



January 21, 2020

GENERAL MEMORANDUM 20-002

FY 2020 Enacted Indian Health Service Appropriations; SDPI Extended through May 22, 2020

In this Memorandum we report on highlights of the final FY 2020 enacted appropriations for the Indian Health Service (IHS). The Further Consolidated Appropriations Act, 2020 (Act) was signed on December 20, 2019, two hours before a government shutdown would have gone into effect. The Act, Public Law 116-94, includes eight appropriations bills and the Indian Health Service is in Division D of the Act. The Act is effective until the end of the fiscal year (September 30, 2020).

Attached is a chart from the Manager's Explanatory Statement (essentially a Conference report) which shows the IHS account amounts for FY 2019 enacted, FY 2020 Administration's request, and FY 2020 enacted. The Explanatory Statement can be found in the December 17, 2019, Congressional Record. The Explanatory Statement provides that directives contained in House Report 116-100 and Senate Report 116-123 stand unless changed in the Statement. The reports can be found here:

[House Report 116-100](#)

[Senate Report 116-123](#)

Special Diabetes Program for Indians. The Act also includes short-term authorizations of several mandatory-funded health programs including the Special Diabetes Program for Indians (SDPI) and the Community Health Centers through May 22, 2020. Funding for SDPI is at the current annual level of \$150 million. It is likely that bills extending these health programs beyond May 22 will attract proposals to add other health-related proposals to it.

Overview. The Act provides \$6.04 billion for the IHS, a 4 percent increase above the FY 2019 enacted level. A significant part of the increase is for the 105(l) lease requirements (see below). Also of note is that the Act provides, as Congress did in FY 2019, the authority that the funds can be used within two fiscal years instead of one year. Thus the FY 2020 funds will remain available until September 30, 2021.

Other increases include \$6.4 million for the Urban Indian Health program for a total of \$57.7 million and a \$7.9 million increase for Indian Health Professions for a total of \$65.3 million. Among the programs whose funding remained the same as in FY 2019 are the Indian Health Care Improvement Fund (\$72 million); Purchased/Referred Care

(\$964.8 million); Alcohol and Substance Abuse Program (\$245.6 million - maintains the \$10 million for the opioid program); and under Hospitals and Clinics the Act maintains level funding for accreditation emergencies (\$58 million).

Congress *rejected* the Administration's proposed cuts to the Community Health Representatives, Indian Health Professions, supplemental funding for Village Clinics, and Facilities Construction and for the elimination of funds for Health Education and Tribal Management programs.

In some cases, Congress partially funded the Administration's requested increases. Congress provided \$8 million toward the modernization of electronic health records which is one third of the requested amount. The Act prohibits IHS from obligating these funds or implementing a new Information Technology system unless they have consulted with House and Senate Appropriations Committees 90 days in advance. Congress also provided \$5 million toward development of a lower-48 Community Health Aide Program (CHAP) which is one quarter of the requested amount. Senate Report language notes that these funds are not to diminish the funds for the currently established CHAP program in Alaska.

Congress did not fund the requested increase of \$25 million for the Administration's wide-ranging HIV/Hepatitis C Initiative.

105(l) Leasing. A significant part of the IHS increase is for the Indian Self-Determination and Education Act Section 105(l) lease provision which requires IHS to enter into and fully fund leases for facilities controlled by tribal providers and used to carry out ISDEAA agreements. The Act provides \$125 million for the leases – an \$89 million increase over FY 2019 enacted.

House Report language directs the IHS to consider whether the 105(l) leases should be considered a separate line item in the budget and funded in the same manner as Contract Support Costs ("such sums as may be necessary"), a solution that has been recommended by tribes.

The Senate Report reflects the concerns expressed by Senate Interior Appropriations Chairman Murkowski regarding future required funding of clinic leases in light of the *Maniilaq v. Burwell* decisions. The Senate Report directs the IHS to communicate regularly with the Committee on estimates of the costs of the 105(l) leases. It also asks the IHS to report on challenges to budgeting for the costs and on the rationale behind its decision to have 12-month lease agreements instead of leases on a prospective basis. In addition, the Committee directs IHS, the Departments of Interior and Justice, and the Office of Management and Budget to work with congressional committees to formulate budget strategies and to discuss whether "in light of the *Maniilaq* decisions, these funds should be reclassified as an appropriated entitlement." Finally, the Senate

Report expresses the view that the 105(l) lease requests should be accounted for separately from the Village Built Clinics in the FY 2021 budget request.

The Explanatory Statement likewise expresses concern that the increasing costs of the 105(l) leases (IHS and BIA) have the potential to increase, causing "a high level of unpredictability into the budget process" and impacting core tribal programs whose funding is discretionary. It directs the Departments of Interior and Health and Human Services to consult with tribes and work with the Office of Management and Budget and congressional committees of jurisdiction "to formulate long-term accounting, budget and legislative strategies to address the situation, including discussions about whether, in light of the *Maniilaq* decisions, these funds should be reclassified as an appropriated entitlement."

Contract Support Costs (CSC). CSC would continue to be funded at "such sums as may be necessary" which is estimated at \$820 million. Continued in the General Provisions of the Act are provisions that prohibit BIA and IHS from using FY 2020 CSC funds to pay past-year CSC claims or to repay the Judgment Fund for judgments of settlements related to past-year CSC claims. They do not preclude tribes from recovering such judgments or settlements from the Judgment Fund.

Housing Allowances. The Act continues language from FY 2019 that the IHS may provide to civilian medical personnel serving in hospitals operated by the IHS housing allowances equivalent to those that would be provided to Commissioned Corps members serving in similar positions at such hospitals. The Administration proposed to continue this provision.

Indian Health Facilities. The Facilities account received a 3.8 percent increase. Of the \$911 million for health care facilities construction, \$5 million is for Green Infrastructure and \$25 million for Small Ambulatory Clinics (a \$10 million increase). The Explanatory Statement echoes the House and Senate Committee Reports' support for the Joint Venture program while directing them to establish "a more consistent application cycle of between three to five years. At each competitive cycle, IHS should select a specific number of awards and non-selected applications should be eligible to reapply during the next competitive cycle."

Alaska Moratorium Provision. The Act extends through September 30, 2020, the Alaska moratorium provision that, with some exceptions, prohibits IHS from contracting directly under the Indian Self-Determination and Education Assistance Act with any tribe that is a member of a regional tribal health organization.

Please let us know if we may provide additional information regarding FY 2020 enacted Indian Health Service appropriations.

The Administration will release its FY 2021 proposed budget on Monday, February 10, although that does not necessarily mean that the individual federal agency budget books will be available on that date.

#

Inquires may be directed to
Karen Funk (kfunk@hobbsstrauss.com)

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2020

(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Communications Site Administration.....	---	---	1,000	+1,000	+1,000
Total, Forest Service without Wildland Fire Management.....	3,082,146	2,785,378	3,132,793	+50,647	+347,415
TOTAL, FOREST SERVICE.....	6,087,132	7,085,998	7,433,413	+1,348,281	+347,415
Forest Service without cap adjustment.....	(6,087,132)	(5,135,998)	(5,483,413)	(-603,719)	(+347,415)
Forest Service Suppression Cap Adjustment...	---	(1,950,000)	(1,950,000)	(+1,950,000)	---

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

Indian Health Services

Clinical Services:					
Hospital and health clinics.....	2,147,343	2,363,278	2,324,606	+177,263	-38,672
Electronic Health Record System.....	---	25,000	8,000	+8,000	-17,000
Dental health.....	204,672	212,369	210,590	+5,918	-1,779
Mental health.....	105,281	109,825	108,933	+3,652	-892
Alcohol and substance abuse.....	245,566	246,034	245,603	+37	-431
Purchased/referred care.....	964,819	968,177	964,819	---	-3,358
Indian Health Care Improvement Fund.....	72,280	72,280	72,280	---	---
Subtotal.....	3,739,961	3,996,963	3,934,831	+194,870	-62,132

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2020

(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Preventive Health:					
Public health nursing.....	89,159	92,084	91,984	+2,825	-100
Health education.....	20,568	---	20,568	---	+20,568
Community health representatives.....	62,888	24,000	62,888	---	+38,888
Immunization (Alaska).....	2,127	2,173	2,127	---	-46
Subtotal.....	174,742	118,257	177,567	+2,825	+59,310
Other services:					
Urban Indian health.....	51,315	48,771	57,684	+6,369	+8,913
Indian health professions.....	57,363	43,612	65,314	+7,951	+21,702
Tribal management grant program.....	2,465	---	2,465	---	+2,465
Direct operations.....	71,538	74,131	71,538	---	-2,593
Self-governance.....	5,806	4,807	5,806	---	+999
Subtotal.....	188,487	171,321	202,807	+14,320	+31,486
Total, Indian Health Services.....	4,103,190	4,286,541	4,315,205	+212,015	+28,664
Contract Support Costs					
Contract support.....	822,227	820,000	820,000	-2,227	---
Indian Health Facilities					
Maintenance and improvement.....	167,527	168,568	168,952	+1,425	+384
Sanitation facilities construction.....	192,033	193,252	193,577	+1,544	+325
Health care facilities construction.....	243,480	165,810	259,290	+15,810	+93,480

4 14

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2020

(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request

Facilities and environmental health support.....	252,060	251,413	261,983	+9,923	+10,570
Equipment.....	23,706	23,983	28,087	+4,381	+4,104
	-----	-----	-----	-----	-----
Total, Indian Health Facilities.....	878,806	803,026	911,889	+33,083	+108,863
	=====	=====	=====	=====	=====
TOTAL, INDIAN HEALTH SERVICE.....	5,804,223	5,909,567	6,047,094	+242,871	+137,527
	=====	=====	=====	=====	=====
NATIONAL INSTITUTES OF HEALTH					
National Institute of Environmental Health Sciences...	79,000	66,581	81,000	+2,000	+14,419
AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY					
Toxic substances and environmental public health.....	74,691	62,000	76,691	+2,000	+14,691
	=====	=====	=====	=====	=====
TOTAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES..	5,957,914	6,038,148	6,204,785	+246,871	+166,637
	=====	=====	=====	=====	=====
OTHER RELATED AGENCIES					
EXECUTIVE OFFICE OF THE PRESIDENT					
Council on Environmental Quality and Office of Environmental Quality.....	2,994	2,750	2,994	---	+244