DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

Rockville, Maryland 20852 Refer to: OD/OTP

INDIAN HEALTH SERVICE CIRCULAR NO. 2003-XX

NEW FEDERALLY RECOGNIZED/RESTORED TRIBES POLICY (REVISED)

Sec.

1. PURPOSE. This Circular revises the Indian Health Service (IHS) policy for integrating newly recognized tribes into the IHS system and procedures for addressing the resource needs of newly recognized tribes within the context of the funds, activities, and programs currently available to tribes previously recognized by the Federal Government and served by the IHS.

2. ELIGIBILITY. Upon verification that a tribe has been newly recognized the Director, IHS, will notify the appropriate Area Director to assign administrative responsibility and will include information on the newly recognized tribe's current status with regard to the existence of a reservation and/or a contract health service delivery area (CHSDA) designation, and any unique provisions included in the tribe's recognition with such special instructions as may be necessary and not covered by existing policy.

3. DEFINITIONS.

   A. Appropriation Request. An Appropriation Request is the funding request for a new tribe prepared by the Area Director and forwarded to the Division of Financial Management (DFM), Office of Management Support (OMS), for inclusion in either the regular budget formulation process or supplemental budget process, whichever is first.

   B. Contract Health Services. Contract Health Services are health services provided

at the expense of the IHS from other public or private providers (e.g., dentists, physicians, hospitals).

C. Contract Health Service Delivery Area. A CHSDA is the geographic areas within which CHS will be made available by the IHS. (Reference Federal Register, Vol. 49. No. 6, 1984)

D. New Federally Recognized Tribe. Any tribal entity that has been recognized and eligible to receive services from the United States Bureau of Indian Affairs (BIA) by virtue of their status as an Indian tribe. The Tribe is acknowledged to have the immunities and privileges available to other Federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. This recognition may be a result of meeting the criterion of the BIA Federal Acknowledgment Process (FAP) and approval, or administrative action by the Secretary, BIA, to acknowledge or enact an action of reaffirmation, or legislatively through an act of Congress.

4. RESPONSIBILITIES.

A. Director, IHS. The Director, IHS, shall ensure that all activities necessary to

address the resource needs for newly recognized tribes shall be supported by the appropriate Headquarters components. The consideration of resource needs shall be within the context of the funds, activities, and programs currently available to tribes previously recognized by the Federal Government and served by the IHS.

B. Area Director. The Area Director is responsible, in consultation and collaboration with the tribe, for:

(1) developing the plan for an appropriate tribal health care delivery system, including short-term and long-term needs.

(2) preparing a budget request for funding through either the regular or the supplemental appropriations process.

(3) identifying any Area funds that are available for interim funding for planning and services.

(4) ensuring that services available at IHS-operated/funded facilities or programs are provided to members of the newly recognized tribe on the same basis as services are provided to other eligible Indians.

5. PROCEDURES. The appropriation request must be prepared as soon as possible:

A. Appropriation Request The appropriation request must include:

(1) The costs for health services.

(2) Estimates of the Area's administrative expenses to serve the new tribe.

B. Funding Request. Preparing the funding request:

(1) The funding request shall be based upon the three part formula as displayed in Section 6.

(2) Once developed, a request for funding must be forwarded to the Division of Financial Management, OMS, for inclusion in either the regular or supplemental budget process, whichever is first.

(3) Funding for a new tribe cannot be assured in the absence of congressional action providing specific direction for the funding of the new tribe.

C. Interim Funding. Providing interim funding, if available, is non-recurring, and may not be made available when doing so would have the effect of substantially reducing services to, or the funding of, previously recognized and funded tribes.

6. FORMULA TO FUND NEWLY RECOGNIZED TRIBES. The new tribes funding formula is consistent with the most current methodologies and data for computing health care costs and enhances the accuracy of estimates of need for newly recognized tribes.

A. New Tribes Funding Formula. The IHS will compute an initial operational funding level for a newly recognized tribe based upon a total of three parts.

(1) Personal Health Services Amount

(2) Wrap-Around Services Amount

(3) Tribal Shares Amount

B. Time-Frame. The IHS will work with a newly recognized tribe within the immediate months following formal recognition to:

(1) orient the Tribe to the IHS.

(2) assess Tribal health needs.

(3) plan for funding a new health care program to tribal members.

C. Data. Data needed to compute the funding amounts for the three part formula will be identified and collected during this phase.

(1) The estimated funding amounts then determined will be requested from Congress in the next budget cycle following the Tribe's recognition.

(2) Funds for the new health program will then be provided when appropriated by the Congress.

(3) Following allocation of the initial operational funding, the tribe will then be eligible to participate in subsequent years in other categories of IHS funding on the same basis as other tribes.

7. PERSONAL HEALTH (CARE) SERVICES AMOUNT.

A. Initial Personal Health (Care) Services Amount. An initial Personal Health (Care) Services Amount funding amount is computed considering the projected number of tribal members to receive personal health care services, the prevailing health care costs in the new tribe's CHSDA, and the IHS average funding level. The "Personal Health Care Services Formula" is made up of three parts. The initial funding amount is computed by multiplying the following three totals together:

(1) The Number of Tribal Users residing in the CHSDA

(2) Net FDI Per Capita cost for the CHSDA.

(3) Indian Health Service Average Level (%) of funding.

B. Tribal Users (beneficiaries). The IHS headquarters staff working with Area statistical/planning staff, who have consulted and collaborated with the Tribe, will forecast the number of tribal members residing in the CHSDA that are expected to use the newly funded health care services annually. The forecasts will be based on the most credible data available and may include consideration of tribal membership rolls, any available surveys and lists of probable tribal users previously developed to plan health care services for the tribe, census counts of American Indians/Alaska Natives (AI/AN) in the relevant counties, and recognized health care planning factors. To be considered a Tribal User (beneficiary) included in the user count, evidence of the following is necessary:

(1) A person is a member/descendent of the newly recognized tribe.

(2) Resides in the designated CHSDA for the newly recognized tribe.

(3) Is likely to access the tribe's health program in a 36 month period.

(4) Is not counted in the user count of another IHS or tribal health program.

C. Net Federal Employees Health Plan Disparity Index Per Capita Cost. The IHS headquarters staff will obtain the most recent per capita health care cost estimates through the Federal Employees Health Plan Disparity Index (FDI) methodology. The FDI methodology was developed to actuarially measure the cost of assuring health care to AI/AN that is comparable in benefits to a mainstream health care plan such as that provided in the Federal Employees Health Plan (FEHP). The FDI methodology is applied annually to update cost per beneficiary estimates. The methodology considers age, sex, and demographic health risk factors for AI/AN, geographic variations in health care costs, and an annual inflation for health plan premiums. The net FDI per capita cost is the portion of the total cost that IHS would pay after deducting third party coverage.

D. Indian Health Service Average Level of Funding. The IHS per capita funding has been less than the Net FDI Per Capita Cost (approximately 54% on average for fiscal year (FY) 2001). Because of concerns about fairness to the existing under funded tribes, the Congress asked the IHS to compute funding levels for new tribes consistent with that of other tribes served by IHS. Consequently, the initial funding level will be computed at the IHS average level of funding relative to the

FDI cost factor. The IHS average is updated annually during the application of the FDI methodology.

8. WRAP-AROUND SERVICES AMOUNT. The extent that the newly recognized tribe needs IHS wrap-around funding depends on local circumstances. The IHS staff will assess the extent to which wrap-around program services are available to tribal members and apply the formula below to estimate wrap-around funding that is not available from other sources.

A. Types of Wrap-Around Programs. In addition to mainstream personal health care services, IHS programs for tribes include important public health and community based programs that are not typically part of mainstream personal health care benefits packages. The IHS provides some of these public health infrastructure programs in reservation areas where such local governmental infrastructure is often unavailable. The IHS provides little "wrap-around" funding for tribes located in urban locations where such services are typically available from local, state, and municipal sources. The extent and type of IHS public health and community based or "wrap-around" programs vary with local circumstances and may include:

(1) Public health nursing

(2) Community health representatives

(3) Environmental health monitoring and remediation

(4) Emergency Medical Services

(5) Traditional healing and wellness programs

(6) Sanitation facilities (safe water and waste disposal)

B. Wrap-Around Funding Formula. The initial "wrap-around funding amount" is computed by multiplying the following two parts of the "Personal Health Care Services" formula together:

(1) Personal Health Services Amount (See 7A above.)

(2) Range: 5% or 10% or 15% (See explanation below.)

C. Personal Health Services Amount. Amount computed at the IHS average funding level in section 7A above.

D. Range 5% to 15%. A variable percentage determined by IHS staff, in

consultation and collaboration with the Tribe, during the planning and assessment stage that reflects the extent that wrap-around services are unavailable from other sources:

(1) 5% - CHSDA has municipal and public health services

(2) 10% - CHSDA is near municipal and public health services

(3) 15% - CHSDA is located far from municipal and public health services

E. Construction Is Separate. Funding for construction of water supply and waste disposal facilities is provided in a separate appropriation and is NOT included in this computation for wrap-around funds. If tribal members live on tribal lands which do not have adequate water supply and waste disposal facilities, the tribe will need to specifically request an assessment by the Area Office of Environmental Health and Engineering Office to be considered in the sanitation construction funding priority system.

9. TRIBAL SHARES AND RESIDUAL AMOUNT. The Indian Self-Determination Act (ISDA), Public Law (P.L.) 93-638, as amended, authorizes a tribe to contract or compact for administrative and support functions for health programs carried out by IHS Area offices and Headquarters offices. Portions of Area and Headquarters funds are identified

and may be transferred to tribes under this law and are known as "tribal shares." A limited number of "inherently Federal" functions, classified as "residual" functions, are performed by Area Offices and Headquarters, but are not contractible to tribes.

A. Administrative or Support Functions. The IHS does not provide administrative or support functions to a tribe prior to its formal recognition. The Area office and headquarters budgets contain NO tribal shares or residual for a newly recognized tribe. Recognition of a new tribe creates a new funding liability that is not included in existing IHS funding. Consequently, this part of the new tribes funding formula estimates tribal share (residual is estimated in step #4) that is proportionate to the historical IHS experience for tribes of similar size and circumstance. Once funds for tribal shares are available in the Area Office or headquarters budgets, the tribe is then eligible to contract for the funds under the ISDA, but not for the residual functions that IHS must perform.

B. Tribal Shares Formula and Residual. The formula to estimate tribal shares and residual is:

Tribal Shares Amount = Personal Health Services Amount (from 7A) X 15%.

(1) Personal Health Services Amount. Amount computed at the average funding level in section 7A above.

(2) 15%. A percentage determined by IHS staff, in consultation and collaboration with the Tribe, during the planning and assessment stage that reflects the historical experience. (Fifteen percent is an average.)

(3) Substitution. A more precise percentage estimate may be substituted if reliable historical data is available for another tribal health care program of similar size and program design.

(4) ½ Area Office Shares, ½ Headquarters Shares. The Tribal shares amount is divided equally between Area Office and Headquarters shares and entered into the respective budgets accordingly. Subsequently, the tribe may electively contract for all of its Area Office and Headquarters shares or have the IHS provide those support functions to the tribe.

10. INDIAN HEALTH SERVICE RESIDUAL AMOUNT. A limited number of "inherently Federal" functions performed by Area Offices and headquarters are not contractible. Area and headquarters funds for inherently Federal functions are known as "residual." Recognition of a new tribe creates a new funding liability for IHS that is not included in existing IHS funding. Consequently, this part of the new tribes formula estimates an amount of funding for residual that is proportionate to the historical IHS experience for tribes of similar size and circumstance. This amount is requested as part of the initial

funding package for a new tribe, but is not available to be contracted under the provisions of the ISDA.

A. Indian Health Service Residual Amount. The IHS Residual Amount is an estimated amount of funding for inherently Federal functions residual that is proportionate to the historical IHS experience for tribes of similar size and circumstance. The formula to estimate the IHS Residual Amount is:

IHS Residual Amount = Personal Health Services (from 7A) X 5%

B. Personal Health Services Amount. Amount computed at the average funding level in section 7A above.

(1) 5%. Five percent is an average for the combination of Area Office and Headquarters residual. The residual percentage is based on historical costs that were negotiated with tribes during the self-governance demonstration project.

(2) ½ Area Office Residual, ½ Headquarters Residual. The residual amount is divided equally between Area Office and Headquarters and is entered into the respective budgets accordingly. Subsequently, both headquarters and Area Offices will begin carry out residual functions on behalf of the newly

recognized tribe.

11. SUPERSEDURE. SGM 97-1, Dated 12/04/97

12. EFFECTIVE DATE. This Circular is effective on the date of signature.

Charles W. Grim, D.D.S., M.H.S.A.

Assistant Surgeon General

Interim Director

DEPARTMENT 0F HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20857

DEC - 4 1997

SGM 97-1

TO: See Below

FROM: Director

SUBJECT: New Federally Recognized/Restored Tribes Policy

This memorandum establishes the Indian Health Service (IHS) policy and procedures for addressing newly recognized tribes.

When a tribe is newly recognized, restored, or acknowledged by the Federal Government, Area Directors are responsible for ensuring that:

I* I There is consideration of the health care program needs of the new tribe within the context of all funds, activities, and programs currently available to tribes previously recognized by the Federal Government and served by the IHS.

2. Staff members are designated to work with the new tribe to plan an appropriate health care delivery system that reflects the health care needs of the newly recognized tribe and the health care resources available to the newly recognized tribe.

3. Assistance is provided to the newly recognized tribe in securing program funding, including planning funds, through the appropriation process.

4. Services available at IHS-operated/funded facilities or programs are provided to members of the newly recognized tribe on the same basis as services are provided to other eligible Indians.

Upon verification that a tribe has been newly recognized, I will assign administrative responsibility for the above actions to the appropriate Area Director. The notification from me shall include information on the newly recognized tribe's current status with regard to the existence of a reservation and/or a contract health service delivery area (CHSDA); the eligibility of the tribe and its members for IHS programs, including direct and contract services; any unique provisions included in the tribe's recognition; and special instructions necessary to implement the above policy.

See Below

The designated Area Director is responsible for: (1) developing the plan for an appropriate tribal health care delivery system, including short-term and long-term needs; (2) preparing a budget request for funding through either the regular or the supplemental appropriations process; and (3) identifying any Area funds that are available for interim funding for planning and services.

The above must be accomplished with maximum tribal involvement and consultation as soon as is practical after notice of the tribe's recognition. All these activities shall be supported by the appropriate Headquarters components.

Appropriation requests must include, in addition to the costs for health services, estimates of Area administrative expenses to serve the new tribe. The funding requests shall be based in part on an estimate of the number of people who are members of or otherwise affiliated with the new tribe and who reside within the tribe's expected CHSDA, if any. Population estimates must be based on tribal rolls, Bureau of Indian Affairs' figures, census enumerations, or other similar identified sources.

Once developed, a request for funding must be forwarded to the Division of Financial Management, Office of Management Support, for inclusion in either the regular or supplemental budget process, whichever is first.

In regard to providing interim funding, it must be clearly delineated for the newly recognized tribes that any interim funding available is non-recurring, and may not be made available when doing so would have the effect of substantially reducing services to, or the funding of, previously recognized and funded tribes. It must also be clearly delineated that future funding cannot be assured in the absence of congressional action providing specific direction for the funding of the new tribe.

The above policy and procedures are effective immediately and shall continue in effect until superseded or rescinded by official notice.

Michael H. Trujillo, M.D., M.P.H., M.S.
Assistant Surgeon General

Addressees:
Executive Staff
Area Directors
Headquarters Office Directors
Functional Area Managers, IHS

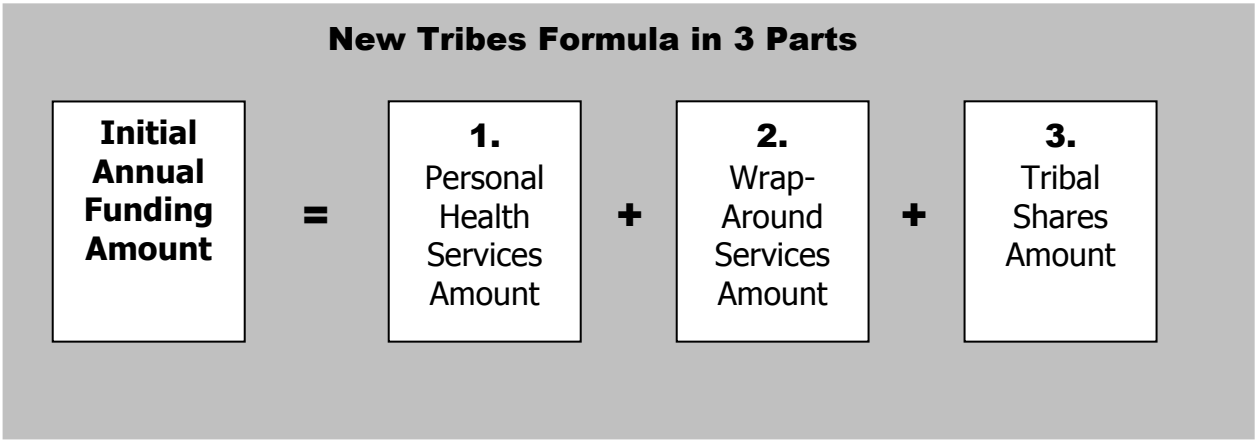
IHS Formula to Fund Newly Recognized Tribes

Purpose:

Update the IHS new tribes funding formula consistent with the most current methodologies and data for computing health care costs. This update introduces empirical refinements to the existing formula that enhance accuracy of estimates.

New Tribes Funding Formula

The IHS will compute an initial operational funding level for a newly recognized tribe based upon a total of three parts:



The proposed methodology/formula for each of the three parts is described on subsequent pages.

Timeframe

The IHS will work with a newly recognized tribe within the immediate months following formal recognition to: orient the Tribe to IHS, assess Tribal health needs, and plan for funding a new health care program to tribal members. Data needed to compute the funding amounts for the three part formula will be identified and collected during this phase. The estimated funding amounts then determined will be requested from Congress in the next budget cycle following the Tribe's recognition. Funds for the new health program will then be provided when appropriated by the Congress. Following allocation of the initial operational funding, the tribe will then be eligible to participate in other IHS funding on the same basis as other tribes.

1. Personal Health (Care) Services Amount

An initial funding amount is computed considering the forecast number of tribal members to receive personal health care services, the prevailing health care costs in the new tribe's CHSDA, and the IHS average funding level. The formula is:

Personal Health Care Services Formula

1. Personal Health Services Amount	=	# of Tribal Users residing in the CHSDA	x	Net FDI Per Capita Cost for the CHSDA	x	IHS Average Level (%) of Funding

Tribal Users (beneficiaries): IHS headquarters staff working with Area statistical/planning staff, who have consulted and collaborated with the Tribe, will forecast the number of tribal members residing in the CHSDA that are expected to use the newly funded health care services annually. The forecasts will be based on the most credible data available and may include consideration of tribal membership rolls, any available surveys and lists of probable tribal users previously developed to plan health care services for the tribe, census counts of AIAN in the relevant counties, and recognized health care planning factors. To be considered a Tribal User (beneficiary) included in the user count, evidence of the following is necessary:

- A person is a member/descendent of the newly recognized tribe,
- Resides in the designated CHSDA for the newly recognized tribe,
- Is likely to access the tribe's health program in a 36 month period,
- Is not counted in the user count of another IHS or tribal health program.

Net FDI Per Capita Cost: IHS headquarters staff will obtain the most recent per capita health care cost estimates through the Federal Employees Health Plan Disparity Index (FDI) methodology. The FDI methodology was developed to actuarially measure the cost of assuring health care to AI/AN that is comparable in benefits to a mainstream health care plan such as that provided in the Federal Employees Health Plan (FEHP). The FDI methodology is applied annually to update cost per beneficiary estimates. The methodology considers age, sex, and demographic health risk factors for AI/AN, geographic variations in health care costs, and an annual inflation for health plan premiums. The net FDI per capita

cost is the portion of the total cost that IHS would pay after deducting third party coverage.

IHS Average Level of Funding: IHS per capita funding has been less than the Net FDI Per Capita Cost (approximately 54% on average for FY 2001). Because of concerns about fairness to the existing under funded tribes, the Congress has asked IHS to compute funding levels for new tribes consistent with that of other tribes served by IHS. Consequently, the initial funding level will be computed at the IHS average level of funding relative to the FDI cost factor. The IHS average is updated annually during the application of the FDI methodology.

2. "Wrap-Around" Services Amount

In addition to mainstream personal health care services, IHS programs for tribes include important public health and community based programs that are not typically part of mainstream personal health care benefits packages. The extent and type of IHS public health and community based or "wrap-around" programs vary with local circumstances and may include:

- Public health nursing
- Community health representatives
- Environmental health monitoring and remediation
- Emergency Medical Services
- Traditional healing and wellness programs
- Sanitation facilities (safe water and waste disposal)

IHS provides some of these public health infrastructure programs in reservation areas where such local governmental infrastructure is often unavailable. IHS provides little "wrap-around" funding for tribes located in urban locations where such services are typically available from local, state, and municipal sources.

The extent that the newly recognized tribe needs IHS wrap-around funding depends on local circumstances. IHS staff will assess the extent to which wrap-around program services are available to tribal members and apply the formula below to estimate wrap-around funding that is not available from other sources.

Public Health Wrap-Around Formula

2. Wrap-Around Services Amount	=	1. Personal Health Services Amount (see above)	x	Range: 5%, 10%, or 15% (see explanation below)

*Sanitation facilities funding is a separate appropriation and is NOT included in the wrap-around computation. Construction funding is determined in an existing OEHE methodology.

Personal Health Services Amount: Amount computed at the IHS average funding level in step #2 above.

Range 5% to 15%: A variable percentage determined by IHS staff, in consultation and collaboration with the Tribe, during the planning and assessment stage that reflects the extent that wrap-around services are unavailable from other sources:

5% - CHSDA has municipal and public health services
10% - CHSDA is near municipal and public health services
15% - CHSDA is located far from municipal and public health services

***Construction Is Separate:** Funding for construction of water supply and waste disposal facilities is provided in a separate appropriation and is NOT included in this computation for wrap-around funds. If tribal members live on tribal lands which do not have adequate water supply and waste disposal facilities, the tribe will need to specifically request an assessment by the Area Office of Environmental Health and Engineering Office to be considered in the sanitation construction funding priority system.

3. Tribal Shares and Residual Amount

Tribal Self-Determination law authorizes a tribe to contract or compact for administrative and support functions for health programs carried out by IHS Area offices and Headquarters offices. Portions of Area and headquarters funds are identified and may be transferred to tribes under this law and are known as "tribal shares". A limited number of "inherently federal" functions, classified as "residual" functions, are performed by Area Offices and headquarters but are not contractible to tribes.

IHS does not provide administrative or support functions to a tribe prior to its formal recognition. The Area office and headquarters budgets contain NO tribal shares or

residual for a newly recognized tribe. Recognition of a new tribe creates a new funding liability that is not included in existing IHS funding. Consequently, this part of the new tribes funding formula estimates tribal share (residual is estimated in step #4) that is proportionate to the historical IHS experience for tribes of similar size and circumstance. Once funds for tribal shares are available in the Area Office or headquarters budgets, the tribe is then eligible to contract for them under self-determination law, but not for the residual functions that IHS must perform.

The formula to estimate tribal shares and residual is shown below:

Tribal Shares Formula

3. Tribal Shares Amount	=	1. Personal Health Services Amount (see above)	x	15%*

Personal Health Services Amount: Amount computed at the average funding level in step #2 above.

15%: A percentage determined by IHS staff, in consultation and collaboration with the Tribe, during the planning and assessment stage that reflects the historical experience. Fifteen percent is an average.

*A more precise percentage estimate may be substituted if reliable historical data is available for another tribal health care program of similar size and program design.

½ Area Office Shares, ½ Headquarters Shares: The Tribal shares amount is divided equally between Area Office and Headquarters shares and entered into the respective budgets accordingly. Subsequently, the tribe may electively contract for all of its Area Office and Headquarters shares or have the IHS provide those support functions to the tribe.

4. IHS Residual Amount

A limited number of "inherently federal" functions performed by Area Offices and headquarters are not contractible. Area and headquarters funds for inherently

federal functions are known as "residual." Recognition of a new tribe creates a new funding liability for IHS that is not included in existing IHS funding. Consequently, this part of the new tribes formula estimates an amount of funding for residual that is proportionate to the historical IHS experience for tribes of similar size and circumstance. This amount is requested as part of the funding package in the next budget cycle, but is not available for shares by law.

Residual Formula

4. IHS Residual Amount	=	1. Personal Health Services Amount (see above)	x	5%

Personal Health Services Amount: Amount computed at the average funding level in step #2 above.

5%: Five percent is an average for the combination of Area Office and Headquarters residual. The residual percentage is based on historical costs that were negotiated with tribes during the self-governance demonstration project.

½ Area Office Residual, ½ Headquarters Residual: The residual amount is divided equally between Area Office and Headquarters and is entered into the respective budgets accordingly. Subsequently, both headquarters and Area Offices will begin carry out residual functions on behalf of the newly recognized tribe.