

Native American Tribes Seek Reimbursement for Healthcare Administration Costs in US Supreme Court Argument

News

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A Jenner & Block team today argued at the US Supreme Court on behalf of the Northern Arapaho Tribe, seeking reimbursement from the Indian Health Services (IHS) for certain “contract support costs” – the overhead costs for tribe-provided health care.

Previously, the 10th Circuit Court of Appeals sided with the Northern Arapaho Tribe, ordering the IHS to pay \$1.5 million in administrative costs incurred from the provision of healthcare services for tribal citizens. The IHS has refused to reimburse costs incurred for providing services paid for by Medicare, Medicaid, or insurance reimbursements.

The San Carlos Apache Tribe of Arizona also argued before the Court today, seeking to preserve the 9th Circuit Court of Appeals decision in which it won reimbursement for \$3 million for three-year’s worth of administrative costs for tribal run health care and wellness programs.

Under the Indian Self-Determination and Education Assistance Act (ISDA), tribes are entitled to reimbursement for the indirect costs incurred in providing services, regardless of whether those services are paid for by the IHS or other sources.

“The intent of Congress is clear,” said Partner Adam Unikowsky, who argued on behalf of the tribe. “The Indian Self-Determination and Education Assistance Act unambiguously entitles the Tribe to collect contract support costs arising from its expenditures on tribal healthcare at issue in this case. The Indian Health Service’s effort to avoid payment undermines the Tribe’s healthcare program and imposes a self-determination penalty on the tribes despite Congress’ intent to avoid that result.”

Read the brief.

In 2016, the Northern Arapaho Tribe contracted with IHS to administer a broad range of health care services on the Wind River Reservation, including outpatient ambulatory medical care and primary care, nursing, mental health, radiology, physical therapy, optometry, dental care, community health services, and laboratory and pharmacy services. The Wind River Service Unit, which provides these services for approximately 12,000 patients primarily from the Northern Arapaho and Eastern Shoshone Tribes, is tied for the lowest level of funding sufficiency across all IHS-funding programs.

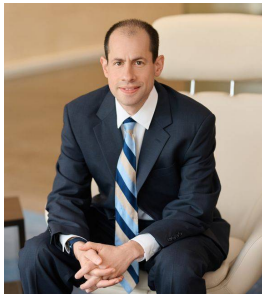
Due to this severe underfunding, health services on the Wind River Reservation are provided from a health center constructed as a military commissary in 1884 – the oldest IHS facility in the nation.

Unreimbursed contract support costs strike at an already underfunded tribal health care system. As the tribe wrote in their Supreme Court brief, “If tribes cannot recover the contract support costs that they incur when making the same expenditures as IHS, they are penalized for entering into ISDA contracts – precisely the result Congress sought to avoid in ensuring that other contract support costs would be paid.”

There is broad support for the tribes’ pursuit of contract support payments, including a joint amicus brief filed by the National Congress of American Indians, Choctaw Nation of Oklahoma, Citizen Potawatomi Nation, Coquille Indian Tribe, Forest County Potawatomi Community, Mille Lacs Band of Ojibwe, Navajo Nation, Pueblo of Acoma, Pueblo of San Felipe, and Saint Regis Mohawk Tribe, as well as the Alaska Native Tribal Health Consortium, the Intertribal Association of Arizona Inc., and the United South and Eastern Tribes.

In addition to Adam, the Jenner & Block team includes Partners Keith Harper and Charlie Galbraith; Special Counsel Lenny Powell; Associates Arjun Ramamurti and Andrew DeGuglielmo; and Law Clerk Donovan Hicks.

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