



SEP 25 2020

Dear Tribal Leader:

I am writing to you to share an “Early Alert” issued by the Department of Health and Human Services Office of Inspector General (OIG) on August 28, 2020, and posted to the OIG Web site on September 2, 2020. This Early Alert, provided as an enclosure to this letter, identifies a vulnerability that compromises the safety and well-being of American Indian and Alaska Native (AI/AN) children who receive treatment at Tribal health programs operated under Indian Self-Determination and Education Assistance Act (ISDEAA) agreements with the Indian Health Service (IHS). **It warrants your immediate attention and response.**

The OIG is currently conducting two audits of Tribal health programs’ compliance with the Indian Child Protection and Family Violence Prevention Act background investigation requirements for hiring individuals whose duties and responsibilities involve regular contact with, or control over, AI/AN children. Federal law requires Tribes and Tribal organizations that contract with the IHS under the ISDEAA to conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves regular contact with, or control over AI/AN children under the age of eighteen. 25 U.S.C. § 3207(c); 34 U.S.C. § 20351. Tribes and Tribal organizations can employ only individuals who meet standards of character that are no less stringent than those prescribed by the regulations outlined at 42 C.F.R. § 136.404, and only after an individual has been the subject of a satisfactory background investigation as described in 42 C.F.R § 136.406, which includes a review of:

- a) The individual’s trustworthiness, through inquiries into the individual’s references and places of employment and education;
- b) A criminal history background check, which includes a Federal Bureau of Investigation (FBI) fingerprint check, and inquiries to State and Tribal law enforcement agencies for the previous five years of residence listed on an individual’s application;
- c) A determination as to whether the individual has been found guilty of or entered a plea of nolo contendere or guilty to any felonious offense or any two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

In accordance with Federal law, a Tribe or Tribal organization may establish higher standards of character; however, the standards must be no less stringent than those prescribed by the regulations outlined in 42 C.F.R. § 136.404. Tribes and Tribal organizations may conduct their own background investigations, contract with private firms, or may request that a Federal or State agency conduct investigations. However, FBI fingerprint checks are required and may only be received or evaluated by governmental agencies, including Tribes or Tribal organizations, and may not be disseminated to private entities. Finally, Tribes and Tribal organizations can provisionally hire individuals prior to the completion of a satisfactory

background investigation only if, at all times prior to receipt of the satisfactory background investigation and when AI/AN children are in the care of the individual, the individual is within sight and under the supervision of someone on staff that has a completed satisfactory background investigation.

The first audit focuses on three Tribal health programs in New England. The second audit, which is not part of this Early Alert, will focus on Tribal health programs in the Midwest. During the course of both past and ongoing audits, the OIG found that tribally operated health programs operated under ISDEAA agreements were not conducting required FBI fingerprint checks for all employees, contractors, and volunteers who have regular contact with AI/AN children. This creates an increased risk that an individual with a disqualifying criminal history in a different state could be hired into a position with regular contact with AI/AN children. All Tribes and Tribal organizations are expected to be fully aware of and comply with the Indian Child Protection and Family Violence Prevention Act's requirements. It is the Tribe and Tribal organization's responsibility to comply with all Federal laws relevant to their ISDEAA agreements.

I have instructed each IHS Area Director to initiate meetings with all Tribes and Tribal organizations in their respective Area that operate IHS programs, functions, services, or activities under the ISDEAA, to inform them of the Federal legal requirement to conduct the background checks. Each Area Director has been directed, within 30 days, to provide a report to me on the Tribal meetings held in their respective Area on this important topic and suggest technical assistance or resources that the IHS might be able to provide to Tribes and Tribal organizations regarding this important legal requirement. In addition, I have asked Area Directors to identify Tribal programs that have exceeded minimum standards and have developed best practices that protect the safety and security of our AI/AN children. We will collect and share this information throughout the IHS health system.

The IHS is committed to patient safety and has taken aggressive action to better protect patients, especially AI/AN children. We will continue to work with Tribes and Tribal organizations to make the safety of AI/AN children a priority and to help Tribes and Tribal organizations to understand the important requirements of the Indian Child Protection and Family Violence Prevention Act.

Sincerely,

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

Enclosure: OIG Memorandum Report – Early Alert: *“Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children”* (A-01-20-01500)