



**To:** House Committee on Natural Resources Republican Members  
**From:** Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder ([Ken.Degenfelder@mail.house.gov](mailto:Ken.Degenfelder@mail.house.gov)) and Jocelyn Broman ([Jocelyn.Broman@mail.house.gov](mailto:Jocelyn.Broman@mail.house.gov))  
**Date:** July 25, 2022  
**Subject:** Hybrid Legislative Hearing on H.R. 5549, the “*Indian Health Service Advance Appropriations Act*”

---

The Subcommittee for Indigenous Peoples will hold a hybrid legislative hearing on one bill: H.R. 5549 (Young, R-AK), the *Indian Health Service Advance Appropriations Act*, on **Thursday, July 28, 2022, at 1:00 p.m.** in 1324 Longworth House Office Building and via Cisco WebEx.

Republican Members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

Member offices are requested to notify Jocelyn Broman ([jocelyn.broman@mail.house.gov](mailto:jocelyn.broman@mail.house.gov)) no later than **4:30 p.m. on Wednesday, July 27, 2022**, if their Member intends to participate in person in the hearing room or remotely via his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at [HNRCDocs@mail.house.gov](mailto:HNRCDocs@mail.house.gov). Please contact David DeMarco ([David.DeMarco@mail.house.gov](mailto:David.DeMarco@mail.house.gov)) or Everett Winnick ([EverettWinnick@mail.house.gov](mailto:EverettWinnick@mail.house.gov)) should any technical difficulties arise.

## I. KEY MESSAGES

- H.R. 5549 would authorize certain Indian Health Service (IHS) budget accounts to receive one-year advance appropriations for four accounts: Indian Health Services, Indian Health Facilities, Contract Support Costs, and Payments for Tribal Leases.
- Congress has authorized similar advance appropriations for the Veterans Administration to mitigate the effects of budget uncertainty in the congressional appropriation process, or continuing resolutions and government shutdowns.
- In 2017, the Government Accountability Office (GAO) added the Indian Health Service to its “High-Risk List” of federal programs that are especially vulnerable to waste, fraud, abuse, and mismanagement or that need transformative change.

- In its 2021 High-Risk report, the GAO reported that the IHS has taken steps to address leadership commitment criterion, but the IHS continues to meet the four remaining criteria only partially. It has identified deficiencies in the categories of capacity, action plan, monitoring, and demonstrated progress.<sup>1</sup>
- This hearing is an opportunity for Republican Members to discuss whether providing advanced appropriations to the IHS is a sound and fiscally responsible policy.

## II. WITNESSES

- **The Hon. Jarred-Michael Erickson**, Chairman, Confederated Tribes of the Colville Reservation, Nespelem, WA [*Republican Witness*]
- **Ms. Alberta Unok**, President and CEO, Alaska Native Health Board, Anchorage, AK [*Republican Witness*]
- **Ms. Liz Fowler**, Acting Director, Indian Health Services, Rockville, MD
- **The Hon. Johnathan Nez**, President, Navajo Nation & Area Representative, National Indian Health Board, Washington, D.C.
- **Ms. Maureen Rosette**, Board Member, National Council of Urban Indian Health, Washington, D.C.
- **The Hon. Fawn Sharp**, President, National Congress of American Indians, Washington, D.C.
- **The Hon. Kirk Francis**, President, United South and Eastern Tribes (USET) Sovereignty Protection Fund, Nashville, TN.

## III. BACKGROUND

The Indian Health Service (IHS) is an agency of the U.S. Department of Health and Human Services (HHS) that provides healthcare to approximately 2.7 million American Indians and Alaska Natives (AI/ANs) through a network of more than 600 hospitals, clinics, and health stations on or near Indian reservations.<sup>2</sup> IHS is headquartered in Rockville, Maryland. Organizationally, the agency is composed of 12 regions, or “Areas,” each with a separate headquarters.<sup>3</sup> IHS offers “direct-service” healthcare, meaning care provided by federal employees, and it also acts as a conduit for federal funds for tribes that have utilized

---

<sup>1</sup> Govt. Account. Office, Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas (March 2021) at 110. <https://www.gao.gov/assets/gao-21-119sp.pdf>.

<sup>2</sup> Indian Health Service Budget Justification FY 2023 at CJ-1. [https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display\\_objects/documents/FY2023BudgetJustification.pdf](https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2023BudgetJustification.pdf).

<sup>3</sup> The twelve areas of the IHS include: Alaska, Albuquerque, Bemidji, Billings, California, Great Plains, Nashville, Navajo, Oklahoma, Phoenix, Portland and Tucson. <https://www.ihs.gov/locations/>.

authorities granted under the Indian Self-Determination and Education Assistance Act (ISDEAA)<sup>4</sup> to independently operate their health facilities. The IHS also administers programs for Indians in urban areas. IHS provides an array of medical services, including inpatient, ambulatory, emergency, dental, public health nursing, and preventive health care in 37 States.<sup>5</sup>

The Snyder Act of 1921<sup>6</sup> provides the basic authority for the federal provision of health services and benefits to Indians because of their federally recognized tribal status. The modern statutory basis and framework for the federal provision of health care to Indians is under the Indian Healthcare Improvement Act (IHCA).<sup>7</sup> IHCA was permanently reauthorized in Title X of the Patient Protection and Affordable Care Act.<sup>8</sup> As previously noted, the ISDEAA authorizes tribes to assume the administration and program direction responsibilities that are otherwise carried out by the federal government through contracts, compacts and annual funding agreements negotiated with the IHS.<sup>9</sup> In Fiscal Year 2020, more than \$2.6 billion of IHS appropriations were administered by a tribe or tribal organization through contracts or compacts and related agreements.<sup>10</sup>

### **H.R. 5549, the Indian Health Service Advance Appropriations Act (Young)**

H.R. 5549 would authorize appropriations one fiscal year in advance for four accounts within the IHS budget. The advance appropriations would not count against the Interior, Environment and Related Agencies appropriations subcommittee's spending allocation until the fiscal year the appropriations would be expended. The bill would also require the President to submit in his annual budget request to Congress a two-fiscal-year estimate of funds necessary for certain IHS accounts after the bill becomes law.

Accounts affected within the IHS budget include:

- Indian Health Services
- Indian Health Facilities
- Contract Support Costs
- Payments for Tribal Leases

The largest IHS account is the Indian Health Services account, which received \$4.6 billion in FY 2022.<sup>11</sup> It provides funding for clinical services provided at either federal facilities,

---

<sup>4</sup> 25 U.S.C. 5304 et seq.

<sup>5</sup> Indian Health Service Budget Justification FY 2023 at CJ-2.

[https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display\\_objects/documents/FY2023BudgetJustifcation.pdf](https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2023BudgetJustifcation.pdf).

<sup>6</sup> 25 U.S.C. 13.

<sup>7</sup> 25 U.S.C. 1611 et seq.

<sup>8</sup> PL 111-148.

<sup>9</sup> 25 U.S.C. 5301 et seq.

<sup>10</sup> Indian Health Service Budget Justification FY 2023 at CJ-190.

[https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display\\_objects/documents/FY2023BudgetJustifcation.pdf](https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2023BudgetJustifcation.pdf).

<sup>11</sup> *Id.* at CJ-12.

facilities operated by tribes or tribal organizations, or through services provide by non-IHS providers paid for using purchased referred care.<sup>12</sup> Purchased referred care coordinates needed services through private health care providers when an IHS or tribal facility is not available.<sup>13</sup> Most of the funds from this account are distributed using base funding, which allocates funds to programs and facilities the amount of funding they received in the prior year plus with increases to account for inflation and population changes, when appropriations permit.<sup>14</sup>

The Indian Health Facilities account provides funds to maintain facilities, purchase equipment, and construct new facilities. This account also supports the costs associated with newly opened facilities.<sup>15</sup>

The Contract Support Costs account supports the indirect and overhead costs a tribe or tribal organization incurs to administer an IHS program of function. Beginning in 2016, contract support costs were funded as an indefinite discretionary appropriation.<sup>16</sup>

The IHS's Payments for Tribal Leases account provides funds for the Section 105(l) leases under ISDEAA.<sup>17</sup> Tribes and tribal organizations carrying out federal functions under a self-determination contract or self-governance compact may enter into a lease agreement with the Department of the Interior (DOI) for the tribally owned or rented facility used to carry out those functions. Under a Section 105(l) Lease, DOI negotiates with the tribe or tribal organization on eligible expenses for use of the facility to carry out the contract or compact function.

#### IV. ANALYSIS

Advocates say that enactment of H.R. 5549 would improve the ability of IHS, Indian tribes, Alaska natives and tribal organizations to plan ahead, manage budgets, and coordinate services more effectively for the benefit of Indians and Alaska Natives.<sup>18</sup> The IHS has experienced several lapses in appropriations, including 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

---

<sup>12</sup> *Id.* at CJ-29.

<sup>13</sup> HHS Office of Inspector General, *Purchase Referred Care Program*, <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000181.asp>.

<sup>14</sup> CRS: Advance Appropriations for the Indian Health Service: Issues and Options for Congress, at 7. <https://www.crs.gov/Reports/R46265>.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.* See P.L. 114-113.

<sup>17</sup> Indian Health Service Budget Justification FY 2023 at CJ-187. [https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display\\_objects/documents/FY2023BudgetJustification.pdf](https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2023BudgetJustification.pdf).

<sup>18</sup> 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>.

federal funds were available and IHS's authority to execute contracts and compacts was lapsed.<sup>19</sup> Approximately 60 percent of the Indian Health Service worked without pay.<sup>20</sup>

Congress has previously authorized advance appropriations for the Veterans Administration (VA) in the 111<sup>th</sup> Congress.<sup>21</sup> 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.

Prior to receiving advance appropriations, the VA found that late funding and successive continuing resolutions (CRs) hampered their ability to budget, recruit health care professionals, provide health care services, and construct and maintain facilities. IHS and tribal health organizations have experienced the same difficulties.

Advance Appropriations for IHS is supported by the several tribes, the National Congress of American Indians (NCAI)<sup>22</sup>, the National Indian Health Board (NIHB)<sup>23</sup>, the National Council of Urban Indian Health (NCUIH),<sup>24</sup> and the Alaska Native Health Board (ANHB)<sup>25</sup>.

#### *GAO Analysis of Advance Appropriations at IHS*

In 2018, the Government Accountability Office (GAO) completed a report on considerations for Congress in analyzing proposals to change the availability of the appropriations that IHS receives. The GAO interviewed IHS officials and tribal representatives about the effects of budget uncertainty caused by CRs and shutdowns. The main effects include: 1) difficulty recruiting and retaining health care providers; 2) incurring additional burdens and costs; and 3) adverse financial effects on tribes and tribal organizations, like higher interest rates for financing health care facilities.<sup>26</sup>

The GAO also highlighted that IHS was added to its high risk list of federal programs that are especially vulnerable to waste, fraud, abuse, and mismanagement or that need transformative change in 2017 and that "proposals to change the availability of appropriations deserve careful scrutiny."<sup>27</sup> IHS remains on the high risk list, along with the

---

<sup>19</sup> *Supra* n. 14.

<sup>20</sup> Felicia Fonseca, *Shutdown Puts Strain on Hundreds of Native American Tribes*, Assoc. Press, (Jan. 12, 2019), <https://apnews.com/article/native-americans-ap-top-news-us-news-nm-state-wire-wa-state-wire-0a2d5cab68fb40d092f73ba14d935cb2>.

<sup>21</sup> P.L. 111-81.

<sup>22</sup> Resolution, *Support for Advance Appropriations for Bureau of Indian Affairs and Indian Health Service*, <https://www.ncai.org/resources/resolutions/support-for-advance-appropriations-for-bureau-of-indian-affairs-and-indian-health-service>

<sup>23</sup> "Advance Appropriations," [https://www.nihb.org/legislative/advance\\_appropriations.php](https://www.nihb.org/legislative/advance_appropriations.php)

<sup>24</sup> "NICUIH Endorses Bills Providing Advance Appropriations for IHS," <https://ncuih.org/2021/10/29/ncuih-endorses-bills-providing-advance-appropriations-for-ihs/>

<sup>25</sup> "ANHB Testifies Before Congress In Support of Advance Appropriations," <http://www.anhb.org/anhb-testifies-before-congress-in-support-of-advance-appropriations/>.

<sup>26</sup> GAO Report, "Indian Health Services: Considerations Related to Providing Advance Appropriations," <https://www.gao.gov/assets/gao-18-652.pdf>.

<sup>27</sup> *Id.* p. GAO Highlights.

Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE).<sup>28</sup> The VA is also currently on GAO's High-Risk list despite currently receiving advance appropriations and a significant amount of congressional scrutiny.<sup>29</sup> Any change to how IHS receives appropriations should continue to be coupled with congressional oversight and structural and program improvements at IHS.

### *Republican Messaging*

For decades, the HHS Inspector General and the GAO have reported that inadequate oversight of healthcare delivery continues to hinder the ability of IHS to provide an adequate quality of care despite continued increases in the agency's budget.<sup>30</sup>

While the GAO reported in its 2021 "High Risk" report that the IHS has taken steps to address leadership commitment criterion, the IHS continues to meet the four remaining areas only partially. It has identified deficiencies in the categories of capacity, monitoring, and demonstrated progress.

Republican Members should use this hearing as an opportunity to discuss whether providing advanced appropriations to the IHS is a sound fiscal policy and whether this spending will ultimately help increase the quality of health care given the deficiencies identified by the GAO.

## **V. COST**

Unknown.

## **VI. ADMINISTRATION POSITION**

The Biden administration included a legislative proposal for advance appropriations for IHS in its FY 2022 budget request.<sup>31</sup> This request was not repeated in the FY 2023 budget request as the administration is requesting that the IHS budget be transitioned to mandatory funding.<sup>32</sup>

---

<sup>28</sup> GAO, "Improving Federal Management of Programs that Serve Tribes and Their Members,"

<https://www.gao.gov/highrisk/improving-federal-management-programs-serve-tribes-and-their-members>

<sup>29</sup> GAO, "Managing Risks and Improving VA Health Care," <https://www.gao.gov/highrisk/managing-risks-and-improving-va-health-care>.

<sup>30</sup> See "Audit of the Indian Health Service's Internal Controls Over Monitoring of Recipients' Compliance With Requirements of the Loan Repayment Program" (Dec. 29, 2010), <https://oig.hhs.gov/oas/reports/region9/91001005.asp>; see also "Two Indian Health Service Hospitals Had System Security and Physical Controls for Prescription Drug and Opioid Dispensing but Could Still Improve Controls" (Nov. 28, 2017) <https://oig.hhs.gov/oas/reports/region18/181630540.asp>; see also "Indian Health Service: Actions Needed to Improve Oversight of Patient Wait Times" (March 29, 2016) <https://www.gao.gov/products/gao-16-333>.

<sup>31</sup> Budget of the U.S. Government FY 2022, at 18, <https://www.govinfo.gov/content/pkg/BUDGET-2022-BUD/pdf/BUDGET-2022-BUD.pdf>.

<sup>32</sup> Indian Health Service Budget Justification FY 2023, at CJ-3, [https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display\\_objects/documents/FY2023BudgetJustifaton.pdf](https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2023BudgetJustifaton.pdf).

**VII. EFFECT ON CURRENT LAW (RAMSEYER)**

**[H.R. 5549](#)**