

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



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

Committee Hearing on
H.R. 5549 “Indian Health Services Advance Appropriations Act”

Jonathan Nez, President of the Navajo Nation &
Member of the NIHB Board of Directors
Representing the Navajo Area

July 28, 2022 at 11:00 AM MST/ 1:00 PM EST

Yá'át'ééh. Chairwoman Leger Fernandez, Acting Ranking Member Obernolte, and distinguished Members of the House Subcommittee for the Indigenous Peoples of the United States. I would also like to acknowledge Chairman Grijalva and Ranking Member Westerman, who preside over the House Natural Resources Committee of which this is a part.

My name is Jonathan Nez; I am the President of the Navajo Nation. I testify today on behalf of the Navajo Nation, and as a member of the National Indian Health Board of Directors, that serves 574+ federally recognized tribes in the United States. I thank you for the opportunity to testify in support of *H.R. 5549 – the Indian Health Services Advance Appropriations Act*.

The United States entered a treaty with the Navajo Nation in 1868, promising health care, education, agricultural assistance, and to improve the health and well-being of the Navajo people. As such, the United States government is legally and morally bound with a treaty responsibility and a sacred trust obligation to support the Navajo Nation in securing and developing our land and resources to improve the quality of life for our citizens. Thus, our government-to-government relationship with the United States is rooted in the Treaty of 1868. In general, the Navajo Nation prefers direct government-to-government consultation with all federal and state agencies.

Founded by the Tribes in 1972, the National Indian Health Board (NIHB) serves all 574+ federally recognized American Indian and Alaska Native Tribes (AI/AN). NIHB works to strengthen Tribal sovereignty and ensure the federal government upholds its Trust and Treaty obligations to the Tribes for the improvement of health care, health outcomes/systems, and public health infrastructure/capacity in Indian Country.

UNIFIED TRIBAL SUPPORT FOR ADVANCE APPROPRIATIONS

On behalf of the Navajo Nation and NIHB, we are grateful for the bi-partisan Congressional support for advance appropriations for the Indian Health Services (IHS) as demonstrated in previous legislative and appropriations sessions. H.R. 5549 “Indian Health Services Advance Appropriations Act” is a continuation of this bi-partisan effort. Additionally, the Navajo Nation and NIHB are pleased to see, for the first time ever, advance appropriations were included in the President’s discretionary funding request. We urge Congress to capitalize on the alignment of Congressional support and the President’s request and include advance appropriations for IHS in this fiscal year’s appropriations bill.

Congress established IHS in 1955 as a step toward fulfilling the federal government’s Treaty and Trust obligations for health services for all AI/AN. Since its inception, IHS has suffered chronic and perverse funding shortages that continue to adversely impact the quality and consistency of health services delivered to AI/AN people. The Indian health system faces chronic challenges that are made worse by the endless use of continuing resolutions (CRs) and the persistent threat of government shutdowns. Of the four federal health care programs, IHS is the only one not protected from government shutdowns and CRs. Medicare/Medicaid receive mandatory appropriations, and the Veterans Health Administration (VHA) receive advance appropriations that began a decade ago. In September 2018, the Government Accountability Office (GAO) issued a report (GAO-18-

652)¹ that noted “uncertainty resulting from recurring CRs and from government shutdowns has led to adverse financial effects on tribes and their health care programs.”

We were pleased when the Bipartisan Budget Act of 2019 put an end to the most recent impact of sequestration. This reprieve, however, only lasted through the end of FY 2021 and IHS is once again subject to this rule starting in FY 2022. During the most recent government shutdown in 2019, which lasted 35 days, IHS was the only federal health care program directly harmed. The impact was devastating, yet entirely preventable. Tribal facilities lost physicians because they could not continue working without pay. Doctor visits could not be scheduled because administrative staff were furloughed. Tribes took out *private loans* to keep the lights on at clinics. Contracts with private entities for sanitation services and facilities upgrades went weeks without payment, which threatened Tribes’ credit and put patients’ health at risk. During numerous consultations and Congressional testimony, Tribal leaders shared how administrative staff volunteered to go unpaid in order for their Tribe to have the resources to keep physicians on the payroll. These are just a few examples of the everyday sacrifices that widen the chasm between the health services afforded to AI/ANs and the nation at large.

IHS: THE ONLY FEDERAL HEALTH SYSTEM NOT INSULATED FROM GOVERNMENT SHUTDOWNS

The threat of government shutdowns and the inordinate impact on IHS funding looms over Indian Country. Over the past two decades, only once has Congress passed the Interior budget on time – in FY 2006. Every other year, IHS has been subject to either short-term or full-year CRs or faced a government shutdown. This inevitably results in insecure funding and the perpetuation of chronic and perverse health disparities across Indian Country. As long as the threat of government shutdowns exists, the need for mandatory funding or advance appropriations also exists. Advance appropriations for IHS is a critical necessity to ensure patient health is not compromised in the event of Congress’s failure to enact a budget each year.

As a matter of health equity, we see a disproportionate and disparate impact on Indian Country. Healthcare services directly administered by the federal government, such as the Department of Veterans Affairs (VA), are funded by advance appropriations to minimize the impact of late and, at times, inadequate budgets. The decision of Congress to enact advance appropriations for the VA medical program provides a compelling argument for the effectiveness of advance funding a federally administered health program, which could easily be applied to the IHS. Beyond the efficiency inherent to advance appropriations, providing timely and predictable funding helps ensure the federal government’s trust responsibility is honored and carried out.

IHS, also provides direct medical care to fulfill legal promises made by the federal government. The promises to AI/AN were made in Treaties and executive orders and have been repeatedly reaffirmed in Supreme Court cases and legislation. Altogether, these fulfill a trust responsibility of the federal government to the Tribes.

¹ Retrieved: <https://www.gao.gov/assets/700/694625.pdf>

Congress recognized the inherent challenges of subjecting IHS, an agency that provides direct health services, to the whims of the annual budget. That is why Congress authorized advance appropriations for the VHA nearly a decade ago, in FY 2010. The authorization protected the VHA from the effects of the 2013 shutdown, the 2013 sequester, the January 2018 shutdown, and the 35-day government shutdown that devastated our nation over the holidays and into February of 2019. Meanwhile, IHS felt the brunt of each and every one of those shutdowns. The 2013 budget sequester was especially damaging – slashing the IHS budget by 5%, or roughly \$221 million, on top of the impacts of that year’s shutdown.

Other federally funded health programs such as Medicare and Medicaid receive “mandatory” funding, meaning that these programs are automatically funded without annual appropriations, and without the uncertainty seen in other areas of the budget. The ultimate goal for IHS is to be classified as mandatory rather than discretionary. In the meantime, however, advance appropriation is the best way to ensure the federal trust and treaty obligation does not go interrupted during government shutdowns.

DEVASTATING IMPACT OF FEDERAL GOVERNMENT SHUTDOWNS ON IHS DELIVERY OF THE TRUST AND TREATY OBLIGATION FOR INDIAN HEALTH

During federal government shutdowns, retaining physicians in rural reservation communities is especially challenging because they cannot continue working without pay. In addition, tribal members are unable to schedule follow-up visits with their doctor(s), obtain a referral due to the furloughing of administrative staff, or obtain assistance through purchase and referred service (formerly contract health) due to frozen funds. Tribes also struggled to maintain payments with outside providers and contractors. In rural Alaska, where transportation of goods and services is already more expensive, government shutdowns interrupt the ability for advanced purchases and price containment to be honored, leaving Alaska Native Villages to pay premium rather than discounted rates. On the Navajo Nation, road closures after heavy snowfall go days without being cleared, leaving Tribal members stranded and unable to deal with the medical needs of elders and those with underlying medical conditions. Every community has been impacted by government shutdowns, which could be avoided through Advance Appropriations.

While government shutdowns are a serious matter as Congress attempts to balance the federal budget, government shutdowns threaten to abrogate the treaty and trust obligation and puts tribal communities at a serious disadvantage for delivering public and behavioral health services to our people. In addition to health care interruption, sanitation projects, public works, and law enforcement in Indian Country are all hindered during these shutdowns. Since the 2013 Federal Government Shutdown, all of Indian Country has been unified in calling for Advance Appropriations for the IHS as the federal government’s primary realization of the “health” portion of “health, education and social welfare” for which tribal nations ceded over 500 million acres of Indian land.

The United States owes a special duty of care to Tribal Nations, which animates and shapes every aspect of the federal government’s trust responsibility to Tribes. Rooted in treaties and authorized by the United States Constitution, the federal government’s unique responsibilities to Tribal

Nations have been repeatedly re-affirmed by the Supreme Court, legislation, executive orders, and regulations. In 1977, the Senate report of the American Indian Policy Review Commission stated that, “[t]he purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people.” This trust responsibility is highlighted recently in the Department of Health and Human Services (HHS) Strategic Plan FY 2018–2022 that reaffirmed.

...the Federal Government has a unique legal and political government-to-government relationship with Tribal governments and a special obligation to provide services for American Indians and Alaska Natives based on these individuals’ relationship to Tribal governments².

The Constitution's Indian Commerce Clause, Treaty Clause and Supremacy clause, among others, provide the legal authority and foundation for distinct health policy and regulatory decision making by the United States. The IHS is the principal federal entity charged with fulfilling the federal trust responsibility for healthcare. These trust obligations are owed to AI/AN peoples and do not have an expiration date.

TRIBES UNIFIED IN SUPPORT OF ADVANCE APPROPRIATIONS FOR THE IHS

Following the devastating impact of the 16-day government shutdown in 2013, NIHB moved quickly to pass *Resolution 14-03 in Support of Advance Appropriations for IHS*. Again, Tribal leaders from across the country have repeatedly shared real-life impacts of government shutdowns. Recruitment and retention of medical professionals to work for Tribes on reservation communities and remote Alaska Native villages is already difficult. The impact of government shutdowns on our ability to provide care to our People is a matter of life and death

Advance Appropriations for IHS is a bi-partisan and bi-cameral policy initiative that increases Tribal and federal government efficiency, reduces federal taxpayer waste, and saves Native lives by providing stable funding for health care services in Indian Country. Since Advance Appropriations are merely advance agreements to provide funding at a later date, they are a budget-neutral and flexible solution to the outsized impacts of funding disruptions on Indian Country. Congress can rescind or modify Advance Appropriations before they are obligated, allowing Congress to respond to changing circumstances based on real-world challenges. The result is continuity of care and services that reduce bureaucratic inefficiencies and uncertainty for IHS and Tribal Nations.

IMPACT ON NAVAJO NATION

The Navajo Nation is the largest Native American tribe in the United States, with over 27,000 square miles of land and more than 400,000 tribal citizens, roughly half of whom reside on reservation land. Similar to any government, our Navajo citizens rely on the Nation to provide basic services, law enforcement, sanitation, and essential public works. Given our size and

² Retrieved: <https://www.hhs.gov/about/strategic-plan/2018-2022/index.html>

geography, the Navajo Nation receives federal funding through a combination of direct services, P.L. 638, and self-governance means. For the most part, when government shutdowns occur, direct services provided by the federal government simply stop. Additionally, critical funding for P.L. 638 and self-governance funding dries up such that critical health services are interrupted due to furloughs and layoffs and are contingent on the length of the federal government shutdown. As you know the Navajo Nation was especially hard hit during the global COVID-19 pandemic. Prior to that, like other tribal nations, we suffered the impacts of the Opiate Epidemic. While there is no good time for government shutdowns to occur, it will take years following the COVID-19 pandemic before tribal nations are resilient enough to withstand another government shutdown. Thus, the time is now for Congress to pass legislation that would advance appropriate IHS funding.

Advance Appropriations for IHS is a step toward fully honoring the treaty and trust obligation for health. A commitment that Congress will enact solutions that address the health inequities and ensure the health and wellness of Tribal communities. The insecurities surrounding discretionary funding for Indian Health threaten the stability of health care delivery in Indian Country. As we work together to restore promises, all options must be on the table for Congressional action.

CONCLUSION

On behalf of the Navajo Nation and the National Indian Health Board, we applaud Congress and the Biden-Harris Administration for their commitment to honoring the federal trust responsibilities. Supporting advance appropriations to the IHS would mark the first commitment by Congress to truly recognize the treaty and trust obligation for health care for Indian Country. We look forward to continuing to work with this Congress to support H.R. 5549.

Ahéhee' and thank you for your consideration of my testimony.