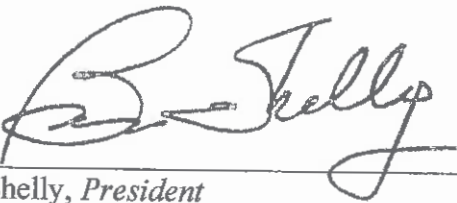




MEMORANDUM

TO: Honorable LoRenzo Bates, Speaker Pro Tem
The 22nd Navajo Nation Council

FROM:


Ben Shelly, President
THE NAVAJO NATION

DATE: November 6, 2014

SUBJECT: **Legislation CO-50-14; An Action Relating to Law and Order; Health, Education and Human Services; Naabik'iyati'; Enacting the 2014 Amendments of Title 2 of the Navajo Department of Health Act by Amending 2 N.N.C. §§ 1601 et seq.**

Pursuant to 2 N.N.C. §1005(C)(10), the above-entitled Legislation CO-50-14 is being submitted to the Navajo Nation Council, through the Office of the Speaker, within the ten (10) days requirement. I have signed the legislation into law.

The legislation is an unprecedented exercise of tribal sovereignty. It establishes the Navajo Department of Health, the first tribally operated, state-like health department.

This legislation affirms the Nation's sovereignty by recognizing the Nation's authority to determine what is in the best interest of our people's health care in the future. By enacting this legislation into law, it demonstrates a commitment to the Navajo People that we will work to ensure that they receive quality, comprehensive, and culturally relevant health care and public health services, no matter where they live within the Navajo Nation.

This legislation amends the 20-year-old enabling legislation for the Navajo Division of Health. Since the creation of the Navajo Division of Health, the Nation has seen substantial growth and changes. However, our health laws have remained stagnant or have seen piecemeal changes. In the past 20 years, the Nation decided to exercise its right to self-determine by compacting and contracting specific health programs, services, functions and activities. The Nation established its own Epidemiology Center and the Public Health Emergency Preparedness Program. This legislation accounts for these developments and brings the Navajo Health System not only up-to-date, but also mindful of our grandchildren's children.

The department will ensure the public health service needs are met within the Navajo Nation through assessment, policy development, and assurance. It will investigate health problems and health hazards in our communities. It will inform, educate, and empower the People about health issues. The department will enforce laws and regulations passed to protect health and ensure safety. It will assure competent public and personal health care workforce and evaluate the effectiveness, accessibility, and quality of personal and population based health services. The department will work with health care providers throughout the Nation and federal, state and local governments.

This legislation also provides authority for the department to use due diligence towards another historic step, the possible creation of the first tribally administered Medicaid agency. Recently, a congressionally mandated study, conducted by the Department of Health and Human Services, found that it is feasible for the Navajo Nation to run its own Medicaid agency. If established, a Navajo Medicaid Agency, would ensure that the Navajo People residing within the Nation receive uniform Medicaid eligibility criteria and coverage, regardless of the state they live in.

This legislation does not authorize the department to intercept or impede existing self-determination funding for our contracted and compacted facilities. There is a misconception that the department will apprehend the existing Title I contracts or Title V compacts the monies from the tribal organizations.

Additional concerns or misconceptions encompass the regulation of traditional practitioners and the use of traditional medicine. Access to and the use of such healing is fundamental to the health choice of many of our Navajo People. The department will assist in establishing a structure and system for the practice and retention of traditional medicine. This will be accomplished through consultation with relevant organizations such as the Navajo Medicine Men's Association and other Hataalii organizations, and to establish a registry of practitioners through said organizations.

The legislation is the beginning of a new era in our health system within the Navajo Nation. It is not perfect, but necessary. We look forward to working with our partners at the local, state, and federal levels, to develop the Department of Health. For the reasons stated above, I sign this legislation.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACT

RELATING TO LAW AND ORDER; HEALTH, EDUCATION AND HUMAN SERVICES;
NAABIK'ÍYÁTI'; ENACTING THE 2014 AMENDMENTS OF TITLE 2 OF THE
NAVAJO DEPARTMENT OF HEALTH ACT BY AMENDING 2 N.N.C. §§1601 *ET*
SEQ.

BE IT ENACTED:

Section 1. Findings

A. The Navajo Nation Council hereby finds that while limited functions related to the health care and public health needs of the Navajo Nation have been delegated by the Navajo Nation Council to various agencies of the Navajo Nation, there is no division, department, office or program that has been delegated or authorized as the primary agent to monitor, evaluate, regulate, enforce, and coordinate health care and public health programs, functions, services and activities of the Navajo Nation.

B. The Navajo Nation Council further finds that health care and public health programs and activities of the Navajo Nation including monitoring, evaluation, regulatory, enforcement, and coordinating functions should be placed within the Navajo Department of Health to appropriately meet the public health needs of the Navajo Nation and the Navajo people.

C. The Navajo Nation Council further finds that fragmentation of health care systems on the Navajo Nation adversely impacts Navajo people and the Navajo Nation as a whole.

D. The Navajo Nation Council further finds that the lack of a Navajo Nation Medicaid Agency results in Medicaid eligible individuals, health care facilities, and providers operating on the Navajo Nation complying with three separate State Medicaid Agencies in Arizona, New Mexico and Utah. Each State has varying requirements, benefits, services, standards and rates of payment

for services. This fragmentation adversely impacts access to health care and causes Medicaid eligible individuals to lose eligibility, resulting in the loss of coverage and reimbursement to providers. Additionally, health care facilities and providers must comply with varying requirements, standards and rates of payment for services especially if they serve Medicaid eligible individuals from more than one State.

E. The Navajo Nation Council further finds that public health actions are generally undertaken and are directed at the population. The Navajo Nation is responsible to develop and ensure the implementation of health codes, regulations, policies, and standards that reinforce and reaffirm Navajo culture and values.

F. The Navajo Nation Council further finds a need for a Navajo Department of Health that is authorized and established to meet the comprehensive health care and public health needs of the Navajo Nation and its population.

G. The Navajo Nation Council further finds States are encroaching on the Navajo Nation's inherent sovereignty to regulate health care.

H. The Navajo Nation Council further finds a need to establish and operate a system for licensure and certification to ensure quality and culturally relevant health care services.

I. The Navajo Nation Council further finds a need for a health data management system to store information of ongoing collection, integration, analysis, interpretation and dissemination of data on health care, behavioral risk factors surveillance system, morbidity and mortality indicators, and health and human research.

J. The Navajo Nation Council finds that the following amendments to Title Two of the Navajo Nation Code will address these findings and are the most appropriate means for addressing the health care and public health needs of the Navajo people.

Section 2. Purpose of the Navajo Department of Health Act of 2014

This Act will establish the Navajo Department of Health as the lead agency delegated to ensure that quality, comprehensive and culturally relevant health care and public health services are provided on the Navajo Nation.

Section 3. Enactment of the Navajo Department of Health Act of 2014

The Navajo Nation Council hereby enacts the Navajo Department of Health Act of 2014. This Act amends Resolution CJY-70-95, an amends sections of Title Two codified at 2 N.N.C. §§ 1601 et seq. as follows:

NAVAJO NATION CODE ANNOTATED
TITLE 2 NAVAJO NATION GOVERNMENT
CHAPTER 5. EXECUTIVE BRANCH
SUBCHAPTER 23. NAVAJO DEPARTMENT OF HEALTH

§ 1601. Establishment

The Navajo Division Department of Health is hereby established as a Division Department within the Executive Branch of the Navajo Nation Government.

§ 1602. Purposes

~~The purpose of the Navajo Division of Health shall be:~~

~~A. to provide to the Navajo people such direct health care services as are approved and authorizes by the Navajo Nation Council; and~~

~~B. To ensure the highest quality of overall health care for the Navajo people by coordinating with the Indian Health Service and other federal, state and private entities and the appropriate public health and quality assurance regulatory authority~~

The purpose of Navajo Department of Health is to ensure that quality comprehensive and culturally relevant health care and public health services are provided on the Navajo Nation.

~~§ 1603. Personnel~~

~~The Navajo Nation shall be administered by an Executive Director and deputy Director. The Executive Director shall be appointed by the President of the Navajo Nation, with the approval and recommendation of the Health and Social Services Committee and the consent of the Navajo Nation Council and shall serve at the pleasure of the President of the Navajo Nation. The Executive Director shall cause to be hired a Deputy Director and such other personnel as may be deemed necessary to carry out the purposes of the Division. All personnel other than the Executive Director, shall be subject to the Personnel Policies and Procedures of the Executive Branch of the Navajo Nation.~~

§ 1603. Definitions

A. "Agreement" shall mean grants, contracts, compacts, Intergovernmental Agreements and other agreements.

B. "Data" shall mean written and/or recorded information such as documents, forms, facts, figures, records, statistics, surveys and/or interviews.

C. "Environmental health" shall mean how environmental factors affect human health and disease and also the theory and practice of assessing and controlling environmental factors that potentially affect health.

D. "Epidemiological Surveillance" shall mean the continuous collection and analysis of health data that has a significant impact on public health.

E. "Health care" shall mean the diagnosis, treatment, and prevention of disease, illness, injury, and other physical and mental impairments in humans delivered by practitioners in medicine, chiropractic, dentistry, nursing, pharmacy, allied health, and other care providers including traditional healers.

F. "Public health" shall mean the science of protecting and improving the health of entire populations through education, promotion of healthy lifestyles, and research for disease and injury prevention.

G. "Traditional Medicine" shall mean the holistic ceremonial healing process that is a reliable and valid treatment system based on indigenous knowledge from diagnosis to referral, application and treatment to recovery of the mind, spirit soul and body, and enhancing wellness and good health.

§ 1604. Powers and authority of the Navajo Department of Health

The powers and authority as delegated by the Navajo Nation Council of the Navajo Department of Health shall be:

A. To monitor, evaluate, regulate, enforce, and coordinate health codes, regulations, policies, and standards and provide public health services in order to protect the health and safety of the Navajo people and communities.

B. To provide direct health care services as approved and authorized by the Navajo Nation Council, and to provide that all contract funds that are awarded shall not be required to pass through the Department of Health.

C. To establish and operate an information system center to collect, manage, control and protect data related to health care, public health, epidemiological surveillance, research and disease investigations.

D. To protect the best interest of the Navajo Nation, review and comment on health care provided and federal and state non-procurement Agreements within 5 business days of receipt by the Navajo Department of Health for the purposes of: 1) ensuring access to quality health care; 2) maintaining compliance with established rules and regulations; and 3) ensuring comprehensive health care services throughout the Navajo Nation.

E. To develop and ensure the implementation of comprehensive health codes, regulations, policies, and standards.

F. To represent the Navajo Nation in lobbying, advocacy, testifying and maintaining government-to-government relationships with the federal, state, and local governments.

G. To conduct due diligence toward the potential establishment of a Navajo Nation Medicaid Agency.

H. To establish a structure and system, in the form of assistance, for the practice and retention of traditional medicine that provides holistic health care through consultation with relevant organizations, including the certifying and registering of practitioners by a traditional medicine practitioner organization.

I. To regulate health, human, and emergency and non-emergency medical transportation service provider.

§1604. Organization

~~The Navajo Division of Health shall be comprised of such departments, programs, offices and administrative components as may be deemed necessary by the Executive Branch to fulfill its purposes, subject to legislative review and approval of the Division's Plan of Operation.~~

§ 1605. Personnel

The Health Director of the Navajo Department of health shall be appointed by the President of the Navajo Nation with the approval and recommendation of the Health, Education and Human Services Committee and the consent of the Navajo Nation Council and shall serve at the pleasure of the President of the Navajo Nation. The Health Director shall cause to be hired other personnel as may deemed necessary to carry out the purpose of the Department. All personnel, other than the Health Director, shall be subject to the Personnel Policies and Procedures of the Navajo Nation.

§1605. Legislative Oversight

~~The Navajo Division of Health shall operate under the legislative oversight of the Health and Social Services Committee of the Navajo Nation Council. Pursuant to the powers granted the Committee in 2 N.N.C. §§191 and 451 et seq. The Division shall operate pursuant to a Plan of Operation approved by the Health and Social Services Committee and the Government Services Committee of the Navajo Nation Council.~~

§ 1606. Organization

The Navajo Department of Health shall be comprised of such programs, offices, and administrative components as may be deemed necessary by the Health Director to fulfill its purposes subject to legislative review and approval of the Department's Plan of Operation.

~~§1606. Amendments~~

~~The enabling legislation for the Navajo division of Health is subject to amendments, revision and other necessary notification by the Navajo Nation Council with review, input and recommendation by the Health and Social Services Committee of the Navajo Nation Council and the Navajo Division of Health.~~

§ 1607. Legislative Oversight

The Navajo Department of Health shall operate under the oversight of the Health, Education and Human Services Committee of the Navajo Nation Council, pursuant to the powers granted the Committee in 2 N.N.C. §§ 192 and 400 *et seq.*

§1608. Amendments

The enabling legislation for the Navajo Department of Health is subject to amendment, revision and other necessary modification by the Navajo Nation Council with review, input and recommendation for approval by the Health, Education and Human Services Committee of the Navajo Nation Council and the Navajo Department of Health.

Section 4. Effective Date

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

Section 5. Codification

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section 6. Saving Clause

Should any provision of this Act 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 of the Act which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in favor and 2 opposed, this 23rd day of October 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

Oct. 31, 2014

Date

Motion: Honorable Jonathan hale
Second: Honorable Leonard Tsosie

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this _____ day of NOV 06 2014 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014, for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation