USET
SOVEREIGNTY PROTECTION FUND

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Transmitted via email

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Real Admiral Michael Weahkee
Director
Indian Health Service
5600 Fishers Lane, Mail Stop 08E86
Rockville, MD 20857

Thomas Engels
Administrator
Health Resources and Services Administration
5600 Fishers Lane
Rockville, MD 20857

Dear Director Weahkee & Administrator Engels,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comment to the Indian Health Service (IHS) and the Health Resources and Services Administration (HRSA) regarding the distribution of funding provided under the Provider Relief Fund (PRF) as authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as well as future funding authorizations under the Paycheck Protection Program and Health Care Enhancement Act. These funding authorizations were secured by Congress in order to provide broad relief to the American healthcare system, including the Indian Healthcare System, which has been facing deep economic impacts due to both losses in revenue and additional expenses associated with caring for COVID-19 patients. While Indian Country welcomes the $400 million Tribal set-aside within the relief fund, this amount is far from adequate in covering the revenue shortfalls that Tribal Nations are facing. In spite of this, as well as assurances of Tribal provider eligibility, it appears that Tribal Nations were not meaningfully included in any of the other distributions from the PRF thus far. This is unacceptable, and IHS and HRSA must work to ensure that the Indian Health System has substantially increased access to current and future distributions under the PRF.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of 30 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico[1]. Both individually, as well as collectively through USET SPF, our member Tribal Nations work to improve health care services for American Indians. Our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities. Our patients receive health care services both directly at IHS facilities, as well as in Tribally-operated facilities under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638.

Though healthcare providers across the country are facing declines in revenue and increases in COVID-19 response expenses, IHS, Tribally-operated healthcare facilities, and Urban Indian Organizations (ITUs)

[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

have been disproportionately impacted. This is due to the federal government's chronic failure to fully fund the Indian Healthcare System, as well as the resulting importance of 3rd party revenue to our continuity of operations. For many ITU providers, 3rd party reimbursements represent 50% or more of operating budgets. With the unmet obligations of the federal government and the substantial decline in 3rd party revenue as a result of the pandemic, Tribal Nations have been operating with greatly diminished resources to address COVID-19. This has been exacerbated by the extensive decline in revenue generated from Tribal enterprises, which Tribal Nations further utilize to fill the gaps in the unmet obligations of the federal government. While the state of the Indian Healthcare System is the result of decades of unfunded trust obligations, IHS and HRSA, as well as all federal agencies, must ensure that Tribal Nations have meaningful access to all resources available to combat the COVID-19 pandemic.

Indian Country Not Meaningfully Included in Provider Relief Fund

With the exception of the very limited Tribal set-aside, representing 0.4% of the total PRF funding available under the CARES Act, it does not appear that Indian Country has had significant access to provider relief dollars. Based on a review of the current data available regarding the general distribution fund, few USET SPF members received funding and, with the exception of one, those that did received small amounts. As far as we are aware, ITU providers in general received limited access to the first and second general distributions to Medicare providers under the PRF, which was further limited by the application and attestation process. In addition, we have not been informed of any concerted effort to ensure ITU access to other funding streams under the PRF, including monies for hot spots and for rural providers. This is in contrast to comments made by HRSA on the joint IHS-HRSA Tribal Consultation call, as well as the federal trust obligation to Tribal Nations.

Increase Tribal Set-Aside and/or Ensure Greater Tribal Access to Remaining Funds

In accordance with the Trust obligation and in recognition of the disproportionate impacts the COVID-19 crisis is having throughout Tribal communities, USET SPF urges IHS and HRSA, along with HHS, to work to vastly increase the amount of PRF resources flowing to Indian Country as the remaining funds are distributed. One opportunity to ensure Tribal Nations and Native people benefit from these resources would be to increase or augment the Tribal set aside. HHS has broad discretion in disbursement of these dollars and as such, USET SPF strongly recommends that IHS and HRSA consider at least tripling the amount specifically designated for ITU providers. This would be a streamlined and efficient way to provide necessary relief to Indian Country.

Another opportunity to achieve greater relief for the Indian Healthcare System would be to ensure the mechanisms associated with further distribution are designed with ITU providers in mind. This would include confirming that IHS beneficiaries are considered 'uninsured' for the purposes of the CRF. Indeed, the health care services provided by ITUs are not and cannot be considered insurance. Rather, they are a hallmark of the federal trust obligation. It would also include ensuring funds targeted at those providers billing Medicaid are distributed in a manner that allows significant sums reach ITUs.

Provider Relief Fund Application and Attestation Requirements—Remove Barriers to Access

Additionally, USET SPF notes the confusion around reporting and attestation requirements associated with the PRF. The U.S. Department of Health and Human Services (HHS) previously indicated the remaining Medicare provider funding would be automatically deposited into provider accounts in the same manner as the first disbursement. However, without warning or explanation, HHS later changed the process, now requiring Medicare providers seeking additional funding to submit an attestation and additional information, including a Taxpayer Identification Number (TIN).

As IHS and HRSA are already aware, Tribal healthcare providers, as the healthcare arms of Tribal governments, do not file taxes and are unable to provide a TIN. With this in mind, the agencies must work to offer a solution to this problem, so that IHS and Tribal Medicare fee-for-service providers are not barred from accessing the subsequent distribution. We further remind IHS and HRSA that ITU providers are already subject to an excessive amount of federal oversight, including auditing requirements. With this in mind, we urge the reduction of, and where possible, exemption from, any application, attestation, and reporting requirements associated with this funding. Access to the Tribal set-aside, in particular, should not be contingent on extensive documentation or reporting, and these funds should be distributed in an equitable manner, using existing funding mechanisms, including Indian Self-Determination and Education Assistance Act contracts and compacts.

Deem All Tribal Nations Rural

Finally, USET SPF was extremely concerned to learn that in addition to being distributed via grants, HRSA is subjecting the $15 million set aside for Tribal Nations it is administering under a different CARES Act provision to the agency's narrow definition of 'rural.' This is an arbitrary and unnecessary barrier, especially during a national crisis, for many Tribal Nations, including many USET SPF members, to whom HRSA has a trust obligation. We urge the agency to ensure this restrictive definition is not applied to future funding aimed at or accessed by Tribal Nations. For the duration of the COVID-19 emergency and beyond, all Tribal Nations should be considered rural for the purposes of HRSA funding.

Conclusion

Decades of neglect, underfunding, and inaction on behalf of the federal government have left Indian Country severely under-resourced and at extreme risk during this COVID-19 crisis. Our existing systems of service delivery and infrastructure, including our health care delivery systems, are experiencing greater stress than those of other units of government, as we seek to maintain essential services and deliver upon our commitments, as well as dedicate resources to the unique circumstances of COVID-19 response. While the crisis is impacting all health care providers, Tribal Nations are the only providers to which the federal government has a trust obligation. With this in mind, Tribal Nations must have substantially greater access to relief under the PRF. As always, USET SPF stands ready to assist IHS and HRSA in ensuring that the Indian Healthcare System is meaningfully included in all funding disbursements. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 202-624-3550.

Sincerely,

Kirk Francis
President

Kitcki A. Carroll
Executive Director