

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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Sent electronically to consultation@ihs.gov

May 18, 2018

RADM Michael D. Weahkee
Acting Director
Indian Health Service
5600 Fishers Lane
Rockville, MD 20857

RE: Consultation on Recommended Revision to the Contract Support Cost (CSC) Policy

Dear RADM Weahkee:

On behalf of the Tribal Self-Governance Advisory Committee (TSGAC), I write to provide our formal comments to your April 13, 2018 Dear Tribal Leader letter request for Tribal consultation on recommended changes to the Indian Health Service (IHS) Contract Support Costs (CSC) Policy. First, we thank you for attending the most recent meeting of the joint IHS/Tribal CSC Workgroup held on March 6-7, 2018 in Albuquerque, NM. The Workgroup worked intently to arrive at consensus recommendations for your consideration. The TSGAC previously communicated to you on April 5, 2018 expressing support for the CSC Workgroup recommendation and urging that Tribal consultation be conducted as soon as possible.

The CSC Workgroup recommendation to revise the CSC Policy language addressed IHS's specific scenario of concern—a scenario when IHS believes the 97/3 option will result in an overpayment because a higher duplication offset has been identified in a prior funding agreement. The language is as follows:

Limited to the above circumstances, the awardee shall elect the method for determining the amount of IDC associated with the Service Unit shares and the remaining IDC that may be eligible for CSC funding, to identify duplication, if any, pursuant to 25 U.S.C. § 5325(a)(3), using one of two options listed below **or any other mutually acceptable approach. In connection with 3.iii, above, if an earlier funding agreement reflects a prior identification of duplicated Service Unit costs, then the parties shall negotiate a new duplicate amount considering the alternatives available under Alternative A, Alternative B, or any other mutually acceptable approach.**

(Indian Health Manual, Chapter 3, Contract Support Costs – Part 6, Section 2E(3), second paragraph, recommended revision in **bold** text.)

Your April 13th letter also recommended some additional changes and alternatives to revising the CSC policy. These additional revisions and alternatives to the CSC Workgroup recommendation did not apparently originate from the Tribes, and obviously was not the product of a consensus recommendation of the CSC Workgroup. The alternatives would, in effect, require IHS concurrence on the method by which the parties may negotiate. The purpose, as discussed within the CSC Workgroup, of designing options for determining duplication of service unit shares was to have a reasonable, consistent method to streamline the CSC calculation

process and avoid conflict, thus saving both the federal government and the Tribes valuable resources. It is for these reasons we do not support the alternatives as outlined in your April 13th letter.

The TSGAC reiterates our support of the IHS CSC Workgroup recommendation, which specifically addresses the IHS's stated concerns. The IHS is required under the Indian Self-Determination and Education Assistance Act to liberally construe the statute for the benefit of the Tribes. The IHS is fully within its authority to adopt the policy revision recommended by the CSC Workgroup. This recommendation provides Tribes and IHS officials alike with the tools needed to successfully conduct CSC funding negotiations.

If you have any questions or would like to discuss these comments in further detail, please contact me at lmalerba@moheganmail.com. Thank you.

Sincerely,

Chief Lynn Malerba, Mohegan Tribe of Connecticut
Chairwoman, IHS TSGAC

cc: P. Benjamin Smith, Deputy Director for Intergovernmental Affairs, IHS
Jennifer Cooper, Acting Director, Office of Tribal Self-Governance, IHS
TSGAC Members and Technical Workgroup