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GENERAL MEMORANDUM 14-090

HHS Office of Inspector General Issues Alert to Tribes on
Use of ISDEAA and Third Party Funds

On November 24, 2014, the Office of Inspector General (OIG) for the Department of Health and Human Services issued the attached Alert to tribes and tribal organizations urging that they ensure that any Indian Self-Determination and Education Assistance Act (ISDEAA) funds they receive are lawfully spent and protected from misuse. The Alert also addresses the use of Medicare, Medicaid, and Children's Health Insurance Program reimbursements. The OIG states: "recent investigations have revealed that some tribes and tribal organizations, or their officials, have not adequately protected these funds; as a result the funds have been misappropriated or misused. In some cases, health care services for tribal members have been jeopardized." The OIG notes that improper use of ISDEAA funds is subject to disallowance and that fraud involving HHS program is "subject to possible criminal, civil, and/or administrative sanctions."

In a December 1 conversation with the OIG Counsel's office, we were informed that the Alert is not based on a particular OIG report, but rather based on individual cases. The OIG informed the Indian Health Service last week that this Alert was forthcoming. While the Alert was issued on November 24, it was posted on the OIG website December 1, 2014.

We will pursue additional information regarding the background and context for the OIG Alert and follow developments relating to it.

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OIG ALERT

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OIG Alerts Tribes and Tribal Organizations To Exercise Caution in Using Indian Self-Determination and Education Assistance Act Funds

Tribes¹ that enter into ISDEAA contracts and Title V Self-Governance compacts with IHS must protect IHS funds from misuse. Further, all tribes that receive Medicare, Medicaid, and Children's Health Insurance Program (CHIP) reimbursements must ensure that those funds are used in accordance with applicable Federal law, including the ISDEAA and the Indian Health Care Improvement Act (IHCA).²

Recent OIG investigations have revealed that some tribes and tribal organizations, or their officials, have not adequately protected these funds; as a result, the funds have been misappropriated or misused. In some cases, health care services for tribal members have been jeopardized.

Tribes may negotiate ISDEAA contracts with IHS, under which the tribes receive funds to provide health-care-related services directly to tribal members.³ Similarly, qualifying tribes may sign Self-Governance compacts with IHS and thereby exercise even more flexibility to use the compact funding for those programs, services, and functions that the tribes have agreed to provide. Tribes must use ISDEAA funds only to carry out activities that are authorized by law and included in the contract, compact, or funding agreements entered into with IHS.⁴ Use of ISDEAA funds for unallowable purposes is subject to disallowance by the Department of Health and Human Services (HHS).

The Affordable Care Act reaffirmed authority for tribal health programs to seek direct reimbursement from Medicare, Medicaid, and CHIP for health care services provided to

¹ For purposes of this alert, we use the word "tribes" to encompass all recipients of Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts with the Indian Health Service (IHS), including tribal organizations.

² 25 U.S.C. § 1601 et seq.

³ ISDEAA funds are distributed pursuant to Public Law 93-638, codified at 25 U.S.C. § 450 et seq.

⁴ 25 U.S.C. §§ 450j-1 and 458aaa-4. In limited circumstances, a tribe may obtain prior approval from IHS for additional uses. 25 U.S.C. §§ 450j-1(k) and 458aaa-15(a).

individuals who are also eligible for those programs.⁵ Importantly, these reimbursements must be reinvested in health care services or facilities.⁶ With respect to compacts, Medicare and Medicaid reimbursements are to be treated as supplemental funding to the tribe's Self-Governance compact.⁷ Tribes that improperly use reimbursements may lose their authority to directly bill Medicare, Medicaid, and CHIP.⁸

Recent OIG investigations have uncovered instances in which tribes used ISDEAA funds to support unauthorized activities. In some cases, shared costs were not allocated correctly between IHS and other activities. In others, ISDEAA funds were "borrowed" to meet other tribal expenses. Sometimes Medicare or Medicaid reimbursements were not reinvested in activities furthering the purposes of the original contract or compact and were not even expended for health care services, but instead were used to cover general tribal deficits. In the most egregious cases, funds were converted to personal use, leaving the tribes with dangerous shortages in health care funding for its members.

The purpose of the limitations on uses of ISDEAA funds and Medicare/Medicaid/CHIP reimbursement is to direct urgently needed funding to health care services for American Indians and Alaska Natives. Tribes should be mindful of these restrictions and take steps to ensure that the funding and reimbursements are properly invested in this vital purpose.

Those who commit fraud involving HHS programs are subject to possible criminal, civil, and/or administrative sanctions.

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⁵ Sections 1880 and 1911 of the Social Security Act and 25 U.S.C. §§ 1641(c) and (d).

⁶ 25 U.S.C. § 1641(d)(2).

⁷ 25 U.S.C. § 458aaa-7(j).

⁸ 25 U.S.C. § 1641(d)(5).