



October 14, 2016

Secretary Sylvia Mathews Burwell
Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

Re: Secretary's Tribal Advisory Committee Follow up items from September meeting

Dear Secretary Burwell,

On behalf of the Secretary's Tribal Advisory Committee (STAC), we thank you and your staff for the productive meeting that was held from September 13-14, 2016. We appreciate the agency's willingness to hear our concerns and address key issues in a responsive and transparent manner and we look forward to working with you to advance many of these priorities in final months of this Administration.

The following letter presents the STAC's key issues from the September meeting. We hope to work with you to resolve these issues in a collaborative, and meaningful way. We are also eager to ensure that issues that cannot be resolved by the end of the year are given priority in a future Administration, and request your assistance in doing so.

Quality of Care issues at the Indian Health Service

Several Indian Health Service (IHS) operated hospitals continue to experience serious violations of patient welfare and safety resulting in not only dangerous patient situations, but diminished care and loss of critical third party revenues. This situation is unacceptable to the STAC and we urge you to do all in your power to see these situations rectified immediately. As recently as September 2016, IHS continues to violate the federal obligation to consult with Tribes on these issues, by announcing that it would move care at Sioux San Hospital in Rapid City to just urgent and outpatient services. As a result, American Indians in this region are losing access to vital services. Many have nowhere else to turn for example:

- The Winnebago Indian Hospital has been unable to collect reimbursements from the Center for Medicare and Medicaid Services (CMS) for over a year now. This has meant the loss of several millions of dollars for this facility, leading to rationed care for the Tribes it serves. HHS and IHS should rectify these issues immediately. The time it has taken to renew CMS certification at Winnebago Indian Hospital is just unacceptable. Please provide us with an update on when the CMS certification will be restored at Winnebago Indian Hospital.
- Tribes in the Great Plains Area have also been asking for a detail breakdown of the Tribal Shares allocation for every facility in the region since early 2016. Each Tribe has provided a request to IHS to release this information. Yet, IHS still refuses to provide

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this information. As Tribes in this region consider moving to self-governance, it is critical that this be shared before the end of the year.

- What are HHS and IHS doing to ensure that the staffing needs of the Great Plains Area are met as soon as possible at both the Area and Service unit levels?

Tribal Budget Formulation Workgroup's Recommendations for the FY 2018 IHS Budget

For FY 2018, Tribes would like to see a minimum 37% increase for the IHS in FY 2018 so that our people can receive a level of care that is more in line with the healthcare taken for granted by other Americans. We also request that you begin putting in explicit budget request for the new authorities of the Indian Healthcare Improvement Act totaling \$97 million. Additionally, the workgroup requests that HHS and IHS advocate that Tribes and Tribal programs be permanently exempt from sequestration and support Advance Appropriations for the Indian Health Service. Finally, we suggest several improvements to the Budget formulation process.

On June 20, 2016, representatives from the Tribal Budget Formulation Workgroup – which represents all 12 IHS areas – presented the Tribal recommendation for the Indian Health Service Budget. We were disappointed to see that neither Secretary Burwell nor IHS Principal deputy Director Mary Smith were present. Nor were other senior budget officials present. Before 2015, this meeting took place during the HHS Annual Tribal Budget Consultation (ATBC), but a separate meeting has been scheduled for the previous two years to allow the Workgroup adequate time to prepare their recommendation. Therefore, we **recommend** the following changes:

- Amend the HHS Tribal Consultation Policy to move the ATBC to the last week of March or April, and allow adequate time to prepare the BFWG national Tribal Budget Recommendations document and Tribal Leader presentation.
- Advocate for Tribal leaders to be active participants in all phases of the budget formulation process with HHS and the Office of Management and Budget (OMB), especially during the Congressional Justification (CJ) phase which has been embargoed to Tribes.

Office for American Indian / Alaska Native Programs at the Office of Management and Budget

For years, Tribal leaders have advocated for the creation of one office at the Office of Management and Budget (OMB) that would coordinate funding and policy for AI/AN programming throughout the various federal agencies. As we are all aware, programs serving the Tribes sometimes operate in silos leading to lack of information about needs, duplication, and inefficiency. Therefore, creating one single office that would have knowledge over all of these programs will ensure that resources directed to Tribes are being used in the most strategic and effective way possible.

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- We **request** that you advocate with the President Obama and White House Council on Native American Affairs to create this office at OMB before the end of the Administration.

Advocacy on the Veterans' Administration Memorandum of Understanding

The VA and IHS signed a Memorandum of Understanding (MOU) on October 1, 2010 with the goal "to improve the health status of American Indian and Alaska Native (AI/AN) Veterans. By the end of FY 2014, VA had reimbursed over \$13.1 million for direct care services provided by IHS and Tribal Health Programs (THPs) covering 4,500 eligible Veterans. The program provides eligible AI/AN veterans with access to care closer to their homes; promotes cultural competence and quality health care; and focuses on increasing care coordination, collaboration, and resource-sharing for eligible native veterans. On September 12, 2016, the Veterans Administration (VA) announced it would seek Tribal consultation on consolidating Tribal programs into one standard rate program at one standard rate. However, this plan will actually negate the positive impacts of the MOU and leave IHS and Tribal health providers with significantly lower reimbursements from the VA. The Choice Program does not pay the OMB-IHS rate and Choice requires preapproval as well as co-payments.

- The STAC **requests** that you advocate for IHS and Tribes and work with the Secretary of Veterans' Affairs to reject the consolidation of Tribal health programs into the Choice program.
- The IHS MOU expires on 12/31/2017. We **request** your support in assuring that the IHS MOU and Tribal Health Program's MOUs will be extended and renewed under the current terms for another five years into the next administration.

Implementation of Comprehensive Addiction and Recovery Act

Opioid abuse and addiction is a growing national epidemic in the United States and Indian Country is no different. However, due to the chronic underfunding of the Indian Health Care Delivery system, Indian Country does not have access to the same resources that the rest of the country has to combat this serious epidemic. Drug-related deaths among American Indians and Alaska Natives is almost twice that of the general population. On July 22, 2016, Congress passed the Comprehensive Addiction and Recovery Act (CARA) designed to address opioid abuse in the United States. However, much of the base funding will go directly to states, and not necessarily directly to Tribes. The following are **challenges** to respect the federal commitment to the Tribes:

- As the Comprehensive Addiction and Recovery Act is implemented how will HHS ensure that funding and resources reach Tribal Communities? Both for programs where Tribes are specifically authorized as grantees, and ones where they are not.
 - How will HHS require States to consult with and involve Tribes as they work on these issues?
- CARA requires the establishment of an inter-agency task force, composed of representatives from HHS, Veterans Administration, Department of Justice, the Centers

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for Disease Control and Prevention and other federal agencies, as well as addiction treatment organizations and other stakeholder communities to develop best practices for pain management and pain medication prescribing. How will Indian Country be involved in this effort?

Senior Level HHS Position Dedicated to Coordinating Tribal Policies at ACF

The STAC appreciates that the Administration for Children and Families (ACF) has reviewed our request to establish a Senior Level Tribal Advisor with the ACF Assistant Secretary's Office. We appreciate your consideration of making the position a civil servant position and understand the difficulty with reconciling the new position with the duties of the ANA Commissioner. As a result, the STAC is in support of elevating the position of ANA Commissioner to the level of Deputy Assistant Secretary for Tribal Affairs at ACF.

- Before the Secretary moves forward on this approach, the STAC would like to **request** a position description and the opportunity to provide input on the roles and responsibilities of the new position.

Indian Child Welfare Act Implementation

The STAC greatly appreciates the efforts of the Administration for Children and Families and HHS leadership for the work you have done to improve the implementation of the Indian Child Welfare Act (ICWA). We are especially supportive of the anticipated inclusion of new ICWA data elements in the Adoption and Foster Care Analysis and Reporting System (AFCARS).

- We **request** that this continue to be a priority for the rest of 2016 and that it stay a priority for the next Administration. We **request** that the Department provide a date when we can expect the final rule to be published.

1115 Waiver Approval

The STAC requests an update on the waivers from Arizona, Oklahoma, and Wyoming that are still under review with the Centers for Medicare and Medicaid Services (CMS). In conversations with CMS, officials have indicated that there is concern with approving waivers that they interpret to be partial Medicaid expansion. These waivers should not be considered partial Medicaid expansion because the authority for these waivers existed long before the Affordable Care Act was made law in 2010. These waivers would expand access to thousands of American Indians and Alaska Natives, honoring the federal government's trust responsibility to provide healthcare. Politics are not an excuse for failing to honor the federal government's commitment to Tribes.

- The STAC requests an update on where CMS is at with review of these pending waivers.
- The STAC supports the State of Alaska's submission of its Medicaid waiver proposal and urges the Department to respond quickly and give a concrete timeline for

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completion; this will be an essential tool to increase access to much needed substance abuse treatment in the state.

Transition Plan for the next Administration

The STAC is very appreciative of the work done during the Obama Administration to renew and strengthen Tribal consultation and the government-to-government relationship between the Tribes and the federal government. As a result of this relationship, federal agencies have a better understanding of the unique needs in Indian Country and how Tribes fit into the federal funding system. We hope to build upon these successes and continue this conversation for future administrations. This historic shift in attitude is appreciated but we still have a long way to go, especially as it concerns state-Tribal relationships. As equal partners in the Federal system, we hope that future administrations do more to encourage improved state-Tribal consultation. Tribes are still routinely left out of federal funding decisions or funds that flow to states are not making it to Tribal communities. Therefore, we request that the STAC be included in the development of the HHS transition plan to the next administration. Specifically:

- STAC **requests** that HHS make its transition plan available to STAC, and allow for collaboration when it comes to Indian Country's priority issues.
- We **request** that the transition plan include language around improving State-Tribal consultation.

Conclusion

In conclusion, we would like to reiterate our appreciation for your willingness to work with us and for your prioritization and commitment to address our issues in Indian Country. We look forward to continuing a strong and respectful relationship with you and to your response to these requests.

Sincerely,



Chester Antone
Chairperson
Secretary's Tribal Advisory Committee