



# CALIFORNIA RURAL INDIAN HEALTH BOARD, INC.

Submitted via e-mail to: [consultation@ihs.gov](mailto:consultation@ihs.gov)

May 18, 2018

RADM Michael D. Weahkee, MBA, MHSA  
Assistant Surgeon General, U.S. Public Health Service  
Acting Director  
Indian Health Service  
5600 Fishers Lane  
Mail Stop: 08E86  
Rockville, MD 20857

## **Re: CSC “97/3 Method” Tribal Consultation**

Dear Acting Director Weahkee:

I write today on behalf of the California Rural Indian Health Board (CRIHB), a network of 15 Tribal Health Programs, controlled and sanctioned by 44 federally recognized tribes, serving American Indian and Alaska Native people residing in California through 40 satellite clinics. I write this letter to provide recommendations and observations regarding the application of the Indian Health Service (IHS) Indian Health Manual, Part 6 – Services to Tribal Governments and Organizations, Chapter 3 – Contract Support Costs (CSC) (“CSC policy”), section 6-3.2E(3) “Alternative Methods for Calculating Indirect Costs Associated with Recurring Service Unit Shares” (commonly known as the “97/3 Method or 97/3 Split”).

### **BACKGROUND ON 2016 IHS POLICY ON CONTRACT SUPPORT COSTS**

The IHS publishes its CSC policy in the IHS Indian Health Manual at Part 6, Chapter 3. The CSC policy serves as a guide for the IHS and tribes in the preparation, negotiation, determination, payment, and reconciliation of CSC funding used to support new, expanded, and ongoing services provided through compacts and contracts pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA).

In accordance with the ISDEAA, CSC are costs associated with administering the compacts and contracts through which tribes assume responsibility for the operation of IHS programs, services, functions, or activities (or portions thereof). CSC are the reasonable costs for activities that tribes must carry on to ensure compliance with the terms of the contract and prudent management, but that normally are not carried on by the IHS in its direct operation of the program or are provided by the IHS from resources other than those under contract. CSC are a legal and contractual obligation of the federal government.

In December 2015, the IHS CSC Workgroup, composed of tribal and federal staff, refocused its efforts on updating the IHS CSC policy, which was last updated in 2007. In April 2016, the IHS CSC Workgroup approved a draft CSC policy that was then shared widely for tribal consultation. The revised CSC policy was published on October 26, 2016.

This section of the CSC policy, often referred to by federal and tribal ISDEAA negotiators as the “97/3 Split” or “97/3 Method,” permits a tribe or tribal organization to exercise the option for “Service Unit level shares” that is similar to the option that previously applied only to “Area” and “Headquarters” level shares. In sum, this option in the policy provides an alternative method for use in determining the amount in a tribe’s or tribal organization’s indirect cost pool that is associated with transferred programs, services, functions, or activities already funded by the Secretarial amount, as defined by the ISDEAA.

### RECOMMENDATIONS AND OBSERVATIONS

1. The ISDEAA, and ultimately the Office of Management and Budget (OMB), define and determine the calculation of indirect and “indirect-type costs.” CRIHB’s worksheets for the calculation of indirect costs for its members, which are comprised of both formal rates and “indirect-type costs”, comply with ISDEAA, OMB, and the unique provisions of IHS for CSC. These worksheets have been reviewed and verified by two independent audit firms, including one employed by IHS, during the review of unpaid CSC, so CRIHB is confident that this is an appropriate method to arrive at CRIHB’s “indirect-type costs.”
2. Tribes and tribal organizations have been the providers of health care in the California IHS Area either by ISDEAA Title I contracting or Title V compacting - not IHS direct care services. Therefore, there would not be any Secretarial or duplicate costs in the Base Funding provided to tribes and Tribal Health Programs in the California IHS Area. Duplication of Area and Headquarter shares are handled by the 80/20 split for those shares. CRIHB’s position is that clarification under 25 U.S.C. § 5325 (a) of the options for Chapter 3, Section 6-3.2E(3) iii of the Indian Health Manual for the 2016 CSC policy is needed.
3. During recent IHS CSC Tribal/Federal Workgroup meetings, tribal representatives were under the impression IHS would only apply the new 97%—3% rule to new and expanded contracts and related renegotiated base amounts—not each time an Annual Funding Agreement is in the process of being reissued. Extending the new rule to straightforward yearly re-issuance is overly burdensome on a number of tribes/tribal organizations. It is not required under federal law and is unnecessary. In fact, applying this rule to Annual Funding Agreements would subject tribes to a decrease in their funding without the consent of Congress, since IHS is indicating that 3% of their base is for indirect CSC. **IHS must clearly state that its new CSC rule does not apply to annual re-issuances, including those of negotiated “indirect-type costs.”**
4. CRIHB approves of the IHS CSC Workgroup’s recommendation for changes to the 2016 CSC policy offered at the March 6-7, 2018 IHS CSC Tribal/Federal Workgroup meeting, displayed in *italicized* text below, but recommends the language in **bold** be added as clarification of the options under 25 U.S.C. § 5325 (a) for the CSC policy:

*Limited to the above circumstances, the awardee shall elect the method for determining the amount of IDC associated with the*

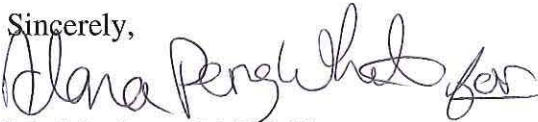
Service Unit shares and the remaining IDC that may be eligible for CSC funding, to identify duplication, if any, pursuant to 25 U.S.C. § 5325(a)(3), using one of two options listed below *or any other mutually acceptable approach*. *In connection with 3.iii, above, if an earlier funding agreement reflects 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.* **If earlier funding agreements did not indicate duplicated Service Unit costs, as in the case of California IHS Area Tribes and Tribal Organizations, the Tribe or Tribal Organization would have the option of a previously acceptable method, or any other mutually acceptable approach.**

5. Concerns from IHS regarding the IHS CSC Workgroup's proposed language are misplaced. IHS remains concerned that the IHS CSC Workgroup's proposed language does not account for all instances in which the 97/3 Split provision of the 2016 CSC policy will not conform to the requirements of the ISDEAA. According to IHS, in such instances, a bilateral decision, rather than unilateral decision, should be jointly made to ensure compliance with the ISDEAA.

**What specific provision of the ISDEAA does IHS cite to require the IHS or IHS Area Director designee determination / a mutually acceptable approach, rather than the method elected by the awardee?**

CSC are the key to self-determination for tribes—these funds ensure that tribes have the resources that any government contractor would require to successfully manage decentralized programs. Anything that discourages tribes from entering into or expanding the programs, services, functions, and activities it operates under a self-determination contract is contrary to the intent and spirit of the ISDEAA. Please contact me at (916) 929-9761 or [mlebeau@crihb.org](mailto:mlebeau@crihb.org) if there are any questions on the issues addressed in this letter.

Sincerely,



Mark LeBeau, PhD, MS  
Chief Executive Officer