



MEMORANDUM

March 27, 2017

TO: TRIBAL CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

Geoff Stammer BY: NAM

Re: ***Report on the Oral Argument Held Friday, March 24, 2017 in Redding Rancheria v. Price***

This is a report on an oral argument held in the U.S. District Court for the District of Columbia in *Redding Rancheria v. Price*, Civ. No. 14-2035 (RMC) before Judge Rosemary Collyer. As you know, we filed an amicus brief in the case on behalf of a number of our tribal clients because of the case's importance to Indian tribes and tribal organizations that administer a Patient Referred Care (PRC) program under an ISDEAA agreement with the Indian Health Service (IHS) and also a tribal self-funded health plan for tribal members.

The primary issue before the court is whether the Redding Rancheria's self-insured health plan is an alternate resource to the IHS Catastrophic Health Emergency Fund (CHEF), so that the tribal plan supplementing the PRC program must pay first before CHEF. The IHS Payer of Last Resort regulation and the alternate resource language in the CHEF statute do not mention tribal health plans as an alternate resource to either PRC or CHEF. However, for the first time in the *Redding* case, IHS started interpreting the payer of last resort provision in the Affordable Care Act as excluding tribal self-insured plans, thus making them an alternate resource to both PRC and CHEF. Simultaneously with this litigation, the IHS published a Notice of Proposed Rulemaking, 81 Fed. Reg. 4239 (Jan. 26, 2016) proposing to make tribal health plans an alternate resource to CHEF. We helped draft comments for many of our tribal clients and, due to the volume of objections and the pending *Redding* case, finalization of this regulation is on hold. The position taken by the IHS in this litigation, and the proposed regulation, would penalize those tribes that choose to supplement PRC with tribal insurance plans, by defining tribal health plans as an alternate resource to PRC and CHEF.

The oral argument did not go well for the IHS. The argument opened with the judge making it clear that she believed that the definition of tribal health plans in the Indian Health Care Improvement Act was broad enough to encompass tribal self-insured health plans within the ACA payer of last resort provision. Thus, the Redding Rancheria's PRC program was eligible for CHEF reimbursement. When the government's attorney then shifted to arguing that Redding was not following CHEF administrative procedures in the IHS Manual in accordance

with its funding agreement, the judge indicated that the Manual was not a binding regulation and there was no law against coordinating administration of the PRC program and the tribal health insurance plan.

On balance the oral argument was very favorable to the Redding Rancheria. Because questions were raised about how the Tribe's coordination of benefits process actually worked, and why IHS insisted that the Tribe spend all its PRC funds before being eligible for any CHEF reimbursement, the judge asked the Tribe's attorneys to file a detailed statement explaining how the tribe's process for coordinating benefits actually worked, and how it has been changed over time, so that this would be in the record. The judge then asked the government to respond as to why the IHS insisted that Redding must spend all its PRC funds before getting any CHEF reimbursement.

We expect a decision in the case sometime over the next few months. We will monitor this case and provide additional reports if necessary. If you have any questions about this memorandum, please do not hesitate to contact Geoff Strommer (gstrommer@hobbsstraus.com or 503-242-1745) or Elliott Milhollin (emilhollin@hobbsstraus.com or 202-822-8282).