

“(1) to permanently establish and implement tribal self-governance within the Department of Health and Human Services;

“(2) to call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance—

“(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

“(B) to permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] relating to the provision of Federal services to Indian tribes;

“(C) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

“(D) to affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

“(E) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

“(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

“(G) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portion thereof) are assumed by Indian tribes;

“(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act [see Short Title of 2000 Amendments note set out under section 5301 of this title] and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

“(I) to provide Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.”

§ 5382. Establishment

The Secretary shall establish and carry out a program within the Indian Health Service of the Department of Health and Human Services to be known as the “Tribal Self-Governance Program” in accordance with this subchapter.

(Pub. L. 93-638, title V, §502, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 714.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 458aaa-1 of this title prior to editorial reclassification and renumbering as this section.

Another section 502 of Pub. L. 93-638 was renumbered section 802 and is classified to section 5422 of this title.

§ 5383. Selection of participating Indian tribes

(a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III¹ on August 18, 2000, may elect to

¹ See References in Text note below.

participate in self-governance under this subchapter under existing authority as reflected in tribal resolution.

(b) Additional participants

(1) In general

In addition to those Indian tribes participating in self-governance under subsection (a) of this section, each year an additional 50 Indian tribes that meet the eligibility criteria specified in subsection (c) of this section shall be entitled to participate in self-governance.

(2) Treatment of certain Indian tribes

(A) In general

An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance provided the Indian tribe meets the eligibility criteria specified in subsection (c) of this section.

(B) Effect of withdrawal

If an Indian tribe has withdrawn from participation in an inter-tribal consortium or tribal organization, that Indian tribe shall be entitled to its tribal share of funds supporting those programs, services, functions, and activities (or portions thereof) that the Indian tribe will be carrying out under the compact and funding agreement of the Indian tribe.

(C) Participation in self-governance

In no event shall the withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance.

(c) Applicant pool

(1) In general

The qualified applicant pool for self-governance shall consist of each Indian tribe that—

(A) successfully completes the planning phase described in subsection (d) of this section;

(B) has requested participation in self-governance by resolution or other official action by the governing body of each Indian tribe to be served; and

(C) has demonstrated, for 3 fiscal years, financial stability and financial management capability.

(2) Criteria for determining financial stability and financial management capacity

For purposes of this subsection, evidence that, during the 3-year period referred to in paragraph (1)(C), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

(d) Planning phase

Each Indian tribe seeking participation in self-governance shall complete a planning phase. The planning phase shall be conducted to the