

National Indian Health Board



November 22, 2021

The Honorable Xavier Becerra
Office of the Secretary
U.S. Department of Health and Human Services
200 Independence Ave S.W.
Washington D.C. 20201

Re: HHS Strategic Plan 2022-2026

Dear Secretary Becerra:

On behalf of the National Indian Health Board (NIHB),¹ I write to comment on the proposed HHS Strategic Plan for 2022-2026. While we generally support the emphasis on health equity, particularly among underserved populations, we are greatly concerned about the grouping of American Indian and Alaska Natives (AI/ANs) with other “disadvantaged groups” does not accurately acknowledge the government-to-government relationship Tribes have with the United States government AI/ANs are citizens of these Tribal nations, which are sovereign nations with jurisdiction over their citizens and Tribal territory. While the plan does include Tribes in certain elements, this is not true across all relevant goals, objectives, and strategies. Further, we believe that this plan **must** go through meaningful Tribal consultation. Tribal leaders must be given the opportunity to weigh in directly on the plan, in a forum where political leadership is present. Given the central role of HHS, particularly the Indian Health Service (IHS), in providing health care resources to AI/ANs, its strategic plan must be directly informed by the concerns and priorities of Tribal nations.

Trust Responsibility

The United States has a unique legal and political relationship with Tribal governments established through and confirmed by the United States Constitution, treaties, federal statutes, executive orders, and judicial decisions. Central to this relationship is the federal government’s trust responsibility to protect the interests of Indian Tribes and communities, including the provision of health care to American Indians/Alaska Natives (AI/ANs). 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).² In the

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. 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 25 U. S. C. § 1601 et seq.

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 people.”³

The obligation to provide healthcare to AI/ANs does not extend only to IHS. The federal trust responsibility is the responsibility of all government agencies, including others within HHS. Agencies like the Centers for Disease Control and Prevention (CDC); Substance Abuse and Mental Health Services Administration (SAMHSA); and Centers for Medicare and Medicaid Services (CMS) all must play a crucial role in ensuring that Indian Country receives both preventative and direct access to health services. As such, NIHB and Tribes request that the HHS Strategic Plan comprehensively supports and evaluate its success in promoting the health and welfare of American Indians and Alaska Natives across the United States.

AI/AN Health Equity

We greatly appreciate the focus on health equity in this Strategic Plan and we hope that it leads to improved health outcomes for marginalized populations. However, we are greatly concerned about how AI/AN people and Tribes are discussed throughout the document. AI/AN people are not just members of a “disadvantaged group”; they are also citizens of sovereign Tribal nations. Despite this fact, the inclusion of Tribes in initiatives is inconsistent.

For example, Objective 1.1 outlines that HHS will work with Tribes (among other entities) to “expand pathways to high-quality healthcare coverage for all populations.” But yet, in Objective 1.3 states that the department will “[a]ddress COVID-19 related health disparities and advance health equity by expanding state, local, US territorial, and freely associated state health department capacity[.]” The exclusion of Tribes in Objective 1.3 is made even more confusing by Objective 2.1’s charge to “expand and build HHS support and assistance to state, tribal, local, and territorial partners, and communities to strengthen the capacity and resilience of public health departments and laboratory operations and facilities to meet needs and demand during response and recovery efforts.”

Tribes should be universally included in any part of the strategic plan that calls for working with state and local governments. HHS must correct these inconsistencies.

Further, the strategic plan fails to include how the federal government will address the existing structural inequities in Tribal communities. Tribal governments have historically been neglected in the development of the nation’s public health apparatus and HHS should specifically prioritize addressing this issue. The COVID-19 pandemic and its disproportionate impact on AI/AN people showed the importance of a well-developed, well-funded, and robust public health system in Indian Country. The responsibility for ensuring this rests throughout the Department. Upholding the trust responsibility requires addressing the injustices of the past, and because of that, HHS **must** prioritize Tribal public health infrastructure in their strategic plan.

Tribal Consultation

President Biden stated in Section 1 of the Presidential Memorandum on Tribal Consultation, “My Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy

³ Id. § 1601(1)

deliberation that affects Tribal communities.”⁴ The strategic plan under consideration is a major policy deliberation, setting forth the priorities, goals, and objectives to guide the actions of the entire Department of Health and Human Services for the next four years. Every operating division within HHS has a significant impact on Tribal communities. Therefore, if HHS is to honor President Biden’s commitment to Tribal sovereignty and consultation, this Strategic Plan must go through a formal Tribal consultation process before being enacted.

We made a similar recommendation in our letter on the FY 2018-2022 Strategic Plan⁵, and we are disappointed that this recommendation has again been ignored. Tribal nations must be consulted on this plan. A meaningful nation to nation relationship cannot exist without an actual consultation where the HHS Secretary sits down with Tribal leaders to discuss the plan and what it should contain in order to ensure that it enables HHS to fulfill the trust responsibility. While we acknowledge that the agency sent a Dear Tribal Leader Letter and initiated written Tribal consultation, we do not feel this amounted to meaningful and robust consultation. **The Department must hold a consultation that allows Tribal leaders to directly engage in a back-and-forth dialogue with political leadership.**

Conclusion

While we appreciate the focus on health equity and the portions of the document that do call for working with Tribes, we believe that the call to work with Tribes is inconsistent and does not further the nation-to-nation relationship between Tribes and the federal government. HHS must consistently call for working with Tribal governments, as they call for working with states. We also call for a broader Tribal consultation on this strategic plan. We believe that there must be a meeting between Tribes and HHS political leadership in order to develop a strategic plan that furthers the trust responsibility and is responsive to the needs of Indian Country. We stand by to assist in scheduling this meeting and we look forward to further engagement on this.

Sincerely,



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Chief Executive Officer
National Indian Health Board

⁴ See “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships,” <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>, January 26, 2021.

⁵ Available Here: <https://www.nihb.org/tribalhealthreform/wp-content/uploads/2017/10/NIHB-Comments-on-HHS-Draft-Strategic-Plan.pdf>