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## MEMORANDUM

March 24, 2020

To: Tribal Health Clients  
FROM: Hobbs, Straus, Dean & Walker, LLP  
RE: *IHS Holds Tribal Consultation on COVID-19 Emergency Funding*

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On March 23, 2020, the Indian Health Service (IHS) held a virtual tribal consultation to inform the agency's decision-making process regarding the distribution of emergency funding for the COVID-19 response to tribal nations and tribal organizations. The funds at issue are the \$70 million set aside for the IHS from the Public Health and Social Services Emergency Fund provided in the Coronavirus Preparedness and Response Supplemental Appropriations Act (Phase I), and \$64 million to support the cost of COVID-19 testing across the Indian health system provided in the Families First Coronavirus Response Act (Phase II). Congress appropriated these dollars to advance Indian Country prevention, preparation, and response activities. This report provides a summary of the major themes raised during the consultation.

Over 500 participants joined the approximately hour-long virtual consultation. IHS leadership on the call was comprised of IHS Principal Deputy Director RADM Michael Weahkee, Office of Finance and Accounting (OFA) Director Jillian Curtis, and Deputy Director for Intergovernmental Affairs Ben Smith. An urban confer on the funding is scheduled for tomorrow, March 25, at 12:00pm – 1:00pm EST. The conference call number is 877-394-5901 and the participant passcode is 7004006.

*The IHS is accepting comments on the COVID-19 funding for a very short window. The agency will select the emergency funding distribution methodology following the conclusion of tomorrow's urban confer. The appropriated funds are already in the IHS account and RADM Weahkee stated that the agency's goal is to begin the distribution of funds by the end of this week. Tribal leaders are strongly encouraged to submit comments electronically to [consultation@ihs.gov](mailto:consultation@ihs.gov) using the subject line "COVID-19 Funding." Please let us know if you are interested in submitting comments and if we can be of assistance to you in this process.*

### ***Opening Remarks***

OFA Director Jillian Curtis opened the consultation with an overview of the funding sources appropriated by Congress to the Indian health system. She explained that

the \$64 million in Phase II funding is only available to support COVID-19 testing and the medical visits during which such testing takes place. The \$70 million in Phase II funding is much broader in scope and can be used to cover treatment, personal protective equipment for medical personnel, medical transportation for patients, and temporary field stations for testing and patient care. Director Curtis explained that the \$70 million cannot be used for purchases of food and household supplies to support community members, though she expects that the Phase III funding under development will include emergency assistance for such healthcare adjacent items.

Director Curtis stated that addition to deciding how to proceed with distributing the Phase I and II funding allocations to tribal nations and organizations, the IHS is working to identify gaps in the appropriated funds to inform how it may distribute the substantial amount of IHS that is expected to come down in the Phase III appropriations under consideration in the Senate. For example, she requested tribal feedback on a methodology under consideration at the IHS whereby a significant portion of the \$64 million in testing funds would be allocated to IHS, tribally operated, and urban Indian health programs (ITUs) with a small set aside amount for emerging locations with increasing rates of COVID-19 infection (i.e., "hot spots").

Deputy Director Ben Smith stressed the importance of electronic communication between the IHS and tribal leaders. He stated that information that would have typically been distributed through the U.S. Postal Service – such as Dear Tribal Leader letters – will now be sent through email. He reported that the IHS is engaged in a concerted effort to ensure that Area Directors and negotiators are in direct contact with appropriate individuals at the tribal level for the effective communication of information.

### ***Tribal Leader Remarks***

Testing. Tribal leaders requested clarification on the scope of testing that will be covered by the Phase I funding. RADM Weahkee stated a range of testing modalities are covered – test kits, respiratory swabs, etc. – and that the decision on which type to use will be made at the local level to ensure maximum flexibility in meeting the needs of specific communities. RADM Weahkee reported the IHS is looking closely into a recently approved diagnostic test with the capability of producing a COVID-19 test result in 45 minutes.<sup>1</sup> He expects this rapid result testing option to be available within the Indian health system in the near future. In response to questions, RADM Weahkee explained that testing will likely be conducted through existing programs and the IHS does not expect to establish independent testing sites.

Preferred Distribution Methodology. Tribal leaders expressed uniform support for the distribution of emergency funding through non-competitive, non-grant methodologies.

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<sup>1</sup> For additional coverage on the 45 minute diagnostic test, please see the Kaiser Health News release available at <https://khn.org/morning-breakout/45-minute-test-is-here-but-will-only-be-used-in-urgent-scenarios-fda-warns-about-at-home-kits/>.

To streamline the process, tribal leaders recommended the IHS use its existing framework for distributing funds (i.e., on a proportional basis) rather than trying to create an entirely new system during a crisis. Tribal leaders on the consultation call also expressed strong support for receiving funds through amendments to self-determination contracts and self-governance compacts under the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93-638. Deputy Director Smith stated that the IHS believes contract and compact amendments can be made quickly using a process similar to standard cost adjustments. In response to questions, Director Curtis reported that the IHS is not contemplating using a reimbursement methodology at this time and is engaged in internal discussions on the issue of contract support costs.

Hot Spot Set Aside Proposal. Tribal leaders urged the IHS to abandon the idea of setting aside a portion of the Phase I and Phase II funding for emerging hot spots. Tribal leaders stated that targeting funds at this stage in the U.S. outbreak would be short sighted as it is likely that within the immediate future all areas of the country will either have or be hot spots.

Strategic National Stockpile. Tribal leaders stressed the need for direct tribal access to the Strategic National Stockpile of emergency medical resources. RADM Weahkee reported that the IHS is looking into every available supply source to assist tribal nations in responding to the pandemic and is in "robust discussions" on the topic of Stockpile access with the Assistant Secretary for Preparedness and Response and the Federal Emergency Management Agency (FEMA). A process for facilitating tribal access to the Stockpile has reportedly been identified, and it is expected to be shared with ITUs. We will notify you when this information becomes available.

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If we can be of assistance to you in preparing a comment on the emergency funding distribution methodology, or for additional information on any of the topics discussed in this report, please contact Elliott Milhollin ([emilhollin@hobbsstrauss.com](mailto:emilhollin@hobbsstrauss.com) or 202-822-8282); Geoff Strommer ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745); or Lisa Meissner ([lmeissner@hobbsstrauss.com](mailto:lmeissner@hobbsstrauss.com) or 202-822-8282).