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BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
OF THE
UNITED STATES SENATE

HEARING
ON
H.R. 1833, TRIBAL SELF-GOVERNANCE AMENDMENTS

October 7, 1998

Chairman Campbell, Vice Chairman Inouye, and Members of the Committee:

Good morning. I am John Callahan, Assistant Secretary for Management and Budget at the Department of Health and Human Services. I am pleased to appear before the Committee today to present the Department's views on H.R. 1833, the Tribal Self-Governance Amendments of 1998.

The Administration supports the spirit and intent of the Tribal Self-Governance Amendments. H.R. 1833 is consistent with our goal of providing maximum participation of tribes in the development and management of Indian programs.

As American Indian and Alaska Native people know well, recognition of the sovereignty of tribal governments and respect for Indian self-determination by the United States has followed a complex and sometimes inconsistent path. Yet, over the past three decades, effective advocacy by the nation's tribes and progressive changes in federal law and policy have reaffirmed the federal government's commitment to Indian self-determination and tribal self-governance.

The Clinton Administration firmly supports strengthened relationships between the United States and the nation's tribal governments. At the Department of Health and Human Services, we have responded to this mandate through a number of important initiatives. Under the leadership of Secretary Shalala and Deputy Secretary Thurm, major components of the Department are fully consulting with Indian tribes on matters that affect Indian people. Other components are working diligently to improve their consultation with tribes. Special efforts are being made to support Tribal colleges and universities. These institutions, chartered by tribal governments, play a vital role in providing higher education opportunities to American Indian and Alaska Native students and preparing them for future leadership and service to their communities. The Department fully supports the Racial and Ethnic Health Disparities Initiative contained in the current FY 1999 budget. This initiative seeks to eliminate disparities in six areas of health status experienced by racial and ethnic minority populations by the year 2000 while continuing the progress we have made in improving the overall health of the American people.

Our increasing attention to tribal issues and improved consultation with tribes has already yielded important results. As Deputy Secretary Thurm reported to you in June, as the President affirmed

in August, and as Secretary Shalala stated in her recent letter to Chairman Campbell, we are pleased to join with this Committee in support of efforts to elevate the Director of the Indian Health Service to the level of Assistant Secretary within the Department. This, and the other important policy initiatives, grows out of our respect for the tribal governments and our deep commitment to the government-to-government relationship between the United States and the nation's Indian tribes.

These principles have also guided us in our consideration of H.R. 1833. From the bill's introduction, through its consideration by the House Resources Committee, and in follow-up working sessions to discuss additional changes both before and after consideration by the full House, we have given the Tribal Self-Governance Amendments our most thoughtful consideration. We have invited representatives of self-governance tribes to brief Department staff, not only on the specific goals of H.R. 1833, but also on the essential principles and values that are the foundation of self-governance.

Over the past year, HHS officials and senior staff have attended several tribal conferences and meetings that have addressed the issue of self-governance. Deputy Secretary Thurm, accompanied by a large delegation from the Department, attended the 1997 National Congress of American Indians annual meeting in Santa Fe. During the past year, I have personally met with high level elected tribal officials on budget issues related to self-governance. Through these meetings, conferences, and numerous other occasions for consultation, we have gained a deeper understanding of self-governance, its importance to the nation's tribes, and our commitment to facilitate and support it whenever appropriate.

At the same time, there are a number of tribes that have no plan to enter into self-governance within the foreseeable future. Our commitment to provide for the health of those tribes can be no less than our commitment to promote self-governance. The needs of neither group of tribes can take priority in the allocation of the IHS budget.

The IHS Self-Governance Demonstration has been a success. It has demonstrated that Indian tribes are the most knowledgeable about the needs within their communities. As the decision makers closest to those needs, tribal leaders have the central role in setting priorities and allocating resources. Through this Demonstration, tribes have established a clear record of accomplishment and success. Consequently, we strongly support making self-governance authority permanent within the IHS, so long as these changes continue to allow the Department and the IHS to perform inherent functions and to maintain trust responsibility to all tribes.

H.R. 1833 was passed by the House on October 5, 1998. While we did not object to passage of the bill as amended by the Committee substitute, the Administration noted that certain concerns remained. In terms of specific provisions, the bill passed by the House reflects the collaborative efforts of all parties to work toward consensus legislation. Significant progress was made to address problems within earlier versions of H.R. 1833, and we will continue to work with the Senate and representatives of tribal governments to address the remaining issues. For example, we have been advised by the Department of Interior that it has serious concerns regarding the definition of the term "inherent Federal functions" included in the version passed by the House.

Because "inherent Federal functions" are best determined on a case by case basis, the Department of Interior recommends that the term not be defined in statute. It also recommends limiting the application and interpretation of H.R. 1833 to title V and the Indian Health Service.

We observe that section 513 includes language on the budget request. The Administration reserves its prerogative to decide what it includes in its annual budget request, but we will work with Congress to provide information needed to make decisions about funding levels for the Indian Health Service. To be able to identify total Indian health funding needs, we also suggest adding the words, "as clearly identified and" after "shall be" in section 5080).

Application of the Prompt Payment Act to a relationship between governments may not be appropriate since this act is geared to federal payments to vendors -for goods and services. The Cash Management Improvement Act, however, which establishes equity as the guiding principle for cash management purposes may be more appropriate toward ensuring timely transfer and expenditure of program funds.

In working sessions leading up to consideration by the full House, MS identified concerns with language authorizing waivers of federal regulations. We believe that parameters for the waiver of regulations must be unambiguous, and that waiver authority not be so broad that it would extend to program regulations best addressed under proposed title VI. We support waiver authority for regulations promulgated under the Indian Self-Determination and Education Assistance Act, the Indian Health Care Improvement Act, and other laws that apply directly to programs operated by or through the Indian Health Service. While we believe that we have reached an "agreement in principle" on this matter, we note that the version of the bill passed by the House does not fully address our concerns. It is clear, though, that this version reflects substantial progress over earlier versions of H.R. 1833.

H.R. 1833 has been strengthened and improved in important ways. As in the original bill, the current version allows compacting tribes autonomy and flexibility in redesigning and consolidating programs. Language has been added to the current version that addresses protection of beneficiaries or otherwise eligible groups who, because of consolidation or redesign, risked losing eligibility and being denied services.

We are pleased that previous Administration concerns regarding the negotiated rule making process under the new title V have been resolved in the version of H.R. 1833 adopted by the House. Early versions limited the ability of the Secretary to fully exercise the authority conferred upon her by both the President and Congress. Under those earlier provisions, the Secretary would have been prohibited from publishing rules that had not been approved by the negotiated rule making committee. In response to our concerns, this provision was deleted from the bill. Mr. Chairman, we are aware of the desire - and right - of the self-governance tribes to participate as full partners in negotiated rulemaking and other deliberations affecting self-governance programs. We commit ourselves to ensuring that the tribes are represented and present "at the table" as important decisions and actions are deliberated. Retention of the Secretary's role as the final determiner of the Department's rules and policies will not diminish the key role and maximum participation of the tribes.

MS, along with many other federal Departments, strongly objected to provisions in earlier versions of the bill allowing for trial de novo, with full rights of discovery, in appeals of funding denial decisions. Inclusion of trial de novo would unnecessarily interfere with the cases currently pending before the courts. We are pleased this provision was also deleted, and we were able to withdraw our objections on this point.

Mr. Chairman, the Department of Health and Human Services is firmly committed to considering, in partnership with the tribes and other stakeholders, the expansion of a self-governance demonstration to non-IHS programs. From the outset, we have indicated our desire to undertake a study of the feasibility of expanding self-governance. On the other hand, we were seriously concerned about the establishment in H.R. 1833 of any authority to proceed with demonstrations before a feasibility study report was presented to Congress. Without a thorough consideration of the numerous questions raised by this proposal, implementation of any demonstrations would be premature and ill-advised. In addition to assessing the impact self-governance will have on all beneficiaries of our programs, questions related to the funding of administrative and contract support costs must be adequately addressed. The vast majority of our programs come under the jurisdiction of Congressional Committees other than Indian Affairs and Resources and many of these programs' authorizing statutes have significant differences from the Indian Self--Determination and Education Assistance Act. Mr. Chairman, we have a responsibility to consult with those Committees in this matter, and seek their advice regarding changes to programs under their jurisdiction.

We are pleased that H.R. 1833, as adopted by the House, allows for a process of consultation and study without establishing authority to begin self-governance demonstrations in non-IHS programs. We support the process of consultation, and requirements for a report to Congress, as outlined in the current bill. We acknowledge our responsibility to initiate consultation with the tribes, and in partnership with them, to develop a format for broader consultations with other entities. The current bill also allows for input from States and other entities through a public comment process that preserves the principal status of tribal governments and direct federal-tribal relationships within the consultations.

Through this period of consultation and study, we will take seriously our charge to carefully examine the authorizing legislation, mission and operation of our programs in order to identify those that may be suitable for inclusion in self-governance demonstrations, and to suggest legislative or administrative actions necessary to implement such demonstrations. At the same time, we will be able to examine the impact of tribal self-governance in non-IHS programs on other stakeholders, including State and local governments, individual beneficiaries, and others.

Mr. Chairman, on behalf of the entire Department, I pledge to you, this Committee, and the tribal leaders and guests gathered here, that upon enactment of this enabling legislation, we will undertake this study and engage in meaningful consultations with tribal governments. We will consider the expansion of self-governance beyond the IHS in a spirit of openness, integrity, and partnership.

Our increased support for H.R. 1833 is possible because of progress made in frank and productive discussions with representatives of the self-governance tribes. In every stage of this process, we have found the tribal leaders to be open, thoughtful, and willing to consider complex issues from many perspectives. Mr. Chairman, I wish to acknowledge, for the record, the dedication and genuine collaboration of the entire group of tribal leaders and representatives who worked with Department staff to suggest mutually-agreeable changes to H.R. 1833 that satisfied the great majority of our concerns. Their efforts contributed to the framing of a bill that, upon enactment, will be good for the tribes, good for IHS and the Department, and good for the countless other stakeholders who also benefit from our programs. Tribal leaders and their representatives have our gratitude for their work on this measure.

In conclusion, I can state that we support making the IHS self-governance authority permanent. We also support exploring the expansion of self-governance to non-IHS programs and commit ourselves to a process of consultation and study of this option, in partnership with the tribes and other stakeholders. There remain provisions of H.R. 1833 that we believe can be further improved. However, the bill has been modified significantly since introduction, and our most serious concerns have been addressed. We look forward to working with Congress and the tribes to make additional improvements and complete work on this important legislation.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before the Committee today. I would be pleased to answer any questions you may have.