

# IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education  
P.O. Box 1734, McAlester, OK 74501

Telephone (918) 302-0252 ~ Facsimile (918) 423-7639 ~ Website: [www.Tribalselfgov.org](http://www.Tribalselfgov.org)

Submitted via: [consultation@ihs.gov](mailto:consultation@ihs.gov)

October 28, 2016

Mary Smith, Principal Deputy Director  
Indian Health Service  
The Reyes Building  
801 Thompson Avenue, Suite 400  
Rockville, MD 20852

## **RE: Comments on Purchasing Health Care Coverage (IHS Circular 2016-08)**

Dear Principal Deputy Director Smith:

I write on behalf of the Indian Health Service (IHS or Agency) Tribal Self-Governance Advisory Committee (TSGAC) to comment on IHS Circular 2016-08, Purchasing Health Care Coverage (Draft Circular). The Draft Circular addresses the purchase of health care coverage, commonly referred to as Tribal Premium Sponsorship (TPS or Sponsorship). Specifically, the draft Circular seeks to provide further detailed guidance to IHS Area Offices regarding the current IHS policy if IHS, Tribes or Tribal organizations, or an urban Indian organization (I/T/U) wishes to purchase coverage for IHS beneficiaries with funding provided under the Indian Self-Determination and Education Assistance Act (ISDEAA) or the Indian Health Care Improvement Act (IHCA).

The TSGAC fully supports efforts by the IHS to facilitate inclusion of Sponsorship activities in a contract or compact. However, we have a number of concerns about the Draft Circular. Many of these concerns were communicated, in person, by Tribal leaders to IHS staff at the consultation sessions held over the past couple of months. Primarily, we are concerned that the Circular unreasonably limits the IHS and participating Tribes from exercising full authorities available in the ISDEAA and IHCA.

The TSGAC requests that IHS take the following actions:

- Withdraw the Draft Circular.
- Rescind the October 24, 2013, Dear Tribal Leader Letter, which incorrectly interpreted section 402(b) of the Indian Health Care Improvement Act (as added by section 152 of the Indian Health Care Reauthorization and Extension Act of 2009). Please see the attached TSGAC letter dated April 15, 2014, requesting similar action.
- Coordinate through a workgroup comprised of I/T/U representatives (appointed by TSGAC, the Direct Service Tribes Advisory Committee, and IHS) to make recommendations to IHS to address the issues raised in the Draft Circular and other Sponsorship-related issues, including determining the preferred mechanism(s) for providing guidance to the I/T/U programs on Sponsorship.

We appreciate the opportunity to provide comment and our recommendation on the Draft Circular. Despite the above recommendation that the Draft Circular be withdrawn, we appreciate the efforts of the Agency to facilitate access to health care services. We all recognize that such programs help to

improve access to care for Tribal members and also provide needed revenue for I/T/U programs. However, the underlying principles and success of the self-governance program—including when Tribes begin taking on health service functions through Title I contracts—have demonstrated time and again that the development of such policies are most advantageous to Tribal citizens when Tribes have maximum flexibility to decide for themselves. We hope you will agree, and thank you for your efforts.

The TSGAC remains willing to assist IHS in this endeavor in any way possible. If you have any questions or wish to discuss these comments further, please contact me at (860) 862-6192 or via email at [lmalerba@moheganmail.com](mailto:lmalerba@moheganmail.com).

Sincerely,



Chief Lynn Malerba, Mohegan Tribe of Connecticut  
Chairwoman, IHS TSGAC

cc: Mary Smith, Principal Deputy Director, Indian Health Service (IHS)  
Jennifer Cooper, Acting Director, Office of Tribal Self-Governance, IHS  
TSGAC Members and Technical Workgroup

Attachment:

- TSGAC, "IHS October 24, 2013 Letter Interpreting Section 402 of the Indian Health Care Improvement Act Letter to Director Roubideaux," dated April 15, 2014

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Via email: [Denise.Turk@ihs.gov](mailto:Denise.Turk@ihs.gov)

April 15, 2014

Dr. Yvette Roubideaux, M.D., M.P.H.  
Acting Director  
Indian Health Service  
801 Thompson Avenue, Suite 440  
Rockville, MD 20852

## **RE: IHS October 24, 2013 Letter Interpreting Section 402 of the Indian Health Care Improvement Act**

Dear Director Roubideaux:

On behalf of the IHS Tribal Self-Governance Advisory Committee (TSGAC), I write in regards to your Dear Tribal Leader Letter (DTLL) of October 24, 2013 addressing Section 402 of the Indian Health Care Improvement Act. This section provides authority for Tribes, Tribal Organizations, and Urban Indian Organizations (T/TO/U) to purchase coverage for beneficiaries, otherwise known as premium sponsorship. We have provided our concerns to you during our most recent TSGAC meetings, the last one being January, 2014. We urge you to either (1) withdraw the October 24, 2013 DTLL for further review; or, (2) amend the DTLL to clarify that financial need is not the only factor that may be considered for these coverage decisions.

Unfortunately, the subject DTLL was issued prior to any Tribal Consultation, where these comments may have been provided in advance. Specifically, the TSGAC has provided feedback to you previously that we believe the IHS interpretation of Section 402 to be over limiting, and thus will preclude T/TO/U from exercising the range of options and flexibility provided by the IHCA.

In your October 4, 2013 letter you stated that, with regard to premium sponsorship:

“...a T/TO/U that wishes to limit the number of beneficiaries covered should be aware that financial need is the only factor permitted by statute upon which to base coverage decisions.”

(Emphasis added.)

Comparatively, the applicable portion of section 402 of the Indian Health Care Improvement Act (IHCA) (as amended by the Affordable Care Act) reads:

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“The purchase of coverage under subsection (a) by an Indian tribe, Tribal organization, or urban Indian organization may be based on the financial needs of such beneficiaries...”  
(Emphasis added.)

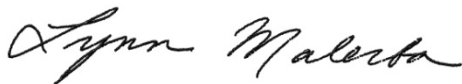
Our plain reading of the language in Section 402 concludes that the IHClA inclusion of financial need as a criterion for coverage was permitted, but not required. The guidance documents and regulations issued by Centers for Medicare and Medicaid Services (CMS), Center for Consumer Information and Insurance Oversight (CCIIO), has been consistent with the Tribal interpretation of Section 402.

In the series of guidance documents and regulations issued on this topic, CMS/CCIIO placed restrictions on other entities (“non-profit foundations” and “hospitals, other healthcare providers, and other commercial entities”), but CMS/CCIIO did not impose these constraints on premium sponsorship conducted by I/T/Us sponsoring premiums, and has not imposed any such restrictions on Tribes, Tribal Organizations or Urbans. The latest action from CMS/CCIIO on this topic was issued as recently as March 15, 2014. We have collected relevant excerpts from CMS/CCIIO guidance documents and regulations that can be provided if they would be helpful.

The Affordable Care Act (ACA), including its amendments to the IHClA, contain many opportunities for IHS and Tribes to gain greater access to care for more American Indians/Alaska Natives and expand resources available to better address the health disparities for our people. We have successfully partnered on many ACA implementation issues, and seek to ensure that IHS, Tribes and Urban Indian programs are able to employ all of the tools that the ACA affords us with the greatest flexibility.

We look forward to further discussion with you at the upcoming TSGAC quarterly meeting later this month. In the meantime, if you have any questions, you can reach me at (860) 862-6192; or via email: [lmalerba@moheganmail.com](mailto:lmalerba@moheganmail.com). Thank you.

Sincerely,



Chief Lynn Malerba, Mohegan Tribe  
Chairwoman, TSGAC

cc: TSGAC and Technical Workgroup Members  
Mr. P. Benjamin Smith, Director, Office of Tribal Self-Governance, IHS  
Mr. Carl Harper, Director, Office of Resource Access and Partnership, IHS  
Mr. Geoff Roth, Special Assistant to the Director, IHS