Indian Health Service Endorses Urban Indian Health Federal Tort Claims Act Bill at Senate Indian Affairs Hearing

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NCUIH provided written testimony for the legislative and oversight hearing on COVID-19 in Indian Country. Many members of the Senate Indian Affairs Committee expressed support for urban Indian health parity.

WASHINGTON, DC (July 1, 2020) – Today, the Senate Committee on Indian Affairs (SCIA) held an oversight hearing on "Evaluating the Response and Mitigation to the COVID-19 Pandemic in Native Communities" and a legislative hearing on S. 3650, the Coverage for Urban Indian Health Providers Act. NCUIH Vice President Robyn Sunday-Allen, who is also the CEO of the Oklahoma City Indian Clinic, submitted written testimony emphasizing the importance S. 3650, which has been exacerbated by the COVID-19 pandemic.

S. 3650 is a bipartisan bill – introduced by Senators Lankford, McSally, Smith, and Udall– that includes a technical fix to provide parity in the Indian Health Service (IHS) system by extending Federal Tort Claims Act (FTCA) coverage to urban Indian organization (UIO) employees such that UIOs would no longer need to utilize limited federal funds to purchase costly malpractice insurance.

During the hearing, many Senators emphasized the critical nature of this legislative fix to help expand resources for urban Indian health services. Chairman Hoeven offered remarks on S. 3650 and stated that **"Urban Indian organizations are not offered malpractice liability protections that are already provided to IHS and Tribal health programs' employees. Urban Indian organizations are providing culturally competent care to natives living in urban areas."** Senator Udall stated the FTCA bill is an "**excellent example of the type of practical bipartisan solution we should all be pushing for. This bill not only creates parity with the IHS system but also helps urban Indian health programs reduce operating costs due to COVID-19 budget related shortfalls."** IHS Director RADM Michael Weahkee also expressed support mentioning that the **"IHS endorses the policy to extend Federal Tort Claims Act Coverage to UIOs, which is consistent with [IHS'] FY 2021 budget request"**.

S. 3650 represents a technical fix that has long enjoyed broad bipartisan support, including from both sides of the aisle and both Chambers of Congress as well as from the Administration and the Tribal Budget Formulation Work Group. IHS facilities and Tribal Health Programs, as well as Community Health Centers, already receive FTCA coverage.

A recording of the hearing can be found here.

Next Steps

Given S. 3650's broad support across the aisles, in both chambers, and by Indian Country, NCUIH will continue to advocate for its swift passage in the next COVID-19 package, which the Senate is expected to take up later in July.

Background Information

- NCUIH Testimony
- S. 3650 / H.R. 6535 One Pager
- Press Release: U.S. Senators Tina Smith and James Lankford Introduce Bipartisan Legislation to Expand Health Care Resources for Urban Indian Health Organizations Amid Pandemic (May 8, 2020)
- NCUIH Press Release: Gallego, Mullin Introduce FTCA Bill to Reduce Burdens for Urban Indian Organizations (April 21, 2020)
- Press Release: Reps. Gallego, Mullin Introduce Bill Boosting Resources for Urban Indian Health Organizations (April 20, 2020)
- Inclusion of FTCA for UIOs in IHS FY 2021 budget (p. CJ-18 and CJ- 288)
- Discussion of FTCA in newly confirmed IHS Director RADM Weahkee's past testimony (p. 14)

Testimony

July 1, 2020

Senate Committee on Indian Affairs

Legislative Hearing to Receive Testimony on S. 3650

Testimony of Robyn Sunday-Allen, Vice President

National Council of Urban Indian Health (NCUIH)

My name is Robyn Sunday-Allen and I am the Vice President of the National Council of Urban Indian Health (NCUIH), which represents the 41 Urban Indian Organizations (UIOs) across the nation who provide high-quality, culturally-competent care to Urban Indians, constituting over 70% of all American Indians/Alaska Natives (AI/AN). I also serve as the Chief Executive Officer of the Oklahoma City Indian Clinic, a permanent program within the IHS direct care program and a UIO, which provides culturally sensitive health and wellness services including comprehensive medical care, dental, optometry, behavioral health, fitness, nutrition, and family programs to our patients. I would like to thank both Chairman Hoeven and Vice Chairman Udall for holding this legislative and oversight hearing during this unprecedented pandemic, which has especially impacted Indian Country. My testimony is regarding S. 3650, Coverage for the Urban Indian Health Providers Act, and how it would improve health care outcomes for Oklahoma City's Urban Indian community.

S. 3650 will close a major disparate gap in the Indian Health Service (IHS) system by extending Federal Tort Claims Act (FTCA) coverage to UIOs. FTCA for UIOs was also included in President Trump's FY 2021 budget and the Tribal Budget Formulation Workgroup's FY 2021 and FY 2022 budget recommendations. Both in this esteemed Chamber and in the House of Representatives, the Coverage for Urban Indian Health Providers Act has enjoyed broad support, both geographically and across political parties. This extensive support shows that one thing is clear across the board: FTCA coverage must be extended to UIOs, especially at a time when it is needed most.

At the Oklahoma City Indian Clinic, we spend approximately $200,000 annually on malpractice insurance, money which we would rather invest in our services. If UIOs were covered under the FTCA, we would put every one of these dollars back into services to include preventative care, such

as: mammograms, pap smears, immunizations (adult and children), and dental sealants, among other services.

We are not alone in needing these funds even more during the COVID-19 pandemic. Many UIOs fear for our staff and have been forced to institute hiring freezes as we stretch every dollar as far as it will go. In fact, 83% of UIOs initially reported they had been forced to reduce their services, and 9 UIOs have reported hiring freezes.

Extending FTCA coverage to UIOs is a simple legislative fix, but the benefits would be significant. A single UIO may pay as much as $250,000 annually in medical malpractice insurance, funds which could instead be used to invest in better health outcomes for their communities or to prepare for public health emergencies like the one we are currently facing. By freeing up federal funding for UIOs, they would be better able to serve their communities with high-quality health care. For instance, some UIOs have reported to NCUIH that they are hesitant to hire additional providers or provide additional services as they cannot cover the costs of additional medical malpractice insurance, even as they are prepared to cover the new salaries and related costs. This directly and substantially limits the services UIOs can provide to their patients as the cost of adding providers or new services to malpractice insurance policies can be the sole prohibition to service expansion.

The federal government maintains a trust obligation to tribes and AI/ANs, which originates in treaties wherein the U.S. promised certain duties to Native populations in exchange for the lands which make up this great Nation; included among these duties is the provision of health care services. The Indian Health Care Improvement Act recognized that the federal trust responsibility to provide health care to AI/AN people does not end at the borders of a reservation and that it extends to AI/ANs who reside in urban areas. It was also under this Act that Congress formally recognized UIOs as the entities to further the fulfillment of the federal government's responsibilities to Urban Indians. UIOs are an integral component of the IHS system, which facilitates the provision of essential health care services through its three components: Indian Health Service facilities, Tribal Health Programs, and UIOs, commonly referred to as the "I/T/U" system. Each component of the I/T/U system has a significant role to play in providing AI/ANs with high-quality, culturally-competent care. UIOs not only offer a wide range of critical services, which include clinical and behavioral health services, but they are also often the only places in urban settings where Urban Indians can receive traditional care services and function as centers for cultural activities in inter-tribal settings.

Although UIOs are an integral component of the IHS system, UIOs still have to fight to receive parity with the other two components of the I/T/U system. If UIOs are not explicitly included in Indian health care legislation, they are most often implicitly excluded, with the ultimate result that UIOs do not receive the resources they need to provide care to their communities. This is a failure of the trust responsibility.

As it stands, all employees and eligible contractors at IHS and tribal facilities are treated as federal employees for the purpose of medical malpractice liability. This is true for Community Health Center employees and volunteers as well. Unlike these similarly-situated health centers, UIOs must use their limited federal funding to purchase expensive medical malpractice insurance out-of-pocket.

Even absent the current Public Health Emergency, UIOs face disproportionate hardship as they attempt to stretch every dollar to care for a population with higher risks of chronic disease. AI/ANs face significant health disparities, including diabetes, cancer, and heart disease.[1] Many of these disparities place AI/ANs at a higher risk for serious COVID-19 complications. With over 70% of AI/ANs living in urban areas, and with the highest rates of COVID-19 taking place in areas of high population density, many UIOs are the central care delivery sites for communities with compounded

risks. UIOs receive direct funding from only one line item – and are not eligible for other critical IHS funding, including Health Care Facilities, Sanitation, Purchased/Referred Care, and Equipment, to name a few. Facing a pandemic with decades of underfunding made it clear in the earliest stages of the pandemic that UIOs would need a substantial amount of emergency resources in order to meet the needs of Urban Indians. Congress acted swiftly to support UIOs and the entire IHS system through emergency supplemental appropriations. We are grateful for the support, and cannot emphasize enough how essential these resources have been to positive health outcomes for Urban Indians.

In order to both maximize the value of the money Congress has appropriated to UIOs, and to ensure other critical needs are met, it is imperative that UIOs have access to critical cost-saving measures like FTCA coverage. UIOs have reported that they would use their medical malpractice savings for additional Personal Protective Equipment, infrastructure improvements to ensure proper distancing between patients and staff, hiring additional providers, and expanding available services. All of these are imperative to help UIOs prevent and treat COVID-19 among their patients and communities, while preparing for future Public Health Emergencies.

We thank Congress for your support of UIOs during this Public Health Emergency and we urge you to keep FTCA coverage for UIOs front of mind as your work diligently on the next COVID-19 package. We are grateful for the Committee's continued support of Urban Indians and dedication to improving the health outcomes of Indian Country.

[1] National Center for Health Statistics. Health, United States, 2015: With Special Feature on Racial and Ethnic Health Disparities. Hyattsville, MD. 2016.