National Indian Health Board

April 9, 2021

The Honorable Raul Ruiz
United States House of Representatives
1319 Longworth House Office Building
Washington, DC 20515

RE: HR 1888 the Improving Access to Indian Health Services Act

Dear Congressman Ruiz,

On behalf of the National Indian Health Board, which serves more than 574 sovereign federally recognized American Indian and Alaska Native (AI/AN) Tribal Nations, we write to express our support for H.R. 1888, the Improving Access to Indian Health Services Act. This bill proposes long overdue technical fixes to Medicaid reimbursement rates and policy and makes permanent some of the flexibilities implemented in response to the ongoing COVID-19 pandemic that are desperately needed.

In 2016, Centers for Medicare & Medicaid Services (CMS) issued a Dear State Health Official (SHO) letter where it explained that only services rendered within the Four Walls of an Indian Health Service (IHS) or Tribal (known as I/T) clinic are eligible for Medicaid reimbursement at the all-inclusive rate. CMS's interpretation means that if a service is rendered *outside* the Four Walls of a clinic by an IHS or contracted provider, the provided health service is not eligible for the same reimbursement under Medicaid. It is common practice within the Indian health care system to use an ancillary site (like a school) or send providers into the community to deliver health care services. In the SHO letter, CMS offered a solution that requires two actions, one by the Indian health program and another by the State Medicaid Agency. If IHS or Tribal clinics want to receive the "clinic" rate for Medicaid services provided outside the four walls, the I/T facilities must first convert to Federally Qualified Health Centers (FQHC). The State also needs to file a State Plan Amendment (SPA) to grant the Tribal FQHCs authority to bill at the "clinic" rate. With CMS approval, the Indian health program can receive the encounter rate, and the State is automatically paid at the 100% FMAP.

This presents multiple issues – first, Indian health programs may not want to convert to FQHCs for reasons other than to receive the reimbursement, as the conversion itself is burdensome. Second, not all States have good working relationships with the Tribes, and if no relationship (or

a poor one) exists, the State may not see the benefits of amending its Plan. (One advantage is that Medicaid services to AI/ANs are reimbursed at 100 percent Federal Matching Assistance Percentage (FMAP)). Because this reimbursement depends on the State's action, it adds to the uncertainty for the Tribes, and in some ways, undermines the Tribes' status as sovereign governments.

This year CMS authorized an extension to its grace period through October 31, 2021, to allow more I/T clinics to convert to Tribal FQHCs. One can expect that another extension will be requested given the CMS solution's onerous burden. The solution CMS proposed in its SHO letter and subsequent Frequently Asked Questions (FAQs) was only a band-aid. The agency's actions do not sufficiently address the reimbursement parity Tribes seek for delivering Medicaid services in a community-centered way. NIHB and other Tribal Organizations have advocated for a permanent fix to CMS's Four Walls issue for more than three years.

The Improving Access to Indian Health Service Act would circumvent the need for a combined State-Tribal fix by amending the Social Security Act to include clinic benefits furnished outside of clinic facilities. It would do so and at the same time expand the applicability of the 100% FMAP. This means states would not see any increase in their expenditures and likely see savings to state budgets. Tribal clinics would not have to convert to FQHCs or wait for a State to amend its State Plan to get the clinic rate for such services. This bill will help Tribes reduce the regulatory burden on the I/T system and allow health care providers to serve their populations in ways that are tailored to the patient.

The extension of the 100% FMAP to Urban Indian Organizations (UIOs) in this bill will bring parity in Medicaid reimbursement with respect to other Tribal health facilities. The fixes in Improving Access to Indian Health Service are crucial to the success of the IHS, Tribal, and Urban Indian (I/T/U) Health system, and NIHB wholeheartedly supports this legislation.

On behalf of the Tribes, NIHB looks forward to working with you to address the structural and practical challenges that the I/T/U health system faces, both as a result of the COVID-19 pandemic and in addressing historical neglect of the Indian health and public health systems. Should you have any questions or require additional information, please contact NIHB Congressional Relations Manager, Josh Jackson at (202) 374-0885 or jjackson@nihb.org.

Sincerely,

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