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Written Testimony of President Fawn Sharp
of the National Congress of American Indians
in Support of H.R. 5549, the Indian Health Service Advance Appropriations Act
for the House Committee on Natural Resources
Subcommittee for the Indigenous Peoples of the United States
July 28, 2022

On behalf of the National Congress of American Indians (NCAI), the oldest and largest organization comprised of American Indian and Alaska Native (AI/AN) tribal governments and their citizens, thank you for this opportunity to provide testimony on H.R. 5549, the Indian Health Service Advance Appropriations Act. My name is Fawn Sharp. I am the Vice President of the Quinault Indian Nation and President of NCAI.

Introduced by the late Representative Young, and originally co-sponsored by Representatives McCollum, Kilmer, Kind, Mullin, Cole, Johnson, and Strickland, H.R. 5549 has a strong list of 15 bipartisan co-sponsors. Indian Country has long supported advance appropriations as a solution to the outsized impacts funding disruptions have on the Indian Health Care system. Recognizing the importance of this issue, the NCAI Executive Committee unanimously passed resolution ECWS-19-001[1] in support of advance appropriations for Indian Health Service (IHS) in 2019.

Advance appropriations for IHS are a bipartisan and bicameral policy initiative that increases tribal and federal government efficiency, reduces federal taxpayer waste, and, most importantly, saves Native lives by providing more effective funding for health care service in Indian Country. Since advance appropriations are merely advance agreements to provide funding at a later date, they are a budget-neutral and flexible solution to the outsized impacts of funding disruptions on Indian Country. Advance appropriations can be rescinded or modified before they are obligated—allowing Congress to respond to changing circumstances based on real-world challenges. The result is continuity of services that reduce bureaucratic inefficiencies and uncertainty for IHS and for Tribal Nations.

The Biden-Harris Administration supports advance appropriations and mandatory funding for IHS—a historic shift in the paradigm of Nation-to-Nation relations that seeks to restore the promises made between our ancestors and the United States. Advance appropriations and mandatory funding are not mutually exclusive requests. However, once IHS obligations are provided through mandatory direct appropriations, there will be no need for advance appropriations through the annual regular appropriations process. Until such time that mandatory appropriations are provided, advance appropriations are a fiscally responsible solution to the outsized impacts of disruptions and uncertainty in funding on the Indian health care system.

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[1] NCAI Resolution No. ECWS-19-001, *In Support of Advance Appropriations for the Bureau of Indian Affairs and the Indian Health Service*, available at: https://www.ncai.org/attachments/Resolution_vkouAZmrehTqskEUMrBcxaBCihXkHApCJyGwXAwyjOkhwIcYAGi_ECWS-19-001%20Advance%20Appropriations%20FINAL.pdf, accessed on: July 23, 2022.

Advance appropriations for IHS is an ongoing policy priority for Indian Country. At NCAI's most recent Mid Year Conference in June 2022, tribal leaders and keynote speakers advocated for the enactment of advance appropriations for IHS, and detailed policy discussions took place during NCAI Committees and the Budget Task Force. Enactment of advance appropriations for IHS is long overdue and H.R. 5549 is the vehicle to get this done the right way. NCAI urges Congress to pass this bipartisan policy solution to end the undue suffering of our people and unnecessary drain on taxpayer resources.

Enactment of H.R. 5549 cannot be timelier, as Indian Country faces a combination of ongoing crises affecting IHS operations and service delivery:

A Funding Crisis

As documented in the *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* report, we face an ongoing funding crisis that is a direct result of the United States' chronic underfunding of Indian health care for decades, which contributes to vast health disparities between Native Americans and other U.S. population groups.[2] Congress continues to provide funding for the Indian Health Service as discretionary spending with a per user investment by Congress that is more than 56% less than national health spending, per capita.[3] At an average age of 37 years, IHS hospitals are nearly four times older than hospital facilities nationwide, and could not be replaced for nearly 400 years based on the amount of funding currently provided. Although funding for IHS has increased significantly since 2009, after adjusting for inflation and population growth, the IHS budget has remained static in recent decades.[4] With federal expenditure metrics such as these, it is no surprise that Indian Country is in a state of crisis by national standards—a 400-year waitlist and less than half the per capita investment in health services is unacceptable.

The chronic underfunding and funding instability of the Indian health care system is particularly egregious because Tribal Nations paid in full for the provision of payments and services, including the promise to provide health care to tribal citizens, when they exchanged the land that created the foundation of the bounty and wealth of the United States.[5] Through the United States' acquisition of land and resources, it formed a fiduciary relationship with Tribal Nations whereby it has recognized

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[2] *See*, U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (hereinafter "*Broken Promises*"), 65, available at: https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf, accessed on: July 23, 2022.

[3] IHS National Tribal Budget Formulation Workgroup FY 2023 Budget, May 2021, accessed at: https://www.nihb.org/docs/02072022/FY%202023%20Tribal%20Budget%20Formulation%20Workgroup%20Recommendations%20Vol%201.pdf, accessed on: July 23, 2022.

[4] *Broken Promises* at 67.

[5] *See, e.g.*, Treaty with the Makah, 12 Stat. 939, art. 11 (Jan. 31, 1855)("And the United States further agrees to employ a physician to reside at the said central agency, or as such other school should one be established, who shall furnish medicine and advice to the sick, and shall vaccinate them; the expenses of said school, shops, persons employed, and medical attendance to be defrayed by the United States and not deducted from the annuities."); Treaty with the Klamath, 16 Stat. 707, art. 5 (Oct. 14, 1864)("The United States further engages to furnish and pay for the service and subsistence . . . for the term of twenty years of one physician . . . ."); Treaty with the Kiowa and Comanche, 15 Stat. 581, art. 14 (Oct. 21, 1867)("The United States hereby agrees to furnish annually to the Indians the physician . . . and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such [person]."); *see also,* U.S. Department of Health and Human Services, Indian Health Service, *Indian Health Service Gold Book—The First 50 Years of the Indian Health Service: Caring and Curing* (2005), 8, accessed at: https://www.ihs.gov/newsroom/includes/themes/responsive2017/display_objects/documents/GOLD_BOOK_part1.pdf, accessed on: July 23, 2022.

a trust relationship[6] by which the United States "charged itself with moral obligations of the highest responsibility and trust."[7]

A Health Crisis

Indian Country also faces a health crisis that is exacerbated by the ongoing coronavirus pandemic and disproportionately impacts American Indian and Alaska Native (AI/AN) communities due to underlying health and living disparities. With a life expectancy that is 5.5 years less than the national average, Native Americans die at higher rates that those of other Americans from chronic liver disease and cirrhosis, diabetes mellitus, unintentional injuries, assault/homicide, intentional self-harm/suicide, and chronic lower respiratory disease.[8] Native American women are 4.5 times more likely than non-Hispanic white women to die while pregnant or "within 42 days of the termination of pregnancy, irrespective of the duration and site of the pregnancy or its management, but not from accidental or incidental causes."[9] The Centers for Disease Control and Prevention (CDC) found that, between 2005 and 2014, every racial group experienced a decline in infant mortality except for Native Americans[10] who had infant mortality rates 1.6 times higher than non-Hispanic whites and 1.3 times the national average.[11] Additionally, Native Americans experience some of the highest rates of psychological and behavioral health issues as compared to other racial and ethnic groups[12] which have been attributed, in part, to the ongoing impact of historical trauma.[13] Native Americans are also more likely than people in other U.S. demographics to experience trauma, physical abuse, neglect, and post-traumatic stress disorder.[14]

Additionally, the coronavirus pandemic is not over and funding certainty and stability are critical to saving Native lives as we continue to combat the ongoing effects of COVID-19. According to Indian Health Service data, the total number of coronavirus cases per week has been on the rise since April 2022 (See Fig. 1.1). Further, the Centers for Disease Control and Prevention (CDC) indicates that community transmission levels are dangerously high in nearly all parts of the country (See Fig. 1.2).

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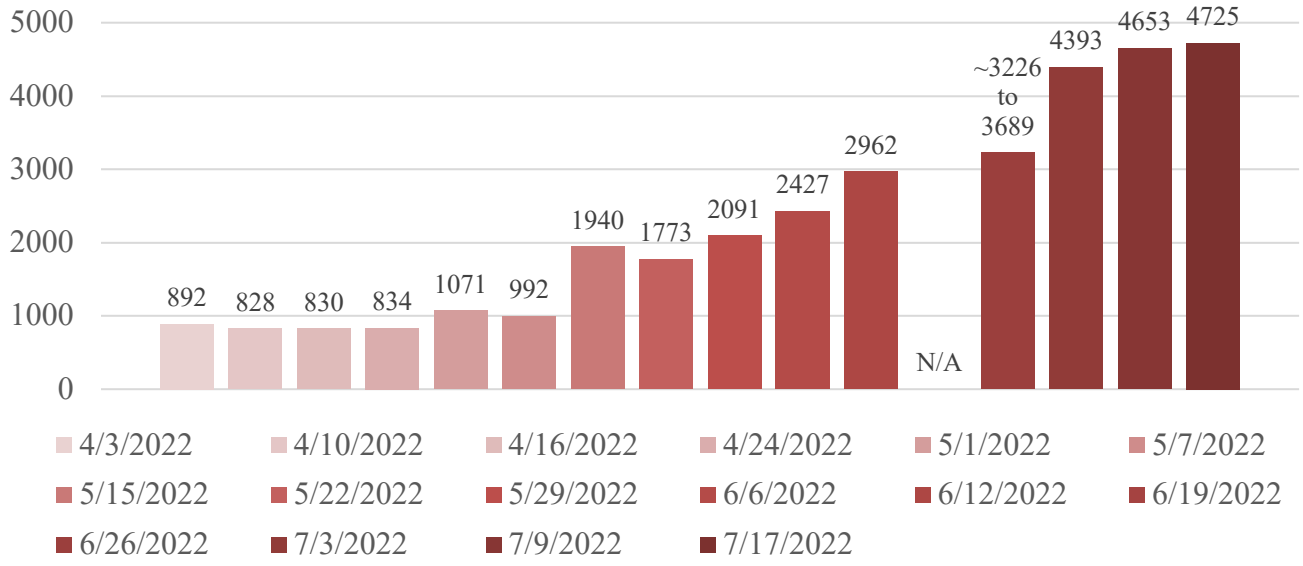
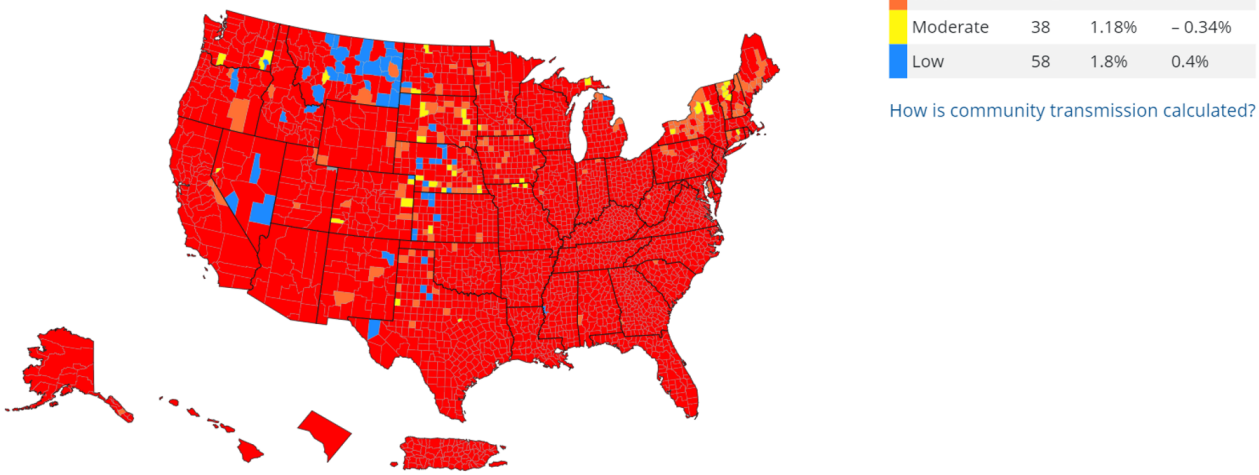
[6] *See, Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); and *Worcester v. Georgia*, 31 U.S. 515 (1832).
[7] *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).
[8] *Broken Promises* at 65.
[9] *Broken Promises* at 65.
[10] *Broken Promises* at 65.
[11] *Broken Promises* at 65.
[12] Walls, et al., *Mental Health and Substance Abuse Services Preferences among American Indian People of the Northern Midwest*, COMMUNITY MENTAL HEALTH J., Vol. 42, No. 6 (2006) at 522, https://link.springer.com/content/pdf/10.1007%2Fs10597-006-9054-7.pdf, accessed on: July 23, 2022.
[13] Kathleen Brown-Rice, *Examining the Theory of Historical Trauma Among Native Americans*, PROF'L COUNS, available at: http://tpcjournal.nbcc.org/examiningthe-theory-of-historical-trauma-among-native-americans/, accessed on: July 23, 2022.
[14] *Broken Promises* at 79-84.

Figure 1.1 - New COVID-19 Cases in Last 14 Weeks - Overall IHS



Source: NCAI Policy Research Center Data as of 7/24/2022 at 12:38 p.m. EDT, collected on a rolling basis from https://www.ihs.gov/coronavirus/

Figure 1.2 - CDC Community Transmission Levels by County



Source: Data as of 07/24/2022 at 12:38 p.m. EDT; https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=Risk

Even though the published data indicates high community transmission throughout the United States and in Indian Country, experts believe the actual number of cases is much higher. An estimate from the University of Washington's Institute of Health Metrics and Evaluation indicates that actual infection numbers in the first week of July were about seven times higher than the number of reported

cases.[15] These quantitative findings and estimates of COVID-19 infection underscore the ongoing nature of the pandemic, indicating that the disparate impacts on Native communities and on the IHS system will persist in the short- and medium-term future.

Further, the seasonal cycle is a consistent feature of respiratory viral infections[16] lending to the widely-held prediction that, even after we transition out of a global pandemic phase of COVID-19 infection, the virus will exhibit some form of seasonality.[17] In consideration of healthcare system efficiency and federal cost reduction, this means that advance appropriations for the IHS will provide funding certainty and continuity of services for the fall and winter months when surges in patient need due to respiratory illness and disruptions in federal funding are most probable. Congress should welcome solutions that increase efficiency at times of increased program service volume because efficiencies ultimately result in improved value ratios of input to desired output—in simple terms, good governance.

An Economic Crisis

Indian Country also faces an economic crisis. Beginning in February 2022, the Bureau of Labor Statistics published monthly data on AI/AN employment using data that was previously available through the U.S. Census Bureau's Current Population Survey. The newly published data reveals a labor market that would be considered catastrophic if it were representative of the full U.S. economy—Indian Country has an unemployment rate more than double the national rate.[18] The data further highlights that Indian Country is still recovering from the effects of the pandemic with unemployment rates reaching 28.6% during the peak of the pandemic fallout—an amount comparable to the national unemployment rate during the Great Depression.[19] As of January 2022, the unemployment rate for Native Americans was still greater than the peak unemployment rate for white workers during the pandemic.[20]

Even when controlling for a host of factors, the Brookings Institute posits that structural racism in the U.S. economy affects AI/AN access to education and attainment as well as employment opportunities.[21] As traditionally place-based peoples with strong cultural and historical ties to the land, AI/ANs do not tend to move away regardless of economic situations. This means that the structural impediments to economic growth are focused and exacerbated on tribal lands, underscoring the importance of federal investment through regular federal appropriations. These broken promises

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[15] Institute of Health Metrics and Evaluation, *COVID-19 Projections, Daily Infections and Testing*, available at: https://covid19.healthdata.org/global?view=infections-testing&tab=compare&test=infections, accessed on: July 23, 2022.

[16] Martinez M.E., *The calendar of epidemics: seasonal cycles of infectious diseases*, PLoS Pathog. 2018;14 doi: 10.1371/journal.ppat.1007327, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6224126/, accessed on: July 23, 2022.

[17] Liu X., et al., *The role of seasonality in the spread of COVID-19 pandemic*, Environ Res. 2021 Apr; 195: 110874, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7892320/, accessed on: July 23, 2022.

[18] Robert Maxim, Randall Akee, and Gabriel R. Sanchez, *For the first time, the government published monthly unemployment data on Native Americans, and the picture is stark*, https://www.brookings.edu/blog/the-avenue/2022/02/09/despite-an-optimistic-jobs-report-new-data-shows-native-american-unemployment-remains-staggeringly-high/#:~:text=Prior%20to%20the%20pandemic%2C%20Native,unemployment%20during%20the%20Great%20Depression, Accessed: May 4, 2022.

[19] *Id.*

[20] *Id.*

[21] *Id.*

of the United States dampen local, regional, and national U.S. economic productivity and negatively impact the safety and wellbeing of Americans—Native and non-Native alike.

In Indian Country, due to the large role public administration jobs—such as healthcare—play in tribal communities and economies, coupled with low average household wealth, disruptions in federal funding uniquely harm Native families. During a shutdown, thousands of IHS employees—many of whom are tribal citizens—are furloughed or work without pay, which means that IHS employees during those times struggle to pay household bills and mortgages. A single salary may support an extended Native family, sending harmful ripples throughout a Tribal Nation and surrounding communities. While this is the most extreme example of IHS funding disruption, the effects of short-term Continuing Resolutions also harm IHS and the communities it serves by forcing tribal governments to cover expenses until funds can be received—funds that start out at pennies on the dollar of the actual duty owed and are often expended before they can even be received as a result of the time it takes to complete the apportionment, warrant, and obligation process associated with each provision of funds. The uncertainty compounds the challenges of attracting and retaining professionals to work in health care and other skilled professions that are critical to fulfilling the programmatic mission of IHS. This effect is especially damaging in rural reservation communities that have acute difficulty recruiting and retaining medical personnel.

Conclusion:
While H.R. 5549 is one solution to allow Congress to enact advance appropriations for IHS, budget resolutions can also provide this authority and have been similarly used for the Veterans Health Administration. The Concurrent Budget Resolution for FY 2022 included this exception for certain IHS accounts; however, advance appropriations were ultimately not included in the final FY 2022 spending package. H.R. 5549 is an improvement on the exception for IHS accounts provided in last year's Budget Resolution because it includes all of the accounts for the Indian Health Service. This is important because of the nature of inherently federal functions as they relate to the operation of programs pursuant to the Indian Self-Determination and Education Assistance Act (P.L. 93-638, as amended). Advance appropriations are not about more money in a single accounting period, they are about advance agreements by Congress that provide certainty and continuity of services that promote efficiencies and reduce taxpayer waste on costly duplicative tribal and federal budgetary functions. If only certain funded accounts are provided continuity of services while necessary and inherently federal IHS functions remain subject to the stops and starts of the annual appropriations process, then Congress is not utilizing the policy of advance appropriations to maximize its best fiscal features.

Advance appropriations for IHS are a simple promise: a promise that the United States honors and upholds its treaty and trust obligations; a promise that Congress will enact solutions that cease the generational trauma and undue and unnecessary suffering of Native people; and a promise of certainty and security for Native communities and our most vulnerable populations. As Congress works to restore the promises made, all options must be on the table. Native lives cannot wait.