



INTERAGENCY AGREEMENT  
BETWEEN THE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
INDIAN HEALTH SERVICE

AND THE

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN EDUCATION AND  
BUREAU OF INDIAN AFFAIRS—OFFICE OF JUSTICE SERVICES

**I. PURPOSE AND AUTHORITY**

This purpose of this interagency agreement (Agreement or IAA) is to address the needs of Native youth by increasing access to mental and behavioral health services by allowing the Indian Health Service (IHS) staff to treat individuals attending Bureau of Indian Education (BIE) schools, or while being detained in Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) facilities.

This Agreement sets forth the terms under which the BIE, IHS, and OJS (collectively Parties) will work collaboratively to establish local partnerships through individual Memoranda of Agreement (MOAs) between IHS federally operated mental health programs and BIE-operated schools and/or OJS-operated Juvenile Detention Centers (JDCs) for the provision of mental health counseling.

This Agreement is entered into pursuant to the (1) Snyder Act of 1921, 25 U.S.C. § 13; (2) the Act of Oct. 12, 1984 (P.L. 98-473, 98 Stat. 1738, 1848, 25 U.S.C. § 13b); (3) 25 U.S.C. § 1637(b) (providing for the use of property to support Indian Health Programs); (4) 25 U.S.C. §§ 1665a and 1665c; (5) 25 U.S.C. § 2802; the regulations at (6) 25 C.F.R. § 31.2 (providing for the use of Federal school facilities), (7) 25 C.F.R. Part 162; and (8) 25 C.F.R. Part 12 as amended, all of which are incorporated by reference into this Agreement. In addition, the provisions of any other applicable Federal regulations shall apply, unless such regulations have been waived by the Secretary of the Interior or the Secretary of Health and Human Services respectively.

**II. RELATED DOCUMENTS**

See "Interagency Agreement and Use Permit Between the Indian Health Service and the Oglala Sioux Tribe and the Department of the Interior."

### III. SCOPE OF WORK

#### A. Mental Health Counseling at BIE Schools and OJS JDCs

The IHS Area Directors, the BIE School Health Policy Advisor in coordination with the Associate Deputy Directors, and OJS Special Agents in Charge, (hereafter “Regional Staff”) will have primary responsibility to implement this Agreement, with oversight as appropriate from IHS, BIE, and BIA headquarters staff in Washington, D.C.

The Parties are authorized to and shall make every effort to enter into individual MOAs between the local federally operated mental health programs and BIE operated elementary and secondary schools and/or OJS operated Juvenile Detention Centers (JDCs), including a facility use permit where required. Regional Staff will work collectively to tailor each MOA to the particular needs of the Indian youth in the region and school(s) or JDC(s), and oversee its respective local staff in their Region to ensure effective implementation. Each MOA shall contain the following minimum responsibilities for the Parties.

##### IHS Shall:

- Offer mental health services to individuals eligible for IHS services pursuant to 42 C.F.R. § 136.12. Purchased/Referred Care (PRC) services are outside the scope of this Agreement, but may be made available to patients in accordance with existing laws, regulations and policies governing PRC services.
- Provide mental health assessment or counseling services when the school is in session for BIE operated schools.
- Ensure that any IHS staff using space at the school or JDC meets appropriate licensure or certification requirements, as determined by IHS.
- Work cooperatively with the schools, BIE, and OJS to meet counseling needs of eligible individuals, including potential delivery of tele-behavioral health services, when available.
- Ensure that any IHS staff using space at the school or JDC has passed a Federal background investigation in accordance with Section VIII of this Agreement.

##### BIE and OJS Shall:

- Pursuant to a use permit, provide use of a private space at each school or JDC appropriate for mental health counseling for the use of IHS in serving individuals eligible for IHS services pursuant to 42 C.F.R. § 136.12.
- Work cooperatively with IHS staff to ensure high quality counseling services are made available to students in need of such services.
- Work cooperatively with IHS staff to ensure processing of any background checks required under Section VIII of this Agreement.
- Provide broadband access, if available, for telehealth services.

#### C. Inclusion of Additional Services

The Parties may negotiate the inclusion in their MOAs of the provision of additional IHS or BIE services as appropriate to each school or JDC.

D. Inclusion of Tribally Controlled Grant or Contract Facilities

The Parties may and are encouraged to include appropriate tribes, tribally controlled schools, or tribally operated JDCs in their Region in these individual MOAs or in separate MOAs if those entities consent to the arrangements, however, tribal and tribal organization participation shall be completely voluntary.

**IV. IMPLEMENTATION SCHEDULE**

Regional Staff will implement local MOAs within 1 year of date of this agreement.

**V. PERSONALLY IDENTIFIABLE INFORMATION**

Under this Agreement, and under each subsequent MOA entered into pursuant to this Agreement, the disclosure or sharing of patient or student records will continue to occur only in accordance with applicable law.

1. Limitation on Disclosure of IHS Records

Medical records created or maintained by the IHS are Federal records, and are thus subject to some or all of the following laws: the Privacy Act, 5 U.S.C. § 552a; the Freedom of Information Act, 5 U.S.C. § 552; the Drug Abuse Prevention, Treatment, and Rehabilitation Act, 21 U.S.C. § 1101; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, 42 U.S.C. §4541; the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and 45 C.F.R. Parts 160 and 164.

Any disclosures of protected health information by IHS to BIE shall be made in accordance with applicable Federal laws, including the HIPAA Privacy Rule.

2. Limitation on Disclosure of BIE Records

Student records created or maintained by BIE are subject to the Family Educational Rights and Privacy Act, its implementing regulations, and BIE's implementing regulations (20 U.S.C. § 1232g; 34 C.F.R. Part 99; 25 C.F.R. Part 43), in addition to the laws applicable to Federal records: and the Privacy Act, 5 U.S.C. § 552a and the Freedom of Information Act, 5 U.S.C. § 552.

3. Limitation on Disclosure of OJS Records

Records of the Office of Justice Services are Federal records under the Privacy Act, 5 U.S.C. § 552a and the Freedom of Information Act, 5 U.S.C. § 552.

**VI. DURATION OF AGREEMENT, MODIFICATION, CANCELLATION**

This Agreement will be effective upon the latest signatory date below and shall remain in effect for 10 years or until terminated by an authorized representative of any Party, with or without cause, by providing 30 days written notice. This Agreement may be modified at any time with the signatures of all Parties. The cancellation of this MOA will not have an effect on regional and local MOAs created pursuant to this MOA.

## **VII. LIMITATIONS**

Nothing in this Agreement shall be construed to transfer an interest in land to either Party beyond the use permit specified for the purposes stated herein. Nothing in this Agreement shall be construed to create any financial obligation of any agency or instrumentality of the United States, including one in excess or advance of appropriations, or to require any specific allocation of personnel or other resources. Nothing in this Agreement shall be construed to create any enforceable rights or expectations in any third-parties nor to prohibit any of the Parties hereto from entering into any similar relationship or agreement. Nothing in this Agreement shall create an obligation for services at every BIE school or JDC but will be subject to the feasibility of providing such services given the respective location and associated costs.

## **VIII. PAYMENT**

No payment will be made by either Party for the use of space at any facility unless otherwise agreed by the Parties and pursuant to an authorized funding mechanism. Any such existing agreements are not terminated by execution of this IAA.

## **IX. SECURITY INVESTIGATIONS**

Activities under this IAA will be implemented in compliance with the Indian Child Protection and Family Violence Prevention Act. All activities in which IHS staff or its volunteers will be interacting with or providing care to children less than 18 years old must be performed by a staff member who has satisfactorily completed the Child Care National Agency Check with Written Inquiries (CNACI) Security Investigation.

## **X. KEY OFFICIALS**

Beverly Cotton  
Director, Division of Behavioral Health, IHS  
5600 Fishers Ln, Mail Stop 08N34A  
Rockville, MD 20857  
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Juanita Mendoza  
Chief of Staff, BIE  
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Washington, DC 20240  
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David Little, Associate  
Director Field Operations, OJS  
1849 C St NW, Mail Stop 2603  
Washington, DC 20240  
(202) 208-5787

**XI. DISPUTE RESOLUTION**

Should the key officials be unable to resolve a dispute arising under this Agreement, they will refer the dispute to the Principal Deputy Director, IHS (or designee), the Principal Deputy Assistant Secretary – Indian Affairs (or designee), who shall confer within 30 days of the referral to resolve the dispute.

**XII. SIGNATURES**

*Mary Smith*

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Mary Smith  
Principal Deputy Director  
Indian Health Service  
Date: DEC 05 2016

*Lawrence Roberts*

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Lawrence Roberts  
Principal Deputy Assistant Secretary –  
Indian Affairs  
Date: 10/21/16