

**STATEMENT OF MELANIE BENJAMIN
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**Regarding Title IV – Access to Health Services
Under the Indian Health Care Improvement Act Reauthorization**

**BEFORE THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS
JULY 23, 2003**

INTRODUCTION

Chairman Campbell, Vice-Chairman Inouye and distinguished members of the Senate Indian Affairs Committee, my name is Melanie Benjamin and I am the Chief Executive of the Mille Lacs Band of Ojibwe. The Mille Lacs Band is a federally-recognized tribe of 3570 members located in East Central Minnesota. We operate three clinics in three Mille Lacs Band districts on our reservation and serve a user population of several thousand.

Three topics will be discussed as they relate to Medicaid and Medicare under Title IV of the Indian Health Care Improvement Act: sovereignty, the federal trust responsibility and the health disparities that exist between Indians and the rest of the American population. The access to health services under Title IV have a direct connection to the health disparities in Indian Country and must be addressed by the Congress. Following the general discussion of the three topics under Medicaid and Medicare will be the Mille Lacs Band recommendation of the establishment of a Tribal Leaders Group and Tribal Technical Advisory Group specific to the Centers for Medicare and Medicaid Services and their work with the Indian Health Service (IHS). The statement concludes with one final issue of concern to the Mille Lacs Band: the Department of Health and Human Services' "One" HHS Initiative.

When the Indian Health Care Improvement Act was first enacted in 1976, Congress recognized its trust responsibility toward the tribes to provide adequate health care. Throughout the subsequent amendments and reauthorizations of the Act, one of the major underlying policies has been to provide tribes access to other federal health care sources like Medicare and Medicaid programs. These programs have unlimited funding, as opposed to Indian Health Service programs that have funding limits each year. The intent was and is to improve our health status through that access. Since then Medicare and Medicaid reimbursements to tribes, including the Mille Lacs Band, have become a significant source of revenue for our health care programs and operations.

SOVEREIGNTY

Over the last fifteen years, the Mille Lacs Band of Ojibwe has actively participated in the formulation of Tribal Self-Governance policy. We take pride in being one of the first ten Self-Governance tribes. We participated in the original demonstration project and the

writing of the permanent Acts for BIA and IHS Self-Governance. The Mille Lacs Band has also been on the rule-making committees for the implementation of Self-Governance laws. Presently, the Mille Lacs Band of Ojibwe is an active member with the Tribal Self-Governance Advisory Committee that advises federal agencies on Indian policy matters affecting the Self-Governance tribes.

The Mille Lacs Band has supported and advocated for Self-Governance laws because our philosophy is that we should be free to govern ourselves and develop our own policies in the administration of our tribal programs. To us, this is an important exercise of sovereignty. In that exercise of sovereignty, we should not be entangled by a Federal or state bureaucracy.

There are three principles that the Mille Lacs Band of Ojibwe considers when analyzing federal programs. First, we assert that our primary relationship is with the Federal government. This tribal-Federal relationship has been established through Treaties with the United States, Executive Orders, Federal statutes and numerous court decisions recognizing the same. Second, we retain all sovereignty not expressly taken away, and therefore we should have the ability to control funds reserved for us under Federal law. Third, we should have equal access to the same funding avenues as states. This third principle raises the fundamental flaw of the Medicaid and Medicare programs.

It is the Band's understanding that the design of the Medicaid and Medicare programs is a federal – state collaboration. The problem is that tribes do not fit into the picture at all and this design flaw makes it very difficult to meet the criteria for receiving reimbursements. An example is that counties receive an administrative match from the state for their administrative costs while tribes cannot. According to the Mille Lacs Band of Ojibwe Commissioner of Health and Human Services, our inability to recover the administrative match demonstrates that tribes do not have equal access to Medicaid and Medicare reimbursements. The reason is that states determine how their block grants will be distributed under their own guidelines. As a result, the Mille Lacs Band and many other tribes lose out on potential and critical avenues of funding we desperately need because federal funding through the Indian health service. Others on this panel have addressed this and other legal barriers more specifically, but from a tribal leader perspective it is clear that states and managed care systems have predominance over tribes under Medicaid and Medicare.

Clearly, the establishment of the Medicaid and Medicare entitlement programs happened at a time in history when the Congress did not focus on tribal sovereignty. Presently tribes are treated as governments in Federal legislation and tribal sovereignty is recognized. Indian people are provided direct access to Federal programs and funding. The Mille Lacs Band of Ojibwe receives direct funding through our Self-Governance Indian Health Service and Bureau of Indian Affairs Annual Funding Agreements. But when it comes to Medicaid and Medicare programs, it is a different situation. It is time to change the Medicaid and Medicare provisions under Title IV of the Indian Health Care Improvement Act to reflect the new enlightened view of tribal sovereignty and provide tribes more access to health care services as the Act was originally intended.

THE FEDERAL TRUST RESPONSIBILITY

Through our treaties, Federal statutes, Executive Orders and court decisions, a Federal trust responsibility has been established and recognized over the course of dealings with tribes. The Mille Lacs Band of Ojibwe signed several treaties with the United States, and the provision of proper health care became an expectation of the Band and an obligation of the Federal government. In addition, the Snyder Act of 1921, the Transfer Act of 1954, the Self-Determination Act of 1975, the Indian Health Care Improvement Act of 1976, as well as the enactment of the IHS Self-Governance Act, all evidence the trust obligations that flow to the tribes from the Federal government for the provision of health care.

In spite of the clear legal duty created by these federal statutes, the Federal obligation to provide adequate health care to tribes has never been properly funded. Historically, this insufficient funding has interfered with our ability to provide comprehensive health care to Mille Lacs Band members. According to IHS estimates, the Mille Lacs Band and all other tribes in the Bemidji are funded at approximately 30% of need. This means more than two thirds of our need is not being met and explains why the status of Indian health on the Mille Lacs Band reservation and almost all other tribal reservations is so poor. We are told that the Federal government spends nearly twice as much for a prisoner's health care than it does for Indians. This fact is an example of why our health status is at the bottom of every disease category.

It seems ironic that Indian health care through the IHS is not an entitlement for Indian people when tribes essentially pre-paid for our health care by ceding millions of acres of land to the Federal government. It seems even more ironic that tribes have problems accessing the Federal entitlement programs like Medicaid and Medicare which were designed for all state citizens. This funding disparity becomes a matter of fairness and equity because Indian people are also citizens of the states in which we reside. It is only logical that we should have the same access to the same services as do other non-Indian citizens.

Given that we have been historically under funded for our health care needs and that tribes likely will not receive funding for the level of need in the next appropriations cycle, the federal trust responsibility needs to be taken seriously and changes made to allow tribes full participation in the existing entitlement programs of Medicaid and Medicare. It is fair and it is right.

INDIAN HEALTH DISPARITIES

It has been more than twenty five years ago since the Indian Health Care Improvement Act was enacted. The primary purpose of the legislation was to improve the health status of Indians to a level comparable with the general United States population. While strides have certainly been made in the delivery of Indian health care in that time, there continue to be health disparities in Indian Country that are recited time and time again. The numbers change slightly, but one constant is that Indians rank highest in nearly every category of disease incidence than the general American population. It is plain and simple that Indian health status is not improving and something must be done.

On the Mille Lacs Band reservation, diabetes is a very serious problem. There is not one family without diabetes among one of their family members. For many of our Band members, it is not a matter of if they get the disease, but when. Band members are losing their vision due to glaucoma complications, they are losing their limbs because of circulatory problems and many are close to requiring kidney dialysis treatments. This chronic disease affects our members' quality of life and it affects the lives of their family members.

More alarming is that diabetes and other long-term chronic health conditions are now occurring in our children and our youth. We have serious concerns for their long-term health and longevity. Our children and youth are our future and we must aggressively confront these health problems to preserve our tribal communities. There are no answers but it is clear that adequate and comprehensive Indian health care is a critical part of the solution.

The ability to provide comprehensive health care on our reservations is paramount because frequently our members will use only our tribal health facilities. The Mille Lacs Band is located in a rural area and other health care facilities are long distances. Our three clinics attempt to provide the health care our members need, but resources are quickly used and we make every effort to access outside funding through Medicaid and Medicare reimbursements within the limitations of existing law. More often than not, our efforts cannot meet our needs. We are fighting to protect the lives and health of our members on our reservations and in our communities. If Congress makes the necessary changes to Title IV of the Indian Health Care Improvement Act and provides more access to federal health care services and funds, it will at least give us another weapon in this war on health disparities.

TRIBAL LEADERS GROUP AND TRIBAL TECHNICAL ADVISORY GROUP

Under Executive Order Number 113175, the Tribal Consultation Policy, the Indian Health Service frequently solicits tribal input on health care matters that affect Indian Country. The same cannot be said for other agencies within the Federal Department of Health and Human Services. Two examples that demonstrate the lack of tribal consultation are the proposed Medicaid and Medicare Reform that will affect tribal health care programs throughout Indian Country.

The Department of Health and Human Services and the Mille Lacs Band of Ojibwe, along with the other federally-recognized tribes throughout the United States, share the common goal of providing accessible and culturally-appropriate health care that we believe is best achieved by working together at the earliest stages of policy development and certainly prior to implementation. The Mille Lacs Band of Ojibwe endorses and supports the Secretarial appointment of a Tribal Leaders Group (TLG) that would provide policy guidance throughout the Department of Health and Human Services. The Mille Lacs Band also endorses and supports the Tribal Technical Advisory Group (TTAG) that would provide technical expertise on complicated Indian policy matters and issues specifically to the Centers for Medicare and Medicaid Services.

The Tribal Leaders Group has been sanctioned by the National Indian Health Board, the National Congress of American Indians and the Tribal Self-Governance Advisory Committee, and would be comprised of tribal leadership from each of the Indian Health Service areas. These three organizations are recognized by the Federal government and the agencies that handle Indian affairs, but on many occasions Indian policy is overlooked by lawmakers and policy makers during the process of policy development. The Tribal Leaders Group would provide important policy recommendations to the Department of Health and Human Services on proposed initiatives that affect health care delivery throughout Indian Country, which in turn furthers the government-to-government relationship that fulfills the objectives of the tribal consultation policy.

On a more specific level, the Tribal Technical Advisory Group (TTAG) would provide the technical expertise and knowledge to the Centers for Medicare and Medicaid Services that is required when dealing with complex issues like Medicaid and Medicare Reform. The TTAG is also sanctioned by the National Indian Health Board, the National Congress of American Indians and the Tribal Self-Governance Advisory Committee. The Centers for Medicare and Medicaid Services has drafted a charter for the TTAG that provides representation from the three national Indian organizations identified above; however, the Mille Lacs Band and the TTAG believe that the Group should also require the participation of at least three technical advisors that are familiar with health care financing and administration and how proposed changes will affect Indian Country.

Through the Secretarial appointment of the Tribal Leaders Group and the Tribal Technical Advisory Group, tribal involvement from the earliest stages of policy development will ensure that Indian issues will be adequately addressed. Involvement and consultation also furthers the government-to-government relationship that the Mille Lacs Band of Ojibwe believes is part of the Federal trust responsibility to tribes.

ONE HHS INITIATIVE

The Mille Lacs Band of Ojibwe has a number of concerns with the Secretary of the Department of Health and Human Services' One HHS Initiative. First, the Initiative has not involved tribal consultation and that lack of consultation undermines the government-to-government relationship that tribes enjoy with the Federal government. One of the underlying policies of Executive Order Number 13175 was and is to involve tribes at the policymaking level and work with decision makers to enhance the government-to-government relationship. The Mille Lacs Band of Ojibwe and other tribes want to be involved and consulted on health and human service policy matters that affect Indian Country because we know best what our tribal communities need and can provide that knowledge to HHS officials.

Second, tribes' unique status as sovereign governments who are federally-recognized political entities is overlooked by the One HHS Initiative. As a federally-recognized tribe, the Mille Lacs Band of Ojibwe is a sovereign government that has a government-to-government relationship with the Federal government and its agencies. Our Self-Governance compacts are an expression of that relationship. As political entities recognized by the Federal government, the Mille Lacs Band and other tribes cannot be

treated as simply another racial minority group. The United States Constitution, our Treaties, Presidential Executive Orders, and Federal statutes and court decisions all affirm our political status as sovereign governments that are distinctly separate from all other racial and minority groups. By engaging in tribal consultation, Federal agencies will support tribes' government-to-government relationship expressed in the above-mentioned instruments.

Third, implementation of the One HHS Initiative is a departmental reorganization that fails to recognize the Indian Health Services' unique responsibility to Indian tribes. The restructuring of the HHS does not acknowledge the unique relationship between the Indian Health Service and the federally-recognized tribes. By incorporating Indian health care into public health and minority health programs, the Indian Health Service may lose its ability to provide direct medical services to tribes and eventually may see the loss of programs designed specifically for tribes. Inherent in the restructuring is an alteration of the federal trust responsibility. Indian Health Service exists to fulfill the Federal trust responsibility of providing health care to tribes across the United States and attempting to improve the health status in Indian Country. Removing that trust responsibility runs counter to the very purpose of the Indian Health Care Improvement Act.

CONCLUSION

The Mille Lacs Band of Ojibwe recognizes that improvements have been made in the delivery of health and human services since the enactment of the Indian Health Care Improvement Act in 1976. However, we still have significant health disparities in our communities that have not seen improvement. This tells us there must be greater efforts to address Indian health disparities. Those efforts must involve tribal consultation and coordinated discussions for any result to be obtained. It is not too late to engage tribes and begin working together to move forward and improve Indian health disparities.

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