



March 7, 2011

David Logan, DDS
Legislative Chairman
Alaska Dental Society
9170 Jewel Lake Road #203
Anchorage, AK 99502

Dear Dr. Logan:

Thank you for your email suggesting language to further amend Section 16 of SB 92. Southcentral Foundation (SCF) agrees with you that the language in the bill as introduced, adding an exemption under AS 08.32.187(a) for certain dental hygienists, needs additional work. Your suggestion was that it read:

(4) a dental hygienist employed in the state by an Alaska Native organization that is recognized by and eligible to receive services from the United States Department of the Interior, Bureau of Indian Affairs, while providing dental hygiene services to a member of a tribe that is recognized by the United States Secretary of the Interior under 25 U.S.C. 479a (Federally Recognized Indian Tribe List Act of 1994).

You asked SCF to identify any problems it might have with that language and it is happy to do so.

Operation of health programs by Alaska Native tribes and tribal organizations is governed by two laws: the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638, (codified as amended at 25 U.S.C. 450 *et seq.*), and the Indian Health Care Improvement Act (IHCIA), Pub. L. 94-437, (codified as amended 25 U.S.C. 1601 *et seq.*). The ISDEAA specifies which tribal entities are allowed to operate services of the Indian Health Service (IHS). These entities include tribes, tribal organizations, and inter-tribal consortia. There is no process by which the Department of Interior, Bureau of Indian Affairs, recognized "Alaska Native Organizations," as the language above suggests, and the definition of tribe in the latter clause is inconsistent with the definition of tribe in either the ISDEAA or IHCIA.

This is a matter of great concern to SCF, and very likely many other tribal organizations throughout the State, since the proposed language would exclude all of the regional tribal health organizations and would also narrow who may be served significantly over that authorized under applicable Federal law, specifically the ISDEAA and IHCIA.

SCF appreciates the interests that the Alaska Dental Society is attempting to address, however,

and wants to help find the correct language. A really simple version could read:

(4) a dental hygienist employed in the state by an Indian health program, as that term is defined at 25 U.S.C. 1603(12), while providing dental hygiene services to a person that the Indian health program is entitled to serve under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, and the Indian Health Care Improvement Act, Pub. L. 94-437, as amended.

An alternative version that would spell out the provisions somewhat more could read:

(4) a dental hygienist

- (A) employed in the state by
 - (i) the Indian Health Service;
 - (ii) an Indian tribe or tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by the [Indian Health] Service through, or provided for in, a contract or compact with the Service under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); or
 - (iii) any Indian tribe or tribal organization to which the Secretary [of Health and Human Services] provides funding pursuant to section 23 of the Act of June 25, 110 (25 U.S.C. 47) (commonly known as the "Buy Indian Act"); and
- (B) while providing dental hygiene services to a person that the Indian health program is entitled to serve under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, and the Indian Health Care Improvement Act, Pub. L. 94-437, as amended.

SCF encloses the definitions of terms used in either of these versions for your reference since whatever we might agree on, the language will have to be sent to Legislative Counsel for final drafting. As you can see in these definitions, the complexities of Indian health programs are many.

SCF appreciates the effort to clearly define the new exemption, but also needs to assure that the exemption does not inadvertently limit the population SCF and other Indian health programs may serve under their compact with the Indian Health Service. Accordingly, SCF also changed the last part of your proposed amendment. SCF did not try to detail every section of the IHCIA that addresses who can be served in an Indian health program. This is a complex matter in which

that addresses who can be served in an Indian health program. This is a complex matter in which one must refer to multiple sections of the law and Federal regulations. SCF is concerned that that level of detail would bog down the limitation on who can be served to the point that the Legislature would exclude that language entirely.

SCF looks forward to continuing to work with you, other stakeholders, and the Legislature on this important piece of legislation.

Sincerely,

SOUTHCENTERAL FOUNDATION

A handwritten signature in blue ink, appearing to read "K. Gottlieb DDS".

Kevin Gottlieb, DDS
Vice President/Chief of Staff

enclosure

APPLICABLE LEGAL DEFINITIONS

Under 25 U.S.C. 1603(12), “Indian health program” means:

- (A) any health program administered directly by the [Indian Health] Service;
- (B) any tribal health program; and
- (C) any Indian tribe or tribal organization to which the Secretary [of Health and Human Services] provides funding pursuant to section 23 of the Act of June 25, 110 (25 U.S.C. 47) (commonly known as the “Buy Indian Act”).

“Tribal health program” is defined in 25 U.S.C. 1603(25) as meaning

an Indian tribe or tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by the [Indian Health] Service through, or provided for in, a contract or compact with the Service under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

“Tribal organization” is defined in the IHCIA, at 25 U.S.C. 1603(26) by reference to “the term in section 4 of the [ISDEAA] (25 U.S.C. 450b).” “Indian Tribe” is defined in 25 U.S.C. 1603(14), as follows:

The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.