



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

April 8, 2022

Ms. Elizabeth A. Fowler
Acting Deputy Director
Indian Health Service
5600 Fishers Lane
Rockville, MD 20857

Re: HIT Modernization

Dear Acting Deputy Director Fowler,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) in response to the Indian Health Service's (IHS) March 10th consultation on Health Information Technology (HIT) Modernization. Though presented as a consultation/confer session, the March 10th meeting amounted to little more than an update for Tribal Nations on the unilateral decisions IHS is making around HIT modernization. The question-and-answer session at the end of the presentation cannot be considered consultation. While we appreciate the addition of focus groups, these also do not represent consultation. Throughout the HIT modernization process thus far, IHS has engaged in a decision-making process that fails to meaningfully include and implement the guidance of Tribal Nations. We urge that IHS increase its transparency as decisions are made, as well as redouble its efforts to ensure Tribal consultation guides this work and the diverse HIT circumstances throughout Indian Country are included in these efforts.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Greater Emphasis on Meaningful Consultation and Transparency in Selection Process and Implementation

As noted above, it appears as though much of the discussion and policymaking around HIT modernization occurs at the agency and departmental levels, as opposed to in consultation and coordination with Tribal

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Nations. While IHS does provide updates when asked, these typically involve high level presentations, rather than the mutual dialogue and decision-making required by consultation. Although IHS has convened the Information Systems Advisory Committee (ISAC) on a semi-annual basis over the last several years, it remains unclear whether the ISAC is fully utilized as a partner in the process. Indeed, in its Fiscal Year (FY) 2022 Congressional Justification, IHS touts its ongoing collaboration with Health and Human Services, as well as the Centers for Medicare and Medicaid Services, but makes no mention of Tribal consultation. It does however, briefly speak to “stakeholder engagement,” a designation that IHS should well know is inappropriate for our sacred, Nation-to-Nation relationship. IHS further frames much of this work as “inherently federal,” which we feel should be the subject of further consultation. Ultimately, we urge IHS to ensure that it is delivering upon trust and treaty obligations to Tribal Nations in each and every action that it takes. This includes consulting with us on a sovereign-to-sovereign basis, and then working to implement the guidance received.

Funding for Tribal Nations that have Purchased COTS

While we appreciate IHS’ focus on interoperability, we underscore that a growing number of Tribal Nations have been forced to purchase commercial-off-the-shelf (COTS) systems due to outmoded nature of the Resource Patient Management System (RPMS) and the indeterminant timeline for full implementation of HIT modernization. Without additional funding from IHS, these Tribal Nations have absorbed the full cost of these purchases. While IHS continues to state that it supports the sovereign decision to opt for COTS, this decision is most often rooted in the federal government’s failure to fund HIT and maintain systems reflective of 21st century health care. True support for this sovereign decision must be demonstrated via adequate federal funding for this purpose via ISDEAA contracting and compacting. Despite numerous calls to reimburse Tribal Nations for COTS, there appears to be no plan on the part of IHS to advocate for or designate funding to ensure that Tribal Nations are not subsidizing trust and treaty obligations in this area. We urge IHS to develop a HIT modernization plan that includes full reimbursement for Tribal Nations that have or plan to implement COTS to better meet the health care needs of IHS beneficiaries they serve.

Funding to Implement IHS Enterprise EHR at Tribally Operated Facilities

We remind IHS that it is critical that adequate funding for health IT modernization be requested by the Administration and authorized by Congress in a way that ensures funding is sufficient but does not come at the expense of other critical IHS programs. The Administration and Congress must ensure Tribal Nations have access to ongoing and adequate resources to support IT modernization in the coming years, including training, tech support, upgrades, and sufficient communication from health IT support staff.

Preservation of Tribal Historical Data and Analytical Capabilities

RPMS currently houses a significant amount of historical data. To preserve and ensure Tribal healthcare providers have access to this critical data, USET SPF underscores that all historical data must be able to be uploaded to a new EHR. To that end, we suggest that IHS add an additional focus group that focuses on data preservation or add this task to the charge of the Data Management group.

Additionally, an upgraded health IT system must maintain and improve upon current RPMS quality measurement tools and functions that allow IHS and Tribally operated facilities to track and evaluate certain analytics and assist the agency and Tribal Nations with various reporting requirements. Comprehensive data collection and analytics must be available in disease surveillance as Tribal Nations require this information when quantifying health issues within our communities, such as COVID-19 and the opioid crisis.

Conclusion

USET SPF asserts that the federal government has fallen short of its trust obligation to Indian Country by under-resourcing our health IT. In partnership with Tribal Nations, IHS must work to ensure that the entire Indian Health System is brought into the 21st century. This includes transparent and direct Nation-to-Nation dialogue as this process proceeds, as well as working to address the diverse circumstances of Tribally operated facilities, as well as those operated by IHS. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Francis", with a long horizontal flourish extending to the right.

Kirk Francis
President

A handwritten signature in black ink, appearing to read "Kitcki A. Carroll", with a long horizontal flourish extending to the right.

Kitcki A. Carroll
Executive Director