Guidance on Indian Health Service COVID-19 Funding Distribution for Tribes, Tribal Organizations, and Urban Indian Organizations

This document provides guidance regarding Indian Health Service COVID-19 funding distributions to tribes and tribal organizations with Indian Self-Determination and Education Assistance Act Title I contracts or Title V compacts and urban Indian organizations with Indian Health Care Improvement Act Title V contracts. This is general guidance, and if there is a question of legal interpretation, then tribes, tribal organizations and urban Indian organizations should contact their legal counsel for further legal guidance. This document will be updated if additional IHS funding is identified and transferred through Indian Self-Determination and Education Assistance Act agreements or Indian Health Care Improvement Act contracts.

Families First Coronavirus Response Act

The Families First Coronavirus Response Act (Pub. L. No. 116-127) enacted on March 18, 2020, authorizes $64 million in new resources to respond to COVID-19 in American Indian and Alaska Native communities. On March 27, 2020, the IHS issued a letter to tribal and urban Indian organization leaders announcing the availability of and distribution decisions for this and other funding. From this amount, the IHS allocated:

- $61 million to IHS federal health programs and tribes and tribal organizations with Indian Self-Determination and Education Assistance Act agreements, using the existing distribution methodology for program increases in hospitals and health clinics funding.
- $3 million to urban Indian organizations through existing Indian Health Care Improvement Act contracts by providing a base amount for each organization and an amount based on each organization's urban Indian users.

The purpose of the Families First Coronavirus Response Act funding is limited and can only be used for COVID-19 related items and services for Indians as identified in section 6007 of division F of the Families First Coronavirus Response Act, which says it is for "COVID–19 related items and services as described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period . . . ." The items and services described in section 6001(a), as amended by the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, are:

> ''(1) An in vitro diagnostic test defined in section 809.3 of title 21, Code of Federal Regulations (or successor regulations) for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19, and the administration of such a test, that—
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> > ''(A) is approved, cleared, or authorized under section 510(k), 513, 515, or 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k), 360c, 360e, 360bbb–3);
> > ''(B) the developer has requested, or intends to request, emergency use authorization under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–

3), unless and until the emergency use authorization request under such section 564 has been denied or the developer of such test does not submit a request under such section within a reasonable timeframe;
''(C) is developed in and authorized by a State that has notified the Secretary of Health and Human Services of its intention to review tests intended to diagnose COVID–19; or
''(D) other test that the Secretary determines appropriate in guidance.''.

(2) Items and services furnished to an individual during health care provider office visits (which term in this paragraph includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in paragraph (1), but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product.

Therefore, funds awarded under the Families First Coronavirus Response Act must be used for Indians for either (1) or (2) above. If the funds are not used for these purposes during the period of availability, then they must be returned to the IHS. The Families First Coronavirus Response Act funding is available for fiscal years 2020-2022. Obligations for funds can begin on March 18, 2020, and are not available retroactively.

Coronavirus Aid, Relief, and Economic Security Act

The Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136), also known as the CARES Act, authorizes more than $1 billion in additional resources for COVID-19 response activities through the IHS. In letters to tribal and urban Indian organization leaders dated April 3, 2020, and April 23, 2020, the IHS announced distribution of $785 million in new resources to address COVID-19 prevention, preparedness, and response in American Indian and Alaska Native communities. The remaining $247 million in CARES Act resources will be managed centrally at the IHS Headquarters. Additional information on these resources can be found in the letter dated April 23, 2020. The IHS allocated:

- $415 million to IHS federal health programs and tribes and tribal organizations, using existing distribution methodologies for program increases in hospitals and health clinics, alcohol and substance abuse, and mental health funding.
- $155 million to IHS federal health programs and tribes and tribal organizations for Purchased/Referred Care, which is allocated using the Purchased/Referred Care distribution formula for new funds.
- $115 million to IHS federal health programs and tribes and tribal organizations for COVID-19 facilities-type activities. This includes $74 million for medical equipment and $41 million for maintenance and improvement, which are allocated using existing formulas for each program.
- $50 million to IHS federal health programs and tribes and tribal organizations, using existing distribution methodologies for program increases in community health representatives and public health nursing funding.
- $50 million to urban Indian organizations through existing Indian Health Care Improvement Act contracts by providing a one-time base amount for each organization and an additional amount based on each organization's urban Indian users.

The CARES Act specifies that the funding can be used:

> to prevent, prepare for, and respond to coronavirus, domestically or internationally, including for public health support, electronic health record modernization, telehealth and other information technology upgrades, Purchased/Referred Care, Catastrophic Health Emergency Fund, Urban Indian Organizations, Tribal Epidemiology Centers, Community Health Representatives, and other activities to protect the safety of patients and staff:

The portion of funds allocated for facilities-type activities are further restricted (e.g., to purchase medical equipment to prevent, prepare for, and respond to coronavirus).

If the funds are not used for these purposes during the period of availability, then they must be returned to the IHS. The majority of CARES Act funding is available for fiscal years 2020-2021. Only the portion of funds allocated for COVID-19 facilities-type activities (i.e., equipment and maintenance and improvement) are available until expended. However, it is important to note that funds may only be spent for COVID-19 and would need to be used within the reasonable period surrounding the public health emergency. If a tribe or tribal organization foresees an issue with expending these resources for COVID-19 related purposes within a reasonable period, it should contact IHS. Obligations for funds can begin on March 27, 2020, and are not available retroactively.

Guidance for both Families First Coronavirus Response Act and CARES Funding Awarded to Tribes and Tribal Organizations

Tribal health programs receive the funding resources described above as one-time, non-recurring funds through unilateral modifications to their existing Indian Self-Determination and Education Assistance Act agreements. These funds must be used for the purposes for which they were appropriated and tribes and tribal organizations should track the funds separately from their other revenue. In addition, eligible contract support costs (to the extent applicable) are available for these funding resources. During future contract support costs reconciliation, the IHS will be asking how tribes and tribal organizations spent the funds in order to negotiate eligible contract support costs.

If the authorized COVID-19 activities are not covered by a tribe or tribal organization's current Indian Self-Determination and Education Assistance Act agreement, but the tribe or tribal organization wants to carry them out, then the IHS and the tribe or tribal organization should discuss amending the Indian Self-Determination and Education Assistance Act agreement to carry out these programs, services, functions, or activities. Lastly, if the tribe or tribal organization cannot use, does not want to use, or does not agree to use the funding for its required purposes, then the tribe or tribal organization must return the funds. Please work with your Indian Self-Determination and Education Assistance Act point of contact, e.g. agency lead negotiator, Title I self-determination specialist, etc. to complete this action.

Guidance for both Families First Coronavirus Response Act and CARES Funding Awarded to UIOs

Urban Indian organizations receive the funding resources described above as one-time, non-recurring funds through bi-lateral modifications to their existing Indian Health Care Improvement Act contracts. These funds must be used for the purposes for which they were appropriated, consistent with a modified scope of work for each Indian Health Care Improvement Act contract. Urban Indian organizations should track the funds separately from their other revenue.