

National Indian Health Board



November 5, 2021

President Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Re: Permanent IHS Director

Dear President Biden:

On behalf of the National Indian Health Board (NIHB),¹ I write to you regarding the permanent appointment of the Director of the Indian Health Service (IHS). We are concerned by the lack of progress on the appointment of a permanent director and the lack of transparency from the Biden Administration on the selection process. The Federal Vacancies Reform Act of 1998² limits the duration that “acting” appointees can serve in positions that require nomination and confirmation by the United States Senate. For an incoming president, that period is limited to the first 300 days of their administration. The current acting director of IHS, Elizabeth Fowler, will approach that limit on November 16, 2021. Given that we are less than two weeks away from that deadline, we are disappointed that the Biden Administration has not made filling this vacancy a higher priority. IHS deserves a permanent director, and the Biden Administration must move expeditiously to make this happen.

Trust Responsibility

An expeditious appointment of an appropriate director to IHS, the lead agency charged with administering Indian health programs, will demonstrate the Biden Administration's commitment to fulfilling the federal government's trust responsibility to protect the interests of Indian Tribes and communities. This trust responsibility is central to the unique legal and political relationship the United States holds with Tribal governments, established through and confirmed by the United States Constitution, treaties, federal statutes, executive orders, and judicial decisions. You underlined this responsibility in your January 26 memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, in which you stated that it is a priority for the Biden Administration to make "respect for Tribal sovereignty and self-governance" and "commitment to fulfilling federal trust and treaty responsibilities to Tribal Nations... cornerstones of Federal Indian policy.”

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 5 U.S.C. § 3345

In recognition of that trust responsibility, Congress has passed numerous Indian-specific laws to provide for Indian health care, including laws establishing the Indian health care system and those providing structure and detail to the delivery of care, such as the Indian Health Care Improvement Act (IHCIA)³. In the IHCIA, Congress reiterated that “federal health services to maintain and improve the health of the Indians are consonant with and required by the federal government’s historical and unique legal relationship with, and resulting responsibility to, the American Indian people⁴. The federal government’s work with AI/AN peoples *must* be informed by this responsibility. **IHS is central to fulfilling that mission and cannot be successful in doing so without a permanent director.**

The Need for a Director

In your January 26 memorandum, you acknowledged that “[h]onoring those commitments is particularly vital now, as our Nation faces crises related to health... which disproportionately harm Native Americans.” IHS is the primary conduit through which health care is funded and provided to AI/AN peoples. IHS either directly operates or provides funding to health facilities throughout Indian Country and without a permanent director, IHS is unable to set forth a long-term vision towards fulfilling this goal. An acting director also lacks the authority and influence within the Administration to affect the change needed to improve the quality of health care provided by or through IHS. An acting director is, by nature, a temporary person in the room. Indian Country deserves a permanent director who is empowered to lead IHS and act as an advocate within the Biden Administration. **To fulfill its duty to Indian Country, IHS must have steady leadership.**

Conclusion

Now is the time to honor the Biden Administration’s commitment to Indian Country. The United States cannot fulfill its trust and treaty responsibilities to protect Indian health and provide for Indian health care without a dedicated, permanent director to the Indian Health Service. This appointment is all the more urgent because of the ongoing pandemic devastating Indian communities. We are now less than two weeks away from the 300-day limit on acting appointees to serve during a presidential transition and we have yet to hear of a nominee to fill the role. This is unacceptable. The Indian Health Service is central to the fulfillment of the federal trust responsibility and finding a permanent director must be a priority of the Biden Administration. The federal trust responsibility cannot be fulfilled without a permanent director leading the Indian Health Service and the Biden Administration must move quickly to nominate someone to fill that role.

Sincerely,



Stacy A. Bohlen, *Sault Ste. Marie Chippewa*
Chief Executive Officer
National Indian Health Board

³ 25 U. S. C. § 1601 et seq.

⁴ Id. § 1601(1)