

# 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)

Sent electronically: [Denise.Turk@ihs.gov](mailto:Denise.Turk@ihs.gov)

May 26, 2017

RADM Chris Buchanan, Acting Director  
Indian Health Service  
Office of the Director  
5600 Fishers Lane  
Mail Stop: 08E53  
Rockville, MD 20857

## **Re: Update to Level of Need Funded Data and Workgroup Request**

Dear RADM Buchanan:

During the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC) March 2017 Quarterly Meeting, Tribal leaders expressed their increasing concerns with the lack of updated Level of Need Funded (LNF) data. This letter serves as a follow up to the TSGAC letter to Ms. Smith, dated December 16, 2016 (enclosed), requesting additional educational training regarding the Indian Health Care Improvement Fund (IHCIF), LNF calculations and plans to update information related to each. The letter specifically requests IHS to:

1. Share a copy of the Congressional report on the current health status and resource deficiency for each IHS Service Unit required by 25 U.S.C. § 1621(f);
2. Identify statistical/technical staff as point of contact for IHCIF and LNF data;
3. Establish a joint Tribal/Federal Workgroup with actuarial and health economist support to update, review and analyze the IHCIF; and,
4. Update the existing data in the LNF analysis.

As you know, Level of Need Funded (or Federal Disparity Index) data has not been updated since 2010, now a benchmark year for federal health care funding. In this budgetary climate, it is critical that IHS and Tribes accurately benchmark unmet health care needs with reliable data. An updated LNF analysis is imperative to support essential funding requests to Congress.

The TSGAC previously requested that IHS either contract with a health economist or otherwise obtain staff to prepare an LNF analysis, as well as establish an LNF Workgroup. Once an IHS contractor or staff can update this information and a Workgroup is established to conduct an LNF analysis, updated data will be available to justify unmet health care needs to Congress. Given the urgent need to complete an analysis, TSGAC requests a status update to our requests to contract with a health economist or obtain staff to update the LNF data as well as efforts to convene an LNF workgroup.

Thank you for your continued partnership and commitment to improving the health care status of American Indians and Alaska Natives. Tribal advocacy for the funding needs of Indian health are much more compelling when they can be supported by current data and benchmarked against health care spending outside of IHS. We look forward to re-engaging in this work. Should you have questions or require additional information, please do not hesitate to 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: Jennifer Cooper, Acting Director, Office of Tribal Self-Governance, IHS  
TSGAC and Technical Workgroup Members

Enclosure: TSGAC Letter dated 12/16/16 – Identification of Staff for Developing Level of  
Need Funded Data

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Sent electronically: [Denise.Turk@ihs.gov](mailto:Denise.Turk@ihs.gov)

December 16, 2016

Mary Smith, Principal Deputy Director  
Indian Health Service  
Office of the Director  
5600 Fishers Lane  
Mail Stop: 08E53  
Rockville, MD 20857

## **RE: Identification of Staff for Developing Level of Need Funded Data**

Dear Principal Deputy Director Smith:

During the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC) October 2016 Quarterly Meeting, Tribal leaders expressed their increasing concerns with the lack of IHS staff attention and due diligence paid to the Indian Health Care Improvement Fund (IHCIF) and the Level of Need Funded (LNF) calculations as required by statute. On behalf of the TSGAC, this letter captures the broader points of our discussion and outlines next steps.

As you are aware, the Indian health system faces significant funding disparities when compared to other Federal health care programs. This disparity continued to grow in 2015, with IHS per capita spending at just \$3,136 per person, while the national average per capita spending was \$8,517 per person. The Indian Health Care Improvement Act (IHCA) established the IHCIF to eliminate the deficiencies in health status and health resources and requires a report to Congress to address the current health status and resource deficiency for each IHS Service Unit, Indian Tribe, or Tribal organization. Despite the American Indian and Alaska Native (AI/AN) health disparities and a legislative mechanism to address resource deficiencies, little to no funding has been used to expand services necessary to bring health parity for AI/AN people.

The TSGAC previously commented to you in a letter dated September 27, 2016 (enclosed), that the 25 U.S.C. 458aaa-13(a)(2) of the Indian Self-Determination and Education Assistance Act requires the annual report to Congress on the administration of the Tribal Self-Governance Program include a detailed analysis of LNF. This analysis must include the level of need funded for each Tribe, either directly by the Secretary, under Self-Determination Contracts, or under Self-Governance Compacts and Funding Agreements. However, the most recent reports do not include this analysis, leaving Tribes and Congress with less data to support continued funding increases to IHS.

As such, TSGAC has a number of requests to help Tribes learn more about IHCIF and LNF, and assist the agency in updating information related to each:

- First, the TSGAC respectfully requests a copy of the required Congressional report on the current health status and resource deficiency for each IHS Service Unit required by 25 U.S.C. § 1621(f). This report was due to Congress no later than three years after the date of enactment of the IHCA.
- Second, we request that IHS identify statistical/technical staff as point of contact for IHCIF and LNF data. The IHS staff who previously conducted this statistical analysis has retired and a new point of contact is necessary to perform future LNF calculations.
- Third, we request a joint Tribal/Federal Workgroup with actuarial and health economist support to update, review and analyze the IHCIF. In the course of its' work, we hope the Workgroup will re-open the technical evaluation of the Indian Health Care Improvement Fund Methodology completed in 2010 and re-evaluate the recommendations received from Tribes at that time. Then, through Tribal consultation, IHS can explore whether changes to the existing approach are necessary for better articulation of the IHCIF in the future.
- Finally, we further request, that the first step simply be an update of the existing data in the LNF analysis.

Thank you for your continued partnership and commitment to improving the health care status of American Indians and Alaska Natives. Tribal advocacy for the funding needs for Indian health are much more compelling when they can be supported by current data and benchmarked against health care spending outside of IHS. We look forward to re-engaging in work on the IHCIF. Should you have questions or require additional information, please do not hesitate to 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: Jennifer Cooper, Acting Director, Office of Tribal Self-Governance, IHS  
TSGAC Members

Enclosure: TSGAC Letter dated 9/27/16 - Comments on FY 2015 Report to Congress on  
Administration of the Tribal Self-Governance Program

# IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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*Sent Electronically to [sgreport@ihs.gov](mailto:sgreport@ihs.gov)*

September 27, 2016

Mary Smith, Principal Deputy Director  
Indian Health Service  
Mail Stop: 08E86  
5600 Fishers Lane  
Rockville, MD 20857

**Re: Comments on FY 2015 Report to Congress on Administration of the Tribal Self-Governance Program**

Dear Principal Deputy Director Smith:

On behalf of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC), I write to provide comments on the Fiscal Year 2015 Report to Congress on the Administration of the Tribal Self-Governance Program. TSGAC appreciates the opportunity to submit these comments in response to your recent letter to Tribal leaders dated August 21, 2016.

As you know, this Report is required by law annually under § 514 of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 458aaa-13. Subsection 514(b)(4) requires that each annual report to Congress, before being submitted to Congress, be distributed to Tribes for comment. Subsection 514(b)(5) requires that each annual report to Congress include the separate views and comments of the Tribes and Tribal organizations.

TSGAC previously submitted comments and recommendations, as recently as last year, to improve the annual report so that it meets the statutory requirements outlined in ISDEAA. Unfortunately, the FY 2015 Report does not reflect recommendations made in 2015 on the FY 2014 and do not meet the statutory requirements. As such, we find it necessary to spell out the statutory requirements for this report.

- Subsection 514(a)(2) requires that each annual report to Congress include a detailed analysis of the level of need being presently funded or unfunded for each Tribe, either directly by the Secretary, under Self-Determination Contracts, or under Self-Governance Compacts and Funding Agreements.
- Subsection 514(b)(2) of the ISDEAA requires, in addition, that each annual report to Congress identify:
  - (A) The relative costs and benefits of self-governance;
  - (B) With particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian Tribes and their members;

- (C) The funds transferred to each self-governance Indian tribe and the corresponding reduction in the Federal bureaucracy;
  - (D) The funding formula for individual Tribal shares of all headquarters funds, together with the comments of affected Indian Tribes and Tribal organizations, developed under § 514(c); and
  - (E) Amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location.
- Subsection 514(b)(3) further requires that each annual report to Congress also contain a description of the method or methods (of any revisions thereof) used to determine the individual Tribal share of funds controlled by all components of IHS (including funds assessed by any other Federal agency) for inclusion in Self-Governance Compacts or Funding Agreements.

Given the statutory requirements, TSGAC provides the following comments to revise the FY 2015 Report and to improve future Congressional reports that are more responsive to the statutory reports.

- 1. Include an analysis of level of need funded and unfunded.** The report does not contain any analysis of the level of need, being presently funded or unfunded for each Tribe. However, IHS does have data to evaluate the level of need funded and unfunded for Tribes and Service Units. IHS should work with Tribes to develop a data analysis and the best method to present the outcomes within the future Tribal Self-Governance Program reports.
- 2. Expand on examples of benefits of Self-Governance.** There is no analysis of the relative costs and benefits of Self-Governance as required by § 514(b)(2)(A). This statutory requirement is reasonably read to require the IHS to conduct a cost/benefit analysis with examples of how Tribes have successfully redesigned their compacted programs in a cost effective way to improve program performance for the benefit of their communities. Instead, the report simply provides a listing of possible actions that Tribes might undertake and refers to the next section that lists the total amounts that Headquarters and the Area Offices have expended for Self-Governance. This is not responsive to the statutory requirement and does not accurately illustrate the tremendous success the Tribal Self-Governance Program brings to the Indian Health System.

Self-Governance Tribes have reduced Federal administration of health care in Tribal communities while providing culturally competent care, expanding local services, and strengthening Tribal economies. This report is an opportunity to let Congress know about how Tribes participating in Self-Governance have redesigned programs, leveraged other Federal resources, and created partnerships with the private sector to expand services and improve care for their communities. It is an opportunity to inform Congress of specific examples of program successes and the language on page 5 leaves much to be desired.

- 3. Specify other department funding available to enhance Tribal Self-Governance Program.** The listing of total amounts expended by IHS Headquarters and IHS Area Offices in Section E does not comply with ISDEAA requirement to provide “with

particularity, all funds that are specifically or functionally related to the provision by the Secretary (HHS) of services and benefits to Self-Governance Indian Tribes and their members.” HHS agencies provide funding to Tribes to enhance and complement their Self-Governance programs. These activities should be included in the report.

4. **Provide a corresponding analysis of reduction in Federal bureaucracy.** While Section F of the Report does show funds transferred to each Tribe in Exhibit A, there is no analysis or illustration of any corresponding reduction in the Federal bureaucracy as required by ISDEAA. The simplistic statement provided does not provide valuable or informative data to Congress that Title V is achieving one of its stated goals, “to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portions thereof) are assumed by Indian Tribes.” As previously recommended, TSGAC suggests a more detailed description and year-to-year comparison to measure reductions in Federal bureaucracy and further illustrate the Tribal Self-Governance Program success. The requirement in ISDEAA necessitates measurable outcomes, not just a vague statement about Federal actions prior to the formal establishment of Title V.
5. **Clarify inherent Federal functions by type and location.** ISDEAA requires that IHS include the “amounts expended in the preceding fiscal year to carry out inherent Federal functions by type and location.” Despite sharing the residuals total, it is not clear what functions the IHS continues to provide to Self-Governance Tribes using the IHS Headquarters residual amount, nor is the report specific about how this amount is determined annually. This number also does not accurately reflect the amount of funding IHS Area Offices retain to carry out inherent Federal functions.

There are criteria for identifying inherent Federal functions, which the Report could reference. The term “inherent Federal functions” is defined in § 501(a)(4) as meaning “those Federal functions which cannot lawfully be delegated to Indian Tribes.” The Federal Activities Inventory Reform Act of 1998 (FAIR), P. L. 105-270 (112 Stat. 2382-2385), codified as a note to 31 U.S.C. § 501, defines an “inherently governmental function” as meaning “a function that is so intimately related to the public interest as to require performance by Federal Government employees.”

The FAIR lists certain types of activities, involving the interpretation and execution of Federal laws, which determine whether a function is inherently governmental. OMB Circular A-76 also is a source for defining inherently governmental functions by type, as well as a recent Policy Letter 11-01 dated September 12, 2014 (76 Federal Register 56227). These sources could be used to respond more adequately to the statutory requirement in § 514(b)(2)(E).

6. **Provide additional opportunity for Tribal input.** This annual report is a unique opportunity for IHS to share the success of Self-Governance. However, the Agency has not made recommended improvements. Prior to development and release of the Report, TSGAC respectfully requests to work together to implement the changes requested above.

In closing, TSGAC appreciates the opportunity to submit comments on this Report and looks forward to working with you on future Reports. Should you have any questions or if I can provide any additional information, please contact me at [lmalerba@moheganmail.com](mailto:lmalerba@moheganmail.com).

Sincerely,



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

cc: P. Benjamin Smith, Director, Office of Tribal Self-Governance  
TSGAC Members and Technical Workgroup