

April 24 - 25, 2019

Tribal Self-Governance Advisory Committee (TSGAC) Summary

Attendance: Quorum present for TSGAC

Area	Member	Present
Alaska	Gerald "Gerry" Moses Senior Director Alaska Native Tribal Health Consortium	X
	Diana Zirul Tribal Council Member Kenaitze Indian Tribe	X
Albuquerque	Ian Chisholm Pueblo of Jemez	X
Bemidji	Jennifer Webster Councilwoman Oneida Nation	X
Billings		
California		
Great Plains	Kenny Baker Spirit Lake Nation	X
Nashville	Marilynn "Lynn" Malerba* Chief Mohegan Tribe of Connecticut	X
Navajo	Theresa Galvan Navajo Nation	X
Oklahoma 1	Kasie Nichols Citizen Potawatomi Nation	X
	Kay Rhoads Principal Chief Sac and Fox Nation	X
Oklahoma 2	Melanie Fourkiller* Choctaw Nation of Oklahoma	X
Phoenix		
Portland	W. Ron Allen Tribal Chairman/CEO Jamestown S'Klallam Tribe	X
Tucson	Daniel L.A. Preston, III Councilman Tohono O'odham Nation	Phone, for a portion of the meeting

**Chief Batton provided a letter to TSGAC requesting Melanie Fourkiller serve as his proxy when he is unable to attend TSGAC.*

TSGAC Committee Business

Kenny Baker from the Great Plains Region made a motion to accept the minutes from the October 2018 minutes with edits identified by the committee and Diana Zirul seconded the motion. The motion passed.

Opening Statement

RADM Chris Buchanan, Principal Deputy Director of the Indian Health System (IHS), presented opening remarks. Specifically, Buchanan made the following remarks:

- IHS continues its commitment to working with tribal nations, tribal organizations, and urban Indian organizations.
- IHS received appropriations for the rest of fiscal year (FY) 2019. The total discretionary budget authority for IHS is \$5.9 billion (\$266 M increase). The IHS will soon announce a new tribal consultation and urban confer regarding the special behavioral health pilot program designed to provide opioid treatment and recovery service.
- IHS realized significant improvements to the quality of care by developing and implementing a strategic plan and establishing the IHS Office of Quality. Additionally, the IHS has also implemented a new standardized credentialing and privileging software.
- Mr. James Driving Hawk was appointed as the Director of the IHS Great Plains Area. Mr. Darrell LaRoche is the new Director of the Office of Clinical and Preventative Services (OCPS).

Office of Tribal Self-Governance (OTSG) Update

Jennifer Cooper, Director, Office of Tribal Self-Governance, IHS

General Overview of Discussion

Director Cooper provided an overview of personnel changes. Filling area lead negotiator positions is an increasing priority and, overall, recruitment is going to be a top priority for the next three months. Another priority is to finalize the funding announcement for the FY 2019 Self-Governance Planning and Negotiation

Cooperative Agreements and recruitment for the objective review committee will begin soon. OTSG has been working diligently to improve their process and timeliness of communication.

Action Items Identified

- Encourage participation in the objective review committee.
- Follow up on OTSG progress on formalizing ALN selection process.

Patient Protection and Affordable Care Act (ACA) Implementation Update

Doneg McDonough, Consultant, TSGAC

General Overview of Discussion

Mr. McDonough provided an update on the agreement between the TSGAC and the IHS regarding the Affordable Care Act/Indian Health Care Improvement Act (ACA/IHCIA) activities. Mr. McDonough presented data collected from a survey conducted with the National Indian Health Board (NIHB) and the National Congress of American Indians (NCAI) about the ACA and its impact on tribes. After reviewing the information that was recently rereleased by Centers for Medicare and Medicaid Services (CMS) regarding market place coverage and cost-sharing protections for American Indians and Alaska Natives, TSGAC sent a letter to the Tribal Technical Advisory Group (TTAG) at the CMS containing suggestions on improving the information available on the website.

Key Questions and Responses

Q: TSGAC requested some data regarding third-party coverage. Have you received any follow up to that?

A: No, I have not seen updated data.

Action Items Identified

- Follow up on recommendations made to TTAG.
- Letter from IHS to tribes asking them to update their National Data Warehouse (NDW) uploads, so that the information available is complete.
- Once the NDW is updated, obtain a report showing active user insurance status.

Office of Information Technology Update (OIT)

Mitchell Thornbrough, Acting Director, Office of Information Technology, IHS

General Overview of Discussion

Mr. Thornbrough gave an update on the new structure of the Information Systems Advisory Committee (ISAC) and the new ISAC charter, which is open for public comment until May 9. There are now 14 standing members that include CIO, NIHB, DSTAC, TSGAC, National Council of CMOs, National Council of Executive Officers, National Council of Informatics, National Council of Nurse Leadership, ISCC, Area Directors, Chief Information Security Officer, Chief Health Information Officer, Deputy Director of Quality, and the Director of Division of Facility Operations in the OEHE. There are also twelve at-large members (one from each area). He also provided an update on the research modernization project, and the IHS HIT modernization effort.

The Modernization Committee has met twice and has a full meeting on April 24. The overall project is on track to meet deliverables. Thirteen site visits have been completed, and there are three site visits remaining. In response to a data request, the Project received 1,300 responses. Data indicated that there is around 95% agreement that the RPMS infrastructure needs an overhaul.

The final modernization project report should be released in September.

Key Questions and Responses

Q: How many of the 1,300 responses were tribal and how many were federal staff?

A: From memory, I want to say 10 to 12 percent is the tribal response rate.

Q: Are most of the responses from facilities or individual users?

A: The survey went out to individual users, so we are measuring their affiliation. About 10 to 12 percent of the responses were submitted from tribal locations. There is a small percent of unidentified respondents.

Q: Are the at-large area members of the ISAC tribal representatives?

A: Yes.

Q: Was the charter in a Federal Register Notice?

A: It went out for public notice.

Q: Is there any way we can get a copy?

A: Yes. We sent it out to all ISAC membership.

Action Items Identified

- Encourage participation in the ISAC.
- Obtain report from NDW detailing the percentage and numbers of patients that were covered by third-party. Area and site-specific data should be grouped by the provider (e.g., Medicare, Medicaid, private insurance).
- Follow up on request for IHS to send a letter to all sites (federal, tribal, etc.) explaining why the data is needed and asking them to update their information regularly.

Texas v. United States and Opioid Litigation Update

Geoff Strommer, Partner, Hobbs, Straus, Dean & Walker

General Overview of Discussion

Mr. Strommer provide an update on *Texas v. United States*. On December 14, 2018, a judge in the western district of Texas issued a decision striking down the ACA. The court interpreted legislation enacted in the previous session of Congress that eliminated the individual mandate of the ACA as rendering the entire statute unconstitutional. If the court's decision is upheld, it will not only strike down the ACA but also the reauthorization of the Indian Healthcare Improvement Act (IHCA) and all of the Indian provisions in the statute. It is likely that the case will go to the Supreme Court.

An amicus brief has been filed on behalf of many tribal nations and tribal organizations from around the country. The main argument of the brief is that if the court finds that the ACA is unconstitutional, the court should apply the Doctrine of Severability to sever IHCA and Indian provisions.

The United States is going to file its brief by May 1st.

Recent Efforts and Discussion regarding Re-Vitalization of the ICNAA

*Jeannie Hovland, Deputy Assistant Secretary, Native American Affairs,
Commissioner, Administration for Native Americans and Co-Chair, Intradepartmental
Council on Native American Affairs, U.S. Department of Health and Human Services*

RADM Michael D. Weahkee, Principal Deputy Director, IHS

General Overview of Discussion

Commissioner Hovland and RADM Weahkee provided an update on efforts to revitalize ICNAA. They had their first meeting in February and will meet again in May. ICNAA was established under the Native American Programs Act (NAPA). Congress intended to utilize ICNAA to foster communication and collaboration within HHS. The Commissioner of ANA will chair ICNAA, and the vice chair will be the Director of the IHS, and within HHS the council consists of the operation division heads. They are developing policy, programs, and addressing concerns collaboratively. Michelle Suave is serving as the Executive Director for the ICNAA while they seek to fill this role.

NAPA also includes a definition for Native Americans. The definition for Native Americans as members of state and federally recognized tribes, Native urban organizations, Native non-profits, Native Hawaiians, and Pacific Islanders including Northern Mariana Islands, American Samoa, and Guam.

Director Weahkee mentioned that ICNAA is structured in a way where they are completely separate from Intergovernmental and External Affairs Office at HHS. Jack Kalavritinos and Stacey Ecofee are running the STAC program and will continue to be the outward facing liaison with tribes. ICNAA is meant to function more as an inward facing group. Commissioner Hovland and RADM Weahkee stated that they are open to suggestions for agenda items and offered to keep TSGAC informed of ICNAA activities moving forward.

TSGAC members were pleased to hear that the ICNAA is being revitalized and made several suggestions for items that the ICNAA can focus attention, including:

- Advocating for the expansion of self-governance within HHS.
- Advocating for the transition of funding for Indian programs from the discretionary side of the federal budget to the mandatory side.
- Exploring and encouraging implementation of methods to streamline interagency communication, collaboration, and resource exchange in a manner to better serve Native communities.
- Continuing to support interagency MOAs and MOUs.
- Encouraging support from federal agencies for the increased flexibility of usage of resources at the local level within legal and ethical parameters

Key Questions and Responses

Q: Can you provide some background on how decided to separate ICNAA from the Office of Intergovernmental and External Affairs (IEA)?

A: An important factor to point out is that IEA continues to be on ICNAA's executive council. So, there will be robust participation from the IEA on ICNAA. The decision was driven by finances and the need to separate functions. We are having discussions about how to ensure that there are communication and collaboration between ICNAA and STAC.

Legislative Update

Caitrin Shuy, Director of Congressional Relations, National Indian Health Board

Ms. Shuy provided an update on some of the things NIHB is working on legislatively, Medicaid amendments, and upcoming conferences. Specifically,

- The partial government shutdown was extremely detrimental to tribal communities. NIHB is working diligently on advocating for legislation that would provide an advance appropriation for IHS. Ms. Shuy clarified the differences between forward-funding, advance appropriations, and mandatory appropriations.
- Securing mandatory appropriations for IHS is a long-term goal of NIHB.
- NIHB has also been working on the bill introduced by Senator Tester that would authorize the formation of a VA tribal advisory group.
- NIHB is holding off on legislative language regarding Medicaid bill until the Washington State Dental Therapy Program litigation is resolved. It will affect how some of the definitions of the bill are written. Additional support in the Senate is needed.
- NIHB has two conferences coming up: May 13th - 17th in Albuquerque and September 16th - 20th in Pechanga.
- Ms. Shuy also announced that she recently accepted a political appointment within HHS' budget office.

Department of Veteran's Affairs (VA) – Office of Community Care

Stephanie Birdwell, Director, Tribal Government Relations, VA

Kristin J. Cunningham, PMP, Executive Officer to the Deputy Under Secretary for Health for Community Care

Ms. Cunningham provided an overview of the Office of Community Care and discussed the implementation of the MISSION Act. A detailed presentation is available at:

<https://www.tribalsegov.org/wp-content/uploads/2019/04/2-OCC-for-Tribal-HEalth-042419.pptx>

An Executive Order on a National Roadmap to Empower Veterans and End Suicide can be found at:

<https://www.tribalsegov.org/wp-content/uploads/2019/04/Executive-Order-on-a-National-Roadmap-to-Empower-Veterans-and-End-Suicide--The-White-House.pdf>

TSGAC participants expressed concern that the time frame for submitting comments on implementation of the MISSION Act needs to be extended. Ms. Birdwell and Ms. Cunningham stated they would take the concern back to VA leadership and will request an extension of the time frame.

National Tribal Advisory Committee on Behavioral Health

Theresa Galvan, Navajo Nation

The National Tribal Advisory Committee (NTAC) on Behavioral Health acts as an advisory body to the Division of Behavioral Health and to the Director of the Indian Health Service, with the aim of providing guidance and recommendations on programmatic issues that affect the delivery of behavioral health care for American Indian and Alaska Natives.

NTAC Leadership:

- Tribal Co-Chair: Ms. Theresa Galvan (Navajo Nation)
- Federal Co-Chair: Ms. Miranda Carman (IHS Division of Behavioral Health)

Membership: The NTAC consists of one primary and one alternate representative from each of the 12 IHS areas. Members are nominated by IHS Area Directors, in consultation with Tribal leaders. All nominees must be elected Tribal leaders or a designee selected by Tribal leaders.

Ms. Galvan provided an overview of the current work of the NTAC and highlighted a number of NTAC's priorities. To start, Ms. Galvan noted that NTAC recently convened in Alpine, CA as part of a joint meeting with SAHMSA and is working with IHS to identify the next meeting date. RADM Weahkee echoed the importance of establishing the next meeting date and hopes the committee will be able to convene in June 2019.

Among other priorities, Ms. Glavan highlighted funding levels, the mechanism through which funding is delivered, the difficulty identifying the appropriate Area Project Officer, and the minimal progress of a contracted marketing group. Specifically,

- \$51.2 M is available for behavioral health funding but some Congress designated set-asides totaling \$10.7 M.
- NTAC has 3 vacancies—Nashville, Billings, and Albuquerque—and it is a priority to get those seats filled.
- Regarding Area Project Officers, NTAC believes there are so many of them that it is confusing for Tribal programs to identify who to contact.
- 2018 Appropriations bill encouraged behavioral health funding to be transferred to Tribes through ISDEAA agreements.
- NTAC wants all funding to be provided directly to Tribes, Tribal Organizations, and Urban Centers rather than external entities doing work within Native communities.
- NTAC is concerned that the marketing group under contract is not making enough progress.

RADM Weahkee also noted that IHS intends to take the recommendations from NTAC and release those publicly for consultation. RADM Weahkee introduced Andy Hunt as the Acting Deputy Director for Behavioral Health.

A TSGAC participant asked Ms. Galvan for further explanation on reinvesting into tribal grant and program awards. Under NTAC recommendations, there is not a specific mention that the funding should go directly to Tribes through ISDEAA contracts and compacts and eliminate the grant piece of the fund disbursement. Ms. Galvan stated the main priority is to have more of the funding go directly to Tribes and not to be funneled through grants management. Several other TSGAC participants echoed the importance of the funding to be delivered through contracts and compacts and highlighted various reasons why this is important.

The letter from NTAC to RADM Weahkee can be found at:

Indian Health Service Budget Update

Ann Church, Acting Director, Office of Finance and Accounting, IHS (Invited)

Melanie Fourkiller, Policy Analyst, Choctaw Nation

Ms. Church provided an update for fiscal year 2019 and the fiscal year 2020 budget proposal. To start, Ms. Church noted that IHS recently received news that the services apportionments were approved. As such, funds for the 3rd quarter are being distributed now. A few key highlights from the presentation include:

- The enacted fiscal year (FY) 2019 budget includes a total discretionary budget authority of \$5.8 billion, which is \$266 million above the enacted FY 2018 funding level.
- The budget includes three accounts:
 - Services: \$4.1 billion
 - Facilities: \$879 million
 - Contract Support Costs: \$822 million
- CSC remains an indefinite discretionary appropriation.

- \$115 million for staffing and operating costs of newly-constructed healthcare facilities.

- The period of availability is changed for a majority of Services funds. Funds previously available for one FY are now available for two FYs, expiring on September 30, 2020. No changes to funds available until expended (no-year funds). Ms. Church noted this is not advance appropriations authority but does provide some benefit to help mitigate the effects of CRs or a shutdown.

- The Fiscal Year (FY) 2020 Budget requests a total discretionary budget authority of \$5.9 billion, which is \$392 million above the FY 2019 annualized continuing resolution level.

Ms. Church provided a presentation that can be found at:

[https://www.tribalsegov.org/wp-content/uploads/2019/04/3-IHS-Budget-Update IHS-Tribal-Self-Gov-Committee-Mtg Apr-25-2019.pdf](https://www.tribalsegov.org/wp-content/uploads/2019/04/3-IHS-Budget-Update-IHS-Tribal-Self-Gov-Committee-Mtg-Apr-25-2019.pdf)

- Ms. Fourkiller provided an update on the fiscal year 2021 budget committee. The committee recently met and selected Andy Joseph, Bruce Pratt, and Victor Joseph are the co-chairs for the budget formulation committee. The committee was also successful in coming together for an agreed upon message and budget amount.

The National Tribal Budget Formulation Workgroup's Recommendations on the Indian Health Service Fiscal Year 2021 Budget can be found at:

https://www.nihb.org/docs/04242019/307871_NIHB%20IHS%20Budget%20Book_WEB.PDF

TSGAC Members' Joint Discussion with IHS Principal Deputy Director

Chief Malerba and RADM Weahkee

General Overview of Discussion

- RADM Weahkee reiterated an offer to put together a 105(l) lease technical workgroup to determine cost estimates.
- Chief Malerba shared concerns that the Department of Justice (DOJ) is not supporting the rule of law regarding the ACA and the IHCA. TSGAC is looking to leadership from the Department of Health and Human Services (HHS) and IHS to provide technical assistance to the DOJ. RADM Weahkee provided an update regarding attempts to obtain approval to go outside of the department and communicate with the DOJ directly concerning the potential detriment to Tribes and the IHS if the ACA is struck down.
- TSGAC membership reminded Director Weahkee that advance appropriation authority is a priority. RADM Weahkee shared that Ms. Anne Church recently accompanied Department of the Interior (DOI) Officials on a visit to the Department of Veterans Affairs (VA) to learn how they implement advance appropriations.
- The Broken Promises report released by the U.S. Commission on Civil Rights was discussed regarding how the report can be utilized to move our mutual agenda forward and highlight funding issues.
- TSGAC requested an update on contract support cost policy. IHS officials commented that a contract support cost policy update should be available at the next quarterly meeting.

- TSGAC membership requested an update about pharmacy management benefit claims.
- The Presidential Task Force on Protecting Native American Children was discussed. RADM Weahkee explained efforts taken by the IHS to ensure that similar issues do not occur in the future. IHS employees are required to undergo No FEAR Act training, which is completely focused on whistleblower protections. However, a reprisal is still a concern by employees who report incidents. Part of the medical quality assurance review is to discover where incident reports are being dropped and if they are reaching management level. The IHS recently purchased an incident reporting system. They are also setting up headquarters governance structures with the standup of the new Office of Quality. They have a quality assurance/risk management workgroup or advisory group at the headquarters level that will review all concerns that are sexual assault or child abuse related.

Key Questions and Responses

Q: How do we utilize the Broken Promises report to move our agenda forward and highlight funding issues? Can you leverage the report (Broken Promises) in any way?

A: I think the opportunities come in our conversations that will be coming up with the OMB about the budget. We can highlight it as part of our internal education and advocacy work.

Q: How are contract support costs recommendations going to be implemented? Are we reinstating the 97/3 methodology?

A: RADM Weahkee is hopeful that when we meet a quarter from now, we will have some movement on this and three or four of our other active consultations. TSGAC can expect dear tribal leader letters for all of these long-standing open consultation items.

Q: Does that include the PRC chapter changes in your consultation policy?

A: Yes, it does - PRC, SDS, mental health services funding.

Q: Have we assessed whether OGC should file a lawsuit to preserve the statute of limitations while we work through a settlement to get paid for past claims as well as the current claims system getting fixed?

A: We are trying to work through the current issues. We have talked about it, but it has not gone that far yet to do that. We will talk about it some more with senior leadership if that is what we want to do.

Q: Have you identified an IHS pediatrician to be on the Presidential task force?

A: We do have an IHS pediatrician on the task force. Although we did not have a role in the selection, she was selected, I believe, by DOJ. We were asked if we support her participation in the task force, which we do. She came from our Navajo Area and is assigned to the Shiprock Service Unit.

Q: Have you given thought to internal systems to address incidents of this nature in a way that will prevent this from happening in the future?

A: One of my principal jobs is to create an environment and a culture within the agency that is supportive of our employees and promotes transparency and promotes reporting when there is a concern.

Action Items Identified

- Request update on progress made by IHS to develop a budget formulation to be implemented in the instance Congress authorizes advance appropriations
- Continue to encourage HHS and IHS leadership to encourage the DOJ to uphold the Indian Health Care Improvement Act
- Continue to advocate for an exemption for Tribes from Medicaid block grants.
- Continue to seek updates on pharmacy management benefits claims
- Support recruitment of area lead negotiators.