

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Requesting Amendment to S. 212 to Allow Reimbursement to Indian Health Service
for Emergency Care to Ineligible Persons)**

RESOLUTION NO. 01-180

1 **WHEREAS, the Tohono O'odham Nation is indigenous to Southern Arizona and Northern Mexico**
2 **and is located on the U. S.-Mexico border; and**

3 **WHEREAS, the Tohono O'odham Nation shares over sixty miles of international border with**
4 **Mexico in a sparsely populated area subject to extreme desert conditions; and**

5 **WHEREAS, in recent years the Tohono O'odham Nation has been experiencing dramatic**
6 **increases in illegal entries into the United States across the Nation's lands; and**

7 **WHEREAS, this increase has forced an ever larger number of non-eligible people to seek medical**
8 **attention at the Indian Health Service ("IHS") Sells Service Unit, which is located on**
9 **the reservation and intended to serve Tohono O'odham or other members of**
10 **federally recognized tribes; and**

11 **WHEREAS, the number of undocumented aliens receiving care at the Sells Service Unit grew**
12 **from four patients in Fiscal Year 1998 to eighty-six patients in Fiscal Year 1999 and**
13 **four hundred and four patients in Fiscal Year 2000; and**

14 **WHEREAS, the Sells Service Unit is required by the Emergency Medical Treatment and Active**
15 **Labor Act (EMTALA) 42 U.S.C. §1397dd (1992 and Supp. 2000) to provide medical**
16 **services to non-eligible people or risk losing accreditation; and**

17 **WHEREAS, because the Sells Service Unit is not reimbursed for services that are provided**
18 **through the EMTALA, funds appropriated for medical treatment of the Tohono**
19 **O'odham in turn must be diverted for non-eligible users of the IHS; and**

20 **WHEREAS, the data provided through the Level of Need Funding acknowledges that healthcare**
21 **for the Tohono O'odham is funded at 49% of the medical funding required when**
22 **compared to other federally recognized tribes without accounting for the added**
23 **burden of treating hundreds of non-eligible undocumented alien patients; and**

24 **WHEREAS, the United States Congress has found that "the unmet needs of the American Indian**
25 **people are severe and the health status of the Indians is far below that of the general**
26 **population of the United States." 25 U.S.C. §1601(d) (1983 and Supp. 2000); and**

27 **WHEREAS, the Tohono O'odham Legislative Council, by Resolution No. 2000-539, requested**
28 **support from the National Congress of American Indians to provide for the health**
29 **and welfare of Tohono O'odham people by helping secure reimbursement for the cost**

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1 **of health care expended on non-Indian patients; and**

2 **WHEREAS, the National Congress of American Indians did adopt Resolution No. STP-00-051 at its**
3 **November 12-17, 2000 Annual Session and thereby (1) recognized that other IHS**
4 **Service Units also expend already inadequate resources to treat non-Indian patients**
5 **without reimbursement (2) urged the United States Congress to appropriate**
6 **sufficient funds to reimburse IHS service units for the cost of treating non-Indian**
7 **patients; and**

8 **WHEREAS, the Indian Health Care Improvement Act Reauthorization of 2001 (S. 212, 107th Cong.,**
9 **1st Sess. (2001)) has been introduced in the United States Senate; and**

10 **WHEREAS, Section 411 of S. 212, "Right to Recover from Federal Health Care Programs," does not**
11 **adequately address the IHS Service Units' need for payment or reimbursement when**
12 **ineligible patients receive treatment.**

13 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that**
14 **Section 411 of S. 212, the Indian Health Care Improvement Act Reauthorization of**
15 **2001 requires amendment to adequately reimburse IHS Units when they are required**
16 **to treat non-eligible patients; and**

17 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council urges the United**
18 **States Congress to amend Section 411 of S. 212 to include the following: Section 411**
19 **is amended by-**

20 **(1) Striking the word "Notwithstanding" and inserting, in lieu thereof, "(a) In**
21 **General.--notwithstanding" and**

22 **(2) By adding at the end thereof the following subsection.**

23 **"(b) Emergency Care to Ineligible Persons.- A Federal agency shall be liable for**
24 **the reimbursement of the Service or an Indian tribe or tribal organization for**
25 **the reasonable charges or expenses incurred in providing emergency medical**
26 **care to an ineligible person if:**

27 **(1) such person is in the actual or constructive custody of an officer, official**
28 **or employee of such Federal agency, or**

29 **(2) an officer, official or employee of such Federal agency, in the performance**
30 **of official duties, transported or caused to be transported such**
31 **ineligible person to a health facility of the Service or an Indian tribe or**

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In order to avoid the cost of providing emergency health care to such aliens, the Border Patrol, in some cases, will not formally arrest the aliens. Instead, the officer will delay making the arrest, but transport the aliens to Sells for emergency care. The Border Patrol is not legally liable for the cost of such care since the aliens have not been formally taken into "custody." The Sells Service Unit must then provide emergency care pursuant to the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §1397dd (1992 and Supp. 2000), or risk losing accreditation. After the care has been provided, the Border Patrol then arrests the aliens. This practice reduces the quantity and quality of care that these already underfunded facilities can provide to Tohono O'odham members.

This amendment simply provides that a Federal agency, which is responsible for health care of persons in their legal custody, would be liable for such care in any case that it brings a non-eligible person to an Indian health facility. Given the significant underfunding of the Sells Service Unit, the Tohono O'odham should not bear the additional burden of losing limited medical resources due to their location on a border established long after their residence on the land.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 26TH Day of APRIL, 2001 at a meeting at which a quorum was present with a vote of 2,165.5 FOR; -0- AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Section 1 (f) & (i) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Dennis Ramon, Legislative Chairman

30th day of April, 20 01

ATTEST:


Julianna Saraficio, Acting Legislative Secretary

26 day of April, 20 01.

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 30th day of April, 20 01 at 2:10 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

APPROVED

on the 1 day of May, 20 01

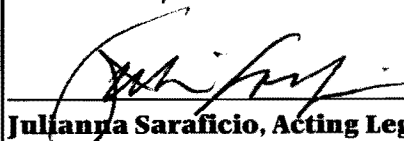
DISAPPROVED

at 1:45 o'clock, P.M.


EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 01 day of

May, 20 01, at 2:04 o'clock, P.M.


Julianna Saraficio, Acting Legislative Secretary

ACTION: REQUESTING AMENDMENT TO S. 212 TO ALLOW REIMBURSEMENT TO INDIAN HEALTH SERVICE FOR EMERGENCY CARE TO INELIGIBLE PERSONS

MOVED: COUNCILMAN ALBERT MANUEL JR.

SECOND: COUNCILMAN DENNIS JOSE

DATE: APRIL 26, 2001

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 171.8	1. MARY ANN ANTONE (Darlene Andrew)	85.9	X			X
	2. RITA MARTINEZ (Nicholas Jose)	85.9	X			
SELLS 372.7	1. DENNIS E. JOSE ()	186.35	X			
	2. EVELYN JUAN ()	186.35	X			X
SCHUK TOAK 133.4	1. MARY FLORES ()	66.7	X			
	2. AMBROSE ENCINAS ()	66.7	X			
SAN XAVIER 165.9	1. TONY BURRELL ()	82.95	X			
	2. DENNIS RAMON ()	82.95	X			
BABOQUIVARI 286.5	1. FRANCES MIGUEL ()	143.25	X			
	2. FRANCES G. ANTONE (Edward N. Kisto)	143.25	X			
GU ACHI 209.6	1. CAMILLUS LOPEZ ()	104.8	X			
	2. ALEX J. RAMON ()	104.8	X			
PISINEMO 156.8	1. BARBARA SALVICIO (Alex Antone)	78.4	X			
	2. JOHNSON JOSE ()	78.4	X			
SAN LUCY 128.1	1. ALBERT MANUEL, JR. ()	64.05	X			
	2. GLORIA RAMIREZ ()	64.05	X			X
GU VO 160.0	1. FERN SALCIDO ()	80.0	X			
	2. GLORIA MONTANA (Phillip Antone)	80.0	X			
HICKIWAN 158.1	1. SHIRLEY MOLINA ()	79.05	X			X
	2. LLOYD FRANCISCO (Susan Sam)	79.05	X			
CHUKUT KUK 222.6	1. KENNETH WILLIAMS ()	111.3	X			
	2. DAVID GARCIA (Mary Audrey Juan)	111.3	X			
TOTAL		2,165.5	2,165.5	-0-	-0-	[04]

****PASSED VOTES**