

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**THREE TRIBES IN NEW
ENGLAND AND THEIR HEALTH
PROGRAMS DID NOT CONDUCT
REQUIRED BACKGROUND
INVESTIGATIONS ON ALL
INDIVIDUALS IN CONTACT WITH
INDIAN CHILDREN**

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Inspector General

November 2022
A-01-20-01504

Office of Inspector General

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Report in Brief

Date: November 2022

Report No. A-01-20-01504

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

Congress passed the Indian Child Protection and Family Violence Prevention Act (the Act), which established requirements for Federal Bureau of Investigation (FBI) fingerprint background investigations for individuals in contact with Indian children. In 2018, we completed two health and safety audits of Tribes and their health programs and found that they did not comply with Federal requirements to perform FBI fingerprint background investigations for employees in contact with Indian children. In this audit, we evaluate the background investigation process for individuals who had contact with Indian children through the health programs of the Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Indian Township, and Narragansett Indian Tribe.

Our objective was to determine whether three Tribes in New England and their health programs complied with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children.

How OIG Did This Audit

We reviewed the background investigation process and documentation at three Tribal health programs for 65 employees, 12 contractors, and 1 volunteer in contact with Indian children for the period October 1, 2018, through December 31, 2019. In addition, we reviewed training and technical assistance provided by IHS to Tribes regarding background investigations.

Three Tribes in New England and Their Health Programs Did Not Conduct Required Background Investigations on All Individuals in Contact With Indian Children

What OIG Found

The three Tribes and their health programs did not comply with Federal and Tribal requirements for performing background investigations on 65 employees, 12 contractors, and 1 volunteer in contact with Indian children. Specifically, the three Tribes did not conduct FBI fingerprint background investigations and compare the results to the required character standards for individuals in contact with Indian children. Indian Health Service (IHS) officials stated that they recalled providing background investigation training prior to 2015 but could not produce documentation to support their recollections. Despite the training that IHS officials informed us about, current Tribal officials said they were not aware of, or misinterpreted, their obligations under the Act. Because the three Tribes and their health programs did not always collect the necessary employment information and did not conduct the required criminal history investigations, they could not compare complete criminal history results to the minimum standards of character for individuals in contact with Indian children. As a result, Indian children faced an increased risk of harm.

What OIG Recommends and Auditee Comments

We recommend that the three Tribes: (1) perform background investigations, as required by the Act, on individuals who currently have contact with Indian children; and (2) develop and implement policies and procedures to ensure that each Tribe conducts required background investigations and assesses results to verify that applicants meet the required minimum character standards. We also recommend that IHS provide additional training and technical assistance to help Tribes comply with the background investigation and character assessment requirements of the Act.

In written comments on our draft report, two of the Tribes concurred with our findings and the third generally concurred with our findings. All three Tribes indicated that they had taken steps to implement or were in the process of implementing procedures to perform background investigations, as required by the Act, on individuals who are in contact with Indian children. In addition, IHS concurred with our recommendations and outlined the steps it would take to help Tribes comply with the requirements.

TABLE OF CONTENTS

INTRODUCTION	1
Why We Did This Audit	1
Objective	1
Background	2
The Department of Health and Human Services’ Partnership With American Indians and Alaska Natives To Promote the Protection of Indian Children	2
Indian Health Service	3
Health Programs Operated by the Three Tribes.....	4
Office of Inspector General Early Alert Memorandum	5
How We Conducted This Audit	7
FINDINGS.....	8
The Three Tribes and Their Health Programs Did Not Meet Federal or Tribal Requirements for Background Investigations for Individuals in Contact With Indian Children	9
Federal and Tribal Requirements	9
The Houlton Band of Maliseet Indians Did Not Meet Federal or Tribal Requirements for Conducting Background Investigations.....	11
The Passamaquoddy Tribe at Indian Township Did Not Meet Federal or Tribal Requirements for Conducting Background Investigations.....	12
The Narragansett Indian Tribe Did Not Meet Federal or Tribal Requirements for Conducting Background Investigations.....	12
The Three Tribes Were Unaware of, or Misinterpreted, the Background Investigation Requirements for Individuals in Contact With Indian Children	13
RECOMMENDATIONS	14
AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE	15
The Houlton Band of Maliseet Indians Comments.....	16
Office of Inspector General Response	16
The Passamaquoddy Tribe at Indian Township Comments	17

The Narragansett Indian Tribe Comments	17
Indian Health Service Comments.....	17
OTHER MATTERS.....	18
APPENDICES	
A: Audit Scope and Methodology	19
B: Early Alert Memorandum.....	21
C: IHS Response and Tribal Leader Letter	26
D: Tribal Policies and Procedures	30
E: Houlton Band of Maliseet Indians Comments	31
F: Passamaquoddy Tribe at Indian Township Comments	32
G: Narragansett Indian Tribe Comments	34
H: Indian Health Service Comments.....	36

INTRODUCTION

WHY WE DID THIS AUDIT

The Indian Health Service's (IHS's) mission is to partner with American Indians and Alaska Natives to elevate their physical, mental, social, and spiritual health to the highest level possible. A primary goal of IHS is to ensure that comprehensive, culturally acceptable personal and public health services are available and accessible to its beneficiaries. Congress has expressed concerns about safeguards for Indian children and passed the Indian Child Protection and Family Violence Prevention Act (the Act), which established requirements for Federal Bureau of Investigation (FBI) fingerprint background investigations of individuals in contact with Indian children.¹

In 2018, we completed two health and safety audits of Tribes and their health programs.^{2,3} We found that the two Tribes did not comply with Federal requirements to perform FBI fingerprint background investigations for employees in contact with Indian children. This placed the children served by these programs at an increased risk of harm. In this audit, we evaluate the background investigation process for individuals who had contact with Indian children at three Tribal health programs in New England.⁴

OBJECTIVE

Our objective was to determine whether three Tribes in New England and their health programs complied with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children.

¹ In this report, we use the term "in contact with Indian children" to refer to individuals whose positions involve regular contact with or control over Indian children.

² *The Passamaquoddy Tribe's Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements* (A-01-17-01500) is available at <https://oig.hhs.gov/oas/reports/region1/11701500.pdf>. *Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements* (A-01-17-01502) is available at <https://oig.hhs.gov/oas/reports/region1/11701502.pdf>.

³ In this report, "Tribes and their health programs" refers to multiple entities within a Tribal organization that are involved in background investigations and the hiring of applicants, including the Tribal Government, human resources department, Tribal law enforcement, and health program. Tribes and their health programs receive Indian Self-Determination and Education Assistance Act (ISDEAA) funds from IHS to administer their health services.

⁴ The Houlton Band of Maliseet Indians (HBMI), Passamaquoddy Tribe at Indian Township, and Narragansett Indian Tribe each administer one of the three Tribal health programs.

BACKGROUND

The Department of Health and Human Services' Partnership With American Indians and Alaska Natives To Promote the Protection of Indian Children

The mission of IHS, which is within the Department of Health and Human Services (HHS), is to partner with American Indians and Alaska Natives to elevate their physical, mental, social, and spiritual health to the highest level possible. A primary goal of IHS is to ensure that comprehensive, culturally acceptable personal and public health services are available and accessible to its beneficiaries. IHS's role is to "provide health promotion and disease prevention services to Indians" to "ensure the highest possible health status for Indians and . . . to provide all resources necessary to effect that policy" (25 U.S.C. §§ 1621b(a) and 1602(1)).

In 1975, Congress recognized the importance of Tribal decision making in Tribal affairs and the nation-to-nation relationship between the United States and Tribes through the passage of the Indian Self-Determination and Education Assistance Act (ISDEAA). Under Title I of the ISDEAA, federally recognized Tribes can contract with IHS for funding to administer health care programs and services that IHS would otherwise provide.⁵ The ISDEAA gives IHS limited authority to oversee Tribal health programs.

In 1990, after a careful review of the problem of child abuse on Indian reservations, Congress passed the Act (25 U.S.C. § 3201(a)(1)). The Act required IHS to promulgate minimum standards of character for individuals working or volunteering in IHS and Tribal health programs who are in contact with Indian children.⁶

The Act and IHS's implementing regulations require Tribes that receive ISDEAA funds from IHS to conduct an investigation of the character of each individual in contact with Indian children (42 CFR § 136.404(b)). Individuals include contractors, volunteers, employees, and those being considered for these roles (42 CFR § 136.403).

An investigation of character must include a criminal history background investigation, which includes an FBI fingerprint background investigation (42 CFR § 136.406(b)). Tribes may obtain FBI fingerprint background investigations through State identification bureaus, FBI-approved channelers, the Department of Justice Tribal Access Program, or by submitting hardcopy

⁵ The ISDEAA agreements are often referred to as P.L. 638 contracts, and Tribes that are parties to these contracts are referred to as "P.L. 638 Tribes" and "Tribal health programs."

⁶ Federal regulations and Tribal policies define character standards relative to specific disqualifying felonies and misdemeanors. Disqualifying offenses for each applicable regulation are described in the Federal and Tribal Requirements section of this report and Appendix D.

fingerprint cards to the FBI.⁷ An FBI fingerprint background investigation accesses criminal history records voluntarily provided by Federal, State, and local jurisdictions. It provides positive identification and eliminates the false positives and false negatives associated with name-based investigations, and it provides additional criminal record history that may not be maintained by the State where a Tribe's reservation is located.⁸

Additionally, Tribes must make inquiries of an applicant's criminal history to State and Tribal law enforcement for the previous 5 years of residency listed on an individual's employment application (42 CFR § 136.406(b)). If an applicant has a pending arrest, a Tribe must research the final outcome of that charge when evaluating the individual's criminal history (42 CFR § 136.406(b)).

The Tribe must compare the results of these criminal history verifications to IHS's minimum character standards (42 CFR § 136.406(c)). A Tribe may determine its own standards of character; however, these standards must be no less stringent than IHS's minimum character standards (42 CFR § 136.408(c)). Tribes may not place individuals who do not meet IHS's minimum standards in a position that is in contact with Indian children (42 CFR § 136.404(b)).

Indian Health Service

IHS is organized into 12 Area Offices that provide service, support, and guidance to Tribes in their respective regions. The strategic goals of IHS include: (1) ensuring that comprehensive and culturally appropriate personal and public health services are available and accessible to American Indian and Alaska Native people, (2) promoting excellence and quality through innovation of the Indian health system into an optimally performing organization, and (3) strengthening IHS program management and operations.

Congress declared that it is the policy of the Nation, in fulfillment of its special trust relationship to Indians, to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy (25 U.S.C. § 1602(1)).⁹ The HHS Secretary, acting through IHS, must provide health promotion and disease prevention services to Indians to achieve the health status objectives set forth in law (25 U.S.C. § 1621b (a)), and IHS will "provide health promotion and disease prevention services to Indians" to "ensure the highest

⁷ An FBI-approved channeler is a contractor that serves as the conduit for submitting fingerprints to the FBI and receiving FBI criminal history record information on behalf of, and for forwarding to, an authorized recipient.

⁸ False positives can occur when a name check identifies a criminal history record for an individual that has a similar name and biographic identifiers. False negatives can occur when a name check fails to identify the criminal history record of an individual who provides inaccurate biographic information either at the time of arrest or when applying for a job, such as a false name and/or date of birth, or a false negative can occur due to misspellings or other such errors.

⁹ This concept is incorporated in the *Indian Health Manual*: IHS aims to elevate "the health status of the Indian and Alaska Native to the highest possible level" (*Indian Health Manual*, part 1, chapter 3, §§ 1–3.4 (A)).

possible health status for Indians and . . . to provide all resources necessary to effect that policy” (25 U.S.C. §§ 1621b and 1602).

IHS partners with Tribes to help them, as sovereign nations, achieve their health care objectives. IHS accomplishes its goals by: (1) negotiating periodic agreements with Tribes for health services to be rendered, (2) providing funding for the Tribal health programs, and (3) providing training and technical assistance to Tribes.¹⁰ During our audit period, the ISDEAA generally limited IHS site visits to once every contracting period.¹¹ A contracting period normally lasts 3 years. In addition, IHS provides input to Tribes based on its reviews of its annual single audits.¹² These audits generally focus on financial rather than programmatic issues.

Health Programs Operated by the Three Tribes

The three Tribal health programs are administered under Title I of the ISDEAA by the Houlton Band of Maliseet Indians (HBMI), the Passamaquoddy Tribe at Indian Township (Passamaquoddy Tribe), and the Narragansett Indian Tribe (Narragansett Tribe).

HBMI—a Tribe in Houlton, Maine—operates the HBMI Health and Wellness Center that serves a Tribal community of approximately 1,700 members, including approximately 792 children. HBMI does not have Tribal law enforcement on its reservation; however, human resources personnel coordinate background investigations and, along with the Tribal Administrator, evaluate the character of each Tribal health program applicant based on criminal history records. In addition to the health program, the Tribe operates a Head Start program on Tribal land.¹³

¹⁰ The three Tribes in this review are classified as Title I, under the ISDEAA, that use annual funding agreement with IHS to fund their health services.

¹¹ Congress amended the ISDEAA to allow two site visits per contract with the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019, § 205, P.L. No. 116—180 (enacted Oct. 21, 2020).

¹² A Single Audit, previously known as the OMB Circular A-133 Audit, is an organizationwide financial statement and Federal awards audit of a non-Federal entity that expends \$750,000 or more in Federal funds in 1 year. It is intended to provide assurance to the Federal Government that a non-Federal entity has adequate internal controls in place and is generally in compliance with program requirements.

¹³ Head Start programs promote school readiness to children and have a focus on family well-being. Prior to employment, each prospective Head Start applicant must receive an FBI fingerprint background check.

The Passamaquoddy Tribe in Princeton, Maine, operates a Tribal health program that serves a Tribal community of approximately 1,543 members, including approximately 248 children.¹⁴ For the Tribal health program, the Passamaquoddy Tribe’s law enforcement coordinates background investigations and human resources personnel evaluate the character of each applicant based on criminal history records. In addition to the health program, the Tribe operates day care, youth, recreation, and education programs on the Indian Township Reservation.

The Narragansett Tribe in Charlestown, Rhode Island, operates a Tribal health program that serves a Tribal community of approximately 3,071 members, including approximately 720 children. For the Tribal health program, the Narragansett Tribe’s law enforcement coordinates background investigations and human resources personnel evaluate the character of each applicant based on criminal history records. In addition to the health program, the Tribe operates the Hand-In-Hand Child Care Center and has a Tribal Youth Council.

The IHS Nashville Area Office provides services to the three Tribal health programs we audited. Each of the three Tribal health programs operates a standalone health facility that provides medical and behavioral health services on an outpatient basis and referrals for specialty care at external health facilities. The Title I contracts and funding agreements with IHS outline the scope of health services each program provides. Each health program receives its primary funding through an annual funding agreement with IHS and supplemental revenue from third-party payers—such as Medicaid, Medicare, and private insurance companies—for providing care to eligible members of the Tribal community. The leadership for each Tribe consists of a chief or chief sachem and a Tribal council whose members are elected for varying terms by members of the community.¹⁵

Office of Inspector General Early Alert Memorandum

In August 2020, we issued an Early Alert memorandum to IHS with our preliminary findings indicating a vulnerability in that two of three health programs at Tribes in New England examined in this current audit were not meeting Federal or Tribal requirements to perform FBI

¹⁴ In the United States, the Passamaquoddy Tribe resides on two separate reservations in Maine: Indian Township and Pleasant Point. Each reservation has its own distinct Tribal Government. Each Tribal Government separately contracts with IHS under Title I of the ISDEAA to operate a health program located on its reservation. In our prior audit, we reviewed the Passamaquoddy Pleasant Point Health Center; our current audit reviews the Passamaquoddy at Indian Township Health Center.

¹⁵ A chief sachem is a North American Indian chief or chief of a confederation of Tribes.

fingerprint background investigations for individuals in contact with Indian children.^{16, 17} Subsequently, in September 2020 IHS issued a letter to Tribal leaders of the federally recognized Tribes that notified the leaders of the vulnerability identified in the Early Alert and called for each Tribe's immediate attention and response. The letter informed the Tribes of the Federal requirements and the Tribes' responsibility for conducting satisfactory background investigations on individuals in contact with Indian children.¹⁸ In addition, the letter directed each IHS Area Office to initiate meetings with all Tribes to: (1) inform them of the Federal legal requirements to conduct the background investigations and (2) identify technical assistance or resources that IHS might be able to provide to Tribes on the background investigation requirements. Furthermore, the letter requested that IHS Area Directors identify best practices for protecting the safety and security of Indian children, and collect and share this information with all participants in the IHS health system.¹⁹ (Appendix B contains the Early Alert memorandum, and Appendix C contains the IHS response and the Tribal Leader letter.)

Actions taken by IHS Area Directors in response to this letter included the following:

- In September 2020, the IHS Oklahoma Area Office, in conjunction with the FBI and OIG, offered training to 43 Tribes within the service area on the Federal background investigation requirements and procedures for conducting FBI fingerprint investigations. In addition, the IHS Oklahoma Area Office provided the Tribes with a summary of the preliminary findings reported in the August 2020 Early Alert memorandum.
- Several IHS Area Offices proposed and updated language in Tribal contracts and compacts emphasizing the background investigation requirements for individuals in contact with Indian children.

¹⁶ When the Early Alert was issued in August 2020, we reported that one Tribe maintained that it was currently meeting the Federal background investigation requirements, but we were unable to confirm this at the time the Early Alert was issued. After the issuance of the Early Alert, we identified that this same Tribe was not performing background investigations according to Federal requirements; thus, all three Tribes were not meeting Federal background investigation requirements.

¹⁷ *Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children* (A-01-20-01500) is in Appendix B and available at <https://www.oig.hhs.gov/oas/reports/region1/12001500.pdf>.

¹⁸ A satisfactory background investigation requires the collection of information about an applicant's previous 5 years of residency, completion of an FBI fingerprint background check, and inquiries to State and Tribal law enforcement about the previous 5 years of residency. The results of the investigation must be compared to the minimum standards of character as defined in the Act to determine whether an individual meets these requirements.

¹⁹ The IHS Tribal Leaders letter is available in Appendix C and online at https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2020_Letters/DTLL_09_252020.pdf. Accessed on April 26, 2022.

HOW WE CONDUCTED THIS AUDIT

We reviewed the background investigation process and documentation at three Tribal health programs for 65 employees, 12 contractors, and 1 volunteer in which the Tribes determined these individuals were in contact with Indian children for the period October 1, 2018, through December 31, 2019, to test compliance with Federal and Tribal requirements for screening these individuals.^{20, 21} Specifically, we reviewed documentation to determine whether Tribes and their health programs: (1) conducted fingerprint FBI criminal history background investigations, (2) collected for job applications the applicants' prior 5 years of residency, (3) made inquiries to State and Tribal law enforcement agencies about the applicants' previous 5 years of residency, (4) compared the criminal history results against the minimum standards of character, and (5) reviewed available criminal history reports to determine whether individuals met the required minimum standards of character. In addition, we interviewed IHS staff and reviewed documentation to identify training and technical assistance provided to the Tribes pertaining to the background investigation process for individuals in contact with Indian children served by the Tribal health programs.

We have addressed this report to the three Tribes and IHS. In addition to the Tribes' roles and responsibilities to safeguard Indian children in their care, IHS has a fundamental role in ensuring the health and safety of Indian children. Specifically:

- IHS's mission to promote the health of all American Indians and Alaska Natives to the highest level includes training and technical assistance for Tribes relating to health and safety issues, such as the Federal requirement of an FBI fingerprint background investigation for individuals in contact with Indian children;
- Congress requested IHS to promulgate the character standards for individuals in contact with Indian children; and
- IHS represents the unique, primary funding and communications conduit between the Federal Government and Tribes for health services.

We conducted this performance audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

²⁰ We selected the three Tribal health programs for this audit based on a number of factors including location, program size, and the population served.

²¹ We reviewed background investigation documentation for individuals in contact with Indian children at HBMI for 14 employees and 2 contractors; the Passamaquoddy Tribe for 38 employees, 6 contractors, and 1 volunteer; and the Narragansett Tribe for 13 employees and 4 contractors.

Appendix A contains our audit scope and methodology.

FINDINGS

The three Tribes and their health programs did not comply with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children.²² Specifically, we found for the 65 employee background investigations we reviewed that the three Tribes and their health programs did not:

- include on their employment applications a place for an applicant to provide information about the prior 5 years of residency for 54 of the 65 employees, and
- conduct FBI fingerprint background investigations using FBI-approved procedures for any of the 65 employees.

In addition, HBMI and the Passamaquoddy Tribe did not conduct the required State or Tribal law enforcement investigations of 36 employees, and HBMI did not collect on employment applications for 14 employees their information about criminal history records involving children.²³

HBMI and the Passamaquoddy Tribe did not ensure that two contractors they hired through agencies had the required background investigations. The Narragansett Tribe obtained background investigation results for three contractors hired through an agency; however, it did not compare the results of those investigations to the character standards of the Act. Furthermore, the three Tribes and their health programs did not provide evidence that the required background investigations were performed on seven other independent contractors.²⁴ The Passamaquoddy Tribe did not perform the required background investigations on a volunteer.

IHS officials stated that they recalled providing background investigation training prior to 2015 but could not produce documentation to support their recollections. Despite the training that

²² Individuals include employees, contractors, and volunteers in contact with Indian children. Tribal health programs rely on contractors and volunteers because the Tribes are in remote locations and have difficulties recruiting staff.

²³ HBMI applied section 231 of the Crime Control Act of 1990 (P.L. No. 101-647) as additional criteria to determine whether an individual is suitable for a position involving the provision to children under the age of 18 of health and human services. This included the requirement that employment applications must contain a question asking whether the applicant has ever been arrested for, or charged with, a crime involving a child and, if so, requiring an explanation of the disposition of the arrest or charge.

²⁴ In contrast to contractors hired through an agency, an independent contractor is a self-employed person or entity contracted to perform work for—or provide services to—another entity as a nonemployee.

IHS officials informed us about, current Tribal officials said they were not aware of, or misinterpreted, their obligations under the Act.

Because the three Tribes and their health programs did not always collect the necessary information about individuals' 5-year history of residency and did not conduct the required criminal history investigations, they could not compare complete criminal history results to the minimum standards of character for individuals in contact with Indian children. As a result, Indian children faced an increased risk of harm.

THE THREE TRIBES AND THEIR HEALTH PROGRAMS DID NOT MEET FEDERAL OR TRIBAL REQUIREMENTS FOR BACKGROUND INVESTIGATIONS FOR INDIVIDUALS IN CONTACT WITH INDIAN CHILDREN

Federal and Tribal Requirements

All Indian Tribes or Tribal organizations that receive funds under the authority of the ISDEAA must identify those positions in contact with Indian children, conduct an investigation of the character of each individual who is employed or is being considered for employment in a position in contact with Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed by regulations in this subpart (42 CFR § 136.404 (b)).

The minimum standards of character are a benchmark of moral, ethical, and emotional strengths established by character traits and past conduct to ensure that the individual is competent to complete his or her job without harm to Indian children. In order to protect Indian children, IHS has established minimum standards of character so that no individuals who have been found guilty of, or entered a plea of no contest or guilty to, any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children are placed in positions in contact with Indian children (42 CFR § 136.405).

The minimum standards of character are considered met only after the individual has been the subject of a satisfactory background investigation consisting of the following (42 CFR § 136.406):²⁵

- a criminal history background investigation, which includes a fingerprint submission through the Criminal Justice Information Services Division of the FBI, under procedures

²⁵ A satisfactory background investigation requires the collection of the previous 5 years of residency information and the completion of a criminal history background investigation. The results of the investigation must be compared against the minimum standards of character as defined in the Act to determine whether an individual meets these requirements.

approved by the FBI, and inquiries to State and Tribal law enforcement agencies for the previous 5 years of residency listed on an individual's application; and

- a determination as to whether an individual has been found guilty of, or entered a plea of no contest or guilty to, any felonious offenses or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes or violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

Tribes or Tribal organizations may, but are not required to, apply additional criteria to determine whether an individual is suitable for a position involving duties and responsibilities that involve contact with Indian children. Any additional suitability criteria established by Tribes or Tribal organizations beyond the minimum standards of character are determined by each Tribe or Tribal organization in accordance with its personnel policies and procedures (42 CFR 136.408 (c)).

The 1990 Crime Control Act requires the following:

- Employment applications must contain a question asking whether the individual has ever been arrested for, or charged with, a crime involving a child and, if so, requiring an explanation of the disposition of the arrest or charge. The application must state that it is being signed under penalty of perjury with the applicable Federal punishment for perjury stated on the application.
- Each applicant must receive an FBI fingerprint background investigation.
- Any conviction for a sex crime, an offense involving a child victim, or a drug felony may be grounds for denying employment or for the dismissal of an employee.²⁶

The policies and procedures for the Passamaquoddy Tribe and the Narragansett Tribe state that individuals in contact with Indian children must meet IHS's character standards. The policies and procedures of HBMI require more stringent character standards for individuals in contact with Indian children than those prescribed in the Act. In addition to the character standards identified in the Act, applicants for positions with HBMI must meet additional standards of the 1990 Crime Control Act. Those standards require HBMI to obtain supplemental information about an applicant's criminal background and disqualifying offenses in addition to those specified in the Act. (See Appendix D for Tribe-specific policies and procedures related to background investigations.)

²⁶ Tribes may adopt more stringent character standards than the IHS standards. Of the three Tribes in this review, HBMI was the only Tribe that adopted more stringent character standards. Specifically, it adopted the requirements of the 1990 Crime Control Act for background investigations.

The Houlton Band of Maliseet Indians Did Not Meet Federal or Tribal Requirements for Conducting Background Investigations

HBMI and its health program did not comply with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children. Specifically, we reviewed the employment documentation for 14 employees and found HBMI and its health program did not:

- include on employment applications a place to provide their prior 5 years of residency history for 3 of the 14 employees,²⁷
- conduct FBI fingerprint background investigations using FBI-approved procedures for any of the 14 employees, and
- conduct State and Tribal law enforcement investigations for 6 of the 14 employees.

In addition, HBMI and its health program did not request on employment applications for 14 employees that they provide information about criminal history records involving children. We determined that 1 of these 14 employees had a felony conviction in a State other than Maine, where the reservation is located. HBMI did not conduct an FBI fingerprint background investigation and limited the applicant's background investigation to the State of Maine. Because the Tribe did not conduct an FBI fingerprint background investigation, it did not know about the felony conviction and hired this individual who did not meet the Tribe's character standards.

In addition, HBMI and its health program did not comply with Federal and Tribal requirements for performing background investigations on two contractors who were in positions that involve regular contact with Indian children. Specifically, for one contractor hired through an agency, HBMI and its health program did not provide evidence that they received and reviewed all required background investigation results from the agency. Furthermore, for an independent contractor, HBMI performed a biographical background investigation through the State of Maine; however, it did not conduct an FBI fingerprint background investigation or collect the prior 5 years of residency to make the necessary inquiries to State and Tribal law enforcement agencies.²⁸

²⁷ In its written comments on our draft report, HBMI stated that it collects the prior 5 years of residency on a consent for background check form during the interview and onboarding process. HBMI provided us with this form for 11 of the 14 employees in our audit, and we confirmed the forms included a place for the applicants to provide information about the prior 5 years of residency.

²⁸ A biographical criminal background investigation involves verification of an individual's criminal history using only the applicant's name and other personal identifying data, such as date of birth or Social Security number. Fingerprinting is not used in biographical criminal background verification.

The Passamaquoddy Tribe at Indian Township Did Not Meet Federal or Tribal Requirements for Conducting Background Investigations

The Passamaquoddy Tribe and its health program did not comply with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children. Specifically, we reviewed the employment documentation for 38 employees and found the Passamaquoddy Tribe and its health program did not:

- include on its employment application a place for providing the prior 5 years of residency history for any of the 38 employees,
- conduct FBI fingerprint background investigations using FBI-approved procedures for any of the 38 employees, and
- conduct State and Tribal law enforcement investigations for 30 of the 38 employees.

In addition, the Passamaquoddy Tribe and its health program did not comply with Federal and Tribal requirements for performing background investigations on six contractors and one volunteer who were in positions that involved regular contact with Indian children. Specifically, for one contractor hired through an agency, the Passamaquoddy Tribe and the health center did not provide evidence that they requested and reviewed all background investigation results from the agency. Furthermore, for five independent contractors, the Passamaquoddy Tribe did not conduct FBI fingerprint background investigations or collect the prior 5 years of residency history for making the necessary inquiries to State and Tribal law enforcement agencies. The Passamaquoddy Tribe also had one volunteer who was in a position that involved regular contact with Indian children, but the Tribe did not perform the required background investigations for this individual.

The Narragansett Indian Tribe Did Not Meet Federal or Tribal Requirements for Conducting Background Investigations

The Narragansett Tribe and its health program did not comply with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children. Specifically, we reviewed the employment documentation for 13 employees and found the Narragansett Tribe and its health program did not:

- include on their employment applications a place for applicants to provide the prior 5 years of residency for any of the 13 employees, and
- conduct FBI fingerprint background investigations using FBI-approved procedures for any of the 13 employees.

For these employees, the Narraganset Tribe conducted biographical State and nationwide background investigations through the Rhode Island State Police. However, these investigations were not substitutes for FBI fingerprint background investigations and collecting the prior 5 years of residency history for making the necessary inquiries to State and Tribal law enforcement agencies.

In addition, the Narragansett Tribe and its health program did not comply with Federal and Tribal requirements for performing background investigations on four contractors who were in positions that required regular contact with Indian children. Through the Rhode Island Attorney General's Office, the Narragansett Tribe and its health program received results from a contracting agency for three contractors who were subject to fingerprint background investigations. However, the results included only a statement that the individuals did not have disqualifying information. The Narragansett Tribe compared the results to requirements in Rhode Island statutes rather than the requirements of the Act's implementing regulation.²⁹ The fourth contractor was an independent contractor for whom the Narragansett Tribe performed a biographical background investigation more than 6 years after the date of hire. That background investigation identified that the person did not meet the required minimum character standards for individuals in contact with Indian children.³⁰ In addition, for this independent contractor the Narragansett Tribe neither provided evidence that it conducted the required FBI fingerprint background investigation nor that it requested and reviewed the prior 5 years of residency history by making the necessary inquiries to State and Tribal law enforcement agencies.

The Three Tribes Were Unaware of, or Misinterpreted, the Background Investigation Requirements for Individuals in Contact With Indian Children

The three Tribes and their health programs did not conduct the required FBI fingerprint background investigations and did not always request and review the prior 5 years of residency by making the necessary inquiries to State and Tribal law enforcement because, according to the Tribal personnel involved in the background investigation processes, they were unaware of, or misinterpreted, the background investigation requirements for individuals in contact with Indian children. In addition, the Tribes' policies and procedures lacked the specific details necessary to ensure that Tribal officials were aware of and understood the requirements of the Act. For example, none of the Tribes' policies and procedures contained sufficient detail on the process for conducting inquiries to State and Tribal law enforcement and FBI fingerprinting to ensure that background investigations were conducted using FBI-approved procedures. Two of the Tribes' policies and procedures did not require that: (1) the applicants provide them with

²⁹ The applicable Rhode Island State statutes are RI GL 23-1-52, 23-17-34, and 23-17-62. The Rhode Island statutes define character standards as well as the number and severity of offenses differently than the Act for disqualifying crimes. The Rhode Island statutes would disqualify people for offenses that would not be disqualifying under the Act and, more concerning, would not disqualify an individual for some offenses for which they would be disqualified under the Act.

³⁰ The disqualifying offenses were two misdemeanor crimes of violence.

the prior 5 years of residency on their applications and (2) the Tribes conduct the necessary inquiries with State and Tribal law enforcement agencies.

In April 2016, the IHS Nashville Area Office provided training to the Tribes that focused on credentialing and privileging requirements.³¹ IHS stated that the training included peer referencing and primary and secondary source verification; however, IHS stated that these are additional steps that do not replace the fingerprint and background investigation requirements of the Act. In addition, IHS officials stated they recalled providing background investigation training prior to 2015 but could not produce documentation to support their recollections. Despite the training that IHS officials informed us about, current Tribal officials told us they were not aware of, or misinterpreted, their obligations under the Act.

Because the three Tribes and their health programs did not always collect the necessary information from the individuals on their residencies or conduct the required criminal history investigations, they could not compare complete criminal history results to the minimum standards of character for individuals in contact with Indian children. As a result, Indian children faced an increased risk of harm.

RECOMMENDATIONS

We recommend that the Houlton Band of Maliseet Indians:

- perform background investigations, as required by the Act, on individuals who currently have contact with Indian children and determine whether the individuals meet the required minimum character standards;
- develop and implement policies and procedures that ensure the Tribe:
 - conducts FBI fingerprint background investigations using FBI-approved procedures for individuals in contact with Indian children,
 - conducts inquiries to State and Tribal law enforcement agencies based on the 5 years of residency information on each application, and
 - assesses criminal history results to verify that applicants meet the required minimum character standards; and

³¹ The IHS Nashville Area Office described: (1) credentialing as the process of obtaining, assessing, and verifying the qualifications of a health care practitioner in terms of licensure, education and training, experience, current competence, and health status and (2) privileging as the process of establishing the manner in which a practitioner is allowed to treat patients (i.e., the scope of practice and type of procedures authorized).

- request on employment applications information about each applicant’s criminal history involving children, per the Tribe’s policies and procedures related to the 1990 Crime Control Act.

We recommend that the Passamaquoddy Tribe at Indian Township and the Narragansett Indian Tribe:

- perform background investigations, as required by the Act, on individuals who currently have contact with Indian children and determine whether the individuals meet the required minimum character standards; and
- develop and implement policies and procedures that ensure each Tribe:
 - requests information on each applicant’s application about the prior 5 years of residency,
 - conducts FBI fingerprint background investigations using FBI-approved procedures for individuals in contact with Indian children,
 - conducts inquiries to State and Tribal law enforcement agencies based on the 5 years of residency information on each application, and
 - assesses criminal history results to verify that applicants meet the required minimum character standards.

We recommend that the Indian Health Service continue to:

- provide additional training and technical assistance, in collaboration with other organizations as needed, to ensure that Tribes understand and comply with the requirements to conduct background investigations and the character assessment requirements of the Act; and
- take the actions described in the IHS Director’s Letter to Tribal Leaders to: (1) identify best practices to protect the safety and security of Indian children and (2) collect and share this information with all participants in the IHS health system.

AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, two Tribes concurred with our findings and the third generally concurred with our findings. All three Tribes indicated that they had taken steps to implement or were in the process of implementing procedures to perform background investigations, as required by the Act, on individuals who are in contact with Indian children. In

addition, IHS concurred with our recommendations and outlined the steps it would take to help Tribes comply with the requirements.

THE HOULTON BAND OF MALISEET INDIANS COMMENTS

In written comments on our draft report, HBMI generally concurred with our draft report's findings. HBMI stated that it has implemented background investigations on individuals who have contact with Indian children to determine whether they meet the required minimum character standards. In addition, HBMI said that it has developed and will implement policies and procedures to ensure that it: (1) conducts FBI fingerprint background investigations using FBI-approved procedures for individuals in contact with Indian children, (2) conducts inquiries to State and Tribal law enforcement agencies based on the 5 years of residency information on each applicant, (3) assesses criminal history results to verify that applicants meet the required minimum character standards, and (4) requests on its employment application information about each applicant's criminal history involving children. HBMI did not concur with our draft report's finding that it did not collect the 5 years of residency for applicants. Specifically, HBMI stated that it collects the prior 5 years of residency on a consent for background check form during the interview and onboarding process.

HBMI's comments are included in their entirety as Appendix E.

OFFICE OF INSPECTOR GENERAL RESPONSE

We maintain that HBMI did not include on its employment application a place for applicants to provide the prior 5 years of residency history as required under 42 CFR § 136.406; however, the Tribe requested applicants provide this information on a different form.

Subsequent to receiving HBMI's response on our draft report, HBMI informed us that it uses a consent for background check form that it developed on December 10, 2002. HBMI provided us with the consent forms for 11 of the 14 employees. Each form requested the applicant's prior 5 years of residency history. For the remaining three employees, HBMI could not provide the consent for background check form for one employee, and two employees were hired prior to the implementation of the current form. Therefore, HBMI could not provide us with evidence that it requested the necessary information from these three individuals.

HBMI's process for obtaining an applicant's prior 5 years of residency history via the consent for background check form is consistent with the intent of the Federal requirement. From our review of the additional documentation that the Tribe provided, we revised the number of employees without a prior 5 years of residency history from 14 to 3 and removed the corresponding recommendation from our final report.

THE PASSAMAQUODDY TRIBE AT INDIAN TOWNSHIP COMMENTS

In written comments on our draft report, the Passamaquoddy Tribe concurred with our findings. The Passamaquoddy Tribe stated that it has been accepted by the FBI into the Tribal Access Program to conduct FBI background investigations, which it stated it plans to implement as soon as practical. In addition, the Tribe stated it is in the process of amending its policies to comply with the requirements as outlined in the findings.

The Passamaquoddy Tribe's comments are included in their entirety as Appendix F.

THE NARRAGANSETT INDIAN TRIBE COMMENTS

In written comments on our draft report, the Narragansett Tribe said that it accepts our recommendations concerning the measures it must complete under the Act for individuals who currently have contact with Indian children. In addition, the Tribe said it accepts our recommendation to update its policies and procedure to ensure that it complies with applicable laws and regulations. The Narragansett Tribe stated that to correct internal procedures it obtained authorization from the FBI Compact Officer to use an FBI-approved channeler to access FBI criminal history information. Furthermore, the Tribe stated it has also undertaken steps to ensure that its Tribal human resources, law enforcement, and health program personnel understand the Tribe's obligations under the Act.

The Narragansett Tribe's comments are included in their entirety as Appendix G.

INDIAN HEALTH SERVICE COMMENTS

In written comments on our draft report, IHS concurred with our recommendations. IHS provided examples from three Area Offices of best practices to ensure that Tribes understand the requirements and comply with the Act. The best practices include providing technical assistance on the requirements of the Act, including specific requirements of the Act in annual contracts with Tribes to fund their health services, and offering annual background investigation sessions at annual budget consultation meetings to educate Tribes on the requirements of the Act. IHS stated that it would share these best practices with all IHS Area Directors to promote compliance with requirements of the Act. In addition, IHS stated that it would encourage information-sharing about best practices developed by Tribes with all participants in the IHS health system, with an emphasis on actively training and assisting Tribes in developing adequate procedures to implement and ensure understanding of the statutory requirements of the Act.

IHS's comments are included in their entirety as Appendix H.

OTHER MATTERS

Unlike the authorizing legislation for many HHS programs serving children, the Act does not require periodic rescreening of individuals who have contact with children. For example, the Child Care and Development Block Grant Act of 2014 reauthorized the Child Care and Development Fund program and made changes to strengthen the health, safety, and quality of child care. Specifically, it requires all Tribal lead agencies to conduct comprehensive background investigations for child care staff members and prospective employees every 5 years. Because Tribes are not required to periodically rescreen the backgrounds of employees, contractors, and volunteers working with Indian children, Indian children receiving care at Tribal health programs experience a higher risk of harm compared to children served by other HHS programs.

Because the Act does not require the periodic rescreening of individuals in contact with Indian children, the Tribes did not conduct periodic rescreening. Staff at one Tribal health program were unaware that after being hired a certain employee had been convicted of a violent crime. Specifically, in response to our audit, the Tribe performed a subsequent background investigation on the employee and found the individual had been convicted of a misdemeanor involving a crime of violence that was committed after the time of hire. The employee would not have been disqualified from employment as the conviction followed completion of the employee's character investigation and the offense was the first of two disqualifying misdemeanors defined by the Act that would prohibit the employee from working with Indian children. However, this example demonstrates that periodic rescreening would identify an instance of an employee being convicted of a disqualifying crime under the Act.³²

³² In order to protect Indian children, IHS has established minimum standards of character so that no individuals who have been found guilty of, or entered a plea of no contest or guilty to, any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children are placed in positions in contact with Indian children (42 CFR § 136.405).

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed the background investigation documentation at the three Tribes and their health programs for 65 employees, 12 contractors, and 1 volunteer who the Tribes had determined were in contact with Indian children relative to Federal requirements for the period October 1, 2018, through December 31, 2019.³³ Specifically, we reviewed documentation to determine whether Tribes and their health programs: (1) conducted fingerprint FBI criminal history background investigations, (2) collected applicants' prior 5 years of residency on job applications, (3) made inquiries to State and Tribal law enforcement agencies for the applicants' previous 5 years of residency, (4) compared the criminal history results against the minimum standards of character, and (5) reviewed available criminal history reports to determine whether individuals met the required minimum standards of character.

We did not assess the overall internal control structure of the three Tribes. Rather, we limited our review of internal controls to those related to our audit objective. We assessed all components (control environment, risk assessment, control activities, information and communication, and monitoring) of Tribes' internal control systems relative to the background investigations conducted on individuals in contact with Indian children. This included assessing the Tribes' policies and procedures related to the hiring and background investigation process for individuals working at the Tribal health programs.

We conducted our fieldwork from January 2020 through June 2022.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements and each Tribe's policies and procedures for conducting background investigations for individuals in contact with Indian children;
- researched demographics and selected Tribes to audit based on a number of factors including location, program size, and population served;
- interviewed staff for each Tribe to gain an understanding of the internal controls involved in the hiring and background investigation processes for individuals working at their Tribal health programs;

³³ We reviewed background investigation documentation for individuals in contact with Indian children at HBMI for 14 employees and 2 contractors; the Passamaquoddy Tribe for 38 employees, 6 contractors, and 1 volunteer; and the Narragansett Tribe for 13 employees and 4 contractors.

- interviewed State officials, FBI personnel, and contract agencies to gain an understanding of background investigation process requirements and actual practices;
- interviewed IHS regional staff and reviewed the documentation of training and technical assistance provided to the three Tribes;
- reviewed selected position descriptions at each Tribal health program to determine whether they included responsibilities that involved contact with children;
- reviewed background documentation provided by the Tribes for individuals in contact with Indian children for each Tribal health program to evaluate compliance with Federal and Tribal requirements; and
- presented the results of our audit to the Tribal chiefs for each Tribal health program and to IHS staff.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: EARLY ALERT MEMORANDUM



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



August 28, 2020

TO: Rear Admiral Michael D. Weahkee
Director
Indian Health Service

FROM: /Christi A. Grimm/
Principal Deputy Inspector General

SUBJECT: Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children (A-01-20-01500)

This memorandum follows up on the Office of Inspector General’s recent teleconference with your staff during which we provided information about a significant vulnerability we identified during our audit of Tribal health programs.¹ Specifically, we found that Tribal health programs that received Indian Self-Determination and Education Assistance Act (ISDEAA) funds from the Indian Health Service (IHS) were not conducting required Federal Bureau of Investigation (FBI) fingerprint background checks for all employees, contractors, and volunteers who have regular contact with Indian children. This creates an increased risk that an individual with a disqualifying criminal history in a different State could be hired into a position with regular contact with Indian children.

This vulnerability warrants IHS’s immediate attention because it may compromise the safety and well-being of Indian children who receive treatment at Tribal health programs funded by IHS. We will follow up to verify how IHS will work with Tribes to address this vulnerability.

BACKGROUND

In 2018, we completed two health and safety audits of Tribal health programs that included an assessment of Federal and Tribal compliance with preemployment screening requirements.² We

¹ In this report, “Tribal health programs” refer to health facilities that receive Indian Self-Determination and Education Assistance Act funds from IHS.

² *The Passamaquoddy Tribe’s Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements* (A-01-17-01500; available at <https://oig.hhs.gov/oas/reports/region1/11701500.pdf>) and *The Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements* (A-01-17-01502; available at <https://oig.hhs.gov/oas/reports/region1/11701502.pdf>).

found that the Passamaquoddy Tribe's Pleasant Point³ Health Center and the Penobscot Indian Nation's Health Center did not comply with Federal requirements to perform FBI fingerprint background checks for employees in contact with Indian children. This placed the children served by these programs at an increased risk for harm and abuse. Because Tribes through ISDEAA agreements administer more than half of the IHS's resources, we have recently focused our work on Tribal programs.⁴

We are currently conducting two audits⁵ of Tribal health programs' compliance with the Indian Child Protection and Family Violence Prevention Act (the Act) character-investigation requirements⁶ on background screening processes and character standards for the hiring of individuals who have contact with, or control over, Indian children. The first audit focuses on three Tribal health programs in New England, each of which is typically the sole health facility on a Tribe's reservation. The second audit, which is not part of this Early Alert, focuses on Tribal health programs in the Midwest, where typically a Tribe operates a hospital and multiple health facilities on a Tribe's reservation; in total, the 2 Tribes operate 2 hospitals and 20 health centers.⁷

In total, this Early Alert highlights the activities of four Tribes that operate five Tribal health programs. For these audits, we interviewed the health programs' staff members and Government officials, and are reviewing documentation to verify that the Tribal health programs have conducted required background checks on employees, contractors, and volunteers in contact with Indian children in accordance with Federal and Tribal requirements.

In 1990, the Congress after careful review of the problem of child abuse on Indian reservations and the special and historical relationship of the Federal Government with Indian people found that: (1) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government; (2) incidents of abuse of children on Indian reservations have been grossly underreported; (3) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children were often deficient; (4) funds spent by the United States on Indian reservations or otherwise

³ In the United States, the Passamaquoddy Tribe resides on two separate reservations in Maine: Indian Township and Pleasant Point. Each reservation has its own distinct Tribal Government. Each Tribal Government separately contracts with IHS under Title I of the ISDEAA to operate a health program located on its reservation. In our prior audit, we reviewed the Passamaquoddy Pleasant Point Health Center; our current audit reviews the Passamaquoddy at Indian Township Health Center.

⁴ IHS, *Justification of Estimates for Appropriations Committees for Fiscal Year 2021*, CJ-184 (Feb. 5, 2020). We selected programs on the basis of a number of factors including location and service population.

⁵ These are audits of the background verification processes at: (1) three Tribal health programs in New England, including the Passamaquoddy Tribe at Indian Township, Narragansett Indian Tribe, and Houlton Band of Maliseet Indians (A-01-20-01504); and (2) two Tribes in Oklahoma that operate various Tribal health programs, including the Cherokee Nation and the Choctaw Nation (A-01-20-01505).

⁶ Section 408 of the Act, P.L. 101-630 (enacted Nov. 28, 1990) (codified at 25 U.S.C. § 3207) and IHS's implementing regulation codified at 42 CFR part 136, subpart K.

⁷ We have not determined yet if the vulnerabilities we identified in the New England Tribal health programs exist at the Oklahoma Tribal health programs because we are at the early stages of this audit.

spent for the benefit of Indians who are victims of child abuse or family violence are inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse or family violence and their families; and (5) there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of, or who are eligible for membership in, an Indian Tribe. On the basis of these findings, Congress passed the Act.⁸ The Act and IHS's implementing regulations require Tribes that receive ISDEAA funds from IHS to conduct a character investigation of each individual in a position that involves regular contact with, or control over, Indian children.⁹ Individuals include contractors, volunteers, and employees, and those being considered for those roles.¹⁰ A character investigation must include, among other things, a criminal history background check, which includes an FBI fingerprint check.¹¹ A Tribe may determine its own standards of character; however, these standards must be no less stringent than IHS's minimum standards.¹² Tribes may not allow individuals who do not meet IHS's minimum standards to be in a position that involves regular contact with, or control over, Indian children.

An FBI fingerprint background check accesses criminal history records across Federal, State, and local jurisdictions. It provides positive identification and eliminates the false positives and false negatives associated with name-based checks,¹³ and it provides the benefit of obtaining additional criminal record history that may not be maintained by the State where the Tribe's reservation is located.¹⁴ The Act does not require employees, contractors, and volunteers in contact with Indian children to be screened periodically after the initial character investigation.

TRIBAL HEALTH PROGRAM PREEMPLOYMENT SCREENING

As part of our current audit focusing on Tribal health programs in New England, we reviewed the preemployment screening processes at health programs run by the Narragansett Indian Tribe in Rhode Island, the Passamaquoddy Tribe at Indian Township in Maine, and the Houlton Band of Maliseet Indians in Maine. Each of these Tribal health programs provides onsite medical and behavioral health services. These programs receive funding through ISDEAA agreements with IHS and may enroll in the Medicaid and Medicare programs. The 3 Tribes' health programs collectively provide health care for approximately 2,000 Tribal members.

⁸ 25 U.S.C. § 3201(a)(1).

⁹ 42 CFR § 136.404(b).

¹⁰ 42 CFR § 136.403.

¹¹ 42 CFR § 136.406(b).

¹² 42 CFR § 136.408(c).

¹³ False positives can occur when a person with a common name is associated with another person's records. False negatives can occur when a search misses a record because of errors in the record or in the information used to initiate the search. Using a fingerprint-based check ensures a prohibited individual will not be licensed or employed.

¹⁴ <https://www.fbi.gov/file-repository/steps-for-success.pdf/view>.

PRELIMINARY FINDINGS

Tribal Health Programs Did Not Conduct Required Background Checks for Staff Working With Indian Children

We found that two¹⁵ of the three health programs in our ongoing audit of Tribal health programs in New England did not perform FBI fingerprint background checks of employees in contact with Indian children.¹⁶ Rather, the two Tribal health programs performed background check verifications using only their respective State's criminal and entitlement databases.¹⁷ These State background checks do not require fingerprinting. For instance, we identified an employee who worked with Indian children at the audited program despite having a felony conviction in another State. The program hired this individual because the Tribe had conducted a background check only in the State in which the program was located. Because the Tribe did not know about the felony conviction, it hired a person who did not meet the Tribe's character standards. This incident placed Indian children at an increased risk for abuse. In addition, our previous audits of two other health programs found that those programs did not comply with Federal requirements to perform FBI fingerprint background checks for individuals in contact with, or having control over, Indian children.¹⁸

Over the course of our two previous audits of Tribal health programs¹⁹ and this audit (covering three Tribal health programs in New England), four of the five Tribal health programs that we reviewed did not comply with FBI fingerprint background check requirements for employees in contact with Indian children.

Our current and prior audits also found that Tribal health programs did not always perform FBI fingerprint background checks for contractors or volunteers.²⁰ For example, one Tribe did not

¹⁵ Noncompliant health programs in this audit were the Passamaquoddy Tribe at Indian Township Health Center and the Maliseet Health and Wellness Center operated by the Houlton Band of Maliseet Indians.

¹⁶ Although the Narragansett Indian Tribe's officials informed us that they conduct FBI fingerprint background checks, we were unable to obtain evidence from the FBI that the Tribe had conducted such background checks. Through our ongoing audit, we will confirm whether the Tribe actually conducted FBI fingerprint background checks for individuals in contact with Indian children.

¹⁷ Entitlement databases are State maintained databases of records in programs such as Medicaid and the State's child welfare information system.

¹⁸ Our two previous audits involved a broad review of health and safety requirements for the health program, including background verification of individuals in contact with Indian children. In each of these prior audits, the Tribe was the auditee, and issues were reported directly to the Tribal leadership. In our current audits, our focus is on the single issue of background verifications at a number of Tribal health programs with IHS as the auditee since it is the agency that provides information and technical assistance on funding requirements to Tribes receiving IHS funding.

¹⁹ *The Passamaquoddy Tribe's Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements* (A-01-17-01500) and *The Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements* (A-01-17-01502).

²⁰ Tribal health programs rely on contractors and volunteers because of their remote locations and the difficulties of recruiting staff.

perform background checks for health care providers retained through a contracted employment agency and instead relied on statements from the employment agency that it had conducted background checks of the contractors. In another case, the Tribe performed the same background check process for its contractors that it used for its employees, but this was a State background check, not the required FBI fingerprint background check.

The Tribes did not perform required FBI fingerprint background checks of all employees, contractors, and volunteers who had contact with Indian children because they were either unaware of or misinterpreted the Act's requirements. For example, although one Tribe had written policies and procedures stating that it would comply with the Act, the staff misinterpreted the requirements and performed background checks using a State criminal database instead of the FBI fingerprint background checks on employees in contact with Indian children as required.

When a Tribe performs background checks using State databases only, it increases the risk that it would allow an individual whose criminal history from another State does not meet the minimum standards of character to have contact with Indian children. As a result, Indian children face an increased risk of harm and abuse.

CONCLUDING OBSERVATIONS

We are committed to working with IHS to ensure the health and safety of children at Tribal health programs. This memorandum documents that we have alerted your office to a serious safety and health vulnerability present at a number of Tribal health programs that we have reviewed. The lack of required FBI fingerprint background checks of employees, contractors, and volunteers poses substantial risks to the children receiving care at these programs.

As soon as possible, but no later than 30 days of the date of this memorandum, please provide a written response apprising us of your planned actions to help Tribes comply with the Act's requirements for FBI fingerprint background checks for their employees, contractors, and volunteers in contact with Indian children. The information in this alert is preliminary, and our audit is continuing. We will issue a draft report at the conclusion of the audit and include IHS's comments and actions taken in response to this Early Alert.

Please send any correspondence to Amy Frontz, Deputy Inspector General for Audit Services, through email at Amy.Frontz@oig.hhs.gov. Should you have any questions, please do not hesitate to call me at 202-619-3148, or your staff may contact Amy Frontz at the email address above or by telephone at 202-619-1156. Please refer to report number (A-01-20-01500) in all correspondence.

cc: Athena Elliott, IHS Chief Compliance Officer



APPENDIX C: IHS RESPONSE AND TRIBAL LEADER LETTER

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville, MD 20857

DEC 21 2020

TO: Inspector General

FROM: Director

SUBJECT: IHS Response to OIG Early Alert: *Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children (A-01-20-01500)*, dated August 28, 2020

Thank you for your August 28, 2020-dated memorandum in follow-up to the Office of Inspector General's (OIG) teleconference with Indian Health Service (IHS) staff, which identified a significant vulnerability during the OIG's audit of Tribal health programs. Specifically, the OIG found that Tribal health programs that received Indian Self-Determination and Education Assistance Act (ISDEAA) funds from the IHS were not conducting required Federal Bureau of Investigation (FBI) fingerprint background checks for all employees, contractors, and volunteers with regular contact with American Indian and Alaska Native (AI/AN) children. The OIG advised that this vulnerability creates an increased risk that an individual with a disqualifying criminal history in a different state could be hired into a position with regular contact with AI/AN children. The OIG believes this vulnerability warrants the IHS's immediate attention because it may compromise the safety and well-being of AI/AN children who receive treatment at Tribal health programs funded by the IHS. The OIG requested a written response from the IHS within 30 days to apprise the OIG of planned actions by the IHS to help Tribes and Tribal organizations comply with ISDEAA requirements for FBI fingerprint background checks for their employees, contractors, and volunteers in contact with AI/AN children. The information in this memorandum describes the IHS's response to the OIG Early Alert.

The IHS took immediate action after receiving the OIG Early Alert. By letter dated September 25, 2020, I informed Tribal Leaders of the findings of the OIG Early Alert and described the objectives of the ongoing OIG audit detailing this vulnerability (see Enclosure). On September 25, 2020, I instructed IHS Area Directors to meet with the leadership of Tribes and Tribal organizations in their respective Area that operate IHS programs, functions, services, or activities under the ISDEAA to inform them of the Federal legal requirement to conduct the background checks. Each Area Director was directed, within 30 days, to provide a report to me on the Tribal meetings held in their respective Area on this important topic and suggest technical assistance or resources that the IHS might be able to provide to Tribes and Tribal organizations regarding these important legal requirements. In addition, I asked Area Directors to identify Tribal programs that have exceeded minimum standards and have developed best practices that protect the safety and security of our AI/AN children. My commitment is to share this information throughout the IHS health system.

Area Directors promptly responded to my directive to hold meetings with Tribes and Tribal organizations in their respective Areas. As further requested by the OIG in November 2020, the IHS will share with the OIG, details of the meetings, including the specific information distributed by each Area Director within their regions. Collaborations with law enforcement, including with the OIG, have been encouraged for all IHS Areas. Specific accomplishments of those collaborations will be reported separately in the IHS response to information requested by the OIG in November 2020.

The IHS appreciates our ongoing collaboration and partnership with the OIG. Compliance with requirements that directly impact patient safety is essential for all programs funded by the IHS. Should you require any additional information, please directly contact Ms. Athena Elliott, Chief Compliance Officer and OIG Liaison, IHS, by e-mail at athena.elliott@ihs.gov.



RADM Michael D. Weahkee, MBA, MHSA
Assistant Surgeon General, U.S. Public Health Service

Enclosure: September 25, 2020-dated Letter to Tribal Leaders



SEP 25 2020

Indian Health Service
Rockville, MD 20857

Dear Tribal Leader:

I am writing to you to share an "Early Alert" issued by the Department of Health and Human Services Office of Inspector General (OIG) on August 28, 2020, and posted to the OIG Web site on September 2, 2020. This Early Alert, provided as an enclosure to this letter, identifies a vulnerability that compromises the safety and well-being of American Indian and Alaska Native (AI/AN) children who receive treatment at Tribal health programs operated under Indian Self-Determination and Education Assistance Act (ISDEAA) agreements with the Indian Health Service (IHS). **It warrants your immediate attention and response.**

The OIG is currently conducting two audits of Tribal health programs' compliance with the Indian Child Protection and Family Violence Prevention Act background investigation requirements for hiring individuals whose duties and responsibilities involve regular contact with, or control over, AI/AN children. Federal law requires Tribes and Tribal organizations that contract with the IHS under the ISDEAA to conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves regular contact with, or control over AI/AN children under the age of eighteen. 25 U.S.C. § 3207(c); 34 U.S.C. § 20351. Tribes and Tribal organizations can employ only individuals who meet standards of character that are no less stringent than those prescribed by the regulations outlined at 42 C.F.R. § 136.404, and only after an individual has been the subject of a satisfactory background investigation as described in 42 C.F.R. § 136.406, which includes a review of:

- a) The individual's trustworthiness, through inquiries into the individual's references and places of employment and education;
- b) A criminal history background check, which includes a Federal Bureau of Investigation (FBI) fingerprint check, and inquiries to State and Tribal law enforcement agencies for the previous five years of residence listed on an individual's application;
- c) A determination as to whether the individual has been found guilty of or entered a plea of nolo contendere or guilty to any felonious offense or any two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

In accordance with Federal law, a Tribe or Tribal organization may establish higher standards of character; however, the standards must be no less stringent than those prescribed by the regulations outlined in 42 C.F.R. § 136.404. Tribes and Tribal organizations may conduct their own background investigations, contract with private firms, or may request that a Federal or State agency conduct investigations. However, FBI fingerprint checks are required and may only be received or evaluated by governmental agencies, including Tribes or Tribal organizations, and may not be disseminated to private entities. Finally, Tribes and Tribal organizations can provisionally hire individuals prior to the completion of a satisfactory

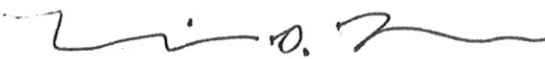
background investigation only if, at all times prior to receipt of the satisfactory background investigation and when AI/AN children are in the care of the individual, the individual is within sight and under the supervision of someone on staff that has a completed satisfactory background investigation.

The first audit focuses on three Tribal health programs in New England. The second audit, which is not part of this Early Alert, will focus on Tribal health programs in the Midwest. During the course of both past and ongoing audits, the OIG found that tribally operated health programs operated under ISDEAA agreements were not conducting required FBI fingerprint checks for all employees, contractors, and volunteers who have regular contact with AI/AN children. This creates an increased risk that an individual with a disqualifying criminal history in a different state could be hired into a position with regular contact with AI/AN children. All Tribes and Tribal organizations are expected to be fully aware of and comply with the Indian Child Protection and Family Violence Prevention Act's requirements. It is the Tribe and Tribal organization's responsibility to comply with all Federal laws relevant to their ISDEAA agreements.

I have instructed each IHS Area Director to initiate meetings with all Tribes and Tribal organizations in their respective Area that operate IHS programs, functions, services, or activities under the ISDEAA, to inform them of the Federal legal requirement to conduct the background checks. Each Area Director has been directed, within 30 days, to provide a report to me on the Tribal meetings held in their respective Area on this important topic and suggest technical assistance or resources that the IHS might be able to provide to Tribes and Tribal organizations regarding this important legal requirement. In addition, I have asked Area Directors to identify Tribal programs that have exceeded minimum standards and have developed best practices that protect the safety and security of our AI/AN children. We will collect and share this information throughout the IHS health system.

The IHS is committed to patient safety and has taken aggressive action to better protect patients, especially AI/AN children. We will continue to work with Tribes and Tribal organizations to make the safety of AI/AN children a priority and to help Tribes and Tribal organizations to understand the important requirements of the Indian Child Protection and Family Violence Prevention Act.

Sincerely,



RADM Michael D. Weahkee, MBA, MHSA
Assistant Surgeon General, U.S. Public Health Service
Director

Enclosure: OIG Memorandum Report – Early Alert: *“Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children”* (A-01-20-01500)

APPENDIX D: TRIBAL POLICIES AND PROCEDURES

The Houlton Band of Maliseet Indians' Employee Policy and Procedure Manual

The HBMI *Employee Policy and Procedure Manual* states that all new hires must submit to a criminal background investigation. Any history of criminal activity may be grounds for not hiring or for discharge. Any employee in contact with Indian children must meet the minimum standards of character and suitability as defined by the Crime Control Act of 1990 (P.L. 101–647). Employment will not begin for a newly hired employee until HBMI receives an acceptable criminal background investigation report.

The Passamaquoddy Tribe at Indian Township's Policies and Procedures

The Passamaquoddy Tribe at Indian Township's policies and procedures state that the Tribe will conduct thorough character investigations (including fingerprinting) required by the Act and that State and Tribal investigations will be completed on all persons for any position in contact with children. The policies and procedures also state that the Tribe will create a separate personnel folder at the time of initial employment and that, during the term of employment, all relevant information pertaining to the employee must be kept in the employee's personnel folder.

The Narragansett Indian Tribe's Personnel Policies and Procedures

The Narragansett Tribe's policies and procedures state that character investigations by Indian Tribes and Tribal organizations require the Tribe to: (1) conduct an investigation of the character of each individual who is employed or is being considered for employment by the Tribe in a position that involves contact with Indian children, and (2) employ individuals in those positions only if the individuals meet standards of character no less stringent than those prescribed under 25 USC 3207(a). Specifically, background investigations must include: (1) a review of the individual's trustworthiness through inquiries with the individual's references and places of employment and education; (2) a fingerprint investigation through the Criminal Justice Information Services Division of FBI and inquiries to State and Tribal law enforcement agencies for the previous 5 years of residency listed on the individual's application; and (3) a determination as to whether the individual has been found guilty of or entered a plea of no contest or guilty to any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children as such offenses are defined under Federal, State, or Tribal law.

APPENDIX E: HOULTON BAND OF MALISEET INDIANS COMMENTS

TRIBAL CHIEF

Clarissa Sabattis

TRIBAL COUNCIL

Beth Aucoin
Suzanne Desiderio
John Flewelling
Cathy St John
Mary Tomah
Crystal Tucker

**HOULTON BAND OF
MALISEET INDIANS**

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(207) 532-2660

September 12, 2022

Report Number: A-01-20-01504

Gregory Demske, Acting Principal Deputy Inspector General
Department of Health and Human Services
Washington, DC 20201

Dear Principal Deputy Inspector General Demske,

I am writing in response to report number A-01-20-01504. We concur with the findings listed in the report and the following have been implemented:

- Background investigations on individuals who have contact with Indian children to determine if they meet the required minimum character standards;
- Policies and procedures have been developed and will be implemented to ensure that the Tribe:
 - Conducts FBI fingerprint background investigations using FBI-approved procedures for individuals in contact with Indian children,
 - Conducts inquiries to state and tribal law enforcement agencies based on the 5 years of residency information on each applicant, and
 - Assesses criminal history results to verify that applicants meet the required minimum character standards; and
 - Request on employment applications information about each applicant's criminal history involving children, per the Tribes policies and procedures related to the 1990 Crime Control Act.

However, we do not concur that the Houlton Band of Maliseet Indians does not collect the prior 5 years of residency for applicants.

- The Houlton Band of Maliseet Indians collects the prior 5 years of residency on a consent for background check form during the interview and onboarding process.

Sincerely,



Chief Clarissa Sabattis

Houlton Band of Maliseet Indians

APPENDIX F: PASSAMAQUODDY TRIBE AT INDIAN TOWNSHIP COMMENTS

Tribal Chief

William Nicholas Sr.

Tribal Vice Chief

Darrell Newell

Tribal Representative

Rena Newell



Council Members

Matthew Dana II

Sonja Dana

Elizabeth Neptune

Alexander Nicholas I

Mihku Sabattus

Joseph Socobasin

August 17, 2022

Gregory E. Demske
Acting Principal Deputy Inspector General
330 Independence Ave, SW
Room 5527
Washington, D.C. 20201

RE: Report Number: A-01-20-01504

Dear Mr. Demske:

I am in receipt of the draft report dated June 24, 2022 entitled “*Three Tribes in New England and Their Health Programs Did Not Conduct Required Background Investigations on All Individuals in Contact With Indian Children.*” In the report, you specifically found that the Passamaquoddy Tribe and its health program did not:

- (1) include on its employment application for any of the 38 employees a place for providing the prior 5 years of residency history,
- (2) conduct FBI fingerprint background investigations using FBI-approved procedures for any of the 38 employees, and
- (3) conduct State and Tribal law enforcement investigations for 30 of the 38 employees.

I have reviewed your draft report and I concur with all of the findings. The tribe did undertake the background investigations, but realizes the mistake in not conducting this aspect through the FBI. Since the time of your findings, I have caused the application of and have been accepted by the FBI into the Tribal Access Program to conduct FBI background investigations, which we plan to implement and begin doing as soon as is practical.

Additionally, the tribe at Indian Township is in the process of amending its policies to comply with the regulations resulting in your findings of non-compliance. Specifically, Indian Township will amend its policies to:

(1) perform background investigations, as required by the Act, on individuals who currently have contact with Indian children and determine whether the individuals meet the required minimum character standards; and

(2) develop and implement policies and procedures that ensure the Tribe:

(a) requests information on each applicant's application about the prior 5 years of residency,

(b) conducts FBI fingerprint background investigations using FBI-approved procedures for individuals in contact with Indian children,

(c) conducts inquiries to State and Tribal law enforcement agencies based on the 5 years of residency information on each application, and

(d) assesses criminal history results to verify that applicants meet the required minimum character standards.

We realize that items (c) and (d) will require additional training with the respective department heads to ensure proper communication between the department and the tribal law enforcement to ensure full compliance with your findings of non-compliance.

The policy amendments will take us some time to complete as they are required to be presented to and passed by the tribal council. As I mentioned in my email response to Timothy Sullivan, this policy amendment will happen in FY22.

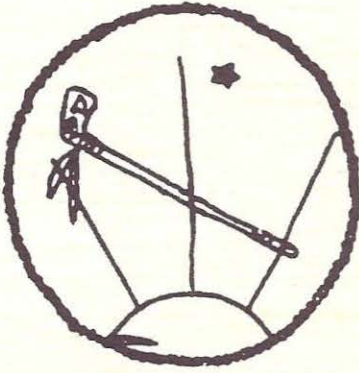
If you have any questions or need any further information, do not hesitate to reach out to me.

Sincerely,



William Nicholas, Sr., Tribal Governor at Indian Township

Cc: Craig Francis, Staff Attorney at Indian Township



Narragansett Indian Tribe

1-401-364-1100 1-800-287-4225

Fax (401) 364-1104

TDD - 711

Chief Sachem's Office

September 1, 2022

Mr. Gregory E. Demske
Acting Principal Deputy Inspector General
Office of the Inspector General/Office of Audit Services – Region 1
U.S. Department of Health and Human Services
JFK Federal Building, Rm 2425
Boston, MA 02203
Attn: Timothy Sullivan, Senior Auditor

Re: Tribe's response to draft report; Report No. A-01-20-01504

Dear Acting Principal Deputy Inspector General Demske,

Thank you for affording the Narragansett Indian Tribe the opportunity to provide comments concerning the above-referenced draft report by your office: *“Three Tribes in New England and Their Health Programs Did Not Conduct Required Background Investigations on All Individuals in Contact With Indian Children.”*

For over thirty years, the Tribe has assumed the duties of the Secretary of the Interior and Secretary of Health and Human Services to perform programs and services for the benefit of our members and other eligible beneficiaries under contracts with these agencies pursuant to the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended. In our performance of these federal contracts, we strive to meet or exceed applicable federal statutory and regulatory requirements. These requirements include compliance with the Indian Child Protection and Family Violence Prevention Act (Indian Child Protection Act), Pub. L. 101-630, as amended, and applicable regulations of the U.S. Department of Health and Human Services codified at 42 C.F.R. Part 136, Subpart K.

In the IG's audit for the period October 1, 2018 through December 31, 2019, it found that while the Tribe conducted biographical State and nationwide background investigations on individuals through the Rhode Island State Police, the Tribe did not conduct FBI fingerprint background investigations using FBI-approved procedures for 13 employees nor obtain residency information dating back five years. The audit also identified four contractors for which the Tribe did not meet the necessary Federal or Tribal requirements for background investigations and the determination required for minimum standards of character for positions determined by the Tribe to require regular contact with or control over Indian children.

P.O. Box 1354 • 4533 South County Trail • Charlestown • Rhode Island 02813

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Mr. Gregory E. Demske

September 1, 2022

Page 2

Following the IG's audit, in 2021, the Tribe reviewed and amended its policies and procedures to ensure compliance with the Indian Child Protection Act and Department regulations to correct deficiencies in our procedures as identified by the IG. Over a year ago, we wrote the IG and acknowledged that to meet federal statutory and regulatory requirements for positions involving regular contact with or control over Indian children our policies must include minimum requirements, including completing an FBI fingerprint check, under procedures approved by the FBI, inquiries to State and Tribal law enforcement agencies for the previous five (5) years of residence listed on an individual's application, and a determination by the Tribe that an individual meets the minimum standards of character.

To correct our internal procedures, last year, the Tribe's health program, an Authorized Recipient (AR), took the initiative and obtained authorization from the FBI Compact Officer to use an FBI-approved channeler to access FBI criminal history information (CHRI) for purposes of compliance with the Tribe's obligations under the Indian Child Protection Act. The contract between the Tribe's health program and the FBI-approved channeler incorporates the current Security and Management Control Outsourcing Standard for Channeling (Outsourcing Standard).

Since the IG audit, the Tribe undertook measures to ensure that Tribal Human Resources (HR), Law Enforcement, and Health program personnel understand the Tribe's obligations under the Indian Child Protection Act and 42 C.F.R. Part 136, Subpart K. The Tribe's Health program has updated its Personnel Policies and Procedures concerning the statutory obligations and determination of minimum standards of character, including, in addition to ensuring that the FBI criminal history background investigation is completed, the requirement to request, obtain, and review the prior five (5) years of residency by making the necessary inquiries to State and Tribal law enforcement to ensure compliance with federal law and the Tribe's policies and procedures.

The Tribe accepts the IG's recommendations concerning the necessary measures the Tribe must complete under the Indian Child Protection Act for individuals who currently have regular contact with or control over Indian children and make the determination whether the individual meets the minimum standards of character. The Tribe further accepts the IG findings and, as noted above, has updated our policies and procedures to ensure the Tribe's compliance with applicable law and regulations.

Thank you again for affording the Tribe the opportunity to provide written comments.

Sincerely,



Anthony Dean Stanton, Chief Sachem
Narragansett Indian Tribe

APPENDIX H: INDIAN HEALTH SERVICE COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville, MD 20857

DATE: August 19, 2022

TO: Inspector General

FROM: Acting Director

SUBJECT: IHS Response to Draft OIG Report: *Three Tribes in New England and Their Health Programs Did Not Conduct Required Background Investigations on All Individuals in Contact With Indian Children (A-01-20-01504)*, dated June 24, 2022

We appreciate the opportunity to provide our official comments on the Draft Office of Inspector General (OIG) Report entitled, *Three Tribes in New England and Their Health Programs Did Not Conduct Required Background Investigations on All Individuals in Contact With Indian Children (A-01-20-01504)*, dated June 24, 2022. The Indian Health Service (IHS) concurs with the two OIG recommendations discussed below.

Recommendation Number 1: IHS concurs with the recommendation.

We recommend that the IHS continue to provide additional training and technical assistance, in collaboration with other organizations as needed, to ensure that Tribes understand and comply with the requirements to conduct background investigations and the character assessment requirements of the Act, and

Planned and completed actions:

Three IHS Areas are highlighted here as agency best practices. First, the Nashville Area Director, as a follow-up to the September 2020 “Dear Tribal Leader Letter” from the IHS Director, issued a “Dear Nashville Area Tribal Leader Letter” to emphasize the requirements of P.L. 101-630, the Indian Child Protection and Family Violence Prevention Act and to include a referral to respective Nashville Area Indian Self-Determination and Education Assistance Act (ISDEAA) negotiators for technical assistance requests on these matters. The Nashville Area is providing individual technical assistance to review the requirements of P.L. 101-630, ensuring understanding of the requirements, and promoting compliance.

Both the Nashville Area Director and the Albuquerque Area Director ensure that this is a topic addressed in annual funding negotiations with Tribes who have agreements under the ISDEAA. The Nashville Area and the Albuquerque Area work to incorporate the specific requirements of the Act into the Tribal awards, along with an agreed upon follow-up process in the event that the IHS becomes aware of non-compliance.

The IHS Oklahoma City Area Director added an annual Background Investigation Section to the Oklahoma City Area’s annual budget consultation meeting to educate Tribes on the requirements of P.L. 101-630. The training will be conducted annually on the proper process to comply with the Federal Bureau of Investigation (FBI) fingerprint and background requirements of the Act. The next budget consultation meeting will be held in November 2022. In September 2020, the Oklahoma City Area held a training session in partnership with staff from the Department of Health and Human Services (HHS) OIG and the FBI discussing the proper process for fingerprinting. In addition to the annual updates at the IHS Area budget consultation meeting, the Oklahoma City Area plans on conducting this collaborative partnership training every four years with representatives from the OIG and FBI.

These three IHS Area’s best practices will be shared with all IHS Area Directors by IHS Headquarters as we promote compliance by both Federal and Tribal programs with requirements under P.L. 101-630.

Recommendation Number 2: IHS concurs with the recommendation.

We recommend that the Indian Health Service continue to take the actions described in the IHS Director’s Letter to Tribal Leaders to:

- (1) identify best practices to protect the safety and security of Indian children and*
- (2) collect and share this information with all participants in the IHS health system*

Planned and completed actions:

As Tribal programs become more experienced with implementing proper procedures to stay in compliance with P.L. 101-630, the IHS will encourage information-sharing about best practices developed by Tribes with all participants in the IHS health system. The IHS’s emphasis will be on actively training and assisting Tribes in developing adequate procedures to implement P.L. 101-630, and to ensure understanding of the statutory requirements.

Thank you for the opportunity to review and comment on this draft report. Please refer any follow up questions you have regarding our comments to Ms. Athena Elliott, IHS Chief Compliance Officer by email at athena.elliott@ihs.gov.

Elizabeth A. Fowler -S
Digitally signed by Elizabeth A. Fowler
Date: 2022.08.19 08:57:00 -04'00'

Elizabeth A. Fowler