

Tribes Win Healthcare Contract Support Costs at Supreme Court

by Andrew Brantingham

On June 6, 2024, the Supreme Court issued its decision in the consolidated cases of *Becerra v. San Carlos Apache Tribe* (No. 23-250) and *Becerra v. Northern Arapaho Tribe* (No. 23-253). In a significant victory for Indian Tribes administering healthcare programs under self-determination agreements with the Indian Health Service (IHS), the Court held that IHS must pay contract support costs when Tribes collect and spend revenues from third parties (such as Medicare, Medicaid, or private insurance), as required to comply with the terms of their contracts.

This case centers on the federal government's obligations to Tribes that enter into contracts with IHS under the Indian Self-Determination and Education Assistance Act (ISDA) to administer healthcare programs that would otherwise be operated by IHS. ISDA Section 5325(a)(2) requires IHS to pay direct and indirect contract support costs for these Tribally-managed programs, including "the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract." IHS agreements incorporate ISDA Section 5325(m)(1), which requires Tribes to use "program income" (i.e., third-party revenue) to "further the general purposes of the contract." The Tribes in this case argued—and the Court agreed—that the "Tribes' contracts and ISDA plainly require them to collect program income and spend it to comply with their contracts." (Slip Op. at 9.) "Because a self-determination contract requires a tribe to spend program income to further the programs transferred to it in the contract," the Court explained, the statutory provisions "require IHS to pay contract support costs when a tribe does so, just as IHS must pay contract support costs to support a tribe's spending of the Secretarial amount," (i.e., direct congressional appropriations). (Slip Op. at 8.)

In sum, the Court held that when Tribes incur administrative costs in the course of collecting and spending third-party revenues in furtherance of their federally-funded healthcare programs, "ISDA requires IHS to pay those support costs." (Slip Op. at 18.)

The Court also observed that reimbursement of these contract support costs on third-

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party revenue is necessary to “prevent a funding gap between tribes and IHS,” which would inflict “a penalty for pursuing self-determination” on those Tribes that choose to enter into ISDA agreements. (*Id.*)

Chief Justice Roberts authored the majority opinion and was joined by Justices Sotomayor, Kagan, Gorsuch, and Jackson. Justice Kavanaugh was joined in dissent by Justices Thomas, Alito, and Barrett.

Attorneys from Dorsey & Whitney’s Indian and Alaska Native Law Practice Group authored a brief in the case on behalf of amici led by the National Indian Health Board.

Dorsey Observations

Significant portions of Tribal healthcare programs may be funded using third-party revenue. The federal government has previously taken the position that it is not required to pay administrative and overhead costs for these activities, leaving Tribes to cover these costs from other funding sources. The Court’s decision confirms the right of Tribes with ISDA healthcare programs to obtain additional funding in support of their programs. The federal government is now required to pay reasonable direct and indirect support costs to Tribes and Tribal organizations that administer healthcare programs under ISDA agreements. Tribes and Tribal organizations with current ISDA agreements are now able to present claims for and recoup direct and indirect contract support costs. These costs are limited to costs directly attributable to ISDA contracts between Tribes and IHS.

The Court’s decision is a major win for Tribes and an important step toward putting Tribally-managed healthcare programs on an equal financial footing with federally-managed programs.

Dorsey attorneys are experienced in advocating for Tribes and Tribal entities, including for claims against IHS for shortfalls in healthcare funding. We prioritize protecting Tribal rights and sovereignty, and we leverage our longstanding experience in Indian Country to best represent Tribal and Alaska Native Corporation clients.

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