

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, October 6, 2015 (8:00 am to 5:00 pm) Wednesday, October 7, 2015 (8:30 am to 1:30 pm)

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

MEETING SUMMARY

Tuesday, October 6, 2015 (8:00 am to 5:00 pm)

Meeting of Indian Health Service Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup with IHS Deputy Director Robert G. McSwain

Jessica Burger, Councilor of Little River Band of Ottawa Indians, provided the opening invocation.

TSGAC Opening Remarks

Chief Marilyn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC
Thank you for participating and representing Tribal nations

Roll Call:

Alaska: Alberta Unok, Deputy Director, Alaska Native Health Board, Proxy for Jaylene Peterson-Nyren
Albuquerque: Louis Romero, Governor, Pueblo of Taos
Raymond Loretto, DVM, Governor, Pueblo of Jemez
California: Maybeline Peterson, Financial Analyst, Hoopa Valley Tribe
Danny Jordan, Self-Governance Coordinator, Hoopa Valley Tribe
Bemidji: Jessica Burger, Councilor, Little River Band of Ottawa Indians
Nashville: Marilyn (Lynn) Malerba, Chief, Mohegan Tribe of Indians of Connecticut
Navajo: Jonathon Nez, Vice President, Navajo Nation
Oklahoma 1: Rhonda Butcher, Director, Citizen Potawatomi Nation
Oklahoma 2: Mickey Percy, Executive Director, Choctaw Nation of Oklahoma
Melissa Gower, Senior Policy Analyst, Chickasaw Nation
Phoenix: Lindsey Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian
Reservation
Delia Carlyle, Vice Chair, Ak-Chin Indian Community
Portland: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe
Tyson Johnston, Vice President, Quinault Indian Nation

TSGAC Committee Business

MOTION

Citizen Potawatomi Nation made a motion to approve the July 2015 TSGAC Meeting Summary.
Pueblo of Taos seconded the motion.
Motion was approved without objection.

MOTION

Quinault Indian Nation made a motion to approve Jessica Burger, Councilor, Little River Band of Ottawa Indians as the Bemidji Area Alternate Representative.

Shoshone-Paiute Tribes of the Duck Valley Indian Reservation seconded the motion.

Motion was approved without objection.

MOTION

Jessica Burger was appointed as the Self-Governance Representative to the IHS Information Systems Advisory Committee by unanimous consent.

IHS Opening Remarks and Update

Robert G. McSwain, Principal Deputy Director, Indian Health Service (IHS)

- Mary Smith starts today as the Deputy Director for IHS. She and HHS Secretary Burwell have agreed to a set of priorities that will Mary fill in on and take on additional responsibilities.
- IHS is encouraging Centers for Medicare & Medicaid Services (CMS) to conduct Tribal Consultation to ensure that there is a continuation of services.
- The four priorities set by the previous Director are still being used, but revisions are also being made to reflect the new Urban Indian Health Care facilities confer policy.
- IHS Area Listening Sessions
 - The IHS Principal Deputy Director is calling on the areas to report to the Tribes including budget, revenue, services, etc.
 - They have finished all of the listening session
 - They've asked the Area Directors to address concerns with grant programs and access issues
 - IHS will put together a complete list of actions that were taken as a result of the listening session.
- IHS has found that the Affordable Care Act is allowing Tribes to get down to the priority four, elective services.
- Information Technology for MU 1 and 2, with 3 looming working through third party use issues
- IHS is working to address personnel shortages and long-term openings by allowing job announcements to remain open until filled.
- IHS has found that 60% of obligated providers through the loan repayment programs are staying on beyond two years.
- Generation-Indigenous Initiative
 - Every area has talked about suicides during the listening sessions.
 - IHS believes hiring young people through the pathways program is one of many new options for young people.
 - IHS is looking for other solutions that are concrete and create safe zones.
 - LGBTQ Youth have particular needs and IHS is seeking solutions for those needs.
- FY 2017 Budget
 - The IHS Budget requests have been presented to HHS and the Office of Management and Budget (OMB).
 - IHS has reported the Tribal budget formulation ideas to HHS.
 - Secretary forwarded those proposals to OMB and was very supportive of the Tribal priorities.
- FY 2018 Budget
 - Formulation will start at the region in late October.
 - New national and regional instructions were improved from last year.
- Contract Support Costs

- IHS is still making good progress on \$721 million in the CSC claims settlement process.
- 1,273 offers have been made on the 1,412 claims.
- The CSC Workgroup is moving forward toward policy development as well.
- IHS Methamphetamine and Suicide Prevention Initiative (MSPI) and Domestic Violence Prevention Initiative (DVPI) grants have been completed.
 - \$13 million were granted to 117 MSPI programs.
 - \$21 million grants were provided to 136 Tribes and Tribal Organizations serving 274 Tribes to promote domestic violence prevention.
- Special Diabetes Program for Indians (SDPI)
 - Has a new distribution methodology based on shared resources for Healthy Heart and SDPI funding.
 - Tribal Response:
 - Thank you for finding a solution to last quarter funding for tribes not on a fiscal year.
 - There are still concerns that the budget doesn't actually meet the need. There are disparities and we need to determine the level of need funding.
- Water Contamination on the Navajo Nation Reservation
 - We need better and cleaner drinking water where the Gold King Mine spill occurred.
 - Clean up is needed for mining sites and IHS has requested collaboration with the Environmental Protection Agency (EPA).
 - There is a request to build additional water wells.
 - IHS is working to fix some flooding issues in the Santa Fe facility.
- Identifying unmet need in the IHS budget.
 - IHS has learned that Mr. Cliff Wiggins is leaving.
 - This is an example of how IHS needs to find solutions to transition successors to highly technical information.
 - Tribes requested that IHS share information regarding the unmet need calculations currently utilized by IHS so that Tribes can participate in continued analysis.
- Tribal Discussion:
 - Tribes are continuing to seek an exemption from sequestration for IHS funding.
 - The Continuing Resolution process causes Tribal issues when they are looking for retention, recruitment, and long-term decisions.
 - The IHS is still approaching funding shortfalls and health care solutions with siloed solutions. The agency should consider more comprehensive solutions to meet the needs of American Indians and Alaska Natives.

Office of Tribal Self-Governance Update

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

- Osage Nation joined the Self-Governance Program on October 1, 2015. Bringing the Self-Governance numbers to:
 - 351 Tribes
 - 88 Compacts
 - 113 Funding Agreements
- OTSG Cooperative Agreements
 - 5 planning agreements
 - 2 negotiation agreements
- OTSG Staff
 - Program analyst interviews are moving forward this week.
- Self-Governance funding disbursements.

- IHS will follow what has been included Funding Agreements.
- Should expect 19.67% of the enacted level after a .2108% reduction.
- OTSG has coordinated Tribal delegation meetings that have provided great feedback beyond area listening sessions. Additionally, input from TSGAC is extremely important to the agency.
- Affordable Care Act National Indian Health Outreach & Education funding through Jamestown S’Klallam Tribe will continue in FY 2016. The group is planning several webinar and electronic training sessions.
- The Self-Governance Database has been updated and is now the OTSG Financial Management System.
 - Should be able to generate additional reports.
 - Kevin Quinn can assist in using the database if there are questions.

Contract Support Costs (CSC) Workgroup Update and Discussion

Chief Marilyn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut

Chairman W. Ron Allen, Jamestown S’Klallam Tribe

Mickey Peercy and Rhonda Butcher, IHS Contract Support Costs Workgroup Members

Roselyn Tso, IHS CSC Team Lead

- Tribal Discussion
 - Negotiated rates with Interior Business Center (IBC).
 - The policy discussion process has been frustrating because the Department of the Interior (DOI) is not taking this position.
 - Tribes believe the decision is being driven by the settlement and claims issues.
 - IHS needs to accept the procedures Tribes and IHS has already agreed too.
 - Categorical duplication of costs is also an issue that must be addressed.
 - The policy needs to provide for a range of options to Tribes.
 - Tribes request that IHS try to interpret the law to benefit Tribes as much as possible.
 - There is no way to make money on the Indirect Cost (IDC) rate.
 - The position of Tribes has been that the detailed changes proposed by the Agency are a direct result of the claims process.
- Workgroup will meet tomorrow to discuss incurred costs.
- Tribes believe the IHS Agency Lead Negotiators (ALNs) are not consistently negotiating across all Areas.
 - IHS has agreed that they are working to train ALNs to create more consistency.
- IHS has provided CSC training in 2014 and 2015 (9 of the areas have received training) on the Annual Cost Calculator (ACC) tool.
- IHS believes they are honoring the IBC rate
 - The agency is looking at the statute and the interpretation of the statute is different.
 - The Tribe’s rate is not the only document that includes CSC.
 - IHS is trying to get out of the claims process, so they are trying to develop a streamlined approach to be able to appropriately calculate the exact costs of CSC.
 - IHS is trying to get better at calculating the actual rates and treating all Tribes fairly
- What other documents are used to calculate CSC
 - Is only calculated on dollars are paid to the Tribe
 - Look at the IBC rates and the duplication of costs

Budget Update

Elizabeth Fowler, Deputy Director for Management Operations, IHS

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

Caitrin Shuy, Director, Congressional Relations, NIHB

- Preparing for FY 2017 Budget Formulation
 - There will be different instructions this year to try and include a greater number of area-specific recommendations.
 - We do need to keep strengthening how we engage stakeholders together.
 - Information from tribes justifying increases has been very helpful.
 - However IHS has not done a great job of aligning dollars with program improvements.
 - This year the formulation team will try to answer “What improvements will you make with this amount of money?”
 - Performance measures and can we point to the changes that will occur as a result of increases.
 - Could Tribes track unfunded services instead of disease programs?
 - Purchased/Referred Care (PRC) and Catastrophic Health Emergency Fund (CHEF) is the only places we track that are unmet needs
- We’ve always heard that HHS uses a different inflationary rate than IHS uses for health care services. Is that true?
 - We need to have more in-depth discussions regarding inflation rates.
- Tribes reiterated that their preference is not to put increases into grants or short-term funding.

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

Mim Dixon, Consultant, Tribal Self-Governance Advisory Committee

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

Doneg McDonough, Consultant, Tribal Self-Governance Advisory Committee

- IHS will continue to fund ACA Outreach and Education for TSGAC
- Tribal sponsorship through Marketplace
 - Making sure any Tribe can do sponsorship.
 - Initial data is very favorable.
 - Tribes are currently adding language to the contracts and Funding Agreements (FAs) to allow for this.
 - There will be case studies to follow up on the effectiveness of the sponsorship programs.
- Introduction of Laura Bird as the new technical representative to TSGAC.
- There is a survey to collect feedback about the types of trainings that will be hosted under the ACA work plan.
- The final ACA outreach magazine and success stories were distributed at the National Congress for American Indians (NCAI) annual meeting.

Tribes as Employers under the ACA

Doneg McDonough, Consultant, Tribal Self-Governance Advisory Committee

Elliott Milhollin, Partner, Hobbs Strauss Dean & Walker

Laura Bird, Legislative Associate, National Congress of American Indians

- Cadillac Health Care Plan “Tax”
 - Tribal Discussion
 - The notion and calculation of what is considered a Cadillac plan, invoking the tax penalty, is incorrect
 - Tribes should be exempted as governments
 - What can be done administratively in terms of IRS’ interpretation
 - Is this a tax on Tribal Government?
 - Yes, effectively because you are purchasing the insurance plan
- Employer Mandate Exemption
 - Our request is to delay implementation while we try to work out another issue

Centers for Medicare & Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG) Updates

Chairman W. Ron Allen, Jamestown S'Klallam Tribe

Terri Schmidt, Acting Director, Office of Management Services, IHS

Kitty Marx, Director, Division of Tribal Affairs, CMS

- Pending rule for grandfathered Federally Qualified Health Centers (FQHC)
 - It is very burdensome administratively.
 - Tribes will get about a third of the payment IHS is currently getting.
 - The grandfathered plan was put in place to address the unique position of the Tribal systems.
- 100% Federal Medical Assistance Percentage (FMAP) Proposals
 - Alaska expanded Medicaid.
 - South Dakota submitted a proposal for FMAP.
 - Working with Tribes and Tribal organization to expand FMAP under consultation.
 - Using contractual arrangements between Tribes and IHS to allow billing back up through the program, clinic, and hospital.

IHS Updates on ACA and IHCIA

Terri Schmidt, Acting Director, Office of Management Services, IHS

Francis Frazier, Acting Director, Office of Public Health Support, IHS

- IHS Medicare-Like Rates Regulation – status and measurement of outcomes
 - HHS is Proposing to call the rule PRC rates
 - They are in the third re-write and fourth round of interviews.
 - Estimated timeline?
 - It may go through the department this time?
 - Maybe January 1, 2016
 - It will probably take a long time to get through OMB
- Aligning Quality Data Requirements for Medicare, Medicaid and Government Performance and Results Act (GPRA)
 - They are working to get on the technical level to determine what can be integrated
 - Additional variable that to be considered is other integrated methods and ability to run reports through the National Data Warehouse.
 - Interface between proprietary and non-proprietary systems.
 - We need to know how best to pull data that communicates real changes and improvements.
 - The essential part of this is to create consistency in reporting data.
 - IHS is trying to figure out how and where to make the measurements the same while respecting the budget process.
 - It is tiresome to go through the HHS process to move GPRA measures around.
- Updating the Resource and Patient Management System (RPMS) system to accept third party data systems
 - Tribes want one database system that can extrapolate many measures and share information from across the board.

Joint TSGAC and IHS Deputy Director Discussion

- Facilities
 - The IHS Facilities Appropriation Advisory Board (FAAB) will prepare statement for March with top five priority clinics.

- \$185 million budget and defense will be easier
- When is the next FAAB meeting?
 - November 18-19 in Phoenix, AZ
- Joint Venture Construction Program apps will be approved for the remaining four of the top seven.
- MLR Regulation
 - HHS has had the rule four times, OMB has not reviewed it yet
 - Per the regulatory agenda IHS is 109 days late
 - Nothing has been signed to change the name of the rule
- Update on IHS/VA PRC inclusion
 - Mr. McSwain is pursuing this discussion now with the Secretary of VA.
 - VA Secretary McDonald was amenable to open discussions. IHS Chief Medical Officer Dr. Susan Karol will lead the negotiations from this point.
 - Tribal Discussion:
 - How well are IHS-VA MOUs represented?
 - All 128 service units are reporting on the IHS side.
 - Can the VA provide a report on the agreements?
 - IHS will work to create something.

Wednesday, October 7, 2015 (8:30 am – 1:30 pm)

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

Chairman Lindsey Manning provided the invocation.

Roll Call:

Alaska: Alberta Unok, Deputy Director, Alaska Native Health Board, Proxy for Jaylene Peterson-Nyren

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Raymond Loretto, DVM, Governor, Pueblo of Jemez

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Reservation
Delia Carlyle, Vice Chair, Ak-Chin Indian Community

Portland: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe
Tyson Johnston, Vice President, Quinault Indian Nation

Introductions – All Participants & Invited Guests

Opening Remarks

*Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC
Robert G. McSwain, Deputy Director, Indian Health Service*

Joint TSGAC and IHS Deputy Director Discussion

- IHS Deputy Director Mr. McSwain provided the following opening remarks and updates to the TSGAC
 - Pharmacy and Medically Underserved Areas Enhancement Act
 - TSGAC requested support for the Pharmacy Enhancement Act to open a medical billing stream as health providers. Because Pharmacists provide health service this would allow I/T/Us to increase third party revenue.
 - IHS Response:
 - Agrees that IHS relies on pharmacists to provide consultation and health services to users.
 - IHS will look to support this and determine if there are additional benefits to I/T/Us
 - Legislative affairs and others will track this issue.
 - Is there a place where we are billing as providers?
 - Geoff will ask Carl Harper to determine if there is a place where IHS is billing for pharmacists as providers.
 - There was a time in IHS was doing it Arizona, but this legislation would be different.
 - OTSG Report to Congress
 - TSGAC provided comments to the Annual Report Congress and leaders would like to know what the next step in the process.
 - IHS Response:
 - The law requires that the comments be included in the report to Congress
 - There were some strong recommendations from TSGAC and four others and they are looking to incorporate the changes in the report.
 - Class Action Employee Unions Settlement
 - TSGAC requested an update regarding the settlement. There was also a request about the guidance IHS is providing to ensure the opportunity for future lawsuits are minimized.
 - IHS Response:
 - Status of the case is the on August 14, 2015 \$80 million dollars was transferred to Unions
 - IHS is matching the claims to clinics, hospitals, and areas. IHS is also having additional conversations with the arbiter because they are seeing claims in areas that were not originally discussed.
 - IHS will provide the following information:
 - Number of employees per service unit
 - Amount of resources per service unit
 - Why they were holding back resources?
 - Mr. McSwain has seen the initial information from the Areas and requested additional detail before sharing with Tribes.
 - IHS is missing a satisfactory response from Areas about why they are holding funds back from previous years.
 - Suits are being filed against other Operating Divisions with regard to overtime and FLSA
 - Mandatory training for all supervisors throughout the system

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- IHS went back through all of the position descriptions to make sure they are properly coded
 - Biggest disadvantage is that IHS has clinical providers who are managers balancing patient care and administrative functions.
 - HHS is watching the agency so that they can replicate processes if necessary.
 - TSGAC wants to make sure that we have processes and policies in place to ensure this doesn't happen again.
 - Are the FLSA standards changing?
 - IHS Response:
 - OPM left interpretation of each positions status as exempt or non-exempt.
 - IHS has reviewed all their positions descriptions to determine which are exempt and non-exempt.
 - RPMS
 - Self-Governance Tribes in many areas are having trouble access the technical assistance needed to stay in the RPMS system. Tribes are finding that many of the experts are retiring.
 - IHS Response:
 - There has been a lot of distraction because of other federal requirements related to Meaningful Use I and II and ICD-10.
 - There are difficulties implementing help desk and every level unit, area, and headquarters.
 - IHS recognizes that there are additional needs because of changes to meet federal requirements.
 - There have also been difficulties because of the data center moving from Albuquerque. The transition has been suspended, so that people can continue to oversee the center and servers.
 - This is the only federal EHR system that is certified.
 - OIT did conduct a survey last year with 66% response rate and TSGAC requested an aggregated report of the findings from the survey.
 - IHS also still needs to close the loop on the MPA letter sent to Tribes.
 - Staffing within the Bureau of Indian Affairs and IHS

TSGAC Discussion

 - The average age at the two agencies is much older and about 60% are due for retirement in the near future.
 - We should discuss this at future conference or meeting.
 - Perhaps as the agency loses its workforce, we need to discuss how those positions will be filled with Tribal positions and sustaining the agencies at a level that makes sure the trust responsibility is fulfilled.
 - The reverse IPA is a model to consider.
 - Title VI Expansion and/or Crosscutting
 - There's a real inconsistency between the Department's adversity to Title VI and the President's willingness to promote the crosscutting budget.
 - Tribes are not seeing more flexibility or contracts, but the \$21 billion actually represents primarily competitive grants. Grants require Tribes to use staff to seek out funding.
 - Tribes have interest in leveraging funding from other agencies with IHS to provide professional housing and ancillary programs to enhance health systems.

- Failing to promote more consistent funding and flexibility is resulting in a perpetuation of more sophisticated Tribes being successful, while smaller Tribes with less capacity to plan, apply, and receive grants to support their community needs.
- Some agencies are actually designing grants so that Tribes are not eligible or cannot qualify because the qualifications are too great for Tribes.
- Youth Suicide as a Crosscutting Issue
 - This is another crosscutting issue where there are barriers because of the funding mechanisms across numerous agencies.
 - Central Council of Tlingit and Haida volunteered to assist in breaking down the barriers and creating a more seamless system.
 - This may be an example of a crosscutting issue on which Tribes could make significant progress.
 - IHS Response:
 - Mr. McSwain agrees with the Tribal comments on crosscutting budget.
 - He also restated the Tribal position to be that the government-to-government relationship is with the Federal government, not only the IHS.
- Navajo Feasibility Study
 - The report indicates that it is feasible for Navajo to operate its own Medicaid program.
 - It takes statutory and legislative authority for CMS to fund directly.

ACA Employer Mandate Exemption and Cadillac Tax Discussion

*Chief Marilyn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC
Dr. Elaine Buckberg, Deputy Assistant Secretary for Policy, Office of Economic Policy, Department of Treasury*

- Employer Mandate
 - We are asking the Internal Revenue Service (IRS) to either make a determination to exempt Tribes or delay implementation in those communities while we work out issues.
 - IRS has determined the issue must be legislatively fixed.
 - Tribes did not comment on this issue during the proposed rules
 - 4988-H does apply to Tribal governments
 - It would be valuable to share comments both orally and in written form.
- Cadillac Tax
 - Deadline for comments on Excise tax were due on October 1, 2015
 - The Tribal request is that Tribes be exempted because we believe the law already excludes us.

TSGAC Adjourned at 1:30 PM