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## MEMORANDUM

March 30, 2015

TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker LLP

Re: *Secretary's Tribal Advisory Committee Meeting Report*

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The Secretary of Health and Human Services' Tribal Advisory Committee (STAC) met on March 17 and 18, 2015 at the Department of Health and Human Services (HHS) Headquarters in Washington, D.C. The STAC Committee met with Secretary Burwell and a number of HHS operating division heads. HHS also provided a report following up on requests from the December STAC meeting. A copy is attached.

Following is a brief summary of some of the main points of discussion with each official, starting with Secretary Burwell.

### *Health and Human Services Secretary Sylvia Burwell*

Secretary Burwell's opening remarks highlighted the President's budget request, noting that it requests mandatory funding for Contract Support Costs. She made it a point to say that she has highlighted the Administration's request to make Contract Support Costs mandatory in every appropriation hearing she has participated in.

Chairman Ron Allen and First Vice-President William Mickland presented the STAC's position on Contract Support Costs to the Secretary. They said they strongly supported the Administration's proposal to make Contract Support Costs mandatory. They stated that Tribes still had some concerns with the proposal, recognizing that although the three year cap is intended to get a toe hold into mandatory funding, they wanted some commitment to move it beyond the three years. They also reported that tribes are not supportive of the 2 percent administrative fee. They recognized that there will be increased costs associated with mandatory Contract Support Costs, but did not believe the 2 percent fee was reflective of those increased costs.

Secretary Burwell appeared very committed and engaged on the issue of mandatory Contract Support Costs funding, and discussed meeting with Congress to advance the issue. STAC members reported to her on their independent efforts to get the proposal approved. Secretary Burwell remarked that any resistance in Congress to the

proposal stems from a concern that Contract Support Costs are potentially limitless. She said the Administration had included program integrity language in its proposal to address this issue. She said that if tribes have other proposals to provide program integrity and cost containment mechanisms, she would like to hear about them.

STAC members asked the Secretary to collect and provide state data on Indian Child Welfare Act implementation to Indian country. They also urged HHS to send states an updated letter regarding their responsibilities under the Indian Child Welfare Act to begin to address the disproportionate placement of Indian children in state foster care systems. Secretary Burwell stated that she is reaching out to other agencies to determine whether HHS can issue a joint letter with other agencies on the Indian Child Welfare Act implementation as that might be more effective than a letter just from HHS.

President and CEO Gloria O'Neill provided the STAC's comments on Public Law 102-477, the Indian Employment, Training, and Related Services Demonstration Act of 1992 (the 477 program). The 477 program allows Tribes to combine formula-funded Federal grant funds, which are employment and training related, into a single plan with a single budget and a single reporting system. Ms. O'Neill had three requests regarding the 477 program. She asked that (1) new guidance that requires three clean audits before participating in the program be rescinded; (2) that HHS assure in writing that funds will continue to be provided through Indian Self-Determination and Education Assistance Act contracts and compacts; and (3) allow new programs, including the Low Income Home Energy Assistance Program and Head Start, be made available through the 477 program. She asked that if the 477 program can't be expanded, tribes want to know so that they don't continue to expend their resources on expansion. She reported that tribes universally support the 477 program.

There was little discussion of Affordable Care Act implementation issues with the Secretary. Chairperson Aaron Payment requested that the administration support new training for the call centers in the new Exchanges. Secretary Burwell committed to working on the issue.

STAC members expressed their strong support for the President's new budget, but recognized that the President will have to negotiate an agreement with Congress. They asked that Indian issues be included among the President's priorities in such negotiations.

STAC members also highlighted a number of other issues with Secretary Burwell, including: (1) asking the Secretary to devote increased resources for suicide prevention to address the youth suicide epidemic in Indian country; (2) asking the Secretary to relax restrictions on meaningful use requirements in Indian country; and (3) expressing frustration that Self-Governance has not expanded in HHS and asking to sit down with the Secretary to discuss those opportunities.

*Vicki Wachino, Center for Medicaid and CHIP Services, CMS*

Vicki Wachino has taken over the role of Cindy Mann as the Director of the Center for Medicaid and CHIP Services (CMCS). She reported on the Administration's recent efforts to work with States to expand Medicaid through Section 1115 Demonstration Waivers and otherwise. She noted that State of Indiana was the most recent State to expand Medicaid, and that the Administration was hopeful other States would expand Medicaid as well.

Ms. Wachino also announced that CMS is working on updating its Medicaid Managed Care regulations. She reported that CMS would be issuing a new set of Medicaid Managed Care regulations as a proposed rule in the near future, and noted that the Administration is looking forward to tribal comments on the new proposal.

She also said that CMS is working on Mental Health parity issues, and looking to bring those concepts to Medicaid and the Children's Health Insurance Program (CHIP). She also reported that CMS is working on a set of fact sheets for American Indians and Alaska Natives regarding the CMS rules on Medicaid estate recovery. She also stated that CMS is internally assessing the effectiveness of the outreach and education grants they made in implementing the Affordable Care Act and promoting enrollment, and pledged to share that information with Tribes.

*Kevin Counihan, Center for Consumer Information and Insurance Oversight, CMS*

Kevin Counihan is the Director of the Center for Consumer Information and Insurance Oversight (CCIIO), which is responsible for implementing the new Health Insurance Exchanges created by the Affordable Care Act. Mr. Counihan reported that although open enrollment in the Exchanges was completed on February 2015, CCIIO implemented a new open enrollment period from March 15 to April 30<sup>th</sup> for those individuals who were unaware of the penalties for not obtaining coverage in 2014 and who want to sign up now.

Mr. Counihan reported that as of the end of open enrollment, 11.7 million individuals had enrolled in health insurance exchange plans, including 8.8 million individuals through the federal exchanges. He said that the exchanges had offered 25% more plans this year than last year, and looked forward to additional plans being offered in the future. He stressed that the exchanges were a multi-year implementation process, and that CCIIO is just at the beginning of the process.

Mr. Counihan reported that as of Mid-March, CCIIO had received 237,000 individual applications for the Indian exemption, and that they have processed 90 percent of them. He noted, however, that individuals can now use the tax filing process to claim the exemption rather than applying for it through the exchanges. He encouraged individuals to use the tax filing process to claim the exemption. He also reiterated his offer to implement a CCIIO tribal advisory committee to work on issues with Indian

country. Chairman Allen stated that tribes were very interested in working with CCIIO on the working group concept.

STAC members reiterated their request that CCIIO use the IHS active user database to electronically verify Indian status for cost-sharing exemptions when applications are filed through the marketplace. Lisa Wilson of CCIIO responded by stating that the using the tax filing process is the best solution. Chairman Allen pointed out that electronic verification is not just an issue with regard to the individual mandate exemption, but also with regard to qualifying individuals for cost-sharing exemptions.

STAC members also reiterated their request from the last meeting that HHS should grant them an exemption from the employer mandate, particularly for tribal member employees who are exempt from the individual mandate. Lisa Wilson and Kitty Marx noted that the employer mandate is implemented by the Internal Revenue Service (IRS), not HHS, and as a result they did not believe that HHS has the authority to deal with this.

STAC members pressed CMS about total enrollment of American Indians and Alaska Native in the new health insurance exchanges. CCIIO leadership did not have the numbers, but Kitty Marx reported that only 28,000 American Indians and Alaska Natives enrolled in a limited or zero cost sharing plan on the Exchanges -- 24,000 in a limited cost-sharing plan, and 4,000 in a zero cost-sharing plan.

Ron Allen asked CCIIO to improve the call centers and to designate an Indian specific call center, with its own number. He suggested that the Indian Health Service could easily set this up and staff it.

President O'Neill asked about conflicting interpretations on the availability of cost-sharing reductions below 100 percent in non-expanding states. She noted that individuals below 100 percent of the Federal Poverty Level (FPL) are not being treated as eligible for the zero cost-sharing plans in some cases. CCIIO noted the issue and said they would work on it.

Vice-President Rex Lee Jim asked about the Navajo Nation Medicaid feasibility study and asked CCIIO for assistance.

*Robert McSwain, Acting Director, Indian Health Service*

Indian Health Service (IHS) Acting Director McSwain reported that the IHS is working on the issue of Contract Support Cost mandatory funding announced in the President's 2016 budget. He also reported on the IHS' progress in settling past Contract Support Cost claims, which he described as an incredible lift for the agency. He stated that the IHS has now made 1232 offers, and settled 898 claims, for a total of \$700 million in claims settled. He stated that was incredible progress in one year.

Mr. McSwain reported that he sat on the federal appropriations advisory board for facilities until last month, and that it is working on and preparing a report to Congress on that issue. He stated that the joint-venture program has been a huge success, and resulted in a new solicitation, which has resulted in three new programs being selected to begin work in 2015.

He also noted IHS has received certification for its Resource and Patient Management System (RPMS) to meet the requirements for Electronic Health Records and meaningful use. Dr. Roubideaux noted that IHS met all its benchmarks for stage one, and is working on implementing meaningful use for stage two. She noted that the issue was for everyone to implement meaningful use stage two in 2015. She stated that one of the biggest issues is the requirements regarding the sharing of data. She said that in order to share that data, IHS wants to be sure that it is secure, and are going to require entities to enter into agreements to secure that data.

Dr. Roubideaux noted that many others in the industry are having challenges meeting the requirements of meaningful use. She noted that HHS is going to issue a new rule allowing entities to attest to meaningful use for 90 days only, not the full year. She said the new rule will provide significantly more time this year for entities to come into compliance with meaningful use.

Acting Director McSwain reported that the IHS has received over 50 comments on its proposed rule to implement Medicare-Like Rates, all of which basically support the proposed rule. He noted that several comments supported the rule, but asked for additional flexibility.

*Lillian Sparks Robinson, Chair, Intradepartmental Council on Native Affairs*

Ms. Sparks provided an update on Self-Governance Expansion opportunities within HHS. She reported on the report of the priorities of the self-governance expansion, which included reallocation, redesigning and reduced administrative burdens. She stated that the Temporary Assistance for Needy Families (TANF) program and the Administration for Children and Families (ACF) have been looking at their programs to determine what, if anything, they can do to achieve these priorities under their existing statutory authorities.

Lt. Governor Jefferson Keel noted that the workgroup process ground to a halt after HHS attorneys got involved, and suggested that Tribal leaders need to go to the Secretary directly to discuss how to move the process forward in a manner that doesn't require the use of another workgroup.

*Pamela Hyde, Administrator,  
Substance Abuse and Mental Health Services Administration*

Ms. Hyde reported that the Substance Abuse and Mental Health Services Administration (SAMHSA) is going to be putting together a webinar with IHS and HHS on SAMHSA activities that can be performed in an inpatient facility based setting. She reported that SAMHSA has issued new tribal specific HIV materials. She also reported they are developing in conjunction with IHS a national tribal behavioral health agenda that will include other federal agencies.

*Mary Wakefield, Administrator, Health Resources and Services Administration*

Ms. Wakefield reported that she is leaving the position of Administrator of the Health Resources and Services Administration (HRS ) and becoming the Deputy Administrator of HHS. She reported on HRSA's efforts to provide clinicians at Indian health care providers across the country, noting that they have over 300 clinicians in Indian country. She also noted that HRSA provides resources for paraprofessional training in the behavioral health arena that could also be used in Indian country. Ms. Wakefield also noted that HRSA has AIDS information and resource centers across the country, and pledged to provide information to tribes about how they can connect with the appropriate center.

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For further information on the CMS final rule, please contact Elliott Milhollin at (202) 822-8282 or [emilhollin@hobbsstrauss.com](mailto:emilhollin@hobbsstrauss.com) or Geoff Strommer at (503) 242-1745 or [gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com).