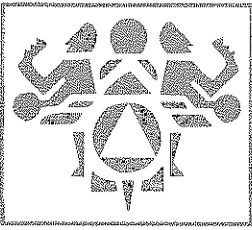

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Coeur d' Alene Tribe
Colville Tribe
Coos, Suislaw & Lower Umpqua Tribe
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SENT BY TELEFAX: (301) 443-4794 – Hardcopy via Federal Express

December 21, 2009

Yvette Roubideaux, M.D., M.P.H
Director
Indian Health Service
801 Thompson Avenue, Suite 440
Rockville, MD 20852

Dear Dr. Roubideaux:

We are writing to you concerning the FY 2010 Contract Health Service (CHS) funding decisions and to provide you with our recommendations following the Senate Committee on Indian Affairs' recent oversight hearing on chronic underfunding of the CHS program.

Our letter makes the following recommendations with discussion following: (1) we recommend that the IHS Director use the "2002 blended formula" when allocating the final FY 2010 CHS funding increase; (2) Portland Tribes recommend Tribal consultation on the continued use of the CHS funding formula, and (3) that the IHS Director convene a new CHS Workgroup to address how the IHS allocates CHS funding so that we effectively address the disparity between need and resources available for CHS.

The FY 2009 Congressional appropriation provided a $55.1 million increase for the CHS program. After applying mandatory pay costs, inflation, and population growth of $30.1 million, there remained $20.5 million that was available for distribution. It is the position of Portland Area Tribes that the $20.5 million should have been allocated using the formula in effect since 1994, or the "blended formula" that was used to distribute increases in FY 2001, FY 2002, and again in FY 2003. Instead the IHS allocated 75% of the remaining funds based on costs of health care, and 25% based on access to inpatient care. This resulted in approximately 18-40% less CHS funding being available for Portland Area Tribes.

It is the position of Portland Area Tribes—and others nationally—that the 2001 CHS Workgroup *proposed funding methodology* has never been officially adopted by the Indian Health Service (IHS). This is evident following the development of the *proposed methodology* when in FY 2001 and FY 2002, there were CHS funding increases of $34.9 million and $15 million respectively, and the IHS Director, Dr. Michael Trujillo, decided to use a blended formula to allocate the funding increases. This was done in order to alleviate many of the "fairness" concerns associated with the new proposed methodology. The IHS Director allocated on a non-recurring basis one-half of the funding using the existing CHS formula (1994 formula) and the other half using the 2001 workgroup recommendations.

The gravity of this of this questionable policy will be felt considerably in FY 2010, in which Congress has provided a $144.8 million increase for the CHS program. Our estimates indicate that the Portland Area will receive approximately 27% ($1.6 million) less funding in FY 2010 if the same formula is applied that was used in FY 2009. Our analysis indicates that the effect of not using the 1994 formula is that following the FY 2001 and FY 2002 decisions, the Portland Area has lost over $50 million when formula changes are compounded through FY 2009.

In FY 2003, the IHS Director, Dr. Charles Grim, made permanent this funding decision by allocating the $49.9 on a recurring basis using the "2002 formula."[1] The 2002 formula in place was the blended formula. Dr. Grim also announced that in the future, "he planned," to use the 2001 workgroup formula. While this letter indicated the IHS Director's intention, it did not explicitly adopt the formula as a final policy for future use. Certainly, Dr. Trujillo never officially adopted it in light of his use of a blended formula when allocating funding increases in FY 2001 and FY 2002. Arguably, Dr. Grim didn't adopt it in practice since in FY 2003 he allocated the CHS funds using the "2002 blended formula."

Portland Area Tribes do not believe that new CHS formula has never been officially adopted through the use of a "Dear Tribal Leader" letter, which is the common practice of the IHS when making substantive policy changes. In fact the IHS Director's decision letters in FY 2001 and FY 2002 state the following:

> *"I support the Workgroup's strong recommendation to convene a follow-up Workgroup to address these issues," and; "..the decision regarding recurring allocation can be deliberated more comprehensively with contemporary and agreed upon data. By using this approach, it is my hope that we will continue our dialogue on the outstanding issues related to the disparity between need and the resources available for CHS."* [2]
>
> *Dr. Michael Trujillo, IHS Director*

These statements indicate that the IHS Director intended to continue to work to refine the CHS formula. There has not been a CHS funding increase sufficient until FY 2009 for the IHS to apply the new formulary components, in which the Agency allocated a $20.1 million increase using the proposed 2001 Workgroup formula. Because the formula has never officially been adopted, the IHS should have conducted Tribal Consultation to determine if the Tribes would prefer to use the blended formula implemented by previous IHS Directors when there were CHS funding increases in 2001, 2002, and 2003 or use the 2001 Workgroup proposal. Thus, we recommend that you use the "2002 blended formula" when making final the FY 2010 CHS funding increase.

During the CHS hearing you testified that you would seek Tribal input about the continued use of CHS funding formulas. It is our position that the CHS formula decision is not a closed case, and that you should seek consultation with Tribes nationally on this issue. We further recommend that you convene a new CHS workgroup to address how the IHS allocates CHS funding so that we effectively address the disparity between need and resources available for CHS. We further recommend that the Agency take into consideration all available resources related to CHS including third party collections such as

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[1] See "Dear Tribal Leader Letter", by Dr. Charles Grim, IHS Director, dated April 10, 2003.
[2] See "Dear Tribal Leader Letter", by Dr. Michael H. Trujillo, IHS Director, dated June 7. 2001 and December 31, 2001.

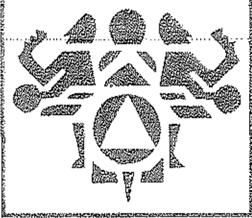
Medicare, Medicaid, CHIP, and private insurance collections. Contrary to what many believe, this data is available and must be used to achieve CHS funding equity.

Our recommendations are consistent with your testimony about how it is important to consult and partner with Tribes about making important changes in the CHS program, including funding distribution. If you should have questions concerning our recommendations, feel free to contact Jim Roberts, Policy Analyst, at (503) 228-4185 or by email at jroberts@npaihb.org.

We look forward to partnering with you on our recommendations.

Sincerely,

Joe Finkbonner, RPh, MHA
Executive Director



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RESOLUTION #09-01-01

Recommend the IHS Director Reconvene the CHS Workgroup to Revise the Contract Health Service Formula

WHEREAS, the Northwest Portland Area Indian Health Board (NPAIHB) is a Tribal organization under P.L. 93-638 that represents forty-three federally recognized Tribes in Idaho, Oregon, and Washington and is dedicated to assisting to promoting the health needs and concerns of Indian people in the Northwest; and

WHEREAS, the Northwest Portland Area Indian Health Board is dedicated to assisting and promoting the health needs and concerns of Indian people; and

WHEREAS, the primary goal of the NPAIHB is to improve the health and quality of life of its member Tribes; and

WHEREAS, the Contract Health Services (CHS) is the most important budget line item for Portland Area Tribes and other Indian Health Service (IHS) Areas (California, Nashville, Bemidji) that do not have inpatient care and must purchase specialty care from the private sector; and

WHEREAS, in 2002 a CHS Workgroup appointed by the IHS Director developed a new CHS formula that requires (1) Congressional earmarks, new Tribes funding, and CHEF requirements must be met first; (2) any remaining amount is used to fund CHS inflation requirements, and; (3) if there is a balance after funding inflation, it is to be distributed using the new formula recommendations; and

WHEREAS, the former CHS distribution methodology was made up of three components with a percentage appropriated to each as follows: (1) Workload and Cost – 20 percent; (2) Years of Productive Life Loss – 40 percent, and; (3) CHS dependency – 40 percent. The former methodology carried a greater weight for CHS dependency than the new formula, which resulted in more funding for CHS-dependent Areas.

WHEREAS, the new CHS dependence component was adopted because it was felt that the former component was not related to the population being served, did not recognize that all Areas have some degree of CHS dependence, did not consistently measure for CHS dependence, and was distorted when applied to the operating unit level data; and

WHEREAS, the new formula component results in significantly less funding for CHS dependent Areas due to the fact that there is less weighted value given to the new variable to measure CHS dependence; and

WHEREAS, the new formula requires that inflation be funded prior to allocating any remaining funds under its requirements and if an inadequate inflation factor is used, it can create a superficial surplus of CHS funds to be allocated under the new formula. It is not fair for any Tribe to receive less funding than what is needed to fund true inflation; and

WHEREAS, one of the recommendations by the CHS Workgroup was the IHS Director should revisit the formula to evaluate its implementation following several years of implementation and make adjustments as needed and recommended by Tribal leaders in order to improve its application.

NOW THEREFORE BE IT RESOLVED, that the Northwest Portland Area Indian Health Board recommends that the IHS Director reconvene the CHS Workgroup to revisit the new CHS formula as recommended by the 2002 CHS Workgroup Report.

CERTIFICATION

NO. 09-01-01

The foregoing resolution was duly adopted at the regular session of the Northwest Portland Area Indian Health Board. A quorum being established; 29 for, 0 against, 0 abstain on October 16 , 2008.

Chairman

10-16-08

Date

Secretary