



# Health Care Reform in Indian Country

Self-Governance Communication & Education

*Self-Governance Tribes Striving Towards Excellence in Health Care*

## OVERVIEW OF CORONAVIRUS RESPONSE & RELIEF ACT, 2021: USE OF FUNDING

Webinar

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**IHS Tribal Self-Governance Advisory Committee**

Self-Governance Communication and Education

# Coronavirus Response & Relief Act, 2021

- Enacted December 27, 2020
- \$908 billion total, 5<sup>th</sup> Coronavirus Supplemental
- Includes FY 2021 Discretionary Appropriations, Coronavirus Relief, and other measures such as Surprise Billing
- No new Coronavirus Relief Funds for tribal governments
  - Extends Coronavirus Relief Fund (CRF) deadline to December 31, 2021 (no new flexibility)
- \$1.125 billion in new funding for IHS and tribal health providers
- \$1 billion in new tribal funding for broadband



# Tribal Health Coronavirus Funding in the Coronavirus Response & Relief Act

1. \$790 million for Testing and Other COVID-19 Activities
2. \$210 million for Vaccine Distribution
3. \$3 billion for Provider Relief Fund & changes
4. \$125 million from the Substance Abuse and Mental Health Services Administration
5. \$1 billion for the Tribal Broad Band Connectivity Program (new)

*Disclaimer: This presentation is not intended to be legal advice and tribes should check with their counsel before making any determinations regarding use of funds.*



# Part I - Funding for Tribal Health Care Providers



# Testing and Other COVID-19 Response Activities- \$790 million

**\$22.4 billion total funding to the Public Health and Social Services Emergency Fund**

- **\$790 million to be transferred to the Indian Health Service (3% of total)**
- **“to be allocated at the discretion of the Director of the Indian Health Service”**
- **Distributed through directly operated programs; ISDEAA contracts or compacts; or UIOs**
- **One-time, non-recurring funds**

**Timeline:** Must be “made available” within 21 days (January 17)

- January 4 – IHS held a virtual consultation where most advocated for using existing funding mechanisms
- January 8 – Additional comments were due to IHS, who will make funding determinations this week

**Reporting:** Entities receiving funds must report within 60 days of enactment (Feb. 25, 2021) on uses of funding and quarterly thereafter. Entities must also update their Paycheck Protection Plan Health Care Enhancement Act plans within 60 days of receipt of funds. Plans will be made public.



# Testing and Other COVID-19 Response Activities- \$790 million

## Purpose and Permitted Uses

The statute includes a broad list of allowable activities, which includes:

- Testing, contact tracing, surveillance, containment, and mitigation to monitor and suppress COVID–19
- Including tests for both active infection and prior exposure, including molecular, antigen, and serological tests, the manufacturing, procurement and distribution of tests, testing equipment and testing supplies
- Including personal protective equipment needed for administering tests, the development and validation of rapid, molecular point-of- care tests, and other tests
- Support for workforce, epidemiology, to scale up academic, commercial, public health, and hospital laboratories, to conduct surveillance and contact tracing, support development of COVID–19 testing plans, and other related activities related to COVID–19 testing and mitigation



# Testing and Other COVID-19 Response Activities- \$790 million

## Purpose and Permitted Uses Continued:

- For necessary expenses for testing, contact tracing, surveillance, containment, and mitigation, including
- Support for workforce, epidemiology, use by employers, elementary and secondary schools, child care facilities, institutions of higher education, long-term care facilities, or in other settings, scale up of testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, mobile testing units, health care facilities, and other entities engaged in COVID–19 testing,
- Other related activities related to COVID–19 testing, contact tracing, surveillance, containment, and mitigation which may include interstate compacts or other mutual aid agreements for such purposes
- May also be used for the rent, lease, purchase, acquisition, construction, alteration, renovation, or equipping of non-federally owned facilities to improve coronavirus preparedness and response capability at the State and local level



# Vaccine-Related Costs - \$210 million

\$8.75 billion total available to the Centers for Disease Control and Prevention

- \$210 million to be transferred to the Indian Health Service (2.4% of total)
  - “to be allocated at the discretion of the Director of the Indian Health Service”
  - Distributed through directly operated programs; ISDEAA contracts or compacts; or UIOs
  - One-time, non-recurring funds
- 
- \$4.5 billion provided to states, localities, tribes, tribal organizations, urban Indian health organizations or health providers to tribes
  - CDC to provide an “updated comprehensive coronavirus vaccine distribution strategy and spend plan” within 30 days (January 26) and updated every 90 days



# Vaccine-Related Costs - \$210 million

## Purpose and Permitted Uses

The statute includes a list of allowable activities, which includes:

- Activities to plan, prepare for, promote, distribute, administer, monitor, and track coronavirus vaccines to ensure broad-based distribution, access, and vaccine coverage
- Funds may be used to restore, either directly or through reimbursement, obligations **incurred for coronavirus vaccine promotion, preparedness, tracking, and distribution prior to the enactment of this Act**
  - No date on how far back for previous obligations
- May be used for grants for the construction, alteration, or renovation of non-Federally owned facilities to improve preparedness and response capability at the State and local level



# Substance Abuse and Mental Health Services Administration - \$125 million

\$4.25 billion total available to the Substance Abuse and Mental Health Services Administration (SAMHSA)

- \$125 million to be transferred to the Indian Health Service (3% of total)
- “to be allocated to tribes, tribal organizations, UIOs, or health or behavioral health services providers to tribes”

According to the House Appropriations Committee Summary, tribal funding will be awarded “Across a variety of programs.”

## **Other Funded programs in SAMSHA:**

- Substance Abuse and Prevention and Treatment Block Grant (\$1.6B)
- Community and Mental Health Services Block Grant (\$1.6B)
- Certified Community Behavioral Health Clinics (\$600 million)
- Project AWARE (\$50 million)
- Emergency Grants to States (\$250 million)
- National Child Traumatic Stress Network (\$10 million)



# Provider Relief Fund— +\$3 billion

**\$3 billion in additional Funding to the Provider Relief Fund**

- No tribal set-aside
- Earlier funding - \$175 billion (\$101.4 billion distributed as of Jan. 7)

## **Purposes and Permitted Uses:**

To prevent, prepare for, and respond to coronavirus, domestically or internationally, which shall be for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus

Available for building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity:



# Provider Relief Fund— +\$3 billion

## Update #1 – Lost Revenue Calculation

- The law clarifies that lost revenues attributable to coronavirus may be calculated as the difference between the budgeted and actual revenue budget for budgets developed prior to March 27, 2020.
  - HHS had issued guidance in September 2020 requiring recipients to submit information showing a negative change in year-over-year net patient care and operating income
  - The Act specifically reverts back to the earlier June guidance that includes “the difference between such provider’s budgeted and actual revenue budget” established before March 27, 2020.



# Provider Relief Fund—\$3 billion

## Update #2 – Clarification of “payment”

- The act clarifies that “payment” in this case, means a the term “payment” means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary.”

## Update #3 – Flexibility for Reimbursements to subsidiaries

- “any reimbursement ...from the Provider Relief Fund to an eligible health care provider that is a subsidiary of a parent organization, the parent organization may, allocate (through transfers or otherwise) all or any portion of such reimbursement among the subsidiary eligible health care providers of the parent organization, including reimbursements referred to...as ‘Targeted Distribution’ payments, among subsidiary eligible health care providers of the parent organization except that responsibility for reporting the reallocated reimbursement shall remain with the original recipient of such reimbursement”



# Provider Relief Fund—Reporting

## UPCOMING DATES:

- Report and reporting portal should be available after January 15, 2021
- By February 1, 2021, OMB will post a notice with key line items and other information from the report that are subject to audits
- February 15, 2021: first reporting deadline for all providers on use of funds
- July 31, 2021: final reporting deadline for providers who did not fully expend PRF funds prior to December 31, 2020



# Provider Relief Fund—Reporting

## NEW FAQs:

- New FAQs provide links to guidance to certified public accountants and clarify applicability of 45 CFR Part 75 – Uniform Administrative Requirements, Cost Principle and Audit Requirements for HHS Awards.
- Clarify that expenses to secure and maintain personnel to respond to coronavirus are COVID-19 related expenses.
- Clarifies that expenses incurred to distribute and administer COVID-19 vaccine is permissible.
- Clarifies that PRF funds must be used last, after Medicaid and FEMA funding
- States that third round of PRF funding will be distributed to all providers who have not yet received up to 2 percent of their annual revenues in PRF funds, and on top of that up to 88 percent of reported losses and net changes in operating expenses from patient care in 2020.



# Tribal Broadband Connectivity Program - \$1 billion

Housed at the Department of Commerce

National Telecommunications and Information Administration

- “Secretary shall use the funds made available ...to implement a program to make grants to eligible entities to expand access to and adoption of—
  - (A) broadband service on Tribal land; or
  - (B) remote learning, telework, or **telehealth resources during the COVID–19 pandemic.**”
- **Eligible Entities:**
  - a Tribal Government;
  - a Tribal College or University;
  - the Department of Hawaiian Home Lands on behalf of the Native Hawaiian Community, including Native Hawaiian Education Programs; (3% set aside for this group)
  - a Tribal organization; or
  - a Native Corporation. (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602))
- Funds to be made available “on an equitable basis”
- 2% funding set aside for administration and “technical assistance to Tribal Governments to help those Governments take advantage of the program established under this subsection.”



# Tribal Broadband Connectivity Program - \$1 billion

Housed at the Department of Commerce

National Telecommunications and Information Administration

- Eligible uses:
  - broadband infrastructure deployment, including support for the establishment of carrier-neutral submarine cable landing stations;
  - affordable broadband programs, including—
    - providing free or reduced-cost broadband service; and
    - preventing disconnection of existing broadband service;
  - distance learning;
  - telehealth;
  - digital inclusion efforts; and
  - broadband adoption activities.
- Timelines
  - Entity shall commit funds within 180 days commit the funds received
  - Funds must be expended within one year from receiving them.
  - Extensions are possible under certain circumstances



# Part 2 – Non-Health-Related Developments in Stimulus Bill



### **The Consolidated Appropriations Act, 2021 (CAA) made changes to:**

- the Paycheck Protection Program (PPP),
- the Employee Retention Credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),
- and family and medical leave under the Families First Coronavirus Response Act (FFCRA).



# Non-CARES Relief Funding – PPP Program

Source: Paycheck Protection Program and Health Care Enhancement Act, P.L. 116-139

Enacted: April 24, 2020

**Purpose and Permitted Uses:** Primarily payroll expenses, but also for rent, utilities, or interest payments

**PPP Loans Administered through Banks & Lenders (like CDFIs):**

- Open to employers of fewer than 500 employees
- NOT available for governments, but tribal business entities and tribal non-profits are eligible
- Designed to cover payroll for workers
  - 60% used on payroll expenses, 40% on other eligible costs = forgivable loan



# Non-CARES Relief Funding – Changes to PPP Program

Source: Paycheck Protection Program and Health Care Enhancement Act, P.L. 116-139; Consolidated Appropriations Act, 2021, Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Div. N, Title III, secs. 301-348)

Enacted: April 24, 2020; Dec. 27, 2020

## **New Eligible Expenditures using PPP Funds**

**Reopens PPP for “First Draw PPP Loans”**

**Creates a new “Second Draw PPP Loan” program**

- Narrower eligibility determinations – 300 employees and 25% reduction in gross revenue

**Entity can use PPP and ERTC for different periods, PPP no longer a bar to using ERTC**



# Employee Retention Tax Credit under the CARES Act

Source: CARES Act, Sec. 2301. Employee Retention Credit for Employers Subject to Closure Due to COVID-19

Enacted: April 24, 2020

**Purpose and Permitted Uses:** The ERTC is a refundable tax credit against certain employment taxes equal to 50 percent of the qualified wages an eligible employer pays to employees between March 12, 2020 and Dec. 31, 2020.

**Applies to Employers:**

- Who operated a trade or business during any calendar quarter during the COVID-19 pandemic, and experience *either*:
  - Full or partial suspension of the operation of their trade or business during any calendar quarter because of governmental orders limiting commerce, travel, or group meetings due to COVID-19; *or*
  - A significant decline in gross receipts (less than 50% as compared with a corresponding calendar quarter in 2019).



# Changes to Employee Retention Tax Credits

**Source: Consolidated Appropriations Act, 2021 , Div. EE, Title II, Sec. 206. Clarifications and Technical Improvements to CARES Act Employee Retention Credit; IRS Guidance**

**Tribal Governments and Entities Sharing Tribes' Tax Status are now "trades and businesses" for ERTC purposes only, and can utilize ERTC for qualifying purposes. (IRS Guidance questions 21 and 21a).**

**ERTC expanded through June 30, 2021**

**ERTC now eligible to cover payroll taxes of up to \$7,000 per quarter, per employee, in Q1 & Q2 in 2021 if eligible. (70% of qualified wages capped at \$10,000)**



# Non-CARES Funding – FFCRA Paid Leave

Source: Families First Coronavirus Response Act, P.L. 116-127

Enacted: March 18, 2020

**Purpose and Permitted Uses:** Requires covered employers to provide two weeks of paid sick leave and 10 weeks of paid family/medical leave for Coronavirus related reasons. Leave paid by employer, and repaid from the Federal Government through payroll tax credits.

**Only Applies to Covered Employers:**

- Generally: 500 employees or less, but waivers for employers with <50 or medical providers.
- Not clear if it applies to Tribal Governments or tribal entities – you should check with counsel and applicability of the law under “Generally Applicable Law” tests.
- Dep’t of Labor has not said whether Tribes are eligible for payroll tax credit repayment if they DO offer leave. IRS in November 2020 said YES.



# Changes to FFCRA Paid Leave

Source: Consolidated Appropriations Act, 2021 , Div. N, Tit. II, Subtit. B, Sec. 286.  
Extension of Credits for Paid Sick and Family Leave

Enacted: December 21, 2020

## Changes to FFCRA Leave:

- Extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021
- Does not extend employees' entitlement to FFCRA leave beyond Dec. 31, 2020
  - Employers no longer legally required to provide such leave, but can and will be reimbursed via tax credit if they do.
- Tribes can receive repayment of eligible leave wages through payroll taxes, if otherwise eligible. (IRS Guidance updated in November 2020).



# Questions?

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