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**Testimony of Robert Flying Hawk, Chairman
Yankton Sioux Tribe
June 8, 2017**

Greetings Secretary Zinke and Acting Assistant Secretary Black. My name is Robert Flying Hawk and I am the Chairman of the Yankton Sioux Tribe Business and Claims Committee. I also serve as the Treasurer of the Great Plains Tribal Chairman's Health Board as well as the Great Plains representative on the Centers for Disease Control Tribal Advisory Committee. The Yankton Sioux Tribe appreciates this opportunity to testify today and to discuss concerns and ideas about the organization of the Department of the Interior and other agencies.

The Yankton Sioux Tribe is a resilient treaty tribe located in present-day South Dakota in the Northern Plains. We are a member of the *Oceti Sakowin* (the "Seven Council Fires," also known as the Great Sioux Nation). We have approximately 9,000 enrolled members. We value our government-to-government relationship and ask that you consider our testimony as you make decisions that affect our Tribe, our members, and our communities. We are located in the Great Plains Region for both Indian Health Services ("IHS") and the Bureau of Indian Affairs ("BIA"). We receive IHS direct services from the Wagner Service Unit and BIA services from the Wagner Agency; both are located in Wagner, South Dakota.

Indian Health Services

As you consider a reorganization of the government, consider addressing the IHS. As you may know, the IHS is the primary if not sole provider of health care for our tribal members living on the reservation.¹ The degree to which our members depend on the services that IHS provides for even the most basic care cannot be understated. We cannot continue to suffer cut after cut.

Service Unit Inpatient and Emergency Room.

In 1992, the IHS hospital at the Wagner Service unit was closed to inpatient care, yet there was no increase in funding for contract health services ("CHS") (now known as purchase referred care). IHS removed services and provided no additional funding to purchase the services elsewhere. It was unthinkable not only to our tribal members that depend on the inpatient care but also on the Wagner Service Unit that was left to balance the books without any increase in CHS or other funding to bridge the gap. The Tribe was against this decision not only as an immediate concern but also with concern for the future viability of the Wagner Service Unit. In spite of the Tribe's objections, the IHS made the decision to stop inpatient care.

¹ Our veterans are eligible to receive care from the Department of Veteran's affairs that does have a small clinic on our reservation, but most of the care for veterans is referred to larger cities like Sioux Falls, South Dakota where there is a VA hospital. There is also a small community clinic that accepts private insurance, Medicaid, and Medicare for those that have coverage.

Next, the IHS made the decision to close the 24-hour ER, and to open an urgent care facility in its place. The Tribe was forced to challenge the closure. While the Tribe was initially successful in its lawsuit, once the IHS met the statutory requirement that it produce a report to the Congress, it was free to close the ER.

In 2005, the IHS commissioned such a report to conduct a final evaluation of the Wagner Service Unit. “The Sharpless report recognized there would be significant hardships to tribal members if the emergency room were closed, but nevertheless recommended partial closure of the Wagner emergency room by replacements with an urgent care facility. The report notes that ‘it could be forecasted that lives would certainly be lost’ if the Wagner emergency room closed.” *Yankton Sioux Tribe v. United States Dep’t of Health & Human Services*, CIV 07-3096 (8th Cir. 2008). In March 2008, the IHS closed the 24-hour emergency room and compensated the Wagner Service Unit budget by adding \$64,000 for “Priority I” care for the remainder of the year.² There have not been additional funds awarded to the Wagner Service Unit budget since that time to compensate for the additional CHS or purchase referred care services. It then became the norm that tribal members would seek emergency health care at the local non-IHS community emergency room. Tribal members were forced to seek this care even without knowing whether the IHS had the funds available to pay for those emergency services or whether the tribal member would become personally liable for payment of those medical bills. Unfortunately, it is more frequently the latter leading many of our tribal members to simply attempt to wait until the Wagner Service Unit IHS clinic opens rather than face the possibility of medical bills that could cripple their household’s finances. Similarly, if tribal members are in need of CHS/purchase referred care and they do not meet the “Priority I” threshold, they are forced to suffer through the pain until funding becomes available. The real-life implications are that it is common-place to meet tribal members that live for months at a time or permanently with broken limbs and other ailments that are not treatable at the Wagner Service Unit clinic and yet do not amount to Priority I. This state of healthcare would be unacceptable in any other context yet it is what our tribal members face every day. Eventually, the prediction contained in the Sharpless report was realized when a tribal member lost his life in the parking lot while waiting for the IHS to open.

It was widely reported that funding was the reason the IHS closed the 24-hour emergency room because the facility did not meet the emergency room criteria as defined by the Center for Medicare and Medicaid Services and therefore the facility would not receive reimbursement from Medicare and Medicaid for those patients eligible for that third-party coverage. I am sorry to report that the sole licensed medical doctor at the Wagner Service Unit has recently retired. IHS allows non-licensed medical professionals that hold degrees from medical schools outside of the U.S. to practice in IHS facilities as long as there is a licensed doctor at the facility. Now, there is no longer a licensed doctor at our service unit. IHS has been bridging this gap by temporarily re-assigning commission corps but that is a temporary fix. We need to attract permanent licensed doctors to our service unit. I would also like to point out that while funding was the reason the IHS closed the 24-hour emergency room, there are more employees at IHS now than there were when the 24-hour emergency room was open. Now, as we know, there is a hiring freeze at IHS that has exacerbated the situation. Together with rumors of anticipated budget cuts in HHS and IHS

² Pursuant to 42 C.F.R. 136.23(e), each Area establishes the medical priority of care when CHS/purchase referred care is insufficient (it is insufficient every year). Priority I is emergent or acutely urgent care services that IHS defines as “diagnostic or therapeutic services that are necessary to prevent the immediate death or serious impairment of the health of the individual, and which, because of the threat to the life or health of the individual necessitate the use of the most accessible health care available and capable of furnishing such services. Diagnosis and treatment of injuries or medical conditions that if left untreated, would result in uncertain but potentially grave outcomes.”

https://www.ihs.gov/chs/index.cfm?module=chs_requirements_priorities_of_care

funding are essentially shutting down recruitment efforts. We already start out at a disadvantage because the salary is often below what a doctor could receive elsewhere, but coupled with the remote location and the possibility of reductions in staff, salary freezes, and limits on procurement, it becomes nearly impossible.

The Tribe seeks solutions that will serve the best interest of the Tribe and its members and in the context of health care, the Tribe wishes to ask for your help in re-opening the 24-hour emergency care at the Wagner Service Unit as well as help in re-opening the in-patient hospital services even as modestly as a few beds. It is also imperative that IHS recruit and maintain licensed medical doctors.

Doctor's Quarters

One of the ways to attract licensed medical doctors is to have living quarters available solely for IHS doctors. The IHS requested to obtain land from the Tribe in order to build doctor's quarters and the Tribe identified a parcel of land near the IHS facility. At the time the request was made, the Tribe was told by BIA that it would be placed into trust status in approximately three years. The Tribe applied for it to be placed into trust and was soon notified that State of South Dakota challenged the land-into-trust decision. The Tribe approved the lease based upon a letter from IHS that said, "[w]hile it is understood that the Tribe would have to pay taxes on the land if it is not in Trust status, the benefits of having ten (10) staff quarters far outweigh the potential of losing the project funding and ultimately not having any staff quarters built at Wagner." The land is still not in trust status due to multiple challenges by State and local governments. Meanwhile, the Tribe has continued to pay taxes amounting to hundreds of thousands of dollars but the IHS Wagner Service Unit still does not attract licensed medical doctors as mentioned above. The Tribe seeks solutions to address this situation.

Yankton Tribal Shares

The IHS currently utilizes a funding formula that calculates what the IHS calls "shares". These shares are calculated in a non-uniform manner according to each region's own formula. In addition, the funding formula that is administered by the Great Plains area office in Aberdeen, South Dakota has been in place for quite a while. Our concern is that our Tribe has increased the number of patients at the service unit since the implementation of the funding formula without a corresponding increase of shares. As a result, we believe the tribal shares allocated to our Tribe is not reflective of the actual care that is sought at the service unit. While we have repeatedly sought out information, we often receive no response or information that is not helpful at all. We seek basic information as well as creative solutions to ensure that each service unit is given resources that are reflective of actual need rather than an archaic funding formula that is based upon outdated data. The result of the discrepancy between funding formulas across regions is that some regions have high funding of patients per capita and some regions have significantly less funding of patients per capita.

Referred Care

Because our service unit consists of a small clinic, every day our people receive "referrals" from IHS physicians to specialists, labs, and hospitals. Tribal members used to go to those referrals assuming that any costs incurred would be borne by the IHS. Unfortunately, that is no longer the case. At Yankton, we have an ever increasing number of tribal members who have received thousands of dollars in medical bills in the mail that they did not expect, and that they cannot pay. This has become so prevalent that we not have tribal members who are refusing to seek the referral care that is necessary to protect their health, and in some cases, even their life, because they fear the possibility of being bankrupted by unpaid medical expenses. This is especially true for our veterans. A veteran may not initially want to drive 100 miles or wait three months to see a specialist, especially when the HIS is offering him a specialist which is closer

and an earlier appointment. He might feel differently, however, if he knew that he was going to receive a large bill for taking IHS up on its referral offer instead of the Veteran's Affairs.

We are asking that IHS implement a policy that includes a process to notify a patient in advance when IHS is not prepared to pay for a referral care visit and related costs. The IHS needs to acknowledge that unpaid medical bills can literally bankrupt a family, and our people have a right to make an informed decision about the care that they choose to seek. It can even be as simple as indicating the amount of coverage IHS is offering on the referral form itself. That way our members can make informed decisions.

Regional Office and Headquarters

We all know that there are never enough funds in the budget for IHS to provide all the care that is necessary for our members. The Tribe is concerned that there is unnecessary spending occurring at the headquarters and regional/area offices. It is a trickle-down effect that tribes, unfortunately, know all too well. The pot of money in the budget is spent at the headquarters, then the region/area, then to the service unit. By the time the funds get applied to actual services for patients, there is very little monies to provide patient care. The Tribe believes that a review or audit should be performed to review whether the current organization is the most efficient for the delivery of patient care. The Tribe is especially weary because cost was one of the reasons given for the closure of our hospital and emergency room, yet, as explained above, there is more staff at IHS than ever. Ironically enough, though, the IHS does not employ a United States certified medical doctor, as explained above. We ask that through this reorganization process, that you identify solutions to address these related concerns.

Bureau of Indian Affairs

The BIA suffers from a similar trickle-down effect. The funds are being spent to employ people at the headquarters and the regions/areas and provide services. The local agencies are then expected to work with reduced budgets and are often short-staffed. Recently, for example, a position opened up at our local BIA agency. We were told it would be filled but to this day, it has not been filled. We expect that either the work under that position is being handled by someone else on top of their regular duties or the work is being left undone.

Bureau of Indian Education

The Tribe is against the removal of Bureau of Indian Education ("BIE") Educational Line Officers ("ELO") further away from the reservation. Currently, the tribally operated BIA school on our reservation, the Marty Indian School, shares an ELO with the schools on the Rosebud Reservation, which is two hours west of our Reservation. BIE has in the past proposed a reorganization that would remove these ELOs further away and place them in the Minneapolis/St. Paul, MN area. Such a drastic move away from the schools would render the function and purpose of the ELOs meaningless. Furthermore, the Tribe believes the BIE should be returned back under the BIA.

Law Enforcement

The Tribe operates a P.L. 93-638 contract for law enforcement. The Tribe would like to see Law Enforcement moved to the BIA. We believe this reorganization will clear up the frequent occurrences of miscommunication that we currently experience. For example, we often meet with Law Enforcement representatives from D.C. via telephone and occasionally in person. At one such meeting, we were give certain information and assurances regarding our law enforcement. However, when the same person returned to Washington, D.C., the information had changed and what we were told was no honored. This miscommunication happens with more frequency that we are comfortable or satisfied with. Accordingly, we would like to see Law Enforcement moved to BIA and there be local employees at the BIA agency to work with on law enforcement matters. The Tribe is concerned that there is an information breakdown as

agency personnel travel to and from the reservation and we believe local personnel would address this concern.

USDA

The United States Department of Agriculture Commodity Supplemental Food Program is an example of a program that is well-run. The USDA provides a tremendous amount of support to the Tribe. For example, the Tribe is in the process of building a new building to accommodate the program on our reservation. The USDA has been fully supporting throughout the process. The Tribe's Commodity Director was selected to sit on a national board. This has been an invaluable relationship. The Tribe is fortunate enough to have direct representation on this board. We are able to provide direct input on matters affecting and concerning us the most. As a smaller tribe with modest resources, this sort of direct participation is very much appreciated.

Conclusion

The Yankton Sioux Tribe asks that you keep this information in mind as your agency and the administration moves forward with a reorganization plan. We hope that the testimony we have provided to you is a reminder that the decisions you make impact lives on the Yankton Sioux Reservation. Thank you for the opportunity to submit comments.