



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



August 28, 2020

TO: Rear Admiral Michael D. Weahkee
Director
Indian Health Service

FROM: /Christi A. Grimm/
Principal Deputy Inspector General

SUBJECT: Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children (A-01-20-01500)

This memorandum follows up on the Office of Inspector General's recent teleconference with your staff during which we provided information about a significant vulnerability we identified during our audit of Tribal health programs.¹ Specifically, we found that Tribal health programs that received Indian Self-Determination and Education Assistance Act (ISDEAA) funds from the Indian Health Service (IHS) were not conducting required Federal Bureau of Investigation (FBI) fingerprint background checks for all employees, contractors, and volunteers who have regular contact with Indian 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 Indian children.

This vulnerability warrants IHS's immediate attention because it may compromise the safety and well-being of Indian children who receive treatment at Tribal health programs funded by IHS. We will follow up to verify how IHS will work with Tribes to address this vulnerability.

BACKGROUND

In 2018, we completed two health and safety audits of Tribal health programs that included an assessment of Federal and Tribal compliance with preemployment screening requirements.² We

¹ In this report, "Tribal health programs" refer to health facilities that receive Indian Self-Determination and Education Assistance Act funds from IHS.

² *The Passamaquoddy Tribe's Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements* (A-01-17-01500; available at <https://oig.hhs.gov/oas/reports/region1/11701500.pdf>) and *The Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements* (A-01-17-01502; available at <https://oig.hhs.gov/oas/reports/region1/11701502.pdf>).

found that the Passamaquoddy Tribe's Pleasant Point³ Health Center and the Penobscot Indian Nation's Health Center did not comply with Federal requirements to perform FBI fingerprint background checks for employees in contact with Indian children. This placed the children served by these programs at an increased risk for harm and abuse. Because Tribes through ISDEAA agreements administer more than half of the IHS's resources, we have recently focused our work on Tribal programs.⁴

We are currently conducting two audits⁵ of Tribal health programs' compliance with the Indian Child Protection and Family Violence Prevention Act (the Act) character-investigation requirements⁶ on background screening processes and character standards for the hiring of individuals who have contact with, or control over, Indian children. The first audit focuses on three Tribal health programs in New England, each of which is typically the sole health facility on a Tribe's reservation. The second audit, which is not part of this Early Alert, focuses on Tribal health programs in the Midwest, where typically a Tribe operates a hospital and multiple health facilities on a Tribe's reservation; in total, the 2 Tribes operate 2 hospitals and 20 health centers.⁷

In total, this Early Alert highlights the activities of four Tribes that operate five Tribal health programs. For these audits, we interviewed the health programs' staff members and Government officials, and are reviewing documentation to verify that the Tribal health programs have conducted required background checks on employees, contractors, and volunteers in contact with Indian children in accordance with Federal and Tribal requirements.

In 1990, the Congress after careful review of the problem of child abuse on Indian reservations and the special and historical relationship of the Federal Government with Indian people found that: (1) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government; (2) incidents of abuse of children on Indian reservations have been grossly underreported; (3) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children were often deficient; (4) funds spent by the United States on Indian reservations or otherwise

³ In the United States, the Passamaquoddy Tribe resides on two separate reservations in Maine: Indian Township and Pleasant Point. Each reservation has its own distinct Tribal Government. Each Tribal Government separately contracts with IHS under Title I of the ISDEAA to operate a health program located on its reservation. In our prior audit, we reviewed the Passamaquoddy Pleasant Point Health Center; our current audit reviews the Passamaquoddy at Indian Township Health Center.

⁴ IHS, *Justification of Estimates for Appropriations Committees for Fiscal Year 2021*, CJ-184 (Feb. 5, 2020). We selected programs on the basis of a number of factors including location and service population.

⁵ These are audits of the background verification processes at: (1) three Tribal health programs in New England, including the Passamaquoddy Tribe at Indian Township, Narragansett Indian Tribe, and Houlton Band of Maliseet Indians (A-01-20-01504); and (2) two Tribes in Oklahoma that operate various Tribal health programs, including the Cherokee Nation and the Choctaw Nation (A-01-20-01505).

⁶ Section 408 of the Act, P.L. 101-630 (enacted Nov. 28, 1990) (codified at 25 U.S.C. § 3207) and IHS's implementing regulation codified at 42 CFR part 136, subpart K.

⁷ We have not determined yet if the vulnerabilities we identified in the New England Tribal health programs exist at the Oklahoma Tribal health programs because we are at the early stages of this audit.

spent for the benefit of Indians who are victims of child abuse or family violence are inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse or family violence and their families; and (5) there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of, or who are eligible for membership in, an Indian Tribe. On the basis of these findings, Congress passed the Act.⁸ The Act and IHS's implementing regulations require Tribes that receive ISDEAA funds from IHS to conduct a character investigation of each individual in a position that involves regular contact with, or control over, Indian children.⁹ Individuals include contractors, volunteers, and employees, and those being considered for those roles.¹⁰ A character investigation must include, among other things, a criminal history background check, which includes an FBI fingerprint check.¹¹ A Tribe may determine its own standards of character; however, these standards must be no less stringent than IHS's minimum standards.¹² Tribes may not allow individuals who do not meet IHS's minimum standards to be in a position that involves regular contact with, or control over, Indian children.

An FBI fingerprint background check accesses criminal history records across Federal, State, and local jurisdictions. It provides positive identification and eliminates the false positives and false negatives associated with name-based checks,¹³ and it provides the benefit of obtaining additional criminal record history that may not be maintained by the State where the Tribe's reservation is located.¹⁴ The Act does not require employees, contractors, and volunteers in contact with Indian children to be screened periodically after the initial character investigation.

TRIBAL HEALTH PROGRAM PREEMPLOYMENT SCREENING

As part of our current audit focusing on Tribal health programs in New England, we reviewed the preemployment screening processes at health programs run by the Narragansett Indian Tribe in Rhode Island, the Passamaquoddy Tribe at Indian Township in Maine, and the Houlton Band of Maliseet Indians in Maine. Each of these Tribal health programs provides onsite medical and behavioral health services. These programs receive funding through ISDEAA agreements with IHS and may enroll in the Medicaid and Medicare programs. The 3 Tribes' health programs collectively provide health care for approximately 2,000 Tribal members.

⁸ 25 U.S.C. § 3201(a)(1).

⁹ 42 CFR § 136.404(b).

¹⁰ 42 CFR § 136.403.

¹¹ 42 CFR § 136.406(b).

¹² 42 CFR § 136.408(c).

¹³ False positives can occur when a person with a common name is associated with another person's records. False negatives can occur when a search misses a record because of errors in the record or in the information used to initiate the search. Using a fingerprint-based check ensures a prohibited individual will not be licensed or employed.

¹⁴ <https://www.fbi.gov/file-repository/steps-for-success.pdf/view>.

PRELIMINARY FINDINGS

Tribal Health Programs Did Not Conduct Required Background Checks for Staff Working With Indian Children

We found that two¹⁵ of the three health programs in our ongoing audit of Tribal health programs in New England did not perform FBI fingerprint background checks of employees in contact with Indian children.¹⁶ Rather, the two Tribal health programs performed background check verifications using only their respective State's criminal and entitlement databases.¹⁷ These State background checks do not require fingerprinting. For instance, we identified an employee who worked with Indian children at the audited program despite having a felony conviction in another State. The program hired this individual because the Tribe had conducted a background check only in the State in which the program was located. Because the Tribe did not know about the felony conviction, it hired a person who did not meet the Tribe's character standards. This incident placed Indian children at an increased risk for abuse. In addition, our previous audits of two other health programs found that those programs did not comply with Federal requirements to perform FBI fingerprint background checks for individuals in contact with, or having control over, Indian children.¹⁸

Over the course of our two previous audits of Tribal health programs¹⁹ and this audit (covering three Tribal health programs in New England), four of the five Tribal health programs that we reviewed did not comply with FBI fingerprint background check requirements for employees in contact with Indian children.

Our current and prior audits also found that Tribal health programs did not always perform FBI fingerprint background checks for contractors or volunteers.²⁰ For example, one Tribe did not

¹⁵ Noncompliant health programs in this audit were the Passamaquoddy Tribe at Indian Township Health Center and the Maliseet Health and Wellness Center operated by the Houlton Band of Maliseet Indians.

¹⁶ Although the Narragansett Indian Tribe's officials informed us that they conduct FBI fingerprint background checks, we were unable to obtain evidence from the FBI that the Tribe had conducted such background checks. Through our ongoing audit, we will confirm whether the Tribe actually conducted FBI fingerprint background checks for individuals in contact with Indian children.

¹⁷ Entitlement databases are State maintained databases of records in programs such as Medicaid and the State's child welfare information system.

¹⁸ Our two previous audits involved a broad review of health and safety requirements for the health program, including background verification of individuals in contact with Indian children. In each of these prior audits, the Tribe was the auditee, and issues were reported directly to the Tribal leadership. In our current audits, our focus is on the single issue of background verifications at a number of Tribal health programs with IHS as the auditee since it is the agency that provides information and technical assistance on funding requirements to Tribes receiving IHS funding.

¹⁹ *The Passamaquoddy Tribe's Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements* (A-01-17-01500) and *The Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements* (A-01-17-01502).

²⁰ Tribal health programs rely on contractors and volunteers because of their remote locations and the difficulties of recruiting staff.

perform background checks for health care providers retained through a contracted employment agency and instead relied on statements from the employment agency that it had conducted background checks of the contractors. In another case, the Tribe performed the same background check process for its contractors that it used for its employees, but this was a State background check, not the required FBI fingerprint background check.

The Tribes did not perform required FBI fingerprint background checks of all employees, contractors, and volunteers who had contact with Indian children because they were either unaware of or misinterpreted the Act's requirements. For example, although one Tribe had written policies and procedures stating that it would comply with the Act, the staff misinterpreted the requirements and performed background checks using a State criminal database instead of the FBI fingerprint background checks on employees in contact with Indian children as required.

When a Tribe performs background checks using State databases only, it increases the risk that it would allow an individual whose criminal history from another State does not meet the minimum standards of character to have contact with Indian children. As a result, Indian children face an increased risk of harm and abuse.

CONCLUDING OBSERVATIONS

We are committed to working with IHS to ensure the health and safety of children at Tribal health programs. This memorandum documents that we have alerted your office to a serious safety and health vulnerability present at a number of Tribal health programs that we have reviewed. The lack of required FBI fingerprint background checks of employees, contractors, and volunteers poses substantial risks to the children receiving care at these programs.

As soon as possible, but no later than 30 days of the date of this memorandum, please provide a written response apprising us of your planned actions to help Tribes comply with the Act's requirements for FBI fingerprint background checks for their employees, contractors, and volunteers in contact with Indian children. The information in this alert is preliminary, and our audit is continuing. We will issue a draft report at the conclusion of the audit and include IHS's comments and actions taken in response to this Early Alert.

Please send any correspondence to Amy Frontz, Deputy Inspector General for Audit Services, through email at Amy.Frontz@oig.hhs.gov. Should you have any questions, please do not hesitate to call me at 202-619-3148, or your staff may contact Amy Frontz at the email address above or by telephone at 202-619-1156. Please refer to report number (A-01-20-01500) in all correspondence.

cc: Athena Elliott, IHS Chief Compliance Officer