



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 23, 2018

H.R. 5874
Restoring Accountability in the Indian Health Service Act of 2018

*As ordered reported by the House Committee on Natural Resources
on June 13, 2018*

SUMMARY

H.R. 5874 would change personnel practices of the Indian Health Service (IHS) to facilitate the recruitment and retention of employees, clarify eligibility for the IHS loan repayment program, allow the Secretary of Health and Human Services (HHS) to appoint qualified candidates directly to vacant positions that are difficult to fill, and require the IHS to implement new methods of measuring the timeliness of care. CBO estimates that implementing H.R. 5874 would cost \$115 million over the 2019-2023 period, assuming appropriation of the necessary amounts.

H.R. 5874 also would apply the same liability protections available to all medical professionals employed by the Public Health Service to medical professionals who volunteer their service at IHS. CBO estimates that this provision would increase direct spending by less than \$500,000 over the 2019-2023 period.

Because the bill would affect direct spending or revenues, pay-as-you-go procedures apply.

CBO estimates that enacting the legislation would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5874 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of H.R. 5874 is shown in the following table. The costs of this legislation fall primarily within budget function 550 (health).

	By Fiscal Year, in Millions of Dollars						2019- 2023
	2018	2019	2020	2021	2022	2023	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION^a							
Incentives for Recruitment and Retention							
Estimated Authorization Level	0	17	18	19	20	21	95
Estimated Outlays	0	17	18	19	20	21	95
Medical Credentialing System							
Estimated Authorization Level	0	1	*	*	*	*	1
Estimated Outlays	0	1	*	*	*	*	1
Clarification Regarding Eligibility for the Indian Health Service Loan Repayment Program							
Estimated Authorization Level	0	*	1	1	2	2	7
Estimated Outlays	0	*	1	1	2	2	7
Improvements in Hiring Practices							
Estimated Authorization Level	0	1	1	1	1	1	5
Estimated Outlays	0	1	1	1	1	1	5
Tribal Culture and History							
Estimated Authorization Level	0	*	*	*	*	*	1
Estimated Outlays	0	*	*	*	*	*	1
Rule Establishing Tribal Consultation Policy							
Estimated Authorization Level	0	*	*	*	*	*	1
Estimated Outlays	0	*	*	*	*	*	1
Employee Protections Against Retaliation							
Estimated Authorization Level	0	*	*	*	*	*	2
Estimated Outlays	0	*	*	*	*	*	2
Fiscal Accountability							
Estimated Authorization Level	0	1	*	*	*	*	1
Estimated Outlays	0	1	*	*	*	*	1
Reports by the Comptroller General							
Estimated Authorization Level	0	*	*	*	*	0	1
Estimated Outlays	0	*	*	*	*	0	1
Transparency in CMS Surveys							
Estimated Authorization Level	0	*	*	*	*	*	2
Estimated Outlays	0	*	*	*	*	*	2
Total Changes							
Estimated Authorization Level	0	21	22	22	24	26	115
Estimated Outlays	0	21	22	22	24	26	115

Notes: * = less than \$500,000; Components may not sum to totals because of rounding.

- a. Enacting the legislation also would increase direct spending by less than \$500,000 per year and over the 2019-2028 period.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 5874 will be enacted near the end of fiscal year 2018 and that estimated amounts will be appropriated each year thereafter.

Spending Subject to Appropriation

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 5874 would cost \$115 million over the 2019-2023 period.

Incentives for Recruitment and Retention. Section 101 of the bill would authorize the Secretary to pay all IHS employees with health care responsibilities according to pay scales used by the Department of Veterans Affairs (VA). Currently IHS uses that scale when compensating physicians and dentists but not nurses or pharmacists. The VA scale adjusts wages for the cost of living at the job location. CBO expects that with this new authority IHS would be more successful in recruiting and retaining employees, salaries would be more competitive across all of its service sites, and as a result, the number of nurses and pharmacists at IHS would increase gradually over time. Based on an analysis of data on the number of nurses and pharmacists employed by IHS and of the difference between the IHS and VA pay scales, CBO estimates that allowing IHS to compensate all health care employees at the VA pay scale would increase salaries for affected employees by an average of \$11,000 to \$14,000 annually (about 10 percent) and gradually would increase the number of nurses and pharmacists by 160 (about 5 percent) at a cost of \$95 million over the 2019-2023 period.

Medical Credentialing System. Section 102 would require the Secretary to establish a credentialing process for health care practitioners who volunteer their services at IHS facilities. IHS allows volunteers to donate both medical and non-medical services to patients of the agency. Based on information provided by IHS, CBO expects that the agency would acquire an existing commercial credentialing system at a cost of approximately \$500,000. Employees in IHS headquarters, various area offices, and hundreds of IHS facilities would coordinate and implement the system. In total, CBO estimates that the combination of the system's acquisition and the additional personnel time involved in its operation would cost about \$1 million over the 2019-2023 period.

Clarification Regarding Eligibility for the Indian Health Service Loan Repayment Program. Section 104 would allow individuals with business administration and health management degrees to qualify for a repayment program for student loans through IHS. Under current law, IHS repays the student loans of some employees who are health care professionals in exchange for commitments to work for IHS for at least two years. That loan repayment program costs about \$28,000 per participating employee, on average. According to a 2016 HHS Office of the Inspector General (OIG) report, IHS has historically had difficulty recruiting and retaining health administrators. Providing loan

repayments to management professionals could allow the IHS to be more successful in hiring additional management staff. However, many of the challenges to recruiting for IHS involve factors that are not related to financial compensation, such as the geographic isolation of many IHS facilities and a lack of nearby housing. CBO projects that permitting those with management and business degrees to receive loan repayments would gradually increase the number of loan recipients over time, reaching about 60 additional recipients by 2023. CBO estimates that this provision would cost \$7 million over the 2019-2023 period.

Improvements in Hiring Practices. Section 105 would allow the Secretary to appoint a candidate directly to a position at IHS without regard to standard civil service practices as long as the candidate meets the job description of the Office of Personnel Management (OPM). CBO expects that the Secretary would use this authority rarely, mostly in situations when a qualified candidate is identified for a difficult-to-fill vacancy in a position of critical need. CBO estimates that there would be a small decrease in the roughly 1,500 currently unfilled vacancies at IHS, principally because direct Secretarial appointment would allow some candidates to start more quickly than they otherwise would. CBO estimates this provision would increase the number of employees at the agency by the equivalent of about 7 annually at a cost of \$5 million over the 2019-2023 period.

Tribal Culture and History. Section 107 would require IHS to institute cultural competency training for any employee or contractor who has regular direct patient access. CBO expects that requirement to apply to most medical personnel and some administrative personnel. IHS would provide training annually, and completion would be a condition of employment with IHS. The agency uses an online system for conducting agency-wide training, including some cultural competency training, but the new requirement would involve more customization to account for specific tribes within the IHS territories. Based on information provided by IHS, CBO projects that developing the additional training would require the equivalent of about 3 full-time employees, and the annual administration of the training would require the equivalent of about one full-time employee at an average cost of \$124,000 per employee. In total, CBO estimates that this provision would cost about \$1 million over the 2019-2023 period.

Rule Establishing Tribal Consultation Policy. Section 109 would require the Secretary, within one year, to establish a rule to update and replace the current tribal consultation process. IHS currently consults with tribes through national, regional and local meetings between IHS and tribal officials regarding a variety of topics, such as improving patient care delivery, setting priorities for diabetes and behavioral health care, and developing information systems. The new policy would identify circumstances when the Secretary should notify tribes, describe how they should be notified, and define what actions constitute meaningful consultation.

CBO projects that the equivalent of three full-time employees would be required for the rulemaking process, both from the IHS headquarters and the IHS area offices. Once the rule is promulgated, CBO expects the new rule would require more frequent consultation with the tribes than under current law, resulting in the equivalent of 1 full-time employee per year in additional staff time at an average annual cost of \$124,000. In total, CBO estimates that this provision would cost about \$1 million over the 2019-2023 period.

Employee Protection Against Retaliation. Section 201 would require the Secretary to designate an agency-level employee to reach out to all employees of IHS about federal and departmental protections for reporting retaliation against whistleblowers and about the duty of employees of IHS to report violations of patient safety requirements or other similar misconduct. In addition, the designated employee would receive reports from employees of IHS who witness misconduct and, within three days of receiving such a report, provide the report to the Secretary, who must formally review it and provide a copy to the HHS OIG. Finally, the Secretary could take other actions to protect whistleblowers, including identifying appropriate IHS employees to complete the Office of Special Counsel's Whistleblower Certification Program.

CBO projects that the designated employee would spend the equivalent of half a full-time employee on their new responsibilities initially and then the equivalent of one-quarter of a full-time employee thereafter. In addition, CBO expects that implementing this section would lead to a small increase in complaints from IHS employees, and therefore to a small increase in OIG investigations. CBO also expects that the Secretary would designate additional employees within IHS area offices and important health care delivery sites to complete the Office of Special Counsel's Whistleblower Certification Program each year. Taken together, CBO estimates that this provision would cost \$2 million over the 2019-2023 period.

Fiscal Accountability. Section 203 would require the Secretary to issue quarterly reports to all Indian tribes and to the Congress describing all authorizations, expenditures, outlays, transfers, financial reprogramming, and obligations at each level of the IHS. In addition, the section would require the Secretary to issue annual reports to all Indian tribes and the Congress regarding the safety, billing, certification, credential, and compliance status of each IHS facility. Should the status of any facility change, the Secretary would issue updates describing the change. Based on information from IHS, CBO expects that the reports would require a significant investment of staff time to compile the information into report form and to write accompanying explanatory text. The greatest level of effort would occur in 2019 as IHS develops the two reports and then be somewhat less thereafter for annual updates to the reports. CBO projects that section 203 would require the equivalent of five full-time employees in 2019, the equivalent of three full-time employees in 2020, and then the equivalent of one full-time employee in subsequent years. In total, CBO estimates that the provision would cost about \$1 million over the 2019-2023 period.

Reports by the Comptroller General. Section 303 would require the Government Accountability Office (GAO) to submit three reports related to housing needs for IHS employees, staffing needs for the agency, and whether IHS has done enough to prevent retaliation against whistleblowers. Based on historical spending for similar activities, CBO estimates that this provision would cost about \$1 million over the 2019-2023 period.

Transparency in CMS Surveys. Section 305 would require the Administrator of the Centers for Medicare and Medicaid Services (CMS) to modify current practice with respect to inspecting IHS facilities. Specifically, the bill would require the Administrator to inspect IHS nursing facilities and hospitals at least once every two years. Under current law, CMS surveys hospitals every three years and nursing facilities annually; H.R. 5874 would thus increase the frequency of hospital inspections but would reduce the frequency of nursing facility inspections.

Survey activities are conducted in one of two ways: CMS contracts with state agencies, or facilities contract with accrediting organizations (AOs), including the Joint Commission on the Accreditation of Health Care Organizations. State agencies conduct nursing home surveys; hospitals may use either state agencies or AOs. Facilities that contract with AOs pay for their inspection and survey activities. State agencies inspect those facilities that do not contract with AOs, and CMS funding supports state activities in this area. The majority of IHS hospitals contract with AOs. There are currently no IHS nursing facilities.

Given the relatively small number of IHS hospitals that would be surveyed by state agencies using federal funds, CBO estimates that this provision increase spending by about \$2 million over the 2019-2023 period.

Other Provisions. Other provisions in H.R. 5874 would each cost less than \$500,000 over the 2019-2023 period, assuming appropriation actions consistent with the bill.

- Section 106 would allow the Secretary to remove or demote IHS employees without adhering to certain civil service rules that normally affect such actions for federal employees.
- Section 108 would require the Secretary to establish a demonstration project that authorizes IHS to provide IHS service sites with additional staffing resources with the goal that the sites become self-sustaining through increasing care to patients with Medicare or Medicaid.

- Section 110 would apply the Medicare low-volume payment adjustment applicable to certain hospitals operated by the IHS or tribes to patient discharges occurring in fiscal year 2011 and subsequent fiscal years.
- Section 202 would subject any federal employees who interferes with the right of other federal employees to petition the Congress to adverse actions under civil service rules.
- Section 302 would require the Secretary to develop plans and submit reports to the Congress that comport with GAO's recommendations for improving professional housing, workforce planning, and timeliness of care.
- Section 304 would require the HHS Office of the Inspector General to submit two reports to Congress on issues related to patient harm events at IHS service units and IHS reporting systems.

Direct Spending

Section 103 of H.R. 5874 would deem health professionals who volunteer with the IHS to be employees of the U.S. Public Health Service (PHS), similar to other medical professionals at IHS. Under current law, the Secretary of HHS must estimate legal expenses (court judgements and settlements) that may be paid because of claims against employees of the PHS (typically for malpractice). The estimated amounts are transferred to the Judgement Fund in the U.S. Treasury, which is a fund that pays legal claims against the federal government.

Deeming volunteers to be employees of the PHS would grant those employees protection from malpractice claims against them and would require the Secretary to include such volunteers in the calculation of potential claims against PHS employees. Based on information provided by IHS, the agency expects that shielding volunteers from personal liability from malpractice claims would lead to an increase in medical professionals willing to volunteer at the IHS, leading to a proportional increase in Judgement Fund payments on behalf of IHS employees. The Judgement Fund is funded by a permanent indefinite appropriation, and outlays from the fund are considered direct spending. According to information from the Treasury Department, about \$9.5 million has been paid annually over the past 5 years from the Judgement Fund, on average, for malpractice claims against IHS employees. Based on the small increase in full-time equivalent employees because of this section and based on the average rate at which IHS employees generate payments from the Judgement Fund, CBO estimates this provision would increase direct spending by less than \$500,000 over the 2019-2028 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures would be insignificant.

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting the legislation would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

CBO has determined that H.R. 5874 contains no intergovernmental or private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

Federal Costs: Robert Stewart–IHS,
Lara Robillard–Medicare
Mandates: Zachary Byrum

ESTIMATE APPROVED BY:

Leo Lex
Deputy Assistant Director for Budget Analysis