

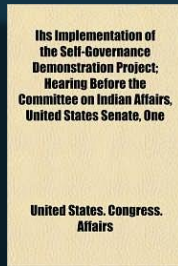
Indian Health Service and the Indian Self-Determination and Education Assistance Act

Background

- The Trust Relationship: establishes a responsibility for a variety of services and benefits to Indian people based on their status as Indians, including health care.
- Self-Determination Era in Federal Indian Policy: American presidents in the 20th century rarely met with Indian leaders to discuss Tribal issues. However, in late 1960s, Federal policies shifted to support Tribal self-determination.

Legislative History

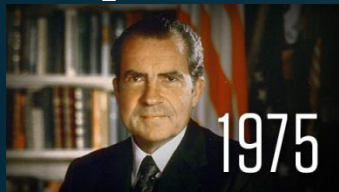
1988 – BIA Tribal Self-Governance Demonstration Project



1992 – IHS TSGP Demonstration Project



2000 - established IHS TSGP (Title V of the ISDEAA)
2002 - Title V Regulations



1975 – Passage of the ISDEAA (P.L. 93-638)
1976 – Passage of the Indian Healthcare Improvement Act (IHICIA)



1991 – IHS Feasibility Study (P.L. 102-184)



1994 – Title III Technical Amendments



2010 – IHICIA permanent reauthorization

Options for Tribes Today

Based on the needs of their communities, Tribes may choose one or a combination of the following options:

- Receive health care administered and operated by IHS
- Assume responsibility for health care formerly administered and operated by IHS through ISDEAA Title I self-determination contracts, Title V self-governance compacts, or both
- Fund the establishment of their own programs or supplement ISDEAA programs

Participation in Title I and Title V

- **Title I:**
 - 227 contracts and annual funding agreements
 - \$900 million transferred through Title I contracts
- **Title V:**
 - 86 compacts and 111 funding agreements
 - 350 Tribes participating directly or through tribal organizations and intertribal consortia
 - Title V agreements transfer \$1.8 billion, approximately one-third of the IHS appropriation.
- **Combined, these agreements transfer approximately \$2.5 billion, over half the IHS appropriation.**

Common Features of ISDEAA Agreements

- Not Procurement Contracts
- Funding Provided
- Access to Federal Sources of Supply
- Health Professional Licenses
- Federal Tort Claims Act Coverage
- Health Services for Ineligible Persons
- Reassumption

Common Features of ISDEAA Agreements: Not Procurement Contracts

- In general, Federal contracting and cooperative agreement laws (including the FAR) do not apply to ISDEAA agreements.
- Title I contracts must include the model contract included in the statute, but there are no model agreements in Title V.
 - Title V does specify a small number of mandatory terms.

Common Features of ISDEAA Agreements: Funds Provided

- Tribes can contract for any IHS program, service, function, or activity (or portion thereof) that is not inherently federal or congressionally restricted (earmarked).
- The funding associated with these PSFAs includes:
 1. Funding the Secretary would have otherwise spent, plus
 2. “Contract support costs” which are an amount for the reasonable costs for activities which must be carried out by the contractor to ensure “compliance with the terms of the contract and prudent management.”

Common Features of ISDEAA Agreements: Funds Provided (continued)

- Funds may only be reduced in subsequent years pursuant to congressional action or tribal authorization.
- Tribes may supplement their ISDEAA funds to expand services while retaining the benefits of the ISDEAA.
- Any savings due to Tribal operation may be used to provide additional services or be expended to carry out the ISDEAA agreement in the succeeding fiscal year.

Common Features of ISDEAA Agreements: Access to Federal Sources of Supply

- Tribes may access Federal sources of supply for the purposes of carrying out an ISDEAA agreement.
- They are deemed part of the IHS for this purpose, and employees of the Tribe or Tribal Organization are eligible to access sources of supply on the same basis as employees of an executive agency.

Common Features of ISDEAA Agreements: Health Professional Licenses

- Licensed health professionals employed by a tribal health program may be licensed in any State.
- They need not meet the licensing requirements of the State in which the tribal health program performs the services described in the contract or compact.

25 U.S.C. § 1621t

Common Features of ISDEAA Agreements: Federal Tort Claims Act (FTCA) Coverage

- Congress extended the FTCA to Tribal contractors carrying out ISDEAA agreements.
 - 25 U.S.C. 450f(d), 25 U.S.C. 458aaa–15.
- Tribal employees must be acting within the scope of their employment *and* the scope of the contract or compact.
- Volunteers granted clinical privileges as a “non-Service health care practitioner” also may be covered.
- The Department of Justice has the final word on coverage.

Common Features of ISDEAA Agreements: Health Services for Ineligible Persons

- Some Tribal health programs also provide health services to persons who would otherwise be ineligible for IHS.
- The governing body of the Tribe or Tribal Organization determines whether or not to serve otherwise ineligible persons.
- Services provided pursuant to such a determination are deemed to be provided under the ISDEAA agreement, but any otherwise ineligible persons receiving services must pay an amount not less than the actual cost of providing the health services.

Common Features of ISDEAA Agreements: Reassumption

- A Tribe may always return a PSFA assumed under an ISDEAA contract to the IHS via the retrocession process or renegotiation/modification of their agreement.
- Involuntary reassumption of a PSFA from an ISDEAA contractor is allowed only in *very* limited circumstances.

Title I and Title V: Four Key Differences

- Eligibility
- Process
- Redesign
- Oversight

Eligibility

Title I	Title V
<p>Any federally recognized Tribe or authorized Tribal Organization upon request by Tribal resolution</p>	<p>A Tribe or Tribal Organization must (1) successfully complete a planning phase,(2) request participation in the by Tribal resolution or other official action by each Tribe to be served, and (3) demonstrate 3 fiscal years of financial stability and financial management capability.</p>

Process

Title I	Title V
<p>The Tribe or Tribal Organization submits a contract proposal for review. Negotiations are held with the Tribe. Within 90 days of receipt, the IHS Area contracting officer must approve the proposal and award the contract or provide written declination of the proposal based on the five ISDEAA declination criteria.</p>	<p>The Tribe or Tribal Organization produces a draft compact and funding agreement. The IHS Agency Lead Negotiator (ALN) negotiates with the Tribe on behalf of the IHS Director. If agreement cannot be reached, the Tribe submits a final offer. IHS has 45 days to reject or accept and may only reject based on the statutory rejection criteria.</p>

Redesign

Title I	Title V
<p>A Tribe or Tribal Organization may redesign PFSAs with IHS approval and may re-budget funding to meet contract requirements without IHS approval in accordance with the ISDEAA.</p>	<p>A Tribe or Tribal Organization may redesign or consolidate PFSAs and reallocate or redirect funding without IHS approval in accordance with the ISDEAA.</p>

Oversight

Title I	Title V
<p>For routine monitoring, the IHS is limited to not more than one performance-monitoring visit per Contract; exceptions may apply.</p> <p>For mature Contracts, an annual agency audit as required by the Single Agency Audit Act of 1984 and a brief annual program report. All other reporting requirements are negotiable.</p>	<p>No routine monitoring is required.</p> <p>Annual single agency audit as required by the Single Agency Audit Act of 1984 and Health Status Reports (if funding is provided).</p>

Office of Tribal Self-Governance

- Self-Governance Implementation
- Indian Self-Determination and Education Assistance Act (ISDEAA)
- Policy Development for TSGP
- Agency Advisor on TSGP
- Compact/Funding Agreement Negotiations
- Special Project Oversight
- Nation-wide Self-Governance Education and Outreach
- Tribal Consultation

Contact Information

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