

Indian Health Service Testimony
House Natural Resources Committee
Subcommittee on Indigenous Peoples of the United States

Legislative Hearing

H.R. 441 - To provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska

H.R. 5221 - Urban Indian Health Confer Act

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Good afternoon Chair Leger Fernandez, Ranking Member Young, and the Members of this Subcommittee. Thank you for the opportunity to testify on the bills H.R.441, to provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska, and H.R. 5221, Urban Indian Health Confer Act.

The Indian Health Service (IHS) is an agency within the Department of Health and Human Services (HHS) and our mission is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level. This mission is carried out in partnership with American Indian and Alaska Native Tribal communities through a network of over 687 Federal and Tribal health facilities and 41 Urban Indian Organizations (UIOs) that are located across 37 states and provide health care services to approximately 2.6 million American Indian and Alaska Native people annually.

H.R. 441

H.R. 441 would convey certain land in Tanana, Alaska to the Tanana Tribal Council by warranty deed. Under H.R. 441, the Tanana Tribal Council would not provide the Federal Government with any consideration for the property and the Federal Government would not be able to impose any obligation, term, or condition on the Tanana Tribal Council. In addition, the Federal Government would not retain any reversionary interest in the property. It also would require completing the conveyance no later than 180 days from enactment of the bill. H.R. 441 would free the Tanana Tribal Council of any liability that it otherwise would have assumed for any environmental contamination that may have occurred on or before the date of the transfer.

We have seen several bills of this sort move through Congress in recent years mandating transfer by warranty deed rather than by quitclaim deed. As with previous bills, HHS is concerned about the details of H.R. 441. Specifically, HHS does not prefer to make Indian Self-Determination

and Education Assistance Act (ISDEAA) transfers by warranty deed as such deeds create the potential for liability if a competing property interest is subsequently discovered. In addition, barring retention of a reversionary interest (as is the standard practice with transfers of property for ISDEAA purposes) deprives HHS a means to ensure the property will continue to be used for health services in furtherance of the purposes of this bill.

The bill requires the conveyance of the property be completed within 180 days of enactment. Additional time is needed to convey the property in order to complete ongoing environmental remediation prior to transfer. The IHS recommends that the time for conveyance of the property be changed to two years from the date of enactment.

The bill would free the Tanana Tribal Council of any liability that it would otherwise have for environmental contamination that may have occurred before the date of the transfer, including the period when the Tanana Tribal Council has been managing the property. The Tanana Tribal Council assumed management of the property with responsibility for the provision of IHS funded health care services in 1995 under the authority of the ISDEAA. The IHS recommends that the Environmental Liability clause read:

“(c) Environmental Liability.--

(1) Liability.--

(A) In general.--Notwithstanding any other provision of law, the Council shall not be liable for any soil, surface water, groundwater, or other contamination resulting from the disposal, release, or presence of any environmental contamination on any portion of the property described in subsection (b) on or before the date on which the property is conveyed to the Council, except that the Secretary shall not be liable for any contamination that occurred after the date that the Council controlled, occupied, and used the property.”

With these concerns in mind, HHS supports the purposes of the bill to convey the property to the Tanana Tribal Council in order to facilitate providing improved health services to Alaska Natives.

H.R. 5221

H.R. 5221 would amend the Indian Health Care Improvement Act (IHCA) to establish a UIO confer policy for HHS. The bill would require HHS to ensure its agencies and offices confer with UIOs in carrying out laws relating to Indian health care.

An integral component of the government-to-government relationship is our commitment to regular and meaningful consultation with Federally-recognized Indian Tribes. The importance of Tribal Consultation has been affirmed through an Executive Order in 2000 and Presidential Memoranda in 1994, 2004, 2009, and 2021.

HHS takes its responsibility to consult with Tribal governments seriously and first established the Department’s Tribal Consultation Policy in 1997, with multiple revisions since its creation, most recently updated in 2012 and evaluated in 2021. Each time the policy has been updated, it

was in collaboration with Tribal governments, recognizing that HHS and Indian Tribes share the goal to establish clear policies to further the government-to-government relationship between the Federal government and Indian Tribes. As such, the policy specifically recognizes the unique political status of Tribal governments and it is upon that status that the government-to-government relationship is affirmed through the HHS Tribal Consultation Policy.

HHS has a long-standing commitment to working on a government-to-government basis with Indian Tribes and in partnership with American Indians and Alaska Natives. HHS is also committed to strengthening this relationship and enhancing coordination and collaboration across its Divisions to address Tribal issues within the context of each Division's mission. Each Division shares in the Department-wide responsibility to coordinate, communicate, and consult with Indian Tribes on issues that affect Tribes. All Divisions are responsible for conducting Tribal consultation to the extent practicable and permitted by law on policies that have Tribal implications.

The IHS Tribal Consultation Policy, updated January 18, 2006, was developed in consultation with Indian Tribes. The IHS Tribal Consultation Policy outlines that consultation with Indian Tribes will occur, to the extent practicable and permitted by law, before any action is taken that will significantly affect Indian Tribes. Such actions refer to policies that have Tribal implications and substantial direct effects on one or more Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The consultation process is triggered with the identification of a critical event, which is defined as a planned or unplanned event that has or may have a substantial impact on Indian Tribes or Indian communities, including but not limited to the development of new or revised policies or programs or funding/budget requests. Part of this process includes facilitating collaboration between HHS Divisions, Regional Offices, and the Indian Tribe(s) to assist with consultation and address any identified issue(s), such as access to HHS programs and services, that could be provided directly to an Indian Tribe(s). IHS has also developed special Tribal advisory committees to provide leadership, advocacy, and guidance to the Director on policy and program matters.

Although the unique Federal relationship with Indian Tribes is based in part on the fundamental concept of government-to-government relations, other statutes and policies exist that allow for Federal consultation with Indian organizations and confer with UIOs that, by the nature of their business, serve Indian people and might be affected if excluded from the consultation and confer process. The IHS enters into limited, competing contracts and grants with 41 non-profit organizations to provide health care and referral services for Urban Indians in 22 states and 11 IHS Areas. UIOs are defined by 25 U.S.C. § 1603(29) as a nonprofit corporate body situated in an urban center, governed by an Urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. § 1653(a).

On March 23, 2010, as part of the Patient Protection and Affordable Care Act, Congress reauthorized and amended the IHCA. 25 U.S.C. §§ 1601, *et seq.* Congress added a requirement that the IHS "confer," to the maximum extent practicable, with UIOs in carrying out the IHCA.

25 U.S.C. § 1660d(b). “Confer” means engaging in an open and free exchange of information and opinions leading to mutual understanding and comprehension and emphasizing trust, respect, and shared responsibility. 25 U.S.C. § 1660d(a). HHS supports conferring with UIOs as set forth in the declaration of national Indian health policy in the IHCIA.

On September 22, 2014, the IHS established the policy on “Conferring with Urban Indian Organizations,” in Part 5, Chapter 26, of the Indian Health Manual, consistent with the new IHCIA authority. The policy serves as a guide when the Agency seeks input from UIO Leaders on Urban Indian health matters. The IHS urban confer policy strives to ensure that Urban Indian health care needs are considered at the local, area, and national levels when implementing and carrying out the IHCIA.

The IHS policy has been used since its implementation in carrying out the IHCIA to ensure the highest possible health status for Urban Indians. The IHS is the only agency within the Federal government to implement this formal process, and it is a best practice and critical partnership opportunity. The IHS has consistently heard from UIOs that they would like the opportunity to confer with other HHS Divisions. They have also expressed that the need to confer with other HHS Divisions is even more critical due to the pandemic and need for inter-agency collaboration. The IHS conferring process works to ensure that the health care priorities of Urban Indian populations are being heard and addressed at the local, area, and national levels. The IHS continues to implement its urban confer policy, measure the level of satisfaction of the urban conferring process, and confer with UIOs when necessary to improve the process to bring about the desired results.

We look forward to continuing our work with Congress on these bills and welcome the opportunity to provide technical assistance as requested by the Subcommittee or its Members. We are committed to working closely with our stakeholders and understand the importance of working with partners to address the needs of American Indians and Alaska Natives.