



April 3, 2020

The Honorable Alex Azar
Secretary of Health and Human Services
U.S. Department of Health and Human Services (HHS)
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

On behalf of the undersigned American Indian and Alaska Native (AI/AN) organizations, we write to urge you to promptly issue guidance on the manner in which Indian Health Service (IHS), tribal, and urban Indian (collectively I/T/U) health systems will access funding to ensure the health and wellbeing of AI/AN community members under provisions of H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Further, we urge you to ensure that funding under the Act is released quickly across all HHS agencies in a manner that guarantees access for all of Indian Country.

As you know, the United States government has federal trust responsibilities and treaty obligations to AI/AN tribal nations. These responsibilities are articulated in more than 350 treaties signed over nearly a century, the United States Constitution, federal statutes and regulations, Supreme Court case law, and presidential executive orders. It is critical that the federal government fulfill its responsibilities and obligations to tribal nations during the current crisis caused by the rapidly spreading 2019 novel coronavirus (COVID-19).

As of April 1, 2020, tribal nations, IHS, state public health agencies, and the Centers for Disease Control and Prevention (CDC) have collectively reported at least 276 confirmed COVID-19 cases in Indian Country. At just one urban Indian organization (UIO), there are at least 15 confirmed COVID-19 cases between patients and staff, with more than 50 test results pending. Due to significant reoccurring fiscal year funding disparities, notably in per capita federal spending on the I/T/U system versus other federal healthcare programs, tribal facilities are less prepared than states and local governments to respond to the COVID-19 epidemic.

The CARES Act includes significant direct funding for IHS, tribal nations, tribal organizations, UIOs, and health or behavioral health service providers that care for AI/ANs. These funds include \$1.032 billion for the IHS Services Account; a minimum of \$125 million set aside for public health through the CDC; a minimum of \$15 million set aside for mental and behavioral health services through the Substance Abuse and Mental Health Services Administration (SAMHSA); and a minimum of \$15 million set aside for health surveillance through the Health Resources and Services Administration (HRSA).

In order to ensure these funds are distributed in a rapid and comprehensive way that provides access for all of Indian Country, we make the following recommendations to the Department:

- Quickly engage in meaningful tribal consultation and urban confer:**

Moving forward, and consistent with the federal trust obligation and the Department's own tribal consultation policy, we strongly urge the Department to engage in immediate consultation with tribal nations and confer with UIOs. We are pleased to see that consultation and urban confer was held on April 1, 2020, regarding the more than \$1 billion in funding for IHS to support a wide range of COVID-19 response activities. SAMHSA, CDC, and HRSA must follow suit and immediately arrange for tribal input on the use of funding and mechanisms each agency will utilize to best serve tribal nations and UIOs.

In addition to holding government-to-government consultation, all agencies should act in accordance with the input provided by tribal leaders and UIO leaders. To this end, each agency should immediately provide records to participants and the public on what was suggested during a tribal consultation or an urban confer, specifically on the suggested allowable uses of funding and the type of funding mechanism each agency should consider in distributing funds. If the agency does not follow the guidance of tribal and UIO leaders, justification must be given to participants and the public.

- Ensure the appropriate tribal advisory committee (TAC) is included in agency decision-making as a supplement to tribal consultation and urban confer:**

In addition to tribal consultation and urban confer, each agency should seek the input of its respective TAC and the Secretary's Tribal Advisory Committee (STAC). We were pleased to see SAMHSA meet with the Tribal Technical Advisory Committee (TTAC) on Friday, March 27, 2020, and urge the CDC/Agency for Toxic Substances and Disease Registry TAC to convene its members to gather input on the \$125 million minimum set-aside for public health through the CDC.

We stand firm that convening these tribal subject matter experts cannot replace tribal consultation and urban confer, but instead functions to supplement those discussions.

- Implement ways to facilitate interagency transfers of funding that tribal nations can access to address COVID-19 and its impacts so that funding can be disbursed to tribal nations quickly.**

COVID-19 response funding will not serve its purpose if it is not quickly made available to tribal nations working on the ground. Time is of the essence as the federal government seeks to provide immediate resources and relief to Indian Country.

We ask that you develop and immediately implement measures to facilitate interagency transfers of funds that tribal nations can access to address COVID-19 and its impacts. Not all federal agencies are created equal when it comes to expeditious and broad distribution of dollars to tribal nations. Many agencies lack expertise with regard to quickly disbursing funds to Indian Country. Further, there are numerous barriers that exist within a variety of federal agencies and

their respective funding structures that will cause unequal and delayed access to funding intended for Indian Country. To facilitate rapid deployment of resources to tribal nations, it is critical that federal agencies are able to transfer funding for Indian Country to those agencies that are able to most quickly disburse such funding to tribal nations and American Indian and Alaska Native organizations.

We ask that you examine the authorities you currently possess for interagency transfers of funds in coordination with other relevant agencies and the White House. Funds made available to tribal nations should be transferred to the agency most able to quickly release those funds to a tribal nation.

We will also be working to secure additional transfer authority, including by coordinating with the White House regarding the possibility of securing an Executive Order, several Secretarial Orders, or an inter-agency MOA as well as legislative authorization. We request that you support our current efforts to pursue the following authorization language:

At a Tribal Nation's or Tribal Nation Organization's request or at the discretion of a Federal agency, any amount available under law to any Federal agency for any purpose related to addressing the coronavirus or its impacts may be withdrawn from one appropriation account and credited to another or to a working fund to facilitate the prioritized and rapid deployment of coronavirus relief within Indian country as that term is defined in 18 U.S.C. § 1151. This authority applies to Indian specific funding and also to other funding for which Tribal Nations or Tribal Nation Organizations are eligible recipients. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. A withdrawal and credit is made by check and without a warrant.

There have been many instances in the past when federal funding was made available to Indian Country but its disbursement was delayed due to bureaucratic hurdles. Such delays now would have disastrous consequences, and therefore, this situation requires creative thinking for ways to avoid delays. There have also been very positive examples, such as the 2009 ARRA inter-agency funding agreement between the Bureau of Indian Affairs and the Federal Highway Administration, which resulted in the rapid, transparent, and accountable delivery of funding to tribal nations for reservation roads projects.

- **Implement ways to disburse funding to tribal nations using existing funding mechanisms already in place when possible.**

As you know, many tribal nations already have in place funding mechanisms through which they receive federal funding. In order to facilitate rapid deployment of COVID-19 resources to tribal nations, it is critical that tribal nations and American Indian and Alaska Native organizations are able to receive funding through existing funding mechanisms, processes, agreements, and partnerships, including ISDEAA contracts and compacts. When paired with interagency transfer authority, tribal nations would be able to receive COVID-19 funding from across federal agencies through their existing funding mechanism.

We ask that you examine ways in which existing funding mechanisms can be utilized to quickly disburse to tribal nations funding that can be used to address COVID-19 and its impacts. For tribal nations or American Indian and Alaska Native organizations that do not currently have a funding mechanism in place, we ask that you expedite execution of such a funding mechanism in consultation and coordination with the relevant tribal nation or American Indian and Alaska Native organization.

We will also be working to secure additional authority to utilize current funding mechanisms for disbursement of COVID-19 funds, including by coordinating with the White House regarding the possibility of securing an Executive Order, several Secretarial Orders, or an inter-agency MOA as well as legislative authorization. We request that you support our current efforts to pursue the following authorization language:

Any and all amounts available under law to any Federal agency for any purpose related to addressing the coronavirus and its impacts, regardless of what agency they are apportioned to, must be made available, at the option of a Tribal Nation or a Tribal Nation Organization, to be transferred to Tribal Nations and Tribal Nation Organizations through any existing funding mechanism, including but not limited to contracts, grants, compacts, or annual funding agreements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), to facilitate the prioritized and rapid deployment of coronavirus relief within Indian country as that term is defined in 18 U.S.C. § 1151. Federal agencies shall amend existing funding mechanisms on an expedited basis to the extent necessary to disburse such funds.

We want to emphasize that use of such funding mechanisms should not affect the allocation of COVID-19 funding made available to each tribal nation. We only suggest that, once funding allocation determinations have been made, funding available to a particular tribal nation or American Indian and Alaska Native organization be made available through existing funding mechanisms at the option of the tribal nation or American Indian and Alaska Native organization.

As the COVID-19 situation rapidly evolves, the Department must uphold its responsibility to ensure the health and wellbeing of AI/AN Peoples. We stand ready to work with you and all other federal agencies to ensure the Indian Health Service, tribal nations and organizations, and UIOs are prepared to address the COVID-19 pandemic.

Sincerely,



Kevin J. Allis
Chief Executive Officer
National Congress of
American Indians



Stacy Bohlen
CEO
National Indian Health Board



Francys Crevier
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Kirk Francis
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cc: Robert R. Redfield, Director, Centers for Disease Control and Prevention
RADM Michael D. Weahkee, Principal Deputy Director, Indian Health Service
The Honorable Roy Blunt, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Rosa DeLauro, U.S. House of Representatives
The Honorable Tom Cole, U.S. House of Representatives
The Honorable Lisa Murkowski, U.S. Senate
The Honorable Tom Udall, U.S. Senate
The Honorable Betty McCollum, U.S. House of Representatives
The Honorable David Joyce, U.S. House of Representatives