

NCUIH Statement on Letter from IHS on Protecting Native Patients From Funding Delays and Government Shutdowns

Category: Policy Blog

written by Meredith Raimondi | November 22, 2022

FOR IMMEDIATE RELEASE

NCUIH Contact: Meredith Raimondi, Vice President of Public Policy, mraimondi@ncuih.org, 202-417-7781

WASHINGTON, D.C. (November 16, 2022) - The National Council of Urban Indian Health (NCUIH) received a [letter](#) from the Indian Health Service (IHS) in response to a request to allow urban Indian organizations (UIOs) to receive an exception apportionment, which would protect them from a government shutdown by providing the full-year base funding amounts.

Today, NCUIH Chief Executive Officer, Francys Crevier (Algonquin), released the following statement in response to the IHS letter:

“During the last government shutdown in 2019, **five patients died**. These are five relatives—mothers, fathers, grandparents— who are no longer part of our community and unable to pass on our cultural traditions that they hold, all because of federal budget disputes. It is atrocious and tragic that the government expects Indian health providers to continue providing services to the most vulnerable population in the country without an enacted budget. Congress regularly fails to reach a budget agreement in time year after year, and Native people are the ones that suffer. Budget delays hinder healthcare delivery and it’s unacceptable. To truly honor its commitment to Native people, the government must act to end budget delays that cost lives. Indian Country has tirelessly advocated for secure funding through advance appropriations for IHS, which is the only major federal healthcare provider funded through annual appropriations. The federal government continues to prove that the safety of Native lives is not a concern, as the government fails to fund IHS in a timely manner and does not provide exception apportionment to the programs that carry out healthcare services to the over 70% Native population living in urban areas.”

Background

IHS has only once, in 2006, received full-year appropriations by the start of the fiscal year. In the absence of an exception apportionment during these budget disputes that may cause the government to shut down, UIOs are subject to the shut down too. Federal shutdowns require UIOs to lay off staff, reduce hours and services, and even close their doors, ultimately leaving their patients without adequate health care.

IHS received an exception apportionment to provide the full-year Secretarial Amount to Tribal Health Programs with Indian Self-Determination and Education Assistance Act contracts and compacts, but this exception does not apply to IHS-operated health programs or UIOs. IHS states, “IHS-operated health programs continue to provide services in the absence of appropriations, even if the health programs are unable to pay health care professionals and related staff, pay invoices for referred care, and purchase supplies and medicines.”

Take Action

NCUIH has been working with our partners to #AdvanceIndianHealth and has more information on how to get involved here: <https://ncuih.org/advance/>. We will continue to push for including advance appropriations for IHS in the final Fiscal Year 2023 spending bill to provide funding certainty to the Indian healthcare system.

- [Advance Appropriations One-Pager](#)
- [IHS Advance Appropriations Infographic](#)

Full Text of IHS Letter

Dear Ms. Crevier:

I am responding to your September 23, 2022, letter, regarding an exception apportionment for Urban Indian Organizations (UIOs). The Indian Health Service (IHS) is committed to hearing concerns about the effect of the Fiscal Year (FY) 2023 Continuing Resolution on UIOs.

Urban Indian Organizations are a critical component of the Indian health care system. The Indian Health Service's top priority is to avoid disruptions in operations and to lift the unnecessary administrative burden that comes with Continuing Resolutions (CRs), sequestration, and government shutdowns for the entire Indian health system, including UIOs.

In your letter, you highlight actions that the current and prior Administrations implemented to limit budgetary uncertainty and ensure continuity of operations for IHS and Tribal Health Programs during government shutdowns. You also request that the IHS seek an exception apportionment under the "safety of human life" justification to provide UIOs with funding above the pro-rata amount appropriated under a CR.

An exception apportionment describes a type of account-specific apportionment that can be issued for operations under a CR in lieu of the Office of Management and Budget (OMB) issued automatic apportionment, which provides the pro-rata funding level available under a CR. Exception apportionments must be requested and approved by OMB each year. The IHS has received an exception apportionment for a portion of its funding since FY 2020.

The exception apportionment allows the IHS to provide the full year Secretarial Amount to Tribal Health Programs with Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts with performance periods that start under the period of a given CR, as opposed to the pro-rata funding amount that is otherwise available under a CR. **The exception apportionment does not apply to IHS-operated health programs or UIOs. It is important to note that the IHS exception apportionment does not fall under the "safety of human life" exception for apportionments.**

The OMB Circular No. A-11: Preparation, Submission, and Execution of the Budget, the basis for a Safety of Human Life and Protection of Federal Property ("life and safety") establishes that exception apportionments may be granted in extraordinary circumstances where the safety of human life or protection of Federal property is a concern during a government-wide lapse of appropriations.

Instead, the IHS exception apportionment authority is rooted in the unique nature of ISDEAA funding agreements, and the timing of such funding agreements. This is why the exception apportionment only applies to Tribal Health Programs whose ISDEAA agreements have a

performance period that begins during the period of the CR. Urban Indian Organizations receive their funding through Federal Acquisition Regulation (FAR) contracts, consistent with Title V of the Indian Health Care Improvement Act, and therefore are not eligible for funding above the pro-rata amount available during a CR under this exception apportionment authority.

Your letter references “excepted programs” under the Antideficiency Act (ADA) during the 2018 – 2019 government shutdown. Indian Health Service operated health care programs are “excepted” during a government shutdown, which means that IHS-operated health programs must continue to provide direct health care services in the absence of an appropriation. The exception under a government shutdown does not provide additional funding during the period of a government shutdown. This exception only applies to Federal functions, and does not apply to Tribal Health Programs. Under this exception, IHS-operated health programs continue to provide services in the absence of appropriations, even if the health programs are unable to pay health care professionals and related staff, pay invoices for referred care, and purchase supplies and medicines.

The criteria for safety of human life excepted programs under a government shutdown is not always the same as the criteria for receiving a safety of human life exception apportionment. Programs that are excepted for safety of human life reasons under a government shutdown generally do not receive exception apportionments. For example, although IHS-operated health programs are excepted during a government shutdown and must continue providing direct health care services in the absence of appropriations, IHS-operated health programs do not receive an exception apportionment. The safety of human life exception for apportionment purposes is used in very narrow circumstances.

The exception apportionment authority provides a partial solution to the unpredictability of Federal appropriations for the IHS, and is likely the extent of what the Agency can achieve within existing authorities. While an exception apportionment does resolve some of the unpredictability in the IHS budget for some Tribal Health Programs, it is not a full solution to the challenges the IHS faces as a result of continuing resolutions. **The exception apportionment also does nothing to prevent the negative consequences of government shutdowns for IHS-operated health programs and UIOs; it only prevents those consequences for Tribal Health Programs in some circumstances. The consequences of a government shutdown directly impact the ability of IHS-operated health programs, Tribal Health Programs, and UIOs to provide high quality health care to the American Indian and Alaska Native communities we serve.**

The Biden Administration has taken the historic steps of requesting advance appropriations in FY 2022 and a fully mandatory budget in FY 2023 for the IHS to fundamentally change the way the Agency receives its appropriations and resolve the negative impacts of budget uncertainty. We sincerely appreciate your support as we work toward achieving these goals.

Thank you for your continued support on our shared mission to raise the health status of urban Indians to the highest possible level. If you have additional concerns, please directly contact Ms. Jillian Curtis, Chief Financial Officer, Office of Finance and Accounting, IHS, by telephone at (301) 443-0167, or by e-mail at jillian.curtis@ihs.gov.

Sincerely,
Roselyn Tso
Director