SUMMARY OF OIG IHS ACTIVITIES

I. Overview

Approximately 1.9 million American Indians and Alaskan Natives (AI/AN) access federally funded health care services. The U.S. Department of Health and Human Services (HHS) provides myriad health and human service programs to AI/AN communities administered through the Indian Health Service (IHS), the Health Resources and Services Administration (HRSA), the Substance Abuse and Mental Health Services Administration (SAMHSA), and the Administration for Children and Families (ACF). The HHS Office of Inspector General (OIG) provides oversight of these programs through audits, evaluations, and investigations to help guard against waste, fraud, and abuse.

This document provides a background on the laws governing IHS, OIG's oversight efforts, and past and ongoing OIG work pertaining to IHS.

A. BACKGROUND

In 1927, the Snyder Act authorized provision of health care services to the AI/AN population. Following the 1956 transfer of Indian health responsibilities from the Department of the Interior (DOI) to IHS, Congress passed the Indian Health Care Improvement Act (IHCIA) in 1976. IHCIA outlines the specific programs IHS is authorized to provide to both federally recognized tribes and the Urban Indian Health Program. In 2010, the Affordable Care Act permanently reauthorized IHCIA.

Initially, IHS provided health care directly through IHS hospitals and clinics. However, in 1974, Congress passed the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638 ("638"). ISDEAA gave tribes the option of assuming responsibility for Federal programs established by IHS and other agencies within DOI. Under this option, tribes negotiate self-determination contracts with IHS and DOI to provide services directly to tribal members. This statute was amended in 2002 to permit tribes to sign self-governance compacts with IHS and thereby gain even greater autonomy in managing their tribal health care programs.

Under IHCIA, as amended, IHS and tribal facilities are authorized to collect reimbursement for services provided to eligible beneficiaries from third party payers, including Medicare, Medicaid, and private health insurers. By law, Medicare and Medicaid reimbursement must be spent on health care.

Finally, IHS administers a variety of other health programs that are outside the scope of the basic service delivery sector, including the health professional educational scholarship and loan repayment programs, the Urban Indian Health Program, behavioral health programs, and health facilities construction. Federally recognized tribes and tribal organizations are eligible to apply for a variety of other HHS funding opportunities, such as discretionary grants; contracts; and funding under special tribal programs, such as Tribal Temporary Assistance for Needy Families (TANF) and Tribal Head Start.

B. AVENUES FOR OIG OVERSIGHT OF AMERICAN INDIAN AND ALASKA NATIVE HEALTH ISSUES

The Inspector General Act of 1978 authorizes OIG to audit and investigate HHS's programs and operations. OIG expends considerable effort in matters relating to AI/AN health by conducting audits, evaluations, and inspections of, among other things, IHS and its facilities. Although IHS is the most prominent agency, tribes and tribal organizations also receive grants from other agencies, including HRSA, SAMHSA, and ACF.

Under the Health Care Fraud and Abuse Control program (Social Security Act § 1817(k)) OIG continues to focus on the intersection between AI/AN health and the Centers for Medicare & Medicaid Services (CMS). The Social Security Act authorizes reimbursement to IHS and tribal facilities for both hospital and nonhospital Medicare service, and reimburses the States at 100 percent of the Federal matching rate for Medicaid services provided to IHS beneficiaries. CMS's role in providing services to AI/ANs is growing rapidly. The $735 million in reimbursements to IHS and tribal facilities in fiscal year 2010 represents a $15 million increase over the prior year.

C. SUMMARY OF PAST OIG EFFORTS RELATING TO INDIAN HEALTH

During the past 10 years, OIG provided substantial oversight and assistance to IHS and its tribal contractors through audits, evaluations, and investigations. OIG offered advice on improving practices and procedures on a wide range of matters extending from financial management to safety and security. Furthermore, OIG's National External Audit Review Center reviews hundreds of tribal "single audits"[1] each year.

Since 2001, OIG has issued 26 reports on topics including financial management and oversight, program effectiveness, quality of care, and credentialing and privileging policies at IHS and tribal hospitals. OIG has also conducted a wide range of investigations on topics including employee misconduct; drug diversion; and fraud related to enrollment, IHS programs, and Medicare and Medicaid reimbursements.

OIG has also provided technical support to HHS on AI/AN health matters. For example, since 2002, the Inspector General has served on the Secretary's Interdepartmental Council on Native American Affairs. This group's work focuses on HHS's relationship with AI/ANs and seeks to ensure their access to HHS programs.

In February 2010, OIG conducted procurement fraud training for IHS hospital and clinic administrators and contracting personnel for the Phoenix area office. The training focused on compliance issues and remedies for procurement fraud violations.

[1] Single Audits, also known as the Office of Management and Budget (OMB) A-133 audits, are performed to ensure that Federal funds and assistance (grants and awards) are being used by recipients (States, cities, universities, nonprofit organizations, etc.) properly.

Although technical support is very beneficial, OIG contributes the most to improving AI/AN health through its audits, evaluations, and investigations. The remainder of this paper provides greater detail on OIG's IHS-related studies and investigations during the past 10 years.

II. OIG Oversight Activities

A. COMPLETED AUDITS AND EVALUATIONS

The 26 audits and evaluations released since 2001 fall into 3 categories of oversight: financial management, quality of care, and program management. Deficiencies in internal controls; financial management; financial reporting; accounting; and compliance with policy, administrative, and statutory requirements contributed to the majority of the financial management problems identified. OIG recommendations focused on the need for IHS, as well as tribes, to serve as proper stewards of Indian health care funding so that the resources reach IHS beneficiaries and are not lost to waste, fraud, or abuse. OIG discovered various quality-of-care deficiencies, including the lack of adequate safeguards to protect controlled substances from diversion and the failure of five IHS and tribal facilities to ensure that their staffs had the proper credentials. Program management issues identified included potential savings through Contract Health Service (CHS) payments for outpatient services and IHS's poor response rate to OIG's previous audit recommendations.

Below are summaries of the 26 individual studies and audits, organized under each of the 3 general categories

1. Financial Management

- *Audit of IHS Scholarship and Loan Repayment Programs* (four reports in 2010 and 2011).

  - Loan Repayment Program: Under this program, IHS assists health professionals employed as IHS or tribal health personnel by awarding loan repayment assistance. OIG found that IHS did not have adequate internal controls to monitor recipients' compliance with certain program requirements. A-09-10-01005

  - Nursing Program Scholarships: Under the Nursing Program, IHS provides grants to colleges, universities, and other programs to develop nursing programs and recruit individuals into those programs who will later provide services to AI/ANs. OIG found that IHS did not have any internal controls to monitor recipients' fulfillment of education requirements and service obligations. A-09-10-01006

- Psychology Scholarships: Under the American Indians Into Psychology Program, IHS provides grants to colleges and universities to develop and maintain psychology recruitment programs to encourage American Indians to enter the mental health field. OIG found that IHS did not have policies and procedures to monitor whether recipients had completed their approved education programs or were fulfilling service obligations.

- Health Professions Scholarships: The Indian Health Professions Scholarship Program provides scholarships to Indian students enrolled full or part time in a health professions program at an accredited school. OIG found that IHS did not always follow its policies and procedures to verify that recipients completed approved education programs and were fulfilling their service obligations.

In each report, OIG recommended, among other things, that IHS develop and implement policies and procedures for monitoring recipients' fulfillment of education requirements and service obligations.

● *Audit of IHS's FY 2005 Cost Statements'* (four reports issued in 2010). OIG audited the fiscal year (FY) 2005 Medicare cost statements prepared for IHS Headquarters and three IHS area offices. OIG found the following:

- Navajo Area Office: The audit found $2.5 million in unallowable obligations and $4.8 million in unsupported costs, including those for salaries, fringe benefits, and related obligations. A-07-08-02721

- Phoenix Area Office: The audit found $66,000 in unallowable depreciation and $2 million in unsupported costs, including those for salaries, fringe benefits, and related obligations. A-09-07-00086

- Oklahoma City Area Office: The audit found $260,000 in duplicate obligations claimed by the National Supply Service Center[2] and $430,000 in unsupported costs, including those for salaries, fringe benefits, and depreciation costs. A-06-07-00080

- IHS Headquarters: The audit found $3.4 million in unallowable obligations for a single scholarship program and $350,000 in unallowable obligations related to construction costs. A-09-07-00054

In each report, OIG recommended, among other things, that IHS and its area offices correct the unallowable amounts reported by adjusting future cost statements.

[2] The National Supply Service Center manages the purchase and distribution of drugs and other medical supplies in all 12 IHS areas.

● *Review of Accounts Receivable at the IHS Billings Area Office* (2006). This audit of how the Billings area office maintained accounts receivable balances for FYs 2003 through 2005 found that the office's practices failed to meet certain Federal requirements. The differences between the general and subsidiary accounts receivable balances totaled approximately $6.1 million.

2. Quality of Care

● *Safeguards Over Controlled Substances at IHS Hospitals and Clinical Centers* (five reports issued in 2006 and 2007). The Controlled Substances Act of 1970 requires health care facilities to secure and account for their Schedule II substances, such as morphine and methadone, which have a high potential for abuse. These audits examined five IHS hospitals and health centers to determine their compliance with Schedule II drug-handling requirements. The audits found that some hospitals and health centers did not always comply with requirements to secure and account for their Schedule II substances. The audits also detected faulty internal controls that rendered the Schedule II substances vulnerable to theft and mismanagement. OIG recommended improvements to internal controls, such as (1) adequately separating the key duties of ordering controlled substances and recording their receipt, (2) monitoring an after-hours alarm system, and (3) fully accounting for substances at other pharmacy locations or automated dispensing units. A-06-06-00035, A-06-07-00048, A-06-07-00049, A-06-06-00034, A-06-06-00032

● *Credentialing and Privileging Practices at Five Hospitals* (eight reports issued in 2004 and 2005). All accredited hospitals must conduct a credentialing and privileging process for all employed medical staff. In addition, IHS hospitals must conduct background checks on all medical staff. OIG reviewed four IHS-run hospitals and one tribal hospital for compliance with credentialing, privileging, and background check requirements. None of the five hospitals successfully completed credentialing, privileging, and background checks on all medical staff. Two hospitals completed credentialing and privileging for all medical staff, but failed to conduct any background checks. A-06-04-00040, A-06-04-00039, A-06-04-00023, A-07-03-00152, A-07-03-00159

3. Program Evaluation

● *IHS Contract Health Services Program: Overpayments and Potential Savings* (2009). Under the CHS program, private providers are reimbursed for providing care to IHS beneficiaries that is unavailable at IHS or tribal facilities. Reimbursement for hospital services is capped at the rates that Medicare pays. The review found that IHS and tribes paid above the Medicare rate for 22 percent of hospital claims. As a result, IHS and tribes overpaid $1 million for hospital claims between January and March 2008. In addition, OIG found that if IHS and tribal payments for nonhospital claims had been capped at the Medicare rate, IHS and tribes could have saved as much as $13 million between January and March 2008. IHS and tribes paid above Medicare rates for 71 percent of nonhospital claims, most of which were for physician services. OIG recommended that IHS, among other steps, direct its contractor to ensure that all future

hospital claims be paid at or below the Medicare rate and that IHS seek legislative authority to cap payments for CHS nonhospital services. OEI-05-08-00410

● *Indian Health Service's Resolution of Audit Recommendations* (2007). The audit found that as of December 31, 2005, IHS had not resolved 6,653 of the 9,493 audit recommendations identified in stewardship reports for calendar years 2003 through 2005. OIG recommended that IHS resolve the backlog and strive to resolve subsequent recommendations within 6 months. A-07-06-03077

● *Access to Mental Health and Dialysis Services at Indian Health Service and Tribal Facilities (2011).* Compared with other populations in the United States, AI/ANs experience a disproportionately high rate of mental and behavioral health challenges and a high incidence of end-stage renal disease. This review found that 82 percent of tribal and IHS facilities provide some type of mental health service; however, the range of services is limited at some facilities. Staffing issues and shortages of highly skilled personnel limit AI/ANs' access to mental health services. This review also found that only 20 of 506 IHS and tribal facilities reported that they provide kidney dialysis services at their facilities. Most AI/ANs receive dialysis services at non-IHS/nontribal dialysis facilities. Of the facilities that did not provide dialysis services, 56 percent reported that they assist in referring their patients to either IHS/tribal or non-IHS/nontribal facilities. The remoteness of dialysis facilities can affect the availability of services and create hardships. To improve access to mental health services, OIG recommended that IHS (1) provide guidance and technical assistance to help tribes explore potential partnerships with non-AI/AN providers of community mental and behavioral health services and (2) continue to expand its telemedicine capabilities and provide guidance and technical assistance to tribal health care providers to expand and implement telemedicine. To improve access to kidney dialysis services, OIG recommended that IHS (1) develop a plan and provide expertise to help tribes expand dialysis services and (2) develop guidance and technical assistance resources to help IHS and tribal facilities offer alternative treatments for dialysis services. Finally, to improve coordination and management of health services overall, OIG recommended that IHS develop a plan to create a database of all IHS and tribal health care facilities.

B. ONGOING AND PLANNED AUDITS AND EVALUATIONS

OIG's ongoing and planned audits and evaluations are described below.

● *Background Investigations To Protect Indian Children*. OIG will review the handling of background investigations required by the Indian Child Protection and Family Violence Prevention Act. This law requires that all IHS employees and contractors who have regular contact with, or control over, Indian children be investigated for any history of certain criminal acts. Previous OIG work found inconsistent practices in staff background investigations. OIG will determine whether IHS and tribal organizations have completed required background investigations.

● *Accounting for Medication Inventory*. Although IHS is required to implement inventory procedures for drugs controlled by the Drug Enforcement Administration (DEA), there is no commensurate Federal requirement for inventories of non-DEA-controlled drugs, which account for most of the drugs on hand. OIG will determine whether pharmacies in IHS facilities have implemented controls to ensure accountability for medication inventories.

Finally, OIG has planned the following audits examining IHS's activities relating to the American Recovery and Reinvestment Act (ARRA):

● *Facilities Construction*. OIG will review the top bidders for IHS construction contracts to determine whether the proposed costs were supported by current, complete, and accurate cost or pricing data; determine the reasonableness and allowability of proposed costs; review bid estimation procedures; and review IHS's management of its facilities construction contingency funds.

● *Property Management*. OIG will review IHS's internal controls for property management and equipment monitoring.

● *IT Security*. OIG will review improvements by IHS to its applications and network infrastructure to ensure that IT security controls are in place.

● *TANF: ACF Oversight of Work Participation and Verification Requirements.* TANF provides assistance and work opportunities to needy families by granting States Federal funds with the flexibility to tailor welfare programs to State needs. OIG will review ACF's oversight of States' compliance with the TANF program's participation requirements. OIG will assess ACF's oversight of tribes' compliance with the Tribal Family Assistance Plan requirements under TANF.

Additional initiatives may be added during the year to address emerging issues.

C. COMPLETED INVESTIGATIONS

The Office of Investigations (OI) investigates alleged fraud, waste, and abuse against HHS's programs; operations; and beneficiaries, including those of IHS. OI coordinates with the Department of Justice and other law enforcement partners to conduct these investigations. While OI generally concentrates its resources on investigations, which can result in criminal convictions, the imposition of civil monetary penalties, or administrative sanctions, OI's activities are also aimed at deterring fraud, waste, and abuse within IHS and the tribal programs by identifying systemic weaknesses and vulnerabilities that can be mitigated through corrective management actions, regulation, or legislation.

From 2001 through 2010, OI opened 288 investigations relating to or affecting IHS. Many of these cases also involved allegations of Medicare or Medicaid fraud. Of these

288 investigations, 118 led to criminal prosecution. Through these investigations, OI identified five general areas of vulnerability that threaten IHS, as well as Medicare and Medicaid, program integrity. These are (1) employee misconduct, (2) drug diversion, (3) tribal enrollment fraud, (4) fraud related to tribal 638 programs, and (5) Medicare or Medicaid reimbursement fraud.

1. Employee Misconduct

OI investigations led to numerous criminal convictions of IHS employees involved in schemes to defraud IHS, Medicare, or Medicaid. Several cases involved IHS employees who embezzled program funds by misusing Government-issued credit cards or otherwise converting program funds for personal gain. In addition, OI investigated more complicated cases of fraud, including one in South Dakota in which an IHS employee and two others were sentenced to prison terms exceeding 1year and were ordered to pay total restitution of more than $225,000 to IHS and to a tribal clinic for contract fraud and payment of kickbacks. Specifically, the employee improperly directed IHS contracts to a contractor which, in turn, paid kickbacks back to the employee and a relative in the form of cash and employment.

2. Drug Diversion

Another area of concern is the IHS pharmacy program, which is vulnerable to drug diversion and trafficking by IHS employees, contract providers, beneficiaries, and others. The rural isolation of many IHS facilities and the black market value of controlled substances contribute to the appeal of these crimes. OIG recognizes controlled substance abuse to be one of the most serious threats to the safety and integrity of IHS facilities and programs and to the health of the AI/AN population. OI identified several cases in which medical staff were involved in conspiracies to illegally obtain controlled substances kept in IHS facilities.

For example, in 2011, one pharmacy technician employed at an IHS hospital in North Dakota was sentenced on the basis of his guilty plea to charges of acquisition of a controlled substance by misrepresentation and conspiracy to possess with intent to distribute a controlled substance. This former IHS employee was sentenced to 3 years' probation, home confinement, community service, and restitution to IHS for the cost of stolen hydrocodone. As a result of this investigation, three other individuals were convicted of conspiracy to possess with intent to distribute a controlled substance and received various sentences ranging from probation to several years of incarceration. In other cases, medical staff illegally diverted drugs from IHS facilities for their own use or for purposes of trafficking. For example, in Montana, a nurse practitioner employed by IHS wrote medically unnecessary prescriptions for controlled substances. The patients, some of whom were also employees of IHS, then filled the prescriptions at the IHS pharmacy and returned the drugs to the nurse practitioner in exchange for cash. Seven defendants were sentenced to various terms of incarceration and probation.

3. Tribal Enrollment Fraud

IHS provides health care to individuals belonging to federally recognized Indian tribes. The availability of free health care at IHS facilities can create an incentive for fraudulent enrollment as a member of a federally recognized tribe. For this reason, OI also investigates allegations of such fraud. For example, in South Dakota, an attorney, who was also a former tribal judge, was sentenced to 3 months' incarceration and ordered to pay $9,000 in restitution to IHS for falsely claiming to be an enrolled tribal member to obtain free health services at an IHS facility.

4. 638 Program Fraud

Because programs authorized under ISDEAA, or "638 programs" (as discussed in the "Background" section), involve HHS program dollars, OI investigates alleged fraud in the operations of 638 contracts and compacts. Misappropriation of 638 funds in particular can have a direct negative impact on program beneficiaries, as vital and limited resources are improperly directed away from needed services. As an example of OI's efforts in this area, in 2006, the Navajo Nation entered into an agreement with the U.S. Government to settle False Claims Act and breach of contract claims regarding the Navajo Nation's construction of a permanent treatment facility. Pursuant to the Navajo Nation's funding agreement with IHS, certain funds were available only for providing health services, not for constructing permanent buildings. However, IHS authorized the use of 638 health-related funds for constructing a temporary, or modular, facility for providing allowable health services. After construction was nearly complete, IHS discovered that the tribe had instead constructed a permanent facility. IHS also learned, after further investigation, that the tribe had intentionally misled IHS during negotiations and never intended to build a modular facility. The U.S. Attorney's Office in Arizona and OIG negotiated a settlement with the Navajo Nation that resolved the False Claims Act case and breach of contract claim. The tribe agreed to settle the matter for $1.6 million.

On April 24, 2009, the ex-governor of the Passamaquoddy Tribe, Indian Township, was sentenced to a 60-month prison term for conspiring to misappropriate more than $1.7 million in restricted Federal funds, including approximately $500,000 from HHS (including funds awarded to the tribe's Health Center, the substance abuse program, and the HIV prevention program). The sentencing followed his November 20, 2008, conviction on 29 counts, including misappropriation of Medicaid reimbursements.

5. Medicare and Medicaid Fraud

As discussed in the "Background" section, IHS and tribal 638 facilities are authorized by Congress to collect reimbursement from Medicare and Medicaid for services provided to AI/ANs who are Medicare or Medicaid beneficiaries. These facilities are required to follow reimbursement requirements, as are any non-IHS and nontribal health care providers. OI has successfully investigated alleged Medicare or Medicaid fraud. For

example, an IHS-operated facility paid approximately $245,000 to Medicaid and more than $63,000 to Medicare for overpayments received for services performed by an unlicensed and uncertified physician's assistant (PA) employed at the facility. The State's Medicaid program requires a PA to be licensed in the State. The PA did not have a South Dakota PA license, and the PA's certification had expired. Consequently, the contract with the PA was terminated.

D. CONCLUSION

OIG continues to provide oversight of IHS and stands ready to assist IHS and the tribes in providing robust stewardship of Federal funds. OIG is aware that many IHS beneficiaries are also Medicare and Medicaid beneficiaries and plans to increase its focus on the convergence of IHS with CMS programs as a vital source of health care to AI/ANs. OIG is also continuing to look at other HHS programs that provide vital health care and social services to AI/ANs. OIG is committed to working with all the components of HHS to protect and strengthen HHS programs serving all native and tribal people.