**TSGAC VIRTUAL MEETING**

**FEBRUARY 17, 2020**

**Meeting Attendance:** A quorum was established for the meeting.

**Committee Business:** TSGAC members voted electronically to approve the October 2020 TSGAC meetings. TSGAC members also nominated and re-elected Chief Malerba to serve as the TSGAC Chair and Ron Allen to serve as the TSGAC Vice-Chair.

**Office of Tribal Self-Governance Update**

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

Director Cooper provided an update on OTSG activities and priorities. The ISDEAA Title V Tribal Self-Governance Program is celebrating its twentieth year as a permanent program. There are now over 375 tribes participating in the program. The OTSG has been involved with perfecting 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, they have transferred $3.29 billion to tribes through Title V agreements.

The OTSG continues to support ISDEAA Title V negotiations and lead negotiators actively; however, negotiations have been limited to virtual platforms due to the pandemic. They are currently two IHS areas with pending area lead negotiator (ALN) designations.

Director Cooper highlighted the OTSG's priorities for FY 2021. Their priorities include; (1) continuing to work on updating the Programs, Services, Functions, and Activities (PSFA) Manual; (2) supporting consultation on IHS consultation policy; (3) submitting reports to Congress on the administration of the tribal self-governance program; and (4) recruiting for two OTSG vacancies. The two OTSG vacancies consist of one admin. officer (G.S. 9-11), and one staff analyst (GS 4-8).

**Indian Health Service Budget Update**

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

The FY 2021 budget includes a total discretionary budget authority of $6.2 billion, which is $189 million above the enacted FY 2020 funding level. The funding is allocated into four accounts as follows:

* Services: $4.3 billion
* Facilities: $918 million
* Contract Support Costs: $916 million
  + Remains an indefinite discretionary appropriation for fully funding CSC
* Payments for Tribal Leases: $101 million
  + A new indefinite discretionary appropriation for fully funding the cost of section 105(l) leases.

The funding includes $18 million for staffing and operating costs of newly-constructed health care facilities located in Alaska. This funding also includes the reallocation of funds due to construction project delays for the Ysleta Del Sur Health Center.

Additional FY 2021 budget highlights:

* Retains two years of availability for the majority of Services funds
  + No changes to funds available until expended (no-year funds)
* The $500,000 spending cap on the Demolition Fund has been removed.
* Mandatory Funds: Special Diabetes Program for Indians
  + Extended through FY 2023, at $150 million per year
* The Consolidated Appropriations Act of 2021 also included $1 billion in supplemental appropriations related to COVID-19.

The FY 2022 budget will be a "transition" budget meaning that the incoming Administration typically releases the President's budget in two parts consisting of the budget blueprint ("skinny" budget) and the full President's budget. The Budget Blueprint is usually published in March or April and typically outlines:

* Total spending for the federal government,
* Topline budget totals for Federal Departments and Agencies, and
* The highest-profile policy proposals in each Department.

Following the Budget Blueprint release, the Administration finalizes information associated with the release of the President's Budget – typically published in May.

FY 2023 tribal budget formulation is underway. The recent work session yielded the following key outcomes:

* FY 2023 Budget Total: $48 billion for funding
* Section 105(l) and CSC requested as Mandatory Funding
* Advance Appropriations
* Exemption from Sequestration and Rescissions
* Permanently reauthorize SDPI at $250 million per year, indexed to inflation.
  + Make SDPI available for self-determination contracts and self-governance compacts, and allow Tribes who have not previously revised SDPI to access funds.
* Fully fund critical infrastructure investments, like HER modernization to include tribal facilities, health care facilities construction, sanitation facilities construction, and demonstration projects.
  + Funds should be provided outside discretionary budget caps to protect funding for health services.
* Provide recurring funding to support public health infrastructure
* Protect, preserve and expand health care services in Indian Country through the Medicare and Medicaid program, as well as the Indian Health Care Improvement Act (IHCIA)
* Provide dedicated funding to implement all authorities and provisions of the IHCIA, which were passed almost a decade ago.
* Discuss how to incorporate OMB into the Tribal Budget Formulation process.

COVID-19 Funding

The IHS received $2.9 billion in COVID-19 resources either through direct appropriations or through HHS.

**Affordable Care Act and Indian Health Care Improvement Act Update**

Cyndi Ferguson, Self-Governance Specialist/Policy Analyst, SENSE Incorporated

Ms. Ferguson provided an update on project activities to date. The team has surveyed self-governance Tribes to gather input on ACA/IHCIA priorities. They also developed a work plan for 2020-2021 with recommendations. They plan on hosting webinars, developing briefing papers, broadcasting notices, and conducting policy analysis. The team recently held an ACA/IHCIA webinar on January 13. Their webinars are generating interest throughout Indian Country as the last two webinars held had over 325 participants.

**HHS Health Information Technology Modernization Project**

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

The project management office (PMO) is still being finalized. The IHS has partnered with the MITRE Federally Funded Research and Development Center (FFRDC) to support ongoing governance, tribal stakeholder engagement, and acquisition planning. They also have started an interoperability pilot. The IHS Four Directions HUB will host interoperability and legacy data currently piloted for eHealth Exchange connectivity to the VA, DoD, and Office of the National Coordination for Health IT (ONC) certified commercial EHRs.

The Federal Electronic Health Record Modernization (FERHM) Program was set up to foster collaboration between the VA and DoD. IHS has developed a partnership with the FERHM. The IHS engages in routine conversations with FERHM staff and participates in some of the DoD/VA conversations on a monthly basis.

Lastly, the IHS hosted a listening session on December 17 and January 14 regarding the Modernization Approach.

Current Funding for Modernization Efforts:

* FY 2020 appropriations provided $8 million to begin the project management office.
* The CARES Act of 2020 provided $65 million to accelerate the project based on the FY 2021 request.
* FY 2021 appropriations provided $34.5 million for the Health IT Modernization project.

**Questions:**

Can IHS host a separate webinar with TSGAC to focus on this project and allow for more substantive and lengthy engagement on this topic?

When does the agency intend to announce the decision and the outcome of the recent tribal consultation?

**Answer:**

We have received feedback indicating that we need to host a summit to make sure we cover the breadth and depth of the topic. We are looking for the right time. We are looking to finalize the decision around the approach in the next few weeks. We anticipate that happening within the next 90 days.

**Question:**

Is RPMS going to meet the CERT 2015 NIP requirements? We may be at the limit of our five-year hardship exemption.

**Answer:**

We released the 2015 certified addition of the RPMS in the fall; however, there is a requirement around recording medication reconciliation that I think we are still struggling to meet from a software or service perspective. So that is an outstanding issue, and there is a risk associated with that.

**Question:**

Will IHS submit a legislative request to add more hardship exemption years as we already reached our five-year limit?

**Answer:**

We have been in discussion with CMS and OMC, with CMS being where I think that discussion needs to happen. That's a national standard, and I think we are open to the feedback here, and we will take that back for consideration.

**Questions:**

Does the agency expect to make specific requests in the FY 2022 and 2023 appropriations process to support the agency's decision? And what time would you attempt to budget for the full amount you will need for this project?

IHS needs to consult with Tribes on the divisibility and contractability of any new funding committed to this project. Because a unilateral decision that funding is not available for Tribes who currently operate systems or who intend to move from RPMS due to lack of interoperability doesn't support the tenants and statutory requirements of Title V. What would the status of this be?

**Answer:**

Under the previous Administration, the approach had been to request small dollar amounts as we were ramping up into this project. We do not have a lot of insight right now as to how the new Administration plans to manage those funding requests. There has been some talk that we have seen in the media about the potential for an additional infrastructure or economic stimulus package after this $1.9 trillion package is enacted. So, there could be an opportunity through that vehicle. There could also be opportunities through the President's budget process.

**COVID-19 Update**

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

The IHS personnel started to participate in pre-planning activities in August of 2020. In September 2020, the IHS established the IHS Vaccine Task Force, the CDC Playbook was released, and HHS held a consultation on COVID-19 vaccination for Indian Country. In October 2020, the IHS distributed its pre-planning tool to areas. Additionally, the IHS held a consultation and confer session regarding the draft plan. In November of 2020, IHS submitted the plan to the CDC. IHS commenced with vaccination in December 2020. In February 2021, the IHS announced that there was a supplemental vaccine distribution for ITUs. IHS continues to monitor vaccine updates.

The IHS COVID-19 task force remains active. The six workgroups continue working on activities associated with pre-planning, vaccine distribution efforts, providing administrative support. They are providing updates, guidance across the system and coordinating logistic issues.

The task force is currently engaged in updating the COVID-19 vaccination plan. They are aligning the plan with the Biden Administration's national strategy. The communication team is working on a public education campaign coordinated with the Department of Health and Human Services.

The data management team is providing ongoing technical support to ITUs across the system. They are reporting data within twenty-four hours to the CDC data reporting system. Data reporting is very important for tracking purposes.

As of February 16, the IHS has provided vaccine to 340 IHS direct tribally operated health programs and urban Indian organizations. 697,025 doses have been received. 385,284 doses have been administered. The goal is to have at least 400,000 vaccines administered by the end of February.

**Comments:**

One of the barriers that Tribes have experienced is that they are only receiving around a weeks' notice if they are receiving any vaccine doses. I wonder how we can get more vaccines out into Indian Country because the Tribes are doing a commendable job of administering vaccinations once they receive the doses. If they received earlier notification regarding when vaccine doses are going to be received, they could improve their efforts to distribute the vaccinations.

**Response:**

We have been working closely with the CDCthrough the tribal support unit and the vaccine response operation. They are providing us with three-week projections now. Last week we sent that out to the area points of contact. What that covers is February 8 through February 12.

**Question:**

Is there any difficulty with including a simple lag time with IHS receiving vaccine information from Tribes that are not using RPMS?

**Answer:**

I will have to take that back to specifically research it. But I am not aware of any lag time issues specific to programs that are not using RPMS. That data is still able to be exported to IHS and on to CDC. In general, we see problems with the entry of lot numbers or dates – just basic types of errors.

**Open Discussion with IHS Acting Director**

*Marilynn “Lynn” Malerba, Chief, Mohegan Tribe, and Chairwoman, IHS TSGAC*

*Elizabeth A. Fowler, Acting Director, IHS*

*Elizabeth Carr, Senior Advisor to the Director*

**Comment:**

The issue that I would like to raise now is about the behavioral health programs that have been made in the form of grants, and it was around $50 million. The agency held large rounds of consultation, then sent those responses back to the national tribal advisory committee behavioral health for IHS, then conducted another round of consultation - under which many of us members of this committee submitted comments. To my knowledge, many of those comments were consistent in that there was widespread support for the application of self-determination and self-governance to those funds as they were not required to be grants. Unfortunately, the agency decided to disagree with the tribal input and for those funds to remain available through grants. From a Tribe that is successful at acquiring those grants, we are still highly supportive of the application of self-determination/self-governance to those funds. The new Administration allows us to look at things from a fresh perspective. I would make a recommendation, if the committee is supportive, to revisit that decision. I don't think new tribal consultation has to be had. It's simply reviewing the consultation that the agency had and deciding in accordance with that.

**Response:**

I am aware of this issue as it relates to grants in general for other programs and not just behavioral health. I would say that I think it is something that the agency can take back and reconsider, but I think there are some real concerns that we need to address that, unfortunately, are easily managed through a formal grant process. I think it's worth a conversation, and I think we would need to work with you, the committee, to review what the specific concerns are. I will commit to revisiting and perhaps forming a group that we can work through what those concerns are.

**Comment/Questions:**

We formed a sub-workgroup regarding 105(l) leases under the budget formulation workgroup to try to come up with a method of forecasting. We did meet a couple of times. I recollect that we did not finish the process. We were developing a workgroup similar to what we did for contract support costs.

Where does the agency stand on the status of the completion go the first workgroup and the formation of the second workgroup?

In the Indian Healthcare Improvement Fund Workgroup, we were scheduled to have a final report to the director by July 2019 – if I remember correctly. That never did happen. About this time last year, the report was revitalized, and we looked at it a little bit, but nothing has ever been finalized or sent to the director for a final decision. I was just wondering if I could have an update on that.

**Response:**

Let me start with your last question first. This came up not too long ago because it occurred to me that we had developed a draft report and sent it out for comments. They are in the process of being collated, but the work was overtaken by events. I do realize that it is very important to complete that work. I am committed to finishing that this spring.

The budget formulation workgroup for 105(l) leases – we do actually plan to reconvene that workgroup this spring. Additional information is forthcoming.

The question about your policy workgroup – I think that it aligns very well with the directive that we received in the report language for the FY 2021 appropriation omnibus bill. So we are currently seeking some discussions with the Department of Interior to determine how they want to proceed on that, but we do anticipate initiating some work this spring on the policy piece of that.

**Question:**

We need IHS to continue to request minority Aids funding in addition to the $5 million for HIV and hepatitis C. Can you do that?

**Response:**

We will certainly be in touch with the department to make sure that we are able to continue to request dollars and explain why the additional resources are still needed even though we now have a $5 million appropriation.

**Question:**

We want to transition focus to the 340B drug program. We know that there are multiple lawsuits pertaining to the 340B drug program, and the drug companies have actually sued HHS for the OGC opinion stating that the drug companies are required to provide discounts to providers that use contract pharmacies. But, right now, while the drug companies and federal agencies are attempting to settle this in court, it's still doing tremendous damage to tribal health centers and limiting our patients' ability to access the drugs that they need. Acting Director Fowler, what can your agency do about this?

**Response:**

I know that we have committed to reaching out to HRSA and advocating on the Tribe's behalf, and I think with the change in leadership that it got a little bit lost in the shuffle. I am aware the RADM Weahkee had initiated some conversation there. We are concerned about the impact on Tribes. I am committed to initiating contact with HRSA with the new leadership there to raise concerns and advocate on this issue.

**Question:**

When will the consultation process will begin on PL 116-311, which calls for the Veteran's Affairs Administration to reimburse Indian Health Service and tribally operated clinics for purchased and referred care services for our veterans?

**Response:**

I heard that loud and clear. I realize that with so many Tribes operating their own programs that have them at the table right from the beginning is extremely important, so we will continue to raise that to the VA in an effort to ensure that that is considered as part of that discussion. At this point, we are still in the very beginning stages of determining how to proceed with the new authority.