



NATIONAL CONGRESS OF AMERICAN INDIANS  
U.S. House Committee on Energy and Commerce  
Hearing on Addressing the Urgent Needs of Our Tribal Communities

Written Testimony of President Fawn Sharp  
National Congress of American Indians  
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On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing to address the growing health, environmental, and accessibility needs in Indian Country. I am Fawn Sharp, President of the Quinault Indian Nation and President of NCAI.

Founded in 1944, NCAI is the oldest and largest representative organization serving the broad interests of tribal nations and communities. Tribal leaders created NCAI in response to federal policies that threatened the existence of tribal nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of tribal nations, advance the government-to-government relationship, and remove structural impediments to tribal self-determination.

There are over 574 tribal nations within the United States (U.S.) which, like other governments, strive to ensure the health and wellbeing of their communities. In support of this responsibility, tribal nations provide a range of governmental services including health, energy, environmental protection, and telecommunications.

These services are funded by the U.S. due to the unique political relationship between tribal governments and the U.S. resulting from the forced cessation of tribal nations' lands and resources. For over two hundred years, the U.S. has consistently maintained a government to government relationship with tribal nations whereby it has recognized a trust and treaty relationship to deliver services to tribal citizens and safeguard their rights and resources.

Despite its fiduciary responsibility, the federal government has consistently neglected its legal obligations resulting in a 21<sup>st</sup> century health and socio-economic crisis in Indian Country. In December 2018, the U.S. Commission on Civil Rights (USCCR) released a report titled, "Broken Promises: Continuing Federal Funding Shortfall for Native Americans" ("Broken Promises") which found that:

Federal programs designed to support the social and economic well-being of Native Americans remain chronically underfunded and sometimes inefficiently structured, which leaves many basic needs in the Native American community unmet and contributes to the inequities observed in Native American communities.<sup>1</sup>

This existing crisis created disparities that led to American Indians and Alaska Native's (AI/AN) vulnerability to the coronavirus-19 (COVID-19) pandemic

<sup>1</sup> Broken Promises: Continued Federal Funding Shortfall for Native Americans (Broken Promises Report), U.S. Commission on Civil Rights, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

and resulted in our communities having the highest per-capita COVID-19 infection rate in the U.S.<sup>2</sup> To enable Indian Country to respond to and mitigate the present public health emergency, Congress must address the structural barriers that impair the lives and livelihoods of AI/ANs. Accordingly, I incorporate by reference the recommendations of the Broken Promises Report and will focus my testimony on a survey of needs in the areas of health, the environment, energy, and telecommunications to address inequities impacting AI/ANs.

### **Health: Stable Funding and Technical Fixes Needed to Address Disparate Access**

Despite the federal government's trust responsibility to provide healthcare, AI/ANs continue to experience the greatest health disparities in the U.S. when compared to other Americans. Shorter life expectancy and the disease burdens carried by AI/ANs exist because of inadequate funding, disproportionate poverty, and discrimination in the delivery of healthcare services. These disparities have made our communities disproportionately vulnerable to the current pandemic. Today, I will highlight two types of barriers that result in AI/AN's disparate access to health care services and solutions to address them.

#### ***Advance Appropriations and Permanent Reauthorization of SDPI***

The Indian health system consists of services provided by: the Department of Health and Human Services, Indian Health Service (IHS); by tribal nations and organizations (through self-determination contracts and self-governance compacts authorized under P.L. 93-638); and by urban organizations that receive IHS grants and contracts (collectively the "I/T/U system"). The federal government has a fiduciary obligation to fund the I/T/U system as a result of its trust and treaty obligation to provide health care to tribal nations and citizens.

Despite this obligation, due to fluctuations in funding and the federal budget process, the I/T/U system must endure uncertainty when planning and providing health services to tribal citizens.<sup>3</sup> The 2019 government shutdown, the longest in history, is a recent example of the budget process endangering tribal health, safety, and wellbeing. Since FY 1998, there has only been one year (FY 2006) in which the Interior, Environment, and Related Agencies Appropriations bill has been enacted before the beginning of the new fiscal year.

The IHS and the Bureau of Indian Affairs (BIA) provide core governmental services for tribal nations and delays in the appropriations process have an outsized impact on the daily lives of AI/AN people as they access services funded by the federal trust obligation. To address this impact, Congress must protect tribal citizens from the negative effects of uncertainty in the federal budget process and pass legislation authorizing advance appropriations for the IHS and BIA. This budgetary solution would protect the treaty and trust responsibilities from future government shutdowns. Additionally, it would protect tribal governments and citizens from cash flow problems that regularly occur at the start of the federal fiscal year due to delays in enactment of annual appropriations legislation. Accordingly, NCAI requests Congress pass H.R. 1128 and H.R. 1135 which collectively provide advance appropriations for IHS and BIA funded services.

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<sup>2</sup> Coronavirus Resource Center, COVID-19 United States Cases by County, Johns Hopkins University of Medicine, <https://coronavirus.jhu.edu/us-map>.

<sup>3</sup> NCAI Resolution ATL-14-084: Recommendations for Address the State of Emergency in Federal Underfunding of the Trust Responsibility; *see also* Broke Promises Report.

Related to delayed appropriations, since September 2019, Congress has renewed the successful Special Diabetes Program for Indians (SDPI) four times in short increments. Compared to other groups, AI/ANs have disproportionately high rates of diabetes which has increased the lethality of COVID-19 for our communities.<sup>4</sup> AI/ANs are twice as likely as whites to have diabetes and die from this disease at a rate 3.2 higher than that of all other races.<sup>5</sup> The SDPI program has been instrumental in decreasing the prevalence of diabetes in AI/AN adults from 15.4% in 2013 to 14.6% in 2017<sup>6</sup> and is responsible for saving Medicare \$52 million per year.<sup>7</sup>

Despite this success, SDPI has been flat funded at \$150 million since 2004, and the short term reauthorizations have caused significant distress for SDPI programs at the expense of patients. To address these issues, for years tribal advocates have requested the permanent reauthorization of SDPI with increased funding. Recently, H.R. 2680, was introduced and would reauthorize the SDPI program for five years and increase funding to \$200 million per year. While this is not a permanent reauthorization, we support this longer-term extension and look forward to working with our legislative partners to provide increased and stable funding for this critical program.

### ***Technical Amendments and Fixes to Medicaid***

The I/T/U system faces significant funding disparities. In FY 2018, IHS per capita expenditures for patient health services were just \$3,779, compared to \$9,409 per person for federal health care spending nationally. Reimbursements from Medicaid and other third-party revenues are integral to addressing this fiscal gap. As reported in the FY 2021 IHS Congressional Justification, in FY 2019 alone, IHS collected \$1.14 billion in third-party reimbursements from these payers, equaling nearly 20 percent of the entire IHS discretionary budget for that year. The federal Medicaid program is critical to the I/T/U system, however, there are significant gaps in access to quality health care services under the federal Medicaid program for low- and moderate-income AI/ANs, depending upon their state of residence. To address these gaps, tribal health advocates have developed the following priorities:

1. Authorizing Indian Health Care Providers in all states to receive Medicaid reimbursement for all services authorized under Medicaid and specified services authorized under the Indian Health Care Improvement Act—referred to as Qualified Indian Provider Services—when delivered to Medicaid-eligible AI/ANs;
2. Creating an optional eligibility category under federal Medicaid law providing authority for states to extend Medicaid eligibility to all AI/ANs with household income up to 138% of the federal poverty level (FPL);
3. Extending full federal funding through a 100% FMAP (Federal Medical Assistance Percentage) rate for Medicaid services furnished by Urban Indian Organizations to AI/ANs, in addition to services furnished by IHS/tribal providers to AI/ANs;
4. Providing reimbursements for services furnished by Indian Health Care Providers outside of an IHS or tribal facility; and

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<sup>4</sup> Trends in Indian Health, Indian Health Services, <https://www.ihs.gov/PublicInfo/Publications/trends98/trends98.asp>.

<sup>5</sup> A Call to Action: Eliminating Diabetes Disparities in Native Communities, American Diabetes Association, Clinical Diabetes, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4608273/#:~:text=According%20to%20the%20U.S.%20Department,die%20from%20diabetes%20\(3\)](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4608273/#:~:text=According%20to%20the%20U.S.%20Department,die%20from%20diabetes%20(3)).

<sup>6</sup> Prevalence of diagnosed diabetes in American Indian and Alaska Native adults, 2006–2017, BMJ Open Diabetes Research and Care in partnership with the American Diabetes Association, <https://drc.bmj.com/content/8/1/e001218>.

<sup>7</sup> The Special Diabetes Program For Indians: Estimates Of Medicare Savings, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, <https://aspe.hhs.gov/pdf-report/special-diabetes-program-indians-estimates-medicare-savings>.

5. Clarifying in federal law and regulations that state Medicaid programs are prohibited from over-riding (through waivers) Indian-specific provisions in federal Medicaid law.

Some progress was recently made with passage of H.R. 6800, which contains technical fixes for items three and four above. Unfortunately, these improvements are only in effect until June 30, 2021. Accordingly, NCAI requests that the Committee work with tribal health advocates to pass legislative technical fixes that will address these critically needed provisions.

### **Environment: Support Tribal Responses to Climate Change and Access to Clean Water**

The cultures and lifeways of tribal nations and their citizens are place-based and closely tied to subsistence practices. As a consequence, tribal nations and their citizens are disproportionately affected by even incremental environmental and climate harms<sup>8</sup> which particularly exacerbate the existing issues tribal nations face in accessing clean and reliable drinking water.<sup>9</sup>

#### ***Climate Change***

Climate change is threatening tribal access to resources (water, food, and lands); traditional habitats and species; forcing relocation; degrading tribal infrastructure; and impacting cultural, economic, and community health for countless generations. Our nations are involved in all stages of climate response including but not limited to: emissions reduction, mitigation, and adaptation. Tribal nations are key partners in the national and global response to climate change and have the following, non-exhaustive list, of goals in Congressional climate responses:

1. Full and meaningful consultation and enforcement with decision makers;
2. Integration of tribal nations into Congressional and Executive Branch climate planning;
3. Securing land, water, wildlife, and fisheries resources;
4. Co-management opportunities to support intergovernmental partnerships and integrate tribal traditional knowledge in climate responses;
5. Financing climate action (via increased appropriations, grants, and public-private financing opportunities); and
6. Ensuring government parity in climate action (e.g. any federal assistance provided to state and local governments should also be provided to tribal governments).

The House Select Committee on the Climate Crisis recently released a majority staff report that incorporated many of these principles and which recognized that tribal communities are on the frontlines of climate change.<sup>10</sup> Along with implementing the recommendations of this report, I look forward to working with the Committee to ensure the needs of tribal nations and people are addressed in climate legislation.

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<sup>8</sup> Broken Promises, at p-193.

<sup>9</sup> U.S. Global Research Program, Fourth National Climate Assessment, (November 2018), at p-580.  
[https://nca2018.globalchange.gov/downloads/NCA4\\_2018\\_FullReport.pdf](https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf)

<sup>10</sup> Solving the Climate Crisis, Select Committee on the Climate Crisis, Majority Report (June 2020)  
<https://climatecrisis.house.gov/sites/climatecrisis.house.gov/files/Climate%20Crisis%20Action%20Plan.pdf>

## ***Clean and Safe Water***

Too many homes in Indian country lack access to clean and safe drinking water and sanitation. According to IHS, approximately 13% of AI/AN homes, in contrast to 0.6% of non-native homes, lack access to safe drinking water and/or safe wastewater disposal infrastructure.<sup>11</sup> Similarly, the 2018 Annual Report to Congress on Sanitation Deficiency Levels for Indian Homes and Communities reported that 31 percent of homes on tribal lands need sanitation facility improvements.<sup>12</sup>

Given these needs, we appreciate the House's passage of H.R. 2 which provides \$2.67 billion for water and sanitation development across the Indian health system through 2024. Assistance out of IHS is also critical, such as the Safe and Clean Drinking Water State Revolving Funds which are important mechanisms for addressing tribal water deficiencies. While H.R. 2 more than doubled funding for the State Revolving Fund, the designated tribal set-aside should be increased to five percent. Further, in accordance with the 2016 Water Resources Development Act Reauthorization, an eligible use of funds should continue to include water operator training and certification. Such an increase for sewage treatment construction programs would help achieve the basic human health and environmental protection needs for tribal communities.

## **Energy: Increase Tribal Energy Access and Development**

The energy resources of tribal nations are critical to tribal energy security, reduction of greenhouse gases, and economic development. These resources include: one quarter of the nation's on-shore oil and gas reserves, one-third of the nation's western low-sulfur coal,<sup>13</sup> almost 3.5 percent of the nation's wind energy, and approximately five percent of the nation's total solar energy potential.<sup>14</sup> Despite this potential, tribal nations encounter many barriers developing resources within their homelands including access to existing infrastructure and financing energy development.<sup>15</sup>

Approximately 14% of homes on reservations do not have access to electricity.<sup>16</sup> The Department of Energy's Office of Indian Energy Policy and Programs (OIEPP) is critical to addressing these access disparities and provides funding for, among other things, developing and strengthening energy infrastructure on tribal lands. H.R. 2 recently increased funding for OIEPP from \$20 to \$50 million. While we are grateful for this necessary increase, Indian country continues to advocate for eliminating matching funds requirements for tribal nations which often serve as a barrier to development. This barrier is even greater as a result of the pandemic which has led to the substantial loss of tribal revenues and decimation of rainy day funds.

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<sup>11</sup> EPA, IHS, Dept. of AG, HUD, Strategies for Increasing Access to Safe Drinking Water and Wastewater Treatment to American Indian and Alaska Native Homes, <https://www.epa.gov/sites/production/files/2015-07/documents/meeting-the-access-goal-strategies-for-increasing-access-to-safe-drinking-water-and-wastewater-treatment-american-indian-alaska-native-villages.pdf>.

<sup>12</sup> Annual Report To the Congress of the United States On Sanitation Deficiency Levels for Indian Homes and Communities FY 2018, Indian Health Service, Office of Environmental Health and Engineering, Division of Sanitation Facilities Construction, [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/Report\\_To\\_Congress\\_FY18\\_SanitationFacilitiesDeficiencies.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/Report_To_Congress_FY18_SanitationFacilitiesDeficiencies.pdf).

<sup>13</sup> See e.g., Property and Environment Research Center, PERC Policy Perspective: Unlocking the Wealth of Indian Nations: Overcoming Obstacles to Tribal Energy Development, (2014), <https://www.perc.org/wp-content/uploads/old/pdfs/IndianPolicySeries%20HIGH.pdf>.

<sup>14</sup> National Renewable Energy Laboratory, Techno-Economic Renewable Energy Potential on Tribal Lands, (2018), <https://www.nrel.gov/docs/fy18osti/70807.pdf>.

<sup>15</sup> Broken Promises: Continuing Federal Funding Shortfall for Native Americans. U.S. Commission on Civil Rights at 182, (2018) (hereinafter "Broken Promises"), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

<sup>16</sup> Department of Energy Department of Energy FY 2017 Congressional Budget Request – Volume 3. (Feb. 2016), p. 755. <https://energy.gov/sites/prod/files/2016/02/f30/FY2017BudgetVolume3.pdf>.

In addition to paying high prices for electricity, tribal nations face difficulties in financing energy development at all scales, from community to utility. For example, the Department of Energy's Tribal Energy Loan Guarantee Program (TELGP) offers partial loan guarantees to leverage public and private lending for energy projects in Indian country. Although the TELGP was authorized in the Energy Policy Act of 2005, it was not funded until Fiscal Year 2017. To date, TELGP has not approved a single project. In part, this is due to eligibility requirements that do not account for the inability of many tribal nations to access banks and lenders. In light of this, straightforward modifications of application requirements such as showing no prior bankruptcies or prior ability to generate positive cash flows would allow tribal applicants to access capital markets and provide the credit necessary to grow and develop energy resources and sustainable businesses.

### **Telecommunication Accessibility: Funding and Structural Solutions for Deployment**

Tribal communities are disproportionately unserved or underserved when it comes to access to high-speed internet. According to a 2019 Federal Communications Commission (FCC) report, individuals residing on tribal lands are nearly 4.5 times as likely to lack any terrestrial broadband internet access as those on non-tribal lands.<sup>17</sup> Even when examining fixed broadband deployment at speeds lower than "broadband," only 6 percent of homes on non-tribal lands lack coverage by any wired provider, while 25 percent of homes on tribal lands have no wired option for 10/1 Mbps service.<sup>18</sup> Further, the Government Accountability Office and FCC agree that this available data overstates the extent of broadband access on tribal lands.<sup>19</sup>

Presently, COVID-19 has driven more activities online putting tribal communities at a distinct health, educational, and economic disadvantage. Unlike their counterparts, many tribal patients are unable to access telehealth and our children are unable to access the same distance learning opportunities due to the digital divide. To address these inequities, immediate investment in tribal broadband infrastructure and ensuring access to existing opportunities is critical.

### ***A FCC Tribal Broadband Fund Should be Created to Structurally Address the Digital Divide***

The unique challenges of broadband deployment throughout Indian Country necessitate a FCC Tribal Broadband Fund specifically designed to target tribal lands. Rural connectivity programs that attempt to include Indian Country have been around for decades, with companies promising to build out over tribal lands, but the data clearly demonstrates that Indian Country is still disproportionately left behind in access to broadband. According to the FCC, "[u]nderstanding the complexity of the digital divide in Indian Country requires an appreciation of the unique challenges facing Tribal Nations, which include deployment, adoption, affordability, and access to spectrum, as well as lack of investment dollars and access to credit and start-up or gap financing."<sup>20</sup>

Accordingly, NCAI urges Congress to take up the recommendations of the FCC in its National Broadband Plan that expressly support congressional action on establishment of a Tribal Broadband Fund.<sup>21</sup> Creation of the Fund would promote education, economic opportunity, health, public safety,

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<sup>17</sup> Federal Communications Commission, Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, 5 (May 2019).

<sup>18</sup> Id., at p-5.

<sup>19</sup> U.S. Government Accountability Office, Broadband Internet: FCC's Data overstate Access on Tribal Lands, GAO-18-630 (see recommendations, status, and comments) (2018), <https://www.gao.gov/assets/700/694386.pdf>.

<sup>20</sup> Federal Communications Commission, Office of Native Affairs and Policy 2012 Annual Report, 7, (2013), <https://www.fcc.gov/document/office-native-affairs-and-policy-2012-annual-report>.

<sup>21</sup> Id.

and governance in tribal communities that currently face a severe broadband deficit and are at a distinct and worsening disadvantage during the COVID-19 pandemic and recovery process.

### ***Support Tribal Access to the 2.5GHz Tribal Priority Window and Unassigned Spectrum***

Spectrum is the invisible electromagnetic waves that wireless signals travel over; and license to a portion of spectrum gives a holder the opportunity to enhance broadband and mobile coverage. In February 2020, the FCC opened a Tribal Priority Window (TPW) for select tribal nations to obtain 2.5 GHz spectrum for free before any commercial auction. The TPW closes on August 3, 2020. As a direct result of COVID-19, an extension of the 2.5 GHz tribal priority filing window is essential. With the highest per capita rates of infection, tribal communities are disproportionately impacted by this pandemic. As a result, tribal nations are currently providing essential services to their communities and dedicating resources to the unique circumstances of COVID-19 response that would otherwise be used on opportunities like the 2.5 GHz tribal priority filing window. Tribal nations and NCAI have requested an extension of the TPW until January 2021 due to the pandemic. To date, the FCC has not indicated any intent to extend the deadline.

Relatedly, where spectrum is unassigned over tribal lands, all tribal nations should be granted emergency temporary authority to operate within those unassigned frequencies. This has been granted to some tribal nations, such as Navajo Nation and the Makah Tribe, during the pandemic. Where infrastructure exists that could operate broadband wireless networks within unassigned spectrum, granting temporary authority to operate within those frequencies provides a virtually no cost federal solution to increased broadband deployment in Indian Country. Where suitable infrastructure does not exist, temporary infrastructure could be deployed by a tribal nation to utilize access to these unassigned licenses and rapidly deploy broadband networks. Accordingly, NCAI asks that Congress take action to grant this temporary authority to all tribal nations during the pandemic.

### ***All Tribal Nations and Lands Should be Eligible for FCC Broadband Proceedings***

While tribal nations welcome the creation of the TPW for the 2.5GHz spectrum, they have noticed that FCC proceedings have increasingly excluded large categories of tribal lands resulting in potential pockets of coverage.<sup>22</sup> The federal government has a trust relationship to all federally recognized tribal nations which includes the delivery of services to all tribal lands.<sup>23</sup> Despite this obligation, the FCC restricted qualification for the 2.5 GHz Band TPW to only limited types of “rural” tribal lands and have excluded tribal lands held in trust by the federal government if they are off-reservation.<sup>24</sup> This has effectively created classes of tribal nations to whom the FCC owes its tribal trust responsibility.

Further, this restrictive definition hinders efforts to deploy 2.5 GHz services to population dense areas of a tribal nation’s lands which can negatively impact their deployment planning and make broadband investment economically infeasible. FCC’s decision also contradicts industry practice which factors in population density for economic efficiency in deployment of wireless services. To address this

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<sup>22</sup> National Congress of American Indians, *Petition for Reconsideration by the National Congress of American Indians* (Petition for Reconsideration)

<https://ecfsapi.fcc.gov/file/1125753726939/NCAI%20PTR%20re%202.5%20GHz%20Tribal%20Priority%20Window.pdf>.

<sup>23</sup> See, e.g., *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831); *United States v. Kagama*, 118 U.S. 375 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. State of Washington*, 315 U.S. 681 (1942).

<sup>24</sup> See Petition for Reconsideration.

inequity, the FCC should be required to use the existing definition of tribal lands at 47 CFR § 73.7000 and include all tribal lands under that definition in the 2.5 GHz band TPW because this definition already addresses the entity and location based considerations raised by the FCC<sup>25</sup> without abrogating the federal governments treaty and trust obligations to all tribal nations on all tribal lands.

**Conclusion**

I thank you for the opportunity to testify on these critical issues and I look forward to working on bi-partisan solutions that address these disparities and ensures the U.S. upholds its trust and treaty responsibilities to tribal nations and citizens.

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<sup>25</sup> Id.