



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

July 28, 2022

W. Ron Allen  
Tribal Chairman & CEO  
Jamestown S'Klallam Tribe  
Chairman of the Board  
Self-Governance Communication & Education Tribal Consortium  
314 West 14th Place  
Tulsa, OK 74119

Dear Chairman Allen:

I am writing in response to your letter that shares a proposal and requests support for efforts to expand Tribal Self-Governance within the U.S. Department of Health and Human Services (HHS or the Department). I appreciate the background information you provided, including a copy of the draft legislation that Self-Governance Tribes proposed be advanced in Congress.

I want to acknowledge and congratulate all the Self-Governance Tribes in the delivery of healthcare to your people. I had the opportunity to visit the Cherokee Nation Health Center and was very impressed with their operations and delivery of healthcare. I know that this is just one example of the many Self-Governance success stories out there. Thank you to all the Self-Governance Tribes for their efforts in making Indian Country healthier.

President Biden does acknowledge and support Self-Governance as a means for tribes to exercise their sovereign rights to govern. This Administration has also shown a commitment to find other means of being flexible with how we partner with you and deliver services to your people. A prime example is the work that the HHS is doing in partnership with other federal agencies and tribes to develop a more robust, flexible Memorandum of Agreement for the 477 programs. I look forward to signing the final Memorandum of Agreement soon.

As a Department, we conducted a review of the draft legislation that is being proposed for the expansion of Tribal Self-Governance outside of the Indian Health Services at HHS. We have not finalized a Departmental position on whether we support the current draft legislation. In our review, HHS has identified several areas that require further consideration. We provide this non-exhaustive list of considerations to demonstrate HHS's commitment to a thorough and thoughtful review of a proposal that would impact programs across the Department.

- The draft legislation proposes a shift from the current grant mechanism. The Department is reviewing the funding equity of the proposed legislation, and how these changes would affect existing grantees. The draft legislation proposes statutory language specifying that the amount provided must be "adequate to permit the successful implementation of the demonstration project." This language leaves a great deal of uncertainty regarding what funding is required to meet that standard or how that funding would be distributed under statutory formulas and program requirements.

- Departmental analysis on the extent of expanding Tribal Self-Governance to programs across HHS would necessitate substantial additional resources. For instance, additional funding and Indian Self-Determination and Education Assistance Act (ISDEAA)-trained staff would be necessary to transition grant programs to ISDEAA agreements, as well as for tribal set-asides. HHS must also consider costs associated with statutory requirements of the ISDEAA such as Section 105(l) lease costs and contract support costs, plus potential associated litigation costs.
- The draft legislation would enable tribes to redesign or consolidate eligible programs and portions of programs as well as to reallocate or redirect funds for included programs. Due to the broad scope of HHS programs eligible for inclusion, the Department is reviewing the different statutory authorities and appropriations structures involved, as well as considering how to evaluate program effectiveness since the draft legislation contains minimal reporting requirements.

As I am sure you know, one of our biggest concerns for supporting expansion is future contract support costs and future litigation costs. We do look forward to working with tribes, Congress, and other interested parties as we consider this complex issue.

Sincerely,

Xavier Becerra