

# National Indian Health Board



June 17, 2021

The Honorable Charles Schumer  
Majority Leader  
U.S. Senate  
S-221 U.S. Capitol Building  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
H-232 Capitol Building  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
S-230 U.S. Capitol Building  
Washington, DC 20510

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204 Capitol Building  
Washington, D.C. 20515

## ***RE: Indian Health Service Electronic Health Records Modernization***

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, and Minority Leader McCarthy:

On behalf of the National Indian Health Board (NIHB), and the more than 574 federally recognized American Indian and Alaska Native (AI/AN) Tribal Nations we serve, I am writing to bring to your attention a matter of concern to Tribal nations: the urgent need for modernization of the Health IT (HIT) infrastructure in the Indian health system. We come together to urge Congress to address these needs within the American Jobs Act. To date, congressional funding dedicated to building HIT infrastructure in Indian Country has been exclusively available to the Indian Health Service (IHS) with no direct pathway for money to reach Tribes or urban Indian health organizations and we have experienced that IHS is not willing to provide resources to fund Tribal HIT modernization efforts that are actively underway and years ahead of IHS. Many Tribes across the nation have invested millions of dollars to acquire commercial off-the-shelf systems or built their own systems, with some Tribes at least nine years ahead of IHS modernization efforts. To be sure, investment into the IHS-HIT infrastructure and capacity is a critical part of this work. And equally critical is the work that has been done and will be done by Tribes exercising self-governance by building their own HIT systems. Tribes will not receive any federal support for this work unless Congress assertively acts to appropriate sufficient resources for Tribal HIT development and ensures there is a legal pathway over which funding can flow directly to Tribes.

**As Congress considers investments into America's infrastructure, we urge you to prioritize funding on a recurring basis for HIT modernization for the Tribal health systems, the Indian Health Service (IHS), and for Urban health systems.**

**It is worthy of note that because of the urgent need to modernize their HIT systems,** many resource strapped Tribes and several urban Indian health organizations have had to purchase commercial-off-the-shelf (COTS) systems on their own. These systems are more efficient and

meet both HIT certification requirements and have interoperability capabilities to exchange data with several health information exchanges and platforms. As a result, there exists a growing and robust network of EHR platforms across the Indian health system. However, in keeping with the federal government's Trust responsibility for American Indian and Alaska Native health, it would be appropriate for Congress to create a mechanism through which, at minimum, a recurring portion of these investments be returned.

## **BACKGROUND**

Many IHS and some Tribal and Urban Indian health programs use the IHS health information management system called the Resource Patient Management System (RPMS). This system is severely outdated and does not meet many health industry standards and federal certification requirements. RPMS does not allow providers to share patient records with other providers across the Indian health system or other federal health programs like the Veterans Health Administration (VA). In addition, RPMS does not connect to CommonWell or other state or national Health Information Exchanges (HIE) used by other commercial EHRs. This outdated system directly impacts and imperils patient care.

For many years, IHS relied on VA for RPMS support, as RPMS builds off the VA's *Veterans Health Information System and Technology Architecture*, or VistA system. Because the VA decided to stop using VistA and moved to a COTS, the agency is no longer providing RPMS support. An improved HIT infrastructure will allow IHS, Tribal, and Urban providers to gather population data and more easily share records with other providers. This will facilitate a quick and accurate response to the needs of patients. While this function is critical to the day-to-day management of patient information in all health systems, we have learned through the COVID-19 pandemic that this function is lifesaving during a public health emergency. Indeed, the ability to easily share records can mean the difference between life-or-death.

In light of the challenges explained above, many Tribally-operated health programs have embarked on their own HIT modernization. These Tribal health programs have invested millions at their own expense to update or maintain their health technology. Finally, on April 1, 2021, the IHS published a Dear Tribal Leader Letter announcing their official decision to proceed with a full replacement of RPMS, something that many Tribes elected to do years ago at their own expense. Now the IHS modernization continues to move forward with funding provided by Congress, however the Tribal modernization has never been funded.

The federal government has a trust responsibility to ensure that Tribal citizens have access to quality health care. In order to fulfill this responsibility, HIT modernization must be developed and equally supported for both IHS direct operated programs and those Tribal health programs that have initiated their own HIT modernization.

## **OUR REQUESTS**

**NIHB urges Congress to fund IHS and Tribes and Tribal health programs on a recurring basis for HIT modernization.** NIHB requests Congress explicitly include legislative text that makes available HIT funds to both IHS and Tribes and Tribal organizations under the Indian Self-

Determination and Education Assistance Act (25 U.S.C. 5301 et seq.). In addition, NIHB requests Congress allow funds to be used by Tribes and Tribal organizations for corresponding maintenance, equipment, and training needs resulting from HIT modernization whether for a Tribal owned system or an IHS system.

### **Medicare Hardship Exemption**

One of the hardships imposed by the lack of HIT modernization is that many Tribal providers have had difficulty meeting the reporting requirements imposed by the Medicare program. While we appreciate that there was a temporary hardship exemption built into the Medicare Promoting Interoperability Program, HIT modernization in Indian Country has proceeded at such a slow pace that many of our providers still operate with outdated HIT. These providers, through no fault of their own, cannot comply with reporting requirements. **NIHB requests Congress extend the Hardship Exception to IHS, Tribal, and Urban health systems for the Medicare Promoting Interoperability Program for an additional five years due to RPMS's inability to meet the requirements.**

### **Recommended bill language for future HIT modernization funds**

**NIHB urges Congress to adopt the following bill language for the pending infrastructure package, or any future appropriations to support HIT modernization for the IHS, Tribal and Urban health systems:**

*\$XXX shall be for carrying out the Act of August 5, 1954 (42 U.S.C. 2001 et seq.) (commonly referred to as the Transfer Act), the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.), the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), and titles II and III of the Public Health Service Act (42 U.S.C. 201 et seq. and 241 et seq.) with respect to the Indian Health Service, of which—*

- (A) \$3 billion shall be for information technology, telehealth infrastructure, and the Indian Health Service and Tribal electronic health records systems;*
  - a. Funds made available under this subsection to Tribes and Tribal organizations under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) shall be available directly to Tribes and Tribal organizations through 638 contracting, and to compensate Tribes and Tribal organizations for maintaining, updating and/or having updated their Health Information Technology systems;*
  - b. Funds made available under subsection to Tribes and Tribal organizations under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) shall be distributed to Tribes and Tribal organizations according to the outcome and recommendations from meaningful Tribal consultation.*

In closing, the Tribes must be included in any effort to make meaningful infrastructure investments in the United States and HIT must be a key consideration in that effort. On behalf of the nation's 574 federally recognized Tribes, both American Indian and Alaska Native, NIHB looks forward

to working with you to address the structural and practical challenges that the Indian/Tribal/Urban health system faces and the opportunities to address these challenges in the American Jobs Act.

Thank you for your continued commitment to Indian Country.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm Smith".

William Smith  
*Valdez Native Tribe*  
Chairman  
National Indian Health Board