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Testimony of Robert Flying Hawk, Chairman
Yankton Sioux Tribe
May 17, 2017

Greetings Mr. Chairman and Members of the Committee. My name is Robert Flying Hawk and I am the Chairman of the Yankton Sioux Tribe Business and Claims Committee. I also serve as the Treasurer of the Great Plains Tribal Chairman's Health Board as well as the Great Plains representative on the Centers for Disease Control Tribal Advisory Committee. The Yankton Sioux Tribe appreciates this opportunity to testify today and to discuss matters of great importance to the Tribe.

The Yankton Sioux Tribe is a resilient treaty tribe located in present-day South Dakota in the Northern Plains. We are a member of the *Oceti Sakowin* (the "Seven Council Fires," also known as the Great Sioux Nation). We have approximately 9,000 enrolled members. We value our government-to-government relationship and ask that the Committee consider our testimony as you make decisions that affect our Tribe, our members, and our communities.

Indian Health Services

As you may know, the IHS is the primary if not sole provider of health care for our tribal members living on the reservation.[1] The degree to which our members depend on the services that IHS provides for even the most basic care cannot be understated. We cannot continue to suffer cut after cut.

Service Unit Inpatient and Emergency Room.

In 1992, the IHS hospital at the Wagner Service unit was closed to inpatient care, yet there was no increase in funding for contract health services ("CHS") (now known as purchase referred care). IHS removed services and provided no additional funding to purchase the services elsewhere. It was unthinkable not only to our tribal members that depend on the inpatient care but also on the Wagner Service Unit that was left to balance the books without any increase in CHS or other funding to bridge the gap. The Tribe was against this decision not only as an immediate concern but also with concern for the future viability of the Wagner Service Unit. In spite of the Tribe's objections, the IHS made the decision to stop inpatient care. Next, the IHS made the decision to close the 24-hour ER, and to open an urgent care facility in its place. The Tribe was forced to challenge the closure. While the Tribe was initially successful in its lawsuit, once the IHS met the statutory requirement that it produce a report to the Congress, it was free to close the ER.

[1] Our veterans are eligible to receive care from the Department of Veteran's affairs that does have a small clinic on our reservation, but most of the care for veterans is referred to larger cities like Sioux Falls, South Dakota where there is a VA hospital. There is also a small community clinic that accepts private insurance. Medicaid, and Medicare for those that have coverage.

In 2005, the IHS commissioned such a report to conduct a final evaluation of the Wagner Service Unit. "The Sharpless report recognized there would be significant hardships to tribal members if the emergency room were closed, but nevertheless recommended partial closure of the Wagner emergency room by replacements with an urgent care facility. The report notes that 'it could be forecasted that lives would certainly be lost' if the Wagner emergency room closed." *Yankton Sioux Tribe v. United Stated Dep't of Health & Human Services*, CIV 07-3096 (8th Cir. 2008). In March 2008, the IHS closed the 24-hour emergency room and compensated the Wagner Service Unit budget by adding $64,000 for "Priority I" care for the remainder of the year.[2] There have not been additional funds awarded to the Wagner Service Unit budget since that time to compensate for the additional CHS or purchase referred care services. It then became the norm that tribal members would seek emergency health care at the local non-IHS community emergency room. Tribal members were forced to seek this care even without knowing whether the IHS had the funds available to pay for those emergency services or whether the tribal member would become personally liable for payment of those medical bills. Unfortunately, it is more frequently the latter leading many of our tribal members to simply attempt to wait until the Wagner Service Unit IHS clinic opens rather than face the possibility of medical bills that could cripple their household's finances. Similarly, if tribal members are in need of CHS/purchase referred care and they do not meet the "Priority I" threshold, they are forced to suffer through the pain until funding becomes available. The real-life implications are that it is common-place to meet tribal members that live for months at a time or permanently with broken limbs and other ailments that are not treatable at the Wagner Service Unit clinic and yet do not amount to Priority I. This state of healthcare would be unacceptable in any other context yet it is what our tribal members face every day. Eventually, the prediction contained in the Sharpless report was realized when a tribal member lost his life in the parking lot while waiting for the IHS to open.

It was widely reported that funding was the reason the IHS closed the 24-hour emergency room because the facility did not meet the emergency room criteria as defined by the Center for Medicare and Medicaid Services and therefore the facility would not receive reimbursement from Medicare and Medicaid for those patients eligible for that third-party coverage. I am sorry to report that the sole licensed medical doctor at the Wagner Service Unit has recently retired. IHS allows non-licensed medical professionals that hold degrees from medical schools outside of the U.S. to practice in IHS facilities as long as there is a licensed doctor at the facility. Now, there is no longer a licensed doctor at our service unit. IHS has been bridging this gap by temporarily re-assigning commission corps but that is a temporary fix. We need to attract permanent licensed doctors to our service unit. I would also like to point out that while funding was the reason the IHS closed the 24-hour emergency room, there are more employees at IHS now than there were when the 24-hour emergency room was open. Now, as we know, there is a hiring freeze at IHS that has exacerbated the situation. Together with rumors of anticipated budget cuts in HHS and IHS funding are essentially shutting down recruitment efforts. We already start out at a disadvantage because the salary is often below what a doctor could receive elsewhere, but coupled with the remote location and the possibility of reductions in staff, salary freezes, and limits on procurement, it becomes nearly impossible.

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[2] Pursuant to 42 C.F.R. 136.23(e), each Area establishes the medical priority of care when CHS/purchase referred care is insufficient (it is insufficient every year). Priority I is emergent or acutely urgent care services that IHS defines as "diagnostic or therapeutic services that are necessary to prevent the immediate death or serious impairment of the health of the individual, and which, because of the threat to the life or health of the individual necessitate the use of the most accessible health care available and capable of furnishing such services. Diagnosis and treatment of injuries or medical conditions that if left untreated, would result in uncertain but potentially grave outcomes." https://www.ihs.gov/chs/index.cfm?module=chs_requirements_priorities_of_care

The Tribe seeks solutions that will serve the best interest of the Tribe and its members and in the context of health care, the Tribe wishes to ask for your help in re-opening the 24-hour emergency care at the Wagner Service Unit as well as help in re-opening the in-patient hospital services even as modestly as a few beds. It is also imperative that IHS recruit and maintain licensed medical doctors.

Doctor's Quarters

One of the ways to attract licensed medical doctors is to have living quarters available solely for IHS doctors. The IHS requested to obtain land from the Tribe in order to build doctor's quarters and the Tribe identified a parcel of land near the IHS facility. At the time the request was made, the Tribe was told by BIA that it would be placed into trust status in approximately three years. The Tribe applied for it to be placed into trust and was soon notified that State of South Dakota challenged the land-into-trust decision. The Tribe approved the lease based upon a letter from IHS that said, "[w]hile it is understood that the Tribe would have to pay taxes on the land if it is not in Trust status, the benefits of having ten (10) staff quarters far outweigh the potential of losing the project funding and ultimately not having any staff quarters built at Wagner." The land is still not in trust status due to multiple challenges by State and local governments. Meanwhile, the Tribe has continued to pay taxes amounting to hundreds of thousands of dollars but the IHS Wagner Service Unit still does not attract licensed medical doctors as mentioned above. The Tribe seeks solutions to address this situation.

Yankton Tribal Shares

The IHS currently utilizes a funding formula that calculates what the IHS calls "shares". These shares are calculated in a non-uniform manner according to each region's own formula. In addition, the funding formula that is administered by the Great Plains area office in Aberdeen, South Dakota has been in place for quite a while. Our concern is that our Tribe has increased the number of patients at the service unit since the implementation of the funding formula without a corresponding increase of shares. As a result, we believe the tribal shares allocated to our Tribe is not reflective of the actual care that is sought at the service unit. While we have repeated sought out information, we often receive no response or information that is not helpful at all. We seek basic information as well as creative solutions to ensure that each service unit is given resources that are reflective of actual need rather than an archaic funding formula that is based upon outdated data. The result of the discrepancy between funding formulas across regions is that some regions have high funding of patients per capita and some regions have significantly less funding of patients per capita.

Referred Care

Because our service unit consists of a small clinic, every day our people receive "referrals" from IHS physicians to specialists, labs, and hospitals. Tribal members used to go to those referrals assuming that any costs incurred would be borne by the IHS. Unfortunately, that is no longer the case. At Yankton, we have an ever increasing number of tribal members who have received thousands of dollars in medical bills in the mail that they did not expect, and that they cannot pay. This has become so prevalent that we not have tribal members who are refusing to seek the referral care that is necessary to protect their health, and in some cases, even their life, because they fear the possibility of being bankrupted by unpaid medical expenses. This is especially true for our veterans. A veteran may not initially want to drive 100 miles or wait three months to see a specialists, especially when the HIS is offering him a specialist which is closer and an earlier appointment. He might feel differently, however, if he knew that he was going to receive a large bill for taking IHS up on its referral offer instead of the Veteran's Affairs.

We are asking that IHS implement a policy that includes a process to notify a patient in advance when IHS is not prepared to pay for a referral care visit and related costs. The IHS needs to acknowledge that

unpaid medical bills can literally bankrupt a family, and our people have a right to make an informed decision about the care that they choose to seek. It can even be as simple as indicating the amount of coverage IHS is offering on the referral form itself. That way our members can make informed decisions.

Funding for Dialysis Center-Related Matters

In 2016, the Tribe opened an 8-chair dialysis treatment facility on our Reservation so our members and non-member Indians living on or near our reservation could gain better access to treatment essential to their health and well-being. In the process, we eliminated over $200,000 in transportation costs of the local IHS service unit. We were grateful for the financial assistance provided by IHS to pay the cost to purchase equipment and retrofit the building. We request continued financial support for the dialysis treatment facility so that we can keep the treatment on the Reservation instead of subjecting those with a fragile health profile to the hours of travel involved in seeking treatment off the reservation.

The Tribe is also concerned about the possibility the following programs will be eliminated:

- ***Low Income Heating and Energy Assistance Program (LIHEAP) -*** Like the surrounding counties, the Tribe receives an allocation of monies from the Low Income Heating and Energy Assistance Program (LIHEAP). This funding pays for one tribal employee who administers the program. Assistance is provided to low income families on the reservation to pay for heating and sometimes cooling costs. Each of the recipients is required to demonstrate need and the payment is provided directly to the utility company. There are also annual limits on the amount and number of times a household can receive assistance. It is imperative that LIHEAP continue to be funded at current or increased levels. For each of the recipients, this assistance has prevented their families from suffering through freezing temperatures and sweltering heat. Oftentimes, it is a matter of life and death in the harsh climate of the Northern Plains.
- ***Tribal Historic Preservation Office -*** The Tribe is the recipient of federal funding for our Tribal Historic Preservation Office (THPO). The THPO employs a Director, an assistant, and works within a modest budget. Our THPO provides culturally competent survey and assumes the functions of State Historic Preservation Officers on Tribal lands. This program was made possible by the provisions of Section 101(d)(2) of the National Historic Preservation Act. We ask that the funding continue to current or increased levels for THPOs across the country.
- ***Tribal Roads -*** The Tribal Roads Department is funded from a combination of formula funding as well as a TIGER grant. These funds are the only source of monies for necessary maintenance to roads, transportations programs that provide public transportation, and roads clearing in the winter months. Our members are heavily dependent on the Tribe's transit program to be able to go to work, attend school, and attend necessary medical and other appointments. We ask that Tribal Roads and TIGER Grants continue to be funded at current or increased levels.
- ***Economic Development Administration -*** The Tribe receives funding to support a single employee in its Economic Development office. This office is responsible for generating economic development opportunities and overseeing projects. It also performs the due diligence necessary to protect the Tribe from predatory and unqualified partners. The office is also responsible for coordinating the preparation of professional studies and generating empirical data that support economic development opportunities and project proposals. The Tribe asks that Economic Development Administration continue to be funded at current or increased levels.

The Yankton Sioux Tribe knows how hard this Committee has fought to preserve tribal priorities including critical needs at IHS and we sincerely thank you for your work. We hope that the testimony we have provided to you is a reminder that the decisions you make impact lives on the Yankton Sioux Reservation. Thank you for the opportunity to appear here today. I will be happy to answer any questions.