

Legislative and Policy Update

January 19, 2021

NPAIHB Quarterly Board Meeting

virtual



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

Legislative and Policy Update Agenda

- Dental Therapy Legislative Activities
 - Pam Johnson, NPAIHB Native Dental Therapy Initiative
- FY 2021 Appropriations
- Coronavirus Response and Relief Supplemental Appropriations Act, 2021
- Recent Legislation
- New and Pending Federal Policy Changes
- Litigation
- Upcoming Regional and National Meetings



Oregon Dental Therapy Legislation

- HB 2528 allows Oregon Board of Dentistry to license dental therapists who have completed CODA accredited education program, or an education program approved by a state pilot project and passed an exam. Dental therapists could work in all practice settings under general supervision (off-site) with a signed practice agreement with dentist.
- NPAIHB convenes the Oregon Dental Access Campaign, a broad coalition of dental and health care organizations, educators, community organizations and Tribes. More information and a link to the bill at: odac.nationbuilder.com



Washington Dental Therapy Legislation

- SB 5142 licenses dental therapists statewide, in limited practice settings: FQHCs; hospitals, nursing homes, schools and tribal clinics. Importantly, this allows Urban Indian Programs to hire dental therapists. Private practice settings were removed from this bill in response to lawmaker and opposition concerns. This year's bill also adds additional hours to the preceptorship.
- Tribal dental therapists will still work under the authority of a tribal license, but this bill would offer opportunity for dual licensure. This could allow for patient and community care outside of tribal lands, or care for non IHS-eligible patients.



FY 2021 Appropriations Department of Interior, Indian Health Service

	FY 2020 Final*	FY 2021 Final*	Increase/<Decrease>*
Clinical Services	\$ 3,937,831	\$ 3,901,877	\$ <32,954>
Preventive Health	177,567	178,789	1,222
Other Services	202,807	220,725	17,918
TTL IHS Services	\$4,315,205	\$ 4,301,391	\$ 13,817
Contract Support Costs	820,000	916,000	96,000
Facilities	911,889	917,888	5,999
Section 105 (I) Leases		101,000	101,000
Total	\$ 6,647,094	\$ 6,236,279	\$ 189,185

*All \$ in thousands



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

FY 2021 Appropriations IHS Clinical Services

Clinical Services	FY 2020 Final*	FY 2021 Final*	Increase/<Decrease>*
Hospitals & Clinics	\$ 2,324,606	\$ 2,238,087	\$ <86,519>
Electronic Health Record	8,000	34,500	26,500
Dental Health	210,590	214,687	4,097
Mental Health	108,933	115,107	6,174
Alcohol and SUDS	245,819	251,360	5,757
Purchased/Referred Care	964,819	975,856	11,037
IHC Improvement Fund	72,280	72,280	--
Clinical Services TTL	\$ 3,934,831	\$ 3,901,877	\$ <32,954>

*All \$ in thousands



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

\$5m for nationalization of CHAP

\$2m for DHAT Training in ID, OR, WA, AK

FY 2021 Appropriations IHS Preventive Services

Preventive Services	FY 2020 Final*	FY 2021 Final*	Increase/<Decrease>*
Public Health Nursing	\$91,984	\$92,736	\$752
Health Education	20,568	21,034	466
Community Health Reps	62,888	62,892	4
Immunizations (AK)	2,127	2,127	-
Preventive Services TTL	\$ 177,567	\$ 178,789	\$ 1,222

*All \$ in thousands



**NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD**
Indian Leadership for Indian Health

FY 2021 Appropriations – IHS Other Services

Other Services	FY 2020 Final*	FY 2021 Final*	Increase/<Decrease>*
Urban Indian Health	\$ 57,684	\$ 62,684	\$ 5,000
Indian Health Professions	65,314	\$67,314	2,000
Tribal Mgmt Grant	2,465	2,465	
Direct Operations	71,538	82,456	10,918
Self-Governance	5,806	5,806	
Other Services TTL	\$ 202,807	\$ 220,725	\$ 17,918

*All \$ in thousands



FY 2021 Appropriations – IHS Facilities

Facilities	FY 2020 Final*	FY 2021 Final*	Increase/<Decrease>*
Maintenance & Improvement	\$ 168,952	\$168,952	
Sanitation Construction	193,577	196,577	3,000
Facilities Construction	259,290	259,290	
Facilities/Environmental Health	261,983	263,982	1,999
Equipment	28,087	29,087	1,000
Facilities TTL	\$ 911,889	\$ 917,888	\$ 5,999

*All \$ in thousands



Other FY 2021 Funding for Indian Country

Agency	Amount	Funding Focus
SAMHSA	\$ 50m	Opioid Response Grants
SAMHSA	\$ 41.5m	Tribal Behavioral Health Grants
CDC	\$ 22m	Good Health and Wellness in Indian Country Program
HRSA	\$ 15m	National Health Service Corps Officers in the Indian/Tribal/Urban health system
SAMHSA	\$ 11m	Tribal set-aside for medication assisted treatment
SAMHSA	\$ 2.931m	American Indian/Alaska Native Suicide Prevention Initiative
SAMHSA	\$ 2.4m	Tribal set-aside for American Indian/Alaska Native Zero Suicide grants
	+ \$ 1.5m	HIV/AIDS Prevention and Treatment Program



Coronavirus Response and Relief Supplemental Appropriations Act, 2021

Agency	Amount	Funding Focus
CDC/IHS	\$790 m	COVID testing/tracing and surveillance. Consultation completed 1/8/2021
CDC/IHS	\$210 m	Vaccine distribution, education, and COVID expense, Consultation 1/8/2021
FCC	\$1 billion	Grants to tribes for broadband
HRSA	\$ 1 billion	Addition to the Provider Relief Fund, new FAQ
SAMHSA	\$125 m	Tribal set-aside
ACL	\$ 7m	Tribal nutrition programs under the Older Americans Act

- Tribal governments have until Dec 31, 2021 to use CARES ACT received
- Unemployment insurance benefits will have addt'l \$300/week through Mar 14, 2021
- Provider Relief Fund language changes re expenses and revenue losses



Provider Relief Fund changes

- “Lost revenues attributable to coronavirus” calculated as the difference between the budgeted and actual revenue budget for budgets developed prior to Mar 27, 2020.
- FAQ reverts back to the Jun 2020 guidance.
- “Payment” is defined as a pre-payment, prospective payment or retrospective payment, as determined appropriate by the Secretary

Hobbs, Straus, Dean & Walker Client Memo dated Dec 22, 2020: Congress Releases FY 2021 Funding Legislation and COVID-19 Relief Bill



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

Recent Legislation



Hill visit Feb 2020



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

Legislation Impacting American Indian Alaska Native Veterans

- Other provisions of HR 133 Omnibus Appropriations
 - Tribal grant schools now have access to the Federal Employee Health Benefit program
 - Requires states consult with tribes, tribal organizations, urban organizations, and Native Hawaiian health care systems re. youth suicide intervention and prevention strategies
 - H.R. 4029 “Tribal Access to Homeless Assistance Act” makes tribes and tribally designated housing entities eligible for homeless assistance grants



Legislation Impacting American Indian Alaska Native Veterans

- H.R. 6237 Proper and Reimbursed Care for Native Veterans Act
 - Amends Indian Health Care Improvement Act
 - Requires Department of Defense to reimburse for services provided through Purchased/Referred Care
- H.R. 7105 Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020
 - Prohibits the VA from collecting copays from AI/AN Veterans
 - Forms a Tribal Advisory Committee at the Veterans Administration
 - Develops a MOU between the IHS and the VA for homeless veterans case management services



Legislation Impacting Special Diabetes Program for Indians

- Special Diabetes Program for Indians
 - Funded at \$150m/year
 - Expires Sep 30, 2023
- NPAIHB Policy Positions
 - Permanent reauthorization at \$200m/year with medical inflation rate increases (Reso17-03-08, 18-03-06, 19-04-12)
 - Subject to contracting requirements under P.L. 93-638 (Reso 12-03-07)
 - Funding in five year increments (Reso 12-03-07)
 - Contract support costs
 - Funding allocation for new programs should be made through Tribal consultation (Reso 06-04-08)



Legislation Impacting Urban Indian Organizations

- Health Care Access for Urban Native Veterans
 - Adds UIO's to the list of eligible to receive reimbursement from the Veterans Administration for services provided to AI/AN veterans
- H.R. 6535/S. 3650
 - Extends Federal Tort Claims Act Coverage to UIO's and employees of UIO's



Recent and Upcoming Consultations

- **IHS Consultation Jan 04, 2021 - \$790/\$210 m Coronavirus Response Funds**
 - \$790m distributed as follows
 - \$50m – Urban Indian Organizations
 - \$190m – Purchase of COVID-19 tests, test kits, testing supplies, therapeutics, and PPE
 - \$550m – Program increases to Hospitals/Clinics, PRC, Alcohol and SUDS, MH, CHR, PH Nursing
 - \$210m – expect a DTLL in the near future
- **Health IT Modernization, comments due Jan 24, 2021**
 - Four Options: Stabilize RPMS, Renew RPMS, Selective Replacement, Full Replacement
 - Stabilizing RPMS has to happen, IHS recommends full replacement
 - Current Funding: \$8m FY 2020, \$65m CARES Act, \$34.5m FY 2021 appropriations
 - Full cost estimated between \$3 – 8 billion over 10 years
 - Parity with the VA system, tribal decision-making in the project, interfacing, COTS



Recent and Upcoming Consultations

- Section 105(I) leases, FY 2021 appropriations [Section 431\(a\)](#) includes
 - Tribal lease payments to begin no earlier than the date the lease proposal is received
 - Secretaries of the Interior and Health and Human Services directed to hold consultation with tribes and tribal organizations re. the requirements of Section 105(I) leases, consistent and transparent implementation process for the payment of the leases
 - **Consultations will take place in FY 2021**



New and Pending Federal Policy Changes

- **4-Walls Extension moved from Jan 31, 2021 to Oct 31, 2021**
 - IMPACT: More time to make a decision re. Tribal FQHC designation, if necessary (only 9 states have SPA's)
- **HHS Eliminates X-Waiver Requirement for DEA-Registered Physicians for the Administration of Buprenorphine, Jan 14, 2021**
 - IMPACT: Expands access to MAT at tribal clinics
- **Final CMS Interoperability and Prior Authorization Rule, Jan 15, 2021**
 - IMPACT: Requires interoperability/HL7 between insurance companies and providers; 72 hours for urgent prior authorizations (2024)
- **Final SUNSET Rule, Jan 08, 2021**
 - IMPACT: Threatens the stability of specific provision w/in IHS, CMS, CHIP that protect AI/AN people



New and Pending Federal Policy Changes Cont'd

- **Final Medicare Program Changes to Part B Payment Policies, OUD Coverage, Telehealth, Jan 01, 2021**
 - IMPACT: Finalized expansion of Medicare telehealth services for opioid use disorder and other substance use disorders, added telehealth physical and occupational therapy
- **Proposed Modifications to HIPAA**
 - IMPACT: Allows disclosure of PHI to social service programs, reduces paperwork, gives patients right to inspect PHI in person, improves electronic information sharing, eliminates the requirement to obtain a signature on a Notice of Privacy Practices
- **Final Revisions to Safe Harbors under the Anti-Kickback Statute (AKS), Jan 19, 2021**



• IMPACT: AKS does not provide safe harbors for I/T/U system, see TTAG priorities

Litigation

- **340B Contract Pharmacies**

- Beginning in Q3 2020, some pharmaceutical manufacturers stopped making discounted drugs available through the 340B program to more than one contract pharmacy
- Sep 28, 2020 NPAIHB Testimony in HRSA Consultation re impact on Northwest tribes without pharmacies, tribes rely on a network of pharmacies if they do not have a pharmacy (Jamestown S'Klallam, TTAG, NIHB letters)
- Dec 11, 2020 American Hospital Association+ sued HHS re 340B
- Dec 30, 2020 HHS Office of General Counsel Advisory Opinion issued, stating that drug manufacturers in the 340B program are required to deliver covered outpatient drugs to contracted pharmacies and to charge no more than the 340B ceiling price for those drugs.
- Jan 13, 2021 Eli Lilly, Sanofi, and AstraZeneca sued HHS over the General Counsel Advisory Opinion



Litigation Cont'd

- **Contract Support Cost (CSC) Claims**

- *Sage Memorial*, 2016 court decision finding that IHS owes CSC on health care services funded by third-party revenues.
- In *Swinomish* and *San Carlos Apache* cases, courts ruled in favor of the IHS. *Swinomish* decision currently on appeal in the D.C. Circuit court. Decision expected soon.
- IHS has agreed to pay CSC on most COVID-19 funding

- **Opioid Litigation**

- Over 3,000 plaintiffs, trying to hold opioid manufacturers/distributors accountable for the opioid epidemic
- Judge has identified specific cases to resolve claims and move toward settlement, including the Cherokee Nation's case.
- Some defendants, including Purdue Pharmacy, have filed for bankruptcy
- Movement toward a "global" settlement, Tribal Leadership Committee that HSDW serves on is working toward a "top-line tribal allocation"



Litigation Cont'd

- **Texas vs. United States (Affordable Care Act litigation)**
 - Case heard by the Supreme Court on Nov 10, 2020
 - Appears unlikely that the Court will strike down the entire Affordable Care Act
- **JUUL Litigation**
 - 16 Tribes, one tribal school, and one tribal health organization have sued JUUL (e-cigarette manufacturer) along with many non-tribal plaintiffs
 - Deceptive marketing, targeting tribal youth



Biden Administration Potential Appointments

- Deb Haaland (Pueblo of Laguna) – Secretary of Interior
- Dr. Don Warne, MD (Oglala Lakota) – Surgeon General
- Karina Walters, PhD (Choctaw) – Director, Office of Minority Health
- Mary Smith (Cherokee) – Office of Management/Budget Director or Deputy
- Victor Joseph (Native Village of Tanana)
- Aaron Payment, PhD (Sault Ste. Marie Tribe of Chippewa Indians)
- Terra Branson-Thomas (Muscogee (Creek) Nation)



NPAIHB Policy Resources

- Weekly Legislative and Policy Updates
- Regulations Tracker
- Weekly COVID-19 Call Lists
- 117th Congress Legislation Tracker
- Developing a TAC Call List
- Developing Policy Briefs



Upcoming Meetings

- | | |
|--|--|
| Jan 25th – 28th | Affiliated Tribes of Northwest Indians <i>virtual</i> |
| Jan 26th – Jan 28th | National Indian Health Board <i>virtual</i> |
| Feb 11th – 12th | National Tribal Budget Formulation FY 2023 <i>virtual</i> |
| Feb 21st – 25th | National Congress of American Indians <i>virtual</i> |
| Feb 25th – Feb 26th | Secretary's Tribal Advisory Committee <i>virtual</i> |



Questions or Comments



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health