

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT OF

MICHEL E. LINCOLN, DEPUTY DIRECTOR

INDIAN HEALTH SERVICE

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

HEARING

ON

INDIAN SELF-DETERMINATION AND EDUCATION
ASSISTANCE ACT - CONTRACT SUPPORT COSTS

SEPTEMBER 15, 1999

OPENING STATEMENT
MICHEL E. LINCOLN, DEPUTY DIRECTOR

Good morning. I am Michel Lincoln, Deputy Director of the Indian Health Service (IHS).

Today, I am accompanied by Mr. Ronald Demaray, Office of Tribal Programs; and Ms. Paula Williams, Director, Office of Tribal Self-Governance. We welcome the opportunity to testify on the issue of contract support costs in the Indian Health Service. Contract support cost funding helps finance the provision of quality health care by Indian tribal governments and other tribal organizations contracting and compacting under the Indian Self-Determination and Education Assistance Act (ISDEA), Public Law (P.L.) 93-638).

The IHS has been contracting with Tribes and Tribal Organizations under the Act since its enactment in 1975. We believe the IHS has implemented the Act in a manner consistent with Congressional intent when it passed this cornerstone authority that re-affirms and upholds the government-to-government relationship between Indian tribes and the United States.

At present, the share of the IHS budget allocated to tribally operated programs is in excess of 40%. Over \$1 billion annually is now being transferred through self-determination agreements to tribes and tribal organizations. Contract support cost funding represents approximately 20% of this amount. On average, contract support costs represent an additional cost of approximately 30% above funding for direct program costs. The assumption of programs by tribes has been accompanied by significant downsizing at the IHS headquarters and Area Offices and the transfer of these resources to tribes.

Contract support costs are defined under the Act as an amount for the reasonable costs for those activities that must be conducted by a tribal contractor to ensure compliance with the terms of the contract and prudent management. They include costs that either the Secretary never incurred in her direct operation of the program or are normally provided by the Secretary in support of the program from resources other than those under contract. It is important to understand that, by definition, funding for contract support costs includes funds which are not already in the program amounts contracted by tribes. The Act directs that funding for contract support costs be added to the direct program operation expenses to provide for administrative and related functions necessary to support the operation of the health program under contract.

The requirement for contract support costs has grown significantly since 1995 due, largely, to the increasing assumption of IHS programs by Tribes and Tribal Organizations. In the fiscal years 1996 and 1997 appropriations committee reports, the IHS was directed to report on Contract Support Cost Funding in Indian Self-Determination Contracts and Compacts. In the development of its report, IHS consulted with tribal governments, the Bureau of Indian Affairs (BIA) and the Office of Inspector General within the Department of the Interior. The report detailed the accelerated assumption of IHS programs by tribes beginning in 1995 as a result of the 1994 amendments to the ISDEA and authorization of the Self-Governance Demonstration Project for the IHS. The report showed that increases in funds appropriated for contract support costs did not keep pace with the accelerated assumptions resulting in an increase in unfunded contract support costs. The report also highlights that the rates for tribal indirect costs, which are the major component of contract support costs, have remained stable, averaging around 23% of

direct program costs.

In addition, pursuant to the ISDEA, the IHS gathers contract support cost data annually as a part of its annual "Contract Support Cost Shortfall Report To Congress." This report details, among other things, the total contract support cost requirement of tribes contracting and compacting under the ISDEA and how these funds are allocated among the tribes.

Congress appropriated an increase of \$35 million for contract support costs in the Fiscal Year 1999 Interior Appropriations Act with accompanying Committee report language instructing the IHS that the increase should be "used to address the inequity in the distribution of contract support cost funding in fiscal year 1999." Further, the Congress directed the IHS in cooperation with the tribes, to develop a solution to the contract support cost distribution inequity within existing resources. We have completed one objective and are close to accomplishing the other.

Allocation of \$35 million

Based on the Congressional guidance and results of extensive agency consultation with Indian tribal governments, the Indian Health Service has adopted an allocation methodology for the \$35 million. We believe this methodology is the most equitable given the total amount of the final negotiated CSC requests submitted by tribes that have entered into P.L. 93-638 contracts or compacts despite not receiving any contract support cost funding for those assumptions. Under the new method, those tribes that have the greatest overall contract support cost need for all programs administered through self-determination contracts and compacts will receive the greatest proportion of new CSC funding. We believe that this allocation methodology is

responsive to concerns expressed by the Congress that the Agency address the inequity in contract support funding levels of tribes in the IHS system. We are presently allocating the \$35 million increase and we anticipate being able to fund, on average, 86% of the total contract support cost need associated with IHS contracts and compacts based on the FY 1998 CSC shortfall report and FY 1999 ISD negotiations.

Revision of IHS Contract Support Cost Policy

Since 1992 the IHS has had an established, written contract support cost (CSC) policy that was developed and implemented in consultation with tribes and tribal organizations. This policy addresses many of the issues surrounding the determination of CSC needs authorized under the ISDEA and the allocation of CSC funds appropriated by the Congress. The first policy adopted in 1992 was subsequently revised in response to the 1994 amendments to the ISDEA.

As a part of the 1999 appropriations process, the Congress expressed its concern over the inequity caused by existing IHS CSC distribution methodologies and directed the Agency to propose a permanent acceptable solution to the CSC distribution inequity as a part of the FY 2000 budget process. Within days of receiving this instruction from the Congress, the IHS began the process to develop solution to these CSC challenges. The fact that the tribes, Congress and other stakeholders have differing views as to what constitutes "equity" was immediately apparent at the start of our work. Consequently, the tribal and Agency representatives devoted significant time, energy, and resources toward addressing the fundamental issues of equity and developing solutions within the context of the different perspectives and the key stakeholders. With a strong commitment to be as responsive as possible to the concerns expressed by tribes, the courts, and

the Congress, the IHS incorporated the results of the tribal-federal work into a major third revision of the current CSC policy. As an example, the new allocation method being utilized to distribute the new FY 1999 CSC funds is reflected in the Agency's proposed new draft CSC policy.

The IHS continues to consult and work closely with tribes, tribal organizations, and their representatives in the further refinement of the proposed revised CSC policy. This is consistent with the Administration and Congressional policy to support Indian self-determination through active consultation to ensure that all major policies, like the IHS CSC policy, are based on the cornerstone of the Indian Self-Determination Act. The IHS and the Department are both firmly committed to providing meaningful consultation on this issue.

The IHS has now nearly completed the development of a revised CSC policy that we believe addresses the expectation of Congress as stated in the Fiscal Year 1999 Appropriation Committee report. The proposed policy abandons the historic approach to the Indian Self-Determination (ISD) Fund and the maintenance of a queue system in favor of a pro-rata system whereby each eligible tribe with an ISD request receives additional funding proportionate to its overall CSC needs. Those with the greatest unfunded CSC needs will receive the greatest increases in ISD funding. CSC funding to resolve existing inequities(e.g., the \$35 million FY 1999 increase) will also be distributed on a similar pro-rata basis providing the greatest CSC increases to the tribes with the greatest unfunded CSC. Basic to this policy however, is the premise that a tribe's CSC funding will not be reduced provided that the tribe is not funded in excess of 100%. This is consistent with the statutory provisions of Section 106(b) of the ISDEA.

The new policy is much more comprehensive in addressing many of the more subtle facets of CSC than prior policy issuances. This can be seen in our approach to improved projections of CSC needs which is a specific concern of the Congress, the tracking of CSC funding based on contract agreements entered, duplication of costs, and the integration of this information into the IHS budget formulation process. We firmly believe that the proposed CSC policy takes advantage of all of the tools available under the ISDEA to manage CSC in a responsible manner. The policy has been drafted in such a way as to minimize future CSC litigation but the possibility of such litigation remains. IHS and BIA are currently prohibited from issuing regulations in this area but Tribes have from time to time raised the possibility of developing joint BIA/IHS regulations for CSC. The Agency needs to seriously consider whether it is time to pursue congressional authorization to enter into the negotiated rulemaking process to adopt a final rule concerning CSC. The IHS would welcome the opportunity to join with tribes, the BIA, and OIG in addressing these issues.

Other Contract Support Cost Efforts.

Recently, the General Accounting Office (GAO) and the National Congress of American Indians (NCAI) each completed an extensive study of CSC that have been forwarded to the Congress. The IHS cooperated fully in the completion of both of these studies which we believe accurately describe the importance of CSC to tribal governments and Indian self-determination policy. These independent studies have drawn many of the same conclusions that have been reached by the IHS in the course of implementing the ISDEA provisions governing CSC. We believe that both of these studies provide thoughtful insight into CSC issues. In our view, the revised IHS

CSC policy is consistent with most of the findings and recommendations contained in these reports and we welcome the opportunity to work with tribes, the BIA, and the Congress in reaching greater agreement amongst all of the varied concerns and views.

Thank you once again for the opportunity to discuss contract support costs in the IHS. We are pleased to answer any questions that you may have.