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## MEMORANDUM

April 1, 2020

TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

RE: *IHS Holds Tribal Consultation on CARES Act Funding; CDC Holds Listening Session with NIHB on COVID-19 Funding*

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### ***I. IHS Holds Tribal Consultation on CARES Act Funding***

Today, April 1, the Indian Health Service (IHS) held a one-hour virtual consultation soliciting tribal leaders' recommendations on funding authorized for the IHS under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Act provides \$1.032 billion to the IHS with certain pots of mandatory funding set aside for designated purposes, namely: a minimum of \$450 million for distribution through tribal shares and contracts with urban Indian health programs; \$65 million for electronic health record stabilization and support; and \$125 million that may be transferred to the IHS Facilities account. The remaining \$517 million may be distributed at the IHS's discretion to support the COVID-19 response in Indian Country. The purpose of the IHS consultation was to discuss how the \$450 million minimum for tribal shares and contracts with urban programs, and the remaining \$517 million could best be distributed to further this goal.

*The IHS is accepting written comments on the CARES Act funding for a short window. Tribal leaders are strongly encouraged to submit comments electronically to [consultation@ihs.gov](mailto:consultation@ihs.gov) using the subject line "CARES Act Funding" or "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***

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. The consultation began with a brief overview of the mandatory set asides within the \$1.032 billion IHS allocation under the CARES Act, which we described above. Director Curtis shared that it is the IHS's goal to distribute the \$450 million in direct tribal funding as soon as possible based on FY 2020 recurring base funding levels. She stated such an approach would be consistent with Congressional directives and feedback on preferred distribution methods received from tribal leaders.

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

Flexibility. All of the tribal leaders who spoke during the virtual consultation stressed the need for flexibility in using any distributed funds. Tribal leaders stated that flexibility is critical to being able to respond to developing conditions at the local level. Director Curtis agreed that flexibility is a prime goal of the funding, noting that Congress provided the IHS with broad discretion in deciding how best to allocate the set aside. RADM Weahkee also encouraged tribal leaders to evaluate their existing grants to see if COVID-19 response activities could be incorporated under an amended scope of work.

Testing. Tribal leaders strongly expressed the need for testing kits and materials in their communities. They spoke passionately on the extreme measures that tribal health officials and tribal members are having to take to access tests. RADM Weahkee reported IHS is communicating with other agencies on this issue in light of the national deficit of testing materials and supplies. At present, testing is generally being ordered only where a patient is clinically symptomatic. RADM Weahkee also encouraged tribal leaders to connect with county and State officials to identify areas of need for targeted testing actions.

Distribution Funding Methodology. Tribal leaders expressed support for the distribution of funds through existing IHS funding mechanisms and Indian Self-Determination and Education Assistance Act of 1975 contracts and compacts. One tribal leader also recommended the IHS use the existing tribal size adjustment formula (which calculates funding in proportion to tribal user counts) to allow resources to be distributed to all tribal nations using an already agreed-upon formula, rather than attempting to create an entirely new distribution methodology. One tribal leader recommended the IHS not provide targeted funding for hot spots (areas of high COVID-19 activity).

Facilities. Participants emphasized the need for a significant infusion of funding to support increasing demands on tribal healthcare facilities during the pandemic. Tribal leaders suggested that the optional transfer of \$125 million to the IHS Facilities account be made with a focus on maintenance and improvement (M&I).

Purchased/Referred Care and Telehealth. Tribal participants discussed the critical importance of Purchased/Referred Care (PRC) and telehealth in responding to the crisis. They noted that PRC is vital to connecting tribal members to acute care facilities and other specialized care that is not available in their home community. Telehealth services were also repeatedly stressed as an area of significant need, both to protect vulnerable members of the population from unnecessary COVID-19 exposure and to ensure that people have access to care for ongoing and new healthcare needs. A tribal leader requested the IHS share its spending plan for the \$65 million for EHR development and stabilization.

Contract Support Costs. In response to questions from participants, Director Curtis stated emphatically that CARES Act funding distributed through ISDEAA agreements will be subject to contract support costs.

## ***II. CDC Holds Listening Session with NIHB on COVID-19 Funding***

On March 31, 2020, the National Indian Health Board (NIHB) hosted a tribal listening session with the Centers for Disease Control and Prevention (CDC) to allow tribal leaders to provide input on the distribution of the \$125 million tribal set aside funding outlined in the CARES Act—the third COVID-19 legislative package. CDC officials shared information on the funding distribution process and answered questions from tribal leaders. In addition, NIHB discussed how the organization is sharing this vital information.

Dr. José Montero, Director of the CDC Center for State, Tribal, Local, and Territorial Support, provided details on how the CDC is planning to spend funds from the first two stimulus bill CDC tribal set asides, and requested consultation on how the CDC should spend the tribal funds it just received in the third stimulus bill.

As a reminder, the CDC originally received \$40 million in tribal funding from the first stimulus bill. The CDC then increased that funding to \$80 million. \$30 million of that will supplement the CDC's existing cooperative agreements under the Tribal Public Health Capacity-Building and Quality Improvement Umbrella Cooperative Agreement program. This will go to nine regional organizations and two large tribal nations who had existing CDC grants. A second grant will go to provide funds to the Great Plains Tribal Chairman's Health Board and the Inter-Tribal Council of Arizona, who did not have existing cooperative agreements with the CDC. An additional \$10 million will go to NIHB and NCUIH for national outreach issues.

The remaining \$40 million is going to go to tribal nations. Dr. Montero explained that this funding has not yet been released, but he expects that it will be posted by April 1 or 2, 2020. He clarified that the \$40 million is not part of the \$125 million tribal set aside in the third stimulus bill.

Dr. Montero indicated that the \$40 million in tribal set aside funding will be released in two parts—Component A and Component B. Component A will provide funding to entities that have Title I and Title V contracts and compacts with the IHC. Component B is designed to assist all federally recognized tribal nations, tribal organizations, consortia of federally recognized tribal nations, or their bona fide agents that represent tribal components of the public health system to carry out COVID-19 preparedness and response activities. Dr. Montero explained that all of the funding is noncompetitive and scoring is not attached. He said that he expects all those who apply will be awarded funding. Accordingly, he said, all tribal nations and eligible entities should apply. He also clarified that, due to the way the legislation is drafted, the CDC is required to distribute funding through grants or cooperative agreements, which does not apply to IHS. He stated that this mechanism is beneficial to applicants because it will allow tribal nations and eligible entities to access the funding more quickly.

Regarding the grant and reporting processes for the \$125 million tribal set aside,

Dr. Montero stated that tribal nations and eligible entities will have 60 days to respond to the Notice of Funding Opportunity (NOFO), but said he expects that once they apply, they will receive funding in as little as 10 days. He did not disclose the date of the NOFO, but reiterated that it would be available soon. He also stated that the applications and reporting requirements are minimized to ensure that all tribal nations and eligible entities will be able to apply and receive funding. He recommended that tribal nations and eligible entities apply for the amounts they need as opposed to the minimum amount listed in the NOFO.

Tribal leaders asked questions regarding whether funding would cover retroactive costs associated with COVID-19 preparation and prevention. CDC officials responded that, yes, tribal nations may apply their funding to retroactive costs, so long as those costs would otherwise be eligible under the grant and the costs were incurred on or after January 20, 2020.

Tribal leaders also asked whether the CDC has chosen a formula for funding allocation. CDC officials explained that the formula will be finalized at the end of the 60-day NOFO period, but that tribal nations and eligible entities would receive funding prior to that finalization. CDC officials stated that when tribal nations and eligible entities apply early in the 60-day period, they will receive an average amount of funding. Next, they explained, applicants will receive an additional amount based on the formula at the end of the 60-day NOFO period. Thus, CDC officials emphasized, all tribal nations and eligible entities should apply early. CDC officials also noted that they are encouraging those who may not otherwise qualify for funding to form partnerships and apply with tribal nations and eligible entities. Although applicants will receive funding prior to the formula's finalization, CDC officials stated that they do not expect applicants will be required to amend or supplement the budgets initially provided in their applications.

Tribal leaders also requested more information on COVID-19 testing and emphasized that testing is either unavailable to their citizens or obtaining test results involve long waiting periods. CDC officials did not resolve this issue, but stated that they heard tribal nations' concerns and asked that they continue contacting the CDC's Center for State, Tribal, Local, and Territorial Support.

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If you have any questions or would like further information on the topics raised during these calls, 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).