Maniilaq Association
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Testimony Presented to the House Natural Resources Subcommittee on
Indian and Alaska Native Affairs
Regarding HR 3229
Legislation to Authorize Advance Appropriations for the Indian Health Service

July 15, 2014

The Maniilaq Association is an Alaska Native regional non-profit organization representing twelve tribes in Northwest Alaska, providing health services through an Indian Self-Determination Act Self- Governance agreement with the Indian Health Service (IHS). We have been active for some time in advocating for legislation that would bring stability and certainty to the Indian Health Service budget by changing its funding to an *advance appropriations* basis, and thus we support H.R. 3229, legislation that would make this possible. This is what Congress has done with regard to the Veterans Administration medical accounts, and we ask for comparable treatment with regard to the IHS. We prepared in 2012 a white paper on the issue of IHS advance appropriations and attach it.

We are so proud and thankful to our Alaska delegation – Representative Young and Senators Murkowski and Begic for introducing legislation, H.R. 3229 and S. 1570, to authorize advance appropriations for the IHS.

There is momentum in Indian Country in recognizing and supporting advance appropriations for the IHS and point to resolutions in support of it by the National Indian Health Board, National Congress of American Indians, United South and Eastern Tribes, the American Medical Association, and a steadily increasing number of individual tribes enacting supportive resolutions.

The Need for Indian Health Service Advance Appropriation. The Federal health services to maintain and improve the health of American Indians and Alaska Natives are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian and Alaska Native people. Since FY 1998 there has been only one year (FY 2006) when the Interior, Environment and Related Agencies appropriations bill has been enacted by the beginning of the fiscal year. The lateness in enacting a final budget during that time ranges from 5 days (FY 2002) to 197 days (FY 2011). In the last four fiscal years, the IHS appropriations have been signed into law far beyond the beginning of

the fiscal year by -- 197 days late for FY 2011; 84 days late for FY 2012; 178 days late for FY 2013 and 109 days late for FY 2014.

Even after enactment of an appropriations bill, there is an apportionment process involving the Office of Management and Budget and then a process within the IHS for allocation of funds to the IHS Area Offices and then to the tribes and tribal organizations.

Late funding causes the IHS and tribal health care providers great challenges in planning and managing care for American Indians and Alaska Natives. It significantly hampers tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance and construction efforts. Receipt of funds late also severely impacts Maniilaq's ability to invest the funds and generate interest which can be used to offset the chronic underfunding of the region's health programs. Providing sufficient, timely, and predictable funding is needed to ensure the Government meets its obligation to provide health care for American Indian and Alaska Native people.

In the case of the Maniilaq Association, we draft our budget for the coming fiscal year in the Spring – a budget which must be reviewed, amended, and approved during the ensuing months. However, if we find out that come October, as has been the case for far too many years, that Congress has not enacted an IHS appropriations bill, we are in limbo and must spend considerable staff time re-doing our budget, perhaps multiple times. We–and all tribes and tribal organizations– are hampered by the uncertainty as to whether Congress will provide funding for built-in costs, including inflation and pay increases, what amount of funding we might have with regard to signing outside vendor/and or medical services contracts, ordering supplies, and making crucial hiring decisions.

Advance Appropriations Explanation. As you know, an advance appropriation is funding that becomes available one year or more *after* the year of the appropriations act in which it is contained. For instance, if FY 2016 advance appropriations for the IHS were included in the FY 2015 Interior, Environment and Related Agencies Appropriations Act, those advance appropriations would not be counted against the FY 2015 Interior Appropriations Subcommittee's funding allocation but rather would be counted against its FY 2016 allocation. It would also be counted against the ceiling in the FY 2016 Budget Resolution, not the FY 2015 Budget Resolution.

To begin an advanced appropriations cycle there must be an initial transition appropriation which contains (1) an appropriation for the year in which the bill was enacted (for instance, FY 2015) and (2) an advance appropriation for the following year (FY 2016). Thereafter, Congress can revert to appropriations containing only one year advance funding. If IHS funding was on an advance appropriations cycle, tribal health care providers, as well as the IHS, would know the funding a year earlier than is currently the case **and** would not be subject to Continuing Resolutions. We note that advance appropriations are subject to across-the-board reductions.

The Veterans Administration Experience. In FY 2010 the Veterans Administration (VA) medical care programs achieved advance appropriations. This came after many years of veterans' organizations advocating for this change, including enactment of the Veterans Health Care Budget Reform and Transparency Act of 2009 (PL 111-81) which authorized advance appropriations and specified which appropriations accounts are to be eligible for advance appropriations. The Act required the Secretary to include in documents submitted to Congress in support of the President's budget detailed estimates of the funds necessary for the medical care accounts of the Department for the fiscal year following the fiscal year for which the budget is submitted.

The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for tribes and tribal organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of the VA to properly plan and manage its resources, tribes and tribal organizations have those concerns about the IHS health system. We also note that there is legislation (HR 813) pending in this Congress that would expand advance appropriations to the VA beyond its medical accounts.

We thus request this Committee's approval for legislation to authorize IHS advance appropriations, to protect such funding from a point of order in the Budget Resolution, and to appropriate the necessary funds.

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Indian Health Service Advance Appropriations

October 2012

Prepared by:

The Maniilaq Association

Indian Health Service Advance Appropriations

I. Need for Indian Health Service Advance Appropriations

The Federal health services to maintain and improve the health of American Indians and Alaska Natives are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian and Alaska Native people. Since FY 1998 appropriated funds for medical services and facilities through the Indian Health Service (IHS) have not been provided before the commencement of the new fiscal year, causing the IHS and tribal health care providers great challenges in planning and managing care for American Indians and Alaska Natives. Late funding has significantly hampered tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance and construction efforts. Providing sufficient, timely, and predictable funding is needed to ensure the Government meets its obligation to provide health care for American Indian and Alaska Native people.

II. History of Late Funding

Since FY 1998 there has been only one year (FY 2006) when the Interior, Environment and Related Agencies budget, which contains the funding for IHS, has been enacted by the beginning of the fiscal year. The lateness in enacting a final budget during that time ranges from 5 days (FY 2002) to 197 days (FY 2011). Even after enactment of an appropriations bill, there is an apportionment process involving the Office of Management and Budget and then a process within the IHS for allocation of funds to the IHS Area Offices. Unfortunately FY 2013 IHS funding will likewise be funded under a Continuing Resolution.

III. Advance Appropriations Explained

An advance appropriation is funding that becomes available one year or more *after* the year of the appropriations act in which it is contained. For instance, if FY 2014 advance appropriations for the IHS were included in the FY 2013 Interior, Environment and Related Agencies Appropriations Act, those advance appropriations would not be counted against the FY 2013 Interior Appropriations Subcommittee's funding allocation but rather would be counted against its FY 2014 allocation. It would also be counted

against the ceiling in the FY 2014 Budget Resolution, not the FY 2013 Budget Resolution.[1]

To begin an advanced appropriations cycle there must be an initial transition appropriation which contains (1) an appropriation for the year in which the bill was enacted (for instance, FY 2013) and (2) an advance appropriation for the following year (FY 2014). Thereafter, Congress can revert to appropriations containing only one year advance funding. If IHS funding was on an advance appropriations cycle, tribal health care providers, as well as the IHS, would know the funding a year earlier than is currently the case and would not be subject to Continuing Resolutions. Advance appropriations are, however, subject to across-the-board reductions.

IV. The Veterans Administration Experience

In FY 2010 the Veterans Administration (VA) medical care programs achieved advance appropriations. This came after many years of veterans' organizations advocating for this change, including enactment of the Veterans Health Care Budget Reform and Transparency Act of 2009 (PL 111-81) which authorized advance appropriations and specified which appropriations accounts are to be eligible for advance appropriations.[2] The Act required the Secretary to include in documents submitted to Congress in support of the President's budget detailed estimates of the funds necessary for the medical care accounts of the Department for the fiscal year following the fiscal year for which the budget is submitted.

The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for tribes and tribal organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of the VA to properly plan and manage its resources, tribes and tribal organizations have those concerns about the IHS health system.

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[1] A Budget Resolution includes, among other things, spending limits for discretionary spending for the upcoming fiscal year and at least five ensuing fiscal years. It does not have the effect of law but its aggregate spending allocations, including limitations on the amount of advance appropriations, are enforceable through points of order and other procedural mechanisms.

[2] The three VA accounts which receive advance appropriations are Medical Services, Medical Support and Compliance, and Medical Facilities. Their total appropriation is approximately $50 billion.

V. Required Steps

Achieving advance appropriations for the IHS requires the following three steps:

A. *Enactment of Legislative Authorizing Language*

The first step in providing for IHS advance appropriations would be to enact legislation adding the following language **in bold** to § 825 of the Indian Health Care Improvement Act, 25 U.S.C. § 1680o, authorizing appropriations. Paragraph (a) is the current language in § 825. Paragraphs (b) and (c) would be added to authorize advance appropriations.[3] A draft bill is attached.

(a) There are authorized to be appropriated such sums as are necessary to carry out this Act for fiscal year 2010 and each fiscal year thereafter, to remain available until expended.

(b) **For each fiscal year, beginning with fiscal year ____, discretionary new budget authority provided in appropriations accounts for Indian Health Services and Indian Health Facilities shall include advance discretionary new budget authority that first becomes available for the first fiscal year after the budget year.**

(c) **The Secretary shall include in documents submitted to Congress in support of the President's budget submitted pursuant to section 1105 of title 31, United States Code, detailed estimates of the funds necessary for the Indian Health Services and Indian Health Facilities accounts for the fiscal year following the fiscal year for which the budget is submitted.**

The legislation would also amend the Congressional Budget Act governing the President's budget submission to require the President to submit estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for the IHS. This would be accomplished by adding the following paragraph at the end of 31 U.S.C. § 1105(a):

(__) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for the following accounts:

(A) Indian Health Services, and

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[3] The legislative language is taken from the VA advance appropriations statute except for obvious changes needed to reflect the IHCIA and the IHS appropriations accounts.

(B) Indian Health Facilities.

B. Inclusion of IHS Advance Appropriations in a Budget Resolution

House and Senate budget resolutions, which are under the jurisdiction of the Budget Committees, are not signed into law but rather express the views of the House and Senate on overall spending, revenue, deficits and debt. They express priorities for funding although the Appropriations Committees, while bound by the overall spending level, are not bound by the Budget Resolutions specific priorities. Of significance is that in most years since 2003, the Budget Resolution limits how much—and for what purpose—advance appropriations may be made. Because the Budget Resolution often sets a cap on advance appropriations it is important to include the Indian Health Services and the Indian Health Facilities appropriations accounts in the list of advance appropriations which are authorized by the Budget Resolution. Otherwise, advance appropriations would be subject to a point of order objection.

As an illustration, the Budget Resolution for FYs 2011-2012, S. Con. Res. 60, stated the Senate could *not* consider any legislation that would provide an advance appropriation, but then went on to provide exceptions as follows:

(b) EXCEPTIONS- Advance appropriations may be provided-
(1) for fiscal years 2012 and 2013 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading "Accounts Identified for Advance Appropriations" in an aggregate amount not to exceed $28,852,000 in new budget authority each year;
(2) for the Corporation for Public Broadcasting; and
(3) for the Department of Veterans Affairs for Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration.

We would want language added to include the IHS advance appropriations in this list of exceptions.

C. Enactment of the Advance Appropriations in the Interior, Environment and Related Agencies Appropriations Bill, Initially for a Transition Year and Thereafter as an Advance Appropriation Each Year

Lastly, achieving IHS advanced appropriations would require new legislative language for the Interior, Environment and Related Appropriations Act providing for advance appropriations for the Indian Health Services and the Indian Health Facilities

accounts. For the transition year, the following language **in bold** could be added to the introductory language of the Indian Health Services appropriation:

For expenses necessary to carry out the Act of August 5, 1954 (68 Stat. 674) . . . ***$ _____, of which $ _____ shall become available on October 1, ____ [the beginning of the first fiscal year after the budget year] and remain available until September 30, ____ [the last day of the first fiscal year after the budget year]***

Similar language **in bold** could be added to the introductory language of the Indian Health Facilities appropriation whose funds are available until expended.

For construction, repair, maintenance, improvement, and equipment for health and related auxiliary facilities, include quarters for personnel; preparation of plans, specifications, and drawings; and purchases of trailers; and for provision of domestic and community sanitation facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a . . .) ***$ _____, to remain available until expended, of which $ _____ shall become available on October 1,____ [the beginning of the first fiscal year after the budget year] and remain available until expended: . . .***

For fiscal years after the transition year, only the advance appropriation would be provided in both appropriation accounts.

VI. Conclusion

Late funding for medical services and facilities through the IHS has significantly hampered tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance and construction efforts. The steps outlined above, including the introduction and enactment of legislation amending the IHCIA to authorize the needed advanced appropriations must be followed to ensure the Government meets its obligation to provide health care for American Indian and Alaska Native people.