

Litigation and Regulatory/Admin Update

April 20, 2021

NPAIHB Quarterly Board Meeting

virtual



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

Agenda

- Litigation Updates
- American Rescue Plan Act (ARPA) Funding Allocation Decision Review
- Federal Policy Updates
- NPAIHB Policy Resources
- Upcoming Regional and National Meetings
- CHAP Certification Board Update



Litigation-Contract Support Cost

- **Swinomish update**

- April 13, 2021: DC Circuit affirmed the district court holding and concluded that ISDEAA or Swinomish's contract do not require IHS to pay the Community contract support costs for health care services funded by third-party revenues.
- Potential next steps in this case: request for a rehearing by the panel or a rehearing by the full court en banc; or petition SCOUTS for a writ of certiorari
- Only one court has ruled in favor of tribal contractors on CSC claims in the 2016 Sage Memorial case (New Mexico)
- Tribes continue to litigate CSC claims across the U.S.—including in AK, SD, and WY.



Litigation-ICWA Update

- **Brackeen v. Haaland (formerly Brackeen v. Bernhardt)**
 - 5th Circuit Case that challenges the constitutionality of the Indian Child Welfare Act (ICWA)
 - April 6, 2021, 5th Circuit published its en banc decision upholds that ICWA is constitutional. Congress has the plenary authority to enact ICWA! (good news)
 - However, the decision is 325 pages long with a number of concerning parts of the opinion that misunderstands the unique relationship between the U.S. and Tribal Nations.
 - Chart on whether Brackeen applies to your case:
https://turtletalk.files.wordpress.com/2021/04/brackeen-v-haaland-decision-tree_april2021_pdf.pdf



Allocation Decision of American Recovery Plan Act (ARPA) IHS Funds

- \$6 billion for Indian Health Service
 - \$2 billion for lost reimbursements
 - \$1.92 billion to I/T facilities (CSC does not apply)
 - \$80 million to UIOs
 - \$500 million for additional health services/PRC
 - \$480 million to I/T facilities H&C and PRC
 - \$20 million to UIOs
 - \$140 million for IT, telehealth infrastructure, and EHR modernization
 - \$67 million to I/T facilities (CSC eligible)
 - \$70 million for IHS for EHR modernization
 - \$600 million for COVID-19 vaccination related activities
 - \$526 million for I/T facilities (CSC eligible)
 - \$50 million maintained by IHS for system improvements
 - \$1 billion to detect, diagnose, trace, monitor and mitigate COVID-19
 - \$960 million for I/T facilities (CSC eligible)



Federal Policy Updates

- HCA submitted 1115 Waiver Amendment to CMS
 - Public comments due 5/2/2021
- Biden Administration Resumes the White House Council on Native American Affairs
 - Secretary Haaland will serve as Chair.
 - First meeting scheduled for 4/23/2021
- NPAIHB joins 29 Regional and Tribal Organizations in proposing infrastructure investments in Indian Country



NPAIHB Policy Resources

- Weekly COVID-19 Call Lists (Mondays)
- Weekly Legislative and Policy Updates (Tuesdays)
 - Legislation Tracker
 - DTLL/Regulations Tracker
- **NEW** Monthly Tribal Advisory Committee updates



Upcoming Regional & National Meetings

Apr 22	OMH Listening Session on Center for Indigenous Innovation and Health Equity 1pm-2pm Pacific
Apr 22	NPAIHB Tribal Caucus re VA Elimination of Co-Pays for AI/AN Veterans 3pm-4pm Pacific
Apr 27-29	NIHB National Tribal Public Health Summit
Apr 27	NPAIHB Tribal Caucus re CHAP Certification Board DTLL 3pm Pacific – Zoom invite coming soon!
Apr 28	VA Tribal Consultation on Elimination of Co-Pays for AI/AN Veterans 10am-12pm Pacific
Apr 28	THD Discussion on HIPAA Privacy Policy Notice of Proposed Rulemaking 2:30-3:30pm Pacific
Apr 30	White House COVID-19 Health Equity Task Force 11am-2pm Pacific



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

Please contact Liz Coronado at ecoronado@npaihb.org or Veronica Smith at vsmith-contractor@npaihb.org for more information on any of these meetings

Portland Area Chap Certification Board (PACCB) Next Steps

- DTLL from Dean Seyler, April 14, 2021
- Packet prepared by NPAIHB
 - Copy of resolutions
 - Template letter for Tribes to respond
 - 4 Critical Component areas addressed:
 - Seating Plan
 - Board Candidacy Requirements
 - Term Limits
 - Representation of Tribes across the Portland Area
- Save the Date: Tribal Caucus
April 27, 2021 at 3pm



NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health



DEPARTMENT OF HEALTH & HUMAN SERVICES

PUBLIC HEALTH SERVICE

04/14/2021

Indian Health Service
Portland Area
1414 NW Northup St. Suite 800
Portland, OR 97209

Dear Tribal Leader:

I am writing to provide an update and request input on the Portland Area Office's efforts to implement the Community Health Aide Program (CHAP) policy under Indian Health Service Circular No. 20-06, that was approved in FY2020 for the tribes in the lower 48. Northwest Tribes have extensively planned in anticipation for the delivery of services by CHAP providers including behavioral health aides (BHA) and dental health aides (DHA). Therefore, I am seeking Tribal input as we develop and implement our Area specific program.

The Indian Health Service (IHS) is currently developing and implementing key program elements that will impact the program nationally including the establishment of the National Certification Board and publication of the National Standards and Procedures. Within the Portland Area IHS, we are planning for the creation of the Portland Area CHAP Certification Board (PACCB) and are exploring approaches for any necessary updates to Indian Self-Determination Education Assistance Act (ISDEAAA) agreements, while accounting for various needs between Direct Service, Title I and Title V programs.

The PACCB will be responsible for the: 1.) Review and recommendation for certification of future CHAP providers that will ultimately provide services across the Portland Area in both IHS and Tribal facilities and; 2.) The review and recommendation of certifying training programs operating within the Area. I am writing to request your input on critical components that will determine the boards makeup including seating plans, board candidacy requirements, term limits, and representation of Tribes across the Portland Area that include Title I, Title V, and Direct Service Tribes.

Therefore, I am conducting a virtual Tribal Consultation and would appreciate tribes providing any specific comments or questions about the implementation of CHAP in the Portland Area or specifically the establishment of a PACCB directly to my office by May 14, 2021. I appreciate your cooperation in advance and look forward to moving this Area program forward as timely as possible, recognizing many Portland Area Tribes already have professionals that are ready to work and are seeking certification, as well as intentions to expand current services and programs. If you have specific questions on this initiative you can contact Roney Won, Acting Special Assistant to the Director at 503-414-5555, roney.won@ihs.gov.

Sincerely,

Digitally signed by Dean M.
Seyler-S
Date: 2021.04.14 12:01:09 -0700

Dean M. Seyler
Director, Portland area IHS

Packet Materials

1) Response letter template:

[Insert Tribe]
 <Insert Date>
 Via electronic submission: dean.seyler@ihs.gov
 Deal M. Seyler
 Indian Health Service
 OREGON ADDRESS HERE

RE: D TTL Portland Area Community Health Aide Program (CHAP) and Portland Area CHAP Certification Board (PACCB), April 14, 2021

Dear Area Director Seyler,

On behalf of the <TRIBE> we provide these comments in response to the Dear Tribal Leader Letter (DTLL), dated April 14, 2021 initiating tribal consultation on the Portland Area Community Health Aide Program (CHAP) and the Portland Area CHAP Certification Board (PACCB). <TRIBE> appreciates the request for input on the Portland Area implementation of the CHAP policy under Indian Health Service Circular No. 20-06.

Pursuant to the DTLL, IHS is seeking consultation in four critical components that will determine board makeup:

- Critical Components: Seating Plan
- Critical Component: Board Candidacy Requirements
- Critical Component: Term Limits
- Critical Component: Representation of Tribes Across the Portland Area

<TRIBE> appreciate the opportunity to provide our recommendations on the Portland Area Office's efforts to implement the CHAP Policy.

GENERAL COMMENTS

With the establishment of the Northwest Portland Area Indian Health Board (NPAIHB) Tribal Community Health Provider Project (TCHPP), the Board project leading the implementation of the CHAP in the Portland Area, our Area Tribes have had the opportunity to provide direct input to guide the vision of the Portland Area CHAP and Certification Board planning and implementation. The TCHPP has educated Northwest Tribes about the extensive benefits of establishing a Community Health Aide Program tailored to Northwest Tribes and worked in close collaboration with Area Tribes to design recommendations for the Portland Area CHAP and Certification Board to best suit the needs of Portland Area Tribes.

In 2016, the NPAIHB approved expansion of the CHAP nationally and in the Portland Area by resolution. The TCHPP staff have presented all relevant program updates at NPAIHB quarterly board meetings, state meetings, and tribal meetings, hosted advisory work group meetings that sought participation and consultation from Area Tribes, and has provided educational opportunities through various NPAIHB platforms.



**NORTHWEST
 PORTLAND
 AREA
 INDIAN
 HEALTH
 BOARD**

Burns-Plateau Tribe
 Chehalis Tribe
 Coeur d'Alene Tribe
 Corvallis Tribe
 Coos, Siuslaw, &
 Lower Umpqua Tribe
 Cogswell Tribe
 Cow Creek Tribe
 Cowlitz Tribe
 Grand Ronde Tribe
 Hoh Tribe
 Jantavon 5'Klallam Tribe
 Kalispell Tribe
 Klaskanin Tribe
 Klamath Tribe
 Kootenai Tribe
 Lower Elwha Tribe
 Lummi Tribe
 Makah Tribe
 Muckleshoot Tribe
 Nez Perce Tribe
 Nisqually Tribe
 Neokack Tribe
 NW Band of Shooshoni Tribe
 Port Gamble 5'Klallam Tribe
 Puyallup Tribe
 Quileute Tribe
 Quinalt Tribe
 Samish Indian Nation
 Sauk-Squamish Tribe
 Shooswone Bay Tribe
 Shoshone-Banawa Tribe
 Siletz Tribe
 Skokomish Tribe
 Sookomish Tribe
 Spokane Tribe
 Squaxin Island Tribe
 Stillequamish Tribe
 Suquamish Tribe
 Swinomish Tribe
 Tillamook 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

RESOLUTION # 20-04-02

SUPPORT FOR CREATION OF A PORTLAND AREA COMMUNITY HEALTH AIDE PROGRAM CHAP CERTIFICATION BOARD

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 Northwest Portland Area Indian Health Board is a "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 ("member tribes" or "Portland Area Tribes"); 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 Northwest Portland Area Indian Health Board is dedicated to assisting and promoting the health needs and concerns of Indian people and its member tribes; and

WHEREAS, American Indians and Alaska Natives (AI/AN) have very limited access to health care services and are disproportionately affected by oral and behavioral health disease and these disparities are directly attributed to the lack of dental and behavioral health professionals in Indian communities, which has caused a serious access issue and backlog of dental and behavioral treatment among AI/AN people; and

WHEREAS, many of our member tribes have great difficulty and face significant challenges in recruiting medical, dental and behavioral health professionals to work in their communities that results in further challenges in ensuring comprehensive health care for tribal members; and

WHEREAS, the Alaska Community Health Aide Program (CHAP) has been in existence since 1964 as a program of the Indian Health Service (IHS); and

WHEREAS, the federally authorized Community Health Aide Program Certification Board (CHAPCB) was established and charged with formalizing the process for maintaining Community Health Aide/Practitioner training and practice standards and procedures; and

2) Copy of Resolution # 20-04-02

3) PACCB Representation Checklist:

Portland Area CHAP Certification Board Representation Checklist

*to be used with the PACCB Seating Chart, a single member could satisfy more than one criteria/category

- Direct Service Tribe
- Title I Tribe
- Title V Tribe
- Urban Indian Health Organization
- Rural Tribal Health Organization (from a tribe in a rural area)
- Urban Tribal Health Organization (from a tribe in an urban or more populated area)
- State Representation
 - Idaho
 - Oregon
 - Washington
- Large Land Based Tribal Health Organization
- Small Tribal Health Organization
- Eastern Washington/Oregon/Idaho
- Western/Coastal Tribes

4) PACCB 13 Member Seating Chart

5) Dear Tribal Leader Letter from Area Director Dean Seyler- April 14, 2021



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

Portland Area CHAP and Certification Board Response

- 4 Critical Components that will determine PACCB makeup
 - Seating Plan
 - Board Candidacy Requirements
 - Term Limits
 - Representation of Tribes Across the Portland Area
- **Plus one more critical component:**
 - Adopting the Standards and Procedures



Seating Plan Recommendations:

- Adopt the attached Portland Area CHAP Certification Board Seating Chart as recommended by the PACCB Workgroup.
- Adopt the nomination recommendations of the PACCB Workgroup incorporated in the Board Seating Chart.
- House PACCB at NPAIHB and staffed by the NPAIHB Tribal Community Health Provider Project.

Board Candidacy Requirements Recommendations:

- Adopt the attached Portland Area CHAP Certification Board Seating Chart as recommended by the NPAIHB PACCB Workgroup
- Adopt the following process for seating the first board as recommended by the NPAIHB PACCB Workgroup



Term Limits

Recommendations:

- The PACCB itself create a process through its bylaws for nominating each position of the PACCB to the Portland Area IHS Area Director.
- The PACCB, through its bylaws determine any term limits and other issues such as nominations, removals, meeting frequency, quorum requirements, technical advisors, executive sessions, rules of order to follow, notice of general and special meetings, codes of conduct, fiscal years, how to deal with vacancies, planned or unexpected, officers, executive committees, what the PACCB will and will not pay for (per diem, travel, etc. . .) and more.

Representation of Tribes

Recommendations:

- Do not tie specific tribal or geographic representation to specific seats.
- Use the attached Portland Area CHAP Certification Board Representation Checklist for the PACCB be used in tandem with the attached PACCB seating chart to ensure diverse tribal representation on the PACCB.



Standards and Procedures Recommendations:

- Adopt a process that directs the PACCB to accept (or reject) the draft Portland Area S&P as a basis for the CHAP in the Portland Area at their first meeting.
- The PACCB itself create a process through its bylaws for amending the Portland Area S&P as necessary.



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