**TSGAC MEETING**

September 30, 2020

**Committee Business:**

• No committee busines. A quorum was established.

**Office of Tribal Self-Governance Update**

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

Director Cooper shared an update on OTSG activities and priorities. There are now 105 compacts and 131 funding agreements to date. The recurring base funding is $2.6 billion to date. They have also transferred $567.6 million in COVID-19 funding. To date, we have transferred to Title V, through Title V agreements, $3.29 billion.

The OTSG will continue to execute amendments and payment documents; however, those funds will be transferred once the IHS financial systems are reopened in the new year. In terms of processing the bilateral for the Payment Protection Program and Healthcare Enhancement Fund, they have executed 64% of 131 funding agreements. That leaves 36% that remain outstanding (around 47 funding agreements).

Director Cooper provided an update on the OTSG’s ongoing efforts to address their priorities for FY 2020. The OTSG continues to recruit and fill staff vacancies. They have filled two financial analyst positions. They are also attempting to fill an administrative officer and a staff assistant position.

The reports to Congress on the Administration of the Tribal Self-Governance Program need to be finalized. The reports will be shared for consultation within the next quarter. Additionally, updating the Headquarters Programs, Services, Functions, and Activities (PSFA) Manual remains a priority. Despite being hindered by the COVID-19 pandemic, progress continues.

The notice of funding opportunity for Self-governance Planning & Negotiations Planning Agreement closes on October 28. The OTSG announced that it would continue the partnership with SGCE and the TSGAC ACA project into FY 2021. OTSG staff remain in a full-time telework status and have successfully implemented technology to continue virtual negotiations and perfect documents electronically.

**HHS Health Information Technology Modernization Project**

*Mitchell Thornbrugh, Chief Information Officer and Director, Office of Information Technology, IHS*

*Dr. Chris Fore, Director, IHS TeleBehavioral Health Center of Excellence (TBHCE), Office of Clinical and Preventive Services (OCPS), IHS*

The project management office (PMO) is still being finalized. The process has been slightly hindered by end-of-the-year cutoffs and review timelines. Once established and operational, the PMO will address overall program support, governance, acquisition, and program planning. Stakeholders will have an opportunity to provide input as they move towards acquisition planning. **IHS will not select vendors or commercial components of the health IT infrastructure without further consultation and urban confer.** They anticipate the acquisition activities to commence in the spring of 2021 – pending the funding levels in FY 2021.

The information system advisory council (ISAC) has vacancies (i.e., Alaska, Albuquerque, Great Plains, Nashville, Navajo, Phoenix, Portland, and Tucson). They will work with the area directors and tribes to select individuals to fill vacancies. The co-chairs designate the ISAC agenda for each meeting.

**Telehealth**

Dr. Chris Fore provided participants with an update on utilizing telehealth technology. COVID-19 has substantially increased the demand for telehealth capabilities. They have been utilizing the Cisco meeting infrastructure for telehealth since around April. Prior to April, they saw around 70 meetings or connections per week on that platform. Use peaked in mid-May with over 1400 visits per week. Since then, usage has leveled off to around 450 connections per week.

For the first time, the IHS has a unified platform that allows them to reach into patients' homes. The system is device agnostic and can be used on a phone, tablet, or computer. Unfortunately, they have discovered that the digital divide is real in Indian Country, which has created some additional challenges.

Around 75% of the telehealth visits coded in the EHR are telephone visits, and about 25% of those have a video component.

Historically, about one-third (1/3) of their sites are in line with the guidance, and another large portion is close, so they need some education is needed there. Around 15% need significant attention to bring them in line with the guidance to collect the data they need and billing appropriately for services provided.

They are continually doing market research on alternative platforms to determine if a platform exists that will allow the IHS to serve patients better.

The public health emergency that has been declared that allows IHS to utilize the platforms has increased reimbursement rates for telehealth; however, the declaration is scheduled to expire on October 23. Nobody is sure if the higher reimbursement rates will stay in place. The Cisco meeting platform is HIPPA compliant; therefore, they can continue using the platform. However, reimbursement rates may change, which would impact sustainability.

**Question:**

How are tribes going to be able to access the work that you are doing?

**Answer:**

The Cisco meeting infrastructure is available to anyone who can access the D1 domain. This is a technical limitation that, in some cases, maybe a barrier.

**Indian Health Service Budget Update**

*Jillian Curtis, Director, Office of Finance & Accounting*

The FY 2021 continuing resolution (CR) extends funding through December 11, 2020. The CR includes an extension for the Special Diabetes Program for Indians (SDPI) from the end of November to December 11 – perhaps the shortest extension in the program's history. The House passed this bill on September 22. The Senate is expected to pass it today. The White House has indicated that the President will ratify the bill. The IHS is not expecting any interruption to appropriations. They are expecting the CR to be in place by October 1, so their preparatory activities for the exception apportionment were "right on." They are pivoting focus from year-end closeout to exception apportionment authorization.

The IHS has allocated $10 million from the unforeseen needs allocation of CARES Act funds to perfect an interagency agreement (IAA) with the Strategic National Stockpile. They are also working on an IAA with the VA for surge bed capacity. This would be specifically for IHS operated facilities.

**IHS Tribal Consultations Update**

*Darrell LaRoche, Director, Office of Clinical and Preventative Services (OCPS), IHS*

*Benjamin Smith, Deputy Director for Intergovernmental Affairs, IHS*

On July 2, 2020, RADM Weahkee signed the Community Health Aide Program (CHAP) policy's nationalization. The program received $5 million in 2020. They sent out a letter announcing the consultation to begin on September 22 and close on November 23. The consultation is on the $5 million received for the CHAP. Further information regarding the CHAP can be found at <https://www.ihs.gov/chap/> if anyone is interested in learning more about the program.

Additionally, there will be four learning sessions that the IHS will be hosting on the CHAP. The first session will be held on October 1, 2020. The second one will be on October 2, the third will be on October 7, and the fourth and final session will be on October 8. These learning sessions will familiarize attendees with the policy, implementation, and other components of the program.

The Special Diabetes Program for Indians (SDPI) started the year thinking this was the last of the five-year cycle for the SDPI, then the COVID-19 pandemic began. They were able to get the approval for grant continuation for an additional year for existing grantees. The SDPI cycle has been shifted to next year so that the new five-year grant cycle will start next year. Also, a tribal consultation was held regarding the $30 million from offsets of grants. Some of the grantees could not spend carryover, and some program funding was unable to be used.

At the September 22 TLDC meeting, the TLDC provided their recommendations based on the information that had come in, and the programs are now developing a presentation to senior leadership.

A grant extension was also requested for behavioral health.

The notice of funding opportunity for the new grant cycle should be available around January of 2021.

A notice of funding opportunity for the Community Opioid Intervention Pilot Project will be published soon and will have a sixty (60) day application period. The funding was received in FYs 2019 and 2020.

**IHS – VA MOU**

The IHS and VA are still operating under the 2010 version of the agreed-upon MOU. They will commence with the second round of input gathering soon and distribute a draft MOU for input. There are also several other interagency agreements in the works. We are implementing a health care coordination advisory board – one of the first-ever tribal/federal advisory boards within the VA. The IHS has received requests from the TSGAC pertaining to whether the VA will consult regarding the agreements. They hope to have some announcements soon, and the IHS will certainly follow their consultation policy.

**Affordable Care Act - Legal Challenge**

*Geoff Strommer, Partner, Hobbs Straus Dean and Walker, LLP*

* In 2018, a court out of the eastern district of Texas ruled that the ACA in its entirety is unconstitutional.
* This was a significant concern for Indian Country because the Indian Health Care Improvement Act (IHCIA) is included in the ACA.
* A coalition of tribes filed a friend of the court brief, which argued that the court failed to apply the severability analysis.
* An oral argument was held in the fifth circuit.
* The United States changed its position regarding the issues – very unusual.
* In the lower court, the U.S. argued that the ACA is constitutional and then changed its position in the appeals court.
* A writ of certiorari was filed immediately filed following the ruling.
* The Supreme Court refused the writ.
* The court remanded the case back to Judge O'Conner to perform the severability analysis.
* In the application of the severability analysis, if a court determines a provision to be unconstitutional, the court still needs to review the other provisions and render a determination regarding the constitutionality of each provision.
* The IHCIA and other Indian provisions found within the ACA are perfect examples of provisions that should survive the severability analysis if the individual mandate is determined to be unconstitutional. The provision can operate without the individual mandate in place.

**COVID-19 Update**

*RADM Francis Frazier, Director, Office of Public Health Support, IHS*

The White House released the Warp Speed strategy for distribution of the COVID-19 vaccine, and the CDC released their interim playbook on September 16. IHS is working on a draft plan resembling the playbook. HHS sessions are ongoing. Two more sessions are scheduled for tomorrow for HHS region nine and ten. All the comments and questions will be captured and utilized to develop a FAQs document.

The IHS has developed a COVID-19 task force. They have six workgroups working on activities associated with the interim playbook. Also, they are working on a draft distribution plan that they are hoping to have posted to the IHS website by the end of the week. The comment period for consultation ends on October 9. It is important that programs review their existing vaccine distribution environment now to help evaluate and provide direction for distribution.

**Comments:**

We want to make sure that the vaccine allocation that we receive is based on patient population so that we are not underserved.

**Question:**

What resources are available to accommodate the necessary special handling of vaccines and distribution to remote communities? Additionally, are there resources to help with the tracing of the health effects on those who receive the vaccination?

**Answer:**

As far as submission of plans, the CDC requires that states submit plans by October 15. For federal entities, the plan is the same. There might be a little leeway, but it's right around the same time of mid-October. There is not a lot of time for formulating these plans.

As far as planning purposes for Alaska, what the Indian Health Service is doing to ensure supplies is purchasing additional supplies with this effort. The plan is to ship the vaccine directly from the producer to the site.

**Joint Discussion with IHS Principal Deputy Director**

**Comment:**

One of the things that have caused me a little concern is the technical assistance provided to Congress regarding McSally legislation for the Special Diabetes Program for Indians reauthorization. It is disconcerting when I see that grants are continuing to be part of that program. I worry about the fact that as we think about how we are providing technical assistance to Congress, we are assisting using the broadest principles that we have for fostering self-determination and self-governance. As we think about some of the things that we are exploring with Congress, we are ensuring that tribal voices are heard.

**RADM Response:**

I fully support, the IHS fully supports, and the administration fully supports self-governance and self-determination. I tried to make that clear in both written and oral testimony. We will watch for those opportunities, and I appreciate Ms. Branson’s advisement regarding the importance of IHS demonstrating leadership in that area for other agencies.

**Comment:**

We should be liberally and broadly interpreting that. I understand that OGC felt that because it was not initially an IHS program that there is no requirement to offer that funding through self-governance compact and contracts. I appreciate your commitment, and we want to ensure that we are living up to our words here. This is the Tribal Self-Governance Advisory Committee, and I would be remiss in not bringing up the issue.

The other thing that I think would be important is that if you know there will be technical assistance required or asked of you, you will look at our position or have a quick call with us.

**Comment:**

I want to discuss the 340B topic. My question to you is, what can you do to push HRSA forward to protect our interests? My tribe, for example, if it goes forward, will lose $1.5 million per year. It will be detrimental to our programs and is a disservice to our patients because they will have to pay a higher price for prescriptions.

**RADM Response:**

In addition to your advisement, we have been courtesy copied on letters from several different tribes voicing the same concern. Many of those letters are being addressed directly to the Secretary and the Inspector General's Office. I have proactively reached out to Mr. Engles. We know that many community health care centers are in the same predicament, with most of those entities not having in-house pharmacies.

I asked Jenn to send a link to a letter that the general counsel for HHS sent to Eli Lilly when they asked and probed about making some changes. I will follow up with Mr. Engles directly. I have an opportunity to see him two or three times per week.