The National Congress of American Indians
Resolution #ATL-14-056

TITLE: Medicaid Asset Recovery Exemption for American Indian/Alaska Natives

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, federal law requires recovery of assets ("estate recovery") by states when a patient has been in long term care. Trust assets and some traditional property may not be recovered but most real and personal property of AI/ANs is subject to liens by the state under this rule when a patient dies; and

WHEREAS, estate recovery was authorized to alleviate some of the financial costs of long term care provided by the Medicaid program. States are required to recover the costs of home and community-based services and nursing homes and may recover for other related Medicaid expenses. There is narrow discretion to grant hardship exemptions or to waive estate recovery; and

WHEREAS, one third of AI/ANs are in families with incomes below the federal poverty line. A report by the Kaiser Family Foundation states that "[the AI/AN] poverty rate is higher than any other racial or ethnic group and about twice as high as the poverty rate of the overall nonelderly population." Many AI/ANs have no choice but to accept Medicaid benefits for life-saving care. They may be aware of the dangers of estate recovery but have few other options available, or they may decline needed care; and

WHEREAS, an exemption from estate recovery for AI/ANs is fundamentally consistent with the trust responsibility owed to AI/ANs by the United States government.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby request the Secretary of Health and Human Services to waive all estate recovery for AI/ANs enrolled in Medicaid; and
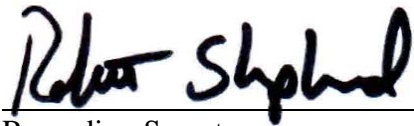
BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.

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President

ATTEST:

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Recording Secretary