**IHS Self-Governance Advisory Committee (TSGAC)**

**Meeting Summary**

**August 30 - 31, 2023**

**Embassy Suites**

900 10th Street NW

Washington, D.C., 20001

**WEDNESDAY**

**Attendance:**

A quorum was established for the TSGAC meeting.

**Committee Business:**

* The March 2023 meeting summary/minutes were approved.
* Eileen Sylvester (primary) and Jim Roberts (alternate) were nominated to serve the Alaska Area on the TSGAC.
* Motion carried.

Dr. Buu Nygren (primary) and Kim Russell (alternate) were nominated to serve the Navajo Area on the TSGAC.

* Motion carried.

**Office of Tribal Self-Governance (OTSG) Update**

***Jennifer Cooper, Director, OTSG, IHS***

Director Cooper began the OTSG update by providing a snapshot of the IHS Tribal Self-Governance Program. She highlighted that 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.

Director Cooper shared some of the OTSG's accomplishments. The OTSG has offered several trainings over the last couple of months. On August 2, a "dear tribal leader letter" (DTLL) was released regarding the FY 2016-2017 report to Congress on the administration of the IHS Tribal Self-Governance Program. The FY 2023 Self-Governance Planning and Negotiation Cooperative Agreements notice of funding opportunity (NOFO) has been published. The OTSG continues to be engaged in negotiations and technical assistance efforts. The OTSG also continues efforts to expand ISDEAA trainings offered. The training is perfect for IHS staff, tribal leaders and staff, HHS operating divisions, and negotiator and negotiations teams.

**Tribal Consultation Policy**

Efforts to update the IHS Tribal Consultation Policy are ongoing. The IHS is currently in the gathering input part of the process. The comment period will end on September 11, 2023.

**Question:** What steps will you take to reconcile or cross-reference the HHS consultation policy?

**Federal Response:** The team reviewed the drafts that were created by the HHS and discussed the draft for consideration within the workgroup.

**PSFA Manual Update**

Director Cooper provided an update on the headquarter-managed PSFA Manual revision. The PSFA Manual was initially published in 1997 and updated and published in 2002. Initial work on updating the PSFA Manual began before the pandemic. The IHS OSG anticipates having a final draft next year. The PSFA Manual can be located at:

<https://www.ihs.gov/sites/selfgovernance/themes/responsive2017/display_objects/documents/2002-PSFA-Manual.pdf>

**OTSGFM**

Efforts are ongoing to address the OTSGFM attachment access issues reported at previous meetings. A system update was generated to correct the upload process to the server. OTSG has corrected a large percentage of the attachment files. The FY 2020 – 2023 attachment files will be manually uploaded in the next 30 to 60 days.

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/>.

**IHS Budget Update**

***Jillian Curtis, CFO, Office of Finance and Accounting, IHS***

**Unobligated Balances**

Jillian Curtis provided an overview of the differences between unobligated balances at the IHS and unobligated balances at other Agencies. For predominantly grant-making Agencies, funds are obligated once a grant is awarded. In contrast, the IHS provides direct health care services, and unobligated balances equal operating budgets for hospitals and health clinics. The IHS is currently working to improve visibility and accountability for unobligated balances. Furthermore, the IHS is considering program updates and expanded use of contracts to increase access to care and obligate direct service PRC funds in a timelier way.

**NIHB Full Funding Study & Mandatory Subgroup Updates**

***Caitrin Shuy, Government Relations Director, National Indian Health Board***

Caitrin Shuy shared updates from the Full Funding Study & the National Tribal Budget Formulation (NTFBW) Sub-workgroup on mandatory funding. The NTFBW sub-workgroup met on August 16. The IHS will contact all involved entities to schedule the next meeting. NIHB will provide an overview of the Full Funding Study, and then the Tribal Representatives will caucus to discuss goals, objectives, and deliverables.

Caitrin Shuy emphasized the importance of collaboration with self-governance Tribes in determining a full funding estimate for the IHS. The final product will be a report of the recommendations for review by Tribes.

**FY 2024 Appropriations Update**

***Tyler Scribner, Director of Budget and Appropriations, National Indian Health Board***

Congress is putting forward a number about 1/7th of the estimate of the full need recommended by the IHS Tribal Budget Formulation Workgroup. In last year's appropriation bill, part of accepting advance appropriations was to accept flat funding for the accounts. This created concerns that the counts would be left flat-funded. Whatever the amount is for advance appropriations, there is a chance that we can follow up in the subsequent year and secure adjustments for the current year.

The House generally appears to come in higher than the Senate for proposed spending. They do this by rolling the Indian Health Care Improvement Fund into hospitals and clinics for the House version – a recommendation included in the President's budget request. Another change in the House version is a nearly $200 million reduction in the Electronic Health Record System (EHR) line. Those funds were used to increase different accounts.

On the Senate side, no single account is showing large increases. The Senate meets its cap on spending by a rescission of funds. They are not taking away IHS-based funding. They are attempting to rescind supplemental funds.

Contract Support Costs (CSCs) and 105(l) Leases (105(l)) are funded at the same level for both the House and Senate. It is important that most of the increase is going to CSCs and 105(l). A vast majority of the year-over-year increase in discretional funding for the IHS is going to administrative accounts and not your operational expenses.

**Section 105(l) Lease Policy**

***Jillian Curtis, CFO, Office of Finance and Accounting, IHS***

The IHS will engage in Tribal Consultation on a Section 105(l) Lease Policy before the end of the calendar year. The IHS will at least engage the Facilities Appropriation Advisory Board (FAAB) before beginning nationwide consultation. The IHS Chief Financial Officer is joining the FAAB meeting on September 13 & 14 to discuss the development of a Section 105(l) Lease Policy. The IHS also has key input from the joint HHS/DOI Section 105(l) Lease Consultation held in August 2021. The IHS welcomes any feedback from TSGAC on this approach, as well

as insights on key topics that should be addressed in policy.

**Discussion With the Office of Management and Budget**

***Elizabeth Carr, Tribal Policy Advisor, Office of Management and Budget***

The OMB continues working on several issues regarding Indirect Cost Rate negotiations. The OMB hopes to have an answer by the end of this week regarding the HHS PSC situation. Additionally, the OMB is working on the issue regarding the Treasury ARPA State and Local Fiscal Recovery Funds (SLFRF) and ensuring an exclusion from the Indirect Cost Rate negotiations.

**Expansion of the Community Health Aide Program**

Donna E. Enfield, CHAP Lead

*Christina Peters, Northwest Portland Area Indian Health Board*

**Donna E. Enfield**

Five Tribal Assessment and Planning grant applications have been received. Six Tribal and Implementation grant applications have been received. The CHAP is on track to award eligible grantees before the end of the fiscal year. All of the funds from 2022 have been used, and there will not be an expiration of funds in September. The CHAP team continues to work on PFSA language. A draft of the needs assessment collection tool has been sent to the CHAP TAG for comments.

The Alaska (AK) agreement for the AK Certification Board to provide technical assistance is currently under development. More details will be released once the agreement is finalized. The Portland Area CHAP Certification Board can begin certifications in collaboration with the AK Certification Board.

The charter for the National Certification Board has been drafted and is currently under review. The charter has been sent to the CHAP TAG for comments. The National Certification Board (NCB) should be seated within six months. Additional board members are still needed.

The National Standards and Procedures establishes the framework for practices throughout the forty-eight contiguous states. The standards and procedures should be adopted after the National Certification Board can meet.

**Christina Friedt – Peters**

The Portland Area CHAP covers Washington, Oregon, and Idaho and works for the forty-three federally recognized Tribes. The Portland Area has begun training CHR personnel with a core curriculum. They have done this so trained CHR personnel can become CHAP personnel if inclined.

The Oregon CHAP SPA was approved in early August, and the DHAT SPA in Washington was retroactively approved. Community Health Aide Practitioner training will launch in the Portland Area in May 2024 with three Tribal pilot training sites. The TCHPP launched its first CHR training this week in collaboration with Idaho State University—twenty-eight students representing Tribes from the Portland Area to Arizona to Oklahoma.

**HHS STAC Update**

***Caitrin Shuy, Government Relations Director, National Indian Health Board***

***A.C. Locklear, Federal Relations Director, National Indian Health Board***

The group was provided with an STAC issue tracker document. There continue to be ongoing issues pertaining to budgets, agency-wide funding, unfunded provisions in the Indian Healthcare Improvement Act, provider shortages, etc. An ongoing issue of discussion with the National Institutes of Health (NIH) is allowing outside observers to come to their TAC meetings. This became an issue earlier this month because they would not allow anyone, not a technical advisor or committee member, to attend meetings. This appears to be a violation of the NIH TAC's charter.

Next week, on Thursday, there will be a technical advisor meeting. This meeting will provide technical advisors and tribal leaders with an opportunity to go over information compiled in preparation for the STAC meeting in Rapid City, South Dakota.

***SGCETC Update***

***Jay Spaan, Executive Director, SGCETC***

The 2023 Tribal Self-Governance Conference was held at the River Spirit Resort Casino from June 26 to 29 in Tulsa, OK. The conference had just under 1,200 people register; around 95% of registrants were in attendance. A survey was made available to conference attendees. 85% of attendees rated their overall impression of the conference as excellent or above average. Around 14% chose average. 85% of respondents said the topics were extremely or very relevant. 12% said the topics were moderately relevant, and 3% said the topics were slightly relevant. 94% of attendees said the conference was very well or well organized, and around 6% responded that the conference was fairly well organized.

The 2024 Tribal Self-Governance Conference will be held at Wild Horse Pass Gila River Resorts & Casinos in Chandler, Arizona, on April 15 – 18. Registration for the conference should open within the next month.

***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.tribalselfgov.org> under the *For Our People* tab. You can also view specific segments of the episodes at our new YouTube channel: @FOROURPEOPLE\_TSG.

*Four Our People* seeks to change the narrative by illuminating the success of tribal nations & increasing knowledge about self-governance authority. Season 2 consists of three episodes and is expected to be released by the end of October.

**Tribal Self-Governance Courses at ASU Indian Law Program**

Executive Director Spaan has offered Tribal Self-Governance courses at the Arizona State University (ASU) Indian Law Program—Tribal Self-Governance I was offered in Fall 2021, Fall 2022, and Fall 2023. Registration has increased from 11 in 2021 to 21 in 2023. Tribal Self-Governance II was offered in Spring 2022 and Spring 2023 – hopeful it will be offered again in Spring 2024.

**Self-Governance Priorities for the 2023 Farm Bill Reauthorization**

SGCETC recommends the inclusion of Self-Governance compacting – not just Self-Determination contracting in the Food Distribution Program for Indian Reservations Self-Determination Project. SGCETC believes Tribal Nations should be authorized to directly administer their Supplemental Nutrition Assistance programs – with the option to use Self-Determination or Self-Governance authorities. Additionally, SGCETC requests the removal of the statutory prohibition for individuals who qualify for both FDPIR and SNAP – doing so would allow Tribal governments to develop more comprehensive approaches to address food security issues in their communities. Additional requests include:

* allow Tribal Nations to assume administration for meat processing inspections;
* direct USDA to prioritize and dedicate funding for additional Tribal Forest Management Self-Determination Projects;
* direct the USDA to determine the feasibility of Self-Governance demonstration projects for additional USDA agencies and programs and establish an Office of Self-Governance at USDA.

**U.S. GAO TIAC Update**

***Cheryl Andrews-Maltais, Chairwoman, Wampanoag Tribe of Gay Head (Aquinnah)***

***Jay Spaan, Executive Director, SGCETC***

In 2022, the GAO began forming its first-ever Tribal and Indigenous Advisory Council to provide insights and recommendations on issues affecting Tribal Nations and their citizens. The Council comprises 16 members, including leaders from federally recognized Tribal Nations, a leader of a state-recognized Tribe, a leader of a Native Hawaiian organization, and experts on topics relevant to Tribal Nations and Indigenous people. SGCETC was selected to help administer and provide technical support.

The first few meetings were focused on establishing a role for the GAO TIAC, providing input into some GAO engagements, learning about GAO's process, and identifying areas for the GAO TIAC to provide valuable input.

The GAO TIAC developed the following list of priorities:

* Establish a Sr. Level Advisor to the Comptroller General for Tribal Nations.
* Provide GAO with the context needed to understand programs under its review.
* Identify areas in need of GAO review and attention.
* Evaluate criteria to determine if they align with Trust and Treaty obligations and responsibilities.
* Incorporate principles of data sovereignty in its process.
* Work collaboratively to develop a path forward for removing IHS, BIE, and BIA from its High-Risk list.

**Updates on CSC and Opioid Cases**

***Geoff Strommer, Hobbs, Strauss, Dean and Walker, LLP***

**CSC Case**

A new legal issue (*Navajo Health Found. Sage Mem'l Hosp., Inc. v. Burwell*, No. CIV 14-0958 JB/GBW (D.N.M. August 31, 2015)) regarding contract support costs arose out of the federal district court in New Mexico around five years ago. One of the issues in the case is whether Sage Memorial is entitled to be paid contract support costs on top of the third-party revenue it generated. Historically, the IHS focused on contract support costs being paid on the Section 106(a)(1) amount, or the amount that was being transferred by the IHS to the Tribe or tribal organization. The district court judge agreed with the tribal opinion. In lieu of appealing the case to the Tenth Circuit, the IHS decided to settle the case.

There are three separate cases regarding the same legal issue. All three cases resulted in a judicial interpretation by the Ninth and Tenth Circuit Courts of the statute that the Tribes were entitled to compensation for different reasons. The United States has until September 13 to file a petition for certiorari (asking the Supreme Court to hear the case) in the San Carlos case and until September 20 in the Northern Arapaho case.

**National Prescription Opiate Multi-District Litigation (MDL)**

MDLs assign multiple, independent lawsuits involving the same parties and/or legal claims to a single judge for consolidated or coordinated pretrial proceedings and "bellwether" trials. The National Prescription Opiate MDL, created in 2017, was assigned to Judge Dan A. Polster in the Northern District of Ohio.

The MDL court appointed a Tribal Leadership Committee (TLC) to manage the tribal track litigation and represent tribal interests in settlement negotiations. The TLC announced the first two tribal settlements in the summer of 2022. In early 2023, the TLC announced additional settlements with additional opioid manufacturers and three major pharmacy chains. These settlements will bring over $1 billion in opioid abatement funds to Indian Country.

**Small Ambulatory Program**

Captain Mark Hench, Indian Health Services

Section 306 of the Indian Health Care Improvement Act authorizes the IHS to award grants and funds to Tribes and/or Tribal organizations for the construction, expansion, or modernization of ambulatory healthcare facilities located apart from a hospital. Participants in the program are selected competitively from eligible applicants who meet certain criteria.

The maximum award amount increased from $2 million to $3.5 million - $50 million in total is available. One award will be made in each IHS Area to the highest-scoring application. The remaining funds will be awarded to the next highest scoring application nationally, without regard to Area, until all funds are exhausted. All funds will be held at IHS headquarters.

**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 activities. The group held two break-out sessions during the 2023 annual Self-Governance Conference in Tulsa, OK. The group has been engaged in the development of Tribal input on Medicaid Unwinding. Also, the group has developed a tribal sponsorship survey. The group has worked on the development of an informational video on tribal sponsorship.

**Upcoming Project Activities**

Webinars are being planned to address tribal best practices in tribal sponsorship, implementation of CHAP, and increases in third-party revenues. 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. The group will participate in TTAG/CMS small workgroups on Medicare/Medicaid Administrative Priorities.

For further information, please visit <https://www.tribalselfgov.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 (IHCIA) regardless of whether the State has authorized that for anyone else.

**Tribal Leader/IHS Discussion**

***Benjamin Smith, Deputy Director, Indian Health Service***

**Portal for CRRSAA Funds**

There were two target areas for CRRSAA funds: one for testing and one for vaccination. The IHS has recently updated the guidance found on the IHS coronavirus resources page. The IHS plans to announce a timeline this fall by the start of the new fiscal year in October.

**Joint Venture Cycle**

The IHS acknowledges the value of joint venture construction projects. The Facilities Appropriations Advisory Board will be meeting on September 13 – 14 in El Paso, Texas. Congress has requested the IHS to have a joint venture project solicitation around every three to five years. However, Congress does not wish to have many projects completed during the same year - to prevent huge spikes in staffing requests coming in for one year. There are several "grandfathered" projects that are ongoing and expected in the next few years. From a previous joint venture cycle, they have five joint venture projects awarded – several that have started, a few that are completed, and a couple that are in the early stages.

**Question:** The FAB recently made recommendations regarding improvements for the joint venture program that include expansion of the facility types that would be eligible (e.g., behavioral health stand-alone clinics) and allowing JVC projects to be eligible for 105(l) leases. Would you be able to speak to some of those recommendations?

**Answer:** The joint venture projects and the 105(l) lease – currently, the law for the joint venture projects states that the Tribe will provide, procure, or construct a health care facility that IHS would normally constructand lease to the IHS at no cost for twenty years and in turn, IHS would provide or request certain staffing and operation costs from Congress. The language found in the Affordable Care Act (ACA) prevents facilities constructed as joint venture projects from being eligible for a 105(l) lease.

**Support for Tribal Ambulance Programs**

The IHS recognizes that EMS needs substantial resources. The Office of Federal Rural Health Policy has been a strong advocate for additional resources for EMS. Part of the reorganization of the Center for Disease Control and Prevention includes the first-ever Rural Health Office, and their priorities include enhancing EMS in rural areas.

President Biden's budget does make a request for additional EMS funding. The IHS recognizes that the request does not equate to 100% of actual need; however, it is a start.

**Addressing Long-Term Elder Care**

**Question:** How is the IHS considering and developing its role in elder care?

**Answer:** The IHS is actively engaged in a lot of work regarding elder care – particularly in relation to the recently appropriated dollars for dementia and Alzheimer's. When you look at some of the long-term services and support programs that IHS is authorized to carry out, there is a vast range; however, the funding is not there. Unfunded provisions of the Indian Health Care Improvement Act (IHCIA) make it extremely challenging.

**Recruitment and Retention Issues**

**Question:** How can we partner with the IHS to amend the clinical requirements and taxation?

**Answer:** The IHS just sent out a notification that the loan repayment program is now accepting applications through October 1. The IHS increased the total amounts from $20,000 to $25,000 in exchange for a two-year full-time service obligation that provides up to $50,000. In addition, it provides an extra 24% in taxes paid directly to the IRS on behalf of an awardee.

**Question:** Are the payments for the tax obligations coming out of the same pool or the same account that is being used to pay for those? The IHS should do an analysis on how many recruitments could be done if they didn't have to pay the tax.

**Answer:** Yes, it does come from the same pool.We have conducted an analysis regarding the additional people we would have been able to support. We have that information.