HOUSE COMMITTEE ON

NATURAL RESOURCES

CHAIRMAN BRUCE WESTERMAN

To:	House Committee on Natural Resources Republican Members
From:	Indian and Insular Affairs Subcommittee, Ken Degenfelder (Ken.Degenfelder@mail.house.gov) and Jocelyn Broman (Jocelyn.Broman@mail.house.gov); ext. 6-9725
Date:	Thursday, May 11, 2023
Subject:	Oversight Hearing: *Examining the President's FY 2024 Budget Request for the Indian Health Service*"

The Subcommittee on Indian and Insular Affairs will hold an oversight hearing titled "*Examining the President's FY 2024 Budget Request for the Indian Health Service*" on **Thursday, May 11, 2023, 2:00 p.m. in Room 1324 Longworth House Office Building**.

Member offices are requested to notify Ransom Fox (Ransom.Fox@mail.house.gov) by 4:30 p.m. on Wednesday, May 10, 2023, if their member intends to participate in the hearing.

I. KEY MESSAGES

- The Federal government has assumed the responsibility of providing healthcare for American Indians and Alaska Natives (AI/ANs) through treaties and federal statutes. The Indian Health Service (IHS) is the primary agency charged with providing health services to AI/AN communities throughout the United States.

- Over the past several years, Indian Country has seen substantial federal funding increases across agencies and programs that serve native communities, including for tribal health care and health care related facilities.

- Despite the fiscal realities facing our nation and the need to reduce federal spending and the deficit, the President's FY 2024 budget proposes a $2.45 billion increase for the agency in FY 2024. The budget also proposes to shift contract support costs and section 105(l) Lease funding to mandatory spending in FY 2024, and to shift all funding for IHS to mandatory beginning in FY 2025.

- IHS has long been plagued with issues of substandard medical care. Committee Republicans are committed to continuing oversight of IHS to ensure they are fulfilling their mission efficiently and effectively for the benefit of native communities.

II. WITNESSES

- **The Hon. Roselyn Tso,** Director, Indian Health Service, U.S. Department of Health and Human Services, Rockville, MD

Accompanied by: Jillian Curtis, Director of Budget, Indian Health Service

III. BACKGROUND

Budget Topline

The Federal government's role in providing health services to AI/ANs is based in the U.S. Constitution's Indian Commerce Clause,[1] treaties between the U.S. Federal Government and Indian tribes, and federal statutes. They form the basis of the trust relationship between the federal government and federally recognized tribes. The Snyder Act of 1921[2] provided the legislative authority to the Bureau of Indian Affairs (BIA) for the federal provision of health services and benefits to Indians because of their federally recognized tribal status. The Transfer Act of 1954[3] moved the responsibility to provide healthcare to tribes from the BIA into the Department of Health Education & Welfare, which was the precursor to the U.S. Department of Health and Human Services (HHS).[4] IHS was officially established in 1955.[5]

The President's FY 2024 budget request for IHS is $9.65 billion in both discretionary and mandatory funding, which would be a $2.45 billion increase over FY 2023 enacted levels. As was previously requested in the President's FY 2023 budget request, the FY 2024 budget again requests moving all budgeting authority for the agency to mandatory spending, rather than maintaining the agency's budget authority as discretionary spending.

Specific IHS budget account breakdowns are below (note: only primary IHS accounts included; for a full breakdown please contact Committee staff).

[1] U.S. Const. Art. I, Sec. 8, Clause 3
[2] 25 U.S.C. 13.
[3] P.L. 83-568, act of August 5, 1954, 68 Stat. 674, as amended; 42 U.S.C. §2001 et seq.
[4] "Agency Overview," *Indian Health Service*, https://www.ihs.gov/aboutihs/overview/.
[5] "'If You Knew the Conditions..." Health Care to Native Americans: Indian Health Service Today." *National Institutes of Health*, U.S. National Library of Medicine, last updated, Nov. 23, 2010. https://www.nlm.nih.gov/exhibition/if_you_knew/ifyouknew_02.html

Agency Budget Authority by Activity	FY 2022 Actual	FY 2023 Enacted	FY 2024 Request	Change
IHS Services	$4.63 billion	$4.92 billion	$7.01 billion	+ $2.09 billion (42.5% increase)
IHS - Facilities	$940 million	$958 million	$1.06 billion	+ $102 million (10.6% increase)
IHS - Contract Support Costs	$880 million	$969 million	$1.168 billion	+ $199 million (20.5% increase)
IHS - Tribal Lease Payments	$150 million	$111 million	$153 million	+ $42 million (37.8% increase)
IHS- Special Diabetes Program	$147 million	$147 million	$250 million	+$103 million (70% increase)
Total IHS[6]	$6.75 billion	$7.11 billion	$9.65 billion	+ $2.54 billion (35.72% increase)

The above table breaks out the IHS's budget authority by activity. The Services activity includes funding for clinical services provided at either federal facilities, facilities operated by tribes or tribal organizations, or through services provided by non-IHS providers paid for using the Purchased/Referred Care (PRC) program. The Facilities activity includes construction, maintenance, and improvements of IHS facilities, including sanitation facilities construction. Contract Support Costs (CSC) are costs associated with tribally run health programs (facility overhead) that IHS would pay if they were providing direct health service to an Indian tribe.[7] Tribal Lease Payments are what IHS pays to lease facilities from tribes for health care services.[8]

In addition to funding through the annual appropriations process, the IHS has received significant COVID-19 and health care focused funding through the Coronavirus Aid, Relief, and Economic Security (CARES) Act ($1.032 billion)[9] and the American Rescue

[6] IHS FY 2024 budget justification at CJ-10. https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2024-IHS-CJ32223.pdf.
[7] https://www.ihs.gov/odsct/contract-support-costs/.
[8] https://www.ihs.gov/california/index.cfm/tribal-consultation/resources-for-tribal-leaders/isdeaa-pl-93-638-section-105-i-lease-proposals/.
[9] https://www.ihs.gov/newsroom/pressreleases/2020-press-releases/ihs-statement-on-allocation-of-final-367-million-from-cares-act/.

Plan ($4 billion[10] and $1.8 billion[11]). IHS also received $3.5 billion over five years for the IHS Sanitation Facilities Construction program through the Infrastructure Investment and Jobs Act (IIJA), designed to address the current estimate of deficiencies in that program.[12] These appropriation increases and large one time set asides have generally been seen by tribal communities as a first step towards addressing the long-term underfunding of Indian country.

Mandatory Funding for IHS

The Biden administration has consistently proposed in its budgets that all IHS activities should be provided through mandatory funding, and the FY 2024 budget maintains that posture.[13] The Biden administration's FY 2024 budget specifically proposes to reclassify IHS's CSC and Tribal Lease[14] Payments from discretionary to mandatory spending for FY 2024, and all other activities would move to mandatory spending in FY 2025. Mandatory funding, like permanent reauthorizations, reduces opportunities for Congressional oversight to review and reevaluate programs' efficiency and efficacy.

However, continued discussion is needed on how the trust responsibility is carried out and what policy decisions should be made going forward. Regular reauthorizations and discretionary funding can help to encourage and facilitate this discussion. Contract Support Costs and Tribal Lease Payments are unique among the services that IHS pays for because these costs are legally required pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA)[15] and *Salazar v. Ramah Navajo Chapter* Supreme Court decision.[16] Since 2012, these costs have been included in appropriations bills as ongoing, indefinite appropriations.[17] The ISDEAA entitles tribes and tribal organizations to receive contract support costs when the tribe or tribal organization is carrying out the responsibilities of the IHS under a self-determination contract or compact. Indian Tribes or tribal organizations may also enter into leases with IHS to provide a tribally owned facility (or part of a facility) which is used to carry out health care services under a self-determination contract or self-governance compact.

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[10] Indian Health Service. "*IHS statement on allocation of final $367 million from CARES Act*" Apr. 23, 2020. https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/16/fact-sheet-biden-administration-invests-4-billion-in-american-rescue-plan-funding-to-combat-covid-19-in-indian-country/.

[11] Indian Health Service. "*Biden Administration Invests Additional $1.8 Billion in American Rescue Plan Funding to Combat COVID-19 in Indian Country*" June 16, 2021. https://www.ihs.gov/newsroom/pressreleases/2021-press-releases/biden-administration-invests-additional-1-8-billion-in-american-rescue-plan-funding-to-combat-covid-19-in-indian-country/.

[12] P.L. 117-58, 135 Stat. 1411.

[13] Budget of the U.S. Government Fiscal Year 2024, Office of Management and Budget at 78. Available at: https://www.whitehouse.gov/wp-content/uploads/2023/03/budget_fy2024.pdf.

[14] Tribal Leases are also known as Sec. 105(*l*) Leases.

[15] P.L. 93-638.

[16] 567 U.S. 182 (2012).

[17] See e.g. P.L. 117-328. Div. H. Title II.

Tribal Lease Payments

The explanatory statement accompanying the Consolidated Appropriations Act for FY 2023 estimated that $111 million would be used for tribal leases at IHS.[18] The President's FY 2024 budget requests an increase of $42 million above the FY 2023 enacted level of $111 million, bringing the account up to an estimated $153 million.[19]

Contract Support Costs

The explanatory statement accompanying the Consolidated Appropriations Act for FY 2023 estimated that $969 million would be needed to fund contract support costs at IHS.[20] The President's FY 2024 budget requests an increase of $199 million above the FY 2023 enacted level of $969 million, bringing the account up to an estimated $1.2 billion.[21]

IHS Services & Purchased/Referred Care Program

In addition to providing direct-service healthcare to AI/ANs, the IHS also operates the Purchased/Referred Care (PRC) program, which refers AI/ANs patients to private health care providers when an IHS or tribal facility is not available.[22] This program is designed to ensure AI/ANs can obtain care when it is not available at IHS facilities, by paying private providers for services, similar to the Choice Program in the Department of Veterans Affairs. The PRC program is funded through annual appropriations and must operate within the limits of available appropriated funds.

Serious deficiencies exist in the PRC program. The IHS often denies PRC claims due to technicalities that are attributable to the program's complex and confusing referral process.[23] This results in uncompensated care costs for private providers. A 2020 HHS Inspector General Report found that out of a 100-paid claim sample, 18 PRC claims were paid in accordance with Federal requirements and 82 PRC claims were paid but did not meet one or more of the nine eligibility criteria.[24] In these cases, IHS failed to implement

[18] House of Representatives, Committee Print of the Committee on Appropriations, H.R. 2617 / P.L. 117-328 [Legislative Text and Explanatory Statement] Book 2 at 1581. Available at: https://www.congress.gov/117/cprt/HPRT50348/CPRT-117HPRT50348.pdf.
[19] Indian Health Service Budget FY 2024 budget justification at CJ-26, available at: https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2024-IHS-CJ32223.pdf.
[20] House of Representatives, Committee Print of the Committee on Appropriations, H.R. 2617 / P.L. 117-328 [Legislative Text and Explanatory Statement] Book 2 at 1581. Available at: https://www.congress.gov/117/cprt/HPRT50348/CPRT-117HPRT50348.pdf.
[21] Indian Health Service Budget FY 2024 budget justification at CJ-26.
[22] Indian Health Service, "Purchased/Referred Care (PRC)" https://www.ihs.gov/prc/
[23] *See*, "Can PRC pay for your referral medical care? Find out in 3 stages." Indian Health Service. https://www.ihs.gov/sites/prc/themes/responsive2017/display_objects/documents/PRC-ProcessHandout.pdf
[24] U.S. Dept. of Health & Human Services, Office of Inspector General, "Most Indian Health Service Purchased/Referred Care Program Claims Were Not Reviewed, Approved, and Paid in Accordance With Federal Requirements." April 2020. Report. No. A-03-16-03002. https://oig.hhs.gov/oas/reports/region3/31603002.pdf at *Report in Brief.*

controls to properly collect information required. IHS and providers also did not conduct timely tracking of certain processes.

Funding allocation is also a serious issue due in part to large cost overruns, including the provision of air and ground ambulance services to healthcare facilities in nearby cities that are often vast distances from remote reservations. When PRC funding is tight, AI/ANs may be unable to obtain basic care except in the case of a life-or-limb emergency.[25] PRC's funding allocation problems can primarily be attributed to the formula the IHS uses to distribute funds across the agency. The funding method is called "base funding," whereby each area is provided a "base" level – what it received the previous year – plus an annual adjustment for medical inflation and other items.[26] In 2012, government auditors concluded that Congress should require IHS "to develop and use a new method to allocate all [PRC] program funds…."[27] The GAO followed up these findings with a 2017 report that found IHS had yet to address improving estimating PRC Program needs and making the allocation of PRC funds more equitable.[28]

Complications regarding the PRC approval process have resulted in direct impacts to AI/ANs through collections services for non-payment of bills. Chairman Jarred-Michael Erickson of the Confederated Tribes of the Colville Reservation testified last year before the subcommittee about how he and other tribal members had received collections notices for PRC care and how that had affected their credit scores.[29] Consistency from IHS on both processes to deal with PRC approvals and consistent funding would alleviate some of these concerns.

Indian Health Facilities Construction and Maintenance

The second largest IHS budget line item is the Indian Health Facilities account, which provides funding to maintain facilities, purchase equipment, and construct new facilities. This account also supports the costs associated with newly opened facilities.[30] The order of what projects are funded first is based on an IHS list of priorities for construction projects created in the early 1990s, known as the 1993 Priority List. That list is not yet fully funded or completed. IHS estimates it can be completed in 2030 with an additional $10.3 billion in funding spread out over 5 years, from FY 2025 to FY 2029.[31] In 2021, IHS testified before

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[25] *See*, Lindsey Bark, "Purchase Referred Care is affected by federal funding, third party payer options," Cherokee Phoenix, Jul. 18, 2022. https://www.cherokeephoenix.org/health/purchase-referred-care-is-affected-by-federal-funding-third-party-payer-options/article_447c0622-06e0-11ed-8071-a70240d11ad9.html

[26] Government Accountability Office. "Indian Health Service: Action Needed to Ensure Equitable Allocation of Resources for the Contract Health Service Program." June 15, 2012. GAO-12-446. http://www.gao.gov/products/GAO-12-446 at 26.

[27] *Id.*

[28] Government Accountability Office. "Status of Prior Recommendations on Federal Management of Programs Serving Indian Tribes" September 13, 2017, GAO-17-790T. at 19-21.

[29] Legislative Hearing on H.R. 5549, Subcommittee for Indigenous Peoples. 117th Congress. Jul. 28, 2022. https://www.youtube.com/watch?v=DuqphPP_TXo at 2:21:41 – 2:23:35.

[30] CRS: Advance Appropriations for the Indian Health Service: Issues and Options for Congress, at 6. https://www.crs.gov/Reports/R46265.

[31] Indian Health Service Budget FY 2024 budget justification at CJ-7 and CJ-250.

this subcommittee that IHS had completed 37 projects with 12 remaining on the list.[32] IHS must complete these projects before spending appropriated funds on other construction projects.

In 2016, the IHS reported to Congress that the current average age of IHS hospitals was 40 years old, approximately 30 years older than most U.S. hospitals.[33] The increased age of IHS facilities adds to the risk of building code noncompliance and compromises the delivery of healthcare. National benchmarks for operation and maintenance costs show that a 40-year-old facility will cost around 26 percent more to operate and maintain than a 10-year-old facility.[34] Unfortunately, the IHS budget request does not contain any innovative proposals to address facility priority needs into the future. In 2010, Congress directed IHS to consider an Area Distribution Fund (ADF), in which a portion of health care facility construction funding could be devoted to all IHS service areas. An innovative proposal like the ADF would extend the benefits of appropriated funds for IHS facilities to a larger number of tribes and communities throughout Indian Country than would be possible by relying solely on funding for individual line-item projects.

Advance Appropriations for IHS

In the absence of mandatory funding for IHS, advocates have encouraged advance appropriations for the agency with the goals of improving the ability of IHS, tribes, and tribal organizations to plan ahead, manage budgets, and coordinate services more effectively for the benefit of AI/ANs, as well as insulate the IHS from government shutdowns.[35] During the 2018-2019 shutdown, tribes and tribal organizations had to curtail some services, exhaust on-hand medical supplies, and considered temporarily closing facilities during the 35-day shutdown when no new federal funds were available and IHS's authority to execute contracts and compacts was lapsed.[36]

Congress can choose to provide advance appropriations for specific programs or departments. Congress has previously authorized advance appropriations for the Veterans Administration (VA) in the 111th Congress.[37] The VA and IHS are both agencies that provide direct, federally funded health care to specific populations and both provide these services pursuant to federal policies.

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[32] Statement by Randy Grinnell, Deputy Director for Management Operations, IHS, before the Subcommittee for Indigenous Peoples. Jun. 17, 2021. (hereinafter Grinnell 2021 Statement) Available at: https://www.hhs.gov/about/agencies/asl/testimony/2021/06/17/examining-federal-facilities-indian-country.html.
[33] Indian Health Service, *The 2016 Indian Health Service and Tribal Health Care Facilities' Needs Assessment Report to Congress* at 3 (hereinafter 2016 Tribal Health Care Facilities Report). Available at: https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf
[34] Adams, Tim, et al. Operations and Maintenance Benchmarks for Health Care Facilities. International Facility Management Association, 2010.
[35] Testimony of Verne Boerner before the House Committee on Natural Resources, (Sept. 25, 2019), https://docs.house.gov/meetings/II/II24/20190925/110050/HHRG-116-II24-Wstate-BoernerV-20190925.pdf.
[36] *Supra* n. 14.
[37] P.L. 111-81.

In the FY 2023 Consolidated Appropriations Act, Congress authorized advance appropriations for two IHS accounts: Indian Services and Indian Health Facilities. $5.13 billion was provided for these two accounts for FY 2024.[38]

IHS on the GAO High Risk List

In March 2017, the Government Accountability Office (GAO) listed IHS as "high risk." Programs listed on the GAO's High-Risk List are federal programs most vulnerable to waste, fraud, abuse, and mismanagement, or that need transformative change. For nearly a decade, the HHS inspector general and others have indicated that inadequate oversight of healthcare continues to hinder the ability of IHS to provide an adequate quality of care despite continued increases in the agency's budget.

In 2023, IHS finalized an agency work plan to address agency wide priorities of patient safety, human capital, operational capacity, financial capacity, compliance and regulatory improvement, and strategic planning. IHS states the goal of the plan is to "make an immediate impact on the Indian health system in alignment with the IHS mission and Strategic Plan."[39] Congress should continue to conduct oversight of IHS actions to ensure it is fulfilling its stated mission to provide quality healthcare for all AI/ANs.

Congress should continue to scrutinize IHS funding to ensure transparency and hold the Biden administration accountable.

[38] House of Representatives, Committee Print of the Committee on Appropriations, H.R. 2617 / P.L. 117-328 [Legislative Text and Explanatory Statement] Book 2 at 1579. Available at: https://www.congress.gov/117/cprt/HPRT50348/CPRT-117HPRT50348.pdf.
[39] "IHS 2023 Agency Work Plan," *Indian Health Service.* https://www.ihs.gov/quality/work-plan-summary/.