

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0107-21_

SPONSOR: Daniel E. Tso

TITLE: An Action Relating to Health, Education and Human Services, Resources and Development, and Naabik'iyáti' Committees and the Navajo Nation Council; Reaffirming the Request to the Governor of New Mexico to Activate the Naat'aani Development Corporation - Molina Healthcare, Inc., Indian Managed Care Entity to Increase the Medical Resources Available to Navajo People During the COVID-19 State of Emergency

Date posted: July 02, 2021 at 4:37PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

LEGISLATIVE SUMMARY SHEET

Tracking No. 0107-21

DATE: June 30, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYATI' COMMITTEES AND THE NAVAJO NATION COUNCIL; REAFFIRMING THE REQUEST TO THE GOVERNOR OF NEW MEXICO TO ACTIVATE THE NAAT'AANI DEVELOPMENT CORPORATION - MOLINA HEALTHCARE, INC., INDIAN MANAGED CARE ENTITY TO INCREASE THE MEDICAL RESOURCES AVAILABLE TO NAVAJO PEOPLE DURING THE COVID-19 STATE OF EMERGENCY

PURPOSE: This resolution, if approved, will reaffirm the Navajo Nation's request to the Governor of New Mexico to Activate the Naat'aani Development Corporation - Molina Healthcare, Inc., Indian Managed Care Entity.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 07-07-21
Eligible for Action: 07-08-21

Health Education & Human Services Committee
Thence
Resources & Development Committee
Thence
Naabik'iyati' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Third Year, 2021

3 INTRODUCED BY

4
5 
6

7 (Prime Sponsor)

8
9 TRACKING NO. 0107-21

10
11 AN ACTION

12 RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND
13 DEVELOPMENT, AND NAABIK'ÍYATI' COMMITTEES AND THE NAVAJO
14 NATION COUNCIL; REAFFIRMING THE REQUEST TO THE GOVERNOR OF
15 NEW MEXICO TO ACTIVATE THE NAAT'AANI DEVELOPMENT CORPORATION -
16 MOLINA HEALTHCARE, INC., INDIAN MANAGED CARE ENTITY TO INCREASE
17 THE MEDICAL RESOURCES AVAILABLE TO NAVAJO PEOPLE DURING THE
18 COVID-19 STATE OF EMERGENCY

19
20 BE IT ENACTED

21
22 SECTION ONE. AUTHORITY

- 23 A. The Health, Education and Human Services Committee is a Standing Committee of the
24 Navajo Nation Council with the delegated authority to ensure compliance and
25 implementation of laws and policies of the Navajo Nation relating to health, social
26 services, education, general government services and human services. 2 N.N.C. §§ 400,
27 401(B)(2), 401(B)(6)(A)-(B), and 401(B)(7)(A).
28 B. The Resources and Development Committee is a Standing Committee of the Navajo
29 Nation Council with the delegated authority to periodically receive reports and review the
30

1 operations of the Navajo Nation enterprises, authorities, and industries. 2 N.N.C. §§ 500
2 and 501(B)(4)(e).

3 C. The Naabik'iyati' Committee is a standing committee of the Navajo Nation Council
4 with the delegated authority to assist development of federal and state programs
5 designed to serve the Navajo People and the Navajo Nation through
6 intergovernmental relationships; and to coordinate all federal, county and State
7 programs with other branches of the Navajo Nation government to provide the most
8 efficient delivery of services. 2 N. N. C. §§ 700 and 701 (4) and (7). In addition, a
9 proposed resolution that requires final action by the Navajo Nation Council [must] be
10 assigned to standing committee(s) having authority over the subject matter at issue
11 and the Naabik'iyati' Committee. 2 N.N.C. § 164(A)(9).

12 D. The Navajo Nation Council is the governing body of the Navajo Nation empowered
13 to state policy and enact laws of the Navajo Nation. 2 N.N.C. §§ 102 (A) and 164
14 (A).

15 16 SECTION TWO. FINDINGS

17 A. COVID-19 is a dangerous and extremely contagious respiratory virus; as of June 22,
18 2021, the Navajo Nation has reported 30,972 cases of COVID-19 and 1,347 related
19 deaths. The virus has not been completely eradicated and variants continue to emerge.

20 B. The Navajo Nation Commission on Emergency Management with the concurrence of
21 the Navajo Nation President declared a Public Health State of Emergency on March
22 11, 2020 to address the COVID-19 pandemic and mitigate spread of the virus. *See*
23 CEM-20-03-11.

24 C. In time of national crisis and legitimate fears and concerns about the spread of the
25 COVID-19, it is imperative that the Navajo Nation take advantage of all available
26 resources to combat this pandemic and provide healthcare services to Navajo
27 members and their communities.

28 D. On January 23, 2020, the Naabik'iyati' Committee adopted Resolution NABIJA-06-
29 20, attached as **Exhibit A** without exhibits, urging the Governor of the State of New
30 Mexico and the New Mexico Human Services Department to, among other things,

1 collaborate with the Naat'aanii Development Corporation ("NDC") to expeditiously
2 secure all necessary regulatory approvals, contracts and infrastructure for launching
3 the Naat'aanii Development Corporation Molina Healthcare, Inc. Indian Managed
4 Care Entity ("IMCE") and have it fully operational in New Mexico in the first quarter
5 of 2020 and in Arizona and Utah thereafter.

6 E. On March 20, 2020, the Navajo Nation Council adopted Resolution CMA-14-20,
7 attached as **Exhibit B** without exhibits, which resolved that:

8 1. The Navajo Nation hereby urges the Governor of the State of New Mexico and
9 the New Mexico Human Services Department to collaborate with the Naat'aanii
10 Development Corporation to expeditiously secure all necessary regulatory
11 approvals, contracts and infrastructure for launching the Naat'aanii Development
12 Corporation Molina Healthcare, Inc. Indian Managed Care Entity and have it fully
13 operational in New Mexico in the first quarter of 2020 and in Arizona and Utah
14 thereafter; and

15 2. The Navajo Nation hereby also urges the Governor of the State of New Mexico
16 and the New Mexico Human Services Department to implement passive
17 enrollment mechanisms that will ensure enrollment of the majority of the 81,000
18 American Indians and Alaska Natives residing within the Navajo Nation into the
19 Naat'aanii Development Corporation - Molina healthcare, Inc. managed care
20 program; and

21 3. The Navajo Nation hereby further urges the Governor of the State of New Mexico
22 and the New Mexico Human Services Department to take those steps necessary to
23 ensure that healthcare decisions can be made collectively by a family unit and that
24 non- American Indian and non - Alaska Natives family members of an eligible
25 individual be allowed to enroll in the Naat'aanii Development Corporation -
26 Molina Healthcare, Inc. managed care program.

27 F. On March 27, 2020, Jonathan Nez, Navajo Nation President, vetoed Navajo Nation
28 Council resolution number CMA-14-20 stating, among other reasons for his veto, that
29 he supports active enrollment and not passive enrollment as the Council stated in
30 CMA-14-20.

- 1 G. On April 17, 2020, the Navajo Nation Council by resolution number CAP-23-20,
2 attached as **Exhibit C** without exhibits, over-rode President Nez' veto by a vote of 16
3 in favor and 6 opposed making Navajo Nation Council resolution numbers CMA-14-
4 20 and CAP-23-20 final law of the Navajo Nation on the matter.
- 5 H. Since April 17, 2020, the New Mexico Governor and the New Mexico Human
6 Services Department held a number of meetings and completed negotiations on a
7 draft contract with Naat'aanii Development Corporation - Molina Healthcare, Inc. to
8 create the IMCE but the New Mexico Governor ceased all meetings and
9 communications in January 2021 regarding the IMCE establishment. There has been
10 no progress on the IMCE since then.
- 11 I. The State of New Mexico has refused to execute the completed draft IMCE
12 Agreement based on the excuse that the governor requires the Navajo Nation to waive
13 its sovereign immunity and that the Navajo Nation president must also sign the
14 Agreement.
- 15 J. However, NDC has previously informed the Human Services Department that NDC
16 can waive its sovereign immunity for enforcement of the IMCE in state judicial and
17 administrative agencies and additional waiver of the Navajo Nation's sovereign
18 immunity is not required. In addition, on January 7, 2021, the Navajo Nation
19 Attorney General, in response to a request from the Human Services Department,
20 opined that the Navajo Nation does not need to be a party signatory to the IMCE
21 contract.
- 22 K. The Navajo Nation Council is willing to support active enrollment in the IMCE on
23 the condition that the President execute a joint letter from the Council to the governor
24 supporting the immediate establishment of the IMCE.
- 25 L. The Navajo Nation Council believes that it is in the best interest of the Navajo Nation
26 and the Navajo people to complete the establishment of Naat'aanii Development
27 Corporation - Molina Healthcare, Inc. as the managed care program (Navajo MCO)
28 so that Navajo MCO members will have access to free testing and diagnostics for
29 COVID-19; the Navajo MCO will also provide doctor and hospital visits with all
30

1 necessary prescriptions, x-rays and laboratory services for members that require
2 treatment against the virus.

3 M. Naat'áanii Development Corporation's Board of Directors and Management have
4 extensive background and experiences managing, leading, and growing multi-billion
5 dollar companies. The IMCE will provide additional revenue to the Indian Health
6 Service (I.H.S.) and Navajo Nation Pub. L. 19-638 healthcare facilities. The IMCE's
7 source of funds are separate from I.H.S. and Navajo Nation Pub. L. 19-638 healthcare
8 funds and will not compete for IHS/Navajo funding.

9 N. In this time of crisis, it is imperative that the Navajo Nation and the State of New Mexico
10 move quickly to complete implementation of the Navajo MCO so it can aid Navajo
11 people during this pandemic crisis and beyond.

12 13 **SECTION THREE. SUPPORTING IMCE THROUGH ACTIVE ENROLLMENT**

14 The Navajo Nation Council hereby approves and resolves that:

15 A. The Navajo Nation hereby reaffirms its prior position with the addition that
16 enrollment may occur through active enrollment provided the President co-signs a
17 letter to the governor supporting immediate establishment of the IMCE.

18 B. The Navajo Nation hereby re-urges the Governor of the State of New Mexico and the
19 New Mexico Human Services Department to collaborate with the Naat'áanii
20 Development Corporation and to expeditiously secure all necessary regulatory
21 approvals, contracts and infrastructure for launching the Naat'áanii Development
22 Corporation Molina Healthcare, Inc. Indian Managed Care Entity and have it fully
23 operational in New Mexico in 2021 and in Arizona and Utah thereafter.

24 C. The Navajo Nation hereby also re-urges the Governor of the State of New Mexico and
25 the New Mexico Human Services Department to implement active enrollment
26 mechanisms that will ensure enrollment of the majority of the 81,000 American
27 Indians and Alaska Natives residing within the Navajo Nation into the Naat'áanii
28 Development Corporation - Molina Healthcare, Inc. managed care program.

29 D. The Navajo Nation hereby further re-urges the Governor of the State of New Mexico
30 and the New Mexico Human Services Department to take those steps necessary to

1 ensure that healthcare decisions can be made collectively by a family unit and that
2 non-American Indian and non-Alaska Natives family members of an eligible
3 individual be allowed to enroll in the Naat'aanii Development Corporation - Molina
4 Healthcare, Inc. managed care program.

5 E. The Navajo Nation hereby urges the Governor of the State of New Mexico and the
6 New Mexico Human Services Department to respect and honor the sovereign will of
7 the Navajo Nation by moving forward with the full implementation of the Indian
8 Managed Care Entity with Naat'aanii Development Corporation as the official
9 designated entity on behalf of the Navajo Nation.

10
11 **SECTION FOUR. EFFECTIVE DATE**

12 The legislation enacted herein shall be effective pursuant to 2 N.N.C. § 221 (B).
13

14 **SECTION FIVE. SAVINGS CLAUSE**

15 Should any provision of this legislation be determined invalid by the Navajo Nation
16 Supreme Court or the District Courts of the Navajo Nation, without appeal to the
17 Navajo Nation Supreme Court, those provisions that are not determined invalid shall
18 remain the law of the Nation.
19
20
21
22
23
24
25
26
27
28
29
30