



FEB 17 2022

Dear Tribal Leader:

As we move into this New Year, I believe it is important to reaffirm the Federal Government's commitment to providing quality health care to American Indians and Alaska Natives, consistent with its statutory authorities and its Government-to-Government relationship with each Indian Tribe. Proof of this commitment is the dedication of the Indian Health Service (IHS) to its mission by ensuring transparency and accountability in IHS program management and operations. To that end, I want to address a subject about which I have received many questions: the misperception that the most recent *Cook Inlet Tribal Council, Inc. v. Dotomain* court decision has resulted in the IHS "defunding" contract support costs (CSC) for Tribal contractors.

The central issue in the *Cook Inlet* decision is whether an activity that the IHS already funds through the Secretarial amount is also eligible for CSC funding. The IHS's position has always been that the Indian Self-Determination and Education Assistance Act (ISDEAA) clearly provides that CSC are not available to expand the scope of a Tribal contractor's program, or to pay for activities that the Federal Government already covers in a Tribal contractor's Secretarial amount. In the *Cook Inlet* decision, the United States Court of Appeals for the District of Columbia Circuit agreed with the Federal Government's longstanding position and held that the ISDEAA does not require the Federal Government to pay CSC for activities the IHS normally performs when it runs a program because those expenses are eligible for payment only under the Secretarial amount.

Let me say clearly: the IHS has not changed the way it implements CSC as a result of the *Cook Inlet* court decision. Furthermore, the IHS fully supports Tribal Self-Governance and Self-Determination and seeks every opportunity to fully fund CSC, and fully implement the ISDEAA. In doing this, the IHS must ensure that we implement the ISDEAA accurately and are good stewards of Federal resources and funds.

To clarify this issue, it is important to understand the following:

- The *Cook Inlet* decision affirmed the Federal Government's longstanding view and implementation of the CSC provisions of the ISDEAA. Therefore, the IHS will not change, and has not changed, the way it implements CSC.
- The CSC negotiation that has sometimes been cited as evidence of the IHS "defunding" 90 percent of a Tribal contractor's CSC was a specific situation with unique characteristics. The IHS identified that the Tribal contractor had previously been erroneously overpaid CSC.

- The IHS and Tribal contractors have completed hundreds of successful CSC negotiations since the *Cook Inlet* decision. The CSC negotiation example noted above is clearly an outlier.
- The IHS is not doing a retroactive review of every CSC payment to Tribal contractors. The IHS will continue to review each Tribal contractor's CSC proposal to ensure the proposed costs meet the statutory definition and terms agreed to during ISDEAA agreement negotiation.

I hope this letter serves to clarify the misunderstandings that have been circulating regarding the *Cook Inlet* decision and the IHS's implementation of ISDEAA's CSC provisions.

Sincerely,

/Elizabeth A. Fowler/
Acting Deputy Director