



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JAN 18 2019

The Honorable Henry Kerner
Special Counsel
Office of the Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Re: OSC File No. DI-18-4156

Dear Mr. Kerner:

I have enclosed a report prepared by the Department of Health and Human Services' Indian Health Service concerning a whistleblower disclosure you referred to me in correspondence dated July 23, 2018.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alex M. Azar II". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alex M. Azar II

Enclosures



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

AUG 27 2018

Lori A. Commins, Director
Division of Personnel Security and Ethics
Office of Human Resources
Indian Health Service
5600 Fishers Lane, Office 11E80
Mail Stop: 11E53A
Rockville, MD 20857

RE: OSC File No. DI-18-4156

Dear Ms. Commins:

The U.S. Office of the Special Counsel ("OSC") has referred the enclosed disclosure to me, which involves allegations that officials at the Indian Health Service engaged in improper fundraising and gambling activities during duty hours to recoup personal expenditures of funds. Pursuant to 5 U.S.C. § 1213, the Department of Health and Human Services is obligated to investigate the allegations and prepare a report that must be submitted to the OSC within 60 days. I am delegating my authority in this matter to the Indian Health Service to conduct a full and objective investigation of the allegations and request that you report your findings directly to me by not later than September 21, 2018.

Sincerely,



Alex M. Azar II

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
Washington, DC**

**Report to the
Office of Special Counsel
OSC File Number DI-18-4156**

**Department of Health and Human Services
Indian Health Service
Acoma-Canoncito-Laguna Service Unit
Acoma Pueblo, New Mexico**

Report Date: August 22, 2018

Any information in this report that is subject to the Privacy Act of 1974 and/or the Health Insurance Portability and Accountability Act of 1996 may only be disclosed as authorized by those statutes. Any unauthorized disclosure of confidential information is subject to the criminal penalty provisions of those statutes.

1. Executive Summary

At the direction of the Secretary of Health and Human Services, the Indian Health Service (IHS) Deputy Director of Field Operations assigned an Investigating Officer to investigate complaints lodged with the Office of Special Counsel (OSC) by a whistleblower employed by the Acoma-Canoncito-Laguna Service Unit (ACL Service Unit). The Investigating Officer conducted an on-site Administrative Investigation at the Service Unit on August 13-14, 2018, to investigate the allegations.

Allegations of the Whistleblower

According to OSC, the whistleblower explained that in 2016 the ACL Service Unit began participating in HHS's Transit Benefits Program. The program provides eligible employees with access to 15-passenger vans for transportation to and from work. The whistleblower stated that employees were provided with transit subsidy cards for the purchase of gasoline and the payment of van rental fees. Transit subsidy cards received monthly payments from the agency based on van usage tracked by a designated employee. According to the whistleblower, ACL Service Unit employees did not accurately track usage during a five-month period running from August 1, 2016 through December 2016, which resulted in a \$5,000 debt owed to the van rental service.

Conclusions for Whistleblowers' Specific Allegations

1. IHS **partially substantiates** that Employee 1 directed subordinate employees to purchase food with their personal funds, for preparation and sale to other ACL Service Unit employees and customers during work hours at the work place.
2. IHS **substantiates** that Employee 1 held an employee 50/50 raffle at the ACL Service Unit, where she retained fifty percent of the proceeds.
3. IHS **substantiates** that used the earnings from these activities to recoup an expenditure of personal funds.
4. IHS **does not substantiate** that Employee 1 has directed Employee 2 to purchase her breakfast or lunch from off-site locations, using her GOV.

Finally, although not alleged by the whistleblower, IHS found evidence that could potentially be deemed gross mismanagement by Employee in retaining a van pool service outside of the Contracting Officer's authority.

Recommendations to the Service Unit:

1. Immediately cease any fundraising activities including food-sales and raffles during work hours.
2. Request Area consultation on establishing an agreement for van pool services to include employee responsibilities within the HHS transit subsidy program.
3. Provide management training on Standards of Ethical Conduct.

Recommendations to the Albuquerque Area Office:

1. Seek guidance from Ethics and Human Resources on issuing/proposing any disciplinary actions for Employee 1, as deemed appropriate and supportable.

Table of Contents

1. Executive Summary.....	2
2. Introduction.....	5
3. Specific Allegations of the Whistleblower.....	6
4. Conduct of Investigation.....	6
5. Findings, Conclusions, and Recommendations.....	7
6. Attachment A.....	11

2. Introduction

The IHS Albuquerque Area is responsible for the provision of health services to 27 distinctly different tribal groups. The Area serves 20 Pueblos, two Apache bands, three Navajo Chapters, and two Ute tribes across four Southwest states. Additionally, numerous tribal members from throughout the United States who live, work, or go to school in the urban centers of the Albuquerque Area are provided services in health facilities operated by the IHS.

The administrative headquarters of the Area are located in Albuquerque, New Mexico. Across the Area care is via five hospitals, eleven health centers, and twelve field clinics, which deliver care at the community level. These facilities are administratively divided into eight service delivery areas called "Service Units." Care of American Indian/Alaska Natives in Albuquerque, NM and Denver, CO areas are provided via two Urban Health Centers.

ACLSU is located 60 miles west of Albuquerque, New Mexico's major metropolitan area and within two driving hours of Santa Fe. The facility serves a tribal population of approximately 9,100 tribal members, comprised of two tribes: the Pueblo of Acoma, and the Pueblo of Laguna.

ACL Service Unit has 126,000 patient visits a year and high risk outpatients and those requiring surgery or complex medical care are referred to another facility for the appropriate higher level care. The Service Unit is Joint Commissioned accredited as a full-service inpatient and outpatient facility staffed by 230 employees, including physicians, physician assistants and nurse practitioners. The Inpatient Unit has a six bed capacity, and services include general medical care, Outpatient services include general medical primary care, woman's health, podiatry, physical therapy, optometry and dentistry.

3. Allegations of the Whistleblower

The whistleblower alleged that:

1. Employee 1 directed subordinate employees to purchase food with their personal funds, for preparation and sale to other ACL Service Unit employees and customers during work hours in violation of 5 C.F.R. 2635.701 and 2635.808;
2. Employee 1 held an illegal employee 50/50 raffle at the ACL Service Unit, where she retained fifty percent of the proceeds, in violation of 5 C.F.R 735-201;
3. Employee 1 used the earnings from these activities to recoup an expenditure of personal funds; and
4. Employee 1 has directed Employee 2 to purchase her breakfast or lunch from off-site locations, using her GOV, in violation of 41 C.F.R 102-34.220 and HHS Logistics Manual 4.4.

4. Conduct of Investigation

The Investigating Officer was assigned by the IHS Deputy Director of Field Operations. The whistleblower was not knowingly interviewed by the Investigating Officer, as the identity of that whistleblower was not known to the Investigating Officer. The Investigating Officer reviewed the "Warnings and Assurances to Employee Required to Provide Information" with a witness present to each employee interviewed. The Investigating Officer interviewed the following ACLSU employees:

1. Chief Executive Officer
2. Housekeeping Supervisor and Acting Safety Officer
3. RN Diabetic Educator
4. Inpatient Coder
5. Administrative Assistant
6. Clinical Credentialing Assistant
7. Nurse Mid-Wife
8. General Supply Specialist
9. Quality Manager
10. Public Health Nutritionist
11. Chief Nurse Manager

The Investigating Officer relied on witness testimony as the primary information source to confirm actions taken by staff. Also provided by employees during the interview process were signed declaration statements by the employee, interview notes of the investigating officer, printed emails, and invoicing documents.

5. Findings, Conclusions, and Recommendations

Findings

1. The whistleblower alleged that Employee 1 directed subordinate employees to purchase food with their personal funds, for preparation and sale to other ACL Service Unit employees and customers during work hours. Based on witness interviews and extensive review of relevant documentation, there was no evidence by means of email or meeting minutes of a directive by Employee 1. Witness testimony by Employee 4 and Employee 7 indicated that fund-raising was a van pool group decision in order to repay a van pool debt. Witness testimony by Employee 3, Employee 5, and Employee 11 indicated that the expectation was made clear by Employee 1 during van pool meetings, supervisor meetings, and morning department huddles to bring in donations and that van pool members were expected to participate. Upon interview by the Investigating Officer, Employee 1 stated that fundraising was optional and she told van pool staff that had a debt to the van service "I know you can't afford this, but you need to help with the fundraising," in part to relieve the stress to the employee for the van pool debt. Witness testimony also indicated that food sales were done, with knowledge by Employee 1 during work hours and in the work place being sold to ACLSU employees and patients. Employee 5 stated that she was told by her supervisor, Employee 1, that she had been assigned to prepare food and work the food sales. Employee 10 reported that she received an email that staff were authorized to use the facility kitchen to prepare for the food sales. A copy of this email was provided by Employee 10 and verified by the investigating officer.
2. The whistleblower alleged that Employee 1 held an illegal employee 50/50 raffle at the ACL Service Unit, where she retained fifty percent of the proceeds. Based on witness testimony, there is evidence that Employee 1 coordinated a 50/50 raffle at the ACLSU and retained proceeds to recoup personal expenditures related to the van pool. Although Employee 1 initially stated that a 50/50 raffle did not occur, she later indicated that it did occur but that it was conducted outside of the workplace. Employee 6 stated that Employee 1 approached her and her office co-worker to purchase 50/50 raffle tickets. She indicated that she responded that she did not have any money and that Employee 1 continued to stand over them in an

intimidating manner. When asked about the "intimidating manner," she reported that she felt very uncomfortable and ultimately found change to purchase two tickets. Employee 5 witnessed this interaction. Employee 11 reported that Employee 1 sold tickets to Purchased Referred Care staff who reported directly to Employee 1. Employee 7 acknowledged that she coordinated a 50/50 raffle with Employee 1 and that all members of the van pool participated in selling tickets. Employee 7 also acknowledged that her husband was the winner of the 50/50 raffle and stated that the winning amount was donated back to the proceeds. Employee 7 was unsure as to how much was collected in the raffle and stated that all proceeds were given to Employee 1. Employee 1 stated that she was unsure as to how much was collected but that the amount turned in to her was applied to the debt she paid by personal credit card for the van pool service. Witness testimony suggested that all staff understood that a 50/50 raffle should not occur in the workplace.

3. The whistleblower alleged that Employee 1 used the earnings from these activities to recoup an expenditure of personal funds. Based on witness interviews and extensive review of relevant documentation, there is evidence that Employee 1 used earnings from fundraising activities such as food sales and a 50/50 raffle to recoup personal expenditures related to the van pool.

As background, in 2016 Employee 1 assigned Employee 10 to coordinate a van pool service under the HHS transit subsidy program. According to witness testimony, many van pool members did not make payments on time to V-ride and a significant debt occurred of approximately \$5,000. Van pool members were provided accounting of debt owed by individual riders directly by Employee 1. Witness testimony and review of documentation showed that some van pool members made personal payment to their own debt and others withdrew from the program and refused to pay the debt with personal funds as there was no employee agreement in place stating that they would be personally responsible for the debt.

Employee 11 stated that in April 2017 she was assigned to resolve the issue of the van pool debt. Subsequent van pool meetings led by her and Employee 1 communicated that if the debt was not resolved the vans were going to be returned. Employee 1 stated that she paid a lump sum amount on her personal credit card "with the understanding that our van would do fundraising. And they just paid it back." Employee 1 could not recall how much she paid in a lump sum. Witness testimony varied greatly on the amount paid by Employee 1. Witness testimony was also unable to tell the Investigating Officer who collected and tracked the proceeds by the fund-raising. Witness testimony and the amounts applied to the Employee 1 personal expenditures related to the van pool debt. Review of relevant documentation included invoicing and payments made to V-ride revealing that Employee 1 paid \$1,700 by credit card on 5/8/17. Documentation did not establish to the Investigating Officer whether that payment included any personal debt of Employee 1 as a van pool participant. Employee 1 stated that the van pool debt she paid by personal credit card had been recouped through fundraising. However, she did not have documentation of this other than a sticky note with dates and dollar amounts. Employee 1 stated that she "had the resources to do it, others didn't. We discussed it. They were clear that fundraising would pay it back. It was a team effort. No one was pressured."

4. The whistleblower alleged that Employee 1 has directed Employee 2 to purchase her breakfast or lunch from off-site locations, using her GOV. Based on witness interviews and extensive review of relevant documentation, there was no evidence of such a directive. Employee 2

denied any such directive stating he will often bring Employee 1 back something from town when he goes in his POV. He stated that Employee 1 always pays for her own food and that these are done during his breaks. Employee 6 and Employee 5 are located in the same office area as Employee 1 and stated that this occurs often and is a conflict as Employee 1 is Employee 2's direct supervisor.

Conclusions for Allegations

1. IHS **partially substantiates** that Employee 1 directed subordinate employees to purchase food with their personal funds, for preparation and sale to other ACL Service Unit employees and customers during work hours.
 - There is witness testimony but no written support of a directive by Employee 1.
 - There is evidence to suggest that Employee 1 had clearly communicated during van pool meetings, supervisor meetings, and morning department huddles an expectation of participation in food sales and fundraising activities.
 - There is evidence to suggest that Employee 1 approved staff to participate in fundraising preparation and activities during work-hours.

2. IHS **substantiates** that Employee 1 held a 50/50 raffle at the ACL Service Unit, where she retained fifty percent of the proceeds.
 - There is evidence that Employee 1 coordinated a 50/50 raffle at the ACLSU and retained proceeds to recoup personal expenditures related to a van pool debt.
 - There is evidence that Employee 1 sold tickets to staff, some of whom reported directly to Employee 1. There is witness testimony by staff stating that they felt intimidated and felt pressured by Employee 1 into purchasing a raffle ticket.
 - There is evidence that staff understood 50/50 raffles should not take place in the work place.
 - There is no written support for the amount collected from the 50/50 raffle or the amount given to Employee 1. Both Employee 7 and Employee 1 stated that the proceeds were given to Employee 1 and applied to the van pool debt. Neither could state the exact amount.

3. IHS **substantiates** that Employee 1 used the earnings from these activities to recoup an expenditure of personal funds.
 - There is evidence that Employee 1 used earnings from fundraising activities such as food sales and a 50/50 raffle to recoup personal expenditures related to the van pool.
 - There is evidence that a debt incurred related to a van pool service called V-Ride.
 - There is evidence that Employee 1 made a personal credit card payment to V-Ride on 5/8/17 in the amount of \$1700. Documentation does not indicate if this amount was to pay a personal debt or that of the van pool group.
 - There is evidence to suggest that Employee 1 made payment to V-Ride on behalf of the van pool debt with the expectation that fundraising would be recouped for her personal expenditure to the service.

- There is no documentation to the amount that was collected by each fundraising activity, nor the amount provided to Employee 1. Employee 1 did report to the Investigating Officer that the personal expenditure in the amount of \$1700 had been paid back to her in full.
4. **IHS does not substantiate** that Employee 1 has directed Employee 2 to purchase her breakfast or lunch from off-site locations, using her GOV.
 - There is no evidence of a directive from Employee 1 to Employee 2.
 - There was corroboration that Employee 2 does go off site for meals and bring back food for Employee 1 paid for by Employee 1.
 - There is no evidence that a GOV was used.
 5. **IHS substantiates** that there was gross mismanagement in the operation of the van pool program. An understanding was arrived at with V-ride at a local level in which contracting personnel were not consulted. Extensive review of documentation by the Investigating Officer found no contract or written agreement for service with V-ride or ACLSU employees participating in the service. Employee 10 stated that she provided guidance to employees about enrollment into the HHS transit subsidy program. Although V-ride had already provided the vans and services, many van pool members were still being processed through the HHS transit subsidy program application. Payments were to be made by individual van pool members through their transit subsidy cards each month directly into the V-ride online system. Cards are provided funds by HHS monthly and then zeroed out at the end of each month for funds not used.

Recommendations to the Service Unit:

1. Immediately cease any fundraising activities including food sales and raffles during work hours.
2. Request Area consultation on establishing an agreement for van pool services to include employee responsibilities within the HHS transit subsidy program.
3. Provide management training on Standards of Ethical Conduct.

Recommendations to the Albuquerque Area Office:

1. Seek guidance from Ethics and Human Resources on issuing/proposing any disciplinary actions for Employee 1, as deemed appropriate and supportable.
2. Provide contracting support in the establishment of an agreement for van pool services.
3. Provide ethics trainings on misuse of position and improper use of government resources and property. In addition a reminder of the prohibition of gambling and raffles on government property.

Recommendations to the IHS:

1. Provide updated guidance on use of the HHS transit subsidy program to IHS facilities.

Summary Statement:

IHS developed this report to address OSC's concerns that the Acoma-Canoncito-Laguna Service (ACL Service Unit Chief Executive Officer engaged in conduct that may constitute a violation of law, rule, or

regulation; gross mismanagement; and an abuse of authority. IHS found evidence that may potentially constitute a violation of regulation through the activity of fundraising and raffle. IHS also found evidence that could potentially be deemed an abuse of authority by in the facilitation of such activities with an expectation for staff participation. IHS found evidence that could potentially be deemed gross mismanagement by Employee 1 in retaining a van pool service outside of the Contracting Officer's authority.