



FEB 16 2018

Indian Health Service
Rockville, MD 20857

Mr. Andrew Joseph
Tribal Co-Chair
Contract Support Costs Workgroup
The Confederated Tribes of the Colville Reservation
P.O. Box 150
Nespelem, WA 73022

Dear Co-Chair Joseph:

I am writing to respond to your January 3, 2018, letter, which provides your concerns about a recent Indian Health Service (IHS) decision to temporarily rescind a provision of the IHS Contract Support Costs (CSC) policy (CSC Policy). In addition, I will provide updates from the IHS CSC Workgroup (CSCWG) meeting held in Tulsa, Oklahoma, on August 16, 2017, and share details for the next CSCWG meeting.

One of the CSC Policy's guiding principles is that it will be reassessed on a regular basis. *Indian Health Manual*, § 6-3.1(B)(18). After a year of implementing the revised CSC Policy, the IHS has found that in certain instances, the section of the policy relating to an alternative method for calculating indirect costs associated with recurring Service Unit shares – which many of you know as the “97/3 method” – does not conform in at least some cases with the statutory authority of the Indian Self-Determination and Education Assistance Act (ISDEAA).

While the IHS was preparing a response to your letter, the Department of Health and Human Services (HHS) Secretary's Tribal Advisory Committee (STAC) meeting was held on January 18, 2018. During this meeting, a STAC member made a request to former acting HHS Secretary Eric Hargan that he immediately reinstate the rescinded provision of the CSC Policy; then-acting Secretary Hargan committed to being briefed on the matter. The briefing was held on February 5, 2018. The IHS will not reinstate the provision at this time. The CSCWG will discuss this provision at the upcoming meeting and develop recommendations for my consideration. Upon review of the recommendations, the IHS will engage nationally in Tribal Consultation prior to making a final decision.

As requested in your January 12, 2018-dated letter, I plan to attend the next CSCWG meeting. This meeting will be held on March 6 – 7, 2018, at the DoubleTree by Hilton, located at the Albuquerque Convention Center, 201 Marquette Avenue Northwest, Albuquerque, New Mexico. The IHS will send a separate follow-up letter about the data that led to the IHS decision to rescind the 97/3 method.

During our last CSCWG meeting in August 2017, Tribal members of the CSCWG identified several questions and recommendations related to the CSC Policy and its implementation. The following provides updates to the issues, questions, and recommendations.

Issue 1: Timeliness to Negotiate Indirect Cost Rates with the Department of Health and Human Services (HHS)

IHS Update: At HHS, the negotiation of indirect cost rates is conducted on a case-by-case basis by the Cost Allocation Services (CAS), which is located within the HHS Program Support Center. HHS is designated by the Office of Management and Budget as the cognizant Federal agency to review and negotiate facility and administrative (indirect) costs for certain Federal grantees.

On October 10, 2017, Ms. Roselyn Tso, Acting Director, Office of Direct Service and Contracting Tribes (ODSCT), IHS, met with the CAS to share the issue raised by the CSCWG. The CAS informed the IHS that delays, in some cases, may be attributed to staffing changes or shortages in CAS's San Francisco, California, office that reviews the majority of proposals from Tribal organizations. At this time, the CAS continues to recruit to fill vacant positions and has reached out to other regional offices for assistance.

Issue 2: Final Fiscal Year (FY) 2014 CSC Payments

IHS Update: The IHS is committed to paying full CSC and agreed to make immediate payments for FY 2014-negotiated CSC need by August 30, 2017. For all known CSC commitments as of August 30, 2017, funds were made available for award and immediate payment. As remaining FY 2014 CSC commitments are negotiated, the IHS will take necessary action to make payments to Tribes or Tribal organizations. Final reconciliation requires negotiation and mutual agreement by both parties as documented in a bilateral amendment or modification.

Recommendation 1: Pay CSC on Catastrophic Health Emergency Fund (CHEF) Reimbursements

IHS Response: Upon review of this recommendation, the IHS reaffirms its position that reimbursements from the CHEF are not eligible for CSC. Therefore, the IHS will not award CSC associated with CHEF reimbursements.

Recommendation 2: Pay CSC on Grants: Substance Abuse and Suicide Prevention (SASP) and the Domestic Violence Prevention Program (DVPP)

IHS Response: Upon review of this recommendation, the IHS reaffirms its position that grants, including the IHS SASP and the DVPP, are not eligible for CSC. Grants are not programs, functions, services, or activities (PFSAs) funded through the Secretarial amount, as defined by the ISDEAA. Therefore, the IHS will not award CSC associated with grants. Discretionary grant programs are managed as stipulated under applicable Federal regulations and policies, specifically by 45 C.F.R. Part 75, the Notices of Funding Opportunity, and the terms and conditions of the respective Notices of Award.

Recommendation 3: Establish a CSCWG Subgroup to Assist the IHS with Determining the CSC Estimate for Budgeting Purposes

IHS Response: Upon review and consideration of this recommendation, the IHS has decided not to establish a subgroup to the CSCWG. Each year, the IHS provides several opportunities for Tribal input on the CSC estimated need, including IHS Area budget consultations and annual budget formulation meetings. During the August 2017 CSCWG meeting, the IHS shared the methodology we use to estimate future CSC need. The funds appropriated to the IHS for CSC remain in a separate, indefinite discretionary appropriation, which fully funds the CSC need. The final appropriation amount adjusts to meet the need.

Recommendation 4: Review IHS Process for Start-up Costs Negotiation with IHS Negotiators to Ensure Consistency throughout IHS

IHS Response: The IHS agrees with this recommendation. To date, the IHS has had several communication and training sessions with IHS negotiators to provide guidance on calculating and negotiating start-up costs consistent with the CSC Policy. The IHS will standardize training to ensure IHS negotiators act consistently with business processes, with the goal of achieving fair and consistent negotiations with all Tribes and Tribal organizations.

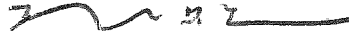
Recommendation 5: Update CSC Negotiation Templates to Reflect August Meeting Discussion

IHS Response: The IHS will honor the commitments made during the August 2017 CSCWG meeting. The updated templates will be shared under separate cover. The changes reflect the CSCWG's discussions and are meant to clarify procedures and streamline CSC negotiations.

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Thank you and the members of the CSCWG for your support and recommendations, which have strengthened and improved Agency implementation of the ISDEAA. If you have any questions, please contact Ms. Tso by telephone at (301) 443-1104 or by e-mail at roselyn.tso@ihs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "M. D. Weahkee", with a stylized flourish at the end.

RADM Michael D. Weahkee, MBA, MHSA
Assistant Surgeon General, U.S. Public Health Service
Acting Director