



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PDX-20-038

TITLE: Supporting Extension of Federal Tort Claims Act (FTCA) Coverage to Urban Indian Organizations

EXECUTIVE COMMITTEE

PRESIDENT
Fawn R. Sharp
Quinalt Indian Nation

1ST VICE PRESIDENT
Aaron Payment
Sault Ste. Marie Tribe of Chippewa Indians

RECORDING SECRETARY
Juana Majel-Dixon
Pauma Band of Luiseño Indians

TREASURER
Shannon Holsey
Stockbridge-Munsee Band of Mohican Indians

REGIONAL VICE PRESIDENTS

ALASKA
Rob Sanderson, Jr.
Tlingit & Haida Indian Tribes of Alaska

EASTERN OKLAHOMA
Norman Hildebrand
Wyandotte Nation

GREAT PLAINS
Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST
Rebecca Crooks-Stratton
Shakopee Mdewakanton Sioux Community

NORTHEAST
Tina Abrams
Seneca Nation of Indians

NORTHWEST
Leonard Forsman
Suquamish Tribe

PACIFIC
Erica Rae Macias
Cahuilla Band of Indians

ROCKY MOUNTAIN
Mark Pollock
Blackfeet Nation

SOUTHEAST
Nancy Carnley
Ma-Chis Lower Creek Indian Tribe of Alabama

SOUTHERN PLAINS
Robert Tippeconnie
Comanche Nation

SOUTHWEST
Vacant

WESTERN
Vacant

CHIEF EXECUTIVE OFFICER
Kevin Allis
FOREST COUNTY POTAWATOMI COMMUNITY

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American 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 the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the term "Urban Indian" refers to an American Indian and Alaska Native (AI/AN) person who is not living on tribal land, either permanently or temporarily, because of the federal government's historical forced relocation policy or because they are in search of economic or educational opportunity; and

WHEREAS, in 1955, Congress created the Indian Health Service (IHS) in order to help fulfill its trust responsibility to protect the interests of tribal nations through the provision of health care to AI/AN people; and

WHEREAS, in 1976, Congress passed the Indian Health Care Improvement Act (IHCA), in which Title V authorized federal funding for urban Indian organizations to provide health services to AI/ANs located in urban centers; and

WHEREAS, in the IHCA Congress 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 necessary to effect that policy;" and

WHEREAS, the IHS continues to be funded by Congress at less than half of expected need, leading to rationed care and worse health outcomes for AI/ANs; and

WHEREAS, the IHS spends less than one percent of its current budget on the provision of health care to urban Indians, with only one budget line item that addresses urban Indian healthcare; and

WHEREAS, the federal trust responsibility to provide health care to AI/ANs does not apply solely to the IHS because the obligation extends to all government agencies, including the U.S. Department of Health and Human Services (HHS), its agencies and divisions; and

WHEREAS, most of the AI/AN population today live in urban areas, with over 78% living off of tribal lands; and

WHEREAS, Congress has long recognized that the federal government's obligation to provide health care for AI/AN people follows them off of tribal lands; and

WHEREAS, urban Indian organizations are integral to the federal government's fulfillment of its trust responsibility to provide health care to AI/AN people and therefore are not severable from the greater Indian health care delivery system; and

WHEREAS, both IHS and tribal health programs receive Federal Tort Claims Act (FTCA) liability coverage for employees, but urban Indian organizations do not; and

WHEREAS, FTCA coverage has been available to tribal contractors in health care settings for over three decades, and to the employees and volunteers of Community Health Centers since the early 1990's; and

WHEREAS, malpractice insurance for an urban Indian organization can cost up to \$250,000 each year; and

WHEREAS, urban Indian organizations have been hesitant to hire additional providers or provide additional services as they cannot cover the costs of additional medical malpractice insurance, even when they are prepared to cover the new salaries and related costs; and

WHEREAS, when the cost of adding providers or new services to malpractice insurance policies is the sole prohibition to service expansion, the services urban Indian organizations can provide to their patients is directly and substantially limited; and

WHEREAS, if urban Indian organizations were covered under the FTCA, funds used to purchase medical malpractice insurance could instead be used to invest in better health outcomes for urban AI/AN communities or to prepare for public health emergencies; and

WHEREAS, urban Indian organizations report that if they were covered under the FTCA, they would put every one of these dollars back into expanded services, recruitment, and retention; and

WHEREAS, urban Indian organizations need access to critical cost-saving measures like FTCA coverage in order to both maximize the value of Congressional appropriations and to ensure other critical needs are met; and

WHEREAS, because of the essential nature of this technical fix, FTCA coverage for urban Indian organizations has widespread and bipartisan support, including within the President's FY 2021 proposed budget; and

WHEREAS, tribes and tribal organizations support FTCA coverage for urban Indian organizations, as evidenced in the Tribal Budget Formulation Workgroup's FY 2021 and FY 2022 budget recommendations and in a recent letter from the Centers for Medicare and Medicaid (CMS) Tribal Technical Advisory Group (TTAG); and

WHEREAS, when urban Indian organizations are not *explicitly included* in Indian health care legislation, they are most often *implicitly excluded*, resulting in the inability of urban Indian organizations to receive the resources they need to provide care to their urban AI/AN communities — a failure of the trust responsibility.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) urges Congress to extend Federal Tort Claims Act (FTCA) coverage to urban Indian organizations in order to improve health care delivery to AI/ANs living in urban centers; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2020 Annual Session of the National Congress of American Indians, held Nov 8, 2020 - Nov 13, 2020, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary