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# Press Release

## How a Government Shutdown Impacts Tribal Healthcare: What Tribes Can Expect

The federal government may be undergoing a shutdown if a Continuing Resolution (CR) is not passed by Congress and signed into law by 11:59PM today, January 19, 2018. Though the U.S. House of Representatives passed a 1-month CR to keep the federal government funded through February 16, 2018 on January 18, this bill does not have votes to pass in the U.S. Senate. The current potential shutdown is a result of disagreements within Congress over the Deferred Action for Childhood Arrivals Program (DACA) and the Children's Health Insurance Program (CHIP).

This would be the first government shutdown since 2013. Government shutdowns are enormously disruptive, with many federal functions, such as park services, oversight, and reimbursement duties not performed. Only federal employees performing duties essential to national security and human safety continue to work. While facilities operated directly by the Indian Health Service (IHS) will remain open and able to offer certain services, Tribal healthcare will be negatively impacted if the shutdown does occur. Because healthcare is a legal right to all members of a federally-recognized Tribe, the federal government's inability to fulfill that obligation during a shutdown is a failure of its trust responsibility to Tribes.

### **How Do Shutdowns Work?**

Shutdowns occur when Congress fails to pass legislation funding the government. When this happens, all federal employees are furloughed and their job responsibilities are not performed. Essential personnel, especially those working in areas of security and human safety, are exempt from the furloughs and continue to work. Federal reimbursements and disbursements made under grant agreements, compacts, or contracts do not go out to the recipients during this time. Technical assistance or policy guidance normally provided by federal employees also do not take place.

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Shutdowns can range from anywhere from a day to several weeks. It is important to note, that the Special Diabetes Program for Indians (SDPI), is funded through mandatory appropriations and has funding through March 31, 2018. Staff funded through SDPI would not be impacted by the shutdown.

Because shutdowns are so impactful, Congress is usually very eager to avert the shutdown entirely or, failing that, to pass a CR as quickly as possible.

#### **How Does a Shutdown Impact Direct Service Tribes?**

At this time, the IHS has not released a specific shutdown plan. However, according to the Department of Health and Human Services (HHS) 2018 shutdown contingency plan, which you can read in full here:

"Indian Health Service (IHS) - IHS would continue to provide direct clinical health care services as well as referrals for contracted services that cannot be provided through IHS clinics...

#### **Activities that would not continue include:**

IHS - IHS would be unable to provide funding to Tribes and Urban Indian health programs, and would not perform national policy development and issuance, oversight, and other functions, except those necessary to meet the immediate needs of the patients, medical staff, and medical facilities."

It is important to note that this plan may not reflect the actual steps HHS will take in the event of a shutdown. The information available at this time suggests that, while IHS facilities will remain open and IHS medical providers will still serve patients during a shutdown, Tribes receiving healthcare services directly from IHS may still experience disruptions. Some of the 176 IHS-run facilities may have to operate only during certain hours or limit the number of services they can offer. Most administrative services at IHS facilities will be curtailed for the duration of the shutdown. IHS employees providing medical care will continue to work during a shutdown; however, other employees such as administrators and office managers may be furloughed. This will make it difficult or impossible for Tribal members and other IHS beneficiaries to schedule appointments or receive follow up services. Many facilities offer reminder notifications via phone to patients for appointments made several months prior; these services would discontinue during the shutdown.

Additionally, healthcare access may be impacted in other ways. The shutdown will have a ripple effect that Tribal communities will feel with unique keenness, since many services provided by Tribal governments often receive federal funding. In 2013, for example, one Tribe in Montana had to furlough its bus drivers during the last shutdown, meaning any Tribal members who depended on the bus to travel to the health clinic were unable to receive care.

#### **How Does a Shutdown Impact Self Governance Tribes?**

The impact a shutdown would have on Self Governance Tribes will vary from Tribe to Tribe. Since these Tribes run their own programs with federal funding, the immediate impacts of a shutdown will depend on the level of funding currently in their accounts. Importantly, during the shutdown, the federal government will make no payments to Tribally run healthcare facilities or Urban Indian Health facilities. This means that each Tribal health system will need to make its own preparations and adjustments based on the resources it has available at the time of the shutdown. NIHB has heard from a large Tribe located in Arizona that the effects of a shutdown will be felt by Tribal patients on "the same day," meaning that the Tribe will not have enough funds in reserve to continue providing care at the normal capacity.

Tribes that operate their own healthcare programs will each determine how to adjust to the shutdown. Some may furlough employees, including specialized medical staff, in favor of keeping emergency services available for as long as possible. Others may close certain facilities entirely if the shutdown persists. It is possible for Tribes to use funds from different sources to fund healthcare needs to make up for the federal government's failure to uphold the trust responsibility, but there is no guarantee that these funds will be reimbursed by the federal government after the shutdown ends. In 2013, IHS encouraged Tribes to reallocate Tribal resources to make up for the federal shortfall. The 2013 shutdown forced six Tribes to suspend food distribution programs to needy Tribal members rather than cut services to other programs like healthcare.

### **What Happens After the Shutdown Ends?**

Once the government reopens and federal employees return to work, the agencies begin sending out funds to the programs, contracts, and compacts. Depending on the funding bill, this may include retroactive funding for the time the government was shut down. Specifically, IHS would begin resending funds due to Tribal and Tribal organization healthcare facilities as required under Tribal compacts, as well as Urban Indian Health facilities. Under normal circumstances, the money is allocated by Congress to HHS, which allocates a portion to IHS, which divides funding between the Office of Direct Service Tribes and the Office of Self Governing Tribes. Each of these offices then disperse the funds based on a line item budget. This process takes time and can delay Tribal receipt of reimbursement, sometimes by as much as two weeks. Therefore, even after a shutdown ends, Tribes may still need to plan for a shortfall of federal funds until the funds are dispersed.

### **How Can Indian Country Avoid This Situation in the Future?**

The federal government funds its trust responsibility for health by funding the Indian Health Service through the annual discretionary appropriations process. This process funds most federal agencies. However, entitlement programs such as the Social Security Administration, Medicare, and Medicaid are funded through mandatory spending, meaning that Congress does not have to appropriate funds each year for these programs to function. Placing IHS and other programs vital to Tribal health needs under mandatory spending would lessen the impact on Tribal health during future shutdowns. You can read more about the Appropriations process [here](#).

A second way to avoid this situation would be for Congress to enact Advance Appropriations. This is a very simple method of providing funds: Congress simply enacts appropriations a year in advance. IHS, and thus the Tribes, would know how much money will be available for their 2019 health programs in 2018. Advance Appropriations would prevent last minute decisions in preparation for a shutdown and allow administrators to plan out the year ahead with more clarity than is available to them now. You can read more about Advance Appropriations [here](#).

NIHB has advocated for both mandatory appropriations and advance appropriations in Congress for several years. These policy changes are also supported by the IHS Tribal Budget Formulation Workgroup's request.

About Southern Plains Tribal Health Board: Southern Plains Tribal Health Board is a non-profit organization based in Oklahoma City, Oklahoma. It provides advocacy, education, partnerships and training to improve American Indian health. The organization serves the 43 federally-recognized tribes in Oklahoma, Kansas, and Texas.