DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20857

DEC 4 2015

Ms. Marilynn Malerba
Chairwoman
Tribal Self-Governance Advisory Committee
P.O. Box 1734
McAlester, OK 74501

Dear Chairwoman Malerba:

I am responding to your November 3 letter regarding the Indian Health Service's (IHS) interpretation of the contract support costs (CSC) provisions concerning duplication in the Indian Self-Determination and Education Assistance Act (ISDEAA). While I appreciate the detail included in your letter, this letter responds only generally due to pending litigation on this specific issue.

The IHS interprets the ISDEAA as explicitly prohibiting activities funded in the Secretarial amount from also being funded with CSC, *see* 25 U.S.C. §§ 450j-1(a)(2)-(3). The ISDEAA requires that the Secretarial amount transferred shall "not be less than the appropriate Secretary would have otherwise provided for the operation of the program[] . . . without regard to any organizational level within the . . . Department of Health and Human Services, . . . at which the program, function, service, or activity [(PFSA)], including supportive administrative functions that are otherwise contractible, is operated." *Id.* § 450j-1(a)(1). However, CSC is only eligible to be paid for "reasonable costs for activities which must be carried on by a [Tribe] to ensure compliance with the terms of the contract and prudent management, but which—(A) normally are not carried on by the respective Secretary in [her] direct operation of the program; or (B) are provided by the Secretary in support of the contracted program from resources other than those under contract." *Id.* § 450j-1(a)(2).

Thus, where an activity is one normally carried on by the IHS and IHS transfers that activity in the Secretarial amount, the activity is not eligible for CSC. *Id.* The IHS recognizes that tribes may expend more funds on these activities when tribes have expanded program operation with tribal or other resources as permitted by the ISDEAA. However, IHS is not authorized to provide CSC for activities that IHS also carried out when operating the program.
The IHS CSC Policy is clear on this treatment of duplication. For example, the policy identifies numerous categories of activities that cannot be funded as direct CSC because the activity is one that normally would be carried on by the IHS in the direct operation of the program. Indian Health Manual, part 6, chapter 3, exhibit 6-3-H (identifying travel/vehicle lease, supplies and drugs, rent/utilities, etc., as among such activities).

As shared in my July 2015 response to your June 29 letter, I have charged the IHS CSC Workgroup with the task of reviewing CSC business processes, including the negotiation of

CSC. I look forward to receiving recommendations from the Workgroup that will help us find ways to address CSC in a fair and efficient manner. The next CSC Workgroup meeting will be held on December 7 and 8 in Denver, Colorado.

I want to restate my commitment to working with the TSGAC, as I value your guidance and recommendations. I have sent a similar letter to Chairman W. Ron Allen.

Sincerely,

Robert G. McSwain
Principal Deputy Director

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