Self-Governance Communication & Education Tribal Consortium

303 South Fifth Street
McAlester, OK 74501
P: 918.302.0252
F: 918.423.7639

Written Testimony of
The Honorable W. Ron Allen, Chairman, Self-Governance Communication & Education Tribal Consortium and Tribal Chairman/CEO, Jamestown S'Klallam Tribe to the Senate Committee on Indian Affairs
S. 1250 "Restoring Accountability in the Indian Health Service Act of 2017"

June 17, 2017

On behalf of the Self-Governance Communication & Education Tribal Consortium (SGCETC), I am pleased to provide the following written testimony regarding Senate Bill 1250 (S. 1250), *Restoring Accountability in the Indian Health Service Act of 2017*. SGCETC appreciates the time, attention and effort this Committee and others have devoted to improving the quality and access to health care for all American Indians and Alaska Natives (AI/ANs). While we agree that legislation offers new opportunities for IHS, Self-Governance Tribes cannot support the legislation as introduced.

Today, 352 Federally-recognized Tribes and Tribal Organizations exercise Self-Governance authority to operate and manage health programs previously managed by the Indian Health Service (IHS), while many more continue to evaluate their opportunities. As Tribes assume greater authority over the delivery of health care in their communities, legislation like S. 1250 is increasingly important to us as we seek to gain more autonomy in the management and delivery of health care programs in partnership with the IHS. This collaboration has proven successful and has improved the Indian health system that existed prior to the passage of the Indian Self-Determination and Education Assistance Act (ISDEAA).

Over the last decade, this Committee, in partnership with Tribes, has passed several pieces of legislation that provided opportunities to modernize IHS, support self-determination, and permanently reauthorize the Indian Health Care Improvement Act (IHCIA). Similarly, shared efforts and continued partnerships will be required to successfully correct the health care quality challenges that IHS faces.

We would be remiss without first reiterating that the agency is chronically underfunded, and receives a fixed amount of appropriations each year to provide health care for 2.2 million AI/AN people, a per capita spending level that is the lowest of any healthcare system. AI/AN have the right to have quality health care services, but without proper resources put behind these intentions, it is unlikely to be fully successful. We appreciate Congress expanding health programs in the Indian Health Care Improvement Act to increase access to health care services in Tribal communities, but more is needed to both appropriately fund these initiatives and further incorporate new and innovative ways to modernize IHS health delivery. Without funding to address the information

technology gap, to treat critically diagnosed patients with specialized care, and improve the facilities to maintain accreditation and accommodate the diverse cultural health needs of native people, IHS will remain an outdated system that is locked in a "time capsule" and unable to achieve its mission of "raising the health status of AI/AN to the highest possible level."

We offer the following recommendations for the Committee to consider and hope that additional Tribal input will improve the legislation to make meaningful progress toward modernization of the IHS.

General Recommendations

This legislation offers many solutions to some of IHS' leading challenges, including provider recruitment and retention and filling shortages, improving quality care and increasing Tribal engagement and culture in the system. While we have some specific comments below to provide additional insight and to identify potential unintended consequences of certain provisions, we also recommend that specific legislation be considered to advance the Federal policy that has proven to improve quality, increase access to care for Tribal citizens and reduce the federal bureaucracy – Self-Governance.

Self-Governance is the most successful partnership between the Federal and Tribal governments to ever exist. S. 1250 does articulate protections for Tribes to assume programs, services, functions, and activities at any time. However, it does not encourage or create additional opportunities for Tribes to assume these responsibilities. We hope that in future legislation, the Committee will consider legislation to expand Self-Governance and assure Tribal rights to assume management of their health care.

Additionally, Self-Governance Tribes note that the legislation does not authorize additional appropriations to support the new initiatives. We strongly believe that overlooking the funding necessary to properly implement the proposed programs will likely result in diminished returns on the Committee's efforts. In fact, even though IHCIA was permanently reauthorized seven years ago, more than 20 provisions remain unfunded and therefore unimplemented. As this legislation moves forward, we recommend and offer any support to Senators who can seek additional appropriations for IHS to improve the quality and access to care for all AI/ANs.

Creating Parity between IHS and Veterans Health Administration

Many of the programs which stand to remain unimplemented are those that seek to address IHS' provider shortage and vacancies. Self-Governance Tribes were heartened by the efforts this legislation makes to bring parity between the Veterans Health Administration (VHA) and IHS in provider compensation and personnel policy, to expand the IHS Loan Repayment Program, and to create demonstration projects to employ successful recruitment and retention strategies. However, some of the proposals do not recognize the challenges that exist in Indian Country. For instance, the housing voucher program included in Section 101 is limited to three years and does not acknowledge that the real challenge in Tribal communities is that there is a housing

shortage. Recognizing that appropriations for IHS-constructed provider housing are far below need, granting IHS authority and flexibility to explore innovative means for addressing housing shortages would be extremely helpful. At a minimum, we ask that the Committee considers extending the termination date for this program as well as authorizing appropriations so that IHS and Tribes can properly support such a voucher program.

Similar to VHA, this legislation also provides IHS additional flexibility to take personnel actions or to remove employees when necessary. Self-Governance Tribes agree that additional authority to manage employee performance is essential to improving quality of care over time. These practices also more closely mirror private industry standards for personnel management.

Addressing Provider and Administrator Vacancies

This legislation responds to long-standing Tribal requests to modify IHS authorities to increase qualified providers and health administrators through expansion of the IHS Loan Repayment Program in Section 104. Self-Governance Tribes support the increased flexibility in eligibility for the Loan Repayment Program, as it is an important tool for recruitment and retention. We recommend that this section be expanded further to provide the IHS with flexibility to repay student loans for shortages of providers in geographic areas with chronic vacancies as long as the provider agrees to serve at least 4 years in that location.

Though we appreciate the efforts to better include Tribal leadership in important hiring decisions, we are concerned that the legislation may have inadvertently included too many positions for Tribal notification. The legislation includes the “position of a manager at an Area office or Service unit” under the Tribal notification requirement in Section 105(a). Self-Governance Tribes are concerned that this could be interpreted quite broadly and that a “too” general interpretation of this language could include an overwhelming number of positions at the local and area levels – creating significant administrative burdens for IHS Human Resources staff. This may lead to unintended consequences, including further delays in the hiring process for critical day-to-day program management and vacancy rate increases. The highest-level managers should have Tribal support; however, program level management decisions should be left to the Senior Executive Service (SES) positions and service unit Chief Executive Officers (CEOs) so as not to interfere with their autonomy, accountability and ability to fill vacancies at the earliest opportunity.

With regard to the waiver of Indian Preference in hiring in Section 105(b), we are unclear of the intention to allow waivers in order to consider former employees that have been removed from employment or demoted for performance or misconduct. This would seem to be at odds with our collective goals to provide quality health care services.

S. 1250 offers a few solutions to improve the Service’s ability to hire employees, including centralization of medical credentialing and direct hire authority. Self-Governance Tribes know all too well that an efficient hiring process will increase quality

and access to care. We fully support shared credentialing throughout the IHS-operated facilities as proposed in Section 102, allowing IHS to efficiently deploy and assign providers to facilities as needed. A centralized medical credentialing process has been initiated by the IHS through Tribal Consultation under a Quality Framework, and is currently being implemented. We support full implementation of the Framework, and while IHS has created a small staff to implement the Framework by reallocating existing resources, implementation would be expedited and enhanced by appropriately funding this effort through additional appropriations. We further recommend that the Committee protect current and future Self-Governance Tribes' rights to choose to operate their own credentialing systems or leverage the efficiency of a centralized credentialing system and quality standards administered by IHS.

Another opportunity the bill offers IHS is the Staffing Demonstration Project included in Section 109. Self-Governance Tribes know the value that demonstration projects can create in Indian Country. Demonstration projects often establish best practices and scalability of a program. However, the proposed project seems over-limiting in that it only includes Federally-operated sites with significant third-party resources. Staffing shortages are a challenge for all rural health care systems. Self-Governance Tribes recommend that access should be broad enough to include Tribes who are managing their health services and wish to exercise their right to participate. The provisions should address cases when Tribes wish to exercise their Self-Governance authority during the demonstration project. Self-Governance Tribes also recommend that an option be available to Tribal Health Programs to extend the liability protections for health professional volunteers under Section 103.

The legislation does not address one common recommendation Tribes previously made to this Committee to improve recruitment and retention of providers. The loan repayment program has proven to be the IHS's best recruitment and retention tool to ensure an adequate health workforce to serve in the many remote IHS locations. Self-Governance Tribes recommend that the Committee included a provision that would provide IHS loan repayment program the same tax free status enjoyed by those who receive National Health Service Corps (NHSC) loan repayments. Under the IHS and NHSC programs, health care professionals provide needed care and services to underserved populations. However, the IHS uses a large portion of its resources to pay the taxes that are assessed on its loan recipients. Currently, the Service is spending 29.7 percent of its Health Professions' account for taxes. Making the IHS loan repayments tax free would save the agency $7.21 million, funding an additional 232 awards. Changing the tax status of the IHS loans to make them tax free would enable the agency to fill two-thirds or more of the loan repayment requests without increasing the IHS Health Professions' account.

Improving Timeliness of Care

Self-Governance Tribes recognize that access to care can be partially measured by evaluating patient wait times. We appreciate the efforts by the proposed legislation in Section 107 to require measurement and accountability for patient wait times. The Improving Patient Care (IPC) initiative, which began in 2008, provides a good

foundation for measuring wait times as well as other measures, and we would recommend the IHS implement IPC in all of its facilities. However, additional time may be necessary to develop the rule. One hundred and eighty days would likely not allow for the proper development of a policy and required Tribal consultation. We would recommend additional time to develop a new set of standards. Further we hope the Committee will consider requiring Consultation prior to implementation and that data collected be available to impacted Tribes on a regular basis.

Establishing a Formal Tribal Consultation Policy

In the Department of Health and Human Services, IHS has set the gold standard for government-to-government consultation. The IHS policy has undergone many revisions and continues to be updated as the relationship between Tribes and IHS changes. Tribes have been an active partner with the IHS in the development and subsequent changes of the IHS Tribal Consultation Policy. If a negotiated rule is required as described in Section 110, it may unnecessarily limit future Tribal engagement or restrict the flexibility the agency requires to serve the best interest of Tribes. Generally, Self-Governance Tribes agree there is always room to improve implementation of the IHS Tribal Consultation Policy, but we are unsure that development of a rule will create the enforcement and results the Committee is seeking.

Fiscal Accountability

While Self-Governance Tribes are supportive of the Committee's effort to ensure that valuable resources are committed to improving patient care, we believe this is a provision that needs additional consideration before passage. The current language in Section 202 is significantly more restrictive than current regulations and could inadvertently impact both the ability of the IHS to meet its obligations to provide care, as well as current and future Self-Governance opportunities.

Specifically, narrowing the use of unobligated funds may negatively impact the ability of IHS and Tribes to meet accreditation standards and requirements in the future such as technology requirements, which may include additional spending categories other than those included in this Section. The language also does not take into account specific appropriations for Facilities and Contract Support Costs, which are limited to those appropriations accounts, and much of this funding is intentionally available until expended. These provisions would also seem to limit IHS' ability to pay funds to a Tribe under a Title I or Title V contract that were collected associated with a Program, Service, Function or Activity that is being assumed for operation by a Tribe. These provisions could also complicate IHS service delivery when there are delays in the appropriations process. Finally, the Section should be clarified to apply only to the IHS directly-operated program.

With regard to the reporting requirements of Section 202, it appears as though the fiscal year reporting required under this section would also include Title I and Title V contracts and funding agreements. Under current law, IHS would not have the ability to obtain information to accurately report the requested information, because the fiscal data is reported by Tribes under their required audits.

In closing, SGCETC would like to thank the Committee for the opportunity to submit testimony and feedback. We look forward to working with you to improve the quality and access to care at IHS. If you have any questions or wish to discuss our recommendations in greater detail, please contact Terra Branson, Self-Governance Communication and Education (SGCE) Director, at terrab@tribalselfgov.org.