



USET

SOVEREIGNTY PROTECTION FUND

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March 2, 2021

Elizabeth A. Fowler
Acting Director
Indian Health Service
5600 Fishers Lane, Mail Stop: 08E86
Rockville, MD 20857

Richard A. Stone, M.D.
Acting Under Secretary for Health, Veterans
Health Administration
U.S. Department of Veterans Affairs Office of
Intergovernmental Affairs (075F)
810 Vermont Avenue, NW, Suite 915G
Washington, DC 20420

RE: VA-IHS MOU Update

Dear IHS Acting Director Fowler and Acting Under Secretary Stone,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide input to the Indian Health Service (IHS) and the U.S. Department of Veterans Affairs (VA) Veterans Health Administration (VHA) on the draft revised IHS-VA memorandum of understanding (MOU) released in December 2020 for Tribal consultation. The draft agreement would replace and supersede the MOU signed by IHS and the VA in 2010 to account for updates in policy and other changes within the agencies' respective healthcare systems. While USET SPF supports efforts by IHS and the VA to bring necessary updates and revisions to the MOU, we underscore that ongoing Tribal consultation must be an integral part of its drafting and implementation. As agencies of the federal government, it is incumbent upon IHS and the VA to ensure that implementation of the MOU reflects the trust obligation to and sovereign status of Tribal Nations.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico¹. Both individually, as well as collectively through USET SPF, our member Tribal Nations work to improve health care services for Native people. Our member Tribal Nations operate in the Nashville Area of the Indian

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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Upper Mattaponi Indian Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

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.

Since 2003, IHS and the VA have sought improved coordination and optimization of shared resources through the MOU to facilitate better health care for Native American veterans. However, there have been certain barriers in reaching full coordination and sufficient oversight through the MOU. For instance, a report by the Government Accountability Office (GAO) in 2019, "*Actions Needed to Strengthen Oversight and Coordination of Health Care for American Indian and Alaska Native Veterans*," found that there were gaps in measuring performance in reaching the goals within the previous MOU. This led to an overall lack of a clear basis for evaluating how and where improvements can be made to provide better care to our veterans. USET SPF is glad to see the agencies set out specific important goals to define metrics within the MOU, including:

- Access – Increase access and improve quality of health care and services to the benefit of eligible Native American veteran patients served by the VHA and IHS.
- Patients – Facilitate enrollment and seamless navigation for Native American veterans in VHA and IHS health care systems.
- Information Technology – Facilitate the integration of electronic health records and other information technology systems that affect the health care of Native American veterans.
- Resource Sharing – Improve access for VHA and IHS patient populations through resource sharing, including technology, providers, training, human resources, services and facilities, communication, reimbursement, etc.

However, we urge IHS and the VA to continue to seek greater engagement with Tribal Nations to ensure that implementation of the MOU—and its outlined goals—reflects our guidance, as well as inherent Tribal sovereignty and self-determination. By engaging with Tribal Nations early and frequently, IHS and the VA can improve access to care and health outcomes for Native American veterans.

Ongoing Tribal Consultation and Guidance on the MOU

USET SPF asserts that discussions on the MOU and ensuring access to care for our veterans must not occur solely between IHS and the VA. For too long, Indian Country has been left out of these discussions to the detriment of the health of our veterans and Tribal sovereignty. As the agencies negotiate and finalize the MOU, IHS and the VA must seek input and participation from Tribal Nations as full partners on an ongoing basis.

It is of particular importance that Tribal Nations be regularly included in all negotiations that would affect reimbursement agreements, since many of us have entered into separate reimbursement agreements with the VA pursuant to the Indian Health Care Improvement Act. In addition, we underscore the importance of our involvement in negotiations regarding the establishment of targets to measure the success of the MOU. These targets should be based upon factors and measurable outcomes with input from Tribal Nations and must include culturally-responsive care for Native American veterans.

Implementation of Veterans Legislation

In early January 2021, three landmark laws were signed by the President that remove significant barriers for Native American veterans' access to healthcare and provide for greater representation within the VA. These include:

- ***Native American Veterans PACT Act*** – Eliminates copayments for Native American veterans accessing VA healthcare.

- **Veterans Affairs Tribal Advisory Committee Act** – Establishes a VA Tribal Advisory Committee (VATAC) that will facilitate an important forum for Native American veterans to provide feedback to the Secretary of the VA on improving policy, programs, and services for Native American veterans.
- **PRC for Native Veterans Act** – Amends the Indian Health Care Improvement Act (IHCIA) to clarify that the VA and the Department of Defense are required to reimburse IHS and Tribal health programs for healthcare services provided to Native American veterans through an authorized referral.

USET SPF offered its support to these bills as opportunities to better honor Tribal sovereignty and the trust obligation within the VHA. While we note that the draft MOU was released prior to the passage of these laws, it is critical that IHS and the VA determine how the MOU will reflect and uphold these laws in a manner reflective of these principles.

In addition, as IHS and the VA take the necessary steps to implement these laws, through rule-making and other policy measures, the agencies must conduct consultation with Tribal Nations. We strongly urge IHS and the VA to initiate this consultation immediately to ensure the coordination of care between the VA and the Indian Health System for our veterans is carried out as intended.

Interoperability

As both IHS and VA modernize their electronic health records (EHR) systems, interoperability between the two, as well as the entirety of the Indian Healthcare System, must be prioritized. With this in mind, USET SPF is encouraged to see that Information Technology (IT) and the facilitation of the integration of EHR within IHS and the VA is included as one of the defined goals within the MOU. It is crucial that IHS, VA, and Tribal healthcare providers have access to real-time, life-saving data for Native American veterans. Previously, IHS and the VA participated in cost sharing for necessary periodic updates to EHR systems. However, since 2018, the VA has been working to replace the agency's current EHR system, VistA. IHS has also been consulting with Tribal Nations as it determines whether to update its current system, the Resource and Patient Management System (RPMS), or implement a new EHR system altogether, with the latter being the most likely path forward. In the meantime, due to the federal government's failure to invest in RPMS, many Tribal health programs have been forced to purchase more user-friendly commercial, off-the-shelf systems in order to manage clinical and public health data. All these factors present significant IT interoperability challenges, making it difficult for the Indian and VA healthcare systems to share and have access to critical, life-saving patient information.

While we are encouraged to see IT included within the defined goals, we remain concerned that the MOU does not outline specific strategies for delivering Tribal, IHS, and VA IT interoperability. This presents a significant barrier in the continuity of care for our veterans. It is unacceptable that veterans should be forced to manually transfer health care records between VA and IHS or Tribal health facilities in order to ensure that they receive the care to which they are entitled. Therefore, it is essential that IHS and the VA consult with Tribal Nations on an ongoing basis on how to facilitate the interoperability of health information data systems between all entities.

Expansion of Telehealth

Since the beginning of the COVID-19 pandemic, the adoption of telehealth has been essential for limiting in-person interactions at health facilities to help slow the spread of the disease. Telehealth has further proven to be an effective tool in delivering critical healthcare services to Native American veterans who may not be able to meet face-to-face with a health care provider. USET SPF is encouraged to see the inclusion of telehealth as a priority within the MOU, and we support policies and practices that will ensure the continuity of care to our veterans through the expansion of telehealth. However, many Native American

veterans reside in communities without access to adequate broadband, which limits continued expansion of telehealth within Indian Country. We support language within the MOU directing the agencies to monitor and continue to advocate for increased access to broadband services where Native American veterans reside. Through the MOU and other mechanisms, we urge IHS and the VA to work closely with Tribal Nations in determining what current limitations exist for Native American veterans in accessing telehealth services, as well as addressing how telehealth technologies may be facilitated across Indian Country's diversity of circumstances.

Conclusion

The federal government has a dual obligation to Native American veterans who have pre-paid for their healthcare, both through the cession of Tribal homelands and resources, as well as the defense of our nation. All barriers in access to critical health care services for Native American veterans must be viewed as a violation of this obligation. USET SPF reminds IHS and the VA that while it is important to build upon previous MOUs, there is still much progress to be made when it comes to fully delivering upon promises to Native American veterans. Central to the success of the revised MOU is on-going collaboration with Tribal Nations. We stand ready to work with IHS and the VA to ensure implementation of the MOU is reflective of Tribal sovereignty, self-governance, and self-determination. 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 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director