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Testimony of United South and Eastern Tribes Sovereignty Protection Fund Submitted to the Senate Committee on Indian Affairs for the Record of the March 14, 2018 Committee Oversight Hearing, *Opioids in Indian Country: Beyond the Crisis to Healing the Community.*

March 28, 2018

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we are pleased to provide the Senate Committee on Indian Affairs with the following testimony for the record of the Committee's oversight hearing, "Opioids in Indian Country: Beyond the Crisis to Healing the Community," held on March 14th, 2018.

USET SPF is a non-profit, inter-tribal organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine¹. 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 (IHS), 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.

The opioid epidemic has had a devastating effect on USET SPF Tribal Nations and Tribal Nations across the country, who continue to experience the destructive effects of opioid addiction--often at higher rates than non-Indian communities. According to data from IHS, American Indians and Alaska Natives (AI/ANs) are more likely than any other race/ethnicity to have an illicit drug use disorder in the past year. In addition, according to the Centers for Disease Control and Prevention (CDC), AI/ANs are at the greatest risk for prescription opioid overdose, confronting an opioid overdose rate of 8.4 per 100,000. Though USET SPF is encouraged to see Congress move in an expeditious manner to identify solutions to the opioid epidemic nationwide, USET SPF is concerned that Tribal Nations are frequently left out of the conversation, despite the disproportionate impact the opioid epidemic has had within Tribal communities. USET SPF reminds the Committee of the unique federal trust responsibility to Tribal Nations, and urges the Committee to use its authority to ensure Tribal Nations are fully included in any subsequent legislation or other Congressional efforts to address the opioid crisis.

Direct Opioid Funding for Tribal Nations

The federal government has a trust responsibility to ensure Tribal Nations have access to resources, financial and otherwise, to combat the opioid epidemic. Among these vital resources is access to direct federal funding for Tribal Nations. While USET SPF is appreciative of the recent \$50 million Tribal set-aside for this purpose within the Fiscal Year (FY) 2018 Omnibus, more resources are required to fully address the

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).

opioid crisis at the Tribal level. Though our data on this issue is incomplete, that which is available shows Indian Country, including USET SPF Tribal Nations, is among the communities affected most by this crisis. Yet, no direct funding stream currently exists to combat this epidemic in Tribal communities. Currently, Tribal Nations are ineligible for a majority of funding available under the 21st Century Cures Act. Where Tribal Nations are eligible for funding, they are forced to compete with state and other entities for limited dollars. Tribal Nations should not have to compete to provide their citizens with the treatment they critically need. This is contrary to the federal trust responsibility to provide healthcare to Tribal Nations, and results in few resources delivered to Tribal citizens. In addition, the Indian Health System remains chronically underfunded, leaving many Tribal communities without the critical resources and funding to address opioid addiction and treatment. During the hearing, Tribal witnesses testified on the need for direct funding to Tribal Nations for Tribal opioid treatment and prevention programs due to the increasing levels of opioid abuse, deaths, and trafficking within Tribal communities. USET SPF echoes these concerns and urges the Committee to prioritize addressing this shortfall by working to ensure Tribal governments have access to direct funding.

Despite the government-to-government relationship between Tribal Nations and the United States, many federal grant programs, including those available as part of the 21st Century Cures Act, require funding to pass through the states before it can be delivered to Tribal governments. Because of this, a majority of Tribal communities have difficulty accessing federal funds, with many completely unable to access them in this manner. Further, when applying for these grants, states will often include Tribal population numbers in the overall state population used to determine each state's award. Yet, Tribal Nations are not provided with outreach for these programs and are left with minimal resources to address the opioid crisis in their communities. In order to ensure Tribal Nations are fully accessing these federal funds in the future, USET SPF recommends the Committee and Congress:

1. Consider implementing a funding model utilized by the CDC's Good Health and Wellness in Indian Country initiative, which allows for a direct, separate funding mechanism specifically for both Tribal Nations and TECs. This model has proven to be successful.
2. Expand language within grant funding programs to specifically include Tribal Nations as direct grantees so that states cannot exclude them in grant funding disbursements.
3. Recognize that competitive grants are not reflective of the federal trust responsibility and work to provide more funding to Tribal Nations via formula-based distribution methodologies.
4. Explore opportunities to deliver opioid funding to Tribal Nations via self-governance contracting and compacting in recognition of Tribal sovereignty and self-determination.

With these priorities in mind, USET SPF urges the Committee and Congress to fully consider the following legislation, as it would provide critical opioid response resources to Tribal Nations, including direct funding.

Mitigating METH Act

As discussed above, despite Tribal advocacy, Tribal Nations are ineligible for a majority of funding delivered to state and local governments under the 21st Century Cures Act. Where Tribal Nations are eligible for funding, they are forced to compete with state and other entities for limited dollars. On December 21, 2017, Senator Steve Daines introduced S. 2270, the Mitigating the Methamphetamine Epidemic and Promoting Tribal Health Act, or the Mitigating METH Act. The Mitigating METH Act would make Tribal Nations eligible to be direct grantees of federal opioid funding under the 21st Century Cures

Act to combat opioid abuse in our communities. In addition, S. 2270 would provide an increase in grant funding of \$25 million to states and Tribal Nations under the State Targeted Response (STR) grants within the 21st Century Cures Act. USET SPF supports this legislation² that would bring critical direct funding to Tribal communities for the treatment and prevention of opioid addiction.

Native Health Access Improvement Act

In addition to the Mitigating METH Act, USET SPF would like to convey our support for S. 2545, the Native Health Access Improvement Act of 2018, which was introduced by Senator Tina Smith on March 14, 2018. This legislation would provide critical behavioral health resources to Tribal communities by creating a Special Behavioral Health Program for Indians (SBHPI). The SBHPI is modeled after the Special Diabetes Program for Indians (SDPI), a successful Tribal health program that has had a significant impact on diabetes within Tribal communities. Like SDPI, SBHPI responds to a public health crisis by providing dedicated, formula-based funding to Tribal Nations to address behavioral health and substance use disorders, including opioid abuse and addiction. In addition, it would support cultural competency by promoting the incorporation of both modern and traditional practices into Tribal behavioral health programs. Further, this legislation would require that funding standards and distribution methodology be developed in consultation with Tribal Nations and would provide the technical assistance necessary to develop robust programs. USET SPF requests that the Senate Committee on Indian Affairs ensure this legislation receive an immediate hearing.

Opioid Response Enhancement Act

USET SPF also conveys our support for the Opioid Response Enhancement Act, legislation introduced by Senator Tammy Baldwin, which would make significant investments in Indian Country to fight the opioid epidemic. The legislation would provide an additional funding of \$10 billion to states and Tribal Nations over five years for the State Targeted Opioid Response (STR) Grant, including \$2 billion for a new Enhancement Grant for Tribal Nations and states with high morbidity rates. The Opioid Response Enhancement Act would also include Tribal Nations as eligible entities for STR Grants, funded by a 10% set aside, which USET SPF feels reflects a commitment to ensuring this crisis is addressed in Indian Country.. Other components of the legislation include:

- Technical assistance delivered from SAMHSA to Tribal Nations through the Tribal Training and Technical Assistance Center; and
- Flexibility to allow Tribal Nations and states to use funding to help address other substance abuse issues in addition to opioid prevention and treatment;

Funding for Comprehensive Opioid Data Collection within the Indian Health System

As noted by Tribal witnesses during the hearing, the available data on opioid abuse and mortality within the Indian Health System is inadequate and fails to fully illustrate the impacts opioids are having in Tribal communities. . As the Committee moves forward with recommendations on how to effectively treat and prevent opioid addiction, the Committee must promote the provision of adequate resources, including direct funding, to the IHS, Tribal Nations, and Tribal Epidemiology Centers in order improve opioid data collection. Expanding data collection and analysis would improve the treatment and prevention of substance abuse within Indian Country. Though our data on opioid abuse is incomplete, data that is available shows Indian Country, including USET SPF Tribal Nations, is among the communities most impacted by this crisis. Without access to critical data, Tribal Nations will continue to feel the impacts of the opioid epidemic for generations. USET SPF urges the Committee to prioritize addressing this shortfall by working to ensure Tribal Nations have access to resources to improve opioid data and provide for the treatment and prevention of substance abuse.

² USET SPF Board of Directors supporting resolution attached.

Tribal Prescription Drug Monitoring Programs

During the hearing, witnesses testified on the importance of partnering with state Prescription Drug Monitoring Programs (PDMP). IHS stated that the agency has been partnering with certain states to connect IHS with state PDMP data. USET SPF supports these partnerships and recommends the Committee and Congress ensure IHS has the necessary resources to expand and update the Indian Health Service's Resource and Patient Management System (RPMS) Electronic Health Record (EHR) to fully include and collaborate with state PDMPs on a multi-state basis. Integrating PDMP functionality into the RPMS EHR will connect Tribal Nations to crucial data within state PDMPs and will ensure an efficient and unified platform for Indian health providers to allow providers to quickly and easily make accurate and appropriate diagnoses (addiction, dependence, drug-seeking behavior, etc.) and document those in the RPMS EHR.

Culturally Competent Treatment

The incorporation of traditional healing practices and a holistic approach to health care are fundamental to successful opioid treatment and aftercare programs in Indian Country. Culturally appropriate care has had positive, measurable success within Tribal communities, and the incorporation of traditional healing practices and holistic approaches to healthcare has become central to many Tribal treatment programs. Tribal communities have unique treatment needs when it comes to substance abuse disorders, as AI/ANs experience high levels of substance abuse disorders, with a strong link to historical trauma. Opioid addiction treatment in Indian Country, then, must be cognizant of this trauma, respectful of community factors, and utilize traditional health care practices. Additionally, opioid addiction treatment within Tribal communities must include adequate culturally appropriate aftercare programs to help prevent substance abuse relapse. These services must be accessible through the Indian Health Care Delivery System.

Even though culturally competent care has had success across Indian Country, treatment options that incorporate cultural healing aspects are oftentimes not available within or near Tribal communities due to a lack of resources. However, some USET SPF member Tribal Nations are engaging in innovative practices that have the potential to be replicated across Indian Country. For example, one Tribal Nation's treatment program incorporates a culturally-based recovery model that has had great success, including in preventing early relapse following treatment. Other best practices within USET SPF Tribal Nations include:

- Extended, culturally-based recovery support in a sober living environment; and
- Trauma informed care training for health and behavioral health staff.

Other notable best practices and culturally healing modalities not currently being employed by USET SPF Tribal Nations include:

- Rapid entry into an acute care facility (detox/inpatient care); and
- Prevention and control interventions developed utilizing the Community Based Participatory Action model.

With additional funding and guidance, these best practices have the potential provide higher rates of recovery for our people. USET SPF encourages the Committee to explore how it might expand and promote these models through legislative action.

Tribal Healing to Wellness Courts

In addition to traditional healing practices, USET SPF urges this Committee and Congress to support innovative, culturally-appropriate Tribal restorative justice models through sustained funding. USET SPF is

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encouraged that the success of family drug courts, or Healing to Wellness Courts (HTWC), was discussed during the hearing. Established as alternatives to conventional sentencing for non-violent individual offenders, Tribal HTWCs promote long-term recovery through treatment, community healing resources, and the Tribal justice process by using a multi-disciplinary approach to achieve the physical and spiritual healing of participants.

For example, USET SPF member, the Penobscot Nation, has operated an HTWC since 2011. Any individual Penobscot Nation citizen who is charged with a non-violent crime can petition to participate in the HTWC program. Once accepted into the program, the individual must agree to enter a guilty plea for the crime charged against him/her, but his/her sentence is “deferred” to allow the individual to go through the program. Then, a comprehensive, holistic plan is developed in collaboration between 10 Tribal government departments to address the individual’s treatment needs in four phases:

- Phase I: Introduction/Education. This phase is focused on detoxification and beginning treatment and generally lasts 180 days.
- Phase II: Personal Responsibility. This phase is focused on stabilization and treatment and generally lasts 120 days.
- Phase III: Cooperation/Accountability. This phase is focused on maintenance and treatment and generally lasts 120 days.
- Phase IV: Completion/Continuing Wellness. This phase is focused on graduation and aftercare and generally lasts 120 days.

Successful completion of the program results in a dismissal of the participant’s guilty plea. Over two dozen individuals have gone into the program since 2011. Recidivism is extremely low. Regrettably, the biggest challenge that the Penobscot Nation has encountered is that they do not have sufficient resources to accommodate all the individuals who are interested in participating in the program. While, the program is funded mainly through the Bureau of Indian Affairs, with supplemental funding from IHS, the Department of Justice, and the Department of Housing and Urban Development, this is administratively burdensome and unlikely to result in additional resources for the Court. Similarly, while some grants offered by the Substance Abuse and Mental Health Services Administration (SAMHSA) could possibly be used for this purpose, SAMHSA’s application requirements and standards often serve to preclude smaller, less resourced Tribal Nations from applying. The recovery model offered by Tribal HTWCs should be supported by this Congress, as it seeks to incentivize long-term sobriety and reduce criminal recidivism among drug offenders. In order to accomplish this, USET SPF urges this Committee to consider dedicated, sustained funding for this infrastructure in Indian Country.

Tribal Engagement at all Levels of Government

USET SPF reminds the Committee that Tribal Nations are sovereign governments to which each member of Congress has a trust responsibility. This trust responsibility is carried out not just through funding, but through meaningful government-to-government consultation and coordination to ensure Tribal Nations are included as full partners. When it comes to addressing the gaps in comprehensive Tribal programs to prevent, treat, and measure opioid addiction, this effort must include collaboration between federal, state, and Tribal governments. During the hearing, Tribal witnesses underscored the crucial need for collaboration on between Tribal Nations and all levels of government, including federal, state and local, in addressing the opioid epidemic. However, Tribal Nations are frequently excluded from these types of collaborative efforts as other units of government work together to ensure a coordinated response.

As the trustee to Tribal Nations, the Committee and Congress must acknowledge the substantial challenges within Indian Country must fulfill the trust responsibility by facilitating and requiring collaboration

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between Tribal governments and state and local governments in the fight to end the opioid epidemic. Failure to include Tribal Nations, including when seeking solutions to the opioid epidemic will result in major gaps in the ability of the United States to eradicate opioid addiction in this country. These gaps in coordination are detrimental not just from a healthcare and treatment perspective, but from a law enforcement perspective, as well. Outreach from the Committee, as well as future legislation, should promote and require this necessary intergovernmental collaboration.

Access to Law Enforcement Resources

In addition to opioid addiction and treatment resources, USET SPF member Tribal Nations report a lack of adequate law enforcement infrastructure to combat the opioid epidemic within our region. Currently, there are only seven drug enforcement agents assigned to serve over one hundred Tribal Nations within our BIA Drug Enforcement Region (from ME to FL to NM to the central US). This limited number of law enforcement agents is unacceptable considering the persistent and growing problem of opioid trafficking within Indian Country, particularly the USET SPF region. As mentioned during the hearing, law enforcement within Indian Country needs additional resources to in order to sufficiently address the growing opioid abuse and trafficking within our Tribal Nations, including human capital.

Though our Tribal patrol officers perform a vital role in addressing drug issues within a community, our law enforcement agencies face underfunding, understaffing, and other failures due to inadequate appropriations. Though USET SPF is pleased that \$7.5 million was recently appropriated in the FY 2018 Omnibus bill providing funding to the Bureau of Indian Affairs law enforcement, additional resources and continued investments must be made available to Tribal Nations when it comes to critical drug enforcement investigations. These services are conducted primarily by specialized units or task forces on departmental, statewide and federal levels and involve enhanced intelligence gathering, information sharing, controlled buys, surveillances and other factors. As the Committee approaches this crisis, it must not forget the importance of stopping the supply of opioids on Tribal lands through well-equipped law enforcement.

Conclusion

USET SPF appreciates the Committee's continued attention to the opioid epidemic and the destructive effects that it has had within Indian Country. We call upon the Committee to take action to ensure vital resources are directed to Tribal communities. Failure to include Tribal Nations in future legislation is a failure to recognize the trust responsibility and will result in an incomplete response to this crisis. USET SPF urges the Committee to use the crucial information gathered during these events to educate Senate colleagues on the impact of the opioid epidemic within Indian Country, and to continue to voice these priorities beyond the Committee during the legislative process. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 202-624-3550.