NCUIH Joins Amicus Brief Filed by the National Indian Health Board in Support of Respondent Tribes in Becerra v. San Carlos Apache Case

Category: Policy Blog
written by Chelsea Gutierrez | March 6, 2024

On February 19, 2024, the National Council of Urban Indian Health (NCUIH) joined attorneys for the National Indian Health Board (NIHB) in filing an amicus brief in support of Respondent Tribes for Case No. 23-250, *Becerra v. San Carlos Apache Tribe* (consolidated with Case No. 23-235, *Becerra v. Northern Arapaho Tribe*). The issue at question is whether IHS is required under the Indian Self Determination and Education Assistance Act (ISDA), 25 U.S.C. §5301 et seq, to pay contract support costs for the increased overhead expenses a Tribe incurs in connection with services funded by the exact same program income from third parties that IHS uses when operating the same program. Respondent Tribes argue that "ISDA broadly requires reimbursement for 'any overhead expense incurred by the tribal contractor in connection with the operation of the Federal program … pursuant to the contract.' The overhead expenses Tribes incur when using program income to provide more healthcare services fall squarely within this definition."

While the issue at hand in this matter has no strong relation to Urban Indian Organizations, how the court decides this case will affect Tribal healthcare facilities, and potentially restrict the scope of contract support costs to cover overhead costs. Failure by the federal government to cover these overhead expenses would require Tribes to divert program income away from healthcare services. NCUIH supports Tribal sovereignty and the efforts by Respondent Tribes to ensure that IHS carries out the federal trust responsibility in the manner required by IHCIA.

Summary of the Brief's Argument

Attorneys for NIHB focused their argument on the text and history of the Indian Health Care Improvement Act (IHCIA). Congress first authorized IHS to bill and collect from Medicare and Medicaid in 1976 when Congress first passed IHCIA. The evolution of IHCIA and amendments to it reflect Congressional intent to address specific programs surrounding funding, operation, and IHS oversight of federal Indian healthcare programs. Through this, it confirms that Congress has always regarded third-party program income as essential and integral to "the Federal Program" whether operated by IHS, Indian Tribe, or tribal organization under ISDA. The main points argued within the brief are:

- Congress enacted IHCIA to redress critical funding shortfalls in federal Indian healthcare programs;
- IHCIA and ISDA amendments demonstrate that third-party revenues are an essential element of "the Federal program" for which IHS must pay contract support costs; and
- While Petitioners insist program income is not part of "the Federal program," IHS continues to treat program income as a critical part of tribally operated programs, including by transferring program income, and personnel funded by program income, to tribes that assume control of IHS healthcare programs under ISDA.

Next Steps

Oral argument for this case is scheduled for March 25th with audio available for public access during and after the oral argument. After oral argument, the Supreme Court will issue a decision on the case by June 30th, 2024.