



2021 Virtual Winter Convention

RESOLUTION #2021 – 03

SUPPORT FOR LEGISLATION TO AMEND LEASE COMPENSATION PROVISIONS OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; 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, tribes also generate income by providing health care services for individuals who are not otherwise eligible for IHS under section 813 of the Indian Health Care Improvement Act, 25 U.S.C. § 1680c; and

WHEREAS, many tribal providers are the primary health care providers in their rural communities and the only ones that will take on Medicare and Medicaid patients; Section 813 helps these Tribes provide better services to their members, other Indians, and their non-Indian neighbors; and

WHEREAS, IHS leasing of tribal facilities providing health care services to eligible Indians and non-eligible individuals in the community served by the facility, as well as the third-party revenues generated by these services, enhance tribal health programs and benefit the communities served, which are in rural areas; and

WHEREAS, IHS has adopted a policy that will only pay 105(l) lease costs based on a “supportable space” formula that allows costs based on what is needed to serve eligible Indians; and

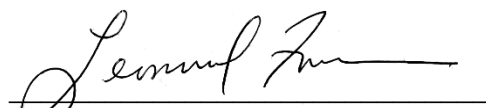
WHEREAS, the recent court decision of *Jamestown S’Klallam Tribe v. Azar*, No. 19-2665, 2020 WL 5505156 (D.D.C. Sept. 11, 2020), upheld the IHS decision restricting the compensation available for 105(l) leases by allowing IHS to deny compensation for space the agency decides is allocated to serving non-beneficiaries—even though such services are deemed by statute to be provided under the ISDEAA; and

WHEREAS, without legislative action to clarify the interplay of Sections 813 and 105(l), it is likely that future rulings will be made along the lines of *Jamestown*, thereby impacting health delivery for IHS beneficiaries and non-beneficiaries alike; now

THEREFORE BE IT RESOLVED, that ATNI supports legislation to clarify the intent of Congress that space used to provide services within the scope of an ISDEAA agreement—to any patient—is compensable under 105(l).

CERTIFICATION

The foregoing resolution was adopted at the 2021 Virtual Winter Convention of the Affiliated Tribes of Northwest Indians, Portland, Oregon, on January 25-28, 2021, with a quorum approving.


Leonard Forsman, President
Norma Jean Louie, Secretary