National Indian Health Board

January 6, 2012
Sent via email to consultation@ihs.gov

Dr. Yvette Roubideaux, Director
Indian Health Service
801 Thompson Avenue
Rockville, MD 20852

RE: Response to November 9, 2011 Dear Tribal Leader Letter (DTLL) Request for Comments on the Federal Advisory Committee Act (FACA)

Dear Dr. Roubideaux:

As the Chairman of the National Indian Health Board (NIHB), I am writing to provide our comments regarding the Federal Advisory Committee Act (FACA) and Indian Health Service (IHS) Advisory Groups.

Fundamental principles of the government-to-government relationship include a respect for the inherent sovereign status of Indian tribes, recognition of their rights of self-determination and a commitment to meaningful and timely consultation with tribal officials on policies with tribal implications. *See, e.g.,* Exec. Order 13175 issued by President Clinton, Nov. 9, 2000. We appreciated that IHS has understood this principle by initiating consultation and receiving tribal input on Federal health policies through technical advisory groups.

Tribal advisory committees comprised of dedicated Indian tribal representatives knowledgeable about the unique health care delivery system in Indian Country and important Federal health programs for which Indians, like all Americans, are eligible. The mission of each IHS advisory group is the same: to help IHS understand how programs operate on the ground to assure that Indian people can fully access these programs through the health care delivery system the Federal Government created to serve them.

We at NIHB strongly support IHS Tribal Advisory Groups and argue that the FACA Intergovernmental Exemption permits Tribal leadership to designate who can represent the tribal interest on such committees. If not implemented in this manner, this would contravene principles of Indian self-determination and severely diminish the ability of Tribal Advisory Groups– and IHS– to perform its mission of assuring individual Indian access to IHS and Tribal programs. We describe below the basis for our position.

This FACA Intergovernmental Exemption permits "meetings held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf)" which are held "solely for the purpose of exchanging views, information or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration."[1]

Implementing IHS programs in Indian Country requires detailed knowledge of the Indian health system to assure that Indians enrolled in those programs can utilize their benefits through the federal system established to provide for their health care. Based on our experience, the convening an IHS Tribal Advisory Group provides an opportunity to exchange views and information about such complex issues at meetings that are held in public buildings, are open to the public, and discussions are memorialized in written minutes. The IHS Tribal Advisory Committees are compliant with implementing guidelines issued by OMB which identify the types of governmental representatives from whom OMB suggests the agency can obtain the "fullest range of meaningful input". These include heads of government (or their designated employees with authority to act on their behalf); program and financial officials; and Washington-based associations representing elected officials.[2] Denying membership to tribal representatives, such tribal employees and inter-tribal organization, which possess key expertise would profoundly reduce the effectiveness of the Tribal Advisory Committee and impede the whole purpose for which it was created.

Tribes have a right to select their own representatives. A fundamental right of Indian self-determination is the right to determine how tribal programs shall be operated and by whom. Tribes must have the right to select representatives who they believe can most effectively work with IHS in navigating application of the complex laws to the Indian health care delivery system. Altering a committee charter by limiting Member status solely to individuals whom IHS deems to be elected tribal leaders deprives Tribes of their inherent right to identify who can best represent their interests.

Tribal governments, like Federal and State governments, depend on employees hired to carry out programs and policies and must not have their right to do so curtailed. It would be absurd to suggest that only the President and Vice President – the only elected officials in the Executive Branch – can conduct inter-governmental communications on the intricate IHS programs. The Federal Government must, and does, work through its designated employees. It is equally absurd to suggest that all such communications by Indian Tribes must be conducted solely by elected Tribal officials, not through employees designated by tribal leadership to speak on their behalf.

DC Based Inter-Tribal organization. Elected Tribal leaders created NIHB to serve as a voice in DC to serve Tribes' interest regarding the health of American Indians and Alaska Natives. NIHB is an inter-Tribal organization that for four decades now, advocates on behalf of Tribal governments for the provision of quality health care to all Indian people. NIHB is governed by a

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1 Unfunded Mandates Reform Act of 1995, Pub.L. 104-4, Sec. 204(b), *codified at* 2 USC 1534(b).

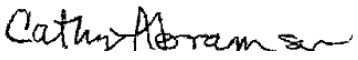
2 Office of Management and Budget, *Guidelines and Instructions for Implementing Section 204: "State, Local, and Tribal Government Input" of Title II of P.L. 104-4,* Sec. I.C. (Sept. 21, 1995).

Board of Directors consisting of a representative from each of the twelve Indian Health Service ("IHS") Areas. The Tribes of each Area Indian Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Indian Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act ("ISDEAA"), or continue to rely on IHS for delivery of some, or even most, of their health care, NIHB is their advocate. This is the reason why NIHB has a seat on some of the Tribal Advisory Committees.

In closing, utilizing Tribal advisory groups for obtaining meaningful tribal input on important federal programs should not only be allowed to continue, it should be strengthened and encouraged.

Thank you for the opportunity to make these comments. Please do not hesitate to contact me or Jennifer Cooper, NIHB Legislative Director (JCooper@nihb.org, 202-507-4070), if we can provide additional information.

Sincerely yours,



Cathy Abramson, Chairman
National Indian Health Board