

IHS Self-Governance Advisory Committee (TSGAC)

Meeting Summary

March 8 - 9, 2023

Embassy Suites

900 10th Street NW
Washington, D.C., 20001

WEDNESDAY

Attendance:

A quorum was established for the TSGAC meeting.

Committee Business:

- The November 2022 meeting summary/minutes were approved.
- The consideration of nominations for Alaska, Great Plains, Pheonix, and Albuquerque representatives was deferred until Thursday, March 9, 2023.
- There is a vacancy on the ISAAC, and the TSGAC seeks volunteers to fill the seat.

Office of Tribal Self-Governance (OTSG) Update

Jennifer Cooper, Director, OTSG, IHS

Carla Mayo, Deputy Director, OTSG, IHS

Director Cooper began the OTSG update by welcoming two new Tribes (Arapaho and Ysleta del Sur Pueblo) to the IHS self-governance program. He highlighted that in FY 1994, there were 14 funding agreements, and today there are 139 funding agreements throughout the country. The IHS Tribal Self-Governance Program currently participates in 112 compacts (87 FY and 52 calendar years), manages \$2.7 billion in funds, and has program participation by 380 federally recognized Tribes.

The OTSG has been focused on developing resources to assist Tribes with participation in self-governance. Efforts include the release of an updated negotiation handbook and OTSG brochure, which can be located at <https://www.ihs.gov/SelfGovernance/resources/>.

OSTSG areas of focus for the next quarter include:

- FY 23 Self-Governance Planning and Negotiation Cooperative Agreements
- Process improvements
 - Tribal Delegation Meetings
- Tribal Consultation Policy
- ISDEAA Training Workgroup

Committee vacancies include:

- Alaska – 1 vacancy
- Albuquerque – 2 vacancies
- Billings – 1 vacancy
- Navajo – 2 vacancies
- Pheonix – 1 vacancy

The nomination must be made by an elected official or approved official from a federally recognized Tribe and submitted to your IHS Area Director.

To improve communications within the IHS with Tribes, Urban Indian Organizations, and other stakeholders and within the general public, the IHS will expand ISDEAA training opportunities.

Training will consist of the following:

- Training for all HIS Staff on ISDEAA
- Tribal Leader Orientation
- HHS Operating Divisions
- Negotiator and Negotiation teams

Comment: An attendee mentioned concerns communicated by Tribes during the HHS consultation policy update regarding HHS' recognition of the Tribal Epidemiology Centers (TECs) as a consultation group who are eligible to participate in consultation activities. They were given similar weight to tribal governments, and there were some concerns regarding consultation within the CDC and their use of comments provided by TECs as having greater weight than tribal nations. IHS must align its consultation policy with HHS to remember that consultation is meant to be between governments.

Deputy Director of OTSG Carla Mayo provided an overview of the OTSG funds management system. The system is a database that the OTSG uses to record the initial funding agreement amounts and any funds transferred to a Tribe throughout the year. The OTSG is currently in the process of updating the system. The update will provide further automation of the process. The update will provide more accurate data reporting and reduce the chances of mistakes regarding funding amounts.

Deputy Director Mayo encourages Tribes to contact the area financial analyst if they discover any errors in existing documents.

IHS Work Plan Update

Jennifer Cooper, Director, OTSG, IHS

Director Tso released an announcement on January 15, 2023, reaffirming IHS's commitment to Tribes and Urban Indian Organizations by introducing the 2023 Agency Work Plan. The Indian Health Service 2023 Agency Work Plan can be located at <https://www.IHS.gov/quality/work-plan-summary/>.

The work plan is part of ongoing IHS efforts to maintain accountability, improve the process, and serve our relatives better. Priority categories included in the work plan include:

- Patient Safety
- Human Capital
- Operational
- Financial
- Compliance/Regulatory
- Strategic

Please visit the link above for more detailed information regarding the work plan.

Comment: A TSGAC member requested collaboration in future training efforts.

Question: An attendee asked where the agency is with the process of updating the PSFA manual.

Answer: The update continues to be a priority for the IHS, and they have started initial work on the plan. Once the IHS has a completed draft, they will work with a small workgroup to review the manual before it is released to the public.

Transitioning Out of the Public Health Emergency

Dr. Loretta Christensen, Chief Medical Officer, IHS

Dr. Christensen provided an overview of how the transition from the public health emergency (PHE) will impact the cost of services.

Medicare:

- Access to over-the-counter COVID-19 tests will end May 11 with the PHE end.
- Continued access to vaccinations with no cost sharing
- Testing is covered for PCR if ordered by a provider.
- Treatments with Paxlovid and Lagevrio will continue with cost-sharing and deductibles.

Medicaid/CHIP

- States must provide vaccination testing and treatments until September 30, 2024.
- Coverage may continue past that date in certain states.

Private Insurance

- In-network will continue to cover vaccines.
- Testing coverage for PCR and Antigen testing will end on May 11, 2023.
- Treatments will be covered as per plan.

Telehealth Services

The Consolidated Appropriations Act of 2023 extended the flexibilities through December 31, 2024.

Medicare

- People with Medicare can access telehealth services in any geographic area in the United States, rather than only those in rural areas.
- People with Medicare can stay in their homes for telehealth visits that Medicare pays for rather than traveling to a healthcare facility.
- Certain telehealth visits can be delivered audio-only (such as by telephone) if someone cannot use audio and video (such as a smartphone or computer).

Medicaid and Chip

- Flexibilities are not tied to the end of the PHE.
- CMS encourages states to adopt and expand telehealth coverage.
- A toolkit has been released and can be located at <https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit-supplement1.pdf>.
- Telephonic telehealth sessions will be maintained for mental health and substance abuse prescribing, such as suboxone.

Blanket Waivers

- no three-day inpatient stay for Medicare coverage of a skilled nursing facility
- limited to CAH inpatient beds to 25 and stay to be less than 96 hours
- waiver to allow acute care patients to be housed in other facilities
- These waivers cannot continue with legislative changes.

<https://www.cms.gov/coronavirus-waivers>

COVID-19 Vaccine Supply

- An ample supply exists for monovalent and bivalent vaccines.
- Order when needed but keep inventory lean.
 - Exceptions
 - Jansen/J&J is no longer available for order
 - Bivalent Peds <5/<6 (Pfizer and Moderna)

What action is needed?

- States could begin to send renewal letters in February. Beginning April 1, 2023, in some states, individuals will lose their coverage if they are no longer eligible or fail to respond to a renewal notice.
- To avoid an interruption in coverage, Medicaid recipients should ensure their state Medicaid or CHIP program has up-to-date contact information.
- Medicaid recipients should also seek a letter from their states about completing a renewal form.
- Each State will have an Unwinding Plan and timeline for completing renewals.
- IHS, Tribal, and Urban Indian Health Programs should explore options for data sharing with State Medicaid agencies.

What assistance will patients need?

- Ensure adequate capacity and training for enrollment assisters.
- Help Medicaid-eligible individuals complete and submit renewal forms to complete the reinstatement process.
- Help AI/Ans ineligible for Medicaid apply for Marketplace or other coverage.
- Plan for mail delays due to the unique nature of receiving mail in Indian Country.

ACA Project Update

***Cyndi Ferguson, Self-Governance Specialist, SENSE Incorporated
Elliot Milhollin, Partner, Hobbs, Straus, Dean, and Walker***

Recent Project Update

Cyndi Ferguson provided an update on recent project developments. The ACA/IHCIA Workplan for 2023 has been finalized. The project team coordinated with TTAG Policy Subcommittee on updates to the Medicare and Medicaid top priorities and issues. The team developed the TSGAC briefing paper on issues related to the end of the public health emergency. The team has also updated and reorganized the AC/IHCIA information on the self-governance website.

Upcoming Project Activities

Webinars are being planned to address tribal best practices in tribal sponsorship and implementation of CHAP. The project team will continue to work on updated TSGAC issue briefs

regarding the summary of benefits and coverage, pharmacy reimbursement issues, and review of recently approved waivers on transitional housing being provided under Medicaid.

For further information, please visit <https://www.tribalsef.gov.org/health-reform/>

Medicaid Unwinding

Mr. Milhollin updated the group regarding Medicaid unwinding following the public health emergency. CMS issued a state health official letter (23-002) on January 27, 2023. On page 12 of said letter, CMS encourages States to share data with Tribes.

Mr. Milhollin provided an overview of the tribal technical workgroup priorities. The priorities are divided into administrative and legislative strategies. On the Medicaid side, the group is asking CMS to fix the four walls issue where you cannot bill for clinical services outside your facility's four physical walls. On the legislative side, the group is asking Congress to authorize all Indian healthcare providers to bill Medicaid for all optional services and specified services in the Indian Health Care Improvement Act (IHCA) regardless of whether the State has authorized that for anyone else.

Regarding Medicare, the CMS should authorize the IHS encounter rate to be paid to any clinic that asks to be paid. The Medicare Advantage plans should deem Indian healthcare providers as "in-network" even if they are not. On the legislative side, in Medicaid, there are no premiums or cost sharing for American Indians or Alaska Natives; the group is asking for the same thing for Medicare. They want Medicare to pay 100% instead of 80% to Indian healthcare providers.

SGCETC Update

Jay Spaan, Executive Director, SGCETC

For Our People

For Our People, Stories of Tribal Self-Governance & Sovereignty is a docu-series that SGCETC created in partnership with Fire Thief Productions. Season one has been completed and consists of three episodes. All episodes are available on the SGCETC website at <https://www.tribalsef.gov.org> under the *For Our People* tab. *Four Our People* seeks to change the narrative by illuminating the success of tribal nations & increasing knowledge about self-governance authority.

Four Our People has had thousands of viewers over the past year on the SGCETC website. First Nations Experience (FNX) has expressed interest in carrying *Four Our People*. FNX has a potential reach of 75.5 million households nationwide and is carried by 34 stations in 29 states.

FNX indicated that more stations would show the docuseries if we could provide 4 or 5 episodes annually. SGCETC has the capacity and stories to create at least four episodes annually, but additional funds are needed.

Additionally, SGCETC participated in creating a motion-capture animation designed to educate Tribes on 105(l) leases. The animation can also be viewed at the SGCETC website by clicking the "Resources" tab and then clicking the "105(l)" tab.

Annual Conference

The 2023 Tribal Self-Governance Conference will be held from June 26 to 29 in Tulsa, OK, at the River Spirit Resort Casino – registration is open.

THURSDAY

Discussion with Substance Abuse and Mental Health Services Administration (SAMHSA)

Captain Karen "Kari" Hearod, SAMHSA

Captain Hearod provided an update on a new program that was authorized but not appropriated – Behavioral Health and Substance Abuse Disorder Resources for Native Americans. The program is authorized so that the Secretary of HHS acts through the Assistant Secretary of HHS for mental health and substance abuse in consultation with the Director of the IHS. The statute authorizes \$80 million for the program; however, the FY 203 omnibus did not provide any funding. The program aims to provide services for preventing, treating, and recovering mental health and substance abuse disorders.

The program authorizes SAMHSA to utilize compacts and contracts for funding under ISDEAA if appropriate.

Question: What do you see as your process going forward? Are you planning to conduct consultations?

Answer: Yes, under the legislation, programs are directed to consult with federally recognized Tribes, to confer with urban Indian programs, and to have discussions with the Native Hawaiian health organizations.

Behavioral Health Discussion

SAMHSA & IHS Representatives

Question: What is SAMHSA doing to address behavioral health issues in Native communities?

Answer: The Office of Tribal Affairs & Policy has partnered with Cynthia LaCounte and ACL to support Title VI directors. We have had a partnership to provide meetings to them to provide support and give them a place to share.

Additionally, SAMHSA has developed several resources to support those out in the field who are supporting elders. We can share those resources with the committee.

Strategic Planning Update/Discussion

***Candice Skenandore, Director of Self-Governance and Grants, Mohegan Tribe
Jay Spaan, Executive Director, SGCETC***

Director Spaan gave the group an overview of the results from focus groups conducted with TSGAC to identify priorities.

Priority areas include:

- Priority Area 1 – Timely Distribution of Funds, Information, and Responses
- Priority Area 2 – Use of Self-Governance Mechanisms Over Grant Mechanisms
- Priority Area 3 – Support and Promotion of Self-Governance Authority
- Priority Area 4 – TSGAC Operations
- Priority Area 5 – Contract Support Costs
- Priority Area 6 – Consistency Across Areas
- Priority Area 7 – Recruitment and Retention

Director Skenandore detailed action items for the timely distribution of funds, information, and responses. Action items for Goal 1 of Priority Area 1 include:

- Gather information to determine the timeliness of the distribution of funds.
- Analyze data gathered from the IHS distribution of funds report.
- Request that the IHS annually report on its ability to distribute funds in compliance with the agreed-upon dates in funding agreements.
- In 2024, TSGAC and IHS will evaluate the impacts of Advanced Appropriations authority to identify the impact, if any, on the timely distribution of funds.

Action items for Goal 2 include:

- Identify concerns related to the timely dissemination of information and responses.
- Analyze responses received from tribal officials.
- TSGAC and IHS will identify opportunities to continuously evaluate the timeliness of information sharing and responses and implementation of recommendations by the workgroup.

For more information regarding each Priority Area, please contact SGCETC to access the overall strategic plan.

Health IT Modernization

Mitchell Thornburgh, Chief Information Officer and Director, Office of IT, IHS

Director Thornburgh provided an update regarding the multi-year effort to modernize the IHS's Health Information Technology (IT) system. The main focus is the replacement of the Resource and Patient Management System (RPMS) with a commercial electronic health record (EHR) solution that meets or exceeds existing capabilities.

Funding for the program includes:

- FY2022 appropriations of \$144.5M in recurring funding – an increase of \$110M from FY2021.
- FY2023 omnibus appropriation increased recurring EHR modernization to \$217.5M.
- The advance appropriation for FY2024 explicitly excludes the use of funds for EHR modernization.
- one-time funding of \$65M provided by the CARES Act
- ARPA provided \$70M in one-time funding in FY2021.
- IHS distributed \$141M from the CARES Act and ARPA to federal, tribal, and urban sites in FY2021 for telehealth and technology needs.

Recent Activities

More than 680 system users registered for vendor product demonstrations which concluded in February. The IHS will discuss with staff and partners to improve modernization communications. A DTLL/DUIOLL published announcing a series of four tribal consultations and urban confer sessions in CY2023 relating to health information technology modernization – the next session is on March 8. The IHS continued one-on-one engagement with respective tribes, urban Indian organizations, councils, and committees.

Sanitation Facilities Construction (SFC)

James Ludington, Director, Office of Environmental Health & Engineering, IHS
Mark Calkins, Director, Division of SFC, IHS

Director Calkins provided a progress report on implementing the Infrastructure Investment and Jobs Act (IIJA). The IIJA provides \$700,000,000 per year from 2022 to 2026 for a total of \$3.5B for sanitation facilities construction projects. In FY2022, IIJA funded 456 projects, with 27% implemented under Title V construction project agreements. Title V funded projects included \$227.5M in funding, or 36% of all FY2022 IIJA allocated project funding.

The IHS launched an interactive website to provide information on the Division of Sanitation Facilities Construction projects funded by IIJA. The website can be visited at <https://dsfc-ihs-gis.hub.arcgis.com>.

Director Ludington delivered an overview of the SFC reprogrammed funding process. Under the IIJA, the IHS received 3% for administrative support; however, the law does not permit the transference of any of those funds to tribal programs. So, they are in a position where they are receiving 3% of project funds that Title V Tribes will not receive.

In 2022, they asked Congress to reprogram some funding from the 2022 appropriations for SFC funds into the project support funds. From those funds, they will subtract 3% of the 2022-funded tribal projects. The total amount to be reprogrammed is \$21M. The 3% of the Title V

projects is around \$6M to \$7M, leaving a remainder of about \$14M. How those funds will be distributed has not been determined yet.

Deputy Director Smith expressed concerns regarding the lack of engineers and tech available to provide administrative support and staffing to complete IJA SFC projects.

IHS Budget Update

Jillian Curtis, Director, Office of Finance and Accounting, IHS

FY 2025 Budget Formulation

Director Curtis began by providing the group an update on the FY 2025 National Tribal Budget Formulation Work Group (NTBW) session. The total recommended funding level for FY 2025 is \$53.8B in mandatory funding. This number serves as a substitution for a full funding budget.

The top 5 funding priorities identified are:

- Hospitals & Health Clinics
- Purchased/Referred Care
- Alcohol & Substance Abuse
- Mental Health
- Indian Health Care Improvement Fund

The NTBFW technical team will now begin creating a document outlining the workgroup's recommendations. Recommendations will be presented during the HHS Tribal Budget Consultation on April 18 & 19, 2023. The IHS will use the Tribal Budget Recommendations as the foundation for developing the FY 2025 budget request.

The NTBFW mandatory funding sub-work group will convene on March 27, 2023. The IHS will follow up with the sub-workgroup members to schedule a specific time and provide a draft agenda for consideration.

Advance Appropriations

The FY 2023 budget includes \$5.1 billion in advance appropriations for the Indian Health Service.

- For programs that received Advance Appropriations, the FY 2024 funding levels are flat with FY 2023.
- Full-year funding will be available for these programs on October 1, 2023, regardless of whether Congress enacts a continuing resolution or a government shutdown.

The following is a list of activities that did not receive advance appropriations:

- Electronic Health Record Modernization
- Indian Health Care Improvement Fund
- Health Care Facilities Construction
- Sanitation Facilities Construction
- Contract Support Costs
- Section 105(I) Lease Payments

COVID-19 Reporting Guidance

The Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) appropriated \$750M for COVID-19 testing-related activities. The following are CRRSAA reporting requirements:

- Updated COVID-19 testing plans required by the Paycheck Protection Program and Health Care Enhancement Act
 - Updated plans must be publicly available.
- Quarterly reports to Congress outlining the uses of the funding, as well as commitments and obligations.

The CDC received the same funding and requirements in the CRRSAA. The CDC currently collects funding data from its grantees on the "uses" of funds in specific categories. The IHS plans to match the CDC's reporting approach, given that the funds are from the same source.

Section 105(I) Leases Transition

On January 15, the HIS published its work plan for 2023. The plan aims to "further develop a national section 105(I) lease program."

Goals for developing a national section 105(I) lease program include:

- Building capacity and institutional expertise.
- Supporting current Area Office functions.
- Developing/enhancing systems to streamline processes.
- Creating policies, procedures, guidance, tools, and other materials to assist Tribes in accessing 105(I) leases.

Preliminary future state vision for section 105(I) leases:

- Public facing Section 105(I) policy, guidance, tools, and performing measures.
- Consistent application of HIS regulations/policies to section 105(I) agreements

- Enterprise-wide section 105(I) lease tracking system with UFMS interface
- Dashboards with easily accessible information about the current status of section 105(I) lease agreements and performance metrics

FY 2024 President's Budget

The FY 2024 President's Budget builds on the FY 2024 advance appropriation using a two-pronged approach. In FY 2024, the budget requests \$9.7B, which is \$2.5B or 36% above FY 2023 enacted. Funding for Services & Facilities activities is requested as discretionary. The budget proposes reclassifying Contract Support Costs and Section 105(I) leases as mandatory and exempting the full IHS budget from sequestration.

Throughout the 10-year budget window, the FY 2024 President's Budget would fully fund:

- The FY 2018 Level of Need Funded analysis and provide additional growth for direct health care services;
- Electronic Health Record modernization;
- The 1993 Health Care Facilities Construction Priority List;
- The current Backlog of Essential Maintenance and Repair (BEMAR)

New or expanded initiatives included in the FY 2024 budget are:

- The Cancer Moonshot;
- Public Health Capacity Building; and
- COVID-19 response activities, including for long-COVID.

The budget also proposes an extension of the Special Diabetes Program for Indians (SDPI) for three years beginning in FY 2024 with an increase in funding to \$250M and index that growth to medical inflation.

Committee Business

Protocols Update

Director Spaan provided an overview of the nomination process in the TSGAC protocols. The protocols were last updated in 2014. TSGAC is considering making minor protocol changes to improve efficiency. Director Spaan presented proposed amendments currently being considered. A comprehensive list of all proposed amendments will be sent out to all committee members for consideration in the near future.

Nominations

Nomination for Vice President Ileen Sylvester to serve as the alternate for Alaska Area. Motion made by Cheryl Andrews-Maltais to approve. Motion seconded by Loni Taylor. Motion carried.

Nomination from Taos Pueblo for Governor Gary Lujan to serve as the primary delegate for the Albuquerque Area. Motion made by Cheryl Andrews-Maltais to approve. Motion seconded by Chairman Ron Allen. Motion carried.

Nomination from the Great Plains Tribal Leaders Health Board for Chairman Douglas Yankton to serve as the primary representative for the Great Plains Area. Motion by Loni Taylor to approve. Motion seconded by Cheryl Andrews-Maltais. Motion carried.

Nomination from Ak-Chin Indian Community for Chairman Robert Miguel to serve as the alternate representative for the Pheonix Area. Motion by Cheryl Andrews-Maltais to approve. Motion seconded by Kasie Nichols. Motion carried.

Tribal Leader/IHS Discussion

Roselyn Tso, Director, Indian Health Service

Benjamin Smith, Deputy Director, Indian Health Service

CHAP Expansion

The group began the discussion by emphasizing the importance of the CHAP expansion and would like the IHS to prioritize efforts to expand the CHAP. Deputy Director Smith informed the group of the IHS' desire to expand as expeditiously as possible. One of the main questions regarding the CHAP expansion is where the funding will come from. Smith acknowledged that there is still much work to be done but emphasized a commitment to getting it done. They want to ensure that expansion is done in a way that does not conflict with the Indian Health Care Improvement Act (IHCA).

Expansion of Self-Governance within HHS

A letter from the IHS dated March 3, 2023, was delivered to Chairman Anoatubby. One of the topics discussed in the letter was the expansion of self-governance within the IHS. In the letter, Director Tso expressed her commitment to "providing technical assistance and engaging HHS leadership on this topic, such as utilizing recently published resources from the OTSG."

Melanie Fourkiller provided Director Tso with an update on TSGAC's efforts to secure the enactment of HHS self-governance expansion legislation.

Chairman Allen reminded Director Tso that TSGAC had had several discussions regarding the expansion initiative with the Secretary of Health and Human Services and emphasized that TSGAC is merely seeking a pilot project to showcase how expansion could succeed. The TSGAC is preparing for a special meeting with the Secretary and would like Director Tso to attend.

Director Tso mentioned that it is time for IHS to host a training for HHS personnel to provide them with information on self-governance and how IHS has successfully implemented the program.

Long Term Care

Melanie Fourkiller began the discussion of this topic by informing Director Tso that the TSGAC discussed the topic with SAMHSA regarding long-term care. Most of the discussion with SAMHSA was focused on long-term authority and specific care for elders. SAMHSA mentioned that they have partnered with the ACL over the Title I program that many Tribes have. However, the Title I program is small and could have a broad reach if it had additional resources.

Question: Have you [IHS] discussed how we could develop a partnership between IHS, SAMHSA, and ACL to address elderly needs?

Answer: IHS must do more. There is an opportunity here for us to talk about this. We need to build a model that works for us. We must build a model for Indian Country and then attach the needed resources. We develop a model, then we put that in front of the partners and ask what portion of the model they can help with.

Ambulance Services

Dr. Steven Stake, CEO of K'imaw Medical Center, shared data with Director Tso about Hoopa Valley's ambulance services to highlight the essentialness of the service. Dr. Stake emphasized the need for additional funding to support ongoing and increased services. Third-party revenue covers around 25% of what it costs to operate the ambulance services.

Director Tso acknowledged the problem and commented that it is also a problem on the direct service side. Jilian Curtis mentioned that they would note that IHS is continuing to request additional resources specifically for emergency medical services in the President's Budget.

Melanie Fourkiller mentioned some issues with the VA regarding PRC reimbursement. The VA is reluctant to reimburse emergency services not provided under a contract. For example, a Tribe might not have a contract with its medical flight company because they refuse to enter into a contract with the Tribe. In that instance, the VA does not want to reimburse the Tribe for PRC services. Another example is pharmacy reimbursement - both the rate and the formulary. Alaska wants to use the Tribe's rather than the VA's formulary.