



806 SW Broadway, Suite 900
Portland, OR 97205

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

May 26, 2017

To: TRIBAL HEALTH CLIENTS

From: HOBBS, STRAUS, DEAN & WALKER, LLP

Geoff Strommer (by FAE)

Re: *Proposed FY 2018 Indian Health Service Budget*

In this Memorandum we report in summary on the Trump Administration's first proposed budget (FY 2018) for the Indian Health Service (IHS). We will also prepare a more detailed memo on it.

The proposed budget is \$301 million below the FY 2017 enacted level for IHS, although \$83 million of that is because they used an FY 2016 estimate for Contract Support Costs (CSC) which is to be fully funded.

The proposed budget came under heavy criticism at the House Interior Appropriations Subcommittee hearing of May 24, with Subcommittee Chairman Calvert (R-CA) noting it contains none of the FY 2017 enacted increases. He expressed concern that such a budget would harm agency morale and recruitment efforts. Representative Cole (R-OK) deemed it "not defensible." Representative McCollum spoke of the June 30 deadline for federal agencies to provide a report on how they plan to downsize and stated that the White House needs to realize that it is not appropriate for all agencies to downsize. IHS, in response to a question at the hearing, said that they have a 20% vacancy rate and that their physician vacancy rate is 30%.

The FY 2018 IHS Budget Justification is seriously flawed as funding levels are not explained in comparison to the enacted FY 2017 funding levels in the Consolidated Appropriations, FY 2017 (PL 115-31). Instead, the figures are explained as being over or under a FY 2017 annualized Continuing Resolution (CR) amount (in other words, the FY 2016 enacted levels). IHS took the figures from the CR which expired April 28, 2017, and then calculated what the full amount would be if the CR extended through the end of FY 2017. *However*, Congress did not extend the CR but rather enacted a "regular" appropriations bill for the last 5 months of the fiscal year. Congress, in enacting the Consolidated Appropriations, FY 2017, provided \$233 million over FY 2016 for the IHS – that increase does not appear in the FY 2018 Budget Justification and hence, its funding charts give the impression of smaller proposed reductions than are the fact.

Below is a listing of IHS line items along with the amount of proposed reduction (and one increase) from the enacted Consolidated Appropriations, FY 2017 amount. Proportionately, the Facilities account took the biggest proposed hit.

IHS SERVICES

Hospitals and Clinics	\$1,870,405,000	(\$64,773,000 reduction)
Dental Services	\$ 179,751,000	(\$ 2,846,000 reduction)
Mental Health	\$ 82,654,000	(\$11,426,000 reduction)
Alcohol and Substance Abuse	\$ 205,593,000	(\$12,760,000 reduction)
Purchased/Referred Care	\$914,139,000	(\$14,691,000 reduction)
Public Health Nursing	\$ 77,498,000	(\$ 1,203,000 reduction)
Health Education	\$ 18,313,000	(\$ 350,000 reduction)
Community Health Representatives	\$ 58,906,000	(\$ 1,419,000 reduction)
Immunization AK	\$ 1,950,000	(\$ 91,000 reduction)
Urban Health	\$ 44,741,000	(\$ 2,937,000 reduction)
Indian Health Professions	\$ 43,342,000	(\$ 6,003,000 reduction)
Tribal Management Grants	-0-	(\$ 2,465,000 reduction)
Direct Operations	\$ 72,338,000	(\$ 1,918,000 increase)
Self-Governance	\$ 4,735,000	(\$ 1,051,000 reduction)

CONTRACT SUPPORT COSTS (such sums as may be necessary; \$717,970,000 estimate)

IHS FACILITIES

Maintenance & Improvement	\$ 60,000,000	(\$15,745,000 reduction)
Sanitation Facilities Construction	\$ 75,423,000	(\$26,349,000 reduction)
Health Care Facilities Construction	\$100,000,000	(\$17,991,000 reduction)
Facilities & Environmental Health Support	\$192,022,000	(\$34,928,000 reduction)
Equipment	\$ 19,511,000	(\$ 3,455,000 reduction)

TOTAL, IHS \$4,739,291,000 (\$300,595,000 reduction)

\$83 million of the reduction is the estimation made for FY 2016 Contract Support Costs

Some items of note in the proposed FY 2018 IHS Budget:

Built-in Costs - No funding for built-in costs). The FY 2017 enacted bill provided \$50 million for pay costs and inflation and that did not fully meet the need.

FY 2017 increases not included - Increases in the FY 2017 budget (i.e., \$11 million for clinic leases; \$29 million for accreditation emergencies; \$14 million for Purchased/Referred Care; \$5 million for small ambulatory facilities; \$10 million for behavioral health; \$13 million for alcohol and substance abuse are not included).

Contract Support Costs - The budget lists the estimated need of \$717.9 million. CSC is maintained as a separate account at an indefinite level ("such sums as may be necessary").

Joint Venture Program – \$20 million would be provided for staffing the Joint Venture projects for Cherokee Nation’s W.W. Hasting Regional Health Center in Tahlequah, OK and the

Yukon Kuskokwim Primary Care Center in Bethel, AK. However, it is explained that in order to provide \$20 million for this purpose, the health care facilities construction budget was reduced.

Health Facilities Construction – Proposed is funding to complete the Rapid City Health Center; to continue construction of the Dilkon Alternative Rural Health Center, and for design/build activities for the Alamo Health Center in New Mexico.

Bill Language, Section 105(l) Leases - New bill language is proposed to try to get around the *Maniilaq v. Burwell* decision that verified that the ISDEAA Section 105(l) clinic leases require full compensation.

Bill Language, CSC - The proposed bill would reinstate the FY 2016 Appropriations bill language which IHS has used as part of the justification to not pay contract support costs on the Substance Abuse and Suicide Prevention and the Domestic Violence Prevention programs, for the initiative to improve collections from public and private insurance at IHS and tribally-operated facilities, and for accreditation emergencies. The language that IHS relies on to deny CSC for these programs is the phrase “Notwithstanding any other law,” the funding for these programs “shall be allocated at the discretion of the Director.” Congress dropped the “notwithstanding” phrase in the Consolidated Appropriations, FY 2017 Act.

Bill Language, CSC Carryover - The proposed bill would reinstate the FY 2016 Appropriations bill language that could be read to deny the carryover authority granted by the Indian Self-Determination and Education Assistance Act (“amounts obligated but not expended by a tribe or tribal organization for contract support costs for such agreements for the current fiscal year shall be applied to contract support costs otherwise due for such agreements for subsequent fiscal years.”) The Consolidated Appropriations, FY 2017 Act does *not* contain this language.

If would like for us to provide additional information on the Administration’s proposed FY 2017 IHS budget prior to our issuing a more detailed report, please contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282); or Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745).