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Testimony by the Honorable Vernon Miller, Chairman, Omaha Tribe of Nebraska
Before the
House Subcommittee on Indian, Insular, and Alaska Native Affairs
Regarding H.R. 5406 and Indian Health Service Reforms

Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee, thank you for inviting me here to testify regarding Representative Noem's H.R. 5406, the Helping to Ensure Accountability, Leadership, and Trust in Tribal Healthcare Act (the HEALTTH Act), and to discuss with you the immediate need for substantive and effective change in the delivery of healthcare services by the Indian Health Service, particularly in the Great Plains Area. My name is Vernon Miller, and I am the Chairman of the Omaha Tribe of Nebraska. I am part of the Thunder Clan and the former Business Teacher at Umo^{n}ho^{n} (Omaha) Nation Public Schools on the Omaha Tribal Reservation in Macy, Nebraska.

The Omaha Tribe is located in the northeastern corner of Nebraska and, along with our neighbors in the Winnebago Tribe, we receive healthcare services from the Indian Health Service at the Omaha/Winnebago Hospital located in Winnebago, Nebraska. In just a week from today, it will have been a full year since the Center for Medicare & Medicaid Services (CMS) ceased payment for services at the hospital because the facility failed to provide for patient safety, failed to combat negligence that resulted in injuries and deaths, and failed to provide adequate care to patients. For us in the Omaha Tribe and our members, the IHS has failed to live up to its treaty and trust obligations to furnish healthcare and failed to treat us with respect and decency.

The stories from the Omaha/Winnebago Hospital and other IHS facilities serving the Pine Ridge and Rosebud reservations sound like scenes from third world countries, not the American heartland. Our members routinely seek to avoid the hospital because of its poor services, but often end up there because of an emergency or they do not have the means to go elsewhere. But, the emergency rooms at these hospitals are renowned for their failures. In the Omaha/Winnebago hospital, the emergency room staff received one of our Tribe's members who was complaining of severe back pain. The hospital sent him home, and later left a single voicemail with the man telling him his kidneys were failing. The hospital attempted no further contact, and the man died at a relative's house two days later. Another one of our Tribal members, a pregnant woman, came to the hospital only to be discharged after the staff could not find a heartbeat for her baby. They told her to drive herself to Sioux City to another hospital to receive care. We've heard stories from our neighbors in South Dakota that their IHS facilities have gone six months without sterilization machines so their workers were handwashing medical equipment. We have heard stories of women giving birth on the floor of IHS facilities' bathrooms and people dying of heart attacks with no intervention from staff.

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In 2010, Senator Dorgan and the Senate Indian Affairs Committee reported on the Great Plains region's failures. Unfortunately, the problems identified in the Dorgan Report have only gotten worse, and the care our tribal members receive still does not meet minimum standards of quality.

We thank the Subcommittee for having this important hearing on this critical issue. We would also like to give particular thanks to Representative Noem for introducing the HEALTTH Act. The HEALTTH Act is a critically important piece of legislation that we hope will empower the Secretary to begin to address the fundamental structural issues that have plagued the IHS in the Great Plains Area for far too long. The Omaha Tribe strongly supports it, and urges this Committee to consider it favorably.

The issues facing the IHS are not only structural in nature however. The IHS continues to suffer from inadequate funding, and many of the problems it faces stem from the fact that it has always been funded at only a fraction of need. The average spending for an IHS patient is only 25% of that for an average Medicare beneficiary. Even if the IHS had no structural issues, the lack of adequate funding would still result in inadequate care. While the HEALTTH Act provides important and needed reforms for the IHS, we are concerned that without additional funding true reform is unlikely to be realized. The problems with the Great Plains Area require a two pronged solution: structural reform and adequate funding. One cannot succeed without the other.

We thus urge you to consider providing additional funding as well. One important change you can make right away is to ensure that the IHS will be held harmless in the event of a sequestration or a government shutdown, just as the Veterans Affairs' health facilities are (through provisions like advanced appropriations and exceptions in shutdown orders). It is unacceptable for our members' health care to get wrapped up in these battles.

The HEALTTH Act

The Omaha Tribe generally supports the HEALTTH Act and the reforms at IHS it seeks to achieve. We offer the following comments on specific aspects of the bill, and urge the Committee to consider it favorably.

Long-term Contract Pilot Program. H.R. 5406 would create a 7-year contracting pilot program "to test the viability and advisability of entering into long-term contracts for the operation of eligible Service hospitals with governance structures that include tribal input." For the pilot program, the Secretary of Health and Human Services would be required to select three direct-service IHS hospitals in rural areas, with the permission of the Tribes served by those hospitals, and, in consultation with those Tribes, to create a governing board for each hospital that includes IHS, hospital, tribal, and expert health care administration and delivery representatives.

The Omaha Tribe supports the concept of blending tribal and IHS governance with private operation of direct service hospitals. The IHS has proven unable to operate the services it provides, so—as long as private contractors are able to handle the job—we are not opposed to the IHS contracting with another entity to fulfill its treaty and trust obligations so long as IHS and the United States retain ultimate responsibility. We hope the Subcommittee agrees that, though this provision calls for a long-term contract, the intent is not to lock the IHS and the tribes into a contract if the contractor fails. Language clarifying that intent in a report may be helpful. We also want to ensure that tribally run programs through self-governance that operate in our hospitals (like some programs at the Omaha/Winnebago facility) that are working are not subject to takeover in these contracts. We also support a strong tribal role in the governance of hospitals under this pilot program, including having say in the selection of the contractor and the hiring and placement of key leadership positions.

We note that the IHS must not be allowed to "recycle" problem contractors. The IHS has hired "AB Staffing" to fill the gap in its services at our hospital and those at Pine Ridge and Rosebud. This company was already providing services when CMS terminated payment at the Omaha/Winnebago Hospital, and now their role has been <u>expanded</u> to include nursing. IHS must look farther afield, including within the Great Plains region, to find providers with expertise in rural health care delivery.

<u>Expanded Hiring Authority.</u> The House bill would permit the Secretary to choose to waive civil service requirements for employees providing healthcare delivery, and to instead exercise statutory and regulatory personnel authorities utilized by the Veterans Health Administration. This option would not apply with respect to senior executive service positions and positions that do not involve health care responsibilities.

The Tribe supports the efforts to streamline and speed hiring. Vacancies in health care provisions plague service delivery. However, we believe vacancies in leadership cause similar problems, and believe these provisions should be expanded to include leadership positions even if those are not in service delivery. Further, we would like to see the provisions of S. 2953 requiring consultation with tribes located in the service area included in this legislation.

We do have some concern about using the Veterans Health Administration's personnel provisions for streamlined hiring. Just two weeks ago, Representative Wenstrup introduced legislation to reform the hiring process at the V.A, calling the process "lengthy and inefficient." Congressman O'Rourke and Congresswoman Stefanik have other legislation aimed at improving the process to increase access to doctors. The Commission on Care's final report of June 30, 2016 recommends many changes to the VA's hiring process. We recommend that this Subcommittee work with Representative Noem to locate authority that will put IHS' process at the front of the pack, not just a small step ahead.

<u>Removal and Demotion of Employees</u>. The Tribe supports the provisions enabling the Secretary of HHS to more easily remove or demote employees.

Some staff and providers are doing fantastic work with few resources to provide what they can to our people. But, those good workers are cut off at the knees by employees who are unwilling to work or fulfill their duties. The IHS's answer to this is often to transfer the employees or put them on lengthy paid leave. The problem will not be solved by shipping it elsewhere or shutting it out.

We note that some have raised due process concerns about a process that will result in more rapid firing or demotion. We urge the Subcommittee and Representative Noem to ensure this authority will not result in lengthy, unwinnable litigation by the IHS, or a practice of the IHS paying settlements to fired employees to avoid such litigation. We recommend that language be added to this section that any costs for litigation arising from these personnel practices and payments resulting to lost cases or settlements be taken from somewhere other than IHS program or services funds, and from either Departmental administrative funds or the Judgment Fund. We cannot afford services money being diverted for legal settlements.

Timeliness of Care. H.R. 5406 includes provisions in response to long wait times for services at IHS facilities. Section 104 of the bill would require the IHS to promulgate regulations establishing standards to measure timeliness of the provision of health care services at IHS facilities and to develop a process for IHS facilities to submit data under those standards to the Secretary. The Omaha Tribe supports these provisions.

Student Loan Provisions. As an employment incentive, the bill would exclude payments made by the IHS student loan repayment program from taxable income, and permit health administration employees to participate in the IHS student loan repayment program by adding health care management and administration degrees to the list of eligible degrees for the program. It would also permit part-time employees to participate in the program, with a longer time commitment. The Omaha Tribe supports these provisions.

Cultural Competency Program. The bill would require the IHS, in consultation with tribal representatives, to develop and implement a mandatory cultural competency training program in each Service area for all employees, locum tenens providers, and contracted employees whose jobs require regular direct patient access. Participation in the cultural competency training program would be mandatory for all employees on an annual basis. The Omaha Tribe supports these provisions.

Relocation Reimbursement. The bill would permit the Secretary to provide between 50% and 75% of base pay for relocation reimbursement to IHS employees who relocate to serve in a different capacity or position within the IHS, if they relocate to a rural or medically underserved area to fill a position that has not been filled by a full-time non-contractor for at least six months, or if the relocation is to fill a hospital management or administration position. The Omaha Tribe supports these provisions provided that relocation costs do not adversely affect the provision of health care services.

Medical Volunteer Credentialing. The bill would require the IHS to implement a uniform credentialing system to credential licensed health professionals who seek to volunteer at an IHS facility. The bill would permit the Secretary to consult with public and private medical provider associations in developing the credentialing system. The bill summary states that the purpose of this provision is to "centralize its licensed health professional volunteer credentialing procedures at the agency level rather than the facility level to reduce the paperwork burden on licensed health professionals who wish to volunteer at IHS direct-service facilities." The Omaha Tribe supports these provisions for the IHS, but is concerned that the provisions apply equally to tribally operated programs, who are already empowered to do their own credentialing of volunteer medical providers. This provision would be strengthened by limiting its applicability to the IHS only.

Waiver of Indian Preference Laws. H.R. 5406 would permit waiver of Indian preference laws. The House bill would permit the Secretary to waive Indian preference laws with respect to a personnel action if it relates to (1) a facility that has a personnel vacancy rate of at least 20 percent, or (2) a former IHS or tribal employee who was removed or demoted from that former employment for misconduct that occurred within the previous five years. In order to exercise that authority, the Secretary would be required to first obtain a written request or resolution from an Indian Tribe located within the Service unit.

Indian Preference is critically important to the Omaha Tribe, though we support providing the IHS with some flexibility as contemplated here. We recommend that the provision be amended to require that a waiver only be operative if the IHS gets a written request or resolution from all Indian tribes located in the Service unit, not just one. Further, the waiver of preference should be limited in nature, and not provide a blanket lifting of preference. Adding a provision that the IHS present a limited staffing plan or action to which the waiver applies would help avoid the IHS treating requests or resolutions as long-lasting without the Tribes' intent that they be.

Financial Stability Reports. The bill would require the Comptroller General, within one year, to submit a report to Congress on the financial stability of IHS hospitals and facilities that have experienced sanction or threat of sanction by the Centers for Medicare & Medicaid Services, including any revenues lost as a result and recommendations for legislative action. The Omaha Tribe supports these provisions.

Conclusion

On behalf of my Tribe, I thank the Subcommittee and Representative Noem for their efforts to improve the IHS and the quality of care for Native people in the Great Plains. If there is any way I or my Tribe can further assist with these efforts, please do not hesitate to contact me.