TSGAC July 2019 Meeting

Attendance:

Area	Present	Attendee(s)
Alaska	X	Diana Zuril Gerry Hope
Albuquerque	X	Ian Chisholm Raymond Loretto
Bemidji	X	Jane Rohl Jennifer Webster
Billings		
California	X	John Robbins
Great Plains		
Nashville	X	Lynn Malerba Cheryl Andrews-Maltais
Navajo	X	Theresa Galvan
Oklahoma 1	X	Kasie Nichols
Oklahoma 2	X	Melanie Fourkiller Melissa Gowler
Phoenix	X	Joey Whitman Delia Carlyle
Portland	X	Ron Allen
Tucson	X	Daniel Preston

Committee Business:

- A quorum was established.
- Minutes from the April 2019 TSGAC meeting were approved (W. Ron Allen motioned to accept the minutes and Cheryl Andrews-Maltais seconded the motion).
- A nomination letter from Sac and Fox Nation was presented to the committee that requested Jacqueline King serve on TSGAC in the alternate for Oklahoma 1 seat. W. Ron Allen made a motion to accept the nomination and Melanie Fourkiller seconded the motion. Nomination approved.

Office of Tribal Self-Governance
Jennifer Cooper, Director

Director Cooper provided a presentation that covered numerous updates from the Office of Tribal Self-Governance (OTSG). The presentation is available at https://www.tribalselfgov.org/tsgac-july-2019-meeting/. Among the updates, Director Cooper noted that the Iowa Tribe of Kansas and Nebraska recently took over administration of their health clinic through a Self-Governance agreement. In total, IHS has entered into 104 Self-Governance compacts and 130 funding agreements—resulting in $2.3 billion transferred to Self-Governance Tribes.

- Director Cooper also provided an update on efforts to fill key positions within OTSG and highlighted the importance of including best practices and achievements of Self-Governance Tribes in the annual report to Congress.

- Director Cooper requested Volunteers to review applications for the planning cooperative agreements. Anyone interested in volunteering was asked to let Director Cooper know of their interest.
- Chief Malerba highlighted the importance of understanding the job description of ALNs and noted that Tribal leaders want ALNs to be decision-makers at the table. In order to be decision-makers, there should be consistency in the qualifications of ALNs across areas.

Indian Health Service Budget Update
Ann Church, Acting Director, Office of Finance and Accounting, IHS
Melanie Fourkiller, Policy Analyst, Choctaw Nation

Key Highlights from the FY 2020 President's Budget:

- Proposed Program Discontinuations: Health Education and Tribal Management Grants Program
- Mandatory Funds: Special Diabetes Program for Indians ($150 million per year)
- Proposed reauthorization for FY 2020 and FY 2021
- Provide Federal Tort Claim Act coverage for IHS volunteers
- Authorize IHS to establish concurrent Federal/State jurisdiction at IHS Federal enclave properties
- Authorize discretionary use of all Title 38 authorities
- Meet Loan Repayment/Scholarship service obligations on a half-time basis
- Provide tax exemption for IHS Health Professions Scholarship and Loan Repayment Programs

Office of Information Technology Update (OIT)
Maia Z. Laing, HHS Optimization Team, Office of the Chief Technology Officer, Immediate Office of Secretary, HHS

Project Highlights:
- Completed HIMSS Analytics Electronic Medical Record Adoption Model (EMRAM) and Outpatient Electronic Medical Record Adoption Model (O-EMRAM) Pilot Program with 7 IHS sites
- Completed the Legacy Assessment to understand RPMS architecture and potential path forward for RPMS modernization
- Completed the Data Call / Qualitative Survey
- Completed Site Visits and Listening Sessions – 24 sites visited across 11 IHS areas; 10+ listening sessions have been held with groups including attendees at the TSGAC Annual Conference, Tier 2 Area IT Support, and various IHS groups and Councils
- Completed and submitted the Analysis of Alternatives (AoA) to the HHS Secretary to support the FY2021 budget ask to support IHS HIT modernization efforts
- The Technical Advisory Commission is preparing to make it's final recommendations to the project team on considerations for IHS HIT modernization
- Kicked-off the Roadmap workstream; the project team is closely collaborating with IHS and ONC
- Kicked-off the Human Centered Design workstream to generate User Stories and Journey Maps to understand interactions with HIT and support future modernization efforts
- Community of Practice Whitepaper is being composed to provide support on how to enhance HIT peer support and the training infrastructure throughout the I/T/U

105(l) Leases Update for FY 2018 and 2019
Ann Church, Acting Director, Office of Finance and Accounting, IHS

Ann Church provided an overview of the progression of 105(l) leases from 2016 to 2018. Starting in 2016, the approximately $6 million was spent on thirty-seven (37) 105(l) lease proposals, and that amount increased to 83 proposals with a cost of around $25 million, and,as of July, they have received

approximately 123 proposals with a cost totaling between $54 and $56 million. There can be a significant difference in proposals with costs ranging from $9,500 to $9 million per lease.

Another round of tribal consultation and uber confer has been conducted, and they are in the process of compiling a summary of the comments. The services appropriation is available for two fiscal years, which provides for flexibility regarding when they will spend the funds.

IHS is going to examine the possibility of leveraging some of the data culls and information requests that facilities are currently in the process of conducting to request data that can be utilized to project future 105(l) lease proposal costs. The request for facilities needs is due by December 31. They are considering including data requests specific to 105(l) leases with the request for facilities needs information. However, they are considering the timing of the requests because the sooner that they can access the information relevant to projections, the easier it will be to incorporate the data into the tribal budget formulation process and begin to share information with appropriators.

Key Comments, Questions, and Responses

Q: How many agreements do you have?
A: I do not have that information but we are looking at how we can distribute that information

A participant noted concern that Tribes are not negotiating with IHS; Tribes are negotiating with OGC. Another participant noted concern with the narrow interpretation of IHS's obligations.

National Community Health Aide Program Tribal Consultation
Christina Peters, Tribal Community Health Provider Project Director, Northwest Portland Area Health Board
Minette C. Galindo, Public Health Advisor, Division of Behavioral Health, Office of Clinical & Preventive Services, IHS

Christina Peters and Minette Galindo provided an overview of the functions of the Community Health Aide Program (CHAP). The focus was mainly on the interim CHAP policy, the proposed nationalization of the CHAP program and efforts to further develop a policy to implement nationalization. Peters provided clarification regarding the misconception that the administration has proposed cutting the CHR program to fund the CHAP program. The CHAP Tribal Advisory Group (TAG) is supportive of the continuation of the CHR program and has never supported the elimination of the CHR program. Peters also referenced the areas of disagreement between the CHAP TAG and the IHS and mentioned that those are in the footnotes of the presentation.

Minnette Galindo expounded upon on the presentation provided by Christina Peters. She emphasized how CHAP can decentralize health care. She explained the differences between the community health aide, behavioral health aide, and dental health aide positions; the CHR will patients navigate between the systems. All providers will operate under the supervision of a licensed physician. Minette discussed the possibility for transitioning CHR personnel to CHAP if they are interested in continuing their education and career development.

Consultations were held regarding the expansion of CHAP in 2016. The three biggest concerns gleaned from the consultations:

- Make sure the program is regional
- Do not disrupt Alaska
    - Efforts taken by the agency to expand CHAP can not reduce resources to Alaska.
- Do it in partnership with Tribes
    - In 2018, the IHS established the CHAP TAG.

The consultation initiated on May 8 requesting recommendations on a draft IHS policy to implement, outline, and define a National Community Health Aide Program The comment period closed on June 7. Tribal feedback included requests for a 30-day extension to the comment period, so the comment period was extended to July 8. Feedback from 41 tribes, tribal organizations, or national organizations was received. The comments will be reconciled and provided to the TAG, so the TAG can review the comments and compile their final recommendations to the IHS. The policy will continue through the IHS and HHS policy review process, which includes agency-wide comment and review, then when it is finalized, it will be published in the Indian Health Manual.

Action Items Identified
Encourage participation in the CHAP TAG. A self-gov alternate for the Albuquerque area is needed. They also need to fill the seats for DSTAC.

National Tribal Advisory Committee on Behavioral Health
Theresa Galvan, Navajo Nation
CAPT Andrew Hunt, Acting Deputy Director, Division of Behavioral Health,
Office of Clinical & Preventive Services, IHS

Captain Hunt provided an update on the National Tribal Advisory Committee on Behavioral Health (NTAC). A consultation and confer period was conducted from May through August 2018. The recommendations compiled during the consult and confer period were reviewed and discussed at subsequent NTAC meetings, then included in a letter that was delivered to RADM Weahkee on March 14, 2019. The letter also included a request for a face-to-face meeting with NTAC and IHS leadership, which was held on June 17, 2019. At the June 17th meeting, RADM Weahkee requested broader input regarding the recommendations.

Theresa Galvan presented the details of the NTAC recommendations made to the IHS to address behavioral health in AI/AN communities. NTAC's recommendations are based on the $48.5 million eligible for tribal consultation. The following is a summary of NTAC's recommendations:

Substance Abuse & Suicide Prevention Program (SASPP)
- *Tribal Grants and Program Awards* – increase from $24,918,003 to $26,011,882 to be distributed through a **new** methodology
- *Urban Indian Organizations* – no change, but maintain the funding methodology
- *National Management* – reduce from $4,002,890 to $610,677
- *AASTEC Cooperative Agreement* – reallocated $215,000 to Tribal Grants and Program Awards

Domestic Violence Prevention Program (DVPP)

- *Tribal Grants and Program Awards* – increase funding from $9,775,838 to $10,433,700 distributed through **new** methodology
- *Urban Indian Organizations* – no change
- *National Management* – reduce from $1,791,440 to $1,123,578

Zero Suicide Initiative (ZSI)
- *Tribal Grants and Program Awards* – increase funding from $3,200,000 to $3,497,415 distributed through a new methodology
- *Urban Indian Organizations* – reduce from $400,000 to $0
- Recommend that IHS allow current grantees to continue as is through 2020 and make any changes to funding effective in the new funding cycle beginning in 2021

Key Comments, Questions, and Responses

Q: What is the funding methodology? Will that be described in detail in the consultation letter?

A: I am not sure if that will be in the DTLL, but it is a methodology that breaks it down into three tiers.

Q: How sure are you that these recommendations will be executed or followed through with?
A: "Now that the NTAC has had the opportunity to put these recommendations forth, I believe in partnership with the Self-Governance Advisory Committee these were formulated, but we wanted to make sure that we do not just leave the review and comment to the workgroup and that It goes out to all of Indian country. So that will be the next step. These are sent out nationally to all 573 tribes… and when that comment period concludes, we will start making decisions." - RADM Weahkee

Action Items Identified

- Recirculate funding methodology explanation presented at self-governance meeting in Michigan

Opioid Funding Consultation

CAPT Andrew Hunt, Acting Deputy Director, Division of Behavioral Health, Office of Clinical & Preventive Services, IHS

Captain Hunt provided an overview of the IHS Opioid Grant Pilot Program. The Consolidated Appropriations Act, 2019 provided a $10 million increase in the Alcohol and Substance Abuse Program budget line. The IHS has been instructed that the program shall be developed in coordination with SAMHSA. IHS has met with SAMHSA to review their Tribal Opioid Response grant to avoid duplication. Grants shall be used for supporting the development, documentation, and sharing of locally designed and culturally appropriate prevention, treatment, recovery, and aftercare services for mental health and substance used disorders. Funding shall be provided for services and technical assistance to grantees to collect and evaluate the performance of the program.

Key Comment, Questions, and Responses

The common complaint tribal leaders are hearing is about the amount of resources that are necessary to apply and maintain compliance with grants. This results in much of the funds being utilized to administer the grant as opposed to resources going to fulfill the objectives of the grant.

There should be a uniform method for all tribes to receive some funding—getting away from the competitive grant basis. Part of the problem is that while all Tribes are impacted by this burden, it distinctly disadvantages those tribes who do not have actual grant writers or the human resources to create sophisticated grant applications.

To put all tribes in a position where they actually have to write a grant for something that should be an absolute consideration or an unfunded obligation is putting the tribes at too big of a disadvantage, and a better way of getting that funding to the tribal nations that actually need it should be considered.

ICNAA should work on developing MOAs with other agencies (e.g., BIA, DOJ) because they have additional funding for opioid treatment and if they can utilize those resources in a collaborate effort, they would be more effective.

Action Items Identified

- Continue to support base and formula funding over competitive grant funding

National Institute of Health – All of Us Initiative

Marilynn "Lynn" Malerba, Chief, Mohegan Tribe, and Chairwoman, IHS TSGAC

Chief Malerba shared concerns regarding the National Insitute of Health's All of Us Initiative. She expressed concerns with NIH's failure to secure tribal consent before collecting data from tribal citizens. It is essential to ensure that tribes are making efforts to exercise data sovereignty. NIH did not initially engage in consultation. Consultation is occurring now.

Action Items Identified

- Advocate for NIH to continue to conduct meaningful consultation before proceeding with initiatives involving tribal members or tribal communities
- Support the embargo of AI/AN data until consultation is completed to the satisfaction of Tribes

Legislative/Litigation Update

Geoff Strommer, Partner, Hobbs, Strauss, Dean and Walker

Mr. Strommer provided an update on *Texas v. United States* and the opioid multidistrict litigation. Oral argument for *Texas* was scheduled for July 9. However, before oral argument was held, the 5th Circuit (court of appeals) asked the parties to brief additional questions that were not the focus of the district court below having to do with standing – more, precisely, whether or not the parties are rightfully before the court. The additional questions were raised due to the change in position in the litigation by the United States. The shift in position is that the U.S. now agrees with that the entirety of the Affordable Care Act (ACA) is unconstitutional. So the question then becomes is there a dispute that the courts need to address and do the parties have standing. Challenging the district court's decision below are intervener states (e.g., California) and the U.S. House of Representatives. If the interveners did not have standing, would the court remand it back to the district court, or is the case null and mooted by the fact that there is no longer a disagreement.

In the briefs that all of the parties filed, they all recognized that even though the U.S. changed position, a dispute remained because the U.S. has committed to continuing to implement the ACA until the courts have finally resolved the issue of whether or not ACA is constitutional. Oral arguments were held on July 9. None of the parties who argued, nor any of the judges raised the IHCIA issue; however, one of the judges did raise the question of whether there are provisions in the ACA that have no connection to the individual mandate. Parties presented provisions in the ACA that are not connected to the ACA, but the Indian specific provisions were not mentioned.

Possible actions that can be taken by the 5th Circuit:

- Could support the district court's decision
- Could overturn the district court's decision
- Could determine that the district court overreached
- Could determine that the individual mandate is unconstitutional, but the severability analysis needs to be applied
- Could remand the case back to the district court to apply the severability analysis
- Could apply the severability analysis itself
- Could dismiss the case entirely due to the standing issue

Opioid Litigation

There have been around 1,100 suits filed over the past ten years by states, their political subdivisions, insurance carriers, hospitals, individuals, tribes, and tribal organizations against manufacturers. All of the cases that were filed in federal court have been consolidated into one court in Ohio with Judge Polster presiding. Consolidation of the cases is a legal tool called multi-district litigation (MDL).

The judge has established a committee that is working with the plaintiffs. There is also a tribal liaison committee that provides advice to the broader committee on Indian specific issues. Is The tribal leadership committee has met with state attorney generals and has reached an agreement in the instance of a settlement to carve out a piece of the settlement to be directed to tribes.

The litigation track is moving forward and the settlement tract I also moving forward, but it is not quite as active. It should grow increasingly active as the October trial date draws closer. Several of the plaintiffs (cities and counties) filed a motion to create a class for the sole purpose of negotiating a settlement

between those plaintiffs (tribes are not included) and the defendants. If that model is ultimately accepted by the court and members of those two plaintiff classes, it might be a model for tribes to utilize.

Key Questions and Responses

Q: How were Blackfeet Nation and Muscogee (Creek) Nation chosen for inclusion in the tribal bellwether test cases?

A: I don't know. I wasn't in the room when they were picked, but I think the idea was to find examples of tribes that fit a profile that could be used to make assumptions about the other tribal plaintiffs.

Brett Weber, Congressional Relations Coordinator & Shervin Aazami, MPH, Policy Analyst, NIHB

Mr. Weber provided an update on efforts to reauthorize the Special Diabetes Program for Indians (SDPI) which expires on September 30. The Senate Committee on Health, Education, Labor and Pensions (HELP) introduced legislation in February to flat fund SDPI for five years. On the House side, NIHB was advocating for a five-year reauthorization with a funding increase. Initial legislation on the House side included a hike. Unfortunately, during the markup, the House HELP subcommittee changed the proposed bill to included flat funding for four years. Advocates are continuing to work to secure an increase in funding to $200 million per year for five years.

Mr. Aazami provided an update on appropriations. When the House began there work on FY 2020 appropriations, they dismissed all of President Trump's proposed cuts. The bill that funds the IHS that passed House includes about a $ 530 million increase. The House has approved a deeming resolution (ballpark figures) to begin working on next year's funding packages. It was necessary to use estimates because Congress has yet to pass a budget deal that sets the topline spending numbers for the twelve appropriations bills. So, even though the House has completed ten out of twelve appropriations bills for FY 2020, they used deeming numbers. The Senate has not begun working on any funding packages.

There are two bills in the House and one in the Senate that would authorize advance appropriations. H.R. 1128 would authorize advance appropriations for both the BIA and IHS. H.R. 1135 would provide advance appropriations for the IHS only. The bill on the Senate side is a companion bill (identical) to H.R. 1128.

H.R. 1135 amends section 825 of the Indian Healthcare Improvement Act and would provide advance appropriations for services and facilities; whereas, H.R. 1128 is more of a broader authorization bill for advance appropriations. H.R. 1128 will provide advance appropriations for the IHS services line item and contract support costs, not for facilities.

Action Items Identified

- Continue to support advocacy efforts to secure reauthorization for SDPI with an increase in funding
- Potentially advocate for a legislative fix to change SDPI's structure as a competitive grant program
- Continue to advocate for advance approporaitons