United States House of Representatives
Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States

Hearing on July 28, 2022, at 1:00 p.m. ET
Legislative Hearing on H.R. 5549, Indian Health Service Advance Appropriations Act

Questions for the Record

The Honorable Fawn Sharp
President, National Congress of American Indians
Vice President, Quinault Indian Nation

Questions from Rep. Leger Fernández for Hon. Fawn Sharp, President, National Congress of American Indians

1. **Can you speak more on the need for advance appropriations for the Indian Health Service considering ongoing tribal economic development concerns?**

   The operation of federal programs in tribal communities continues to be an economic driver providing good paying jobs to the community and supporting Native families. Simply put, adequate funding for the Indian Health Service (IHS) can help drive forward self-determined tribal economies. Uncertainty in funding limits the ability to not only provide service, but to support our health care professionals, plan for the future, and, ultimately, look at ways we can best serve our people. Advance appropriations for IHS will support Tribal Nations in recruiting and maintaining talent in our communities while providing the stability for our families to grow and prosper, and will help build a better future for communities by helping drive tribal economies.

Questions from Rep. Grijalva for Hon. Fawn Sharp, President, National Congress of American Indians

1. **What are some stories that you've heard from the National Congress of American Indian's (NCAI) member tribal nations about their experiences during federal funding gaps for tribal programs?**
   a. **What about the experiences your own tribal government faced during government shutdowns?**

      See the below responses.

2. **In what ways would securing advance appropriations for the Indian Health Service streamline the budget process and reduce taxpayer waste?**

   Regardless of whether the appropriations are full-year or partial-year funding, the funds distribution process involves multiple federal agencies and can take well in excess of 30 days. By repeating these activities several times per year under Continuing Resolutions (CRs) or at the very end of the budget cycle, you sink labor into both federal and tribal budgets on duplicative calculations and processes. Advance appropriations immediately eliminate the waste associated with these duplicative functions by eliminating the effects of CRs on the necessary budgetary functions for both tribal and federal governments.

3. **In your experience, how would ensuring the continuity of care for Indian Health Service clinics and programs help tribal governments better plan for longer-term objectives?**

Good budgeting and performance management involve multi-year planning and decision-making–and this exercise is one that Tribal Nations already engage in to provide all kinds of services to our citizens. However, when the funding is uncertain, it has a chilling effect on the exercise of tribal sovereignty and self-determination by limiting the ability to match multi-year planning and initiatives to the necessary resources to carry out those plans. This chilling effect holds back progress on innovative healthcare solutions that could reduce costs due to better community health.

Another example can be found in facilities construction and facilities improvement and repair. Construction and repairs are costly endeavors that naturally stand to benefit from multi-year plans and longer-term objectives. Advance appropriations for IHS facilities accounts would assist Tribal Nations taking on much-needed construction and repair activities that benefit from knowing how much and when funds will be available.

Tribal Nations that are prudent investors will get the money up front, allowing them to put that money in interest-bearing accounts or other short-term investments, while simultaneously allowing other tribal investments intact to continue to grow. When Tribal Nations pull resources from their third-party revenue to maintain IHS operations that would have otherwise been invested, they are losing the potential revenue from growth on that investment. These sorts of financial coverings for trust and treaty obligations often force tribal governments to operate paycheck-to-paycheck because they cannot position their revenue to grow over time. This is not just an issue for Tribal Nations with third party revenue–passive income is a path to wealth generation and operating paycheck-to-paycheck is no way to build tribal economies.

4. **As your testimony states, the Indian Health Service is the only federal health care provider that does not receive advance appropriations.**
    a. **How does this current system contribute to further Broken Promises?**

Tribal Nations paid, in full, for the provision of payments and services—including the promise to provide health care to tribal citizens—when they exchanged their land that created the foundation of the bounty and wealth of the United States. An exchange was made and memorialized, and the duty is owed. One of the most fundamental promises was access to health care.

The current system contributes to further broken promises in three ways:

(1) by subjecting the provision of health care to the discretionary appropriations process, it violates the fundamental agreement that was struck by our ancestors;

(2) by subjecting the United States' trust and treaty obligations to statutory caps on discretionary spending, it pits IHS funding against the competing interests under those caps, telling us each year which promise gets further broken. We prepaid for these services and now we have to re-compete for them against the land we prepaid with;

And (3) by subjecting IHS to the uncertainty and instability of the partisanship of the regular appropriations process, it results in inefficiencies and waste that leave those solemn promises further and further behind.

SUPPLEMENTAL ANSWER TO REP. GRIJALVA'S QUESTION 1.

What are some stories that you've heard from the National Congress of American Indian's (NCAI) member tribal nations about their experiences during federal funding gaps for tribal programs?

When Tribal Nations assume or are transferred IHS operations and facilities under the Indian Self-Determination and Education Assistance Act (ISDEAA), they have to be certain they have the cash flow to maintain operations and accreditation. One Tribal Nation in the west was in the middle of transferring an IHS facility to become a tribal facility when Congress began passing CRs as opposed to full-year funding. This disruption in funding caused by short-term CRs meant that IHS did not have money to give to the Tribal Nation for the transfer of the facility and the Nation was forced to use their general fund to maintain sufficient cash flow to complete the project. Before the transfer could be completed, the Tribal Nations had to affirm they could fund operations until a budget is enacted. This is a substantial risk for any Tribal Nation that does a transfer and does not have robust and stable government revenue.

Without advance appropriations, Tribal Nations will continue to struggle to exercise self-governance and their administrative rights over healthcare. The provision of healthcare costs a lot, and the federal government is obligated to fund these services. Most Tribal Nations like to take over at a fiscal year change because it makes sense for providers and contracts. However, if the Tribal Nation has to mitigate the effects of multiple CRs providing partial-year funding and conduct duplicative planning and cash flow analyses, then Tribal Nations struggle to keep providers or enter into rational and cost-effective contracts.

A lot of Tribal Nations do their capital asset purchases at the beginning of the year. They order medical equipment, and it comes in when it comes in. However, if you have a situation like COVID-19, where there have been supply chain constraints, delivery may be delayed. A typical transaction for these capital assets requires Tribal Nations to make a down payment on costly capital equipment—such as Magnetic Resonance Imaging (MRI) machines—and enter into contracts to try to guarantee delivery within the accounting period for audit and efficiency purposes. The regularity of funding disruptions from the federal government means Tribal Nations have to gamble that their funding will be consistent and there will not be a shutdown or a CR affecting the ability to make payment. In the alternative, Tribal Nations must secure alternate resources to make the acquisition on a timely and reliable basis. Stable IHS funding received earlier in the year means Tribal Nations can enter into those capital asset obligations earlier and feel more secure when negotiating the agreements for life-saving medical equipment.

One Tribal Nation, which is generally fortunate enough to maintain sufficient funds from third-party billing, still must regularly assess how to handle the effects of federal funding disruptions and the instability it creates. Their accountants are always aware of the amount of funds needed to keep aside in the general fund in case they have to cover costs to maintain healthcare services and operations. The uncertainty and instability of regular IHS funding causes Tribal Nations to be more dependent on capital markets that charge interest on loans and other grant revenue that may have more restrictions, which inhibit Tribal Nations' ability to exercise their sovereignty in relation to funds received pursuant to ISDEAA. If you do not have the certainty of full-year funding to rely on, it makes it hard for Tribal Nations to plan, progress, and exercise their inherent right to sovereignty. During disruptions in funding, Tribal Nations are at the mercy of Congress.

During the 2013 federal government shutdown, it was more difficult. The Tribal Nation quickly had to assess if they had the funds to continue to provide services. They had to identify critical staff and make quick decisions about who would be first to be furloughed. Fortunately, that government shutdown was not very long, but having to make decisions to cut services to their people is difficult. Tribal leaders are just trying to answer to their people and do not want to have to say, "we can't provide you these services because the government is shut down." Going forward, the Tribal Nation has learned to plan around potential government shutdowns, and they are fortunate to be in a financially secure situation to mitigate a shutdown. However, the possibility of a future shutdown is enough to give Tribal leaders heartburn when they have to make decisions about employees' lives and the lives of people who depend on those vital healthcare services.

When looking at healthcare in general, the costs have gone up exponentially. The dollars are not adequate the way it is. If we put on top of that the government shutdown, it is clear Tribal Nations' basic rights are being failed. Tribal Nations should be able to rely on the full funding amount for IHS. As the financial standing of Tribal Nations has become more and more sophisticated, they can handle it better, but they should not be at the whim of the government shutdown.

Additionally, tribal leaders know that these funds could be better spent. If Tribal Nations use their general fund to cover federal funding shortfalls, it takes away from language programs, elder care, and youth programs, among the myriad of programs, services, functions and activities provided by tribal governments. If you have to reallocate dollars, something else is always hurt. Advance appropriations would allow Tribal Nations to plan better with their dollars, supporting additional critical programs in their communities.

The effects on Tribal Nations vary based on when the disruption in funding occurs, such as if the shutdown takes place at the fiscal year or the calendar year. Tribal Nations will regularly have to divert funding from other vital projects to cover their healthcare programs. This delays activities like ongoing construction, and increases the general costs for both the health program and the programs that had their funding diverted, contributing to the overall costs Tribal Nations face. Tribal Nations do a great job of using every resource they have in order to ensure that their patients are not negatively impacted. However, they should not have to use those resources to safeguard against the United States defaulting on its trust and treaty responsibilities.

For sanitation facilities construction, funding disruptions mean furloughed IHS staff struggle to get the money out to Tribal Nations. This puts wastewater projects and drinking potable water projects on hold. These houses or facilities will then go long spans of time without access to water. When disruptions in funding affect construction projects, conditions change. In places with significant weather changes, like harsh winter months or rainy seasons, it changes when and how you can continue construction, which results in duplicative costs on planning and project delays.

Disruptions also impact other funding, like the ability to clear roads in a winter storm. For one Tribal Nation, this meant that emergency services could not get out to the community during emergencies and lives were lost as a result.

For one Tribal Nation in the northwest, government shutdowns have caused the tribal government to implement immediate restrictions, such as on traveling and training, pauses in classes for accreditation, etc. The Nation is resilient and, like many Tribal Nations, knows how to be resourceful, but they shouldn't have to be, especially when there is added stress around the rising rates of natural disasters or the COVID-19 pandemic. Last winter, the one road leading to the clinic for this Tribal Nation washed out during a hard rain. They had people that needed critical life-saving care, such as dialysis. The Tribal Nation began flying supplies in and using the coast guard to transport patients to their appointments. Flying in medications was critical because supplies were getting depleted. This Tribal Nation knew how to be resourceful and devised creative solutions to maintain care for their people but, again, this shouldn't be the norm.

During government shutdowns, this Tribal Nation is able to withstand it for the most part, but they do so by repurposing carefully managed resources. For this Tribal Nation, what is the most frustrating is that healthcare is in their treaty, but the funding is already only at approximately half of their current community need. During the COVID-19 pandemic, it became apparent that certain IHS clinics and hospitals do not have the capacity to do everything their citizens need, due to already limited staff and resources. The Tribal Nation stretched their resources and their dollars to try to meet the needs of their patients as best they could, while sacrificing other tribal government initiatives.

For many Tribal Nations, one extra barrier is IHS housing. Tribal Nations must provide housing for professional staff, for counselors, for practitioners, etc. For a doctor, it is usually a temporary situation. Doctors in Indian Country usually stay only two or three years, then move out of the community. IHS doctors are like a revolving door, which is a result of the amount of pay, stability in pay, and availability of community infrastructure like housing. Recent supplemental funds have helped, but for Tribal Nations stability in regular funding is critical. Nothing can be fixed properly until funding is at a minimum, stable. Shutdowns strain the community because funding becomes even more limited, and Tribal Nations have to supplement their health care services with extreme and costly solutions.

The COVID-19 pandemic only amplified these issues that were already present in Indian Country. During the pandemic, Tribal Nations lost a lot of revenue that is used to support the unmet obligations of the United States and resiliency needed to provide services during funding disruptions. Tribal leaders have shared that enterprise activity comes second to saving their peoples' lives. Tribal Nations shut down their business, offices, and lands during COVID-19 and chose to worry about revenues later. The resiliency to provide for their people is a model for all governments throughout the world, but Tribal Nations are maintaining this resiliency by spending carefully managed and hard-earned resources.

For tribal hospitals, a shutdown is riskier because they have to meet life safety protocols, and anything that is not an emergency becomes a back burner issue. Because of staffing issues, both ongoing and due to disruptions in federal funding, Tribal Nations cannot hold patients in their hospital unless necessary. You might see people go home sooner with fewer wrap-around services. If you do not have purchase and referred care funding, you might see fewer diversions where patients are diverted to another hospital. While people are not dying directly from these decisions, breaks in the patient coordination cycle can result in life-altering complications or additional harm that increase costs and quality of life for the patient. When tribal hospitals have their patients, they try to hold onto them because they might be remote, or there might be personal issues which prohibit regular visits. Providing that wrap-around care is more difficult when there are fewer available resources during a CR or government shutdown.

Disruptions in federal funding also affect the provision of specialty care like cancer treatment or diabetes treatment. A diabetic who is injured with a cut may not be considered an emergency under an emergency operating plan. Meaning, that patient may not lose their limb immediately, but the reality is that they should see a specialist to address the threat of an infection, or should be in a step down unit ensure there are no complications. Patients are sent home as a direct result of the disruptions and IHS funding, and the next time they are seen by a doctor it is to remove their leg.

For a registered nurse (RN) in the Great Plains Region, it is difficult to plan around the fall during budget season. Working at a tribal clinic, she doesn't frequently follow Congress or politics, except in the case of a government shutdown. Under the furlough policy at her clinic if she takes a day for either personal or sick leave during a government shutdown, she will be furloughed. This means, even though she is a single mom, she is unable to stay home with children if they are ill, or to travel with her son for his basketball games. If she has to stay home for any reason during the shutdown, she then will not be paid until the shutdown is over. If the

shutdown is particularly long, that can cause serious gaps in her ability to pay her bills. She works at an IHS clinic because, as a Native woman, she cares about her people even though she might have better pay, better hours, and more stability at a private clinic. However, to do so, disruptions in IHS funding require her to choose between family, the cost of basic necessities, and the people she serves. It's hard to know what might happen to her patients if services are cut or if she must be furloughed. Today, the reality in Indian Country without IHS Advance appropriations is that many medical professionals, like this RN, must choose between providing for their family or serving their communities when a government shutdown occurs. This should never be a choice that they have to make.

SUPPLEMENTAL INFORMATION FROM PRESIDENT SHARP:
On behalf of NCAI President Fawn Sharp, we would like to provide the following supplemental information for two of the questions asked during the hearing.

1. Question from Chair Leger Fernández: "Do you think there is any difference in the trust obligation that is owed to our Native American citizens than that obligation that we owe to our veterans for their service?"

   The respect for the agreements entered into by the United States and care for its citizenry are similar—and when the United States makes a promise it must keep it. We are grateful for the service of all veterans—including our Native American veterans who serve this country at disproportionately higher rates than other groups. The treaty and trust obligations to Tribal Nations have a distinct meaning in the U.S. Constitution and embody unique relationships between sovereigns. The United States has failed to uphold what our ancestors bargained for years ago. Our Tribal Nations bargained for healthcare in perpetuity and look at what we have received instead—a chronically underfunded system that has cost us generations of strong and healthy Native Americans. Our treaties and agreements are to be read pursuant to the Indian Canons of Construction. Instead, we had those promises broken. We were put into a pool of quicksand of continued poverty and oppression. We were left vulnerable to epidemics, sadly costing us thousands of Native lives. We were robbed of so many promising, healthy, and strong futures. Congress must finally uphold its end of the bargain to help the generations now and generations to come, as our ancestors were promised.

2. Various GAO Report and Congressional Oversight Function Questions

   Since advance appropriations still require a budget request from the agency and annual inclusion in appropriations laws to maintain, Congress retains its oversight functions over federal action; however, an important aspect of IHS operations that was not thoroughly addressed during today's hearing is the ability of tribal governments to exercise oversight over the resources owed to them. Tribal Nations are the front line of defense to ensure that Indian Country gets the best services, providers, and care for our citizens. Nearly every other health care system in our country has a board for oversight and assurance, yet we barely have funding to pay our healthcare workers. Full funding means that Indian Country must have the necessary checks and balances capacity to support tribal oversight of tribal healthcare. There must be government equity in this process, or else it remains a paternalistic practice that inhibits tribal sovereignty.