

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
STATEMENT  
OF  
MICHAEL H. TRUJILLO, M.D., M.P.H., M.S.  
ASSISTANT SURGEON GENERAL  
DIRECTOR, INDIAN HEALTH SERVICE  
BEFORE  
THE COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES  
May 16, 2000

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Mr. Chairman and Members of the Committee:

Good morning. I am Dr. Michael H. Trujillo, and I have served as the Director of the Indian Health Service since 1994. I am accompanied today by Mr. Michel Lincoln, Deputy Director of the Indian Health Service and Mr. Douglas Black, Director of the Office of Tribal Programs. Mr. Ronald Demaray, Director, Self-Determination Services and Mr. Carl Fitzpatrick, Director, Division of Resource Management are also here to help answer any questions the Committee may have.

We welcome the opportunity to testify concerning H.R. 4148, the "Tribal Contract Support Cost Technical Amendments of 2000." We have testified before this Committee on two separate occasions this past year concerning contract support costs. We believe strongly that contract support cost (CSC) funding is critical to 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 (ISDA).

H.R. 4148 addresses numerous problems that both tribes and the administration have been grappling with these past few years. The GAO Report stated that appropriations for contract support costs have not kept pace with tribes' costs of administering IHS programs. The IHS has been and remains involved in litigation over several CSC issues which are not clearly addressed under the ISDA. We welcome the efforts of this Committee to address these CSC issues, however, both the IHS and the Administration have serious concerns with this bill.

We respectfully request that the Committee keep the hearing record open so that other Federal agencies may submit written statements of their specific concerns. At this time, I will share many of our concerns with H.R. 4148.

Let me now speak to several specific provisions in the legislation. From the perspective of both Tribes and the Federal Government, the single most significant aspect of this legislation is that it would make CSC funding an entitlement, see Section 3(1)-(4). It should be noted that making CSC an entitlement and deleting "subject to the availability of appropriation" provisions is a substantial change to the statutory construct of the ISDA. The Administration does not support the creation of a new entitlement because it only addresses one component of the provision of health services to tribes and only of those tribes who choose to contract, and because we are concerned about the financing of this budgetary change and its effects of the funding priorities of the IHS and other Federal agencies. While there has been much confusion in Indian Country, as well as in the courts, concerning CSC funding, since the enactment of the law in 1974, contract support payments have been categorized as discretionary spending, subject to annual appropriations, the same for most administrative expenses of other Federal agencies.

This legislation would authorize full funding of CSC and at the same time require the appropriation of the necessary resources. We are concerned that funding for this entitlement would have to come from existing or future appropriated IHS funds and supersede the other critical priorities for budget increases for tribal health programs, including funding for the provision of critical health care services and continued maintenance of IHS' service delivery infrastructure. While we have not yet estimated the cost impact increases of this contract support funding proposal, we believe that the costs would be prohibitive. Such costs certainly

could not be covered within IHS' FY 2001 budget, which is already at a level of \$2.6 billion, a historic increase of \$230 million.

Section 106A(a), addresses other Federal agencies and their responsibility to pay indirect costs (IDC). From the perspective of other Federal agencies, the requirement to fully fund CSC for their programs would likely create significant budgetary and programmatic limitations by diverting funds available for their key discretionary programs to pay for administrative costs. For this reason, the Administration has concerns with the full cost requirement of this legislation. For example, within the HHS, tribes would be allowed full funding of CSC at a rate exceeding other non-tribal grantees, and these increased expenditures would reduce the amounts available for key health and service programs like Head Start. This section provides that tribes should receive full funding of their indirect cost need, consistent with their indirect cost rate agreement with their cognizant Federal agency. At this point no one has assessed the cost of this provision to the Federal government nor looked at the extent to which tribes contracting under the ISDA also have contracts with other Federal agencies. The HHS would support a feasibility study similar to the one proposed in H.R. 1167, to determine whether this proposal is the best option in the context of other potential discretionary solutions, assess the impact on Federal agencies, and provide estimates of the cost of providing full indirect costs for IHS and non-IHS programs. The HHS believes it would be premature to authorize the full-funding of indirect costs for all other federal programs prior to the completion of such a study.

Section 106A( d) is a procedure for the management of CSC within a single award amount. The IHS has been working with tribes to develop innovative approaches to the funding of CSC. This section has merit but the IHS would like the opportunity to work with tribes and

the committee to further refine this process because we have the following concerns with this section:

1. it seems to limit a tribal option of maintaining multiple contracts;
2. it introduces the term "mature contractor" (emphasis added) which is a term that has never appeared in the ISDA;
3. it unreasonably limits tribal liability for actual overpayments and appropriate adjustments of tribal indirect cost rates, possibly even in the case of a fixed with carry-forward rate; and
4. it legislatively designates the specific office within the IHS that would be responsible for CSC negotiations. The Agency should be afforded some measure of flexibility in administering CSC matters.

In Section 106A(c), the legislation calls for tribal specific OMB cost principles to be developed through the negotiated rule-making process. The result would be an OMB Circular specifically applicable to Indian Tribes and tribal organizations. The Administration believes that there is not a clear reason or necessity for establishing a separate circular for Indian tribes.

Under Section 3, paragraph (4), a provision authorizing payment of pre-award and startup costs "without regard to the year in which the costs were incurred" has been added. Due to

limitations set forth by appropriations language on payment of prior-year start-up costs, some tribes were not awarded their startup costs as a result of the FY 1999 CSC allocation methodology. This provision attempts to address this situation. However, the Administration is concerned about the potential cost of this provision. Also, this section appears to be worded much too broadly and would likely result in significant confusion as to what the Congress actually intends.

In Section 3(5) and (6), the proposed legislation seeks to reinstate the reporting requirements of the former Section 106(c) of the 1994 amendments to the ISDA. We believe portions of the former reporting requirements may be helpful to the Congress, however, this might be an opportunity to redraft these reporting requirements in light of our current context and the Congress's need for pertinent Self-Determination information. We would be happy to work with Tribes and the Committee to offer appropriate language for this section.

Section 4 of the proposed legislation would enlarge the current proposal review period from 90 days to 180 days. The IHS believes this provision would be consistent with Congressional policy which authorizes "the orderly transition of Federal programs to tribal control."

Nothing in the statute or the current regulations precludes the agency from making awards at any time during the 90 (or now 180) day review period but enlarging the time frame would surely result in better planning and a smoother transfer of program responsibilities.

Section 5 of the proposed legislation addresses two concepts related to the Equal Access to Justice Act (EAJA). The first, a new paragraph (f) expands the scope of the EAJA to all Tribes who may be party to a claim or dispute related to an ISDA award. This provision may be contrary to the Congress's purpose in imposing the limitation on extending EAJA coverage

to all parties processing claims against the Federal Government. We understand that the Department of Justice will be submitting a statement for the record on the provisions of this section.

The second provision under Section 5, paragraph (g), can not be supported by the IHS. The IHS is committed to Indian Self-Determination and we believe that our record speaks for itself. We enthusiastically support tribes in all of their varied efforts to assume programs under the ISDA. Where we may differ with the courts on how this should be done, our goal is to make tribes whole and to work together in harmony rather than under the constant possibility of litigation. Clearly this provision may encourage the filing of claims in hopes of a double payoff. This provision should not be considered by the Committee as this legislation moves forward through the legislative process.

This concludes our initial comments on H.R. 4148, the "Tribal Contract Support Cost Technical Amendments of 2000." Thank you for this opportunity to discuss contract support costs in the IHS. At this time, we are available to answer any question that you may have.