

# IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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## INDIAN HEALTH SERVICE TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE AND TECHNICAL WORKGROUP QUARTERLY MEETING

**Tuesday, March 24, 2015 (8:00 am to 5:00 pm)**

**Wednesday, March 25, 2015 (8:30 am to 2:00 pm)**

Embassy Suites Washington DC - DC Convention Center  
900-10<sup>th</sup> Street NW  
Washington, DC 20001  
Phone: (202) 739-2001

### Meeting Summary

**Tuesday, March 24, 2015 (8:00 am to 5:00 pm)**

**Meeting of IHS Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup with IHS Acting Director Robert G. McSwain**

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#### Tribal Caucus

- TSGAC hosted a Tribal Caucus prior to the March quarterly meeting. During the caucus the TSGAC prepared for a meeting with the Office of Inspector General and discussed other caucus issues in preparation for the meeting with Acting Director McSwain.

#### Invocation

Chairman Vanderhoop of Wampanoag of Gay Head (Aquinnah) provided an opening invocation.

#### Roll Call

**Alaska:** Jaylene Peterson-Nyren, Executive Director, Kenaitze Indian Tribe  
**Oklahoma 1:** Rhonda Butcher, Self-Governance Coordinator, Citizen Potawatomi Nation, Proxy for Chairman Barret  
**Oklahoma 2:** Vickie Hanvey, Self-Governance and Government Resources Coordinator, Proxy for Chief Baker  
Mickey Peercy, Self-Governance Executive Director, Choctaw Nation, Proxy for Chief Batton  
**Albuquerque:** Luis Romero, Governor, Taos Pueblo  
Shawn Duran, Tribal Administrator, Taos Pueblo  
**Nashville:** Tobias Vanderhoop, Chairman, Wampanoag of Gay Head (Aquinnah)  
Stephanie White, Treasurer, Wampanoag of Gay Head (Aquinnah)  
**Portland:** Jennifer McLaughlin, Self-Governance Analyst, Jamestown S'Klallam Tribe, Proxy for Chairman Allen

#### Opening Remarks

*Mickey Peercy, Self-Governance Executive Director*

Mr. Peercy provided welcoming remarks and reviewed the TSGAC agenda.

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### **Opening Remarks**

*Robert G. McSwain, Acting Director, Indian Health Service*

Acting Director McSwain expressed appreciation for the opportunity to meet with TSGAC and explained that he would only be present for the first day of the meeting due to other commitments.

During his opening remarks the Acting Director also shared that the President's Fiscal Year 2016 (FY16) request continued to prove his commitment to Indian Country and health care for American Indians and Alaska Natives. Congressional members were also interested in the request because for the first time in history IHS presented during four separate hearings on the President's FY16 Budget Request. Despite the recent change to Dr. Roubideaux's role within the Department of Health and Human Services (HHS), she acted as lead witness during the hearings.

The Acting Director reassured TSGAC members that he was up-to-date on IHS issues and priorities and did not foresee a drastic change in the agency's future.

### **OIG Alert and Congressional Dialogue**

*Greg Demske, Chief Counsel, Office of Inspector General, Department of Health and Human Services*  
*Melinda Golub, Senior Counsel, Office of Counsel to the Inspector General, Department of Health and Human Services*

*Amitava "Jay" Mazumdar, Senior Counsel, Office of Counsel to the Inspector General, Department of Health and Human Services*

- Ms. Golub and Mr. Mazumdar provided a short presentation about the role the Office of Inspector General (OIG) plays within HHS and explained how the audit alert was generated and released. Below are a few notes from their presentations.
  - OIG is Responsible for conducting audits and investigations to protect HHS programs.
  - There are twenty-four OIG field offices
  - The report to Congress twice a year and ultimately try to promote the prevention of fraud and abuse
  - There are five components within OIG
    - Office of audit services
    - Office of evaluation & inspections
    - Office of investigations
    - Office of counsel to the inspector general
    - Office of management and policy
  - OIG publishes regular reports and an annual work plan
    - One item in the work plan is on the quality of care in the IHS hospitals
    - They also share many resources on their website for those operating HHS programs.
    - The Tribal alert was posted on the website in an effort to raise awareness about possible fraud and abuse.
  - The Tribal alert grew out of the fraud and alert process. Which has a long history of providing information on how to comply with HHS regulations around using those funds.
    - They provide resources including
      - Compliance guidance documents
      - Interpretation legal regulations
      - Guidance for oversight responsibilities
      - Testimony and speeches provided by OIG

- Special fraud alerts
  - Issued to the public
  - Identify problems and go into a fair amount of detail that providers need.
- Other guidance
  - Alerts to physicians and Tribal alerts
  - These are shorter and explain general trends that may be at risk for continued abuse
- The Tribal Alert falls into the “other guidance” provided.
  - OIG plans to conduct many more investigations, under the guardian project looking very deeply into the use of HHS grant dollars in Tribes.
    - They do not believe there are any systemic problems, however, they’ve noted there are not always internal controls to oversee their use.
    - Additional compliance programs may be necessary.

### **What effect might this have on other Self-Governance legislation?**

*Nick Matiella, Legislative Assistant, for The Honorable John McCain, U.S. Senate*

- McCain’s amendments were meant to protect the integrity of the Self-Governance program
  - Add additional site visit opportunities for review
  - Keeps the threshold for audits low at \$500,000
  - Required IHS to provide Tribes with technical assistance to build internal control standards

*Mike Andrews, Majority Staff Director & Chief Counsel, SCIA*

*Rhonda Harjo, Majority Deputy Chief Counsel, SCIA*

*Brandon Ashley, Majority Senior Policy Advisory, SCIA*

*Anthony Walters, Minority Staff Director & Chief Counsel, SCIA*

- The US Senate Committee on Indian Affairs is trying to move the bill forward before Memorial Day.
- This is great opportunity to get S. 286 plus the amendments to move forward. Having support from OIG is a great sign that things are moving forward.

### **Tribal Discussion**

- Can you provide some examples of how there was abuse in the past?
  - OIG
    - There was no systemic audit to share examples now.
    - ACA allows the Secretary to retrocede ability to direct bill Medicare, Medicaid, and CHIP.
      - They did notice that some Title I Tribes did not know they are supposed to use reimbursements
      - Some Tribes did not have internal controls, which allows employees to redirect or syphon money.
    - They were hearing from Assistant US Attorneys that Tribes did not know about the regulations.
    - There was no robust education process in Indian Country either.
- Is there are particular part of Indian Country where you are seeing the frequency is higher?
  - OIG
    - They are seeing issues in both Title I and V Tribes
    - The often conduct an audit and investigation
- Are there specific resources on the OIG website that are helpful to Tribes?

- OIG
  - Are there other ways that they can be helpful in providing tools for compliance?
  - Evaluate the website resources
  - Video, training materials, and compliance guidance resources.
- TSGC Members proposed that some technical advisors and IHS need to work together to prepare resources about reimbursement policies and requirements for Tribes
- Rhonda Butcher noted that Tribes have been starved of Contract Support Costs (CSC), which would support the audits and development of internal controls and is likely leading to some of these issues. This really is an example of why full CSC funding is necessary to correctly support HHS programs.
- Were the McCain proposed amendments proposed by OIG?
  - Nick Matiella
    - Amendments from McCain were not proposed by OIG, but do try to get to the heart of protecting the integrity of the program.
    - The other alternative considered was allowing for a negotiated rulemaking process where the agency to develop internal control standards
- Acting Director committed to try and standardize internal controls and do more to support Title I Tribes.
- TSGAC members encouraged OIG to utilize the regional and national network of organizations to provide training and share best practices.
- TSGAC members also expressed sizeable differences between the funding levels provided to CMS and IHS and that the alert did not seem to match the concern that OIG is currently expressing. Members also recommended stronger partnerships to avoid future unintended consequences
- OIG recognized that the release may not have been the most effective way to get to the substance of the discussion.
- OIG responded that they desired to get the best information to the public in the most effective way and committed to making sure that the direction is coming from the Tribes and providing the same messages.
- OIG suggested that Tribes meet more often to provide compliance information for hospital billing, etc.
- Is there way for us to work together and find solutions so that OIG could be supportive of Self-Governance Expansion?
  - OIG would not comment directly on Title IV or V expansion.
  - They did suggest that if Tribes are considering expansion, that internal controls be adopted or recognized to support the Title V expansion program. They also stated they may be willing to provide guidance on proposed internal controls.

### **Office of Tribal Self-Governance Update**

#### *P. Benjamin Smith, Director, Office of Tribal Self-Governance*

- The Director reported that three Tribes officially entered into Self-Governance in 2015:
  - Southern Indian Health Council
  - Cow Creek Band of Umqua Indian
  - Santa Ynez Band of Chumash Indians
- To date the Self-Governance Tribes have 87 compacts and 112 funding agreements representing nearly 1.8 billion dollars transferred from IHS control to Tribal control.
- Together these funds support over 350 Federally Recognized Tribes.
- When combined with Title I Tribes, more than half the IHS budget, 2.5 billion dollars, is being transferred to Tribes.

- The theme for this year's conference is "A Legacy for Future Generations" could not be more indicative of the growth in policy and maturity of the government-to-government relationship since passage of the Indian Self-Determination and Education Assistance Act (ISDEAA) forty years ago.
- OTSG has responded to a number of requests for technical assistance, including interest in entry to Self-Governance and training new staff and leadership about the program.
- OTSG co-hosted a training with the DOI in California in February to provide training and technical assistance in financial aspects of Self-Governance, particularly around funding tables.
- OTSG is also conducting interview to hire a staff assistant to support the office.
- OTSG is working to update the database and plans to have the update completed by summer time.

### **Discussion**

- Why do Office of Environmental Health and Engineering dollars come later than others? What is causing the delay?
  - OTSG has brought the delay to the attention of Mr. Hartz and his staff and is tracking the issues they've heard about through other negotiations.
  - Liz Fowler agreed to look into the issue and report back what she learned.
  - She mentioned that some of the delay is likely related to the process needed to update the workload and determining final allocations.
  - She agreed that IHS would look at the possibility of sending money by category versus project.
- The tables for facilities is not entirely transparent and it is difficult to determine what are the residuals withholdings and Tribal share determinations from the table. You cannot follow the appropriations process from beginning to the table provided. Can we take a look clarifying the table and providing a more transparent process to determine the final table?
  - Liz Fowler agreed to follow up on the issue and report back.
- What will/has the role been for Acting Director?
  - He will continue the same agenda and consultation agenda as previously set forth.
- What is the new HHS Role for Dr. Roubideaux?
  - She advises the Secretary regarding several agency priorities, including
    - Representing the Secretary in hearings regarding the President's FY16 Budget request;
    - Overseeing AI/AN advising to the Secretary;
    - Continuing implementation of ACA and several aspects of the law;
    - Promoting behavioral health; and
    - Assisting in the launch of Generation Indigenous.
- OTSG has posted the planning, negotiation and management grants for Tribes pursuing Self-Governance Compacts. The applications are due June 1, 2015.

### **Discussion and Update on Budget Issues**

*Elizabeth Fowler, Deputy Director for Management Operations, IHS*  
*Melanie Fourkiller, TSGAC Technical Co-Chair and Policy Analyst*

- Fowler shared a few updates about FY 2015
  - PRC increase allocation was made to the areas on February 13, 2015
  - Everyone should have received their increase in their funding agreements
  - Pay cost increase of 2.5 million. Those were allocated on March 11, 2015 to the area offices.
- Status of FY 2017 Budget Formulation
  - Completed the national work session in February for HHS and IHS

- The next step is to evaluate that process and start planning for FY 2018
- Budget Summit Recommendations and Implementation
  - Should be included in the formulation process and the planning meeting at Annual Conference

**Lunch and TSGAC Members' Executive Session with IHS Acting Director and HHS Senior Advisor to the Secretary for American Indians and Alaska Natives**

**Contract Support Cost Workgroup Update and Discussion**

*Mickey Peercy and Rhonda Butcher, IHS Contract Support Costs Workgroup Members  
Yvette Roubideaux, M.D., M.P.H., Senior Advisor to the Secretary for American Indians and Alaska Natives, HHS*

- Update from February CSC Meeting
  - IHS is requesting new and expanded requests come in by March 31<sup>st</sup>
  - Workgroup has adopted the ACC template
  - IHS will roll out the template in a Dear Tribal Leader Letter (DTLL), they also recommended that standardized pass-through and exclusions be included in the DTLL
  - The workgroup requested a clarification of reconciliation process.
- Comments on the FY2016 Presidents Budget CSC Mandatory on February 9<sup>th</sup>
  - The comments are being compiled and will be shared with the CSC workgroup group
  - The Administration has provided all the information to the Hill
  - We need Tribal support
  - The Administration is still trying to find a champion
- CSC for Methamphetamine and Suicide Prevention and Domestic Violence Prevention Initiatives
  - Tribal members of the workgroup believes that the need to get as much as possible is more important than ever.
  - They also believe that because litigation is over CSC for these two programs creates a win-win situation for everyone.
  - The agency has had conflicting positions and should clarify before other action is taken.

**Joint TSGAC and IHS Acting Director Discussion**

- Medicare-Like Rate
  - IHS received 54 comments regarding the proposed regulation.
  - They will share comment if they are able.
  - They are trying ascertain the timeline in publishing the final rule and implementation.
  - There will be a briefing at the PRC meeting in the upcoming weeks.
- Expansion of Title V
  - HHS still believes a formal process via legislation is needed before adoption and expansion of Title V.
  - Though the workgroup was going to talk about principles to inform legislation, Congress will have to propose legislation and then talk to the administration about the proposal.
  - There are legal provisions in the law that need to be changed before agencies feel comfortable moving forward.
  - Secretary Burwell is asking that HHS leads find a solution and officials are asking if it has to the full-blown Self-Governance model or another model could be considered.
  - The outcomes are already defined, maybe we need to identify additional pathways

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- All of the agencies are starting their FY17 proposals, perhaps TSGAC should consider meeting with agencies to request legislative proposals to support expansion.
  - The basic concern is that SG Tribes are unsure of the forum to talk about expansion, but Dr. Roubideaux is happy to try to facilitate a few meetings on this in the future. And will try to make sure Tribes are at the table.
  - OEHE
    - Working on the funding tables to create more transparency

### **Closing Remarks**

*Robert G. McSwain, Acting Director, Indian Health Service*

- The Acting Director thanked the committee for their feedback, agreed to follow up on notes and to stay attentive to the issues.

*Yvette Roubideaux, M.D., M.P.H., Senior Advisor to the Secretary for American Indians and Alaska Natives, HHS*

- HHS remains committed to making progress, even with changes in the Administration.
- She explained she is trying to figure out how to leverage her opportunities and prioritize or efforts with the Secretary.

### **Review strategic plan document and prepare for DSTAC/TSGAC joint meeting.**

### **Wrap Up and Preparation for Wednesday, March 25, 2015**

**Wednesday, March 25, 2015 (8:30 am – 2:00 pm)**  
**Meeting of TSGAC and Technical Workgroup**

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### **Welcome**

Melanie Fourkiller, Policy Analyst, Choctaw Nation; and Tribal Technical Co-Chair, TSGAC

### **Invocation**

Clyde Romero of Taos Pueblo provided the morning invocation.

### **TSGAC Committee Business**

- Approval of Meeting Summary (January 28, 2015)
  - MOTION: Approved by acclamation
- Approval of the Strategic Plan
  - MOTION: Approved by acclamation
- DSTAC-TSGAC Inaugural Joint Meeting
  - TSGAC Members proposed the following ideas for the upcoming meeting:
    - Smaller delegation and a more informal meeting test
    - Identify shared priorities
    - Discuss future joint meetings together
    - Teleconference availability for additional meetings
    - Determine action and/or follow up items
    - Share ideas about Tribal Sponsorship Models under the ACA

- Confirmation of Alaska Alternate Representative
  - MOTION: Alternate Representative, Gerald “Jerry” Moses, was approved by acclamation
- SGCE provided updates about the Annual Consultation Conference, recruited additional moderators and recorders, and sought approval for the final Conference agenda.

### **Interfacing Resource and Patient Management System (RPMS) with Proprietary Systems and OIT Survey Results**

*CDR Mark Rives, MBA, MSCIS, Director, Office of Information Technology, IHS*

*Yvette Roubideaux, M.D., M.P.H., Senior Advisor to the Secretary for American Indians and Alaska Natives, HHS*

- IHS conducted a survey as part of the operational analysis for RPMS, infrastructure, and National data warehouse
- It's a survey of stakeholders, not really a systemic review and included end users, technicians, and developers
- There were in-person surveys and interviews.
- Themes from the survey included:
  - Negative feedback:
    - Feasibility
    - Usability
    - Interoperability
    - Interface was antiquated
  - Positive Feedback:
    - Eye care and population tracking makes the system stand out from other commercial programs
  - Improve communication around RPMS and future work was necessary from participant's perspectives.
- Paid for service model to be included to create stakeholders and survey data about those users.
- Developers stated that the organization is getting more complicated and training when developers leave the work is left hanging a bit
- Four contractors work on four RPMS development and that has created friction
  - IHS is replace all contracts this year to emphasize the demarcation of work.
- Tribal discussion
  - Do you have a handout that summarizes all of those issues?
    - There are slides that will be shared with the committee.
  - Is there a timeline to address some of those?
    - The office is working through a number of issues as quickly as possible and some is tied to Meaningful Use required updates.
- Interoperability?
  - Meaningful Use (MU) has been the driver of the need to be interoperability
  - Incentive payments resulted in significant revenue for Indian Country
  - Patient Summary and records can now connect to a larger network
  - IHS is ahead of the game the challenge is meeting the new regulations and requirements
  - IHS is reviewing alternative delivery models
  - Meaningful Use is to create quality measurement and provide patient data at the appropriate time
  - IHS has met MU 1 & 2

- Once IHS achieves interoperability they have to make sure that data is secure, that is the part that seems to be holding up the process for developers.
- There is good news out that IHS may be able to meet the next step in MU 2
  - Steep curve for 2015 calendar year
- Tribes may want to provide comments to the MU Part 3 rules currently out for comment to allow RPMS users to meet the requirement.
- Dear Tribal Leader Letter on the Multi-purpose user is coming out soon and should provide an opportunity for comment.
- Is there funding available to support updating third party system?
  - Not for Tribes searching for interoperability of third party systems.
- How do Tribes connect to the federal network for local needs?
  - ONC is trying to layout a network that meets these more complicated need.

### **Patient Protection and Affordable Care Act (ACA) Implementation and Update**

*Doneg McDonough, Consultant, Tribal Self-Governance Advisory Committee*

*Cyndi Ferguson, Self-Governance Specialist/Policy Analyst, SENSE Incorporated*

- The team continues to host regularly scheduled webinars
  - January - VA Agreements
  - February – Hot current issues for ACA [will continue quarterly]
  - March – Tribal sponsorship
- Webinars are recorded and questions are summarized for archival purposes
- Success Stories
  - Two site visits and two stories have been completed
    - Two remaining are Fond du Lac and Southcentral Foundation
  - The goal is to share the first two stories at the Annual Conference.
  - Then finally, a glossy magazine for waiting rooms that will be accessible from the SG website.
- Premium Sponsorship Webinar
  - IHS sent out a notice to Direct Service Tribes (DST) and resulted in great interest.
  - The team will focus on how IHS will make sure that premium sponsorship is available across the spectrum of IHS facilities.
  - Medicaid expansion remains a critical for Tribal health facilities, if expanded to every state roughly a billion dollars additionally each year.
  - A negative decision in the King v. Burwell case could result in some states without federal tax credits.
  - 26,000 AI/AN reported enrollment in the marketplace in March reporting
  - Return on sponsorship enrollment is approximately 100% on average. However, Tribes are flagging some problems in recouping payments...requiring additional work to improve those systems.
- The ACA Team is working on a Special Project: Qualified Health Plan (QHP) Contracting with Indian Health Providers (IHPs)
  - They are trying to measure the extent to which the QHPs are offering contracts to IHPs
  - In the Federal Marketplace each health program has to offer a contract with an Indian addendum.
    - Results are mixed, however where active health boards exist health plans are offering contracts
  - Those states where it's not required results are significantly different.
- Materials are available on SGCE information
- TTAG workgroup report is also available in the meeting materials
- Tribal Discussion

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- The collaboration that has developed over the last couple of years has been helpful for advocacy and policy priorities.

#### **Annual CSC Calculation Tool Demonstration**

- CSC workgroup has made suggestions to improve the template to simplify the CSC policy options
- Feedback from TSGAC
  - We need to make sure there is agency history that can explain the tool
  - Communication to all the Tribes about this tool is required
  - Should live within Self-Governance offices
  - The tool that has been used on the BIA side required an OMB number, because it is a form
  - Update on the needs report is necessary, because the last one included 2011 data
- Has IHS submitted the needs report to the Departmental clearance process?
  - The clearance process can be protracted and long so it is unclear when the next needs report will be released.

#### **Adjourn TSGAC Meeting**

##### MOTION

Wampanoag Tribe of Gay Head (Aquinnah) made a motion to adjourn the meeting.  
Cherokee Nation seconded the motion.  
The motion to adjourn was approved and the meeting was adjourned at 11:59 AM Eastern.