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TESTIMONY BEFORE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
HEARING ON
PROPOSED FY 2013 BUDGET FOR THE INDIAN HEALTH SERVICE AND THE OFFICE OF SPECIAL TRUSTEE

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Good afternoon and thank you for the opportunity to be here today. My name is Carolyn Crowder. I am the Health Department Director for the Aleutian Pribilof Islands Association (APIA) in Alaska. APIA is the federally recognized tribal organization of the Aleut people in Alaska. We are a co-signer to the Alaska Tribal Health Compact with the Indian Health Service (IHS) and under the Indian Self-Determination and Education Assistance Act, we provide and promote health care and oversee a variety of health programs for people in our region.

I have been asked to provide testimony on what we see as the IHS's continuing failure to uphold its legal and trust responsibilities to Alaska Natives by chronically underfunding Village Built Clinics – VBCs – in our villages. Many of the VBCs in Alaska are now unsafe or closed. We believe the IHS has a legal responsibility to fully fund the VBCs and has available appropriations to meet this responsibility. In short, the IHS should no longer ignore this issue at the cost of Native people's health. *We estimate that the IHS is underfunding the VBCs by $6.6 million annually.*

In addition to speaking here today on behalf of APIA, I have also been asked to serve as a spokesperson on these issues for the Bristol Bay Area Health Corporation, the Maniilaq Association, and the Norton Sound Health Corporation, who are all like APIA – co-signers of the Alaska Tribal Health Compact and health organizations concerned about the status of the VBCs in their member villages.

The VBC Lease Program

VBCs are critical to maintaining health services for rural Alaska Natives. In Alaska we have the IHS Community Health Aide Program, known in short as "CHAP." The CHAP was developed years ago to respond to disparities in health care and to help facilitate improved health status in rural Alaska. CHAP now involves a network of health aides/practitioners who provide primary health care services and coordinate patient care through referral relationships with midlevel providers, physicians, and regional hospitals.

The CHAP cannot operate in most of rural Alaska without clinics in which to provide the services. In the 1970s, the IHS established the VBC leasing program to

provide funds for leasing health clinics from Alaska Native Villages for the provision of CHAP services. By 1972 the IHS was able to lease 142 clinics for a total cost of $842,000 appropriated by Congress, and by 1989 the funding for the VBC leasing program was approximately $3 million, which came through the IHS Hospitals and Clinics sub-activity of the IHS appropriation.

Leases Are Underfunded, VBCs Are Unsafe or Closed

The majority of VBC lease rentals have not increased since 1989 and the current funding is not sufficient to cover inflationary increases and, in particular, the cost of the repair and renovation needed to keep the facilities in a safe condition. As the CHAP has evolved to provide additional staffing and updated equipment, the inadequacy of the VBCs has become an increasingly difficult obstacle to providing health care to Alaska Natives. By FY 2006, the lease rentals paid by the IHS to the villages covered only 55% of operating costs.

In many situations, the CHAP has to be operated in unsafe facilities and, in some villages, the VBCs have to be closed and CHAP services suspended because of safety hazards to the employees and patients. There are many examples of this in Alaska but I would like to highlight the recent February 16, 2010 environmental health survey was conducted at the Atka Clinic. The results of the survey revealed an urgent priority need for maintenance of the building and further recommended that funds be sought for replacement. A sample of some the specific hazards noted were:

- The interior of the clinic is in poor condition. Different rooms have pieces of baseboards and trim boards missing. The wood flooring inside the clinic entrance is weakened by rotting. Standing in this area causes the floor to buckle slightly.

- The floor under the water softener in the utility room has water damage. Additionally, pieces of flooring were missing in the utility room. The floor under the water softener in the utility room has water damage. Flooring must be constructed of material that is of sound construction, non-absorbent, durable and easy to clean.

- The exam room and emergency rooms are not accessible by stretchers due to the limited space and excess of stored items in the clinic hallway. At a minimum, three feet of clear door space must be available. Future renovations or construction will need to incorporate guidelines from the American Institute of Architects (AIA) to meet standards for design of health care facilities.

- The building was not uniformly heated. The furnace room temperature was 80ºF. The heating system needs to be arranged to provide uniform heat throughout the building between 68ºF and 72ºF when occupied. The door to the furnace room/utility room was propped open due to the temperature. The furnace needs to be maintained in accordance with code and have regular maintenance performed to keep it running safely.

- Electrical wiring was exposed and some electrical wires were frayed. All electrical wiring should be installed and maintained in accordance with the National Fire Protection Association's electrical code (NFPA 70).

The Atka village built clinic lease amount is $18,184 annually. This amount does not even cover annual heating fuel and electricity costs of $18,612, much less expenses necessary for water and sewer, insurance, and daily upkeep and repairs!

Similarly, the Unalaska Health Center's lease is $16,610 annually. Their annual cost of operation or to operate their facility is $80,320 or almost 500% of the funds actually received by the Tribe.

In 1993 the IHS decided to address VBC deficiencies by issuing IHS Circular 93-74, which includes detailed environmental and safety standards that must be met by the VBCs and a requirement that the VBCs be evaluated for compliance with the Circular's safety standards. But, the IHS does not provide any funding through the VBC leases to help ensure such standards can be met. Instead, by issuing the Circular, IHS shifted responsibility to the villages for keeping the clinics in safe and good repair and tried to insulate itself from any responsibility for addressing the serious deficiencies in the VBCs and any health care problems that beneficiaries may experience as a result.

IHS Is Legally Responsible To Fully Fund VBC Leases

The IHS is statutorily required to keep the VBCs in good repair. Under the Indian Health Care Improvement Act amendments of 1992, Congress required the IHS to "maintain" the CHAP, and in the recent reauthorization of the Act, Congress requires the IHS to "develop and operate" the CHAP for Alaska health care, health promotion, and disease prevention for Alaska Natives living in rural Alaska.[1] The Act also requires the IHS to ensure that the VBCs are upgraded to establish a teleconferencing capability.[2] IHS cannot fulfill these statutory responsibilities without keeping the VBCs maintained and in good repair.

The IHS has traditionally used "full-service" leases (presumably under the leasing authority in the Federal Property and Administrative Services Act of 1949) as the basis for shifting the cost of operation and maintenance of the VBCs to the villages. Yet, the IHS has had direct leasing authority under the Indian Health Care Improvement Act since the Act was originally enacted in 1976 to enter into leases that cover a full range of costs, such as rent, depreciation, and operation and maintenance expenses. Such authority also includes reconstruction or renovation by IHS of the leased property. The House Report that originally accompanied the 1976 legislation specifically mentions leasing village facilities in rural Alaska to help the IHS meet it responsibilities to provide health services in remote villages in Alaska.[3]

Contrary to Congressional intent, the IHS has continued to shift its responsibilities to the villages and to the Alaska Tribal Health Compact co-signers, without regard for the health of the people who need the VBCs for services. Some tribal organizations who are co-signers to the Alaska Tribal Health Compact have had to take over the arrangements with the IHS for their member villages and to divert funding from other critically needed health services to try to maintain the VBCs. Despite this, it is impossible to keep up with the costs of operating and maintaining the VBCs, and thus continuing to provide needed

[1] 25 U.S.C. § 1616*l*(a)(2).
[2] 25 U.S.C. § 1616*l*(a)(3).
[3] H.R. Rep. No. 94-1026 (Apr. 9, 1976), 122-123, reprinted in 1976 U.S.C.C.A.N. 2760-2761.

CHAP services to rural Alaska Natives, based on the inadequate funding IHS provides through the VBC leases.

In order to establish proper standards of care, compliance accreditation by the Joint Commission has been established as one of the terms included in the tribal health corporations annual funding agreements. Compliance with several of the Joint Commission environments of care standards are simply not possible due to the lack of funding made available by the IHS to maintain these facilities.

Additionally, IHS's failure to maintain the VBCs and upgrade them directly hampers the ability of the co-signers to the Alaska Tribal Health Compact to meet the "meaningful use" standards set by the Centers for Medicare and Medicaid Services in order to be eligible for incentive payments for implementing or implementation of Electronic Health Records technology. IHS must ensure that VBCs are brought up to the appropriate technological capability so that the co-signers will qualify for needed incentive payments to implement the Electronic Health Record technology, which will improve patient health and is an important congressional initiative.

IHS Has Available Funding For VBCs

In the past, when this matter has been brought to the IHS's attention, IHS has responded that it provides for VBC leases all of the funding that Congress has appropriated for the VBC program. IHS has also told co-signers to the Alaska Tribal Health Compact that they cannot use maintenance and improvement funding – provided to them under their self-governance agreements – for the VBCs. We just don't accept IHS's statements as true and think they are legally incorrect.

Based on our review, the amounts historically traceable to the VBC lease program are not capped by statute as the only funds available for that program. The Indian Health Facilities appropriation is a lump sum appropriation that can be used for construction, repair, maintenance, improvement and equipment, and includes a sub-activity for maintenance and improvement of IHS facilities. The VBCs are IHS facilities acquired by lease in lieu of construction and should thus be eligible for maintenance and improvement funding. The IHS also has the ability to access other IHS discretionary funds to fully fund its VBC responsibilities.

APIA believes there is no question that the IHS has had sufficient funds in its appropriations to fully fund the VBCs' needs. According to a report issued by the Alaska Native Health Board in 2007, the operation and maintenance shortfall for the average VBC was $28,692 per year. The Board estimated that $5.8 million should have been added in FY 2008 to the FY 2007 VBC lease program base in order to sustain the program. More than four years have gone by since then and the funding crisis for the VBCs has continued to get worse. Assuming a modest inflationary rate of 3% since the Board's analysis in 2007, we estimate at least $6.6 million should be added in FY 2013 to the VBC lease program base funding.

Conclusion

Mr. Chairman, APIA is beyond frustrated that the IHS continues to fund VBC leases at less than 60% of costs, while adopting standards for VBC operation and maintenance and requiring evaluations and inspections, but without supplying maintenance and improvement or other funding to assure compliance. Our VBCs are falling apart and we cannot qualify for "meaningful use" incentive payments to implement the Electronic Health Record in the VBCs, nor can we keep pace with technological advances in health.

The VBC program is a unique and critical component of the CHAP. Without VBCs that are suitable for their purposes, the CHAP cannot work as intended by Congress and our people cannot get the health care they need. IHS's choice not to adequately fund the VBCs is a violation of the trust responsibility and IHS's mandatory statutory duties to implement a CHAP program throughout the State of Alaska.

I sincerely hope that these comments are helpful to the Committee in understanding the situation and the critical need we have in Alaska right now. It goes without saying that if the IHS fully funded the VBC leases, health care to Alaska Native people in rural areas would be greatly improved. We therefore encourage Congress to direct the IHS to fully fund VBC leases so that the United States' trust responsibility to Alaska Native people for health care is fully realized.

Thank you.