House and Senate Committees on Veterans Affairs
March 18, 2021

Chairman Mark Takano, Chairman Jon Tester, Ranking Member Mike Bost, Ranking Member Jerry Moran, and distinguished Committee members, I would like to thank you for inviting us to provide written testimony today regarding care for urban Indian veterans.

American Indians and Alaska Natives (AI/ANs) have a long history of distinguished service to this country. Per capita, AI/ANs serve at a higher rate in the Armed Forces than any other group of Americans and have served in all the nation's wars since the Revolutionary War. In fact, AI/ANs served in several wars before they were even recognized as U.S. citizens. Despite this esteemed service, AI/AN veterans have lower personal incomes, higher unemployment rates, and are more likely to lack health insurance than other veterans.

The National Council of Urban Indian Health (NCUIH) represents the 41 Urban Indian Organizations (UIOs) operating in 77 health facilities in 22 states that provide high-quality, culturally competent care to urban Indian populations,[1] which constitute more than 70% of AI/ANs. UIOs serve American Indians and Alaska Natives that reside in urban areas as a part of the Indian health system, which consists of Indian Health Service (IHS), tribal organizations and UIOs (collectively, I/T/U or Indian Health Care Providers). Tribal leaders advocated to Congress for the creation of UIOs after the Relocation Era in recognition that the trust obligation for healthcare follows Indians off reservations. Importantly, AI/AN veterans often prefer to use Indian Health Care Providers (IHCPs), including UIOs, for reasons such as cultural competency, community and familial relations, and shorter wait times.

Recommendation: Urge VA to Reimburse UIOs ASAP and Include Urban Indians in Copayment Exemption

We would like to thank you for your steadfast efforts in the 116th Congress to expand health care opportunities for AI/AN veterans in fulfillment of the trust and treaty obligations. We were grateful for the passage of the *Health Care Access for Urban Native Veterans Act of 2019* as part of *Consolidated Appropriations Act, 2021*. Previously, the VA had deemed UIOs as ineligible to be reimbursed for the services they provide to AI/AN veterans. With this legislative fix, Congress has enabled the VA to reimburse UIOs for

[1] "Urban Indian" refers to an American Indian or Alaska Native person who resides in an urban center.

services to VA beneficiaries. While the VA has initiated discussions with UIOs, to date, the VA has yet to fully implement the VA IHS-MOU with UIOs. We await next steps regarding when UIOs may begin to receive any monies since the law was enacted on December 27, 2020. For UIOs interested in entering into reimbursement agreements immediately with the VA, it is essential that VA communicate the steps they need to take to do so. NCUIH requests that Congress urge IHS work with VA to expeditiously issue guidance on immediate VA-IHS MOU reimbursement agreement participation.

We applaud the Committee's work on the enactment of the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* (Public Law 116-315). Specifically, PL 116-315 will eliminate copayments for AI/AN veterans accessing VA health care and would bring parity between those AI/AN veterans receiving services at VA and those who receive services through the Department of Health and Human Services (HHS), Indian Health Service (IHS), and under Medicaid. Currently, NCUIH and UIOs are engaging with the VA to ensure all IHS-eligible beneficiaries are included in the copayments exemption as intended by Congress. Additionally, the bill will also AI/AN veterans, tribal leaders, and urban Indian organizations to engage with the VA to assess, develop, and implement AI/AN veterans' policy through the VA Tribal Advisory Committee (VATAC).

Recommendation: Establish an Urban Confer between VA and UIOs

The National Council of Urban Indian Health (NCUIH) has long-advocated for parity for health services for urban Indians, including the establishment of an urban confer policy between the VA and UIOs. Currently, only the Indian Health Service (IHS) has a legal obligation to confer with UIOs. As the VA continues to work more closely with UIOs to increase access to health care services for AI/AN veterans, it is imperative that a formal confer process is established for the VA – a mechanism for regular dialogue with UIOs on policies that impact them and their AI/AN veteran patients. Urban confer policies do not supplant or otherwise impact tribal consultation and the government-to-government relationship between tribes and federal agencies. As NCUIH has been unsuccessful at facilitating dialogue between numerous federal agencies and UIO-stakeholders, despite several attempts. This is not only inconsistent with the government's responsibility but is contrary to sound public health policy. Absent urban confer policies, agencies have been operating as if only IHS has a trust obligation to AI/ANs, and that causes an undue burden to IHS to be in all conversations regarding Indian Country. For instance, although the VA recently held a tribal consultation on reimbursement agreements, the burden fell to IHS to hold a separate urban confer, with UIO comments submitted to IHS and not the

VA. Moreover, a confer policy establishes a strong working relationship between the agency and UIOs – enabling the agency to regularly and directly obtain input from UIOs. As discussed herein, UIOs have yet to receive instruction regarding how to enter into reimbursement agreements with the agency. It is imperative that UIOs have avenues for direct communication with agencies charged with overseeing the health of their AI/AN patients, especially during the present health crisis. NCUIH therefore respectfully requests Congressional support for an urban confer policy for the VA.

Recommendation: Provide Oversight to the VA to Interpret Eligibility in Favor of Increasing Access to Care and Consistent with the PL 116-315 **and Indian Health Care Improvement Act (25 U.S.C 1602)**

VA has inquired of NCUIH and UIOs regarding the definition of "Indian" and required proof/documentation accepted by UIOs to prove that an individual is Indian. NCUIH understands that VA will soon engage in Tribal Consultation on this issue and how it relates to the recent legislation regarding co-pays. Notably, because the agency has no urban confer policy, it will not specifically seek input from UIOs. It is imperative that neither the IHS nor the VA misinterpret any law to unnecessarily narrowly tailor eligibility in opposition with the Congressional intent. We are grateful for the inclusion of all IHS-eligible AI/ANs (including urban Indians as defined in the Indian Health Care Improvement Act (25 U.S.C 1602)) in the copayments exemption of PL 116-315 and respectfully request Congress provide oversight to ensure that the VA correctly implements the law.

Recommendation: Remove Non-Committal Language of Only "Exploring Options" to Extend VHA Consolidated Mail Outpatient Pharmacy Access to UIOs

On January 6, 2017, IHS issued a Dear Tribal Leader Letter[2] to announce that IHS had recently signed an Interagency Agreement with VA authorizing the IHS to use the Veterans Health Administration's Consolidated Mail Outpatient Pharmacy (CMOP). With that development, tribes and tribal organizations with Indian Self-Determination and Education Assistance Act (ISDEAA) agreements were able to access the CMOP through the National Supply Service Center (NSSC). The award-winning CMOP utilizes common shipping carriers to deliver filled prescriptions directly to patient

[2] Available at: https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2017_Letters/56995-1-DTLL-IHS-VAInteragencyAgreement.pdf

homes across the country, with a focus on quality management, patient safety, customer satisfaction, environmental safety, and infection control.

The NSSC already supports UIOs by acquiring supplies, either directly or from other Federal agencies, that are not directly available to the I/T/U under federal law. An interested UIO would need only complete and comply with the IHS NSSC Customer Agreement,[3] which includes agreeing to be subject to the restrictions or conditions placed on such access to pharmaceuticals by the VA, meet minimum technical requirements, and agree to the terms, conditions, and responsibilities set forth by CMOP. There is no authority prohibiting UIOs from participating in the VHA CMOP. NCUIH requests that Congress recommend that IHS work with VA to revise the VA and IHS CMOP Interagency Agreement[4] to specify that UIOs have access to the CMOP through the NSSC.

Conclusion

The United States must honor its commitments to AI/AN veterans. The federal government's responsibility to provide quality healthcare to AI/AN veterans comes both from their service to this country and the federal government's treaty and trust obligations to AI/AN people, which includes the trust responsibility to provide healthcare to all AI/ANs. The Indian Health Care Improvement Act (25 U.S.C 1602), declares that "it is the policy of the Nation, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to ensure the highest possible health status for Indians and urban Indians." The recommendations contained herein are necessary to meet this national goal.

We appreciate your continued efforts to ensure tribal members in urban areas are included in all relevant legislation. Thank you for allowing us to provide testimony and for your tireless efforts ensuring that the voices of tribal members living in urban areas are heard.

[3] Available at: https://www.ihs.gov/sites/nssc/themes/responsive2017/display_objects/documents/customer/NSSC_NewCustomerApplicationForm.pdf
[4] Available at: https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2017_Letters/Enclosure_IHS_VA_CMOP_Agreement.pdf