July 22, 2020
House Subcommittee for Indigenous Peoples of the United States
Legislative Hearing to Receive Testimony on H.R. 6535
Testimony of Robyn Sunday-Allen, Vice President
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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, who constitute 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 nearly 20,000 patients. I would like to thank both Chairman Gallego and Ranking Member Cook for holding this legislative and oversight hearing during this unprecedented pandemic, which has especially impacted Indian Country, including urban AI/ANs. My testimony is in support of H.R. 6535, the Coverage for Urban Indian Health Providers Act, and how it would improve health care outcomes for Oklahoma City's Urban Indian community, as well as the larger UIO system.

H.R. 6535, Coverage for Urban Indian Health Providers Act

H.R. 6535, the Coverage for Urban Indian Health Providers Act, will close a major gap in the Indian Health Service (IHS) system by extending Federal Tort Claims Act (FTCA) coverage to UIOs. H.R. 6535 was introduced by Chairman Gallego and Representative Mullin, who have recognized the essential nature of this technical fix and its importance as a nonpartisan issue. This legislative fix will ensure that UIOs are treated fairly and equally as a part of the IHS, Tribal health programs, and UIOs system, commonly referred to as the I/T/U system. "Our urban Indian organization partners are the third leg of our Indian Health System stool, along with our IHS federally operated or -- in our tribally operated programs," said IHS Director Rear Admiral Michael Weahkee on July 1, 2020 at the Senate Indian Affairs Committee hearing on this bill. Currently, UIOs are the only providers in the I/T/U system who do not receive FTCA coverage. However, there is widespread support to correct the omission. Given the dire strain of the COVID-19 pandemic on UIOs, they could fully redirect thousands of dollars in funds to needed health care.

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Both in this esteemed Chamber and in the Senate, the Coverage for Urban Indian Health Providers Act has enjoyed broad support, both geographically and across political parties. FTCA coverage for UIOs not only has broad support in the legislative branch, it was recently endorsed by RADM Weahkee at a Senate hearing on the companion bill on July 1, 2020. FTCA coverage for UIOs was included in the IHS FY 2021 budget and the Tribal Budget Formulation Workgroup's FY 2021 and FY 2022 budget recommendations. This extensive support shows that one thing is clear across the board: FTCA coverage must be extended to UIOs, especially during a crisis when it is needed most. This Committee has been and continues to be a strong advocate for urban AI/ANs and we need your help in order to ensure that AI/ANs are able to receive culturally competent care regardless of where they live.

At the Oklahoma City Indian Clinic, we spend approximately $200,000 annually on malpractice insurance, money which would be more effective if used to provide culturally competent health care to urban AI/ANs. If UIOs were covered under the FTCA, we would put every one of these dollars back into services including, but not limited to mammograms, pap smears, immunizations (adult and children), and dental sealants. UIOs, including the Oklahoma City Indian Clinic would also use the money saved by FTCA coverage in order to respond to COVID-19 and to prepare for future pandemics. We could use this funding to provide testing to urban AI/ANs, who are more likely to experience severe illness or death due to COVID-19. Money currently spent on malpractice insurance could be used for PPE and disinfectants to keep our workers safe. Without these additional funds, COVID-19 has forced UIOs 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, 9 UIOs have reported hiring freezes, and 4 UIOs closed their doors.

Extending FTCA coverage to UIOs is a simple legislative fix, but the benefits would be significant. For example, 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. By freeing up federal funding for UIOs, they would be better able to serve their communities with high-quality health care and provide additional services. UIOs have reported to NCUIH that cannot hire additional providers 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

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providers or new services to malpractice insurance policies can be the sole prohibition to service expansion.

Federal Trust Obligation to AI/ANs and the Role of UIOs

The federal government maintains a trust obligation to 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 reaffirmed the law – 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 the three components of the I/T/U system. Each segment 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, which constitutes less that 1% of the already underfunded IHS budget, 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,

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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.

Conclusion

We thank Congress for your support of UIOs during this Public Health Emergency and we urge you to pass H.R. 6535. This simple, cost effective legislative fix will increase the services UIOs can provide to urban AI/ANs and will ensure that UIOs are prepared for future public health emergencies. Too often urban AI/ANs are left behind and left out of crucial legislation, however, we know that we can count on this Committee to support urban AI/AN health care. We are grateful for this 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.

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