



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

May 18, 2018

RADM Michael D. Weahkee
Acting Director
Indian Health Service
5600 Fishers Lane
Rockville, MD 20857

Dear RADM Weahkee:

As Navajo Nation President, I am writing in response to the Dear Tribal Leader Letter (DTLL) dated April 13, 2018 requesting for comments on the proposed language provided by the Indian Health Service CSC workgroup. On March 6-7, 2018, the IHS CSC Workgroup conducted a formal meeting in Albuquerque, New Mexico to discuss the Alternative Methods in which the Navajo Nation was represented. From this meeting, the discussion at length dealt with the Indian Health Service (IHS) decision to rescind with no appropriate consultation the provisions of the 97/3 method and data that was provided to support the agency's decision with regards to duplication offsets.

Given the unique government to government relationship, the Navajo Nation has always stressed the importance of adequate tribal consultation when policy or regulatory changes occur that will impact service delivery to tribal communities. Hence, the Navajo Nation hereby provides the following comments to address the IHS CSC workgroup recommendations:

- 1.) The Navajo Nation requests that the Indian Health Service reinstate the original language agreed to by Tribes and the IHS on the revised CSC policy that was published on October 26, 2016. The Navajo Nation is concerned that Tribes are currently impacted because they are not receiving their full CSC as required by law because IHS is refusing to implement the policy method used to calculate their full CSC need.
- 2.) The Navajo Nation supports the IHS CSC workgroup recommendation that is written in bold. To the extent, Tribes and the Agency have previously negotiated and agreed to a specific level of duplication reflected in a prior funding agreement, a renegotiation of that agreement seems reasonable. Below is the bold language found on page 2 of the DTLL.

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.**

- 3.) The Navajo Nation has reviewed the two options to consider and we believe these options are unsatisfactory for the following reasons:

First, the duplication provision was meant to apply to the negotiation of funding in or after FY 2016. But the two new IHS options would make these options available only for agreements that are entered into in or after FY 2017. This change appears to cut off the right of any Tribe or tribal organization from renegotiating a duplication amount if it was contracting before FY 2017. At the very least, it prohibits Tribes from using these options when “reconciling” or negotiating the amount of indirect CSC that was due in 2014, 2015 or 2016. Given that the majority of Tribes took over programs long before FY 2017, this language may make this provision inapplicable to most tribal contractors.

Second, the two new agency options strip a Tribe of the right to choose which method to use, and instead makes it a choice both Tribes and IHS must agree on. The clear result of this rewrite are far more instances where the agency will be in a position to force a Tribe into a contentious negotiation that would lead to litigation if the Tribe does not capitulate—the exact opposite of the policy’s goals. The whole point of the CSC policy was to make CSC calculations less contentious. The two new agency-drafted options are guaranteed to make the CSC calculation process far more complicated, contentious and ultimately unfair.

- 4.) The Navajo Nation does not agree that the IHS should be able to force all Tribes into a detailed line-by-line negotiation when a reasonable alternative like the 97/3 method exists. That appears to be the goal of each of the two Agency alternatives so we reject those emphatically.

We thank you for allowing our nation to respond to this important matter and reviewing our comment to the IHS CSC workgroup recommendations. If there are any questions, please contact Dr. Glorinda Segay, Executive Director, Navajo Department of Health at 928.871.6350 or email at Glorinda.segay@nndoh.org

Sincerely,

THE NAVAJO NATION

Russell Begaye, *President*

XC: Dr. Glorinda Segay, Executive Director
Navajo Department of Health

Cordell Shortey, Contracting Officer
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