

**WRITTEN TESTIMONY OF JAY SPAAN, EXECUTIVE DIRECTOR, TRIBAL SELF-GOVERNANCE, OVERSIGHT HEARING ON “MODERNIZING THE IMPLEMENTATION OF 638 CONTRACTING AT THE INDIAN HEALTH SERVICE” BEFORE THE U.S. HOUSE OF REPRESENTATIVES NATURAL RESOURCES COMMITTEE, SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

December 11, 2025

Chairman Hurd, Ranking Member Leger-Fernandez, and Members of the Committee:

Thank you for the opportunity to testify. My name is Jay Spaan, and I am the Executive Director of Tribal Self-Governance (TSG). TSG, previously known as the Self-Governance Communication and Education Tribal Consortium, supports Tribal Self-Determination and Self-Governance by providing education and communication resources and fostering knowledge-sharing throughout Indian Country.

In my testimony, I will summarize the Indian Self-Determination and Education Assistance Act (ISDEAA), highlight its proven successes, outline the main parts of the Indian Health Service (IHS) realignment related to ISDEAA implementation, identify concerns about consultation, negotiations, and decision-making, and suggest further steps to ensure modernization supports, not weakens, Tribal Self-Governance.

**The Indian Self-Determination and Education Assistance Act**

Congress passed the ISDEAA in 1975, confirming that Tribal Nations have the right to govern their own affairs and manage federal programs. In the years since, Congress and Tribes have worked together to improve the Act, and in 2000, Title V Self-Governance became a permanent option for IHS.

ISDEAA authorizes two primary mechanisms for Tribal administration of federal programs:

- Title I Self-Determination contracts, which transfer daily operations but maintain more federal oversight; and
- Titles IV and V Self-Governance compacts, which provide Tribes with broader programmatic flexibility and greater autonomy.

Today, nearly every federally recognized Tribe uses ISDEAA in some capacity, and Tribes directly administer 65 percent of the entire IHS budget through ISDEAA agreements.

This shift has changed how IHS operates. The IHS today is very different from twenty years ago, not because its mission has changed, but because Tribal Self-Governance has grown, succeeded, and changed the federal role in delivering healthcare.

### **ISDEAA: A Proven Tool for Better Care and Stronger Accountability**

For fifty years, the ISDEAA has shown that Tribal administration leads to better results, stronger accountability, and more effective use of federal resources. The ISDEAA allows Tribal governments to:

- Redesign federal programs to meet local needs and cultural values.
- Integrate funding sources to reduce fragmentation.
- Modify or waive federal rules that hinder community-driven solutions.
- Reduce administrative burdens so more effort goes toward patient care.

This authority has led to real-world success. For example:

- The Chickasaw Nation operates a world-class medical campus that serves over 1 million patient encounters annually, earning CMS five-star ratings and the Malcolm Baldrige National Quality Award.
- The Swinomish Tribe launched the first Dental Health Aide Therapist program in the lower 48, expanding access to oral healthcare and decreasing wait times for its citizens.
- The Lummi Nation developed a nationally recognized Harm Reduction and Hepatitis C Elimination Program addressing the opioid and fentanyl crisis.
- The Alaska Native Tribal Health Consortium delivers statewide integrated care across immense distances, coordinating travel, housing, and specialty services in ways no federal system could replicate.

These examples highlight not only the success of ISDEAA but also the reality that realigning and modernizing IHS must build on what is already working.

### **Overview of IHS Realignment**

IHS is planning its biggest organizational realignment in almost twenty years. The agency faces real challenges, including ongoing workforce shortages, more legal and oversight requirements, more complex health care, and the fact that Tribal Nations now manage most of the IHS budget. Modernization is both understandable and necessary.

According to IHS, the realignment seeks to:

1. Strengthen patient-centered care by reducing administrative burdens on hospitals and clinics.
2. Advance Tribal Self-Determination by standardizing ISDEAA negotiations and supporting increased compacting and contracting.
3. Modernize enterprise services, including acquisitions, technology, data, and infrastructure management.

The proposal would move many functions and authority to Headquarters, create three regional hubs for direct care operations, nationalize ISDEAA negotiations, and shift Area Offices into primarily relationship-focused roles.

Modernization is needed, but any realignment should strengthen ISDEAA implementation. We want to make sure modernization improves responsiveness, accountability, and the federal trust responsibility.

As IHS moves forward, several issues require close attention, including:

### **Concerns Related to Consultation, Negotiations, and Decision-Making Authority**

As IHS considers realignment, we want to highlight three main areas that need careful attention: how consultation is conducted, how ISDEAA negotiations will operate under the new structure, and where decision-making authority will lie within the agency.

### **Meaningful Tribal Consultation Is Essential**

The IHS Consultation Policy emphasizes that true consultation is continuous and grounded in mutual understanding. We acknowledge the pressures IHS faces, but realignment of this scale requires complete information and adequate time for Tribes to meaningfully evaluate impacts and work through them with IHS.

IHS released only an executive summary on December 5, just one week before the first consultation. Tribes need all the details to understand how the reorganization will affect:

- ISDEAA implementation,
- funding processes,
- agency responsibilities, and
- government-to-government relationships.

Sharing full details earlier in the process would lead to better consultation results and more effective modernization plans. After consultation, IHS should work closely with Tribal leaders and experts to develop implementation plans for changes supported by Tribes. If

Tribes do not support aspects of the proposed realignment, the agency should be open to revisiting and changing those proposals.

That is what meaningful consultation requires.

### **Nationalization of ISDEAA Negotiations Is Highly Concerning**

The proposal to nationalize ISDEAA negotiations represents a fundamental, unprecedented shift in how the Act is implemented and warrants close examination. IHS proposes creating a new Office of Agency Negotiations that would coordinate all Title I and Title V negotiations nationwide. This is the component of the realignment most likely to reshape how ISDEAA functions in practice.

While it makes sense to want greater consistency across Areas, centralizing negotiations raises several concerns. Centralizing negotiations could cause new delays, reduce Tribes' flexibility to work with their Area Offices, and move key decisions further from the local context that is important for effective Self-Governance.

Recent Tribal experiences already show these risks. Several Tribes have reported slower negotiations because routine matters now often need approval from Headquarters. It is not clear whether this is due to less authority at the Area level, insufficient legal counsel, or differences in experience among Agency Lead Negotiators, but the impact on negotiations is real and growing.

Some Tribes also report that Area Offices, when compared to Headquarters, often provide faster, clearer, and more accurate information because they are rooted in the communities they serve and are more familiar with local needs. At the same time, we recognize Area performance is not uniform across the country; while many Areas maintain strong, trusted relationships with Tribes, others need significant improvement. Given this variation, Tribes should retain the choice to work with either their Area Office or Headquarters until nationwide performance is consistent and reliable.

### ***Strike Team Experience Also Signals Risk***

The “strike team” model that IHS started to help with negotiations also shows the problems with centralization. Early feedback shows that coordination issues, even something as simple as a missed meeting, can disrupt negotiations, delay amendments, and put Tribes at risk of not getting program administration funds on time. These problems suggest that nationalization, which brings officials across the country together into a single team, will require even greater oversight, precision, and accountability.

### ***Increased Use of “Final Offers” Indicates a Breakdown***

As delays grow, Tribes are increasingly submitting “final offers,” a mechanism Congress intended for rare impasses—not routine negotiations. This is not merely procedural. It signals that Tribes believe the negotiation process has become unresponsive to their statutory rights.

Final offers trigger strict timelines and elevate disputes. Most importantly, widespread use reflects erosion of trust, unclear roles, insufficient staffing, or delayed decisions. If negotiations become more centralized without addressing these underlying issues, reliance on final offers will only increase, weakening the government-to-government relationship.

Strengthening the negotiation process to resolve disagreements early, consistently, and collaboratively is essential. Based on the information provided to date, we are concerned that nationalizing negotiations may weaken, rather than strengthen, ISDEAA implementation unless these systemic challenges are addressed first.

### **Decision-Making Authority Should Remain Connected to Tribal Communities**

The IHS proposal would transform current Area Offices into Area Tribal Relations Offices and relocate many of their operational and decision-making authorities to Headquarters or national divisions. This is a significant structural change.

Area Directors currently serve as key decision-makers who understand the unique histories, priorities, and contexts of the Tribal Nations they work with. Maintaining that local knowledge is essential. Removing decision-making authority from Areas weakens accountability and federal responsiveness.

As mentioned earlier, we know that Area performance is uneven and some Areas need improvement. IHS has recognized this too. Still, modernization should build capacity and accountability where needed, without weakening the strong relationships and good support that many Area Offices already give.

Although IHS has stated that Tribal shares will not be affected, major structural changes naturally raise questions. Tribes will seek additional details to understand how these assurances will be implemented in practice.

In the end, modernization should aim to keep decision-making as close as possible to Tribal communities.

## **Realignment Alone Is Not Modernization: Additional Actions Are Needed**

While structural realignment is one component of modernization, we have identified several longstanding challenges that must also be addressed for meaningful and lasting improvement—specifically, workforce shortages, program funds eligible for ISDEAA, IPA agreement terms, and outdated regulations that don't align with Self-Governance tenets.

***A Comprehensive Workforce Strategy.*** IHS and the HHS offices that help support IHS face significant workforce shortages with IHS recently reporting a 35 percent vacancy rate, with even higher shortages in critical clinical fields. These shortages threaten patient care and impede the implementation of ISDEAA. For example, after an HHS office closed, Tribes were left without a point of contact for indirect cost negotiations, thereby delaying the receipt of essential funds.

The realignment recognizes workforce shortages but does not offer solutions. Modernization requires a clear plan to recruit, retain, and support the staff the agency needs to work effectively.

***All Program Funding Must Be Eligible for ISDEAA Agreements.*** Several behavioral health programs—including SAPTA, SPIP, YRTC Aftercare, BH2I, Zero Suicide, DVP, and Forensic Healthcare Services—remain limited to grants despite strong Tribal support for compacting and contracting authority. Leaving these programs outside ISDEAA undermines Tribal Self-Governance and limits innovation.

***Restore Mutually Agreed-Upon IPA Terms.*** IHS recently revised the terms of the Intergovernmental Personnel Act (IPA) agreement without consultation. The new requirements—including up to one year of severance pay—shift federal costs to Tribes and raise statutory concerns. TSGAC has requested discussions since July 2025 and continues to seek restoration of mutually agreed-upon terms.

***Align Regulations and Program Administration with Self-Governance.*** Several existing policies and administrative practices are outdated and do not align with the core tenets of Self-Governance. For example, the 2007 IHS Environmental Review Manual requires duplicative NEPA reviews and does not integrate Tribal environmental review programs. In another example, the 2009 O&M Guidance predates remote monitoring, Tribal utility commission codes, and modern asset-management technologies. These examples show the need for a full review to find and update other policies and practices that may also hold back Tribal innovation and effective Self-Governance.

## **Congress Plays a Critical Role in Strengthening ISDEAA and Modernization**

Congress can significantly support modernization by:

1. Making IHS funding mandatory, ensuring the trust responsibility is not subject to annual budget instability.
2. Extending advance appropriations to all IHS accounts, including Contract Support Costs and 105(l) leases.
3. Expanding ISDEAA authority to additional HHS programs beyond IHS.

These steps would give the stability, authority, and flexibility needed to move Tribal Self-Governance forward for the next generation.

### **Conclusion**

In closing, Tribal Nations and IHS both want the same thing: a modern, effective health system that provides high-quality care and supports Tribal Self-Governance. We appreciate the agency's efforts to address long-standing challenges, and we offer these comments in the spirit of partnership and ongoing improvement.

Chairman Hurd, Ranking Member Leger-Fernandez, and Members of the Committee, thank you again for the opportunity to testify. I am happy to answer any questions you may have.