



**Support for Legislation to Amend Lease Compensation Provisions of the  
Indian Self-Determination and Education Assistance Act  
RESOLUTION # 21-02-01**

**NORTHWEST  
PORTLAND  
AREA  
INDIAN  
HEALTH  
BOARD**

Burns-Paiute Tribe  
Chehalis Tribe  
Coeur d'Alene Tribe  
Colville Tribe  
Coos, Siuslaw, &  
Lower Umpqua Tribe  
Coquille Tribe  
Cow Creek Tribe  
Cowlitz Tribe  
Grand Ronde Tribe  
Hoh Tribe  
Jamestown S'Klallam Tribe  
Kalispell Tribe  
Klamath Tribe  
Kootenai Tribe  
Lower Elwha Tribe  
Lummi Tribe  
Makah Tribe  
Muckleshoot Tribe  
Nez Perce Tribe  
Nisqually Tribe  
Nooksack Tribe  
NW Band of Shoshoni Tribe  
Port Gamble S'Klallam Tribe  
Puyallup Tribe  
Quileute Tribe  
Quinalt Tribe  
Samish Indian Nation  
Sauk-Suiattle Tribe  
Shoalwater Bay Tribe  
Shoshone-Bannock Tribe  
Siletz Tribe  
Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribe  
Umatilla Tribe  
Upper Skagit Tribe  
Warm Springs Tribe  
Yakama Nation

2121 S.W. Broadway  
Suite 300  
Portland, OR 97201  
Phone: (503) 228-4185  
Fax: (503) 228-8182  
[www.npaihb.org](http://www.npaihb.org)

**WHEREAS**, the Northwest Portland Area Indian Health Board (hereinafter "NPAIHB" or the "Board") was established in 1972 to assist Tribal governments to improve the health status and quality of life of Indian people; and

**WHEREAS**, the NPAIHB is a non-governmental "tribal organization" as defined by the Indian Self-Determination and Education Assistance Act (P.L. 93-638 seq. et al) that represents forty-three federally recognized tribes in the states of Idaho, Oregon, and Washington; and

**WHEREAS**, in accordance with the definitions of the Indian Self-Determination and Education Assistance Act at 25 USCS § 450b, a tribal organization is recognized as a governing body of any Indian tribe and includes any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; and

**WHEREAS**, the NPAIHB is dedicated to assisting and promoting the health needs and concerns of Indian people; and

**WHEREAS**, the Indian health system has always been chronically underfunded, as documented by the U.S. Commission on Civil Rights, among others; and

**WHEREAS**, tribes and tribal organizations providing health care services through contracts and compacts with the Indian Health Service (IHS) under the Indian Self-Determination and Education Assistance Act (ISDEAA) have been able to supplement inadequate health care facilities funding by leasing tribal facilities to IHS under the authority of section 105(l) of the ISDEAA, 25 U.S.C. § 5324(l); and

**WHEREAS**, tribes also generate income by providing health care services for individuals who are not otherwise eligible for IHS under section 813 of the Indian Health Care Improvement Act, 25 U.S.C. § 1680c; and

**WHEREAS**, many tribal providers are the primary health care providers in their rural communities and the only ones that will take on Medicare and Medicaid patients; Section 813 helps these Tribes provide better services to their members, other Indians, and their non-Indian neighbors; and

**WHEREAS**, IHS leasing of tribal facilities providing health care services to eligible Indians and non-eligible individuals in the community served by the facility, as well as the third-party revenues generated by these services, enhance tribal health programs and benefit the communities served, which are in rural areas; and

**WHEREAS**, IHS has adopted a policy that will only pay 105(l) lease costs based on a “supportable space” formula that allows costs based on what is needed to serve eligible Indians; and

**WHEREAS**, the recent court decision of *Jamestown S’Klallam Tribe v. Azar*, No. 19-2665, 2020 WL 5505156 (D.D.C. Sept. 11, 2020), upheld the IHS decision restricting the compensation available for 105(l) leases by allowing IHS to deny compensation for space the agency decides is allocated to serving non-beneficiaries—even though such services are deemed by statute to be provided under the ISDEAA; and

**WHEREAS**, without legislative action to clarify the interplay of Sections 813 and 105(l), it is likely that future rulings will be made along the lines of *Jamestown*, thereby impacting health delivery for IHS beneficiaries and non-beneficiaries alike.

**THEREFORE BE IT RESOLVED**, that NPAIHB supports legislation to clarify the intent of Congress that space used to provide services within the scope of an ISDEAA agreement, to any patient, is compensable under 150(l).

### **CERTIFICATION**

The foregoing resolution was duly adopted by the Board of Directors of the Northwest Portland Area Indian Health Board at the January 20, 2021 Quarterly Board Meeting. With a quorum being established.



---

**Nicolaus Lewis, Chairman**

**ATTEST:**



**Greg Abrahamson, Secretary**