

Testimony of the National Indian Health Board

**Witness: Jonathan Nez, President of the Navajo Nation &
Member of the NIHB Board of Directors
Representing the Navajo Area**

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**Before the United States House of Representatives
Natural Resources Committee
Indigenous Peoples Subcommittee**

**Committee Hearing on
HR 5549 “Indian Health Services Advanced Appropriations Act”**



Yá'át'ééh. Chairman Grijalva, Ranking Member Westerman, and distinguished Members of the House Natural Resources Committee. My name is Jonathan Nez; I am the President of the Navajo Nation and a member of the National Indian Health Board (NIHB) of Directors. I testify today on behalf of the 574+ federally recognized Tribal nations and the member organizations the National Indian Health Board serves. I thank you for the opportunity to testify in support of ***HR 5549 ~ the Indian Health Services Advanced Appropriations Act.***

Founded by the Tribes in 1972, the National Indian Health Board serves all 574+ federally recognized American Indian and Alaska Native Tribes. NIHB works to strengthen Tribal sovereignty and ensure the federal government upholds its Trust and Treaty obligations to the Tribes for the improvement of health care, health outcomes and systems and public health infrastructure and capacity in Indian Country.

UNIFIED TRIBAL SUPPORT FOR ADVANCED APPROPRIATIONS

Tribes and NIHB are grateful for the bipartisan Congressional support for advance appropriations for the IHS as demonstrated in previous legislative and appropriations sessions. HR 5549 “Indian Health Services Advanced Appropriations Act” is a continuation of this bi-partisan effort. Additionally, NIHB is pleased to see, for the first time ever, advance appropriations were included in the President’s discretionary funding request. We urge Congress to capitalize on the alignment of Congressional support and the President’s request and include advance appropriations for IHS in this fiscal year’s appropriations bill.

Congress established IHS in 1955 as a step toward fulfilling the federal government’s Treaty and Trust obligations for health services for all American Indians and Alaska Natives (AI/AN). Since its inception, IHS has suffered chronic and perverse funding shortages that continue to adversely impact the quality and consistency of health services delivered to AI/AN People. The Indian health system faces chronic challenges that are made worse by endless use of continuing resolutions (CRs) and the persistent threat of government shutdowns. Of the four federal health care programs, IHS is the only one not protected from government shutdowns and CRs. This is because Medicare/Medicaid receive mandatory appropriations, and the Veterans Health Administration (VHA) receive advance appropriations starting a decade ago. In September 2018, the Government Accountability Office issued a report (GAO-18-652)¹ that noted “uncertainty resulting from recurring CRs and from government shutdowns has led to adverse financial effects on tribes and their health care programs.” As long as the uncertainty of CR’s continue, so too does the threat to an interruption of the treaty and trust obligation for the only class of Americans with a federal treaty right to health care.

We were pleased when the Bipartisan Budget Act of 2019 put an end to the most recent impact of sequestration. This reprieve, however, only lasted through the end of FY 2021 and once again is subject to this rule starting FY 2022. During the most recent government shutdown in 2019, which lasted 35 days, IHS was the only federal health care program directly harmed. The impact was devastating, yet entirely avoidable. Tribal facilities lost physicians because they could not keep working without pay. Doctor visits could not be scheduled because administrative staff were furloughed. Tribes took out *private loans* to be able to help pay to keep the lights on at their clinic. Contracts with private entities for sanitation services and facilities upgrades went weeks

¹ Retrieved: <https://www.gao.gov/assets/700/694625.pdf>

without payment which threatened Tribes' credit and putting patients' health at risk. During numerous consultations and Congressional testimony, Tribal leaders shared how administrative staff volunteered to go unpaid in order for their Tribe to have the resources to keep physicians on the payroll. These are just a few examples of the everyday sacrifices that widen the chasm between the health services afforded to AI/ANs and the nation at large.

IHS THE ONLY FEDERAL HEALTH SYSTEM NOT INSULATED FROM GOVERNMENT SHUTDOWNS

The threat of government shutdowns and the inordinate impact on IHS funding looms over Indian Country. Over the past two decades, only once has Congress passed the Interior budget on time – in FY 2006. Every other year, IHS has been subject to either short-term or full-year CRs or faced a government shutdown. This inevitably results in insecure funding and the perpetuation of chronic and perverse health disparities across Indian Country. As long as the threat of government shutdowns exists, the need for mandatory funding or advanced appropriations also exists. Advance appropriations for IHS is a critical necessity to ensure patient health is not comprised in the event of Congress's failure to enact a budget each year.

As a matter of health equity, we see a disproportionate and disparate impact on Indian Country. Healthcare services directly administered by the federal government, such as the Department of Veterans Affairs (VA), are funded by advance appropriations to minimize the impact of late and, at times, inadequate budgets. The decision of Congress to enact advance appropriations for the VA medical program provides a compelling argument for the effectiveness of advance funding a federally administered health program, which could easily be applied to the IHS. Beyond the efficiency inherent to advance appropriations, providing timely and predictable funding helps ensure the federal government's Trust responsibility is honored and carried out.

In FY 2010, the Veterans Health Administration (VHA) achieved advance appropriations. IHS, also provides direct medical care to fulfill legal promises made by the federal government. The promises to American Indians and Alaska Natives were made in Treaties and executive orders, and have been repeatedly reaffirmed in Supreme Court cases and legislation. Altogether, these create a trust responsibility that runs from the federal government to the Tribes.

IHS is one of four federal healthcare entities – the others being Medicare, Medicaid, and the Veterans Health Administration. Of these four, IHS is the only one created as the direct result of treaty obligations. IHS is also the most chronically underfunded of the four, and the only one vulnerable to government shutdowns and CRs. Congress recognized the inherent challenges of subjecting an agency that provides direct health services to the whims of the annual budget. That is why Congress authorized advance appropriations for the Veterans Health Administration nearly a decade ago. That authorization protected the Veterans Health Administration from the effects of the 2013 shutdown, the 2013 sequester, the January 2018 shutdown, and the 35-day government shutdown that devastated our nation over the holidays and into February of this year. Meanwhile, IHS felt the brunt of each and every one of those shutdowns. The 2013 budget sequester was especially damaging – slashing the IHS budget by 5%, or roughly \$221 million, on top of the impacts of that year's shutdown.

Other federally funded health programs such as Medicare and Medicaid are “mandatory” funding, meaning that these programs are automatically funded without annual appropriations,

and without the uncertainty seen in other areas of the budget. While mandatory funding would reduce uncertainty for the Indian Health system, this distinction can be confusing to some. The ultimate goal for IHS is to be classified as mandatory rather than discretionary. In the meantime, however, advanced appropriations is the best way to ensure the federal trust and treaty obligation does not go interrupted during government shut downs.

DEVASTATING IMPACT OF FEDERAL GOVERNMENT SHUTDOWNS ON IHS DELIVERY OF THE TRUST AND TREATY OBLIGATION FOR INDIAN HEALTH

During federal government shutdowns, Tribal leaders shared how they lost physicians in their rural reservation communities because they couldn't keep working without pay. Tribal members were unable to schedule follow-up visits with their doctor or get a referral because administrative staff were furloughed and purchase and referred service (formerly contract health) funding frozen. Tribes struggled to keep up to date with payments to outside providers and contractors. In rural Alaska where transportation of goods and services is already more expensive, government shutdowns interrupt the ability for advanced purchases and price containment to be honored which leaves Alaska Native Villages to pay premium rather than discounted rates. Road closures after heavy snowfall on the Navajo Reservation went days without being cleared, leaving Tribal members stranded and have even claimed the lives of some of our People.

Since the 2013 Federal Government Shut Down, NIHB, all of Indian Country has been unified in calling for Advanced Appropriations for the Indian Health Service as the federal government's primary realization of "health" portion of "health, education and social welfare" for which tribal nations ceded over 500 million acres of Indian land. While government shutdowns are a serious matter as Congress attempts to balance the federal budget, government shutdowns threaten to abrogate the treaty and trust obligation and put tribal communities at a serious disadvantage for delivering public and behavioral health services to our people. In addition to health care interruption, sanitation projects, public works, and law enforcement in Indian country are all hindered during government shutdowns.

The United States owes a special duty of care to Tribal Nations, which animates and shapes every aspect of the federal government's trust responsibility to Tribes. Rooted in treaties and authorized by the United States Constitution, the federal government's unique responsibilities to Tribal Nations have been repeatedly re-affirmed by the Supreme Court, legislation, executive orders and regulations. In 1977, the Senate report of the American Indian Policy Review Commission stated that, "[t]he purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people." This trust responsibility is highlighted recently in the Department of Health and Human Services (HHS) Strategic Plan FY 2018–2022 that reaffirmed.

...the Federal Government has a unique legal and political government-to-government relationship with Tribal governments and a special obligation to provide services for American Indians and Alaska Natives based on these individuals' relationship to Tribal governments².

² Retrieved: <https://www.hhs.gov/about/strategic-plan/2018-2022/index.html>

The trust responsibility establishes a clear relationship between Tribes and the federal government. The Constitution's Indian Commerce Clause, Treaty Clause and Supremacy clause, among others, provide the legal authority and foundation for distinct health policy and regulatory decision making by the United States when carrying out its unique trust responsibility to provide for the health and welfare of AI/ANs and support for the Indian health system that provides their care. While the understanding of the trust and treaty obligation is not new, federal government shut downs ignore this obligation as Indian Health Care funding comes to a halt. The Indian Health Service (IHS) is the principal federal entity charged with fulfilling the federal trust responsibility for healthcare; however, every branch and agency of the federal government is required to honor and uphold the trust obligations for health and public health to sovereign American Indian and Alaska Native (AI/AN) Tribal Nations and Peoples. These trust obligations are owed to American Indian and Alaska Native peoples and do not have an expiration date.

TRIBES UNIFIED IN SUPPORT OF ADVANCED APPROPRIATIONS FOR THE IHS

Following the devastating impact in 2013 of the 16-day government shutdown, NIHB moved quickly to pass *Resolution 14-03 in Support of Advance Appropriations for IHS*. Tribal leaders from across the country have repeatedly shared the real-life impacts of government shutdowns. Again, several Tribes reported losing key medical personnel due to frequent government shutdowns. As you must know, the physician and other health care provider workforce vacancies at IHS stands at approximately 70%. Recruitment and retention of medical professionals to work for Tribes on reservation communities and remote Native Alaskan villages is already difficult. The impact of government shutdowns on our ability to provide care to our People is a matter of life and death! In other examples, Alaska Natives, who rely on heating oil shipped by a river for Tribal health clinics, experience a profound loss of buying power if a government shutdown stops IHS funds and prevents heating oil from being bought in bulk at a lower rate. Further, if a shutdown persists, rivers freeze and further thwart needed oil transportation.

The irony with government shutdowns is that that the current amounts appropriated to Indian Country will not make or break the federal budget. Tribes, however, rely on the scarce federal funding that we do receive such that the impact on Indian Country is especially acute and disproportionately adverse instigating lasting consequences. Again, already a challenge for recruitment and retention of medical personnel in rural reservation and Alaska Native Village areas, the interruption of payroll for medical staff for direct service, 638 and self-governance tribes is devastating as doctors and medical professionals will simply move to positions where their livelihood is not put at risk.

Advance Appropriations for IHS is a bi-partisan and bi-cameral policy initiative that increases Tribal and federal government efficiency, reduces federal taxpayer waste, and saves Native lives by providing stable funding for health care services in Indian Country. Since Advance Appropriations are merely advance agreements to provide funding at a later date, they are a budget-neutral and flexible solution to the outsized impacts of funding disruptions on Indian Country. Congress can rescind or modify Advance Appropriations before they are obligated, allowing Congress to respond to changing circumstances based on real-world challenges. The result is continuity of care and services that reduce bureaucratic inefficiencies and uncertainty for IHS and Tribal Nations.

IMPACT ON NAVAJO NATION OF GOVERNMENT SHUTDOWNS

The Navajo Nation is the largest Native American tribe in the United States, with over 27,000 square miles of land and more than 400,000 tribal citizens, roughly half of whom reside on reservation land. Similarly, to any government, our Navajo citizens rely on our Tribal Nation to provide services, law enforcement, sanitation, and essential public works to our people. Given our size and geography, the Navajo Nation receives federal funding through combination of direct services, 638, and self-governance means. For the most part, when government shutdowns occur, our direct services provided by the federal government simply stop. Additionally, critical funding for 638 and self-governance funding dries up such that critical health services are interrupted due to necessary furloughs and even layoffs depending on the length of the federal government shutdown. As you know the Navajo Nation was especially hard hit during the worldwide Covid19 pandemic. Prior to that, like other tribal nations, we were suffering the impacts of the Opiate Epidemic. While there is no good time for government shutdowns to occur, it will take years following the Covid19 pandemic before tribal nations are resilient enough to withstand another government shutdown. Thus, the time is now for Congress to pass legislation that would advance appropriate Indian Health Services funding.

Advance Appropriations for IHS is a step towards fully honoring the treaty and trust obligation for health. A commitment that Congress will enact solutions that address the health inequities and ensure the health and wellness of Tribal communities. The insecurities surrounding discretionary funding for Indian Health threaten the stability of health care delivery in Indian Country. As we work together to restore promises, all options must be on the table for Congressional action.

CONCLUSION

The National Indian Health Board applauds Congress and the Biden Administration for their commitment to honoring the federal trust responsibilities. Advanced Appropriating the Indian Health Services would mark the first commitment by Congress to truly recognize the treaty and trust obligation for health care for Indian Country. We look forward to continuing to work with this Congress to support HR5549.

Ahéhee' and thank you for your consideration of my testimony today.