

USET SPF Alert: IHS DTLL Announces Upcoming New CHEF NPRM February 2, 2021

Dear USET Health Directors and Health Committee,

On Friday, January 29th, the Indian Health Service (IHS) released a [Dear Tribal Leader Letter](#) (DTLL) announcing the delay of a notice of proposed rulemaking (NPRM) [published](#) in the Federal Register on January 26, 2016 on the administration of the Catastrophic Health Emergency Fund (CHEF). IHS further notes that the NPRM should not be relied upon for any reason. Instead, IHS intends to publish a new CHEF NPRM that is consistent with current IHS policy and takes into consideration comments received by stakeholders during the previous NPRM comment period.

In the NPRM published by IHS in January 2016, the agency proposed definitions governing the CHEF, processes for reimbursement, and parameters for alternate payments including Tribal self-insurance. However, IHS received comments from several Tribal Nations and Tribal organizations expressing concerns regarding the treatment of Tribal self-insurance as an alternate resource. During both the initial comment period and the extended Tribal consultation period, USET SPF provided comments to IHS on the NPRM. Links to those comments are available [here](#) and [here](#). In our comments, we express our concerns on the proposal to include Tribal sources of payment as alternate resources to CHEF, as well as the lack of procedure for making a determination to award CHEF funds (leaving the decision to IHS' discretion) and the overall lack of Tribal consultation.

In response to the comments received, IHS delayed moving forward with the NPRM pending the resolution of relevant litigation. According to IHS, the agency intends to proceed with developing a new CHEF NPRM consistent with how Tribal self-insurance is currently recognized in IHS's [Purchased/Referred policy](#) which does not consider Tribally-funded Tribal self-insurance plans as an alternate resource under the IHS's payer of last resort rule. In the DTLL, IHS states that Tribally-operated programs can choose to follow this coordination process or develop their own policies to coordinate with Tribal self-insurance plans.

USET SPF will continue to monitor progress on this issue and will alert our membership of the new CHEF NPRM when it becomes available.

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