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Transmitted via email to:
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Roselyn Tso
Director
Indian Health Service
5600 Fishers Lane, Mail Stop: 08E86
Rockville, MD 20857

Dear Director Tso,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write in response to the Indian Health Service's (IHS) request for comment on Health Information Technology (HIT) Modernization. USET SPF appreciates the updates from IHS regarding the selection of a vendor for the new Electronic Health Record (EHR) system and offers the following comments and recommendations for the implementation of the system.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.[1] USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

USET SPF reminds the IHS of its trust and treaty obligations to provide for the health of Tribal Nations and our communities, which stands to be either greatly aided by or harmed by this EHR rollout. It is no question that the RPMS system is outdated and must be replaced, but an implementation as inefficient and problematic as the ongoing Department of Veterans Affairs (VA) EHR rollout stands to exacerbate the issues that already exist within the Indian Health System. USET SPF urges the IHS to properly consider each facet of the upcoming EHR configuration and implementation to ensure that the concerns, requirements, and priorities of the Tribal Nations and communities who depend on this system are addressed.

[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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).

Funding to Implement the Enterprise EHR at Tribally-Operated Facilities

As the IHS works to roll out the implementation of the enterprise EHR and transition facilities and programs to the new system, we remind IHS that Tribal Nations will require adequate funding to properly implement the EHR. The Administration and Congress must ensure Tribal Nations have access to ongoing and adequate resources to support IT modernization in the coming years, including training, tech support, upgrades, and sufficient communication from health IT support staff. IHS should conduct Tribal consultation regarding the level of technical assistance that IHS and Tribally operated facilities might require during implementation and beyond. For example, smaller facilities with limited staff capacity might require on-the-ground technical assistance during implementation. USET SPF understands that IHS intends on creating training for staff on the new EHR system and encourages the agency to inform the trainings with additional Tribal consultation as well as lessons learned from the implementation of the VA EHR rollout.

Most importantly, it is critical that adequate funding be requested by the Administration and authorized by Congress in a way that ensures that funding is sufficient but does not come at the expense of other critical IHS programs and services. The high estimated cost of replacing the RPMS is largely due to chronic federal underinvestment in the IHS and the Indian Health System as a whole. It is undeniable that HIT modernization is critically necessary, but the IHS budget is already woefully insufficient for the programs and services that presently exist, and this project must not result in funding cuts elsewhere within the budget. IHS must provide all requested and necessary information to Congress to inform an appropriate budget request, and Congress, in turn, must honor its trust and treaty obligation to fully fund the Indian Health System - including a modernized EHR system.

Incorporate Lessons Learned from the VA EHR Rollout

In recent years, the VA has struggled to properly implement the rollout of their new enterprise EHR system, which aims to replace a system roughly as old as the RPMS. The IHS must consider the VA's ongoing implementation challenges and work to forestall similar issues in this rollout, particularly given the elevated importance of the IHS's trust and treaty obligations to its service population. The VA's implementation has attracted the frustration of Congress and has ultimately led to a pause in the rollout of the system to address critical issues and significant cost overruns.

Regarding the budget, the initial cost projection to overhaul the VA system was $10 billion over 10 years, but that projection has grown significantly to $50.8 billion over 28 years. The IHS – which must implement the new system on a similar scale using the same system vendor – has estimated a topline budget of $6.2 billion over 10 years. USET SPF encourages the IHS to make a critical comparison between its plan and the VA's current experience and consider whether a higher budget request will be necessary to sufficiently fund an efficient and effective IHS EHR rollout. However, we continue to assert the importance of protecting the larger IHS budget from funding cuts as a result of a larger-than-anticipated EHR implementation cost.

During this transition, assessments of the VA implementation have also found significant capacity issues that contributed to a difficult deployment. The VA inspector general found that some facilities lacked sufficient staffing to implement the transition and did not adequately plan for potential risks. The IHS must consider its technical assistance capacity requirements and facility IT infrastructure capacity in consultation with Tribal Nations prior to beginning its own implementation.

Additionally, USET SPF strongly encourages the IHS to learn from the VA's renegotiation of its contract with Oracle Cerner. The company has been blamed for a significant portion of the VA's implementation challenges, and the renegotiated contract includes stronger performance expectations and larger financial credits for the VA if Oracle does not meet expected requirements. As the IHS is now also contracted with Oracle through General Dynamics Information Technology, Inc., USET SPF encourages the IHS to hold the vendors accountable to their contractual obligations and consider strengthening performance expectations to ensure a smoother transition. USET SPF also urges IHS to be as transparent as possible in its negotiations with the vendors, and to keep Tribal Nations informed of any contractual issues or changes.

Preserve Tribal Historical Data and Enhance Analytical Capabilities

RPMS currently houses a vast amount of historical data across the Indian Health System. All historical data within RPMS must be accessible through the new EHR system, or in combination with the Four Directions Warehouse (4DW). This historical data must be not only available, but mineable/searchable within the database to ensure maximum utility. Additionally, IHS must provide additional information about the 4DW and its operationality and access. The overall system must maintain and improve upon current RPMS quality measurement tools and functions that allow IHS and Tribally operated facilities to track and evaluate certain analytics and assist the agency and Tribal Nations with various reporting requirements. To this end, stakeholders within the Indian Health System need to understand the format of the 4DW, what elements and fields it will employ, how the data will flow between entities and facilities, and how IHS will export data from the National Data Warehouse and the current RPMS system. Further, more information must be provided regarding how data permissions will be shared amongst entities, as well as information regarding data ownership and sharing authorities. For example, Tribally operated facilities within the USET region have granted access to various modules within RPMS to the USET Tribal Epidemiology Center (TEC), and the TEC will require continued access to that data to mine, monitor and report on diseases impacting USET Tribal Nation's local communities. However, this also raises questions about how data will be protected and siloed within the 4DW. USET SPF requests that IHS share additional information regarding how the agency will allow data sharing amongst entities that require bilateral data exchanges, while also ensuring that data within the 4DW and proprietary Tribal data are protected. Under all circumstances, the data produced by, for and of Tribal Nations belongs to those Nations, and must remain protected.

In addition, interoperability options with national and state public health data reporting systems must be a requirement of the new EHR system configuration. IHS programs, Tribally operated facilities, and TECs report data into these systems, but do not receive data back in return. Tribal Nations and the TECs that serve us require access to critical data within those systems in order to effectively identify and respond to health priorities in our communities. USET SPF has previously raised the issue of data access with the Department of Health and Human Services (HHS), citing issues the USET TEC has experienced in gaining access to identifiable data within federal and state datasets to which we are legally entitled as Public Health Authorities. In this effort to effectively configure the new EHR system, IHS should advocate for and ensure this critical access by prioritizing interoperability with public health data reporting systems. However, as is the case with all discussions regarding data, Tribal Data Sovereignty must remain paramount. It is the policy of our TEC Tribal Nation consent is always required for access to data, including that held by federal and other external entities.

Funding for Tribal Nations that have Purchased COTS

As USET SPF has stated in the past, while we appreciate the IHS's focus on interoperability, we underscore that a growing number of Tribal Nations have been forced to purchase commercial-off-the-shelf (COTS) systems due to the outmoded nature of the RPMS and the indeterminate timeline of the new EHR implementation. Without additional funding from IHS, these Tribal Nations have absorbed the full cost of these purchases. While IHS continues to state that it supports the sovereign decision to opt for COTS, this decision is most often rooted in the federal government's failure to fund HIT and maintain systems reflective of 21st century health care. True support for this sovereign decision must be demonstrated via adequate federal funding for this purpose. Despite numerous calls to reimburse Tribal Nations for COTS, there appears to be no plan on the part of IHS to advocate for or designate funding to ensure that Tribal Nations are not subsidizing trust and treat obligations in this area. We urge IHS to develop a HIT modernization plan that includes full reimbursement for Tribal Nations that have or plan to implement COTS to better meet the health care needs of IHS beneficiaries they serve.

Conclusion

USET SPF maintains that the federal government has fallen short of its trust obligation to Indian Country by under-resourcing our health systems, including health IT. While the selection of an EHR vendor is a significant step towards the goal of HIT modernization, the more important steps of configuration and implementation remain. The IHS and the federal government must work in partnership with Tribal Nations to ensure that the Indian Health System is brought into the 21st century and without undue consequences. USET SPF urges the IHS to continue to work in close consultation with Tribal Nations and facilities as it develops and rolls out the new EHR system in a way that addresses the diverse circumstances of Tribally-operated facilities, as well as those operated by the IHS. We look forward to working with the agency as it continues to undertake this important endeavor. 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