



FEB 10 2005

Dear Tribal Leader:

I am looking forward to the upcoming year and continuing our collaboration in implementing Public Law 106-260, Title V, the Self-Governance Amendments of 2000.

During this year, we will be looking to bring to closure all compliance issues. For instance, during the 2005 Indian Self-Determination and Education Assistance Act (ISDEAA) Title V compact negotiations held in 2004, the IHS realized that there is an issue that needs to be resolved with many Tribes who have compact language that is exact or similar to the following:

"The Tribe may merge PSFAs (programs, services, functions, and activities) provided under this compact with other health related PSFAs provided by the Tribe with its own funds or funds from other sources. In such cases, the Tribe shall not be required to separate dollars or functions so long as the Tribe can provide sufficient data to permit an acceptable program and financial audit to be conducted."

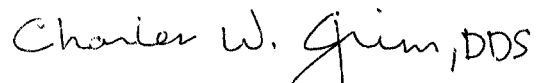
It is important to note that Tribes can merge programs and funding from other sources as long as those programs are programs that can be carried out under the authority of the IHS and compacted for by the Tribe under the ISDEAA. I sent a memorandum to this effect to all Area Directors on June 10, 2004, and the IHS wants to ensure there is no confusion as to the meaning of any compact provisions relating to this issue. A copy of the June 10 memorandum is enclosed for your information.

To further clarify this issue, I will present an example. To the extent permitted by the program known as Women, Infants, and Children (WIC) administered by the Department of Agriculture, the Tribe may supplement its IHS nutrition program with WIC funds. However, if WIC was to require the Tribe to serve non-IHS eligibles, Section 813 of the Indian Health Care Improvement Act (IHCIA), which allows the Tribe and IHS to extend services to non-IHS eligibles, would have to be followed. If WIC was to require the Tribe to serve non-IHS eligibles absent contract language whereby the IHS and Tribes agreed that the requirements of Section 813 were met and that the Tribe was operating a PSFA authorized by statute, the services would not be considered services under the IHS compact for the purposes of accessing the Federal Supply Schedule or Federal Tort Claims Act coverage, or for using IHS funding. The WIC is not an IHS program and is not included in the ISDEAA funding agreement; however, as shown in the example above, the funds may be used to supplement a Tribe's nutrition program to the extent permitted by law. It should be noted that the calculation of contract support costs only considers the Secretarial amount and does not consider any supplemental funds added to IHS programs from other sources.

Thus, provisions in a Tribe's compact addressing which PSFAs may be included or merged in a compact or FA must be read to mean that the Tribe may merge PSFAs provided under the compact with other health-related PSFAs provided by the Tribe with its own funds or funds from other sources as long as those PSFAs are ones the IHS is authorized to administer in accordance with Section 505 of the ISDEAA. The term "PSFA" is a term of art used in the ISDEAA, and the IHS wants to be sure that the position of the Agency is clearly understood.

Thank you for your willingness to continue to address issues of concern in a positive manner and with mutually beneficial outcomes.

Sincerely yours,

Handwritten signature of Charles W. Grim, DDS in black ink.

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

Enclosure