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GENERAL MEMORANDUM 17-031

Indian Health Service Fiscal Year 2018 Proposed Budget

In this Memorandum we report on the Trump Administration's proposed FY 2018 budget for the Indian Health Service (IHS). The proposed federal budget was released May 23, 2017, which is quite late, but not unexpected for the first year of a new Administration. The result is that the FY 2018 appropriations process is very far behind and Congress has not yet adopted a Budget Resolution which sets the spending caps for the fiscal year. Hence, the Appropriations subcommittees have not yet received their individual allocations which set upper limits on how much funding they have available when making appropriations recommendations.

There have been very few congressional hearings for public witnesses on FY 2018 appropriations, although the House Appropriations Subcommittee on Interior, Environment and Related Agencies continued its recent tradition and held two days of hearings (May 16 and 17) for public witnesses on Indian programs under its jurisdiction. Federal agency witnesses are now being called to testify on the proposed budget.

IHS OVERALL FUNDING

FY 2016 Enacted	$4,807,589,000
FY 2017 Enacted	$5,039,886,000
FY 2018 Admin. Request	$4,739,291,000

The proposed budget is $301 million below the FY 2017 enacted level. The proposed decrease may not turn out to be as large as $301 million that due to an anticipated decrease in the estimated full Contract Support costs (CSC) need for FY 2017. However, the program increases realized in the Consolidated Appropriations, FY 2017 for behavioral health initiatives, accreditation emergencies, prescription drug monitoring, detoxification, small ambulatory construction program, domestic violence, and clinic leases are not continued in the proposed FY 2018 budget. Also absent are increases due to inflation.

The only program proposed for an increase over the FY 2017 enacted level is Direct Operations, and that is almost a technicality as $4 million of Direct Operations FY 2017 funds were transferred to other accounts. In addition, the proposed budget would provide a $2 million increase for new and replacement quarters.

The proposed budget came under heavy criticism at the House Interior Appropriations Subcommittee hearing of May 24, with Subcommittee Chairman Calvert (R-CA) noting it contains none of the FY 2017 enacted IHS increases. He expressed concern that such a budget would harm agency morale and recruitment efforts. Representative Cole (R-OK) deemed it "not defensible."

Misleading Figures. The FY 2018 IHS Budget Justification can be misleading as the proposed funding levels are not explained in comparison to the enacted FY 2017 amounts in the Consolidated Appropriations, FY 2017 (PL 115-31). Instead, the figures are explained as being over or under a FY 2017 annualized Continuing Resolution (CR) amount (in other words, the FY 2016 enacted levels). Congress, in enacting the Consolidated Appropriations, FY 2017, provided $233 million over FY 2016 for the IHS – that increase does not appear in the FY 2018 Budget Justification and hence, its funding charts give the impression of smaller proposed reductions than are the fact. This is the case for other federal agency FY 2018 budget justifications as well. Had Congress enacted FY 2017 funding in a timely manner, federal budgets, which were largely drafted before we had a final FY 2017 bill, would have been able to provide realistic comparison between FY 2017 enacted and FY 2018 proposed.

Built-in Costs. It is unclear whether the FY 2018 proposed IHS budget includes funding for pay cost increases. Per the action of President Obama last December, federal employees are to receive a 2.1 percent pay increase in 2017. The FY 2016 appropriation included $19.4 million for a 1.3 percent pay increase (but no other inflationary increases), and it may be that this amount is calculated into the proposed budget. The Indian Affairs FY 2018 budget proposes $17.3 million for pay raises.

By comparison, the FY 2017 Appropriations Act includes $59.5 million for built-in costs of which $14.4 million is for pay costs and $45.1 million is for inflation.

Staffing Packages. The budget proposes $20 million for staffing of two newly constructed Joint Venture projects – the Flandreau Health Center in Flandreau, SD and the Choctaw Nation Regional Medical Center in Durant, OK. Of that amount $17.9 million is in the Services account and $2 million is in the Facilities Account.

Appropriations Structure. The Administration proposes to strike language which has been in the Appropriations Act for a number of years which requires that the appropriations structure of the IHS may be not be altered without the advance notification to the House and Senate Committees on Appropriations. The IHS simply notes in the Budget Justification that they propose to strike the provision "to maximize operational flexibility".

CONTRACT SUPPORT COSTS

FY 2016 Enacted	*Such sums as may be necessary*
FY 2017 Enacted	*Such sums as may be necessary*
FY 2018 Admin. Request	*Such sums as may be necessary*

The Administration's FY 2018 budget for IHS and the Bureau of Indian Affairs (BIA) does not make any major changes in the structure or amount of CSC appropriations—although the estimated expenditures are much lower than predicted in FY 2017. Funding for CSC in each agency remains a separate appropriation account with an indefinite amount—"such sums as may be necessary." This achieves the twin objectives of full payment CSC with no impact on programs.

The Administration estimates that CSC spending for IHS will total $717,970,000, which it frames as in increase of $1,365,000 over the annualized FY 2017 continuing resolutions. For comparison's sake, the FY 2017 budget estimated CSC needs at $800 million, although it is now believed actual FY 2017 expenditures will end up closer to $710 million.

The budget's proposed bill language would reinstate two provisions of the FY 2016 appropriations act that tribes succeeded in having removed from the Consolidated Appropriations Act for FY 2017:

- *Carryover clause*: The proposed bill would reinstate the FY 2016 appropriations act language that could be read to deny the carryover authority granted by the Indian Self-Determination and Education Assistance Act: "amounts obligated but not expended by a tribe or tribal organization for contract support costs for such agreements for the current fiscal year shall be applied to contract support costs otherwise due for such agreements for subsequent fiscal years." The Consolidated Appropriations, FY 2017 Act does *not* contain this language.
- *"Notwithstanding" clause*: The IHS proposal includes language the agency has used as part of the justification to not pay CSC on Substance Abuse and Suicide Prevention (SASP), Domestic Violence Prevention Initiative (DVPI), programs to improve collections public and private insurance, and for accreditation emergencies. The language which the IHS says precludes CSC for these programs is the phrase "Notwithstanding any other law," the funding for these programs "shall be allocated at the discretion of the Director." Congress dropped the "notwithstanding" phrase in the Consolidated Appropriations, FY 2017 Act, which gave tribes a better argument for CSC on these funds. But with the "discretion" clause retained, it is not clear that IHS will agree to pay CSC on them even in the absence of the "notwithstanding" clause.

The FY 2018 budget proposal would continue prior language in the General Provisions section:

> *Contract Support Costs, Prior Year Limitation*
> *Sec. 404.* Sections 405 and 406 of division F of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) shall continue in effect in fiscal year 2018.
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> *Contract Support Costs, Fiscal Year 2018 Limitation*
> *Sec. 405.* Amounts provided by this Act for fiscal year 2018 under headings "Department of Health and Human Services, Indian Health Service, Contract Support Costs" and "Department of the Interior, Bureau of Indian Affairs and Bureau of Indian

> Education, Contract Support Costs" are the only amounts available for contract support costs arising out of self-determination or self-governance contracts, grants, compacts, or annual funding agreements for fiscal year 2018 with the Bureau of Indian Affairs or the Indian Health Service: *Provided*, That such amounts provided by this Act are not available for payment of claims for contract support costs for prior years, or for repayment of payments for settlement or judgments awarding contract support costs for prior years.

FUNDING FOR INDIAN HEALTH SERVICES

FY 2016 Enacted	$3,566,387,000
FY 2017 Enacted	$3,694,462,000
FY 2018 Admin. Request	$3,574,365,000

HOSPITALS AND CLINICS

FY 2016 Enacted	$1,857,225,000
FY 2017 Enacted	$1,935,178,000
FY 2018 Admin. Request	$1,870,405,000

Of the total, $14.7 million is for staffing of Joint Venture facilities ($11.7 million for the Choctaw Regional Medical Center and $3.1 million for the Flandreau Health Center).

Tribal Clinic Leases. The proposed budget would provide only $2 million for tribal clinic leases, versus the $11 million provided in FY 2017. In addition, the IHS has proposed to amend the law in order to avoid full compensation for section 105(l) Indian Self-Determination and Education Act (ISDEAA) leases. The IHS proposal:

- Is contrary to the decision in *Maniilaq Association v. Burwell*, 170 F. Supp.3rd 243(D.D.C. 2016) in which the court held that section 105(l) of the ISDEAA provided an entitlement to funding for section 105(l) leases separate from section 106(a)(1) of the ISDEAA.
- Would in essence amend the ISDEAA on an appropriations bill.
- Would be in violation of House and Senate rules which prohibit amending the law on an appropriations bill (House Rule XXI(2)(b) and Senate Rule XVI(2)(b)) and could be subject to a point of order.

The new IHS-proposed appropriation language is as follows:

> *Provided further*, That, notwithstanding any other provision of law, for any lease under section 105(l) of the Indian Self-Determination and Education Assistance Act, as amended, no additional compensation is required by the Act above the amount provided to the tribe or tribal organization under section 106(a)(1), except the Secretary, in the discretion of the Secretary, may award compensation for such leases, above the section 106(a)(1) amount, and if the Secretary awards such additional compensation, the amount

> of such compensation may be based on such reasonable expenses, if any, as the Secretary determines to be appropriate, which may include the expenses described in section 105(l)(2), and the exercise of this discretion to award additional compensation and determine its amount is not subject to sections 102(a)-(b), (e) or 507(b)-(d) of the Act.

Accreditation Emergencies. The proposed budget would provide only $2 million for hospital accreditation emergencies the same as the FY 2016 level. This would be a huge reduction from the FY 2017 enacted amount of $29 million. The Appropriations committees, responding to growing accreditation problems, increased the final FY 2017 funding significantly beyond what had been their original recommendations.

DENTAL SERVICES

FY 2016 Enacted	$178,286,000
FY 2017 Enacted	$182,597,000
FY 2018 Admin. Request	$179,751,000

Of the total, $1.46 million is for staffing of Joint Venture facilities ($1.1 million for the Choctaw Regional Medical Center and $330,000 for the Flandreau Health Center).

The FY 2018 Budget Justification addresses the House and the Senate Committees FY 2017 Appropriations report language which expressed strong interest in IHS establishing a pilot project for a centralized credentialing system for volunteer dentists, similar to what the Department of Defense and Veterans Affairs have. The FY 2017 House Report directs the IHS to consult with those federal agencies and with private organizations to develop this pilot project. The FY 2017 Senate Report asks the IHS to consult with federal agencies, private organizations and state dental organizations and work to establish a pilot project. The IHS response is:

> The Indian Health Service (IHS) understands the Committee's concerns about the length of time required for credentialing of volunteer healthcare practitioners, including dental care practitioners, prior to work commencing at tribal or IHS facilities. The IHS is currently undergoing efforts to establish a national credentialing system which could encompass volunteer practitioners. (The background research for which included consultation with the Department of Veteran's Affairs, Department of Defense, and other organizations.) IHS has awarded a contract for centrally procured credentialing software for use at the IHS Area and Service Unit level that will provide enhanced capabilities and improve standardization of the credentialing process across IHS, as called for by the IHS Quality Framework. IHS will use the software to manage the credentialing of health professional staff agency-wide. The credentialing functions are best performed at the local or regional level since the local Service Unit is responsible (Governance responsibilities defined by the CMS Conditions of Participation and external accreditation standards) for the granting of privileges to provide services commensurate with the verified credentials and qualifications. Use of the credentialing software system is anticipated to accelerate the credentialing process and to facilitate transfer of credentials between facilities for staff who change duty location (including volunteers). (pp. CJ- 195 and 197)

MENTAL HEALTH

FY 2016 Enacted	$ 82,100,000
FY 2017 Enacted	$ 94,080,000
FY 2018 Admin. Request	$ 82,654,000

Of the total, $554,000 is for staffing of Joint Venture facilities ($460,000 for the Choctaw Regional Medical Center and $94,000 for the Flandreau Health Center).

ALCOHOL AND SUBSTANCE ABUSE

FY 2016 Enacted	$205,305,000
FY 2017 Enacted	$218,353,000
FY 2018 Admin. Request	$205,593,000

Of the total, $288,000 is for staffing of Joint Venture facilities ($186,000 for the Choctaw Regional Medical Center and $102,000 for the Flandreau Health Center).

IHS states that the request includes $101.5 million for drug control activities and will maintain the program's progress "in addressing the alcohol and substance abuse needs by improving access to behavioral health services through tele-behavioral health efforts and providing a comprehensive array of preventive, educational and treatment services." (p. CJ-184)

PURCHASED/REFERRED CARE

FY 2016 Enacted	$914,139,000
FY 2017 Enacted	$928,830,000
FY 2018 Admin. Request	$914,139,000

Of the total, $51.5 million is for the Catastrophic Health Emergency Program. The FY 2017 enacted level was $53 million.

PUBLIC HEALTH NURSING

FY 2016 Enacted	$76,623,000
FY 2017 Enacted	$78,701,000
FY 2018 Admin. Request	$77,498,000

Of the total, $875,000 is for staffing of Joint Venture facilities ($601, 000 for the Choctaw Regional Medical Center and $274,000 for the Flandreau Health Center).

HEALTH EDUCATION

FY 2016 Enacted	$18,255,000
FY 2017 Enacted	$18,663,000
FY 2018 Admin. Request	$18,313,000

Of the total, $58,000 is for staffing for the Choctaw Regional Medical Center.

COMMUNITY HEALTH REPRESENTATIVES

FY 2016 Enacted	$58,906,000
FY 2017 Enacted	$60,325,000
FY 2018 Admin. Request	$58,906,000

HEPATITIS B and HAEMOPHILUS
IMMUNIZATION (Hib) PROGRAMS IN ALASKA

FY 2016 Enacted	$1,950,000
FY 2017 Enacted	$2,041,000
FY 2018 Admin. Request	$1,950,000

URBAN INDIAN HEALTH

FY 2016 Enacted	$44,741,000
FY 2017 Enacted	$47,678,000
FY 2018 Admin. Request	$44,741,000

The IHS states that the request includes $3.6 million for Alcohol and Substance Abuse Title V grants and notes that Urban Indian programs "have active partnerships with their local Veterans health Administration programs and several have identified joint alcohol and substance abuse initiatives." (p. CJ-184)

INDIAN HEALTH PROFESSIONS

FY 2016 Enacted	$48,342,000
FY 2017 Enacted	$49,345,000
FY 2018 Admin. Request	$43,342,000

Programs funded under Indian Health Professions are: Health Professions Preparatory and Pre-Graduate Scholarships; Health Professions Scholarships; Extern Program; Loan Repayment Program; Quentin N. Burdick American Indians Into Nursing Program; Indians Into Medicine Program; and American Indians into Psychology. The budget proposes $36 million for

the loan repayment program. The IHS notes that the proposed level "will maintain the current loan repayments and scholarship commitments, and will not support additional awards." (p. CJ-129)

TRIBAL MANAGEMENT

FY 2016 Enacted	$2,442,000
FY 2017 Enacted	$2,465,000
FY 2018 Admin. Request	-0-

The Tribal Management grant program, authorized in 1975 under the authority of the ISDEAA, provides competitive grants funding for new and continuation grants for the purpose of evaluating the feasibility of contracting IHS programs, developing tribal management capabilities, and evaluating health services. IHS notes that no funding is proposed for this program in order "to prioritize funding for direct care services." (p. CJ-134)

DIRECT OPERATIONS

FY 2016 Enacted	$72,338,000
FY 2017 Enacted	$70,420,000
FY 2018 Admin. Request	$72,338,000

IHS estimates that 58.7 percent of the Direct Operations budget would go to Headquarters and 41.3 percent to the 12 Area Offices. Tribal Shares funding for Title I contracts and Title V compacts are also included.

SELF-GOVERNANCE

FY 2016 Enacted	$5,735,000
FY 2017 Enacted	$5,786,000
FY 2018 Admin. Request	$4,735,000

The Self-Governance budget supports implementation of the IHS Tribal Self-Governance Program including funding required for Tribal Shares; oversight of the IHS Director's Agency Lead Negotiators; technical assistance on tribal consultation activities; analysis of Indian Health Care Improvement Act new authorities; and funding to support the activities of the IHS Director's Tribal Self-Governance Advisory Committee.

The IHS notes in its FY 2018 budget justification that in FY 2016, $1.9 billion was transferred to tribes to support 89 ISDEAA Title V compacts and 115 funding agreements.

SPECIAL DIABETES PROGRAM FOR INDIANS

While the entitlement funding for the Special Diabetes Program for Indians (SDPI) is not part of the IHS appropriations process, tribes and tribal organizations routinely include support for this program in their testimony on IHS funding. SDPI is currently funded through FY 2017 at $150 million annually, and the Administration supports $150 million for FY 2018. The program needs to be reauthorized this year.

FUNDING FOR INDIAN HEALTH FACILITIES

FY 2016 Enacted	$523,232,000
FY 2017 Enacted	$545,424,000
FY 2018 Admin. Request	$446,956,000

MAINTENANCE AND IMPROVEMENT

FY 2016 Enacted	$73,614,000
FY 2017 Enacted	$75,745,000
FY 2018 Admin. Request	$60,000,000

As of October 1, 2016, the Backlog of Essential Maintenance, Alteration, and Repair is $515.4 million. Maintenance and Improvement (M&I) funds are provided to Area Offices for distribution to projects in their regions. IHS estimates funding to be distributed as follows:

- Routine maintenance - $57.1 million;
- M&I Projects to reduce the backlog of maintenance - zero
- Environmental compliance - $2.5 million, a reduction of $500,000, and
- Demolition of vacant or obsolete health care facilities - While bill language would authorize up to $500,000, the budget narrative states they anticipate providing $400,000 for this purpose (a reduction of $100,000).

FACILITIES AND ENVIRONMENTAL HEALTH SUPPORT

FY 2016 Enacted	$222,610,000
FY 2017 Enacted	$226,950,000
FY 2018 Admin. Request	$192,022,000

Of the total, $2 million is for staffing of Joint Venture facilities ($1.56 million for the Choctaw Regional Medical Center and $466,000 for the Flandreau Health Center).

MEDICAL EQUIPMENT

FY 2016 Enacted	$22,537,000
FY 2017 Enacted	$22,966,000
FY 2018 Admin. Request	$19,511,000

While proposed bill language would provide up to $500,000 for TRANSAM equipment and up to $2.7 million for purchase of ambulances, the narrative states that IHS expects to provide $450,000 to purchase TRANSAM equipment from the Department of Defense and no funding for the purchase of ambulances.

CONSTRUCTION

Construction of Sanitation Facilities

FY 2016 Enacted	$ 99,423,000
FY 2017 Enacted	$101,772,000
FY 2018 Admin. Request	$ 75,423,000

IHS projected in the FY 2018 budget justification that the funds would be distributed as follows:

- $37 million for projects to serve new or like-new housing ($20 million below FY 2017);
- $37.9 million for projects to serve existing homes ($5 million below FY 2017); and
- $523,000 for emergency projects (about $500,000 below FY 2017).
- No funding would be provided for projects such as studies, training, or other needs related to sanitation facilities construction for which $2 million was provided in FY 2017.

The IHS sanitation facilities construction funds cannot be used to provide sanitation facilities for HUD-built homes.

Construction of Health Care Facilities

FY 2016 Enacted	$105,048,000
FY 2017 Enacted	$117,991,000
FY 2018 Admin. Request	$100,000,000

The IHS proposes construction funding for the following project:

- $45 million to complete construction of the Rapid City Health Center, Rapid City, SD;

- $50 million to continue construction of the Dikon Alternative Rural Health Center, Dikon. AZ; and
- $5 million for design/build activities for the Alamo Health Center, Alamo, NM

No funding is requested for the Small Ambulatory Program which received $5 million in FY 2017.

New and Replacement Quarters. The IHS proposes $8.5 million for new and replacement quarters, the same as the FY 2016 level and $2.5 million above the FY 2017 level.

THIRD PARTY COLLECTIONS

The budget justification includes estimates of FY 2018 third party collections totaling $1,193,577,000 the same as the FY 2017 estimates:

- Medicaid $807,605,000
- Medicare $248,638,000
- Private Insurance $109,272,000
- VA Reimbursements $ 28,062,000

CONTINUING BILL LANGUAGE

The proposed bill continues language from previously enacted bills, including the following:

IDEA Data Collection Language. The proposed budget would continue the BIA authorization to collect data from the IHS and tribes regarding disabled children in order to assist with the implementation of the Individuals with Disabilities Education Act (IDEA). The provision is:

> *Provided further*, That the Bureau of Indian Affairs may collect from the Indian Health Service and tribes and tribal organizations operating health facilities pursuant to Public Law 93-638 such individually identifiable health information relating to disabled children as may be necessary for the purpose of carrying out its functions under the Individuals with Disabilities Education Act. (20 U.S.C. 1400, et. seq.)

Prohibition on Implementing Eligibility Regulations. The proposed budget would continue the prohibition on the implementation of the eligibility regulations, published September 16, 1987.

Services for Non-Indians. The proposed budget would continue the provision that allows the IHS and tribal facilities to extend health care services to non-Indians, subject to charges. The provision states:

> *Provided*, That in accordance with the provisions of the Indian Health Care Improvement Act, non-Indian patients may be extended health care at all tribally administered or Indian Health Service facilities, subject to charges, and the proceeds along with funds recovered under the Federal Medical Care Recovery Act (42 U.S.C. 2651-2653) shall be credited to the account of the facility providing the service and shall be available without fiscal year limitation.

Assessments by DHHS. The proposed budget would continue the provision which provides that no IHS funds may be used for any assessments or charges by the Department of Health and Human Services "unless identified in the budget justification and provided in this Act, or approved by the House and Senate Committees on Appropriations through the reprogramming process."

Limitation on No-Bid Contracts. The proposed budget would continue the provision regarding the use of no-bid contracts. The provision specifically exempts Indian Self-Determination agreements:

> Sec. 411. None of the funds appropriated or otherwise made available by this Act to executive branch agencies may be used to enter into any Federal contract unless such contract is entered into in accordance with the requirements of Chapter 33 of title 41 United States Code or chapter 137 of title 10, United States Code, and the Federal Acquisition Regulations, unless:
>
> (1) Federal law specifically authorizes a contract to be entered into without regard for these requirements, including formula grants for States, or federally recognized Indian tribes; or
>
> (2) such contract is authorized by the Indian Self-Determination and Education and Assistance Act (Public Law 93-638, 25 U.S.C. 450 et seq.) or by any other Federal laws that specifically authorize a contract within an Indian tribe as defined in section 4(e) of that Act (25 U.S.C. 450b(e)); or
>
> (3) Such contract was awarded prior to the date of enactment of this Act.

Use of Defaulted Funds. The proposed budget would continue the provision that allows funds collected on defaults from the Loan Repayment and Health Professions Scholarship programs to be used to make new awards under the Loan Repayment and Scholarship programs.

Please let us know if we may provide additional information or assistance regarding the Trump Administration's proposed FY 2018 Indian Health Service appropriations.

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