



**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

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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