

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT OF

YVETTE ROUBIDEAUX, M.D., M.P.H., ACTING DIRECTOR

INDIAN HEALTH SERVICE

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING

ON

CONTRACT SUPPORT COSTS AND SEQUESTRATION:

FISCAL CRISIS IN INDIAN COUNTRY

November 14, 2013

**STATEMENT OF YVETTE ROUBIDEAUX, M.D., M.P.H., ACTING DIRECTOR OF
THE INDIAN HEALTH SERVICE**

Thank you, Madam Chairwoman, Vice Chairman Barrasso, and Members of the Senate Committee on Indian Affairs (Committee). I am Dr. Yvette Roubideaux, the Acting Director of the Indian Health Service (IHS). I am pleased to provide testimony on Contract Support Costs and Sequestration.

The IHS is an agency within the Department of Health and Human Services (HHS) that provides a comprehensive health service delivery system for approximately 2 million American Indians and Alaska Natives from 566 federally-recognized Tribes in 35 states. The IHS system consists of 12 Area offices, which are further divided into 168 Service Units that provide care at the local level. Health services are provided directly by the IHS, through tribally-contracted and operated health programs, through services purchased from private providers, and through urban Indian health programs. The IHS fiscal year (FY) 2013 discretionary appropriations were \$4.1 billion, with approximately \$2.028 billion of the IHS appropriations transferred to Indian Tribes and Tribal Organizations (T/TO) through agreements entered under the Indian Self-Determination and Education Assistance Act (ISDEAA).

The impact of sequestration in FY 2013 was significant for IHS; overall, the \$220 million reduction in IHS' budget authority for FY 2013 was estimated to result in a reduction of 3,000 inpatient admissions and 804,000 outpatient visits for American Indians and Alaska Natives (AI/ANs). In FY 2013, IHS made significant reductions in administrative costs, travel, and delayed hires, purchasing and planned renovations to focus on preserving the IHS mission.

Contract Support Costs

As authorized in 1975, the ISDEAA provides T/TO the authority to contract with the Federal government to operate programs serving eligible persons and to receive not less than the amount of funding that the Secretary would have otherwise provided for her direct operation of the

program (also known as the “Secretarial amount”). The 1988 amendments to that law added Contract Support Costs (CSC) as a second category of funding to ISDEAA agreements. CSC covers additional activities that T/TOs must perform in support of the programs, services, functions, and activities (PSFAs) administered under their ISDEAA agreements which the Government did not perform or did not otherwise fund through the Secretarial amount. 25 U.S.C. § 450j-1(a)(2). CSC is not a simple indirect rate or percentage of funding received, though the calculation of one category of CSC – indirect CSC – can rely, in part, on the T/TO’s negotiated indirect cost rate agreement. The ISDEAA does not establish the methodology for calculating CSC; but, the statute is clear that CSC must be reasonable, non-duplicative, prudent and necessary to carrying out the PSFAs in the ISDEAA agreement.

The IHS administers CSC funding under a policy established in 1992. The policy was developed through extensive consultation with and participation by Tribes and has been amended based on that consultation, most recently in 2007. In FY 2011 and FY 2012, IHS made significant improvements to the IHS business practices associated with the CSC policy to ensure fair and consistent application of the CSC policy across all Tribes, including Tribal data verification.

Contract Support Cost Funding

The IHS paid about \$447.8 million in CSC to T/TO in FY 2013, which is a 67 percent increase over the FY 2008 funding level. The President’s Budget request for FY 2014 provides about \$477.2 million for CSC, including \$500,000 for new and expanded ISDEAA agreements. The FY 2014 President’s Budget also requests increases for other Tribal budget priorities including medical inflation, staff and operating costs for newly constructed facilities, and Contract Health Service, and reflects the challenge of funding all identified needs and funding priorities, especially in the difficult fiscal climate we currently face.

The FY 2014 President’s Budget request also proposed adopting a new approach to funding CSC in light of the Supreme Court’s decision in *Salazar v. Ramah Navajo Chapter* in 2012. Consistent with one of the options identified by the Supreme Court, the President’s request proposes new appropriations language that creates a line-item appropriation with a maximum

amount of CSC funding available for each ISDEAA agreement. Three of the other options identified by the Supreme Court involve amending the ISDEAA.

Tribes have expressed concerns about the approach proposed in the FY 2014 President's Budget and have emphasized that full funding of CSC is their desired result. The Administration considers the FY 2014 budget proposal to be an interim measure, and has been consulting with Tribes on a long-term solution and requesting input through several forums and communications. And, as the President stated at the Tribal Nation's Conference, he hears the frustration of the Tribes and will work with Tribes on a solution.

More specifically, each IHS Area Office has been requested to submit recommendations from the Tribes participating in the FY 2016 IHS Tribal Budget Formulation sessions occurring this fall.

On September 9, 2013, I sent a letter to Tribes that included an update on CSC and initiated a discussion on calculation of estimates of CSC in the pre-award or negotiations context. As planned, I have met with the Tribal leadership in the IHS Tribal Self-Governance Advisory Committee and the IHS Direct Service Tribal Advisory Committee, and we had productive discussions on the topic of CSC and agreed to move forward with a charge to the IHS CSC Workgroup to make recommendations on this topic. We are hopeful that greater agreement on how to calculate estimates of CSC in the pre-award context will help with more efficiency in all other phases of the CSC process. I appreciate all the input we have received from Tribal leadership, and we are working to continue progress on this issue.

Contract Disputes Act Claims for CSC in Past Years

In terms of Contract Disputes Act (CDA) claims for unpaid CSC in past years, the IHS continues to make progress and to prioritize the resolution of claims presented to the agency in the most efficient manner and through settlement wherever possible. We have moved forward with a joint case management plan, agreed upon by both IHS and the T/TOs, for exploring settlement of all CSC claims on appeal to the Civilian Board of

Contract Appeals. In response to input from Tribes, the IHS also announced in June 2013 two procedural options for resolving claims for unpaid CSC in past years:

- Traditional procedure. Under this option, the IHS and the Tribe will have in-depth discussions of the Tribe's claims and share documentation in an effort to reach agreement on a final amount of unpaid CSC. The benefit of this option is that the mutual exchange of information and documentation ensures the highest level of confidence in the final agreed-upon amount.
- Alternative procedure. Under this option, a Tribe can request that the IHS perform the same costs-incurred analysis based on the agency's documentation and then make a one-time, non-negotiable offer to settle the Tribe's claim(s). The Tribe may choose to settle for the offered amount and resolve the claim(s). The Tribe may also choose to reject the offer and instead return to the traditional in-depth option. The benefit of this option is it is less time-consuming for Tribes.

Regardless of the process selected, the IHS will seek to ensure the agency consistently determines the appropriate CSC amount for each claim. IHS also recently committed more resources to the claims process to increase the rate of generating initial settlement offers. Currently, there are approximately 60 settlement offers on the table in both informal and formal settlement discussions, and many more in progress.

Sequestration

At this time, IHS faces uncertainty about its funding level for FY 2014 as we await full-year FY 2014 appropriations. The impact of sequestration in FY 2013 was significant for IHS; overall, the \$220 million reduction in IHS' budget authority for FY 2013 was estimated to result in a reduction of 3,000 inpatient admissions and 804,000 outpatient visits for American Indians and Alaska Natives (AI/ANs). In FY 2013, IHS made significant reductions in administrative costs, travel, and delayed hires, purchasing and planned renovations to focus on preserving the IHS mission.

One of the most significant challenges we face is the potential future impact of reductions to the discretionary spending limits and sequestration on IHS. Tribes have expressed their concern and

disappointment that our recent progress on increases to the IHS budget is being reduced by having to absorb the cuts from sequestration. The FY 2014 President's Budget proposal as a whole replaces sequestration and reductions to the discretionary spending limits, while providing funding consistent with the discretionary spending limits agreed to by bipartisan majorities in the Budget Control Act of 2011. The IHS budget in particular would be increased above the sequestered level in FY 2013, and allow the IHS to continue making improvements to health care access and quality for our AI/AN patients.

IHS has the solemn responsibility to honor the federal trust responsibility and to carry out health care programs for AI/ANs, including through ISDEAA agreements, and remains committed to ensuring that our AI/AN patients and communities receive the quality health care that they need and deserve.

Thank you and I am happy to answer questions.