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MEMORANDUM

April 3, 2020

TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

RE: *SAMHSA and HRSA Hold Listening Session on CARES Act Funding*

On April 1, 2020, the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Health Resources and Services Administration (HRSA) co-hosted a virtual listening session with the National Indian Health Board (NIHB) on the distribution of CARES Act funding in Indian Country. The third legislative aid package to support the national response to the COVID-19 pandemic contained $15 million in set aside funding for tribal nations within each agency. This funding is intended to further access to mental and behavioral services in the crisis, and provide additional support to rural communities. This report provides a summary of the major topics discussed during the listening session.

SAMHSA Discussion

Dr. Alec Thundercloud, Director of the Office of Tribal Affairs and Policy, framed the SAMHSA portion of the listening session by reporting that Congress provided $425 million under the CARES Act to support mental and behavioral health services, of which not less than $15 million is set aside for Indian Country. Dr. Thundercloud requested tribal input on preferred distribution methodologies and areas of need for the funding. Comments of participants also touched upon the following general topics.

Growing Unmet Need for Services. Tribal leaders spoke on the growing need for mental, behavioral, and substance use disorder services as people grapple with the effects of prolonged social isolation and the disruption of support networks. They stated that pre-existing strains on specialty providers – such as recruitment, retention, and access to community-based services – are being exacerbated by the pandemic with its restrictions on in-person contact. They explained how many communities have limited or non-existent broadband systems that make telehealth an unreliable platform for patient care, especially in regards to sensitive services like mental health. Dr. Thundercloud reported that the SAMHSA Tribal Technical Advisory Committee met virtually last week and expressed the same concerns on how to connect tribal members to telehealth providers. He stated that SAMHSA is exploring how to make secure healthcare programs compatible with a variety of electronic devices, and how to make such devices more accessible.

Distribution Methodology. Tribal leaders stressed the critical importance of using a distribution methodology that reaches all tribal nations and health organizations. A participant explained that the existing SAMHSA distribution methodology of moving funds through regional health centers results in some tribal nations not receiving support because they are not a part of a regional network. Tribal leaders recommended SAMHSA adopt the approach of the Indian Health Service (IHS) in distributing funds on a proportional basis. They also encouraged SAMHSA to consider funneling funds to tribal nations through existing grants, if possible, to further expedite the distribution process. For example, SAMHSA could provide CARES Fund as a non-competitive supplement to an existing grant where it aligns with the original purpose of the underlying grant. One tribal leader also recommended that SAMHSA consider using the Tribal Opioid Response Grants framework for quickly distributing funds to Indian Country.

Streamline Administrative Burdens. Tribal leaders across the board requested a relaxation of existing administrative application and reporting requirements. They shared how shelter in place orders are contributing to a diminished capacity to comply with administrative requirements because of the lack of reliable internet connections and adequate office supplies for staff working from home. To respond to these conditions on the ground, participants requested that SAMSHA streamline its administrative grant application and reporting requirements, and that the agency allow tribal applicants to use CARES Act funding for broadband infrastructure improvements.

HRSA Discussion

Nisha Patel, Office of Rural Health Policy, reported that Congress provided $180 million in funding for HRSA programs to address the needs of rural communities in the COVID-19 response. Of that $180 million no less than $15 million was set aside for Indian Country. Ms. Patel explained that HRSA plans to administer the CARES Act funding in a flexible manner to ensure that the dollars are being expended based on rural needs. She clarified that the only hard requirement is that the services be physically provided in a rural setting. In other words, all tribal nations and urban Indian organizations are eligible to apply, however, the services they provide pursuant to HRSA funding must be provided in a rural area.[1] Tribal leaders raised the following topics during the HRSA listening session.

Distribution Methodology. Tribal leaders expressed support for distributing funds through amendments to existing contracts and compacts under the Indian Self-Determination and Education Assistance Act. They also recommended that HRSA use a similar distribution model as the IHS, which allocates funds to tribal nations on a proportional basis. Tribal leaders explained that the IHS distribution methodology has already been vetted through tribal consultation and reflects the input of tribal leaders.

[1] We note that HRSA defines "rural" generally as all non-metropolitan areas (i.e., population centers of at least 50,000 people). See HRSA's "Defining Rural Population" informational webpage at https://www.hrsa.gov/rural-health/about-us/definition/index.html.

Homeless Services. Several participants discussed the importance of prioritizing healthcare for the homeless during the pandemic as a means of safeguarding individuals and the community. Tribal leaders cautioned that people without shelters are at heightened risk of contracting the virus and of unintentionally spreading it within the community, making containment difficult and raising the risk of waves of infection over time.

Local Medical Supplies and Resources. Tribal leaders from different geographic locations voiced common concerns over the lack of testing supplies, medical equipment, and facilities in rural communities. For example, one tribal leader reported that the local clinic does not a single ventilator and lacks the capacity to set up a quarantine ward. Several others shared how their tribal governments do not have the financial resources to cover the costs of the long-distance patient transportation to regional hospitals that are better equipped to respond to a high-volume of complex medical needs.

Hazard Pay for Medical Personnel. Tribal leaders discussed the difficulties that rural communities face in recruiting and retaining qualified medical professionals. They encouraged HRSA to allow tribal applicants to use CARES Act funds to provide hazard payments to frontline medical personnel. One participants shared that the local tribal healthcare facility has had to reduce staffing due to decreases in third-party revenue that cannot be made up by general funds. Due to the reduced workforce of many tribal and healthcare programs, tribal leaders urged HRSA to reduce administrative requirements associated with applying for the funding and allow tribal nations to apply the funding retroactively to cover expenditures related to the COVID-19 response.

Request for Follow-up Call. One tribal leader recommended that HRSA, and SAMHSA, hold another call to discuss the distribution of CARES Act funding, noting that it is very unclear to tribal nations at this time as to which agencies have authority over which pots of money and how Indian Country is being calculated into the equation. He stated that due to the lack of clear information he cannot offer informed recommendations as to how CARES Act funding could best be distributed. He also noted that if the $15 million were distributed evenly among the 574 federally recognized tribal nations, it would only equate to approximately $26,000 per recipient. He encouraged agencies to share ways that federal funds can be leveraged with other sources of federal and non-federal funding.

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If you have any questions or would like further information on the topics discussed in this report, please contact Elliott Milhollin (emilhollin@hobbsstraus.com or 202-822-8282); Geoff Strommer (gstrommer@hobbsstraus.com or 503-242-1745); or Lisa Meissner (lmeissner@hobbsstraus.com or 202-822-8282).