



APR 21 2005

Dear Tribal Leader:

During the 1990s, the Indian Health Service (IHS) entered into agreements with Tribes under the Indian Self-Determination and Education Assistance Act, as amended, wherein the Agency agreed to pay contract support cost (CSC), "subject to the availability of appropriations." Because the IHS received insufficient appropriations for CSC, the Agency could not always pay Tribes the full amount of the CSC identified in their contracts and funding agreements.

In March 2005, the Supreme Court decided a case brought by the Cherokee Nation of Oklahoma and the Shoshone-Paiute Tribes of Duck Valley Reservation, Cherokee Nation of Oklahoma, et al. v. Leavitt. The Supreme Court decided that the IHS was liable to these two Tribes under their contracts for unpaid CSC for fiscal years (FY) 1994-1997. Since the decision, the IHS has received many questions from Tribal Leaders, and I am writing to you to answer those questions.

Many of you have asked about other pending claims. Currently, there are two cases in Federal court where Tribes have requested a class action: The Pueblo of Zuni case is pending in New Mexico, and the Tunica-Biloxi Tribe of Louisiana and Ramah Navajo School Board case is pending in the District of Columbia. Both cases challenge the amount of CSC paid to Tribes. A class has not been certified in either case. The Department of Justice, the Office of the General Counsel, and the IHS are evaluating how to proceed in the litigation. Since these cases are being litigated, neither I nor my staff can provide you with any further information at this time.

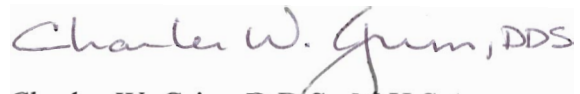
I have also been asked whether the Supreme Court's decision affects how the IHS currently pays CSC. Since 1998, Congress has placed a limit; i.e., a cap, on the amount of the IHS appropriation that may be used for CSC. The case before the Supreme Court only involved a number of years before the cap was instituted, and the Supreme Court did not address the cap years. The Supreme Court based its decision on the fact that the IHS had unrestricted funds available in its appropriations to pay CSC in FYs 1994-1997. That said, the IHS is carefully considering how it will pay CSC under its cap for new and expanded contracting in future years should Congress not appropriate additional CSC funds.

Finally, many Tribal Leaders have expressed concern that ongoing services will be reduced either directly or as a result of repaying the Judgment Fund for the payment of judgments in the CSC litigation. While the Contract Disputes Act provides that agencies are to repay the Judgment Fund, I am committed to maintaining and improving the level of services that the IHS

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provides to all Tribes. To that end, the IHS will work with the Administration and Congress to ensure that the CSC litigation does not result in any health service reductions.

Sincerely yours,

A handwritten signature in dark ink that reads "Charles W. Grim, DDS". The signature is written in a cursive style with a large, looped "G" and "M".

Charles W. Grim, D.D.S., M.H.S.A.
Assistant Surgeon General
Director