

Flandreau Santee Sioux Tribe

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Submitted via E-Mail

The Honorable Secretary Alex Azar II
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201
Secretary@HHS.gov

Dear Secretary Azar:

The Flandreau Santee Sioux Tribe (the "Tribe") urgently requests assistance for its ongoing efforts to prevent, detect, and treat the Coronavirus ("COVID-19") on its Reservation and within its community. The Tribe is the largest employer in Moody County, and employs around 400 people. With the rapid expansion of the virus, closing of schools, and additional labor needs to adequately disinfect public spaces, funding needs continue to escalate. The Tribe is on the verge of a complete shutdown, and which would cripple the Tribal economy and tribal businesses, and it therefore needs immediate financial assistance to get through this critical time.

Indian Country is pleased that Congress included, and the President signed into law, \$40 million in direct funding to Tribes, Tribal organizations, and urban Indian organizations under H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act. The Tribe is also pleased that H.R. 6074 authorizes reimbursements to federal agencies like the Indian Health Service ("IHS"), and to Tribes, Tribal organizations, and urban Indian organizations that have expended funds since January 20, 2020 on COVID-19 preparedness and response activities.

The local impact has been extensive, and to date, the following action was taken on behalf of the Tribe in relation to COVID-19:

1. South Dakota Schools have been closed by the Board of Regents/Governor. The lack of available daycare services in the area has caused the Tribal Daycare to prioritize the needs of employees, and then take others on an as available basis.
2. The Tribe's Casino has expended additional resources to ensure that the facility is cleaned and sanitized beyond its normal cleaning procedures.
3. The Tribe has suspended its elderly nutrition program, except for home delivery of meals.
4. There is a labor shortage because of school closures, and employees that are unable to come to work because they may have an individual living with them who is more susceptible to the contraction of the COVID-19.

5. Customer visits to the Tribe's Casino and businesses are down because of COVID-19 community fears, thereby impacting the Tribe's revenue and tax base.
6. The Tribe has also suspended non-essential travel to tradeshows and other business opportunities, thereby hindering the economic development endeavors of the Tribe.
7. The Tribe's Casino has suspended all entertainment and concerts to prevent any potential spread of the virus.

Here are some additional impacts on just the Flandreau Santee Sioux Tribe Health Clinic:
FSST HC clinic impacts:

1. Staff and resources deployed to plan and respond to keep employees, patients and clients safe. Training and education in infection control and reassignments of duties. TIME and RESOURCES reprioritizing their business as usual work.
2. COVID-19 Response Team has met daily since Thursday, March 5 at 8:30 a.m. to debrief, assess and modify standard operating procedures in accordance to the CDC and state and national guidelines based upon the rapid and changing epidemiology of the virus. TIME and RESOURCES
3. Reduction in clinic volume that will have an impact on third party billing and revenues. Prudence in preventing the spread of the virus and guidelines encourage patients to avoid exposure to the virus by staying home, phone triage and consultations, delaying non-urgent visits including general wellness and specialty/ancillary volumes are soft as a result. REVENUE will be impacted by lower volumes.
4. Staffing variations due to illness, childcare and high risk vulnerability. This is resulted in both overtime (comp time) for those covering absences and closure of business lines due to staffing levels. For example: Dental, Optical, Physical Therapy and Imaging. REVENUE will be impacted.
5. Response to COVID-19 has consumed more than usual supplies which will be additional expense (and not additional revenue) to the clinic. For example, additional cleaning supplies, PPE, office supplies, and the like will add additional expenses.
6. Increased pharmacy expense. For example, increased use of OTC supply kits for flu symptoms distributed will increase pharmacy expenses.

Please keep in mind that this list is not exhaustive, and matters will continue to arise as the tribal task for continues to face new COVID-19-related obstacles.

To that end, the Tribe and Indian Country puts forth the following recommendations to ensure a robust and comprehensive response to COVID-19 in Tribal and urban Indian communities:

- 1. Authorize an interagency transfer of the \$40 million in set-aside funds for Tribes, Tribal organizations, and urban Indian organizations from the Centers for Disease Control and Prevention ("CDC") to the IHS for dissemination.**
- 2. Triple the set-aside funds for Tribes, Tribal organizations, and urban Indian organizations to \$120 million.**

3. **Provide additional funds to cover related Tribal and urban Indian expenses for COVID-19 outside of strictly clinical care.**
4. **Minimize deployments of Commission Corps Officers stationed at IHS, Tribal and urban Indian sites.**
 - **The Tribe urges you to deem all IHS Commission Corps officers as mission critical.**
5. **Clarify the process by which Tribes, Tribal organizations, and urban Indian organizations can receive reimbursements authorized under H.R. 6074.**

Background

Each department and agency of the United States federal government has trust and treaty responsibilities to AI/AN Tribes and Peoples. These responsibilities were established through over 350 Treaties between sovereign Tribal Nations and the United States, and reaffirmed in the United States Constitution, Supreme Court case law, federal legislation and regulations, and Presidential executive orders.

Congress further reaffirmed the federal trust responsibility under the permanent reauthorization of the Indian Health Care Improvement Act (“IHCIA”) when it declared that “. . . it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians . . . to ensure the highest possible health status for Indians and urban Indians and to provide all resources to effect that policy.”¹ It is essential to remember that these obligations exist in perpetuity. As such, the federal government must honor its obligations to Tribes and AI/AN Peoples in the COVID-19 response, and the Tribe believes the best way to do that in this scenario is to transfer the \$40 million in Tribal and urban Indian COVID-19 funds to IHS for immediate distribution.

Further, Section 601 of IHCIA established IHS as an agency under the U.S. Public Health Service (“USPHS”), making it an integral part of the federal public health emergency response apparatus. Relatedly, Section 218 of IHCIA authorizes IHS to award funds to Indian Country for communicable and infectious disease prevention, control, and elimination measures. This is important, as the Indian health system has a large federal footprint nationwide with 605 hospitals, clinics, and health stations managed by IHS, Tribal, and urban Indian health programs (the I/T/U system) stretching over 37 states. IHS also has the most efficient mechanism in place to ensure funding swiftly reaches the I/T/U system with the added strength of the statutory authority under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) to award funds to Tribes under self-determination or self-governance contracts and compacts.

Despite the large footprint of the Indian health system and inclusion of IHS as an agency under the USPHS, the Service is frequently excluded from federal public health emergency response efforts. In addition, IHS is not even included in the White House Coronavirus Task Force led by the Vice President – a situation which Tribes would like to see corrected. IHS also is not able to directly access pharmaceuticals, supplies, and other

¹ 25 U.S.C. 1601 et seq.

medical countermeasures (MCMs) from the Assistant Secretary for Preparedness and Response (ASPR) Strategic National Stockpile (SNS). This needs to be corrected, as well.

The most recent version of CDC's report on how state, local, and Tribal entities can access SNS resources acknowledges that, "...*Many planners mistakenly believe that [AI/AN] communities will receive MCMs from the Indian Health Service (IHS) or another federal agency. However, CDC's guidance calls for state and local health departments to coordinate with these communities, develop written agreements, and ensure those living on tribal lands will receive MCMs.*"²

It is entirely unacceptable that IHS has to face restrictions in accessing SNS resources, and that the only recourse for sovereign Tribal governments to access SNS resources is by working with local and state entities when the trust responsibility lay solely with the federal government, and not with the states. It is equally unacceptable that a state governor must request a presidential disaster declaration on behalf of a Tribal Nation under the Stafford Act in order for a Tribe to directly access resources. In light of the COVID-19 health emergency, these federal structural failures are once again placing AI/AN lives at increased risk of disease and death.

AI/AN Health Disparities and Increased Risk for COVID-19

AI/AN Tribal and urban Indian communities are disproportionately impacted by health conditions that the CDC has specifically identified increase the risk of a more serious COVID-19 illness. Among these are heart and lung disease, diabetes, and respiratory illnesses.³ Among AI/ANs 18 years of age and over, rates of coronary heart disease are 1.5 times the rate for Whites⁴, while rates of diabetes among AI/ANs in the same age group are nearly three times that of Whites.⁵ Studies have shown that AI/ANs are also at increased risk of lower respiratory tract infections,⁶ and in certain regions of the country are twice as likely as the general population to become infected and hospitalized with pneumonia, bronchitis, and influenza.⁷

Health disparities in Indian Country are exacerbated by the chronic underfunding of the Indian health system, and statutory restrictions in access to federal public health funding

² Centers for Disease Control and Prevention. Receiving, Distributing, and Dispensing Strategic National Stockpile Assets: A Guide for Preparedness, Version 11. Retrieved from

https://www.orau.gov/sns/v11/ReceivingDistributingDispensingSNSAssets_V11.pdf

³ See <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>

⁴ CDC 2020. Summary Health Statistics: National Health Interview Survey: 2018. Table A-1a.

<http://www.cdc.gov/nchs/nhis/shs/tables.htm>

⁵ CDC 2019. Summary Health Statistics: National Health Interview Survey: 2018. Table A-

4a. <http://www.cdc.gov/nchs/nhis/shs/tables.htm>

⁶ Santiago Manuel Cayetano. Lopez, MD, Zachary Weber, Medical Student, GERALYN PALMER, Medical Student, Travis KOOIMA, Medical Student, Fernando Bula-Rudas, MD, Archana Chatterjee, MD, PhD, Archana Chatterjee, MD, PhD, 2615. Increased Severity of Lower Respiratory Tract Infection Among Native American Compared with Non-Native American Children, *Open Forum Infectious Diseases*, Volume 6, Issue Supplement_2, October 2019, Pages S909–S910, <https://doi.org/10.1093/ofid/ofz360.2293>

⁷ Groom, A, et al. Pneumonia and influenza Mortality among American Indian and Alaska Native People, 1990-2009. *Am J Public Health*. 2014 June; 104. Supplement 3: S460–S469. Published online April 2014. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4035860/>.

streams. For instance, per capita medical expenditures within IHS in FY 2017 were \$4,078, compared to \$9,726 in national per capita spending that same year. Tribes, Tribal organizations, and urban Indian organizations remain ineligible to apply for CDC Public Health Emergency Preparedness (“PHEP”) grants, and historically receive very little CDC funds for public health.

In fact, the \$21 million per year Good Health and Wellness in Indian Country (“GHWIC”) program is the largest source of dedicated public health funding for Indian Country, and it has been proposed for elimination in the last three President’s Budget requests. This is a compelling reason why Indian Country does not believe CDC has the organizational commitment to champion and protect public health resources for Tribal and urban Indian organizations. Further, CDC has historically expressed very little cultural competency to address Tribal and urban Indian needs, and the current COVID-19 emergency requires swift and appropriate action. That is why Indian Country is asking for their set-aside emergency COVID-19 funding to be administered through IHS, which possesses both cultural and structural competency to ensure these resources reach Indian Country in alignment with Tribally informed methods.

In conclusion, to effectuate more robust and comprehensive access to COVID-19 prevention, control, and response efforts across Indian Country, the Tribe asks that the following recommendations be implemented:

- 1. Authorize an interagency transfer of the \$40 million in set-aside funds for Tribes, Tribal organizations, and urban Indian organizations from CDC to IHS for immediate dissemination.**
 - The IHS has direct access to and relationships with Tribes, Tribal organizations, and urban Indian organizations in a way that CDC does not.
 - Authorizing an interagency transfer of funds from CDC to IHS would assist in guaranteeing that the entire Indian health system is included in response efforts.
 - In addition, transferring the funds to IHS would allow funds to be distributed according to IHS rules and regulations, thus allowing self-governance Tribes to receive COVID-19 funds under P.L. 93-638 self-determination or self-governance contracts and compacts.

- 2. Triple the set-aside funds for Tribes, Tribal organizations, and urban Indian organizations to \$120 million.**
 - Tribes, Tribal organizations, and urban Indian organizations urgently need COVID-19 funds. If the \$40 million in set aside funds were to be equally distributed across all of Indian Country, it would amount to only \$65,000 per Tribal Nation and Urban Indian Organizations, which is entirely inadequate.
 - H.R. 6074 established \$40 million as the baseline Tribal set-aside, with the opportunity to receive additional funding. The Tribe urges you to consider tripling the set-aside to \$120 million for Tribes, Tribal organizations, and

urban Indian organizations to ensure that Indian Country is more appropriately resourced.

- The Tribe urges the federal government to identify additional resources and reallocate them to Indian Country for this purpose.

It would be wholly unacceptable for the federal government to fail to sufficiently fund all 50 states in the COVID-19 response – why then should it be acceptable to fail to sufficiently fund all of Indian Country, to which the federal government holds trust and treaty obligations?

3. Provide additional funds to cover related Tribal and urban Indian expenses for COVID-19 outside of strictly clinical care.

- Most IHS and Tribal facilities lack the necessary laboratory infrastructure to test for COVID-19, and also lack the supplies and resources to isolate or quarantine patients experiencing symptoms, provide personal protective equipment to providers and first responders, and connect patients to care services. As a result, Tribal and urban Indian entities have faced additional ancillary expenses such as for transportation, lodging, patient referrals, and other expenditures.
- While H.R. 6074 authorizes reimbursements for activities directly related to coronavirus preparedness and response, it does not explicitly outline reimbursements for related expenditures such as transportation and other expenses.

4. Minimize deployments of Commission Corps officers stationed at IHS or Tribal sites.

- **The Tribe urges you to deem all IHS Commission Corps officers as mission critical**
- The Indian health system faces severe and chronic provider shortages. In a 2018 Government Accountability Office (GAO-18-580) report, provider vacancies across eight IHS Areas with substantial direct care responsibilities were at an average 25%, but stretched as high as 31%.
- The Indian health system relies on Commission Corps officers to fill its widespread provider vacancies. In fact, the IHS is the largest recipient of Commission Corps officers nationwide.
- IHS and Tribal sites have reported that dozens of Commission Corps officers have already been deployed, and an additional 100 have been authorized for deployment.
- Taking Commission Corps officers from IHS, Tribal and urban Indian sites not only adversely impacts patient care, it also poses a significant financial burden on the I/T/U system. This is because I/T/U sites are still required to cover salary and benefits of Commission Corps officers, *even when they are on deployment*.

5. Clarify the process by which Tribes, Tribal organizations, and urban Indian organizations can receive reimbursements authorized under H.R. 6074.

- It remains unclear how Tribes, Tribal organizations and urban Indian organizations can submit reimbursement requests for expenditures related to COVID-19 between January 20, 2020 and the date of enactment of H.R. 6074.
- The Tribe asks that you work with IHS and CDC to issue guidance to all Tribes and urban Indian health entities clarifying the process for itemizing and submitting reimbursement requests.

As more and more cases are announced and as availability of medical supplies remains scarce, the Tribe urges your prompt consideration of these requests to ensure that necessary COVID-19 resources are delivered to Indian Country as expeditiously as possible. The Tribe stands ready to work you to ensure the Indian health system is fully prepared to address this health emergency.

Questions or comments regarding this letter may directed to Seth Pearman, Attorney General for the Flandreau Santee Sioux Tribe at Seth.Pearman@fsst.org, and Patty Marks, Fredericks Peebles & Patterson, LLP, Washington, D.C. Counsel to the Tribe at pmarks@ndnlaw.com.

Sincerely,



Anthony Reider
President

cc: FSST Executive Committee
Jerilyn Church, President/CEO, Great Plains Tribal Chairmen's Health Board
Patty Marks, Fredericks Peebles & Patterson, LLP