



# USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted via email*

October 27, 2017

The Honorable John Hoeven  
Chairman  
U.S. Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C. 20515

The Honorable Tom Udall  
Vice-Chairman  
U.S. Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C. 20515

Dear Chairman Hoeven and Vice-Chairman Udall,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to you regarding President Donald Trump's nomination of Robert M. Weaver as the Director for the Indian Health Service (IHS) announced on October 24, 2017. If confirmed, Mr. Weaver would serve as IHS Director for a term of four years and would oversee the agency that is responsible for providing healthcare services to American Indians and Alaska Natives (AI/ANs).

USET SPF is a non-profit, inter-tribal organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine<sup>1</sup>. 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 citizens 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.

USET SPF supports the steps being taken by the Administration to fill the position of IHS Director. The IHS Director plays a crucial leadership role in working to raise the health status of AI/ANs to the highest level, as well as deliver upon the federal government's trust responsibility. At a time when IHS continues to face chronic challenges, it is vital that the incoming IHS Director remain steadfast in upholding the trust responsibility to deliver quality, culturally-competent healthcare to AI/ANs. With this in mind, USET SPF would like to outline the following professional qualities and policy priorities the incoming IHS Director must have in order to be successful in the position.

### **Commitment to Protecting and Increasing IHS Resources**

Since 2015, IHS has had four acting (temporary) directors. These fluctuations in leadership have impeded IHS from fulfilling its trust responsibility to deliver quality healthcare to Tribal Nations and have hindered

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<sup>1</sup> 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).

progress in addressing the systemic challenges that exist within the agency. Though USET SPF is encouraged that the Administration has taken steps to provide the agency with permanent leadership, the disparities that exist at IHS will not be addressed until the agency is fully funded. As you know, IHS has been chronically underfunded for decades, leading to challenges such as difficulties in recruiting and retaining qualified staff, lack of transparency, and a lack of timeliness in delivering care. The incoming IHS Director must advocate for increases in funding for IHS to ensure that meaningful progress is made as the agency seeks to overcome these challenges. As long as IHS remains so dramatically underfunded, progress in these and other areas will remain elusive. It is imperative that the incoming IHS Director work closely with Tribal Nations and Congress to ensure that IHS is equipped to deliver on the trust obligation to improve the health status of AI/ANs across the country.

The incoming IHS Director must also work to protect IHS funding from the ongoing damaging effects of sequestration by advocating for an exemption. In 2013, the Office of Management and Budget (OMB) ruled that IHS would be subject to the full 5.2% across-the-board sequestration cut. This is counter to exemptions and special rules provided for other similarly situated programs that are provided as a commitment by the federal government. This includes exemptions from sequestration for Social Security Veterans benefits, low income programs (CHIP, Medicaid, and SNAP), certain Tribal trust accounts, as well as special rules for Medicare, which is subject to no more than a 2% cut. The impact of sequestration was significant for IHS and led to decreases in vital services for AI/ANs. This violation of the trust responsibility must never happen again. The incoming IHS Director must commit to working to ensure that IHS will not be subject to these detrimental cuts in the future. IHS continues to be funded at approximately 60% of identified obligation and further sequestration cuts will have devastating effect on the agency's ability to provide health care to AI/ANs.

In addition to advocating for vital increases in funding for IHS, the incoming IHS Director must also work to protect access to Medicaid for services provided through the Indian Health System. Over 40 years ago, Congress determined that Medicaid resources should be available to IHS and other Tribal health programs to help ensure that AI/ANs have increased access to quality healthcare. Since then, Medicaid has become a critical source of funding and reimbursement for the chronically underfunded Indian Health System, and is another mechanism the federal government utilizes to fulfill its trust obligation to AI/ANs. The incoming IHS Director must work to ensure that access Medicaid is protected and oppose any cuts or barriers to the program for AI/ANs.

### **Preserved and Expanded Reimbursement Agreements with VA**

Five years ago, IHS and the Department of Veterans Affairs (VA) negotiated and announced a national agreement on VA reimbursements for services provided by IHS and Tribal health programs to eligible AI/AN veterans. However, the national reimbursement agreement continues to cover only those services provided directly by an IHS or Tribal facility. IHS and Tribal health programs are not always able to provide AI/AN veterans directly with all of the health care services they need. Like other AI/ANs, many of these veterans receive essential and emergency health services through the IHS Purchased/Referred Care (PRC) program when care is not available at IHS or Tribal facilities. USET SPF strongly encourages the incoming IHS Director to work with the VA to expand the reimbursement agreements to include Purchased/Referred Care (PRC) provided to eligible AI/AN veterans served at IHS, Tribally-Operated, Urban Indian clinic (ITU), as well as providing an exemption for AI/AN veterans from having to utilize the Consolidated Mail Outpatient Pharmacy (CMOP) if an ITU has a pharmacy onsite. Expanding these agreements will prolong the limited PRC funds that ITUs receive.

In addition, USET SPF and Tribal Nations and organizations across the country worked with IHS and VA to negotiate an agreement that reimburses the Indian Health System at a rate reflective of the federal

government's commitment to AI/AN veterans and the trust obligation. However, there have been recent attempts by the VA to renegotiate this rate in favor of a lower level of reimbursement. There are significant disparities in health financing between IHS and VA, which lead to disparities in health outcomes for AI/AN patients. Congress recognized this disparity when it made IHS the payer of last resort as a part of the permanent reauthorization of the Indian Health Care Improvement Act. A lower rate of reimbursement would simply shift a higher share of the cost to a deeply underfunded Indian Health System. Moreover, AI/AN veterans are unique in the level of responsibility the federal government holds for their care. Any renegotiation of reimbursement agreements resulting in a reduction in reimbursement to the Indian Health System would diminish the number of services and quality of care provided to AI/AN veterans, while undermining the federal trust responsibility.

### **Importance of Tribal Self-Governance**

As mentioned previously, the citizens of USET SPF member Tribal Nations receive health care services both directly at IHS facilities, as well as Tribally-operated facilities under contracts and compacts with IHS pursuant to the ISDEAA. By engaging in Tribal Self-Governance, Tribal Nations and the federal government are able to work together to promote Tribal sovereignty and self-determination to meet the unique needs and priorities within our communities. The incoming IHS Director must continue to uphold the principles of Tribal self-determination and support Tribal Nations in exercising their inherent sovereignty by managing their own healthcare programs to ensure the health status of their citizens is raised to the highest possible level.

### **Preserve and Modernize the Indian Health System**

The incoming IHS Director must also continue to support and preserve the IHS, Tribal, and Urban (ITU) based healthcare system. The ITU system plays an essential role in fulfillment of the trust responsibility through the provision of health care to AI/AN in a manner that is cognizant of traditional practices, cultural competence, and Tribal sovereignty. It is imperative that the incoming IHS Director work to fulfill the federal trust obligation to ensure access to healthcare for AI/ANs by ensuring that the Indian Health System is preserved at all levels.

In addition, mainstream healthcare delivery continues to advance, modernizing how Americans receive care, while the ITU system remains years behind. Nationally, the health care environment continues to innovate change in the following areas: increasing the quality of care by focusing on patient value as opposed to patient volume, implementation of medical homes and care coordination, utilization of health information technology and an increased focus on access to care and health outcomes. This vision for healthcare cannot be fully realized in Indian Country without strong advocacy, in partnership with Tribal Nations, from the IHS Director.

### **Commitment to Tribal Consultation**

Finally, the incoming IHS Director must commit to robust and ongoing Tribal consultation with all IHS areas and Tribal Nations. This includes fully engaging with Tribal governments, including Tribal leaders, in a proactive and transparent manner to understand and address the unique healthcare issues faced in each Tribal community. Tribal consultation is essential to the sacred government to government relationship between Tribal Nations and the United States, and is critical to ensuring the federal government fulfills its trust responsibilities and obligations. It is vital that the incoming IHS Director regularly engage in a continued dialogue with Tribal Nations across the country, as well as honor our expectations and guidance with a goal of reaching consent for federal actions.

## Conclusion

USET SPF thanks you for your time and consideration regarding the nomination for IHS Director. USET SPF maintains that until Congress fully funds the IHS, the Indian Health System will never be able to fully overcome its challenges and fulfill its trust obligations to deliver quality healthcare to AI/ANs. Disparities in healthcare funding and health outcomes within Indian Country are a violation of that trust responsibility. The incoming IHS Director must commit to changing these realities and to work with Indian Country to improve and uphold the federal trust obligation while maintaining the Indian Health System. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [L.Malerba@usetinc.org](mailto:L.Malerba@usetinc.org) or 202-624-3550.

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director