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108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108-75

TO AUTHORIZE THE INTEGRATION AND CONSOLIDATION OF ALCOHOL
AND SUBSTANCE ABUSE PROGRAMS AND SERVICES PROVIDED BY IN-
DIAN TRIBAL GOVERNMENTS, AND FOR OTHER PURPOSES

JUNE 18, 2003.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 285]

The Committee on Indian Affairs to which was referred the bill (S. 285) to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

The Native American Alcohol and Substance Abuse Program Consolidation Act of 2003 (S. 285) has two primary purposes.

The first purpose is to enable Indian tribes to create a simpler and more efficient delivery system for alcohol, substance abuse, and mental health treatment services by consolidating and integrating administrative, management and accounting functions into a single program, and thereby recognizing that tribal governments, as the local entities directly responsible for the well-being of their populations, can best determine the most appropriate policies and methods for achieving these goals in their communities.

The second purpose is to reauthorize the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986.

BACKGROUND

Native communities are increasingly plagued by mental health problems and alcohol and substance abuse at staggering rates and this abuse is wreaking havoc on Native families across the country. The incidence of alcohol and substance abuse among American In-

dian and Alaskan Native adults is far greater than that of the general population. Alcoholism occurs among American Indian and Alaskan Natives at a rate that is 579% greater than the general population. Deaths due to alcoholism occur at a rate that is 627% higher than that of the general population, and the trend is worsening. During the ten years between 1987 and 1996, the rate of deaths due to alcoholism increased 57% among American Indians and Alaskan Natives.

Similarly, alcohol continues to be an important risk factor associated with the top three killers of American Indian and Alaskan Native youth—accidents, suicide, and homicide. Based on 1996 data, the rate of mortality due to alcoholism among American Indian and Alaskan Native youth ages 15 to 24 was 3.4 per 100,000 which is 11 times the rate for white youth of the same ages. The same data show a suicide rate among American Indian and Alaskan Native youth of 34 per 100,000, a rate which is 2.5 times the rate for the general population.

Native Americans also have higher rates of alcohol and drug use than any other racial or ethnic group in America, another worsening trend. The drug-related death rate for American Indian and Alaskan Native—already 65% higher than the general population—increased 240% between 1981 and 1996.

Despite previous treatment and preventive efforts, alcoholism and substance abuse continue to be prevalent among Native youth: a 2001 study by the Harvard School of Public Health found that Native college students had the highest rates of “binge” drinking among all college ethnic groups. In a 2001 study by the National Household Survey on Drug Abuse, 22.1% of American Indian and Alaskan Native teens reported the use of marijuana, cocaine, and other illicit substances. The Survey also found that 35% of Native youth used alcohol.

Reports issued by the Indian Health Service (IHS) indicate that mental health and social problems are associated with more than one-third of the demands made on Indian health facilities for services. Data gathered by IHS and corroborated with data from the Substance Abuse and Mental Health Services Administration (SAMHSA) demonstrates that Native people have the highest rates of mental distress of all ethnic and racial groups in the United States.

The Federal government offers several disparate and currently uncoordinated mental health and substance abuse prevention and treatment programs for which Indian tribes and tribal health organizations are eligible to receive funding. Amounts available for the operation of these programs are generally very small.

Pursuant to the Tribal Self Governance Amendments Act of 2000 (Pub. L. 106–260), the Department of Health and Human Services (DHHS) conducted “a study to determine the feasibility of a tribal self-governance demonstration project for appropriate programs, services, functions, and activities (or portions thereof) of [DHHS].” Essentially, the study was aimed at identifying those DHHS programs that could be consolidated by tribes into a self-governance compact, or that would be useful to a self-governance compact, but could not be consolidated due to statutory restrictions.

Mental health related programs that were identified included the Community Services Block Grant, Child Welfare Services, Pro-

moting Safe and Stable Families, Family Violence Prevention, and the Administration on Aging's Grants for Native Americans, as well as various IHS programs. Additionally, a couple of significant programs under SAMHSA, the Community Mental Health Block Grant and the Substance Abuse Prevention and Treatment Block Grant, were identified as appropriate for consolidation, but due to statutory restrictions cannot be distributed in block grants to tribes. Other possible candidate programs include those administered by the National Institutes of Health—National Institute on Alcohol Abuse and Alcoholism, which includes several different grant programs for minorities and the prevention of alcohol abuse.

Even in those instances where Indian tribes and tribal organizations are able to access program funding from several different sources, the amounts are generally so meager and the auditing and reporting requirements so onerous, that it is simply not cost effective to attempt to operate a program which combines multiple sources of available funding.

S. 285 addresses these problems by allowing for the submission of a plan to consolidate funding and develop a single plan to meet auditing and other reporting requirements. In the process, the Indian tribe or tribal organization is encouraged to access several funding sources, make one report to the Federal government on the use of funds, and to operate these programs so that the resources are effectively targeted at the communities that need them.

S. 285 will authorize and encourage Indian tribes and tribal organizations to streamline alcohol and substance abuse and mental health programs through consolidation and integration of mental health diagnosis and treatment programs, including alcohol and substance abuse prevention, diagnosis, and treatment programs, and to provide unified and more effective services to Native Americans with mental health and substance abuse-related illnesses.

S. 285 tracks the highly-successful "477 model" that Indian tribes and tribal organizations have used to effectively integrate and consolidate employment, training and related services through the Indian Employment Training and Related Services Demonstration Act of 1992 (Pub. L. 102-477).

Pursuant to S. 285 an applicant tribe or Indian health organization can file a single comprehensive plan to draw and coordinate resources from many Federal agencies and administer them through one office, which will be housed in the DHHS. To facilitate this inter-agency resource transfer, Secretaries of the agencies designated in the bill are required to negotiate and enter into a memorandum of agreement.

Assisting Indian tribes and tribal organizations to access alternative sources of funding for mental health services can potentially increase the overall level of health care in Indian country. In addition, recent studies by SAMHSA indicate that preventive mental health programs can save substantial amounts from having to be spent on medical treatment.

SUMMARY OF MAJOR PROVISIONS

1. Overview and coordinating agency status

The Native American Alcohol and Substance Abuse Program Consolidation Act of 2003 authorizes the Secretary of the DHHS to

be the Federal official in charge of establishing the framework for integration and coordination of Native American alcohol, substance abuse, and mental health programs at the Federal level. The Secretary is the logical candidate to lead this effort as the Secretary oversees the operation of key agencies within the DHHS which provide funding in the area of alcohol, substance abuse and mental health treatment. Additionally, the Secretary is in the best position to successfully negotiate with other Federal departments for a memorandum of agreement to effectuate the purposes of S. 285.

S. 285 designates the IHS as the “coordinating agency” for the consolidation program. Because the IHS has considerable experience implementing the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450 et seq), and is responsible for administering the great majority of Indian health programs, the activities envisioned by S. 285 make the Service an ideal point of coordination for the consolidation program.

2. Definitions

A definition of “substance abuse” is included in the bill in response to concerns expressed by Committee members that program monies consolidated under the bill could not be used to treat inhalant abuse, which is a growing problem among American Indian and Alaskan Native youth.

It is the intent of the Committee that funds used under this legislation be used to treat inhalant abuse where a tribe or tribal consortia determines such uses to be necessary.

Definitions of “automated clinical information system” and “Indian behavioral health care program” are also included in the bill as amended. The term automated clinical information systems refers to computer software and/or hardware specifically designed for use in a clinical health care setting. The term Indian behavioral health care program is defined to express the intent of the Committee to include within the purview of this act all Federal programs and, necessarily, related Federal funding, for alcohol, substance abuse prevention, diagnosis and treatment and mental health analysis, counseling, treatment, support and related programs for Indians and Indian tribes.

It is the intent of the Committee that, for purposes of this Act, the term “Indian tribe” be broadly defined. There are multiple types of non-profit organizations and clinics, as well as Indian tribes and intertribal consortium, that shoulder the responsibility of delivering critically needed alcohol and substance abuse, and mental health services to American Indians. Some clinics and organizations operate only on reservations, serving only one tribal community, others operate in urban settings, serving a number of different tribal communities.

3. Types of programs that are eligible for consolidation

Section 104 of the bill, as amended, addresses the different types of programs which may be included in plans for consolidation under this legislation. Previous versions of the bill authorized only those programs which are formula-funded. In the 106th Congress, the Committee was made aware that formula funding is rarely used to fund alcohol and substance abuse programs, and that the

majority of funds used for these programs are provided through competitive grant or other programs.

Accordingly, the Committee drafted the authorization in S. 285 to include grant programs and other types of funding that may be distributed for the treatment of alcohol, substance abuse or mental health treatment. The Committee intends that tribes have significant latitude in securing funding sources for inclusion in a consolidated plan.

The DHHS has expressed concerns that certain program funding sources, such as SAMHSA's Community Mental Health Block Grant and the Substance Abuse Prevention and Treatment Block Grant, might need statutory amendments to work effectively with the S. 285 consolidation program. Therefore, the Native American Alcohol and Substance Abuse Program Consolidation Act of 2003 has been amended from prior versions of the bill to allow for inclusion of grant funding, as noted below, such as that which tribes receive from the SAMHSA.

In drafting section 104 of S. 285, considerable thought was given to the provision which allows grant funds to be consolidated. The Committee recognizes that without the inclusion of grant monies this program authority would be ineffective because the majority of monies available to tribes for the treatment of alcohol and substance abuse problems are distributed through grants.

The Committee intends that the enactment of S. 285 should not be used as a justification for the denial of grant applications submitted by tribes because the DHHS prefers that the funds not be consolidated. At the same time, the Committee desires to protect the integrity of the grant process. Accordingly, the tribe must still apply for and secure a competitive grant before it can include the grant funding in a consolidation plan.

Section 104 also accommodates the granting agency by allowing consolidation where the plan to include grant funds is essentially the same as the requirements of the grant program. This allows some flexibility for the tribe but still requires conformity to the requirements of the grant program.

4. Initiation of program

Under the Native American Alcohol and Substance Abuse Program Consolidation Act of 2003, the Secretary is obligated to develop and implement the interdepartmental Memorandum of Agreement (MOA) at the Cabinet level. This MOA will provide the framework for the implementation and operation of the consolidation program among relevant Federal agencies.

Initially, the Committee expects that the departments of Health and Human Services, Interior, Justice and Education will cooperate in the development of the MOA. Eventually, each Federal department or agency which funds alcohol, substance abuse and mental health programs can be expected to be signatories to the MOA and to participate in a meaningful way.

The Committee expects that, similar to the MOA developed to implement Congress' mandate in Pub. L. 102-477, the MOA required by the Native American Alcohol and Substance Abuse Program Consolidation Act of 2003 will address the following issues:

1. Advising tribal governments regarding their eligibility to integrate programs and how they may develop and implement a tribal plan for consolidation of funds.

2. Procedures for the review and approval of plans, including time lines for their review and approval.

3. The agreement which will be used by tribes and Federal departments or agencies to govern their relationships under the program. It is anticipated that the agreement that is currently being used will provide guidance to the Secretaries who enter into the Memorandum of Agreement.

4. An expedited process for the review of waiver applications from tribes participating in this program. Additionally, it is anticipated that appeals from a denial will also be accelerated.

5. An agreement and procedure for the timely payment of funds to tribes participating in the program.

The Committee expects that the opportunity to access this program will be extended to all tribes that express a desire to participate.

5. Review and approval of tribal plans

Central to the success of this program is a deliberative and comprehensive plan to develop, consolidate and implement programs in an integrated manner. It is the belief of the Committee that tribes can best determine where scarce resources will be used most economically and what type of services are most appropriate to serve their communities. Accordingly, the Federal agencies that administer program funds which are authorized to be consolidated under this legislation are expected to give deference to tribal allocations of resources and program design.

The Secretaries are expected to allow tribes a great deal of flexibility in designing the plans which will be submitted pursuant to this legislation. Creativity in the use of multi-year plans, mix of services and innovative approaches to treatment should not be stifled. The primary objective of the Native American Alcohol and Substance Abuse Program Consolidation Act of 2003 is the reduction of the incidence of alcohol and substance abuse, and other mental health afflictions suffered by American Indians and Alaskan Natives.

It is clear that "mainstream" treatment approaches to treating these problems have not been effective and that tribal involvement in developing new and culturally appropriate services are needed. It is expected that the Secretary will keep this in mind when reviewing plans under the act. The Committee believes that in reviewing such plans, the Secretary should focus on the following issues:

1. Does the plan effectively address the purposes of the program, how those purposes meet tribal goals to address the existing problems, and what is the projected effect the program is expected to have on individuals served?

2. Does the plan lay out an overall strategy for dealing with alcohol and substance abuse and mental health problems within the tribe's service area?

3. Does the plan integrate other available resources?

Where tribes or tribal consortia have integrated or have an intent to consolidate competitive grant programs, it is expected that

Federal agencies will provide maximum flexibility to program participants who are attempting to match grant requirements to tribal needs. The character of a grant program is relevant but, unless there is a statutory mandate, serious consideration should be given to allowing a tribe or organization whose plan does not match with the requirements of a grant to consolidate funds.

The Committee is cognizant that, to be effective, proposed tribal consolidation plans, must account for the timing, availability and receipt of the program funding to be consolidated. The DHHS has expressed concerns about the ability to adequately review tribal plans without such information. Therefore, as part of the substitute amendment to S. 285 adopted by the Committee, section 107 was clarified to specify that information regarding the timing, availability and receipt of program funding must be included in a tribal consolidation plan, or the plan may be disapproved by the Secretary.

6. Use of technology

The language in section 108 regarding use of program funds for acquisition of technology by lease, license or purchase, or for training to use such technology, is intended to clarify that, in developing a consolidation program, tribes and tribal consortia are authorized and encouraged to utilize modern technological advances in computer hardware and software, communications and other electronic devices.

In the private health care industry, such advances have proven to greatly improve efficiencies in clinical practices, as well as in third party and Medicare/Medicaid billing. It is the intent of the Committee that S. 285 be interpreted to give tribal clinics the widest latitude in adopting industry best practices, for the purpose of providing the highest quality health care to Indian people possible given the limited budgets on which most such facilities operate.

It is also the intent of the Committee that tribal health facilities and Federal agencies utilize the authorization under this legislation to develop modern, reliable and valid systems to improve the accountability, quality and continuity of the mental health and substance abuse programs serving Indian people, while at the same time more efficiently utilizing the funding received and the ability to bill third party providers and access the Medicaid/Medicare system.

Concerns were also expressed by DHHS that Indian tribes or clinics may “unwisely” overinvest in technology. To address those concerns, changes were made in previous versions of the bill, clarifying the importance of not cutting program activities when acquiring technology.

Specifically, this concern was addressed in the section detailing the required elements of a tribal plan. Pursuant to section 105, paragraph (4), a tribal consolidation plan must contain a “description of] the manner in which services are to be integrated and delivered and the results expected under the plan (*including, if implemented, the manner and expected results of implementation of an automated clinical information system*)”. Section 108, which provides the authority for tribes to acquire technology, conditions

that authority on compliance with the requirements of an approved plan.

Similarly, DHHS' concern was addressed in the section specifying grounds for the Secretary to disapprove a tribal plan. In section 107, subparagraph (b)(1)(C) the Secretary may disapprove a plan if—"the plan provides for the purchase, lease, license, or training for, an automated clinical information system, *but the purchase, lease, license, or training would require aggregate expenditures of program funding at such a level as would render other program activities substantially ineffectual*".

To be certain that the Secretary has all of the necessary information to review and approve or disapprove a tribal plan, subsection 105(5) requires a tribal plan to "*identify the projected expenditures under the plan in a single budget*".

While the Committee appreciates the DHHS concerns, the Committee is confident that the consolidation plan requirements contained in section 105, and the authority given to the Secretary in section 107 to disapprove a tribal plan that does not meet those requirements, provides sufficient opportunity for the Secretary to insure the continued efficacy of program services under a consolidation plan.

7. Waiver authority

One of the purposes of S. 285 is to simplify Federal requirements pertaining to the operation of Federal programs. As part of the plan submission and review process, the bill provides that the tribe and Federal government review the plan and identify any rules, regulations, policies, procedures or underlying statutory provisions which need to be waived in order to successfully implement the plan. The Committee expects that unless a Federal requirement is central to the nature of the program involved, it should be considered an appropriate requirement to be waived under the authority provided in section 106.

The DHHS has expressed concerns that the scope of the waivers that can be requested by tribes and tribal consortia and organizations may be too broad to effectively assess the appropriateness of waivers. This concern was addressed in the previous version of the bill, and that language was carried forward in S. 285.

Specifically, section 106, subsection (c), in providing authority for waiver of statutory, regulatory, or policy requirements, expressly states that the head of the affected Federal agency cannot waive a requirement that "*is inconsistent with—(3) any underlying statutory objective or purpose of a program to be consolidated under the plan, to such a degree as would render ineffectual activities funded under the program.*" Section 106 is further strengthened by section 107, subsection (b), which allows the Secretary to disapprove a plan that "*identifies waivers that cannot be waived under section 106(c).*"

8. Amendment made to S. 285 as introduced

During the business meeting at which S. 285 was approved by the Committee, a substitute amendment was adopted which contained several amendments to the bill as introduced. The primary amendments are the following:

1. The rationales for Secretarial disapproval of a tribal consolidation plan were clarified to specify that information regarding the timing, availability and receipt of program funding must be included in a tribal consolidation plan, or the plan may be disapproved.

2. The designated role of the IHS was amended from being “Lead Agency” to that of “Coordinating Agency.”

3. Reauthorization of the Indian Alcohol and Substance Abuse Prevention and Treatment Act through Fiscal Year 2008 was added.

LEGISLATIVE HISTORY

S. 285 was introduced on February 4, 2003, by Senator Campbell for himself, and was referred to the Committee on Indian Affairs. Senators Domenici and Murkowski were added as cosponsors on February 10, 2003. Senator Inouye was also added as a cosponsor on May 13, 2003.

A predecessor bill to S. 285 (S. 210) was introduced by Senator Campbell in the 107th Congress. The bill was reported out of Committee on July 10, 2002, and was approved by the Senate on September 17, 2002, but was never taken up by the House of Representatives.

On April 9, 2003, the Committee held a hearing on S. 285 at which testimony was provided by the DDHS, the National Indian Health Board (“NIHB”), and Our Youth Our Future, Inc. (“OYOF”), a nonprofit Native American substance abuse clinic. Both the NIHB and OYOF testified in favor of S. 285. The DHHS expressed some concerns with the bill, which were addressed in a substitute amendment.

Subsequent to the hearing, Committee staff determined that the best method of effecting a reauthorization of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (ASAP) was to include it in S. 285. The ASAP was last authorized in FY2001. A new Title II was added to the substitute amendment to S. 285, providing for reauthorization of the ASAP through Fiscal Year 2008.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table of Contents. The Act may be cited as the Native American Alcohol and Substance Abuse Program Consolidation Act of 2003. Section 1 also contains a Table of Contents.

Title I—Integration and Consolidation of Alcohol and Substance Abuse Programs and Services

Sec. 101. Purposes. The purposes of this Act are to enable Indian tribes to consolidate and integrate alcohol and other substance abuse programs, and mental health and related programs, and to assist Indian tribes in maximizing the use of public, tribal, human and financial resources for Indian behavioral healthcare programs.

Sec. 102. Definitions. This section contains definitions for Automated Clinical Information System, Federal Agency, Indian, Indian Behavioral Healthcare Program (which includes alcohol and sub-

stance abuse, and mental health programs), Indian Tribe, Secretary and Substance Abuse.

Sec. 103. Plans. This section provides that the Secretary of Health and Human Services, in cooperation with the other appropriate Secretaries shall, upon the receipt of an acceptable plan from an Indian tribe, authorize the tribe to consolidate its Federally-funded Indian behavioral healthcare programs into a single, coordinated, comprehensive program, that uses, to the extent necessary, an automated clinical information system to better manage services, costs and reporting requirements.

Sec. 104. Programs Affected. Section 104 provides that the programs that may be integrated include Indian behavioral healthcare programs under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula, competitive or other grant program, or any other funding scheme. In the case of grant funding, a tribe must obtain permission to consolidate from the agency that is awarding the grant or, in the alternative, tailor its reporting structure closely to the reporting required by the grant program.

Sec. 105. Plan Requirements. The requirements for plan submitted by an applicant tribe or tribal organization under this Act are to: identify the programs to be integrated, consistent with the purposes of this Act; describe a comprehensive program strategy, including technology assessments; describe how the services are to be integrated, delivered and budgeted, including the implementation of an automated clinical information system, if used; identify any statutory provisions, regulations, policies or procedures that the tribe believes need to be waived; and be approved by the appropriate tribal or tribal organization governing body.

Sec. 106. Plan Review. In reviewing the plan the Secretary is to consult with the other Federal agencies providing funding and with the tribe or tribal organization. The parties shall identify any waivers necessary to enable implementation of the plan. Affected agencies shall have the authority to provide waivers, unless the affected agency determines that such a waiver is inconsistent with the purposes of this Act, any statutory requirements applicable to the program to be integrated, or the underlying statutory objectives or purposes of a program to be integrated.

Sec. 107. Plan Approval. The Secretary shall have 90 days after the receipt of a tribe's plan to approve or disapprove the plan. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or petition for reconsideration by the Secretary.

Sec. 108. Use of Funds for Technology. Indian tribes and tribal organizations are authorized by this section to acquire technology for an automated clinical information system, as long as such acquisition is in accordance with a plan approved by the Secretary.

Sec. 109. Federal Responsibilities. Paragraph (a) provides that within 180 days following the date of enactment of this Act, the appropriate Secretaries shall enter into an interdepartmental memorandum of agreement providing for the implementation of the plans authorized under this Act. The Coordinating Agency under this Act is the Indian Health Service, within the Department of Health and Human Services. The responsibilities of the IHS will include: The

use of a single report format to be used by a tribe to report on the activities undertaken by the plan and on all plan expenditures, and the development of a single system of Federal oversight for the plan, including the provision of technical assistance to tribes and convening of a meeting not less than two times during each fiscal year between the affected Federal agencies and tribes and tribal organizations. Paragraph (b) provides that the single report format shall be developed by the Secretary of HHS and should contain information that will allow a determination that the tribe has complied with the requirements incorporated in its approved plan.

Sec. 110. No Reduction in Amounts. In no case shall the amount of Federal funds available to a participating tribe involved in any project be reduced as a result of the enactment of this Act.

Sec. 111. Interagency Fund Transfers Authorized. The appropriate Secretaries are authorized to take such action as necessary to provide for interagency transfer of funds otherwise available to a tribe.

Sec. 112. Administration of Funds; Excess Funds. Program funds shall be administered to allow for a determination that funds from specific programs are spent on allowable activities; however, tribes are not required to maintain separate records tracing any services or activities conducted under approved plans to the individual programs under which funds were authorized. All administrative costs may be commingled and participating Indian tribes shall be entitled to the full amount of such costs.

Sec. 113. Fiscal Accountability. Nothing in this Act shall be construed to interfere with the ability of the Secretary to fulfill his responsibilities for the safeguarding of Federal funds.

Sec. 114. Report on Statutory and Other Barriers to Integration. Within two years after the date of enactment of this Act, the Secretary of HHS shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives on the implementation of this program. Within five years after the date of the enactment of this Act, the Secretary of HHS shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives on the results of the implementation of the program, which identifies statutory barriers to the ability of tribes to integrate more effectively their mental health programs and services.

Sec. 115. Assignment of Federal Personnel to State Indian Alcohol and Drug Treatment Programs. Any State with an Indian behavioral healthcare program targeted to Indian tribes shall be eligible to receive, at no cost to the State, such Federal personnel assignments deemed appropriate to help insure the success of such program.

Title II—Reauthorization of Certain Indian Alcohol and Substance Abuse Prevention and Treatment Programs

Sec. 201. Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986. This section reauthorizes the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 for each of fiscal years 2004 through 2008.

Sec. 202. Effective Date. This section make the reauthorization effective on the date of enactment of this Act.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On May 14, 2003, the Committee, in an open business session, considered S. 285 and approved an amendment in the nature of a substitute to S. 285, and ordered the substitute amendment favorably reported to the full Senate with a recommendation that the substitute amendment do pass.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 285 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 2, 2003.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 285, the Native American Alcohol and Substance Abuse Program Consolidation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Eric Rollins.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

S. 285—Native American Alcohol and Substance Abuse Program Consolidation Act of 2003

Summary: S. 285 would authorize the appropriation of such sums as necessary for fiscal year 2004 through 2008 for the Bureau of Indian Affairs (BIA) to provide assistance to Indian tribes to prevent alcohol and substance abuse. The bill also would permit Indian tribes to consolidate alcohol and substance abuse programs that are currently funded through a number of federal agencies.

CBO estimates that implementing S. 285 would cost \$38 million in 2004 and \$226 million over the 2004–2008 period, assuming the appropriation of the necessary funds. Almost all of those costs would be for BIA programs to prevent alcohol and substance abuse. The bill would have no effect on direct spending or revenues.

S. 285 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). By allowing tribes to consolidate programs for behavioral health care, including substance abuse, the bill would provide tribes with greater programmatic flexibility.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 285 is shown in the following table. The costs of this legislation fall within budget functions 450 (regional and community development) and 550 (health).

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
BIA Substance Abuse Programs:					
Estimated Authorization Level	47	47	47	47	47

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
Estimated Outlays	37	47	47	47	47
Consolidation of Alcohol and Substance Abuse Programs:					
Estimated Authorization Level	1	*	*	*	*
Estimated Outlays	1	*	*	*	*
Spending Under S. 285:					
Estimated Authorization Level	48	47	47	47	47
Estimated Outlays	38	47	47	47	47

*=Less than \$500,000.

Basis of estimate:

BIA alcohol and substance abuse prevention

S. 285 would authorize the appropriation of such sums as are necessary through 2008 for the Bureau of Indian Affairs to provide assistance to Indian tribes to prevent alcohol and other substance abuse. Such programs would include law enforcement and judicial training, emergency shelters for youth, and juvenile detention centers. No funds were provided for this program in 2003, but based on the level of funding authorized for such programs in previous years, and information from the Bureau of Indian Affairs regarding demand for various programs under this title, CBO estimates that implementing these provisions would cost \$37 million in fiscal year 2004 and \$225 million over the 2004–2008 period.

Consolidation of alcohol and substance abuse programs

S. 285 would permit Indian tribes to consolidate alcohol and substance abuse programs that are currently funded through a number of federal agencies. Under the bill, tribes would submit plans to the Department of Health and Human Services (HHS) for approval. HHS would approve or reject plans after consulting with the federal agencies that would be affected. During this approval process, these agencies would be able to waive statutory and other requirements to enable tribes to implement their plans. CBO estimates that the costs of approving plans, monitoring their implementation, and providing technical assistance would cost about \$600,000 in 2004, and \$350,000 annually in later years.

S. 285 also would require HHS to submit reports on the bill's implementation within two and five years of enactment. CBO estimates that these reports would each cost less than \$100,000. The additional costs of the provisions in S. 285 that deal with program consolidation would be borne by the Indian Health Service (IHS), the lead agency for the bill's implementation.

Intergovernmental and private-sector impact: S. 285 contains no intergovernmental or private-sector mandates as defined in UMRA. By allowing tribes to consolidate programs for behavioral health care, including substance abuse, the bill would provide tribes with greater programmatic flexibility.

Estimate prepared by: Federal Costs: Lanette Walker and Eric Rollins. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that S. 285 will reduce regulatory or paperwork requirements and impacts.

EXECUTIVE COMMUNICATIONS

A copy of a letter from the Department of Health and Human Services (DHHS) dated June 6, 2003, is set out below.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, June 6, 2003.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We take this opportunity to advise you of the views of the Department of Health and Human Services (HHS) and the Department of the Interior on S. 285, the "Native American Alcohol and Substance Abuse Program Consolidation Act of 2003", as recently ordered reported by your Committee.

The Administration supports the principle that Indian Tribes best know how to meet the needs of their members for programs such as those addressed by S. 285. However, we continue to have the serious concerns about title I (Integration and Consolidation of Alcohol and Substance Abuse Programs and Services) that we stated in our recent testimony before the Committee (copy attached) and in an HHS report on similar legislation (S. 210) in the 107th Congress. Therefore, we cannot support title I of S. 285 as currently drafted.

Our concerns about title I, which are fully discussed in our recent testimony, are: (1) lack of clear delineation of affected programs and of permissible uses of consolidated funds; (2) limitation on the flexibility of the Secretary in considering the merits of waiver request; (3) insufficient time for appropriate Federal decision-making; (4) designation of the Indian Health Service as the lead (or coordinating) agency; (5) lack of control on the possible use of grant funds for administrative overhead and information technology; and (6) lack of adequate and effective Federal oversight for consolidated programs. We look forward to working with you to address our concerns on title I.

The Administration does not object to title II (Reauthorization of Certain Indian Alcohol and Substance Abuse Prevention and Treatment Programs). The Department of the Interior (Interior) advises that its Bureau of Indian Affairs (BIA) has recently reorganized. Under the new reorganization, the Office of Alcohol and Substance Abuse Prevention reports directly to the Deputy Director of Tribal Services, who reports to the Director of the Bureau of Indian Affairs. BIA placed the Office of Alcohol and Substance Abuse Prevention under the Deputy Director of Tribal Services to enhance BIA's responsiveness for social and community programs. Under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (the Act), the Office of Alcohol and Substance Abuse Prevention is located within the Office of the Assistant Secretary

for Indian Affairs. Interior requests, therefore, to be consistent with the reorganization and to better meet the needs of tribal communities, that a new provision be added to S. 285 to reflect this organizational change. Such a new provision would amend section 4207 of the Act (25 U.S.C. 2413) by striking “Office of the Assistant Secretary of Interior for Indian Affairs” and inserting “Bureau of Indian Affairs”, and by striking “Assistant Secretary of the Interior for Indian Affairs” and inserting “Director of the Bureau of Indian Affairs”.

Thank you for considering these views on S. 285.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration’s program.

Sincerely,

TOMMY G. THOMPSON.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 285, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 99–570

A bill to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,

TITLE IV—INDIAN ALCOHOL AND SUBSTANCE ABUSE
PREVENTION AND TREATMENT PROGRAMS

* * * * *

SEC. 4206. * * *

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(d) **[(1) The Secretary]** (1) *IN GENERAL.*—*The Secretary* of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to provide technical assistance in the development of a Tribal Action Plan. The Secretary shall allocate funds based on need.

[(2) There are authorized to be appropriated for grants under this subsection not more than \$2,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.]

(2) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2008.*

* * * * *

SEC. 4206. * * *

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[(f) Grants for training, education, and prevention programs.

[(1) The Secretary] (f) *GRANTS FOR IN-SCHOOL TRAINING PROGRAMS.*—

(1) *IN GENERAL.*—*The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to implement and develop community and in-school training, education, and prevention programs on alcohol and substance abuse, fetal alcohol syndrome and fetal alcohol effect.*

[(2) Funds] (2) *USE OF FUNDS.*—*Funds provided under this section may be used for, but are not limited to, the development and implementation of tribal programs for—*

- (A) youth employment;
- (B) youth recreation;
- (C) youth cultural activities;
- (D) community awareness programs; and
- (E) community training and education programs.

[(3) There are authorized to be appropriated to carry out the provisions of this subsection \$5,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.] (3) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2008.*

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SEC. 4210. * * *

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[(b) Authorization of Appropriations. There are authorized to be appropriated to carry out this section \$500,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.] (b) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2008.*

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SEC. 4212. * * *

(a) [(The Assistant Secretary of Indian Affairs)] (1) *IN GENERAL.*—*The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention Act of 1986. [The Assistant Secretary shall]*

(2) *DEFRAYMENT OF COSTS.*—*The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot programs in the school from funds appropriated for this section. [For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, 1993, 1994, 1995, 1996, 1997, 1998, 1999, and 2000.]*

(3) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2008.*

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SEC. 4213. * * *

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(e) [(1) For the planning and design, construction, and renovation of, or purchase or lease of land or facilities for, emergency shelters and half-way houses to provide emergency care for Indian youth, there are authorized to be appropriated \$10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

[(2) For the staffing and operation of emergency shelters and half-way houses, there are authorized to be appropriated \$5,000,000 for fiscal year 1993 and \$7,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

[(3) The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting or available for grants pursuant to the Indian Self-Determination Act.](1) *IN GENERAL.*—*There are authorized to be appropriated to carry out planning and design, construction, and renovation of, or to purchase or lease land or facilities for, emergency shelters and halfway houses to provide emergency care for Indian youth, such sums as are necessary for each of fiscal years 2004 through 2008.*

(2) *STAFFING AND OPERATION.*—*There is authorized to be appropriated for staffing and operation of emergency shelters and half-way houses described in paragraph (1) \$7,000,000 for each of fiscal years 2004 through 2008.*

(3) *ALLOCATION.*—(A) *IN GENERAL.*—*The Secretary of the Interior shall allocate funds made available under this subsection to Indian tribes on the basis of priority of need of the Indian tribes.*

(B) *CONTRACTING AND GRANTS.*—*Funds allocated under subparagraph (A) shall be subject to contracting or available for grants under the Indian Self-Determination Act (25 U.S.C. § 450f et seq.).*

[(4) Funds] (4) *CONDITIONS FOR USE.*—*Funds appropriated under the authority of this subsection may be used by any Indian tribe or tribal organization to purchase or lease any land or facilities if—*

(A) the Secretary of the Interior determines that no Federal land or facilities are reasonably available for emergency shelters or halfway houses described in subsection (a) to serve the needs of that Indian tribe or tribal organization, and

(B) the Indian tribe or tribal organization enters into an agreement with the Secretary of the Interior that requires the Indian tribe or tribal organization to use the land or facilities

for emergency shelters or half-way houses described in subsection (a).

[(5) Nothing in this Act may be construed] (5) EFFECT ON OTHER AUTHORITY.—Nothing in this Act—

(A) **[to limit] limits** the authority for contracts with, or grants to, Indian tribes or tribal organizations under the Indian Self-Determination Act for the construction, improvement, renovation, operation, repair, land acquisition, or maintenance of tribal juvenile detention facilities, emergency shelters, or half-way **[houses, or] houses; or**

(B) **[to require] requires** a lease of tribal facilities to the United States to qualify for financial assistance for the facilities under this or any other Act.

* * * * *

SEC. 4216. * * *

(a) * * *

[(3) For the purpose of providing the assistance required by this subsection, there are authorized to be appropriated—

[(A) \$500,000 under paragraph (1)(A) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000,

[(B) \$500,000 under paragraph (1) (B) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000, and

[(C) \$500,000 under paragraph (1) (C) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.]

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

(A) to carry out paragraph (1)(A), \$1,000,000 for each of fiscal years 2004 through 2008; and

(B) to carry out provisions of this subsection other than paragraph (1)(A), such sums as are necessary for each of fiscal years 2004 through 2008.

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SEC. 4218. * * *

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[(b) Authorization. For the purposes of providing the training required by subsection (a), there are authorized to be appropriated \$2,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999 and 2000.]

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2008.

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SEC. 4220. * * *

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[(b) Authorization.

【(1) For the purpose of constructing or renovating juvenile detention centers as provided in subsection (a), there are authorized to be appropriated \$10,000,000 for fiscal year 1993s and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

【(2) for the purpose of staffing and operating juvenile detention centers, there are authorized to be appropriated \$7,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.】

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2008.

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