





Legislative & Policy Update

Quarterly Board Meeting
Hosted by: Port Gamble S'klallam
October 16, 2018



Report Overview

1. Hot Topics
2. Legislation in 115th Congress
3. FY 2019 -- FY 2021 Appropriations
4. Current & Pending Federal Policies
4. Upcoming National/Regional Meetings



Hot Topics

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2018 Elections

- Elections are November 6, 2018
- Senate
 - Nationally 7 Contested
- House
 - Nationally 31 Tossups
 - In NW: Washington District 8
- Governor
 - Idaho – Paulette Jordan v. Brad Little
 - Oregon – Kate Brown v. Knute Buehler



Other

- U.S. Supreme Court – New Associate Justice Brett Kavanaugh
- U.S District Court, Northern District of Texas case – *Brakeen v. Zinke* (ICWA Case).
- IHS Director Nominations



Legislation in 115th Congress



Legislation in 115th Congress

- Support for Patients and Communities Act (H.R. 6)
- The Native Behavioral Health Access Improvement Act of 2018 (S.2545 & H.R. 3704)
- The PROGRESS for Indian Tribes Act (S.2515)
- Restoring Accountability in the Indian Health Service Act of 2017 (H.R. 4874/H.R. 2662/S. 1250)
- Independent Outside Audit of the Indian Health Service Act of 2017 (S. 465)
- Department of Veterans Affairs Tribal Advisory Committee Act of 2018 (S.3269)
- List of Other Legislation – Still Pending



Support for Patients and Communities Act (H.R. 6)

- On President’s desk for signature.
 - 5% Tribal set aside under state response to abuse crises grants amounting to \$50 million per year
 - Up to a 3% set aside under Plans of Safe Care to address maternal and child health issues resulting from the opioid crisis
- Tribes are considered eligible entities for:
 - Comprehensive opioid recovery centers
 - Providing care to individuals after an opioid overdose
 - Youth prevention and recovery programs
 - Efforts to improve overdose surveillance
- Technical Assistance to tribes to address surveillance needs and develop and implement prevention and treatment and programs.



The Native Behavioral Health Access Improvement Act of 2018 (S.2545 & H.R. 3704)

- Introduced by Sen. Tina Smith (D-MN) on 3/14/2018; 5 co-sponsors.
 - Companion bill to Native Health Access Improvement Act of 2017 (H.R. 3704)
- Authorizes a special behavioral health program for Indians.
- Appropriates \$150 million each year for FY 2018-2022 for providing services for prevention and treatment of mental health and substance use disorders.
- Establishes a technical assistance center.
- House bill referred to Subcommittee on Indian, Insular and Alaska Native Affairs on 9/13/17; Senate bill referred to Senate Committee on Indian Affairs on 3/14/18



Restoring Accountability in the Indian Health Service Act of 2018 (H.R. 5874 & S. 1250)

- H.R. 5874 was introduced by Rep. Kristi Noem (R-SD) on 5/18/18; 8 co-sponsors.
 - Related to S. 1250 and H.R. 2662. S. 1250 was introduced by Sen. John Barasso (R-WY); and H.R. 2662 was introduced by Rep Noem (R-SD) on 5/25/17.
- Seeks to reform IHS and offer better tools for recruiting the agency's staff and leadership, improve care standards, and dramatically increase accountability.
- 4/11/18: Passed out of Senate Committee on Indian Affairs.
- 6/13/18: Passed out of Natural Resources Committee.
- On hold by E&C Committee Ranking Member



Independent Outside Audit of the Indian Health Service Act of 2017 (S. 465)

- Introduced by Sen. Mike Rounds (R-SD) on 2/28/17 with two-co-sponsors.
- Requires an independent outside audit of the Indian Health Service with report to Congress.
- 2/28/17: Referred to Committee on Indian Affairs
- 11/8/17: Committee hearing
- 9/26/18: Passed out of Senate Committee on Indian Affairs



The Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act (S.2515)

- Introduced by Sen. John Hoeven (R-ND) on 3/7/18; 6 co-sponsors.
- Amends ISDEAA to provide further self-governance to Indian tribes by streamlining the Interior Department's self-governance process and providing tribes with greater flexibility to administer federal programs.
- 9/5/18: Passed out of Senate Committee of Indian Affairs.
- 10/2/18: Referred to House Natural Resources.



GAO Report for IHS Advance Appropriations

- On 9/13/18, Government Accountability Office issued a report titled, “Indian Health Service: Considerations Related to Providing Advance Appropriation Authority” – GAO-18-652.
- GAO makes recommendations for policy makers to consider
- *Next steps:* In-person testimony, letters, Hill and IHS meetings, tribal conference gatherings - that the FY 2020 Interior and Related Agencies appropriations bill include FY 2021 advance appropriations for the IHS.
- Report available at www.gao.gov



To Be Introduced Medicaid Indian Amendment Act

- Tribal Self-Governance Advisory Committee initiative
- The aim is to *fix gaps in access to high-quality health care services* under Medicaid for low- and moderate-income American Indians and Alaska Natives (AI/ANs) across all states.
- **Approach:**
 - Do no harm.
 - Build on existing administrative infrastructure.
 - Indian health care providers (IHCPs) are defined in federal regulations.
 - Most services to AI/ANs by IHCPs are currently supported with 100% federal funding.
 - Establish new authorities as either “requirements” or “options” based on assessment of: (a) ability to achieve policy goal and (b) ability to enact legislation.



To Be Introduced Medicaid Indian Amendment Act

- Authorize Indian Health Care Providers (IHCPs) in all states to receive Medicaid reimbursement for a federally-defined set of health care services—referred to as Qualified Indian Provider Services (QIPS)—when delivered to AI/ANs.
- Create the option for states to extend Medicaid eligibility to all AI/ANs with household income up to 138% of the federal poverty level (FPL).
- Extend full federal funding (through 100% FMAP) and the IHS encounter rate to Medicaid services furnished by *urban* Indian health programs to AI/ANs.
- Clarify in federal law and regulations that state Medicaid programs are
 - Permitted to implement policies limited to AI/ANs and/or IHCPs (through waivers or State Plan Amendments), including without concern of violating (a) “comparability” or (b) “statewide” standards.
 - Mandate [or permit] exemption of AI/ANs from work requirements.
 - Prohibited from over-riding (through waivers, etc.) Indian-specific provisions in federal Medicaid law.
- Address the “four walls” limitations on IHCP “clinic” services.



FY 2019 – FY 2021 Appropriations

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IHS Appropriations FY 2019

- Continuing resolution until 12/7/18
- House \$5.9 billion- increase of \$370 million over FY 2018
- Senate \$5.8 billion, increase of \$234 million over FY 2018
- Both include funding for CHRs, Health Educators and Tribal management grants



FY 2020 IHS Budget

- National Tribal Budget Formulation Workgroup co-chairs presented the recommendations for FY 2020 at the HHS Annual Tribal Consultation in D.C. on March 1 and to HHS Budget Council for the Tribal Budget Formulation in D.C. on April 11.
- Recommends over \$7 billion for FY 2020 (36% increase over FY 2017 enacted level).
- Recommends \$36.83 billion for tribal needs based budget to be implemented over 12 year period.
- Available at:
https://www.nihb.org/legislative/budget_formulation.php



FY 2021 IHS Budget

- SAVE THE DATE: Portland Area Budget Formulation Meeting on November 15, 2018 in Portland, OR
- IHS FY 2021 Area Budget Instructions Call/Webinar:
 - October 31, 2018 12:00-1:00 pm PST
 - Call in Information: # 866-762-5163 Participant Code: 8409941
 - <https://ihs.adobeconnect.com/r3hvyg9zb8gg/>
 - Room Passcode: ihs123
- NPAlHB prep call/webinar:
 - November 2, 2018, 11:00am-12:00pm PST.



FY 2019 Labor HHS Education Appropriations-DHHS

- FY 2019 Labor HHS Appropriations approved on 9/27/19 (H.R. 6157)
- Office of the Secretary
 - \$54m for Secretary’s Minority AIDS Initiative Fund
- CDC
 - +\$5m increase for Good Health and Wellness in Indian Country (\$21m)



FY 2019 Labor HHS Education Appropriations-DHHS

- SAMHSA
 - \$50m Opioid set-aside for tribes and tribal organizations
 - +\$5m increase for medication assisted treatment (\$10m)
 - +\$10m increase for Tribal Behavioral Health Grants (\$40m)
 - +\$1m set aside to expand access to tribal populations to National Child Traumatic Stress Initiative
 - \$2.9m tribal set-aside under Garrett Lee Smith Suicide Initiative
 - +\$200k for Zero Suicide Initiative (\$2.2m)



Current & Pending Federal Policies

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Reimagine HHS Initiative

- In May 2017, HHS introduced a new initiative to reimagine HHS. The work is done by 5 workgroups focused on the 4 objectives in the HHS Mission.
- HHS Department is assessing its organizational structure to better align personnel, improve the acquisitions process, streamline services, and improve intra-departmental coordination.
- HHS will be updating its tribal consultation policy.
- HHS is prioritizing placement of new Commissioned Corps Officers in Indian Country.



IHS Update on IHS Regulatory Reform Activities and Stakeholder Engagement Plan

- DTLL on 7/23/18 provides an update on IHS regulatory reform activities, including the IHS Stakeholder Engagement Plan Regulatory Reform.
- CAPT Brandon Taylor, IHS Chief of Staff serves as the Regulatory Reform Officer and primary point of contact for IHS to the HHS Regulatory Reform Task Force.
- IHS developed a Stakeholder Engagement Plan to promote participation, coordination, and transparency regarding regulatory reform activities.
- Stakeholder Engagement Plan is available at: www.ihs.gov/DRA/



Recent CMS Informational Bulletin

- On 8/16/18, CMS issued an informational bulletin on State Plan Amendment and Section 1915 waiver process improvements.
- Highlights CMS's progress as to the waiver process.
- Announces that CMS will initiate disapproval of a waiver if a response to a formal request for additional information is not received within 90 days.
- Other major provisions...



CMS Work Requirements Issue

- On 1/17/18, CMS issued a DTLL stating that CMS could not provide an exemption to the work requirements for AI/AN because of civil rights concerns.
- NCAI and NIHB worked with tribes and tribal organizations across the nation to address this issue.
- On 5/7/18, CMS updated its position, stating that they would actively consider state proposed accommodations for AI/AN from work requirements on a state by state basis.
- On 6/29/18, a Kentucky Federal Judge ruled that the Kentucky Waiver requiring work or community engagement was not consistent with the objectives of the Medicaid statutes and remanded the waiver back to the Administration; comment period reopened until 8/18/18.
- On 8/28/18 NCAI, NIHB and other national organizations held another strategy meeting.
- On 9/24/18, at STAC meeting, HHS Deputy Secretary Eric Hargan requested a legal opinion on the AI/AN exemption from work requirements.



CMS 4 Walls Limitation

- CMS determined that If a Tribal facility is enrolled in the state Medicaid program as a provider of clinical services under 42 CFR 440.90, the Tribal facility may not bill for services furnished by a non-Tribal provider or Tribal employee at the facility rate for services that are provided outside of the facility.
- Per CMS, under FQHC designation there is no requirement that the services be provided within the 4 walls.
- Section 1905 of the SSA recognizes outpatient Tribal clinics as FQHCs.
- CMS FAQ released January 18, 2017.
- Effective Date: January 30, 2021.
- CMS Guidance pending-currently under interval review (over one year).



IHS ISDEAA Sec. 105(l) Leases

- DTLL on 7/10/18 initiating tribal consultation on IHS FY 2018 appropriation to meet ISDEAA requirements (25 U.S.C. Sec. 5324(l) also known as 105(l)).
- This section authorizes IHS to enter into a lease with a tribal/tribal organization for a facility used for administration and delivery of ISDEAA services.
- IHS originally stated that had received 55 proposals for FY 2018 estimated at \$18m; however, this has increased to 77 proposals totaling \$28m.
- IHS is considering use of new unallocated FY 2018 inflation increases and must notify Congress of any planned reprogramming but is seeking input before any formal action is taken.
- Comments were due 7/27/18; NPAIHB submitted comments.
- IHS issued a DTLL letter on 9/14/18.



IHS Sanitation Deficiency System Guide

- DTLL on 7/2/18 seeking consultation on *IHS Sanitation Deficiency System (SDS)- A Guide for Reporting Sanitation Deficiencies in American Indian and Alaska Native Homes and Communities* (commonly known as the SDS Guide).
- 30-business day comment period in effect from 7/2/18 through 8/14/18.
- Comments were due on 9/14/18; NPAIHB submitted comments.
- IHS decision pending



IHS Indian Health Care Improvement Fund

- DTLL 6/8/18 Indian Health Care Improvement Fund (IHCIF) Workgroup Recommendations on IHCIF formula changes.
- Comments were due 7/13/18.
- DTLL 8/13/18 with final decisions:
 - Benchmark: National Health Expenditure (was Federal Employee Health Benefits Program)
 - User count: National unduplicated users (was regional)
 - Alternate resources: Statewide averages (was flat 25%)
- Only 3 Portland Area tribes received funding.
- IHCIF Workgroup reconvened to continue phase 2 work for FY 2019



Recent IHS DTLLs

- DTLL on 9/15/18: Resolving Denied Pharmacy Claims from Pharmacy Benefit Manager CVS/Caremark
- DTLL on 9/24/18: IT Service Catalog with Updates Released
- DTLL on 10/4/18: New Automated Tool for Electronic Submissions of CHEF Requests
 - Webinars in October and November (see schedule)



Pending IHS Responses

- **IHS Draft Strategic Plan FY 2018-2022;** DTLL on 7/24/18; comment period closed.
- **Special Diabetes Program for Indians** funding distribution for FY 2019; DTLL issued 7/12/18
 - IHS decided not to make any changes.
 - *Follow-up:* Stated that RADM Weakhee to ask Area Directors to meet with tribal leaders to discuss the Area's proposed budget for its share of the SDPI FY 2019 data infrastructure fund.



Pending IHS Responses Cont'd

- **IHS Behavioral Health initiatives Funding Mechanism** to distribute behavioral health initiatives that are currently distributed through grants; DTLL 5/18/18; comment period closed.
- **IHS Manual, PRC Chapter Revisions;** DTLL on 5/18/18; comment period closed.
- **Contract Support Costs – Indian Health Manual, Chapter 3 CSC,** rescission of 97/3 split language; DTLL 4/13/18; comment period closed.
- **CHEF Regulation / Redding Rancheria Case**



SAMHSA

- Tribal Opioid Response Grant –
 - NPAIHB consortium -23 Tribes: Applied for \$1.8 m; awarded \$3.5 m
 - 13 other Portland Area Tribes applied for the funds directly
- Tribal State Policy Academy (Round 1- Washington)
 - 16 states total: 5 tribal reps and 5 state reps
 - Challenges, Prevention, Treatment, Recovery, and Priorities



Opioid Litigation

- More than 1,100 cases were filed against pharmaceutical manufacturers, distributors, and retailers.
- 60 Tribes filed claims and all are pending in MDL action. 2 Bellweather Cases have been selected (Muscoogie Creek Nation and Blackfeet Tribe).
- Tribal Amicus Brief: 448 tribes and tribal organizations signed on and provided statements of interest (NPAIHB, ATNI, NCAI, and NIHB).
- GOAL: Tribal needs are understood and the settlement funds go directly to tribes. It is an opportunity to:
 - 1) Support the 2 Tribal Bellweather cases;
 - 2) Educate everyone in the process about Tribal governments and jurisdictional problems; and
 - 3) Tribal relationships with states and success stories that tribes have been able to develop and argue for tribal set-asides



Upcoming National/Regional Meetings





October – November 2018

- NCAI 7th Annual Convention and Marketplace, October 21-26, 2018, Denver, CO
- IHS Behavioral Health National Tribal Advisory Committee, October 25-26, Albuquerque, NM
- IHS Semi-Annual ISAC Meeting, November 14-15, Albuquerque, NM
- Medicare Medicaid and Health Reform Policy Committee Meeting, November 14, 2018, Washington, D.C.



November - December 2018

- CMS Tribal Technical Advisory Group, November 15-16, 2018, Washington, D.C.
- Portland Area Budget Formulation Meeting, November 15, Portland, OR
- NIH Board Meeting, November 28-30, 2018, Washington, D.C.
- IHCIF Workgroup, December 12-13, 2018, Rockville, MD
- WA Medicaid DHAT SPA Hearing, December 18-19, Seattle, WA



Discussion



HHS Secretary's Tribal Advisory Committee (STAC) Meeting, Fairbanks, Alaska, September 2018
