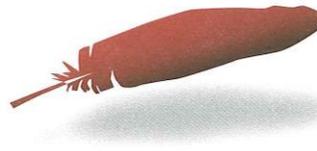


# National Indian Health Board



## National Indian Health Board Resolution 21 – 02

### A Resolution concerning 105(l) lease agreements

**WHEREAS**, the National Indian Health Board (NIHB), established in 1972, serves all Federally recognized American Indian/Alaska Native (AI/AN) Tribal governments by advocating for the improvement of health care delivery to AI/ANs, as well as upholding the Federal government's trust responsibility to AI/AN Tribal governments; and

**WHEREAS**, the Indian health system has always been chronically underfunded, as documented by the U.S. Commission on Civil Rights, among others; and

**WHEREAS**, Tribes and Tribal organizations providing health care services through contracts and compacts with the Indian Health Service (IHS) under the Indian Self-Determination and Education Assistance Act (ISDEAA) have been able to supplement inadequate health care facilities funding by leasing Tribal facilities to IHS under the authority of section 105(l) of the ISDEAA, 25 U.S.C. § 5324(l); and

**WHEREAS**, Tribal governing bodies have the authority to determine to what extent a Tribe should provide such services, which are deemed as a matter of law by § 1680c(c)(2) to be provided under the Tribe's ISDEAA agreement with IHS; and

**WHEREAS**, Tribes are required to charge for those services and may bill third parties such as health insurance, Medicare, Medicaid, and the Children's Health Insurance Program, for the services; and

**WHEREAS**, it is essential that Congress continue funding 105(l) leases and Contract Support Costs (CSC), as these are contractual obligations to sovereign Tribal governments, but without meaningful impacts to funding for medical services, facilities, sanitation, and other needs, that are vital to the Indian health system and effectively reduce AI/AN health disparities; and

**WHEREAS**, a recent court decision involving the Jamestown S'Klallam Tribe threatens to undermine the increasingly beneficial interaction between sections 105(l) and 813.

**NOW THEREFORE BE IT RESOLVED**, that Congress should amend Section 105(l) of ISDEAA to further reinforce congressional intent regarding the intersection of Sections 105(l) and 813 by clarifying that all facility space used to provide healthcare services under ISDEAA agreements – including to non-IHS beneficiaries, be compensable under Section 105(l); and

**THEREFORE, BE FURTHER IT RESOLVED**, that the funding increases for the 105(l) leases must hold harmless the rest of the IHS budget, and these funds must be considered separate and outside of increases to the agency and not impact increases to other critical IHS line items; and

**THEREFORE, BE IT FINALLY RESOLVED**, That NIHB suggests legislative language reading as follows:

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable. **The compensation must include all such facility based expenses used to provide services within the scope of an agreement under this chapter, including services provided under section 1680c of this title.**

#### CERTIFICATION

The foregoing resolution was adopted by the Board, with quorum present, on the 26<sup>th</sup> day of February 2021.



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**Chairperson, William Smith**

**ATTEST:**



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**Secretary, Lisa Elgin**