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Statement of the United South and Eastern Tribes Sovereignty Protection Fund for the Record the House Committee on Veterans' Affairs Subcommittee on Health Oversight Hearing, "Native Veterans' Access to Healthcare"

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Committee on Veterans' Affairs Subcommittee on Health with the following statement for the record of the oversight hearing entitled, *"Native Veterans' Access to Healthcare."* USET SPF is appreciative of the Subcommittee's commitment to examining and addressing the unique barriers that American Indian and Alaska Native (AI/AN) veterans face when seeking the healthcare to which they are entitled. Whether delivered through IHS or the VA, AI/AN veterans have pre-paid for their healthcare, both through the cession of Tribal homelands and the defense of our nation. We remind the Subcommittee of the unique federal trust responsibility to Tribal Nations and urge the Subcommittee and Congress to improve access to quality and culturally competent healthcare for AI/AN veterans.

USET SPF is a non-profit, inter-tribal organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine[1]. Both individually, as well as collectively through USET SPF, our member Tribal Nations work to improve health care services for American Indians. Our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities. Our patients receive health care services both directly at IHS facilities, as well as in Tribally-operated facilities under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638.

As the Subcommittee is likely aware, AI/AN veterans serve in the military at higher rates per capita than any other group in the nation. In addition, the VA has found that AI/AN veterans are more likely to have a service-connected disability than non-Indian veterans. AI/AN veterans face significant disparities in care when compared to other veterans. In the USET SPF region, AI/AN veterans are often faced with access to only either the limited services provided by the chronically underfunded IHS and Tribally-operated facilities or no services at all. As the Subcommittee seeks to help improve access to quality healthcare for AI/AN veterans, USET SPF requests the exercise of this body's oversight functions to ensure VA's actions reflect and uphold the federal trust responsibility and obligations unique to our population. This includes working to institute programs that address historical trauma, provide culturally competent treatment, and provide greater access to behavioral health programs. We provide additional recommendations below to the Subcommittee on how to meet the federal trust obligation to AI/AN veterans.

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[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

IHS-VA MOU

USET SPF is appreciative of the Subcommittee's efforts to bring together Tribal Nations as well as IHS and the VA to discuss the 2010 memorandum of understanding (MOU) between the VA and IHS. The intention of the MOU was to better facilitate patient care for AI/AN veterans across country within both agencies. However a report by the Government Accountability Office (GAO) in 2019, *"Actions Needed to Strengthen Oversight and Coordination of Health Care for American Indian and Alaska Native Veterans"*, found that more action is needed to strengthen oversight and coordination between IHS and the VA regarding implementation of the MOU.

Preservation of Existing Reimbursement Agreements

The existing reimbursement agreements within MOU have demonstrated success in facilitating patient care for AI/AN veterans. As both agencies seek to expand the existing MOU or establish new agreements, the VA must continue to uphold and preserve the existing agreements within the MOU which should serve as a template for the VA to enter into similar agreements within the Indian Healthcare System. Specifically, USET SPF underscores the importance of preserving the IHS All-Inclusive rate on reimbursements for outpatient services for AI/AN veterans delivered through IHS. Preservation of the All-Inclusive rate within the MOU will ensure critical dollars remain within the Indian Health System to be able to continue support the facilities and services provided to AI/AN veterans.

Reimbursement Agreements for PRC

IHS and Tribal health programs are not always able to directly provide AI/AN veterans with all necessary health care services. Like other AI/ANs, many of these veterans receive essential health services through the Purchased/Referred Care (PRC) program, which authorizes the purchase of services from a network of private providers when care is not available at IHS or Tribal facilities. PRC is an integral part of IHS and Tribal health care systems, as it facilitates access to care that the federal government has failed in providing the funding to deliver directly.

However, the VA does not currently reimburse IHS or Tribal programs for services provided using PRC funds. Instead, the VA requires that veterans in need of care return to the VA for a referral instead – an inefficient and time consuming process. USET SPF asserts that this policy fails to prioritize the healthcare necessities of AI/AN veterans by creating additional and unnecessary burdens. The continued lack of coordination of care between the VA and the Indian Healthcare System for the full complement of health care services will only continue to create additional barriers in access to care for our veterans.

This limitation is further contrary to the plain language of Section 405(c) of the Indian Health Care Improvement Act, which provides for reimbursement "where services are provided ***through*** the [Indian Health] Service, an Indian Tribe, or a Tribal organization …" (emphasis added) without limitation to direct services. It is also in conflict with Section 2901(b) of the Affordable Care Act, which specifies that health programs operated by IHS, Tribal Nations, Tribal organizations, and UIOs are payers of last resort. Through these provisions, Congress clearly intended to shield IHS and Tribal PRC dollars from being used to pay for services when other sources of funding are available, including funding from VA. Accordingly, VA should reimburse for all services provided by or through Tribal health programs.

Ensuring UIOs are Eligible to Bill VA for AI/AN Veterans Care

Approximately 78% of AI/ANs do not live on Tribal reservations. However, the MOU does not include Urban Indian Organizations (UIOs) as eligible to for inclusion in the reimbursement

agreements even though UIOs provide critical healthcare services to AI/AN veterans residing in urban areas. While the VA has successfully implemented the MOU for IHS and Tribal facilities, the VA has made a discretionary decision to deem UIOs ineligible for inclusion in the MOU, excluding UIOs from entering into reimbursement agreements. The federal trust responsibility to provide healthcare to AI/ANs in perpetuity is not limited to where an AI/AN veteran resides. USET SPF encourages the Subcommittee to use its authority to address this discrepancy by ensuring the MOU, including eligibility for reimbursement agreements, is extended to UIOs. We remind the Subcommittee that Congress created the UIO system to honor a federal trust obligation and assert that UIOs are well-positioned to play a vital role in closing the gap in service to AI/AN veterans.

Exempt AI/AN Veterans from VA Copays

USET SPF highlights that AI/AN veterans are currently subject to standard copays for services received within the VA. When healthcare is received through IHS or Tribally-operated facilities, AI/AN veterans are not subject to any cost-sharing. However, AI/AN veterans are subject to certain copayments, such as for urgent care services, when they are receiving care from VA facilities. Subjecting AI/AN veterans to any copayments as a condition of healthcare access is a violation of the federal trust responsibility, which all federal agencies share in equally. Further, AI/AN veterans may be discouraged from seeking critical and life-saving healthcare if they are subject to copays for certain VA services. We recommend the Subcommittee work with the VA to waive any and all copays for AI/AN veterans in a manner that upholds current law authorizing IHS as the agency of "payer of last resort."

Improved VA-IHS EHR Interoperability

Since 2018, the VA has been working to replace the agency's current electronic health record (EHR) system, VistA, to an off-the-shelf EHR known as Cerner Millennium. Since then, IHS has been considering either maintaining its current system, the Resource and Patient Management System, or implementing a new EHR system altogether – previously, IHS and the VA participated in cost sharing for necessary periodic updates. While the VA and IHS committed to facilitate the interoperability of health information data systems between both agencies to share information on common patients, the differences in EHR systems have led to challenges with regard to information technology interoperability. These challenges have made it difficult for healthcare providers to have access important patient information within one another's EHR systems. USET SPF underscores to the Subcommittee that interoperability between both EHR systems be prioritized as healthcare providers for AI/AN veterans must have access to real-time, life-saving data.

Conclusion

There is great potential in the MOU and care coordination between IHS and the VA. However, it is critical that VA do more to recognize its unique obligations to AI/AN veterans. Left unaddressed, AI/AN veterans will continue to face many ongoing challenges when it comes to accessing quality healthcare and resulting disparities. The federal trust obligation to provide comprehensive healthcare to Tribal Nations and AI/AN veterans exists in perpetuity and is shared by all federal entities including IHS, the VA, as well as the Subcommittee. It is incumbent upon the whole of the federal government to remove barriers in accessing healthcare for AI/AN veterans, and we encourage the Subcommittee to work to address these problems, as well as strengthen existing partnerships between the VA and the Indian Healthcare System.