

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE
c/o Self-Governance Communication and Education Tribal Consortium
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Sent electronically via Denise.Turk@ihs.gov

January 12, 2022

Ms. Elizabeth Fowler
Acting Deputy Director
Indian Health Service
5600 Fishers Lane
Rockville, MD 20857

RE: Summary of Issues from the Tribal Self-Governance Advisory Committee (TSGAC) Meeting November 9, 2021

Dear Acting Deputy Director Fowler:

On behalf of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC), I write to thank you for taking part in our tri-annual meeting held on November 9, 2021. The TSGAC Tribal leadership appreciates your engagement on the discussion related to mandatory funding for the IHS. The following is a summary of the main issues and actions discussed during our meeting:

1. TSGAC's input on the Mandatory Proposal. TSGAC believes there is a need to include automatic inflators into the proposed legislation. During our discussion with the Office of Management and Budget (OMB), TSGAC expressed a need to hire a health economist who can work with the IHS Tribal Federal Budget Workgroup (Budget Workgroup) to collaborate on what funding levels should look like for the IHS. The Budget Workgroup came up with a good starting point to determine what full funding could look like. The health economist can work with the Budget Workgroup to determine what the baseline should be for the IHS and determine the growth rate of funding over a period of time. We know that current level of spending is less than 50% of what it should be. TSGAC looks forward to working with the IHS in pursuit of mandatory funding.
2. Self-Governance Expansion into US Department of Health and Human Services (HHS). Since 2013, Tribal Nations and Tribal Organizations have prioritized the expansion of Self-Governance at HHS in their communications to Congress and with the Department. Recently, the Biden Administration and key members of Congress have expressed interest in revitalizing the expansion effort. We request IHS assist in this effort by educating sister agencies within HHS on Self-Governance and to address any concerns expressed during internal communications with HHS and/or sister agency leadership. The Self-Governance Communication and Education Tribal Consortium (SGCETC) posted numerous materials on its website to help educate and inform about this initiative. That webpage can be accessed here <https://www.tribalsefgov.org/selfgov-expansion-hhs/>.
3. IHS Consultation Policy. An issue raised in our discussion was the need for more time for the IHS Consultation Policy Workgroup to conduct a comprehensive review of the consultation policy. The purpose of this request was to allow the three subgroups to enough time to review and fully understand the recommendations of their assigned

sections of the consultation policy. The subgroups will then need to come together to ensure that recommendations do not conflict with other sections of the policy as well as comply with the HHS Consultation Policy. TSGAC appreciates the IHS extension to allow the Workgroup to complete this important work.

4. Behavioral Health Funding. As mentioned during our discussion, TSGAC believes that the decision to distribute nearly \$50 million in behavioral health funds through grant mechanisms should be reconsidered. Rather than distributing the funds through burdensome grant mechanisms, the funds should be disbursed through Self-Governance and Self-Determination Agreements.

During our discussion, the IHS provided its rationale for the decision to release behavioral health funding through the granting mechanism. The IHS stated two major concerns it had related to distributing behavioral health funding through Self-Governance agreements: 1) the amount of funding available; and, 2) the need for data to support the purpose of the funds. The IHS also identified other issues which included no formal Programs, Services, Functions, or Activities (or portions thereof) (PSFAs) that went along with the funds when they were first appropriated. IHS expressed further concerns about the timing of the funds (i.e., funding availability, when funding was going to expire, the timing of the grant cycle).

TSGAC does not agree that these concerns should prevent distribution through Self-Governance agreements. We understand that there is not enough funding. However, even if the funding allocations are kept the same, we ask that they be distributed through Self-Governance and Self-Determination Agreements. This allows Tribes to receive Contract Support Costs to cover administrative costs. Tribes have done and continue to do the work needed to improve the physical, mental, social, and spiritual health of their communities. They do this even if they are not funded or are only partially funded. It is their right to do what is needed to provide for the health, safety, and welfare of their citizens.

TSGAC agrees with the IHS when it says it cannot require Tribal Nations to provide data. However, Tribal governments with Self-Governance agreements routinely collect performance data and do so successfully. Tribal Nations are generally willing to provide this data when they fully understand the use of the data, who has access to it, and if that data has the potential to result in additional program funding from appropriators. Many Tribes are addressing issues such as data sovereignty and the proper uses of data. We would recommend that when programs could be more effectively budgeted by using more accurate data that there be data sharing agreements between IHS and the Tribe with mutually agreed upon terms defining the uses of the data and how that data will be protected. Identifying data collection as a concern and using it as a rationale to distribute funding through the granting mechanism presents a false idea of the capabilities and willingness of Tribal governments to work collaboratively with IHS to improve the programs the serve our nations and citizens.

In addition, Tribal governments follow appropriation laws and use earmarked funding for specific reasons when required by Congress. Although Tribes prefer the flexibility to reprogram and reallocate funds to address Tribal priorities and unique challenges that face each of our communities, we understand that there are times when Congress allocates funding for specific purposes and our Nations adhere to those requirements.

The TSGAC believes more discussion is needed around this topic and looks forward to working with the IHS to address these concerns before future funding decisions are made.

5. IHS Electronic Health Record (EHR) Modernization Project. TSGAC requests an update on the status of Tribal input in response to the August 9, 2021 Dear Tribal Leader Letter. Specifically, TSGAC has been requesting Tribal representation on the IHS Committees implementing these updates. Any changes or improvements made to IHS infrastructure will affect Tribally operated facilities. As such, it is critically important for Tribal leaders to understand the options and the recommendations being proposed by the Office of Information Technology.

In closing, we again express our appreciation to IHS for its dedication and participation in TSGAC meetings and we look forward to further discussions on these priorities. In the meantime, should you have any questions or wish to discuss further, please do not hesitate to contact me at (860) 862-6192; or via email: lmalerba@moheganmail.com. Thank you.

Sincerely,



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

cc: Jennifer Cooper, Director, Office of Tribal Self-Governance
Jay Spaan, Executive Director, Self-Governance Communication and Education
TSGAC Members and Technical Workgroup