LEGISLATION NO: 0107-21  SPONSOR: Daniel E. Tso

TITLE: An Action Relating to Health, Education and Human Services, Resources and Development, and Naabik’íyáti’ 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

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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.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Third Year, 2021
INTRODUCED BY

[Signature]
(Prime Sponsor)

TRACKING NO. 0107-21

AN ACTION
RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND
DEVELOPMENT, AND NAABIK’IYATI’ COMMITTEES AND THE NAVAJO
NATION COUNCIL; REAFFIRMING THE REQUEST TO THE GOVERNOR OF
NEW MEXICO TO ACTIVATE THE NAAT’AAANI 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

BE IT ENACTED

SECTION ONE. AUTHORITY
A. The Health, Education and Human Services Committee is a Standing Committee of the
Navajo Nation Council with the delegated authority to ensure compliance and
implementation of laws and policies of the Navajo Nation relating to health, social
services, education, general government services and human services. 2 N.N.C. §§ 400,
401(B)(2), 401(B)(6)(A)-(B), and 401(B)(7)(A).
B. The Resources and Development Committee is a Standing Committee of the Navajo
Nation Council with the delegated authority to periodically receive reports and review the
operations of the Navajo Nation enterprises, authorities, and industries. 2 N.N.C. §§ 500 and 501(B)(4)(e).

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

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

SECTION TWO. FINDINGS

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

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

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

D. On January 23, 2020, the Naabik'iyati' Committee adopted Resolution NABIJA-06-20, attached as Exhibit A without exhibits, urging the Governor of the State of New Mexico and the New Mexico Human Services Department to, among other things,
collaborate with the Naat'aanii Development Corporation ("NDC") to expeditiously secure all necessary regulatory approvals, contracts and infrastructure for launching the Naat'aanii Development Corporation Molina Healthcare, Inc. Indian Managed Care Entity ("IMCE") and have it fully operational in New Mexico in the first quarter of 2020 and in Arizona and Utah thereafter.

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

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

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

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

F. On March 27, 2020, Jonathan Nez, Navajo Nation President, vetoed Navajo Nation Council resolution number CMA-14-20 stating, among other reasons for his veto, that he supports active enrollment and not passive enrollment as the Council stated in CMA-14-20.
G. On April 17, 2020, the Navajo Nation Council by resolution number CAP-23-20, attached as Exhibit C without exhibits, over-ruled President Nez’ veto by a vote of 16 in favor and 6 opposed making Navajo Nation Council resolution numbers CMA-14-20 and CAP-23-20 final law of the Navajo Nation on the matter.

H. Since April 17, 2020, the New Mexico Governor and the New Mexico Human Services Department held a number of meetings and completed negotiations on a draft contract with Naat'aanii Development Corporation - Molina Healthcare, Inc. to create the IMCE but the New Mexico Governor ceased all meetings and communications in January 2021 regarding the IMCE establishment. There has been no progress on the IMCE since then.

I. The State of New Mexico has refused to execute the completed draft IMCE Agreement based on the excuse that the governor requires the Navajo Nation to waive its sovereign immunity and that the Navajo Nation president must also sign the Agreement.

J. However, NDC has previously informed the Human Services Department that NDC can waive its sovereign immunity for enforcement of the IMCE in state judicial and administrative agencies and additional waiver of the Navajo Nation’s sovereign immunity is not required. In addition, on January 7, 2021, the Navajo Nation Attorney General, in response to a request from the Human Services Department, opined that the Navajo Nation does not need to be a party signatory to the IMCE contract.

K. The Navajo Nation Council is willing to support active enrollment in the IMCE on the condition that the President execute a joint letter from the Council to the governor supporting the immediate establishment of the IMCE.

L. The Navajo Nation Council believes that it is in the best interest of the Navajo Nation and the Navajo people to complete the establishment of Naat'aanii Development Corporation - Molina Healthcare, Inc. as the managed care program (Navajo MCO) so that Navajo MCO members will have access to free testing and diagnostics for COVID-19; the Navajo MCO will also provide doctor and hospital visits with all
necessary prescriptions, x-rays and laboratory services for members that require treatment against the virus.

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

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

SECTION THREE. SUPPORTING IMCE THROUGH ACTIVE ENROLLMENT

The Navajo Nation Council hereby approves and resolves that:

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

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

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

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

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

SECTION FOUR. EFFECTIVE DATE

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

SECTION FIVE. SAVINGS CLAUSE

Should any provision of this legislation be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those provisions that are not determined invalid shall remain the law of the Nation.