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## MEMORANDUM

April 19, 2016

TO: Contract Support Cost Clients  
FROM: HOBBS, STRAUS, DEAN & WALKER, LLP /s/  
RE: ***Template Comment Letter on Draft IHS CSC Policy***

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As noted in our last report, the Indian Health Service (IHS) recently kicked off a 60-day tribal consultation period for input on the agency's draft IHS Contract Support Costs (CSC) Policy. A copy of the draft policy is attached again for your convenience, along with a template comment letter for your consideration.

The template letter, which we developed in collaboration with lawyers in the Sonosky firm, focuses on several of the key issues we have discussed extensively over the last few months, including the following:

- **Duplication**: The policy implements IHS's view that the inclusion of any funding in the Secretarial amount for an activity or category (for example, facilities) precludes the recovery of any amount for that category in CSC. The tribal view, memorialized in footnote 1 on page 9, is that the Indian Self-Determination Act (ISDA) non-duplication rule applies to funds, not categories or activities.
- **Direct CSC**: The policy limits the "triggers" to DCSC renegotiation, so most tribes will continue to receive the recurring amount from the previous year (plus inflation) without a costly negotiation process. The letter also supports a proposed shift in the inflation rate from the non-medical to the higher medical inflation rate.
- **Indirect CSC**: The letter largely supports the compromises the Workgroup was able to negotiate to accommodate IHS's "incurred costs" approach without undue burden to tribes, but offers some suggestions for fine-tuning the process of estimating needs and reconciling payments.
- **Funds Eligible for CSC**: IHS does not pay CSC for tribal health care services and activities funded by third-party revenues (Medicare, Medicaid, and private insurance) or by certain categories such as Catastrophic Health Emergency Fund (CHEF) and Methamphetamine and Suicide Prevention Initiative (MSPI) funding. The tribal position, set forth in note 12 on page 55, is that the ISDA requires CSC on all of these funds.

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- Impact on Ratemaking Process: The letter calls attention to the policy's impact on the indirect cost ratemaking process—including how the policy's provisions on overpayment might affect carryforward calculations and final rate determinations.
- Training: Weighing in at 68 pages, the policy is long and complex. The comment letter urges IHS to develop a comprehensive training program for both federal and tribal staff.
- Calculation Template: The Annual CSC Calculation (ACC) spreadsheet, which IHS uses to estimate and reconcile CSC, incorporates a number of assumptions and rules with which tribes disagree, including an inflated federal fringe rate and a unilateral salary cap. The letter calls on IHS to remove or modify these rules.

The template comment letter can be modified and customized as you see fit. If you decide to submit comments to IHS, please send us a copy of your letter.

We will continue to follow CSC developments in both IHS and the Bureau of Indian Affairs on your behalf. If you have any questions about this memorandum, please do not hesitate to contact Joe Webster ([jwebster@hobbsstrauss.com](mailto:jwebster@hobbsstrauss.com) or 202-822-8282), Geoff Strommer, ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745), or Steve Osborne ([sosborne@hobbsstrauss.com](mailto:sosborne@hobbsstrauss.com) or 503-242-1745).