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MEMORANDUM

May 26, 2017

TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

Re: *Joint DSTAC and TSGAC Call on Executive Order 13781*

On March 25, 2017, the Direct Service Tribal Advisory Committee (DSTAC) and Tribal Self-Governance Advisory Committee (TSGAC) hosted a joint call regarding Executive Order 13781, *A Comprehensive Plan for Reorganizing the Executive Branch*. The order is intended “to improve the efficiency, effectiveness, and accountability” of the Executive Branch by requiring the Director of the Office of Management and Budget (OMB) to propose a plan to reorganize or eliminate redundant federal agencies, agency components, and agency programs. Joining the call to discuss the implementation of the order at the Department of Health and Human Services (HHS) were Indian Health Service (IHS) Acting Director Chris Buchanan, Acting Deputy Director for IHS Field Operations Kevin Meeks, as well as tribal representatives serving on the DSTAC and TSGAC.

Background

Pursuant to the terms of the Executive Order, HHS Secretary Tom Price must submit a draft proposal on suggested improvements in the organization and functioning of HHS agencies and programs—including the IHS—by June 30, 2017, with a final proposal due to the OMB by September 7, 2017. To meet these deadlines, Secretary Price has implemented a Department-wide initiative to “Reimagine HHS” driven by the recommendations of five workgroups that represent the major goals of HHS’s strategic plan: (1) Healthcare System; (2) Public Health; (3) Economic and Social Wellbeing; (4) Scientific Advancement; and (5) Management and Stewardship. The five workgroups will be comprised of career staff with expertise in each of these areas.

We note that there has been no formal tribal consultation or direct tribal involvement in the HHS reorganization process to date. Acting Director Buchanan and Acting Deputy Director Meeks have been providing feedback and recommendations to the workgroups on behalf of the IHS.

DSTAC and TSGAC Joint Call

Nicolas Barton, Chairman of the DSTAC, opened the call by noting that any restructuring of the HHS would necessarily be significant for the IHS and, therefore, should include meaningful tribal consultation. Lynn Malerba, Chairwoman of the TSGAC, emphasized the need to incorporate Native voices at the earliest stages of the reorganization to ensure that the IHS's pivotal role in providing healthcare to Native communities is properly understood and maintained. She reminded participants that the foundation of Indian healthcare rests on the federal trust responsibility, regardless of whether care is provided under a direct service or self-governance capacity.

Acting Deputy Director Meeks provided participants with an overview of the "Reimagine HHS" initiative, focusing particularly on the role of the workgroups in that process. He reported that efforts are proceeding at a "very fast pace" given the short turnaround for proposals to the OMB mandated by the Executive Order. He explained that the workgroups are currently in the process of winnowing down specific recommendations after "generating any and all ideas" that could improve the operation of the HHS and IHS. He stated that "there is not a day we [himself and Acting Director Buchanan] have not mentioned consultation" and raised tribal concerns for incorporation into the workgroups' recommendations. He concluded his remarks by praising Beverly Cotton's leadership in raising tribal concerns as part of the Economic and Social Wellbeing Workgroup. Ms. Cotton serves as the Director of the Division of Behavioral Health in the IHS.

Participants on the call voiced concern regarding the rapid pace at which the reorganization efforts are developing without active tribal participation. In response, Acting Director Buchanan shared his belief that more formal tribal consultation is expected, although he did not have any further information at this time on what that may look like. Chairwoman Malerba recommended that IHS leadership participate in the next TSGAC meeting in Washington, D.C., on July 18–19, as well as the Direct Service Tribes national meeting on August 2–3 in Boston, Massachusetts. Acting Director Buchanan was receptive to the idea and also suggested hosting a panel at the National Congress of American Indians' Mid-Year Conference at Mohegan Sun on June 12–15, 2017.

Other issues raised during the call included the seeming incompatibility of the Executive Order's goal of reducing the size of the Federal Government with effectively resolving the chronic under-resourcing of the IHS, and the possibility of using the reorganization as a vehicle to expand self-governance programs within the HHS. An All Tribes Call is scheduled for June 16, 2017, to continue this important conversation.

We will continue to update you as plans for the reorganization of HHS under Executive Order 13781 move forward. For more information, please contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282); Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745); or Lisa Meissner (lmeissner@hobbsstrauss.com or 202-822-8282).