

NPAIHB
Legislative & Policy
Update

AIHC Quarterly Delegates Meeting

May 9, 2019

NATIVE Project

Spokane, WA

Report Overview

1. Hot Topics
2. Legislation
3. Future IHS Appropriations & Budget Formulation
4. New & Pending Federal Policies
5. Litigation
6. Upcoming National/Regional Meetings



Hot Topics

- Threat to the Affordable Care Act and Indian Health Care Improvement Act
- SDPI Reauthorization and Funding
- CMS Work Requirements
- AI/AN Health Resource Advisory Committee
- Eric Miller confirmed to U.S. Ninth Circuit Court of Appeals by Senate Judiciary Committee on 2/26/19.
- Hill Visits- Recent and Future



Consolidated Appropriations Act, 2019 (“Omnibus”) (H.J.R. 31)

- The President signed the FY 2019 Omnibus on February 15, 2019 which averted another government shutdown (Senate 83-16; House 300-128)
 - 7 spending bills; 5 previously passed
 - \$328 billion spending package
- For the Indian Health Service (IHS) \$5.8 billion
 - \$4.98 billion for IHS for services and facilities (\$162 million or 3.4%↑)
 - \$822 million for mandatory contract support costs





Omnibus FY 2019

IHS Appropriations Cont'd

- Clinical Services \$136m increase above FY 2018 level
 - Hospitals and Clinics \$102m or 5% ↑
 - Dental Services \$9.4m or 4.8% ↑
 - Mental Health \$5.4m or 5.4% ↑
 - Alcohol and Substance Abuse \$17.8m or 7.8% ↑
 - Purchased and Referred Care \$2.1m or .2% ↑ - includes a mandate by Congress as to allocation of future increases
 - No new funding for Indian Health Care Improvement Fund



Omnibus FY 2019

IHS Appropriations Cont'd

- Preventative Health \$4.8m increase above FY 2018 enacted level
 - Public Health Nursing \$4.1m or 4.8% ↑
 - Health Education \$697k or 3.5% ↑
 - Community Health Representatives- level, no increase
- Other Services \$9.2m increase above FY 2018 enacted level
 - Urban health \$2m or 4.1% ↑
 - Indian Health Professions \$8m or 16.2% ↑
 - Tribal Management - level, no increase
 - Direct Operations- -\$800k transferred to Dental Services
 - Self Governance- level, no increase



Omnibus FY 2019

IHS Appropriations Cont'd

- Facilities \$11.3m increase over FY 2018 enacted level
 - Maintenance & improvement –level, no increase
 - Sanitation Facilities – level, no increase
 - Health Care Facilities Construction –level, no increase
 - Includes \$15m for small ambulatory grant program
 - Facilities & Environmental Support - \$11.3m or 4.7% ↑
 - Equipment – level, no increase
- Contract Support Costs \$822m, indefinite appropriation

Omnibus FY 2019

Other IHS Authorities and Reports to Congress


- **Opioid Grants-** \$10m increase to create special behavioral health pilot program
- **Maternal and Child Health** – IHS’s top priority is to hire a National Maternal/Child Health Coordinator with report to Congress within 90 days of hiring position
- **Health Care Facilities** – IHS is directed to publish the gap analysis required under H.R. 115-238 within 180 days
- **IHCIA Demonstration Authorities** – IHS is directed to identify criteria for ranking projects funded through IHCIA demonstration authorities should funds become available in the future within 180 days





Not Invisible Act (H.R. 2438)

- Introduced by Rep. Deb Haaland (D-NM) on 5/1/19.
- Establishes an advisory committee on violent crimes and would establish best practices for law enforcement on combatting the missing and murdered AI/ANs epidemic.
- **Status:** Referred to House Judiciary Committee and Natural Resources Committee



Tribal Veterans Enhancement Act (S.1001)

- Re-introduced by Sen. John Thune (R-SD) on 4/23/19.
- Amends IHClA to allow IHS to cover the copayment cost of an AI/AN veteran receiving medical care at the VA.
- **Status:** Referred to House Judiciary Committee and Natural Resources Committee

PrEP Assistance Program Act (H.R. 1643)

- Introduced by Rep. Bonnie Watson-Coleman (D-NJ) on 3/8/19.
- Establishes a Grant Program under HHS to provide grants to tribes, states and territories for pre-exposure prophylaxis (PrEP) programs.
- **Status:** In Committee



Violence Against Women's Act of 2019 (H.R. 1585)


- Introduced by Rep. Karen Bass (D-CA) on 2/14/19.
- Reauthorizes the Violence against Women's Act of 1994
- **Status:** 4/4/19- Passed House (263-158)



Department of Veterans Affairs Tribal Advisory Committee of 2019 (S.524)


- Introduced by Sen. Jon Tester (D-MT) on 2/14/19 and referred to Committee on Veterans' Affairs.
- Establishes a Department of Veterans Affairs (VA) Tribal Advisory Committee (TAC).
- **Status:** In Committee





Assessment of the Indian Health Service Act of 2019 (S. 498)

- Introduced by Sen. Mike Rounds (R-SD) on 2/14/19 and referred to Committee on Indian Affairs.
- Calls for the Secretary of HHS to contract an assessment of IHS' health care delivery systems and financial management process of IHS facilities to improve care for patients.
- **Status:** In Committee



Native American Suicide Prevention Act of 2019 (S. 467 & H.R. 1191)

- S. 467 introduced by Sen. Elizabeth Warren (D-MA) on 2/13/19 and referred to HELP Committee.
- H.R. 1191 introduced by Rep. Raul Grijalva (D-AZ) on 2/13/19 and referred to Energy and Commerce Committee.
- Amends section 520E of the Public Health Service Act to require States and their designees receiving grants for development and implementation of statewide suicide early intervention and prevention strategies to collaborate with each Federally recognized Indian tribe, tribal organization, urban Indian organization, and Native Hawaiian health care system in the State.
- **Status:** In House and Senate Committees.



Advanced Appropriations Bills for BIA/BIE/IHS and IHS only

- **S. 229 & H.R. 1122** – Advanced Appropriations for BIA and BIE at DOI and IHS at HHS.
 - Senate Bill introduced by Sen. Tom Udall (D-NM) on 1/25/19.
 - House Bill introduced by Introduced by Rep. Betty McCollum (D-MN-4) on 2/8/19.
 - **Status:** Both referred to respective House and Senate Committees.
- **H.R. 1135** –Advanced Appropriations for IHS.
 - House Bill introduced by Rep. Don Young (R-AK- At Large) on 2/8/19; referred to Committees.
 - Senate Bill anticipated to be introduced.
 - **Status:** In House Committees.

Tribal HUD-VASH Act of 2019 (S. 257)

- Introduced by Sen. Jon Tester (D-MT) on 1/29/19.
- Provides rental assistance for homeless or at-risk Indian veterans, and for other purposes.
- **Status:** 3/28/19- Placed on Senate Legislative Calendar under General Orders; Indian Affairs-Reported by Sen. Hoeven without amendment



PROGRESS for Indian Tribes Act (S.209) (H.R. 2031)

- S. 209 Introduced by Sen. John Hoeven (R-ND) on 1/24/19 and referred to Indian Affairs Committee.
- H.R. 2031 introduced by Rep. Deb Haaland (D-NM) on 4/2/19 and referred to Committee on Natural Resources.
- Amends the Indian Self-Determination and Education Assistance Act (ISDEAA) to establish and further self-governance by Indian Tribes under DOI.
- **Status:** 1/29/19- Reported through Indian Affairs.





Community and Public Health Programs Extension Act (S.192)

- Introduced by Sen. Lamar Alexander (R-TN) and referred to Senate HELP Committee on 1/18/19.
- Provides for funding extensions through 2024 for:
 - Special Diabetes Program,
 - Community Health Centers,
 - National Health Service Corps, and
 - Teaching Health Centers that operate GME programs.
- **Status:** In Committee

Pay Our Doctors Act of 2019 (H.R. 195)

- Introduced Rep. Markwayne Mullin (R-OK) and referred to Appropriations Committee on 1/3/19.
- Provides full-year appropriations for the Indian Health Service in the event of a partial lapse in appropriations and for other purposes
- **Status:** In Committee





Future IHS Appropriations & Budget Formulation



FY 2020 IHS Appropriations

- National Tribal Budget Formulation Workgroup recommended over \$7 billion for IHS for FY 2020 (36% increase over FY 2017 enacted level).
- Available at:
https://www.nihb.org/legislative/budget_formulation.php
- House Interior, Environment and Related Agencies Appropriations Subcommittee Public Witness Hearings – March 6 and 7
 - Andy Joseph, Jr., Chairman testified
- House hearings on IHS appropriations – week of **April 8.**
- Senate hearings on IHS appropriations- **May 8 (Testimony due May 17)**



FY 2020 President's Recommendations for IHS

- On March 11, 2019, the President released the FY 2020 for IHS.
 - Congressional Justification (CJ) for FY 2020 with detail released on March 25, 2019.
- Per our annual analysis of President's Budget:
 - President's budget and CJ use 2019 annualized CR level, not FY 2019 enacted level.
 - Only recommends an \$82.6m increase above FY 2019 for services and facilities (1.7%) above FY 2019 enacted level.

FY 2020 President's Recommendations for IHS

- Cuts included:
 - Zero funding for Health Education and Tribal Management Grants
 - \$39 m cut to Community Health Representative program
 - \$2.5 m cut to urban health programs
 - \$14 m cut to Indian Health Professions
 - \$1 m to Self-Governance
 - \$78m cut to Health Care Facilities Construction
 - \$647k cut to Facilities & Environmental Support





FY 2020 President's Recommendations for IHS

- Recommendations for FY 2020 include:
 - \$2 m for quality and oversight
 - \$8 m for recruitment and retention
 - \$20 m for expansion of the Community Health Aide Program (CHAP)
 - At budget formulation meeting, tribes clearly expressed that should not be at expense of CHR program.
 - \$25 m for establishing an Eliminating Hepatitis C and HIV/AIDS in Indian Country initiative
 - **New line item:** \$25 m for an initial investment in modernizing the Electronic Health Record System



FY 2021 IHS Budget Formulation

- National Tribal Budget Formulation Workgroup met on March 14-15, 2019 in Washington D.C. and recommended full funding for IHS at \$37.61 billion to be phased in over 12 years.
- For FY 2021, a total of \$9.1 billion for IHS is requested. Includes:
 - \$257 m for full funding of current services
 - \$413 m for binding fiscal obligations
 - \$2.7 b for program increases (46% above FY 2019 enacted level)
 - And more!

FY 2021 IHS Budget Formulation Cont'd

- Other recommendations for IHS:
 - Support preservation of Medicaid, IHClA and Indian-specific provisions of the ACA.
 - Fund critical infrastructure investments (Health IT/HCFC)
 - Exempt Tribes from Sequestration
 - Support Advance Appropriations
 - Allow federally-operated health facilities and IHS headquarters to use federal dollars efficiently and adjust programmatic funds flexibly across accounts at the local level
 - Support funding of tribes outside of grants based system.
 - Permanently authorize SDPI and increase funding to \$200 m per year plus annual inflationary increases.
 - Take adequate steps to fully address 105(I) leasing obligations and work proactively with Congress to ensure its full payment as an indefinite appropriation.
- Available at:
https://www.nihb.org/legislative/budget_formulation.php






New & Pending Federal Policies

HHS Office of HIV/AIDS and Infectious Disease Policy STD Federal Action Plan

- Comments Due: 6/3/19
- Federal Notice Issued: 5/3/19
- HHS seeks input on strategies to inform the development of the STD Federal Action Plan and strategies that can be implemented by federal agencies to improve efficiency, effectiveness, coordination, accountability, and impact of the national response to increasing rates of STDs.






HHS Office of National Coordinator (ONC) 21st Century Cures Act and CMS Interoperability, Information Blocking and the ONC Health IT Certification Program

- Comments Due: 6/3/19 (EXTENDED)
- Federal Notice Issued: 3/4/19
- Proposes adoption of standardized application programming interfaces (APIs) to allow patients to securely and easily access electronic health information.
- ONC requests clear and concise proposals that include data and specific examples.




Pending Responses from HHS

- **HHS RFI on National HIV/AIDS Strategy and National Viral Hepatitis Action Plan;** issued 2/8/19; comments submitted.
- **HHS Initiative: Ending the HIV Epidemic;** announced 2/5/19; comments submitted.
- **HHS Pain Management Best Practices Inter-Agency Task Force Draft Report on Pain Management Best Practices;** issued 12/31/18.
- **HHS Tribal Consultation Policy;** DTLL 10/22/18; comments submitted.
- **HHS Draft Strategy to Reduce Regulatory and Administrative Burden of Health IT and EHRs**



CMS New Opportunities to Test Innovative Integrated Care Models for Dually Eligible Individuals

- Effective: 6/24/19
- SMD Letter for states to partner with CMS to test innovative approaches to better serve those who are dually eligible for Medicare and Medicaid.
- Approaches: Capitated Financial Alignment Mode, Managed Fee-for-Service Model, and State-Specific Models.



CMS Final Rule for 2020 Annual Notice of Benefit and Payment Parameters Certification Program

- Effective: 6/24/19
- Federal Notice Issued: 4/8/19
- Released final annual notice of benefit and payment parameters for 2020. The final rule lowers user fees, encourages use of lower cost generic drugs, promotes market stability and consumer choice.

CMS New Guidance on State Implementation of Home and Community Based Services Regulation Issued in 2014

- Issued: 3/22/19
- Provides updated guidance to State Medicaid Directors on the 2014 Home and Community Based (HCBS) regulation, which impacts older adults and adults with disabilities eligible for Medicaid.
- Available at: www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf



Pending Responses and/or Ongoing Issues with CMS

- **CMS Medicaid and CHIP Managed Care Proposed Rule - comments submitted 1/28/19.**
- **CMS Work Requirements**
- **CMS Four Walls Limitation- FAQs**





Recent IHS DTLLs

- **IHS is Accepting Applications for FY 2019 Small Ambulatory Program; DTLL on 4/23/19; Due 6/28/2019**
- **Automated Tool for Electronically Submitting CHEF Requests and Training Schedule; DTLL on 3/15/19.**
- **Tribal Consultation on Long and Short Term Options for Meeting ISDEAA 105(I) Requirements; DTLL on 3/12/19; Comments submitted 5/3/19.**
- **Final IHS Strategic Plan FY 2018-2022 Released; DTLL on 2/27/19.**
- **IHS and HRSA announce availability of new funding of \$15 million through the National Health Service Corps; DTLL on 1/16/19.**

HHS/IHS Health IT Modernization Project

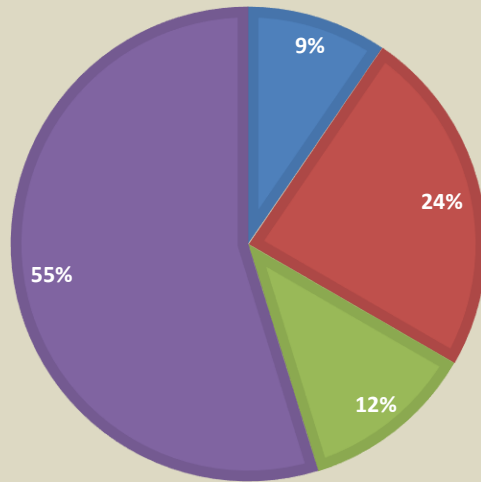
- PURPOSE: Evaluate the current state of HIT across the I/T/U and identify alternatives to aid future HIT decisions.
- SEPTEMBER 2019: Final IT Roadmap Strategy and recommendations will be provided.
- DATA CALL:
<https://redcap.uits.iu.edu/surveys/index.php?s=DYKDTEJXHC>
- SITE VISITS: By May 15, 5 out of 14 tribal sites have been visited.
- SITE VISITS:
 - 1) Port Gamble S’Klallam Tribe,
 - 2) Puyallup



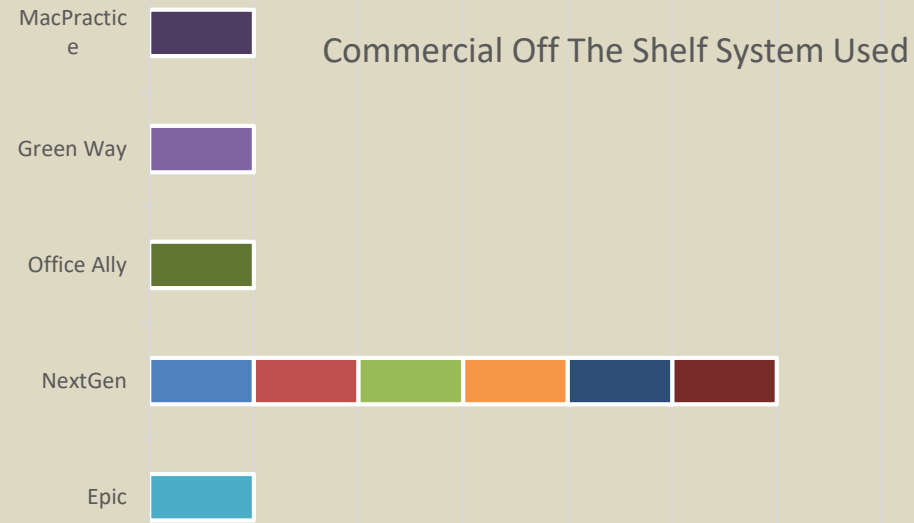
NPAIHB EHR Survey Responses Snapshot

WHAT EHR SYSTEM IS USED

- NO CLINIC
- No, we use another system
- Yes, RPMS and another system
- Yes, RPMS only



Commercial Off The Shelf System Used



- Coeur d'Alene Tribe
- Confederated Tribes of Siletz Indians
- Coquille Indian Tribe
- Cow Creek Band of Umpqua Tribe of Indians
- Jamestown S'Klallam Tribe
- Klamath Tribes
- Port Gamble S'Klallam Tribe
- Puyallup Tribe
- Stillaguamish Tribe
- Upper Skagit Tribe





Pending IHS Responses

- **IHS notice about IHS Headquarters Reorganization; DTLL 12/20/18.**
- **Update on the Mechanism to Distribute Behavioral Health Initiative Funding; DTLL on 12/11/18; comments submitted.**
- **Tribal Consultation on PRC implications for the entire State of Arizona if identified as a PRCDA/CHSDA; DTLL on 11/20/18; comments submitted.**



Pending IHS Responses Cont'd

- **Special Diabetes Program for Indians** funding distribution for FY 2019; DTLL issued 7/12/18; comments submitted.
 - *Follow-up:* Stated that RADM Weahkee to ask Area Directors to meet with tribal leaders to discuss the Area's proposed budget for its share of the SDPI FY 2019 data infrastructure fund.
- **IHS Sanitation Deficiency System (SDS);** DTLL on 7/2/18; comments submitted.



Pending IHS Responses Cont'd

- **IHS Manual, PRC Chapter Revisions;**
DTLL on 5/18/18; comments submitted.
- **Contract Support Costs – Indian Health Manual, Chapter 3 CSC,** rescission of 97/3 split language; DTLL 4/13/18; comments submitted.
- **CHEF Regulation** – comments submitted.
 - *Redding Rancheria* case update



HRSA Shortage Designation Modernization Project (SDMP) Updates

- HRSA SDMP will update existing Auto-HPSA designations in Summer 2019.
 - New Auto-HPSA scores will be applicable to the 2020 National Health Service Corp application cycle.
 - Clinics will be able to update their HPSA score in the online portal after the national rollout.
 - Clinics should collect and submit facility-specific data and supplemental data to increase scores in replacement of the ACS data.
- Upcoming HRSA Shortage Designation Modernization Project Webinar



VA Updates

- GAO Report: IHS/VA Coordination of Services
- VA and SAMHSA Mayor's Challenge to prevent suicide among service members, veterans and their families.
 - Goal to eliminate suicide by promoting comprehensive public health approach to empower communities to take action.
- June 2019 VA Community Care Program implementation..
 - Veterans will be able to access urgent, non-emergency care for non-life-threatening conditions in VA's network of community providers.
- VA DTLL: Requests comments on implementation of VA MISSION Act; DTLL on 4/16/19; Comments Due 6/10/19 (Comment Deadline Extension).

Brackeen v. Bernhardt

Challenge to ICWA

- On 10/5/18, Judge Reed O'Connor (USDC ND Texas) ruled that ICWA is unconstitutional in *Brackeen v. Zinke*.
- Found that *Morton v. Mancari* rule does not apply because ICWA extends to Indians who are not members of tribes.
- ICWA struck down in violation of equal protection.
- Appealed to USCA for the Fifth Circuit and now titled, *Brackeen v. Bernhardt*.
- Many tribes and tribal organizations (including NPAIHB) joined the amicus brief.
- On March 13, 2019, oral argument occurred before a panel of 3 judges.
- Decision pending in Fifth Circuit.





Texas v. United States

Challenge to Affordable Care Act

- On December 14, 2018, Judge Reed O’Conner (USDC ND Texas) found that Congress’ 2017 elimination of the ACA individual tax penalty for non-compliance with not having health insurance resulted in the mandate invalid.
- Reasoning:
 - In the absence of a tax, Congress has no authority to issue a mandate.
 - Individual mandate essential to the rest of the ACA, not “severable”
- If ACA struck down, then ICHIA could also be struck down.
- Appealed to USCA for the the Fifth Circuit.
- Tribes and tribal organizations(including NPAIHB) joined an amicus brief.
- On March 25, 2019, a coalition of states intervened in the case in order to defend the ACA while Department of Justice filed a two-sentence letter with the court announcing that the U.S. had changed its position in the litigation.
- Decision pending in the Fifth Circuit.

Opioid Litigation

- All federal court lawsuits have been combined in multi-district litigation under Federal District Judge Dan A. Polster (USDC-ND Ohio)
- Over 100 tribes and tribal organizations joined 1,000 state and local governmental plaintiffs in the litigation.
- Tribal Amicus Brief: 448 tribes and tribal organizations signed on and provided statements of interest (NPAIHB, ATNI, NCAI, and NIHB).
- **Status:** Two Tribal Cases selected as bellweather cases --- Muscokee (Creek) Nation and Blackfeet Tribe. On April 1, 2019, Magistrate Judge released his Report and Recommendations that Judge Polster permit most of the tribal claims to proceed. Judge Polster's decision on tribal bellweather cases anticipated in May.



Upcoming National/Regional Meetings



HHS Annual Tribal Budget Consultation , Washington, DC

May-July 2019

- NIHB National Tribal Public Health Summit, May 13-15, 2019, Albuquerque, NM
- NIHB AI/AN National Behavioral Health Conference, May 15-17, 2019, Albuquerque, NM
- Purchased and Referred Care Meeting, May 16-17, 2019, Phoenix, AZ
- ATNI Mid-Year Meeting, May 20-23, 2019, Spokane, WA
- DSTAC Quarterly Meeting, May 29-30, 2019, Rapid City, SD
- NCAI Mid-Year Conference & Marketplace, June 23-26, 2019, Reno, NV
- IHS Budget Formulation Evaluation FY 2021/Planning FY 2022, June 26-28, Reno, NV
- Region 10 HHS Tribal Consultation, July 9-11, 2019, Spokane, WA
- NPAIHB/CRIHB Joint QBM, July 15-19, 2019, Sacramento, CA



Discussion and Questions



HHS Joint Tribal Advisory Committee, Washington, DC.