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

**Meeting Minutes**

**December 13-14, 2023**

**Embassy Suites**

900 10th Street NW

Washington, DC, 20001

**WEDNESDAY**

**Attendance:**

A quorum was established for the TSGAC meeting.

**Committee Business:**

* The August 2023 meeting summary/minutes were approved.

**Deputy Director for Intergovernmental Affairs (DDIGA) Update**

***Stacey Ecoffey, DDIGA, IHS***

**Consultation Policy**

The IHS Tribal Consultation Policy Workgroup met at the beginning of June to work on several items. The workgroup reviewed several comments received by the IHS and sent out another consultation process for review. The group reconvened in September and worked through several issues. The group then returned to their communities to determine the best way to proceed.

The group is still working on which definition (List Act or ISDEAA) for "Indian" should be utilized, so that issue has been referred to consultation. The group is still in an open consultation period of 60 days. Once the consultation concludes, the group will enter internal deliberation with the Director of IHS. The group hopes to have a finalized consultation policy by early next year.

**Comment:** Chairman Allen commented on the importance of consistency between IHS's and HHS's consultation policies.

**Question:** Why has the policy been recirculated for consultation regarding the definition of "Indian Tribe" when ourobjection was to the Indian Health Service's unilateral removal of intertribal consortium and intertribal organization in that policy?

**Response:** I don't necessarily know that it was a unilateral removal. We received comments from Tribes during the comment period regarding which definition to utilize during the process. There was no agreement during the workgroup discussion regarding the utilization of one definition over the other, so we thought the best way to address the issue was to return to consultation and hear from everybody regarding which definition should be utilized.

**Self-Governance as a Priority**

Fifty-four percent of the IHS budget is budgeted for Tribes to participate in Self-Governance, so Deputy Director Ecoffey has been examining what the agency can do to prepare for an increase in Tribal participation in Self-Governance. Preparation includes implementing training mechanisms to assist agency personnel for self-governance expansion.

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

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

Director Cooper began the OTSG update by commending the IHS personnel and Tribes for the timely distribution of advanced appropriation funds to fiscal-year self-governance Tribes. They are working on the 47 calendar-year Tribes and tribal organizations. The IHS will be moving forward with the calendar-year funding agreements.

The most recent Self-Governance Planning and Negotiation Cooperative Agreements have been posted. The funding for a planning grant is $180,000, and $84,000 for negotiation, with an opportunity of five awards for each. The deadline for this opportunity is February 19, 2024.

**Discussions with IHS and OMB**

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

***Elizabeth Carr, Tribal Policy Advisor, OMB***

**Elizabeth Carr**

The OMB will consult Tribes regarding President Biden's Executive Order 14058 (EO 14058) early in the new year. Elizabeth Carr indicated that her remaining time at the OMB will most likely focus primarily on implementing EO 14058.

The OMB is currently working on offering an "Indian 101" internally. Additionally, they are working on offering an "OMB 101" for tribal leaders to demystify the functions of OMB. That should be unveiled around the National Congress of American Indians' (NCAI) executive session.

**Questions:** Has there been a decision regarding the exclusion of fiscal recovery funds from indirect cost rate calculations? What is the status of the request made by the IHS to move Indian Healthcare Improvement Act funding, CSC, and 105(l) into the advance appropriation line item?

**Answers:** Yes, to the first question. Tribes should have received a notification from the Treasury announcing the exclusion of the SLFRFs from the IDC rate negotiations. Regarding the CSC and 105(l), I have to go back to our HD shop, have a conversation with them, and get back to you.

**Jillian Curtis**

The current CR provides funding for the federal government through early 2024. The Fiscal Responsibility Act (FRA) would trigger an automatic 1% discretionary sequester if the government still operates under a partial-year continuing resolution past April 30. Congress has the authority to override a potential sequester. The default application of the sequester would be across the board. It is unclear whether the sequester would apply to the advance appropriation. The OMB will issue guidance if the federal government enters sequestration.

The IHS hosted the third mandatory virtual sub-group session on November 30, 2023. The FY 2026 National Tribal Budget Formulation Work Session is scheduled for February 13-14 to finalize the FY 2026 National Tribal Budget recommendations, including a discussion regarding the mandatory sub-group.

The Contract Support Cost Advisory Group has paused due to ongoing litigation.

The IHS provided information about the financial reporting requirements associated with the CRSAA funding. Please visit the following link for additional information: [Coronavirus Response & Relief Supplemental Appropriations Act Public Law (PL) 116-260 - At-a-Glance Guide (ihs.gov)](https://www.ihs.gov/sites/coronavirus/themes/responsive2017/display_objects/documents/At-a-Glance-CoronavirusResponse_ReliefSupplementalAppropriationsAct.pdf).

The IHS is nearing completion of the steps necessary to transition section 105(l) activities to the Office of Finance and Accounting (OFA). Once the transition is complete, the IHS will issue a Dear Tribal Leader Letter. The IHS is developing a draft Section 105(l) Lease policy based on the joint consultation that the IHS conducted in collaboration with the DOI in 2021. The IHS will continue to brief tribal leaders on the draft policy and conduct a national consultation in 2024.

The IHS unobligated balances stay "on the books" longer because the agency provides direct health care. Seventy-five percent of the IHS unobligated balances are for project-based activities that are obligated over a longer time and care that is referred outside the IHS. The IHS addressed misconceptions and reduced unobligated balances by 15% over FY 2023.

**Updates on CSC and Opioid Cases**

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

**CSC Case**

Historically, the IHS focused on contract support costs being paid on the Section 106(a)(1) amount, or the amount the IHS was transferring to the Tribe or tribal organization. The IHS has opposed these rights, and several years ago, the federal Circuit Court of Appeals court in the *Swinomish* case agreed with IHS. 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 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.

**Interdepartmental Council on Native American Affairs (ICNAA) Update**

***Michelle Suave, Executive Director, ICNAA***

The current ICNAA chairperson is ANA Commissioner Patrice Kunesh. The vice chair is IHS Director Roselyn Tso. The ICNAA has been focused on various executive orders concerning Native American affairs – for example, public safety and coordinating activities with the White House Council on Native American Affairs. In addition to the ICNAA supporting the development of a comprehensive plan to prevent violence against AI/ANs and improving victim services under Executive Order 14053, the ANA Commissioner was also named to the Not Invisible Act Commission. Recently, Commissioner Kunesh, along with the IEA principal advisor for tribal affairs and HHS Office of General Counsel, participated in an internal presentation on the opportunity for tribal self-governance expansion within HHS.

The newly signed Executive Order 14112 calls attention to the historic systematic approach of the United States and their many attempts to ultimately eliminate and destroy Indian communities through dramatic shifts in federal Indian policy.

**IHS Produce Prescription Pilot Program (P4)**

***Laurie Harvey, Chippewa Cree Tribe***

***Misha Pete, Chippewa Cree Tribe***

The IHS Nutrition Security Initiative focuses on food security. About one in four Native Americans experience food insecurity, compared to one in eight Americans overall. Native American families are 400% more likely to report being food insecure, with limited access to sufficient, affordable food.

To help reduce food insecurity, the IHS has authorized recurring funding to implement a Produce Prescription Pilot Program (P4) to increase access to produce and other traditional foods within AI/AN communities. A $2.5 million five-year grant funds the pilot program.

P4 awardees are required to:

* Identify a target population;
* Develop an infrastructure that fosters collaboration with a healthcare facility and local markets/organizations/services that provide fresh fruits and vegetables and traditional foods;
* Implement a nutrition education program and
* Develop an evaluation plan that measures food insecurity, health outcomes, and utilization of services over time.

**Discussion with the IHS Director**

***Roselyn Tso, Director of Indian Health Service***

**Opioids**

Director Tso referenced a report released at the Opioid Summit in Washington state. One of the recommendations in the report is that IHS behavioral health funding should be distributed using a method other than grants – for example, contracts and compacts. Since they are in year two of a five-year grant cycle, they would need to start phasing out the grants. Director Tso mentioned that she believes there is an opportunity to start shifting the way the IHS distributes the funding.

**Staffing Packages**

The discussion then shifted to funding staffing packages for newly opened facilities. In 2023, Congress made an oversight and did not provide the total level of funding necessary to fulfill that commitment. The IHS was able to address the issue administratively in 2023 and is looking for a way to address it within the continuing resolution. The IHS relies on Congress to resolve the matter in the FY 2024 appropriations. However, the IHS continues to look for and execute an administrative solution.

**Recruitment and Retention**

The IHS continues to fight for flexibility (e.g., work schedules). Director Tso mentioned that she would lose half of her leadership team if staff were forced to halt remote work and come back to work at the office. The pandemic has forced our workforce to reevaluate their priorities – prioritizing family, health, and personal life over work. The IHS is attempting to adjust to changes in the work environment.

The IHS is piloting housing subsidies in Indian Country. The subsidies are coming out of service unit budgets. Director Tso met with HUD officials when she attended the National Congress of American Indians to explore opportunities to build staff housing utilizing HUD funding.

Director Tso recently met with the American Medical Association, and the US Department of Veterans Affairs (VA) presented during the meeting. The VA hired over 60,000 employees in 2023. Director Tso wants to meet with the VA to learn more about their hiring strategies. VA has Title 38 authority, which brings greater flexibility, including the flexibility to offer higher pay.

Eight hundred forty-six individuals have come out of the scholarship program and are spread out across Indian country. The IHS struggles because the IHS scholarship is taxable, and the HRSA scholarship is not taxable. An A-19 fix is needed to address the taxability of the IHS scholarship.

**Question:** Do you see new or different opportunities for us related to constructing a healthcare facility?

**Answer:** That is a difficult question.It is sad when I visit Indian country and see an 80 or 70-year-old building that we are trying to retrofit for health care. It becomes nonsensical at some point. Yet, I have seen what Tribes and tribal organizations can do to renovate. Sometimes, duct tape keeps some of our old facilities together. I would say that as I spend more time on the hill, it is about what we are talking about here. We are accountable. We are making improvements. I think that is the message that has to keep being communicated.

**Comment:** The joint venture (JV) list has stagnated since the mid-90s. Oklahoma has no facilities on the list and hasn't since 2014. It's our only viable opportunity to move forward with a facility. I am urging that we get on a schedule for JV. I am asking for opportunities to compete. We haven't competed since 2019.

The other issue I wanted to raise was the pharmacy benefits managers (PBMs). We have been working on this issue for many years. We raised the issue with IHS in 2019. There were discussions regarding negotiating settlements with at least one PBM. However, those discussions fell apart. Some of us have ongoing litigation with PBMs. We have also been working on a contract addendum. It removes the Part D addendum we used to have for contracts, makes it more explicit, and directly addresses many of the problems we are having with mail orders and specialty pharmacies. It also expands beyond Part D to all PBM contracts. We are awaiting a response from CMS regarding the revised addendum. It would be helpful if leadership could push the issue to encourage CMS to act swiftly and engage with us in a negotiation to finalize the contract addendum.

**Response:** Concerning joint ventures, the legislation recommends that IHS should have these conversations every three to five years. 2024 will be the fifth year, so we are going out in 2024 for joint venture applications. I anticipate that and have been having conversations with our team.

Concerning the PBM issue, I am meeting with HHS in January, so I will need some help preparing. The one-on-one meetings with my colleagues helped me understand our requests.

**Comment:** Concerning the SDPI carryover grant funds, our staff were surprised by the changes in carryover regulation for the SDPI. We do not know how this change was communicated, but we would have appreciated more notice and an explanation. In past years, we could carry over funds without any issues.So, this is just one example of why SDPI needs to be moved into self-governance programs. There is no reason IHS should have any grants at all. SDPI is an essential program for Tribes, yet SDPI funds are far less flexible than IHS self-governance funds, which we can carry over and reprogram without interference from the federal government. We request that you provide more timely notice for any changes to SDPI and work with us to get SDPI moved into self-governance.

**Response:** If you recall, when we were in the last year of the five-year grant, we had twelve months to close those grants. We are in that phase right now. That is the only reason we are telling Tribes that we must close these out: the new ones are out, and we need to start on the new grants. I hear you about moving them into contracts and compacts, and let's make it permanent; then, we will find a way to do that.

**Medication Update**

***Lorretta Christensen, Chief Medical Officer, Indian Health Service***

**Syphilis and Bicillin**

A multi-regional STI outbreak started two to three years ago and has peaked in the recent few months. The capacity to investigate cases was limited in some areas. The congenital syphilis rate was ten times higher than it has been in ten years. Initially, there was a shortage of Bicillin for treatment due to manufacturing issues, so a priority protocol was issued. Focusing on treating substance use disorder will help reduce the STI rate. We need to prioritize access to substance use disorder treatment, remove punitive measures for substance use, and encourage routine syphilis testing for patients reporting methamphetamine use.

Bicillin is the preferred treatment protocol for Syphilis. There is adequate supply through the Pharmaceutical Prime Vendor (PPV) McKesson. NSSC will provide a weekly update on the supply. There is an increasing amount of available Bicillin for all I/T/U, and there is no shortage. Public health nurses can provide treatment outside the facilities.

**RSV and Nirsevimab (Beyfortus)**

AI/AN children have a high burden of RSV. Hospitalizations are 1.7-7.1 times – amongst the highest in the world. The most significant burden is experienced in full-term infants. The RSV prevention strategy consists of maternal immunization and monoclonal antibodies.

Nirsevimab is given to infants under one year entering the first RSV season. It is recommended that AI/AN babies get a second dose before the second RSV season. Maternal RSV vaccine Abrysvo should be administered around 32-36 weeks of pregnancy. The Nirsevimab manufacturer notified the CDC of an impending medication shortage. The CDC could not provide additional doses to the I/T/U system through the VFC system; however, the IHS NSCC procured a supplemental supply (8,000 doses) of Nirsevimab from the manufacturer.

**PBM Issues**

Tribal facilities across the country are getting hit with steep discounts in their reimbursements from PBMs based on the Tribes' ability to access drugs at discount rates under programs like the 340B program and VA prime vendor and due to Part D Direct and Indirect Remuneration (DIR) fees. PBMs ask tribal facilities if they are accessing discounted pharmaceuticals and then discounting reimbursements based on the discount amount. These efforts take benefits away from Tribes and keep them for the PBMs. TTAG is developing a new Part D Addendum to address these issues and request CMS to adopt the same.

**Comment:** I Just wanted to clarify the work we have done up to this point on the addendum. We started with the Part D addendum, but we broadened the rewrite to include all PBM contracts - not just Part D but any commercial plan. We have not received a response from CMS at all. The IHS Director agreed to raise the issue during her next meeting with the CMS administrator.

**Office of Environmental Health and Engineering (OEHE) Update**

***James Ludington, Director, OEHE***

**Bipartisan Infrastructure Law**

The Bipartisan Infrastructure Law (BIL) provides $3.5 billion over five years to the IHS for Sanitation Facilities Construction (SFC). As of February 2023, 98% of the FY 2022 BIL funds have been obligated.

**Health Care Facilities Construction (HCFC) Priority Projects**

HCFC funds the construction of inpatient and outpatient facilities. The priorities were set in 1993, and the IHICA will not allow any additional projects on the list until the current facilities are funded. There is about $7 billion left to complete on the list. It will take several years before new projects are added to the list.

**Joint Venture Construction Program**

The IHICA authorizes the IHS Joint Venture Construction Program (JVCP) for establishing projects where American Indian and Alaska Native Tribes can acquire a tribally owned healthcare facility in exchange for the IHS providing the initial equipment, then operating and maintenance funding of the facility for 20 years. The JVCP started in 2001. The Tribes have provided over 3 billion square feet of healthcare facility space and saved the federal government $2 billion in construction costs. The IHS provides over 6,500 FTEs to provide health care in JVCP facilities.

**Question:** The Facilities Appropriations Advisory Board (FAAB) had afacility needs workgroup**,** and they were looking at the JVCP process and schedule**,** as well aslooking at improvements to JVCP, including expansion of non-medical facilities like behavioral health – including additional facilities for eligibility.

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**Answer:** The FAAB has a technical workgroup, and one of the things that the workgroup is charged with is submitting a needs report to Congress every five years. The last report was submitted in 2021, and the estimated need for Indian Country was about $23 billion. At that time, the legacy list was around $2 billion. The FAAB asks the workgroup to look into other things as well. They asked them to look into the scoring for JVCP because there are some areas where they feel that they are at a disadvantage. The workgroup looked at that and made recommendations for how it scored. They haven't submitted those recommendations to the Director, IHS, yet. With the facility types, because of their competitive grant funding, it's hard for an outpatient facility to compete with a behavioral health facility because they are different types of facilities with different needs. One of the things that FAAB has suggested is that maybe we open up the JVCP more frequently but do fewer projects. One year, we would open it up for substance abuse facilities, and then the following year, maybe it would be inpatient facilities.

**HHS STAC Update**

***Devin Delrow, Principal Advisor for Tribal Affairs, HHS***

In November, the HHS hosted the White House Youth Forum for the second year. They welcomed over 136 Native youths from across the country. Six international youths were also in attendance. A few weeks after the forum, the HHS held their Native American Month Celebration, where they dedicated their new Hall of Tribal Nations. Tribal flags will be featured in the hall. At the end of November, they held the Secretary's Tribal Advisory Committee (STAC). The White House Tribal Nations Summit was held on December 6.

Several vacancies are coming open on the STAC. They have two positions opening up for national members-at-large. The at-large, alternate, and primary positions for Alaska are opening. The alternate and primary are opening for Albuquerque. The primary and alternate are opening for Billings. The primary and alternate are also opening for the Great Plains and Phoenix areas. Nominations will be due at the end of January. The date for the February STAC meeting will be held around February 26 (awaiting confirmation). The first self-governance expansion workgroup meeting will be held on February 26 or 29 in conjunction with the STAC meeting. The workgroup is a priority for the Secretary of HHS.

The date has changed for the annual tribal budget HHS consultation. The consultation will be held on April 9th and 10th, as requested by the STAC. There will be an STAC meeting on May 7th and 8th in Washington, DC; then, on September 10th – 12th, an STAC meeting will be held in Indian Country – somewhere in the Northwest area.

**Comment:** The word "workgroup" has caused a lot of confusion. A great deal of work has been done on it already, so I hope we don't have to rewind and try to do that all again. I wonder if those terms have meaning for what is actually executed. We are looking for a productive meeting to lay out what has been done and determine the next steps.

**Question:** Is there someplace where we can have the dates for all of the meetings listed? Because the website has not been maintained all that well. Additionally, I wanted to mention that trying to have someone else book your reservations when you are not in a mainstream or metropolitan area is a real challenge. It would be nice if we could go back to the reimbursement process.

**Response:** For your first question, I will ensure that Cindy receives a list of all the dates that I mentioned and NIHB. I fully recognize that our website is not the best. Part of the team that I will be hiring is an admin. That ensures the website is maintained. To your second point, unfortunately, that is a department-wide travel policy they changed last year, but I can contact DOI to see how they do it. Maybe they have certain exceptions in places that we do not know about.

**Comment:** I just wanted to follow up on the travel comment. It feels as if there is a lot of inconsistency between the agencies regarding travel policies. I traveled while co-chairing the IHS consultation policy, and their process was so complicated that I gave up on trying to receive my per diem. On the VA TAC, many of our members are not tribal leaders. They are veterans. One of the things that we brought up in the VA TAC is that many of them could not afford to travel and wait for reimbursement. At our last TAC meeting, we asked them to change their policy, and they are now prepaying for all travel expenses and hotels so that the members pay nothing out-of-pocket beforehand.

**Question:** I am asking about the non-discrimination clauses that continue to come out of the HHS and how that affects our needs. How do we safeguard ourselves against someone using such clauses to challenge our government-to-government relationship?

**Non-Federal Response:** HHS' Office of Civil Rights is consulting next week on compliance with specific non-discrimination provisions as a requirement for receipt of grant dollars. The USET Sovereignty Protection Funds has done a lot of work related to laws of general applicability and how they stand in the way of our sovereign right to enact our anti-discrimination provisions, but also how requiring compliance with these provisions violates trust and treaty obligations.

**ACF TAC Update**

***Jennifer Webster, Councilmember, Oneida Nations***

***Kasie Nichols, Self-Governance Director, Citizen Potawatomi Nation***

At the October meeting, the TAC met with Acting Assistant Secretary Jeff Hild and ANA Commissioner Patrice Kunesh regarding self-governance expansion. The TAC agreed to invite self-governance leadership to a future ACF TAC meeting. They did exhibit general support for self-governance but were concerned about the legislative barriers. They feel that ACF cannot act without authorizing legislation from Congress. They would like to put together a pilot project called Tribal Integrated Early Systems (TIES), which includes early childhood programs.

**National Tribal Opioid Summit**

***Nickolaus Lewis, Councilman, Lummi Nation***

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

The National Tribal Opioid Summit was held August 22 – 24, 2023. The summit was anchored by a panel of tribal citizens who shared their lived experiences. During the three-day summit, attendees focused on sharing stories of the impact opioids have had on their lives, exploring potential solutions, and considering policy recommendations to help overcome the opioid epidemic.

Priorities and policy recommendations developed during the summit include declaring a national emergency regarding the opioid epidemic. Tribal leaders feel this is necessary because

It would allow President Biden to open up more resources. Other recommendations include ensuring tribal practices, including traditional medicine, are reimbursable by third-party payers and providing additional and proactive technical assistance to Tribal Nations to access and apply for available funding to treat and prevent Substance Use Disorders. The IHS and BIA should also provide technical assistance and outreach to Tribal Nations for available uses of 105(l) leases, including housing and other services. To view the complete federal policy recommendations, please visit the website below.

For resources and additional information related to the national opioid summit and ongoing efforts to address the opioid epidemic, please visit:

<https://www.npaihb.org/national-tribal-opioid-summit/>.

**ACA Project Update**

***Cyndi Ferguson, Self-Governance Specialist, SENSE Incorporated***

***Elliot Milhollin, Partner, Hobbs, Straus, Dean, and Walker***

***Betsy Barron, ACA/IHCIA Project Intern***

**Recent Project Update**

Cyndi Ferguson provided an update on recent project activities. The group completed the executive summary and report based on tribal input received in a recent survey. Betsy Baron conducted Interviews to highlight some tribal best practices and outcomes due to authorities under the ACA/IHCIA. Webinars are being planned to address tribal best practices in tribal sponsorship and increases in third-party revenues. They participated in TTAG/CMS small Medicare/Medicaid Administrative Priorities workgroups.

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. During the pandemic, CMS suspended Medicaid redeterminations. There was a financial incentive for the states to stop doing annual redeterminations to determine whether someone was still eligible for Medicaid. This created a backlog. Now that redeterminations have resumed, individuals are falling off the Medicaid rolls. They are not falling off because they are no longer eligible. They are falling off because of what CMS calls "procedural disenrollment," which means someone didn't respond to an email or letter. Reports show that up to 15 million people nationally have been disenrolled from Medicaid.

The group wanted to get to CMS a story from Indian Country. The NIHB's data team did excellent work trying to compile some of the best estimates of how many Natives are being disenrolled from Medicaid. The problem is that states aren't required to collect or document Native identifiers. So, the group decided to do a survey. It's a survey that was done by the project to gather stories from Indian Country as to what is happening. It's dire, and the group encourages anyone interested to look at the survey.