

National Indian Health Board



Submitted via email: secretary@hhs.gov

July 15, 2020

The Honorable Alex M. Azar II
Secretary
Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20101

Re: Extension of the Public Health Emergency

Dear Secretary Azar:

On behalf of the National Indian Health Board (NIHB),¹ I write to urge extension of the Public Health Emergency past its currently scheduled end date of July 25, 2020. We note that the Department has indicated an interest in extending the Public Health Emergency (PHE) and while we appreciate this declaration, we still await an official notice from Health and Human Services (HHS) that an extension has been granted. As of this writing, a formal notice of the extension has yet to appear on HHS's Public Health Emergency Declaration website². We would like assurance that the PHE will be renewed beyond its current expiration date.

Given the rising number of novel coronavirus (COVID-19) infections nationally and strong indicators that the situation could soon get worse for American Indian and Alaska Natives (AI/ANs), we believe that a Public Health Emergency continues to exist, and in fact, poses an even greater risk to Indian Country and the entire nation than when the Administration initially declared the emergency on January 31, 2020. It is because of the continued threat of COVID-19 that we place a special emphasis on receiving confirmation that the PHE will continue.

¹ Established in 1972, the National Indian Health Board (NIHB) is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/ANs). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

² See <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>

Extension is Necessary

When the Administration, through your office, declared the Public Health Emergency on January 31, only six cases of COVID-19 had been confirmed in the United States³. On July 15, the Centers for Disease Control (CDC) reported 60,971 new cases, bringing the total to 3,416,428 cases⁴. In addition to this, there were 773 new deaths, bringing the total to 135,991 people who have died from this disease. The data clearly points to the fact that United States has not contained this virus.

This disease has also greatly impacted Indian Country. We are all familiar with the Navajo Nation and their struggles with the disease. According to our data, COVID-19 deaths for AI/ANs in Arizona and New Mexico are (respectively) 321% and 474% higher than the general population in their states. However, the Navajo Nation is not the only Tribal community that has seen a disproportionate impact from this disease. In Mississippi, home of the Mississippi Choctaw, AI/ANs are dying at a rate 596% higher than the state's general population. Also, in Wyoming, AI/ANs deaths from COVID-19 are 1413.6% higher than the state's general population. Many Tribal communities across the country are already grappling with this disease.

The shifting geographies of this disease also pose a threat to Indian Country. Rural communities are seeing increases in cases and their case numbers are now growing at a rate exceeding many of their urban counterparts. Indian Country is predominantly rural and trends that impact rural areas more broadly also impact Indian Country. We have heard that many Tribal communities have recently seen their first COVID-19 cases and sometimes even their first COVID-19 death in recent days. We have reason to believe that, as the months go on, this disease will pose a greater threat to Indian Country.

Preserving Emergency Authorities / Flexibilities will Assist Tribes as They Respond to COVID 19

Among other powers, a declaration of a Public Health Emergency gives the Secretary the ability to deploy resources or waive onerous requirements in order to allow providers to divert resources to the issue at hand. For example, under a Public Health Emergency, the Secretary may extend grant deadlines or modify grant application submission requirements, both of which are tremendously helpful to Tribes, many of which are grappling with having to work with a reduced workforce because of the impacts of COVID-19.

Over the past several months, we have also seen an increased number of flexibilities and waivers from the Centers for Medicare and Medicaid Services (CMS) that have allowed for the expansion of the Medicare program and allowed states to expand their Medicaid programs. For example, the Section 1135 waiver authority has been utilized through the Medicare and Medicaid program to expand access to telehealth, allow providers to practice across state lines, and modify provisions of their respective programs in order to improve their responsiveness to the current emergency.

³ "January 31, 2020- Update and Interim Guidance on Novel Coronavirus (2019-CoV) Outbreak," District of Columbia Department of Health, <https://dchealth.dc.gov/publication/january-31-2020-update-and-interim-guidance-novel-coronavirus-2019-cov-outbreak>

⁴ "Cases in the U.S." Centers for Disease Control, July 15, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

While the Secretary of Health and Human Services (HHS) retains the authority to extend 1135 waivers beyond the end of the Public Health Emergency, this extension is limited in duration.

We also have seen states file Disaster Relief State Plan Amendments (SPAs), which have served to allow states to make their Medicaid programs more flexible and capable of responding to the current Public Health Emergency. Many of these flexibilities, which include expansions of telehealth, increases in the amount of prescription drugs that can be prescribed at a given time, and other measures designed to reduce patient- to- patient and patient- to- practitioner contact in order to contain COVID-19's spread, are due to sunset at the end of the Public Health Emergency.

Third party revenue is a significant contributor to the financial stability of IHS and Tribal clinics and hospitals, especially Medicare and Medicaid. The importance of Medicaid, in particular to the financial health of the Indian health system cannot be overstated. According to the Indian Health Service 2020 Congressional Justification, between Fiscal Year 2013 and Fiscal Year 2018, third party collections at IHS and Tribal facilities increased by \$360 million, with 65% coming from Medicaid, a substantial portion by any measure⁵. Moreover, data show that the number of AI/ANs with Medicaid increased from 1,458,746 in 2012 to 1,793,339 in 2018. The 334,593 increase in Medicaid coverage is a 22.94% increase over 2012. In 2018, 33.55% of all AI/ANs had Medicaid compared to 29.55% in 2012. We fear that the end of the Public Health Emergency will also mean the end of the flexibilities and waivers that have increased the ability of our Indian health programs to respond to this crisis. These flexibilities have enabled Indian health providers to expand their telehealth programs and take other measures designed to minimize patient- to- provider and patient- to- patient contact while ensuring continuity of care. However, these provisions are generally set to sunset at the end of the PHE. The loss of these flexibilities would create financial difficulty for the Indian health system as Tribes move to enact restrictions to protect their citizens.

Conclusion

We urge the extension of the Public Health Emergency, until such time that it is clear that COVID-19 is contained and the threat to public health has dissipated. The data demonstrates that the conditions requiring the emergency declaration have yet to subside. In fact, we have reason to believe that the disease poses a greater threat to Indian Country than ever before. There have been some positive steps taken to control the spread of COVID-19, but prematurely ending the Public Health Emergency, particularly during a time when COVID-19 spread remains at all-time highs, threatens to undo much of progress that has already been made.

Sincerely,



Stacy A. Bohlen

⁵ Data show that the number of AI/ANs with Medicaid increased from 1,458,746 in 2012 to 1,793,339 in 2018. In 2018, 33.55% of all AI/ANs had Medicaid. National Indian Health Board Date Brief (2020).

CEO
National Indian Health Board

CC:
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