4424

Middletown

Sexual Assault Crisis Center 1-800-437-7766

Eastern Connecticut

MENTAL HEALTH CRISIS SERVICES

Connecticut Mental Health Center 1-203-974-7735(9am-10pm)
1-203-974-7713

After hours (10pm - 8am) 1-203-974-7300

Greater Bridgeport Community

Mental Health Ctr. (8am-8pm) 1-203-551-7507

Capitol Region Mental Health 1-860-297-0999

Hartford (24 hour)

Rushford Center 1-800-567-0902

Meriden (24 hour)

Southeastern Mental Health 1-860-886-9302

Norwich (24 hour)

HOME HEATING ASSISTANCE & ELECTRICITY ASSISTANCE

The Federal Fuel Assistance Program gives fuel assistance money to residents who need help with fuel bills. In Connecticut the program is called CEAP (Connecticut Energy Assistance Program). To find out if you qualify, call your nearest Community Action Program (CAP) or call INFOLINE by dialing 211 or visit: www.211ct.org.

LEGAL SERVICES

STATEWIDE LEGAL SERVICES

www.slsct.org

1-800-453-3320

Statewide Legal Services screens cases for all legal assistance programs in the State of Connecticut. Call Statewide Legal Services first for referrals to local legal services offices.

CONNECTICUT LEGAL SERVICES

www.connlegalservices.org

CLS provides representation and counseling with the following civil legal problems: loss of housing through eviction or foreclosure, discrimination, domestic violence, denial or loss of public benefits, health care issue, education issues.

Bridgport: 203-336-3851

New Britain: 860-225-8678

New London: 860-447-0323

Stamford: 203-348-9216

Waterbury: 203-756-8074

Willimantic: 860-456-1761

NEW HAVEN LEGAL ASSISTANCE

www.nhlegal.org

1-203-946-4811

New Haven Legal provides advice, brief service, community education, policy advocacy and representation in the areas of: family and child, housing, consumer, elderly, benefits, employment, disability issues, and some criminal.

GREATER HARTFORD LEGAL AID

www.ghla.org

1-860-541-5000

GHLA provides advice, counsel, and legal representation in the areas of: domestic violence, protecting the rights of people with HIV, employment, elder law, housing, public benefits, and education and health care for children.

CENTER FOR MEDICARE ADVOCACY

www.medicareadvocacy.org

1-860-456-7790

The center provides education, advocacy and legal assistance to help older people and people with disabilities obtain Medicare and necessary health care.

CONNECTICUT LEGAL RIGHTS PROJECT

www.mindlink.org

1-877-402-2299

This project helps low-income adults who have or are perceived to have psychiatric disabilities. Its staff may also help clients to protect their civil rights in conservatorship and commitment proceedings or in discrimination in housing.

CHILDREN'S LAW CENTER OF CONNECTICUT

www.clcct.org

1-860-232-9993 or 1-888-

LAW-DOOR

The CLC provides low-income children with experienced lawyers to give them a voice in family court. It provides telephone advice about legal situations involving children through its Children's Lawline - 1-888-LAW-DOOR.

CONNECTICUT WOMEN'S EDUCATION AND LEGAL FUND

www.cwealf.org

1-800-479-2949

This organization provides a free telephone counseling and legal referral line for help in the areas of discrimination, harassment, and family matters. It also offer community education and training in employment and family law.

OTHER COMMUNITY RESOURCES

CONNECTICUT COMMISSION ON HUMAN RIGHTS

www.ct.gov/chro

1-800-477-5737

This is the state agency that handles complaints of discrimination in the areas of housing, employment, and public accommodations.

NATIONAL ASSOC. OF INDIAN LEGAL SVCS.

www.judicare.org/nails.html