

# 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 Wednesday, March 30, 2016 (1:00 pm to 5:00 pm) Thursday, March 31, 2016 (8:30 am to 4:30 pm)

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

### MEETING SUMMARY

#### Wednesday, March 30, 2016 (1:00 pm to 5:00 pm)

Meeting of IHS Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup  
with Principal Deputy Director Mary Smith

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#### Tribal Caucus

- TSGAC hosted a Tribal caucus from 1:00 PM to 2:00 PM.

#### Welcome

Chief Malerba provided a brief welcome and introduction of Dr. Mary Wakefield.

*Dr. Mary Wakefield, Acting Deputy Secretary, Department of Health and Human Services*

- Expressed thanks for TSGAC's willingness to partner and work together.
- Strong Federal-Tribal relationships have been critical to the success of the Tribal Self-Governance Program.
- Self-Governance Leadership continues to be engaged with HHS and are represented on the Department of Health and Human Services (HHS) Secretary's Tribal Advisory Committee (STAC). In fact, all five of the at-large representatives are Self-Governance Tribal Leaders.
- Ms. Smith and Dr. Wakefield have been in regular communication regarding progress on the Contract Support Costs (CSC) Policy.
- HHS hopes that the IHS developed template will assist in consistent negotiations with Tribes.

#### *Tribal Response:*

- The issues the Indian Health Service (IHS) is currently working on are issues that Tribes have been working on for several years.
- Something in the IHS has fallen down and it is up to this Administration to make the corrections necessary to resolve previous issues.
- There is a frustration with IHS management of civil servants suit and management of health care quality in the Great Plains.
- The Federal side has been depleted of historical knowledge and drive to negotiate Title V contracts. The IHS is chronically dysfunctional and will take nearly a decade to resolve issues that are desperate today. If these issues occurred at a Tribal facility, Tribal employees would have been absolved of their duties.

#### *HHS Response:*

- We find the situation as unacceptable as you do.
- Resources that are allocated should be well spent.

- We are not consistently meeting quality care across direct service facilities.
- As stated earlier, the reason Mary Smith and Dr. Wakefield are in regular communication are to change the tide of services provided to Tribes in the Great Plains.
- We welcome your continued feedback and support as IHS makes these changes.

*Tribal Response:*

- Billings recently conducted a search for an Area Director, however it was clear that IHS skewed the panel to select one person.
- The Tribes requested a list of individuals who applied, but IHS refused to provide the additional applicants.
- Third party collection for Medicare and Medicaid
  - The coding system has become incredibly burdensome and is affecting the delivery of care from providers.

*HHS/IHS Response:*

- CMS should make sure that billing tools and technical assistance are available to Tribes.

*Tribal Discussion:*

- Chief Malerba request to have a side meeting with Dr. Wakefield to discuss a few more issues in detail.
- The HHS grant funding (557 grants) is not the best way to strengthen the Federal-Tribal relationship. Discussion regarding how Tribes access HHS funding is necessary.
- Tribes are still waiting for Suicide Prevention funding to come through the IHS to support Tribal efforts to combat suicide.

*HHS/IHS Response:*

- Models from other communities are available to replicate best practices.
- Suicide is of great importance to this administration and funding was requested in FY16 and FY17.

**Invocation**

Tyson Johnston, Vice President, Quinault Indian Nation provided the opening invocation.

**Roll Call**

Alaska: Jaylene Peterson-Nren, Executive Director, Kenatize Indian Tribe  
Albuquerque: Benito Sandoval, Governor, Taos Pueblo  
Daniel Lucero, Secretary, Tao Pueblo  
Billings: Ken St. Marks, Chairman, Chippewa Cree Tribe  
California: Maybelline Peterson, Self-Governance Office, Hoopa Valley Tribe  
Nashville: Marilyn "Lynn" Malerba, Chief, Mohegan Tribe  
Tobias Vanderhoop, Chairman, Wampanoag Tribe of Gay Head (Aquinnah)  
Stephanie White, Treasurer, Wampanoag Tribe of Gay Head (Aquinnah)  
Navajo: Jonathon Nez, Vice President, Navajo Nation  
Oklahoma 1: Mickey Peercy, Executive Director of Self-Governance, Choctaw Nation  
Phoenix: Lindsay Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian  
Reservation  
Portland: Tyson Johnston, Vice President, Quinault Indian Nation

**Introduction of all participants and invited guests**

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### **TSGAC Opening Remarks**

*Mary Smith, Principal Deputy Director, Indian Health Service*

- 60% of the IHS budget goes out to Tribes operating contracts or compacts.
- She is trying to create a culture of leadership and mission-driven work.
- She recognized the long-term struggle to move things along, however she hopes that Tribes will continue to work with IHS to improve delivery of care.
- Termination has occurred at the Winnebago Hospital, but been delayed at Rosebud Sioux Hospital.
  - The issues did not happen overnight, but the solutions have been short term.
  - We must make improvements in a sustainable way to prevent these issues from happening again.
  - IHS wants to be transparent throughout the process.
- IHS is going to the Great Plains next week to begin address the systemic issues and consult with Tribes to identify solutions.
  - Hiring in rural areas is similar for all rural employers. What are best practices that can be replicated by IHS.
  - Alternate service delivery models.
  - Telemedicine is an opportunity.
  - Dorothy Dupree is the new Deputy Director of Quality a new office to help improve quality of care within the IHS.
- A new CSC policy will be released for sixty-day comment period.
- Behavioral Health funding and pilots
  - \$48 million for behavioral health, including \$15 million for GEN-I to train behavioral health providers for young people.
  - \$4 million for zero suicide pilot programs, \$2 million to address gap in services after Regional Youth Treatment Centers.
  - \$25 million mandatory funding, including \$15 million for behavioral health crises and \$10 million for scholarship and loan repayment programs.
- Improve service and management
  - Recently received an approval to increase pay for emergency room doctors.
  - Personal goal is to leave IHS better than when she arrived.

### *Tribal Response*

- Request to follow up on the Billings Area Director question.

### *IHS Response*

- The last panel was not acceptable to the Tribes and there was a request to add more health care experience.
- The notice is public again or should be available again soon.
- Area Director positions have been publicized in Phoenix, Albuquerque, and Navajo this week.

### *Tribal Discussion*

- The USAJobs system often kicks out qualified individuals because of technical writing issues with resumes. Perhaps IHS should review applications by hand instead of relying on the system to choose a panel.
- Navajo Nation has been working closely with Mr. McSwain to advocate for a few initiatives, including the Gold King Mine Spill.
- This is a political year and there is great importance to get a budget for Fiscal Year for 2017. We need to partner and make sure that we have a plan to implement quality care with a stagnant IHS budget.

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### **TSGAC Committee Business**

- Approval of Meeting Summary (October 2015)
  - Approved without objections.
- National Institutes of Health Tribal Advisory Committee Self-Governance Representative
  - We need an alternate.
  - Vice President Johnston expressed interest in becoming an alternate.
- Planning for 2016 Annual Consultation Conference “Celebrating Success, Shaping the Future” (April 24-28, 2016 in Orlando, Florida)
  - Update from the Self-Governance Communication and Education (SGCE) Office
  - Registration is projected to be around 800
  - Room block is closed; alternate hotels are available. Please visit the website.
  - Please take a look at the Moderator and Recorder documents being passed around and fill in the blanks where you can assist.

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

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

- 352 Tribes are participating in Self-Governance
- There are two IHS Areas where Self-Governance is finally being considered.
  - Ask that Tribes contribute support to both Tribes and IHS officials participating in negotiations in these areas.
- IHS was in Phoenix during the last week providing ISDEAA Training (the last training of this kind took place in 2006)
- IHS is working to train themselves regarding Self-Governance and assumptions
  - Additionally, Tribes should consider also training new staff on the Tribal side regarding Self-Governance transitions and assumptions.
- Yukon Kuskokwim Health Corporation signed their Joint Venture Project earlier this week.
- Extended gratitude to SGCE and ACA teams who lend assistance to Tribes and IHS employees to learn more about Self-Governance, ACA, and CSC.
- OTSG recently participated in a Self-Governance training in the Great Plains Area.
- Self-Governance Planning and Negotiation Cooperative Agreements are now available for Tribes to apply.
- Self-Governance negotiations continue to be a topic of great importance within IHS. They are looking for ideas from TSGAC.

#### *Tribal Response*

- Tribes need to be aware if we are negotiating with the Agency Lead Negotiator (ALN) or the Office of General Counsel (OGC).
- Tribes should be able to go back to negotiating with ALN and an arbitrator if necessary.

### **Information Technology Update**

*LCDR, Andrea Scott, Deputy Director and Deputy Director ICO, Office of Information Technology*

- ICD-10 and Meaningful Use
  - Resource Patient Management System and ICD-10 are tied
  - Finalized and released 92 patches for RPMS to meet Meaningful Use (MU)
  - 100% deployment of MU Stage 2 and ICD-10 after October 2015
  - Patches will be released on a quarterly basis rather than the informal releases as in the past for easier use by IHS, Tribal, and Urban facilities.
  - New Measures available
    - 27 quality measures
    - 15 provider measures

- 12 hospital measures
- Meaningful Use Stage 3
  - Requested a hardship exemption, because of onboarding IHS systems. New deadline is July 1, 2016.

*Randall Hughes, Tribal Liaison, Office of Information Technology, IHS*

- Service Catalogue
  - Replaces 2002 packages
  - Cover every single service provided by IHS Headquarters
  - Present Business catalogue side to the Information Service Advisory Committee (ISAC) and TSGAC before final approval this year.
  - Please feel free to reach out to OIT for discussion
- Will there be a price listing on the Catalogue?
  - Response:
    - OIT will be working with OTSG to standardize prices.
    - It will not be a fee-for-service type of catalogue because of the Tribal-sized adjustment formula.
    - ISAC and TSGAC will have to weigh in on the pricing of the catalogue
- Are we close to catching IHS up with the industry?
  - Response:
    - They are working to protect facilities and it does seem to be working properly.
- Is OIT working to make sure that Tribes can upload data into the National Data System electronically?
  - Response:
    - The catalogue does include some of these services, however there are challenges to incorporate each, individual states' requirements.
- We need to be able to capture those who we are serving and those who we are not?
  - Response:
    - We do capture tribal affiliations; which off-the-shelf systems do not offer this detail.
- We understand you are beta-testing the personal electronic health record?
  - Response:
    - OIT is trying to be response to tribal requests to PEHR.

### **Patient Protection and Affordable Care Act Implementation Update**

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

- ACA Workgroup
  - Continuing webinar trainings every other month. These are archived on the [www.tribalselfgov.org](http://www.tribalselfgov.org).
  - There is a face-to-face training in Alaska and Bemidji next month.
  - Other opportunities will be available during the Annual Meeting.
  - Policy briefs are available for Self-Governance Tribes through the broadcast and website.
  - Technical assistance is still available to Tribes regarding Tribal Sponsorship.

*Laura Bird, TSGAC ACA Consultant*

- Compliance Dates for Employer Reporting
  - Deadlines are arriving employer reporting is May 31<sup>st</sup> and June 30<sup>th</sup>.
  - Self-Insured Tribes must also report.
  - There is information about how to comply the requirements on the website.
- 100% FMAP for Services “Received Through” an IHS/Tribal Facility
  - Tribes should be working closely with states to implement the 100% FMAP regulation.

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## **Budget Update**

*Elizabeth Fowler, Deputy Director for Management Operations, IHS*

- Planning for FY 2018 Budget Formulation
  - The Tribes have met and developed their national priorities for the FY18 formulation. The recommendation is roughly 30% higher than the FY17 Budget request.
  - Recommendations were submitted to the HHS Annual Budget Formulation Tribal Consultation.
  - We expect the development will be very different because of the election.
  - HHS is waiting to receive instruction from the Administration
  - Evaluation of the FY18 Formulation
    - Looking at the end of June in Denver for the evaluation meeting
- President's Budget Request for FY 2017
  - 377 million increase over FY16 enacted levels
  - \$6 billion total for IHS
  - "Purchased/Referred Care (PRC) Rate: 'Medicare-like Rate' (MLR) Payment for Non-ITU Physician and Other Health Care Professional Services Associated with Either Outpatient or Inpatient Care Provided at Non-ITU Facilities"
    - Final rule was recently published.
    - Why was the final rule published with a comment period?
      - Because IHS was not able to share the final rule prior to publication, so IHS wanted to ensure that Tribes could submit comments after the final rule.
    - Ensures that when referrals are made outside the IHS system are similar to the MLR rate to save PRC money.
    - The rule requires Tribes to opt-in to the rule, to allow for maximum flexibility for Tribes to negotiate other rates.
    - High rates may be negotiated in certain circumstances.
- FY 2016 Omnibus Appropriations - Funding Plan
  - All funds have now been apportioned, however it did take much longer this year because of changes to the CSC accounts.
    - Changes were a result of appropriations language to protect IHS services.
    - CSC lines are indefinite discretionary funds. IHS must fully obligate the needs by the end of the year in order to ensure that CSC is fully paid.
    - IHS will work hard this summer to determine what the full amount of need is.
    - This may mean that IHS will require great coordination with Tribes to make sure that funds are available to pay CSC in full.

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

- Long term care, Diabetes prevention, mental health professionals, chronic provider shortage, behavioral health have been a top unfunded priorities for Tribes. This year Tribes were very intentional about presenting the need for additional funding.

**Recess until March 31, 2016**

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**Thursday, March 31, 2016 (8:30 am – 4:30 pm)**

**Meeting of IHS Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup  
with IHS Principal Deputy Director Mary Smith**

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**Welcome and Introductions (Take Break as Needed)**

*Mary Smith, Principal Deputy Director, IHS*

*Chief Marilyn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC  
Tribal Chairman/CEO W. Ron Allen, Jamestown S'Klallam Tribe, and Co-Chair IHS TSGAC*

- Introduction of Steve Petzinger from OMB who provided a brief update on the 2016 budget and the decision process of OMB. Mr. Petzinger expressed his willingness to be available to answer questions and discuss priorities for future budgeting process.

**Office of Management and Budget (OMB) Introductions and Overview of Self-Governance  
Priorities for Remainder of Obama Administration**

*Steve Petzinger, OMB Program Examiner for IHS, Executive Office of the President*

*Tribal Discussion:*

- What are the things that are being looked for with regards to lessening the impacts on budget?
  - Response:
    - Justifications are necessary for approval of needs. Best to submit trends or data from previous years.
- Does anyone in OMB know the impact that the budget cuts have had on Indian Country? Request that OMB examiner spend real time in Indian Country.
  - Response:
    - There was a recent visit to Indian Country recently and will be back soon to discuss budgets and priorities at the local level.

**Contract Support Cost Workgroup Update and Discussion**

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

*Mickey Peercy and Melanie Fourkiller, IHS Contract Support Costs Workgroup Members*

- Close to having final draft which should be released on April 8th, time has been spent on Federal and Tribal side to complete the policy.
- Several letters have been drafted on incurred cost and duplication. Tribal representatives anticipate these items being heavily discussed during consultations. There are some very complex issues which have resulted in a detailed which should lead to less misunderstandings.
- Improvements have been listed in new policy which will include practices in policy and new options for new circumstances, for example, renegotiation of Direct CSC, can add new programs to CSC.
- Incurred cost needed to be a different reconciliation process for SG Tribes, now no undue burden for Tribes to negotiate.
- Indirect Cost will not be left open for years. Tribes can choose to close and reconcile rate or wait for rate to come through and be paid for rate for current year.
- The policy does not concede either the Tribal or Federal position on duplication and there is still no agreement on the issue. During implementation is where issues will arise. Process was not consistent across areas, with new policy process will now be standardized and will use the same calculation tool across the board. Will have consultation at SGCE Annual Conference in April for briefing and discussion.
- Following sixty-day comment period, workgroup will reconvene to discuss any edits and comments that have arose targeted time to meet and discuss comments will be the first week of July.

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*Roselyn Tso, IHS CSC Team Lead*

- In final stages to release the draft policy on April 8<sup>th</sup>.
- IHS included a citation in the policy to make use of the medical inflation rate and at what point it will be applied.
- Changes were made to be able to reconcile incurred costs within 90 days after contract term based on what information will be used to close out. A grace period between 2013-2014 has been built into the policy.
- 80/20 Tribal shares already included have now included a 97.3% at service level for consistency.
- On quarterly basis working on changes at service level, including consistently asking staff for updated data for better allocation.
- Areas that change calculation, rate changes, past exclusions, additional funding must work with Tribes prior to changes.
- Templates that IHS have created to be used to add consistency to calculations.

**Implementation of the Indian Health Care Improvement Act: Behavioral Health**

*Benjamin Whittemore, Native American Issues Coordinator in the Office of Legal and Victim Programs, Executive Office of the United States Attorneys (EOUSA), U.S. Department of Justice*

- Mr. Whittemore introduced himself and explained the USA Office in Coordination of Behavioral Health resources and programs
- Need for services of victims of crime, the continued services after crime is limited however there is a need to improve the availability of resources.
- Outreach and regional meetings would be helpful. The US Attorney is tasked with holding regional meetings that are not occurring on a regular basis to the best of our knowledge. However, these meetings may not meet the standard of what a formal consultation should be.

*Tribal discussion:*

- Behavioral health funding is far from adequate
- Domestic violence and sexual assault rates are overwhelming in Indian Country.
- Juvenile justice system is inadequate and has been neglected with regards to education and reform.
- How does cross agency participation how does DOJ work with HHS/IHS, need to breakdown walls for these agencies to work together?

*Mr. Whittemore:*

- There is a lot of silo-ing not only Federally but Tribally creating a duplication of efforts in this very important area, making success in this are all the more difficult.

*Tribal Discussion:*

- Need the funding to build infrastructures to make things work.
- Notifications needed to identify when Tribal youth have been placed in the juvenile justice system

*Mr. Whittemore:*

- DOJ is working with IHS and SAMHSA to eliminate the silo-ing effect.

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### **Veteran's Affairs Update**

*Stephanie Birdwell, Director, VA Office of Tribal Government Relations*

*Gina Capra, Director, VHA Office of Rural Health*

*Kristin Cunningham, Director, Business Policy, VHA Chief Business Office*

- VHA continues to make changes to improve the community care program.
- Over the past 6-8 months they have worked to consolidate standards to provide the highest level of care for veterans.
- Held consultation to get feedback from veterans about the needs of the communities which have been utilized to develop a new plan of care for veterans.
- The plan includes short and long term improvements that provide a more comprehensive and streamlined plan of service and billing.
- In the short term the Choice program will be implemented to define how providers are paid and how veterans are served.
- The VHA has also implemented a call center for veterans' concerns.
- Providers are now eligible for payment without immediate medical records.
- Changes to criteria for those who can be eligible for the choice program have also been implemented.
- There is a draft performance work statement for how VA will purchase care in the future to address the long term issue of providing care to veterans.

#### *Tribal Discussion:*

- With regards to increasing access to care, include reimbursement for referred care to Tribes, is VA ready to provide and amendment?

#### *Birdwell:*

- This is being addressed in the long term within the work statement and the outsourcing of care.

### **ACA Employer Mandate Exemption and Cadillac Tax Discussion**

*Chairman W. Ron Allen, Jamestown S'Klallam Tribe*

*Chief Marilyn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC*

*Thomas C. West, Jr., Tax Legislative Counsel, Office of Economic Policy, Department of Treasury*

*Kathryn Johnson, Attorney Advisor, Office of the Benefits Tax Counsel, Department of Treasury*

- Treasury is working to address concerns of the requirements for Tribal entities with regards to Tribal member employees
- Treasury has concluded at present time that they are not able to provide a permanent exemption for Tribal employers from the employer shared responsibility provision.
- Deadline requirements have been extended the payments for employees is not required when forms are submitted.

#### *Tribal Discussion*

- May be cheaper for Tribes to get penalties than purchase insurance.
- What are next steps with continuing dialogue and will there be an opportunity for Tribal Leader involvement?

#### *Ms. Johnson:*

- Substantively we are prepared for turnover and are continuing to analyze correspondence.

#### *Tribal Discussion*

- TSGAC requests a meeting with Chief Malerba, Chairman Allen, and Treasury.

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Cadillac Tax:

- This issue has now moved to 2020, Treasury provided two notices that to which TSGAC has responded.
- Coverage should not be subject to tax by Tribal entities, cannot respond to issue at this time because it is under discussion, no time frame for when guidance will come out.

*Tribal Discussion*

- If coverage is required by Tribes, TSGAC requests Tribal consultation beforehand.

**OTSG Policy Program Information Review Workgroup**

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

- The workgroup hosted a meeting in December to review years of documents and develop a series of recommendations for TSGAC to consider.

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

- There were some questions from the workgroup for TSGAC to consider:
  - Role of OTSG in budget process: Should OTSG assume full responsibility for payments?
  - Role of OTSG in negotiation process: Is the current role sufficient or should the role be increased?
  - ALNs: Should the ALN Position be a formalized position and with that who will they report to and what are the job requirements?
  - Develop Committee Charter: Does TSGAC want to include a reference to TSGAC within the IHS manual?
  - Other recommendations:
    - IHS to share negotiations documents and update every year online. Recommend a direct request from TSGAC to IHS to release the documents.
    - Update IHS functions and authorities to reflect changes in law.

*Tribal Discussion*

- TSGAC agreed the negotiations documents should be requested and a letter sent to Principal Deputy Director Smith to request such documents.
- They committee recommended the workgroup prepare a short list of recommendations that can be acted on in the short term and those that require additional research before action can be taken by leadership.

**TSGAC Working Lunch and Joint Discussion between TSGAC and IHS Principal Deputy Director**

- Medicare-Like Rate Final Rule
  - Opt in rule, not applicable if not chosen.
- Inclusion of Purchased and Referred Care in the VA-IHS National MOU
  - IHS Would like to create a National MOU, Dr. Wakefield and Karen Diver are both very supportive of system and would like to make an effort into making this change.
- Update regarding Payment of Settlements to Civil Service Employees
  - Entirety of funds have been paid to Union, still gathering information and no payments have been made to individuals as of yet.
- Aligning Quality Data Requirements for Medicare, Medicaid and GPRA
  - Have efforts underway to address this, Dorothy Dupree is establishing a quality department including data analytics.

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- TSGAC requests Tribal consultation on front end on the development for better alignment on front end rather than in the after effects, need help to get IHS together with Center for Medicare and Medicaid Service (CMS) to discuss common measures.
  - Recommendation to draft comment addressed by committee. TTAG did send letter to CMS requesting consultation and was highly disappointed on the process. TTAG received a response that comment period had closed, sent follow up letter to Andy Slavit and stated issues along with the original letter.
  - TTAG and TSGAC will follow up with subsequent letter and cc the IHS Principal Deputy Director.
  
  - Catastrophic Health Emergency Fund Rule
    - The final comment period is now May 10th and major concern is that there was no consultation. Formal request will be sent for Tribal consultation.
    - Payer of Last Resort: requesting specific consultation before this proposal comes out.
  
  - IHS has resurrected line item for repair and replacement of quarters the request for \$12 million.
    - Look into working with other groups ie.. HUD and USDA
    - Set up a list of recommendations to submit to IHS

**TSGAC Technical Workgroup Meeting**

**Adjourn TSGAC Meeting**