

National Indian Health Board



March 7, 2022

The Honorable Brian Schatz
Chairman
Senate Committee on Indian Affairs
838 Senate Hart Office Building
Washington, DC 20510

The Honorable Lisa A. Murkowski
Vice Chair
Senate Committee on Indian Affairs
838 Senate Hart Office Building
Washington, DC 20510

Dear Chairman Schatz and Vice Chair Murkowski:

On behalf of the 574 federally recognized American Indian and Alaska Native Tribal nations and the Member Organizations the National Indian Health Board (NIHB)¹ serves, we write today regarding the nomination for the position of Director of the Indian Health Service (IHS). We urge the nomination and appointment of a qualified, American Indian or Alaska Native (AI/AN) IHS Director and we highlight the ambitious, necessary priorities the Tribes expect the new Director to embrace and on which we expect the Director to collaborate with Tribes and the organizations that serve them to deliver.

On February 24, 2022, the NIHB Board of Directors formally adopted Resolution #22-02 supporting and urging the appointment of a Director of the IHS. In this Resolution, the NIHB called upon the President to nominate an IHS Director to ensure that the IHS has a leader empowered to carry the imprimatur of the President and work with the Tribes to advance and implement bold, transformational policies necessary to honor the federal government's trust responsibility and treaty obligations and make measurable improvements in addressing the health disparities that American Indian and Alaska Native people face. The Resolution is attached.

NIHB fully supports a Senate-confirmed IHS Director that is American Indian or Alaska Native (AI/AN) with the requisite knowledge, proven experience in leadership, diplomacy and political acumen, and capabilities required to carry out the federal trust responsibilities for health and public health to Tribal nations. The absence of a Director impedes the ability of both the Tribes, the Administration as well as Congress to carry out a bold vision for the Indian, Tribal and Urban, or I/T/U, system for which the IHS is responsible.

¹ NIHB is a 501(c)(3), not-for-profit organization, providing health advocacy services, Tribal budget formulation coordination, timely information dissemination, and other services to all Tribal Nations. NIHB is governed by a Board of Directors consisting of representatives elected by the Tribes in each of the twelve IHS Service Areas. Whether Tribes operate their own health care delivery systems through contracting and compacting, or receive health care directly from the IHS, NIHB is their advocate.

Tribal leaders from across the nation have recently engaged in a dialogue regarding the qualities they require of a suitable nominee for the IHS Director. We offer comments based on that dialogue to ensure that the next IHS Director will advance the government-to-government relationship, honor the federal trust responsibility, uphold the treaty obligations to Tribal nations and work with the I/T/U system in a meaningful and respectful manner. The new Director will face many challenges and the opportunity for transformation awaits. The agency must have a permanent, competent leader who is capable and willing to advocate and act with diplomacy and tenacity, to respect Tribal nations and their voice, and to transform and reform institutional operations through innovative, effective, and sustainable systems-wide changes.

Advocate for AI/AN Health Care and Public Health Funding and Policies

Perhaps one of the greatest challenges facing the I/T/U system is the chronic and severe underfunding and budgetary instability for health care and public health services infrastructure and delivery. Since its creation in 1955, IHS has been chronically underfunded, with annual appropriations never exceeding 50% of demonstrated need. This underfunding has contributed to substandard investment in health delivery systems, some of the worst health disparities among any US population and a severe lack of public health infrastructure and services for our people. At the start of the COVID-19 pandemic these vulnerabilities were starkly exposed and while Congress moved decisively to invest into Tribal health and public health, the new Director must work to maintain these one-time investments. Specifically, the new Director must ensure that the Administration and Congress understand and act on the knowledge that the funding inequities and the chronic conditions they wrought remain and must be addressed through dramatic and sustained budget and funding transformation.

Highlights of Tribal Health and Public Health Priorities

Tribal Consultation

Diplomacy and the government-to-government relationship require that the Director actively seek Tribal engagement through formal Tribal Consultations. Robust, timely, and meaningful consultation with Tribal nations is an essential component to a true government-to-government relationship. Consultation, however, is meaningful where there is adequate, equitable, transparent and accountable engagement with Tribal participation a result of robust Tribally-led participation. The next Director must commit to supporting and engaging in such equitable and accountable consultation. Further, the Director must support and promote that Tribal voice on health care issues throughout the Administration.

Full Funding

The next IHS Director must also be an advocate for full IHS funding. For years, IHS has been funded at a rate that is far below its level of need and the results of this historical neglect can be seen in the disparities in health outcomes for AI/AN people. Addressing the inequities in funding must be an immediate priority of the Director. For every year that IHS is not fully funded, Indian health care status and opportunity falls farther behind, and existing inequities are further exacerbated.

The Director must also be proactive in working with Indian Country to ensure that full funding is achieved in a manner that addresses the needs of Tribal citizens. After all, full funding must also

include funding to address the historical neglect that Indian health system has faced and allow it to achieve parity with other health systems. To achieve this, it is going to be important for the IHS Director to understand the distinct and unique gaps and challenges faced by all Tribes. Any process that seeks to inform full funding must be led by Tribes and IHS must be an active listener. We need an IHS Director who understands this and can work collaboratively to achieve full funding in a meaningful and intentional way

Advance Appropriations for the I/T/U system

Achieving Advance Appropriations is an immediate Tribal priority and one that must be embraced and advanced by the next IHS Director. Reliable funding is necessary for continuity of care, operations, and certainty in planning and management. However, when federal funding is tied to completion of the appropriations process and continuing resolutions, it becomes unreliable. It also forces Indian health providers and systems into an untenable situation where funding to operate the I/T/U system is stopped or destabilized because of political actions or inaction beyond the control of the I/T/Us - who rely on annual appropriations to ensure seamless administration of health care services. For all of these reasons, advance appropriations was included in the President's 2022 budget for the first time in history and the Director must vigorously fight for this change.

Mandatory Funding

Because health care for Tribal nations is a Trust obligation of the federal government, Tribal nations propose that Indian health care be secured through mandatory federal funding, rather than through the discretionary, annual appropriations process. Substantial efforts from the Tribal nations, Director, the Administration, and Congress will be needed to achieve full and mandatory funding for IHS.

Implementation and Advocacy for Self Governance

The implementation of the *Indian Self-Determination and Education Assistance Act* has demonstrated that policies, programs, and other operations related to Indian health care services are significantly improved with Tribal management. Tribal nations and their communities are best served by a Director who will respect and recognize Tribal nations' sovereign right to self determination. The Director is required by law to promote and advocate for the full implementation of self governance throughout the I/T/U and Tribes also expect the Director to advance self governance throughout all operating divisions of the US Department of Health and Human Services.

Delivering Excellent Health Care to Direct Service Tribes

The next IHS Director must have the cultural competency and the vision to respect that those Tribes receiving their health care directly from the federal government do so as an act of sovereignty. The treaty and trust obligation to deliver excellent health care in modern parlance to the Direct Service Tribes is a fundamental responsibility of IHS. This responsibility was recently reaffirmed in August 2021 by the Eighth Circuit Court of Appeals in *Rosebud Sioux Tribe v. United States*. In that case, the Court stated, "[g]iven the special trust relationship between the Government and the Tribe, the history of reinforced promises, and the unacceptable state of healthcare provided ... the district court's order is a treaty-based declaration to define (and assign)

necessary to work with the Direct Service Tribes to ensure that IHS care is responsive to the diverse needs of Indian Country. There is no “one size fits all” solution and the IHS Director must respect the diversity and sovereignty of the Tribes that the agency serves. Improving care at the IHS facilities will require an IHS Director who prioritizes community outreach, listens and is responsive to the concerns of Tribal members, and works to orient IHS health care delivery in a manner that address the local needs of Tribes. The next IHS Director must listen to the Tribes and use their concerns as the foundation for improving health care delivery.

SDPI Permanency and Subject to 638 Contracting and Compacting

The Special Diabetes Program for Indians (SDPI) has proven to be one of the most effective public health programs in the country. However, its very existence has proven to be remarkably unreliable and subject to short term extensions because its funding is short term. For example, between September 30, 2019 and December 21, 2020 Congress reauthorized SDPI six different times for periods lasting only several weeks to several months. This inherent instability makes it difficult for Tribes to rely on the program. The next IHS Director will need to work with Congress to permanently authorize SDPI so Tribes can know for certain that the program will continue to exist into perpetuity.

Tribes and Tribal organizations have also repeatedly called for changing SDPI’s statutory framework to permit Tribes and Tribal organizations to receive SDPI funds through self-determination and self-governance contracts and compacts as authorized under ISDEAA. The next IHS Director must act consistently in favor of this Tribal position with Congress.

Health Information Technology

The next IHS Director will also inherit the Health Information Technology (IT) modernization process. This process has been fraught with failures to address or show responsiveness to Tribal concerns. Further, IHS is performing very poorly in demonstrating transparency or in providing timely and complete briefings to Tribes about Agency actions and decisions with appropriated funding. Tribes are currently using an outdated Health IT system that does not allow them to fully integrate with newer systems, which endangers continuity of care and the preservation of patient records. Health IT modernization must be an urgent priority and the next IHS Director must work collaboratively with Tribes to ensure that any new system fully meets their needs.

Public Health Investment

The COVID-19 pandemic placed a magnifying glass on the existing inequities facing Indian Country – particularly in health care and public health preparedness. AI/ANs were disproportionately impacted by the disease, an outcome driven by the historical neglect of public health infrastructure in Indian Country as well as grossly inequitable funding. The pandemic illustrated the need for Tribes to be able to develop a public health apparatus that empowers Tribes to protect the health and welfare of their people. The next IHS Director must be an active partner in the process of identifying need and building the Tribal public health infrastructure.

Advocate for Political Appointee to be AI/AN HHS Counselor to the Secretary

Tribal leaders have repeatedly requested the creation of a position and appointment of a Counselor to the Secretary for AI/AN Health Law and Policy as a political appointee within the HHS Immediate Office of the Secretary. To make informed policy decisions reflective of the importance

of the government to government relationship he represents with the Tribes, the Secretary needs a Counselor with an extensive background in federal Indian law and policy, including a deep understanding of Tribal nations and the relationship with the federal government.

The IHS Director must play a key role in advocacy for the creation of this role. Perhaps better than anyone in the federal government, the IHS Director knows about the need for Tribally informed advocate for health and public health policy and how ill-informed policies can detrimentally impact Indian Country. The IHS Director must work with Congress and the President to ensure that this role is created and seated soon.

Conclusion

We cannot overstate the importance of securing a competent, proven national leader to serve as the IHS Director to ensure quality health care and public health services are delivered through IHS. IHS is charged with providing health care to the millions of American Indians and Alaska Natives who receive healthcare through the I/T/U system. Careful consideration of the competencies, capabilities, and character of nominees for the IHS Director relative to advancing Tribal and Administration is critically important. Further, the Tribes have put forward a sound, bold and ambitious health and public health agenda highlighted here. The Tribes deserve an IHS Director of the highest caliber of leader that the I/T/U system warrants and deserves. The health and lives of millions of American Indians and Alaska Natives, from newborns to elders, is depending on it.

For more information or should you have questions, please contact Stacy A. Bohlen, Chief Executive Officer of the National Indian Health Board. She can be reached by phone at (202) 680-2800 or through email at sbohlen@nihb.org.

Sincerely,

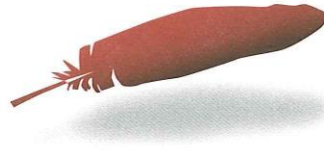
A handwritten signature in black ink, appearing to read 'Wm Smith', with a stylized flourish at the end.

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

Enclosure: NIHB Resolution 22-02

CC: Members, Senate Committee on Indian Affairs
Members, NIHB Board of Directors
Chief Executive Officer, NIHB

National Indian Health Board



National Indian Health Board Resolution #22 – 02

SUPPORT FOR THE APPOINTMENT OF A DIRECTOR OF THE INDIAN HEALTH SERVICE

WHEREAS, the National Indian Health Board (NIHB), established in 1972, serves all Federally recognized American Indian/Alaska Native (AI/AN) Tribal governments by advocating for the improvement of health care delivery to AI/ANs, as well as upholding the Federal government's trust responsibility to AI/AN Tribal governments; and

WHEREAS, the Federal government of the United States has a unique and special relationship with American Indians and Alaska Natives (AI/ANs) to provide health care as established through the U.S. Constitution, Treaties with Indian Tribes, U.S. Supreme Court decisions and Federal legislation; and

WHEREAS, the unmet health needs of AI/ANs are severe and the health status of AI/ANs is far below that of the general population of the United States, resulting in an average life expectancy for American Indians and Alaska Natives that is 4.2 years less than that for the U.S. all races population; and

WHEREAS, the Indian Health Service (IHS), an agency within the Department of Health and Human Services, addresses these disparities by administering health care to over 2 million AI/ANs residing in Tribal communities in 37 states, directly, or through contracts or compacts with Tribes and Tribal organizations under the Indian Self-Determination and Education Assistance Act; and

WHEREAS, IHS has not had a permanent director since the beginning of President Joe Biden's term; and

WHEREAS, the appointment of a director to IHS should demonstrate the Biden Administration's commitment to fulfilling the federal government's trust responsibility to protect the interests of Indian Tribes and communities.

THEREFORE BE IT RESOLVED, that the National Indian Health Board calls on President Joe Biden to nominate an IHS Director in order to ensure that IHS has a leader who can set forth a vision to address the health disparities that AI/AN people face.

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NIHB until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the Board, with quorum present, on the 24th day of February, 2022.



Chairperson, William Smith

ATTEST:



Secretary, Lisa Elgin