

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT

OF

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INDIAN HEALTH SERVICE

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON INDIAN AFFAIRS

ON

“TRIBAL LAW AND ORDER ACT ONE YEAR LATER: HAVE WE IMPROVED PUBLIC  
SAFETY AND JUSTICE THROUGHOUT INDIAN COUNTRY?”

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STATEMENT OF THE INDIAN HEALTH SERVICE  
HEARING ON  
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Mr. Chairman and Members of the Committee:

Good afternoon, I am Dr. Rose Weahkee, Indian Health Service (IHS) Director for the Division of Behavioral Health. I am pleased to have this opportunity to testify on the Indian health system’s implementation of the Tribal Law and Order Act of 2010.

The IHS plays a unique role in the U.S. Department of Health and Human Services to meet the Federal trust responsibility to provide health care to American Indians and Alaska Natives (AI/AN). The IHS provides comprehensive health service delivery to 1.9 million Federally-recognized American Indians and Alaska Natives through a system of IHS, Tribal, and Urban operated facilities and programs based on treaties, judicial determinations, and Acts of Congress. The mission of the agency is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level, in partnership with the population we serve. The agency aims to assure that comprehensive, culturally acceptable personal and public health services are available and accessible to the service population. Our foundation is to promote healthy American Indian and Alaska Native people, communities, and cultures, and to honor the inherent sovereign rights of Tribes.

The IHS works in partnership with the communities it serves, and as such IHS hospital administration frequently includes Tribal representatives who closely participate, as key stakeholders, in the health care delivery system. Additionally, under the Indian Self-Determination and Education Assistance Act (ISDEAA), many Tribes across the country have assumed full authority for all health care delivery within their communities, including hospital operations. Currently, 84% of Alcohol and Substance Abuse programs and 54% of Mental Health programs are Tribally operated. Traditionally, behavioral health and medical programs,

both IHS and Tribally operated, have been separately managed; however, it is now a major focus of the IHS to reintegrate these programs to provide more efficient and effective patient care.

## **Introduction**

Across Indian Country today, the high incidence of alcohol and substance abuse, mental health disorders, suicide, violence, and behavior-related chronic diseases is well documented. Each of these serious behavioral health issues has a profound impact on the health of individuals, public health, and community well-being both on- and off-reservations. American Indians and Alaska Natives are at higher risk for certain mental health disorders than other racial/ethnic groups. For example, the Office of Minority Health, in the Department of Health and Human Services, reports that AI/ANs experience higher rates than all races in the following areas:

- Serious psychological distress;
- Feelings of sadness, hopelessness, and worthlessness;
- Feelings of nervousness or restlessness; and
- Suicide.

Alcoholism, addiction, and alcohol and substance abuse are among the most severe public health and safety problems facing AI/AN individuals, families, and communities, resulting in devastating social, economic, physical, mental, and spiritual consequences. American Indians and Alaska Natives suffer disproportionately from substance abuse disorder compared with other racial groups in the United States. In a 2010 report from the National Survey on Drug Use and Health (NSDUH), the rates of past month binge alcohol use and illicit drug use were higher among AI/AN adults compared to national averages (30.6 vs. 24.5 percent and 11.2 vs. 7.9 percent, respectively) and the percentage of AI/AN adults who needed treatment for an alcohol or illicit drug use problem in the past year was nearly double the national average for adults (18.0 vs. 9.6 percent).<sup>1</sup>

Alcohol abuse and alcohol dependence contribute to high rates of mortality from liver disease, unintentional injury, and suicide. AI/AN communities suffer from some of the highest rates of Fetal Alcohol Spectrum Disorders (FASD) in the nation, and the damaging effects of alcohol use to an unborn baby during pregnancy are permanent. Methamphetamine and other drug abuse are

increasingly significant problems among AI/AN people and have a devastating impact on families and communities. For instance, there are marked disparities in behavioral health morbidity and resulting mortality between the AI/AN population and the nation as a whole. The following are examples:

- The age-adjusted<sup>ii</sup> alcohol related death rate for AI/ANs is 43.3 per 100,000 (2003-2005) and is over six times the U.S. all races rate of 7.0 per 100,000 (2004).<sup>iii</sup>
- The age-adjusted drug related death rate for AI/ANs is 15.0 per 100,000 (2002-2004) and is 1.5 times greater than the U.S. all races rate of 9.9 per 100,000 (2003).<sup>iv</sup>

Domestic violence and intimate partner violence continues to be a serious and pervasive problem. Domestic violence often begins with intimate partner rape and can end in homicide. The statistics on domestic violence and sexual assault against AI/AN women are alarming. According to the Centers for Disease Control and Prevention, 39% of AI/AN women have experienced intimate partner violence – the highest percentage in the U.S.<sup>v</sup> In addition, one out of every three AI/AN women will be sexually assaulted in her lifetime,<sup>vi</sup> and AI/AN women are more than five times as likely to die from domestic violence-related injuries than women of any other race.<sup>vii</sup>

The numbers do not fully capture the tremendous physical and psychological toll that sexual assault and domestic violence take on individuals and society. Besides the obvious costs of medical care and evidence collection, there is increasing evidence that interpersonal violence is associated with many common health problems, including obesity, hypertension, chronic pain, headaches, gastrointestinal problems, complications of pregnancy, post traumatic stress disorder (PTSD), alcohol use disorders, depression, and anxiety.<sup>viii</sup> All of these health problems can impact an individual's family life and ability to work. The economic impact of the loss of work and productivity is enormous.

### **Tribal Law and Order Act of 2010**

The President signed the Tribal Law and Order Act of 2010 (TLOA) on July 29, 2010. The Act signifies an important step in strengthening behavioral health efforts in Indian Country by helping the Federal government better address the unique public safety challenges that confront

Tribal communities. The Act is one of many steps needed to address the public safety and justice challenges faced by AI/ANs. The TLOA has several health specific provisions which will be addressed in further detail below.

The TLOA also expands the number of Federal agencies who are required to coordinate efforts on alcohol and substance abuse issues in Indian Country. Agencies included in coordinated efforts are the Department of Justice (DOJ) and the Substance Abuse and Mental Health Services Administration (SAMHSA), along with the Department of Interior (DOI), the Bureau of Indian Affairs (BIA), and the IHS. The Act promises improved Federal interagency coordination on substance abuse policy by the establishment of an Office of Indian Alcohol and Substance Abuse within SAMHSA. All these elements of the TLOA offer important policy support for health, wellness, and public safety in AI/AN communities and a recognition of the multiple factors that influence behavioral health concerns. The new possibilities for behavioral health efforts brought about by the passage of important legislation like the TLOA, along with the permanent reauthorization of the Indian Health Care Improvement Act, have significant implications for increasing resources to improve the health and well-being of AI/ANs. In addition, the TLOA will provide important information which can be used in the development and implementation of the National Drug Control Strategy and in the Office of National Drug Control Policy's work when coordinating drug control activities and related funding across the Federal government.

#### Memorandum of Agreement

Section 241 of the TLOA amends the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, expanding the number of Federal agencies who are required to coordinate their efforts on alcohol and substance abuse issues in Indian Country. Specifically, TLOA directs the Secretaries of the Department of Health and Human Services (DHHS) and the Department of the Interior, together with the Attorney General, to develop and enter into a Memorandum of Agreement. The Memorandum of Agreement was signed on July 29, 2011 and among other things: 1) determines the scope of the alcohol and substance abuse problems faced by Tribes; 2) identifies and delineates the resources each entity can bring to bear on the problem; 3) sets standards for applying those resources to the problems; and 4) coordinates existing agency programs with those established under the 1986 Act.

This provision also breathes new life into Tribal Action Plans (TAP) on substance abuse prevention, first authorized in 1986. The TLOA mandates that DHHS' IHS and SAMHSA, DOI's BIA and Bureau of Indian Education (BIE), and DOJ coordinate resources and programs to assist Indian Tribes to achieve their goals in the prevention, intervention, and treatment of alcohol and substance abuse. It was determined that there is a need to align, leverage, and coordinate Federal efforts and resources at multiple levels within each agency to effectuate comprehensive alcohol and substance abuse services and programs for AI/AN individuals, families, and communities. With this knowledge, the agencies have developed a TAP Work Group to establish the operating framework and guidelines of the TAP.

#### Testimony and Production of Documents by Federal Employees

Section 263 of the TLOA requires the IHS Director to provide written approval or disapproval of subpoenas or other requests from Tribal or State courts for the testimony of IHS employees or for the production of documents by IHS employees under the Director's supervision. The IHS has drafted a revised delegation of authority to permit IHS Area Directors to authorize testimony by Federal employees in criminal and civil cases at the local level. The draft delegation of authority notes that: 1) subpoenas and requests may be approved if the request is consistent with DHHS' policy to remain impartial; and 2) subpoenas or requests for documents or testimony in violent crime cases which would include sexual assault and domestic violence must be approved or disapproved within 30 days after receipt or the subpoenas and requests will be deemed approved. The draft delegation of authority pertains to factual information obtained by Federal employees in carrying out their official duties. It does not apply to requests for expert testimony from Federal employees.

#### IHS Sexual Assault Policy

Section 265 of the TLOA adds a new section to the Indian Law Enforcement Reform Act requiring the IHS Director to develop sexual assault policies and protocol based on a similar protocol established by the DOJ. In response, IHS established a national sexual assault policy, which is the foundation for local policies at hospitals managed by the IHS as they develop their own standard operating procedures and protocols on sexual assault medical forensic

examinations. The policy establishes a uniform standard of care for sexual assault victims seeking clinical services. The policy ensures that the needs of the victim are addressed, care is culturally sensitive, patient-centered, and community response is coordinated. The policy also includes evidence collection guidance which aligns with criminal justice system response and subpoena regulations. The IHS consulted with Tribal leaders and Urban Indian health directors and reviewed comments for incorporation in future revisions of this policy.

#### Study of IHS Sexual Assault and Domestic Violence Response Capabilities

Section 266 of the TLOA requires the Comptroller General to conduct a study of the capability of IHS facilities, including facilities operated pursuant to contracts or compacts under the Indian Self-Determination and Education Assistance Act, to collect, maintain, and secure evidence of sexual assaults and domestic violence incidents and develop recommendations for improving those capabilities. This section also requires a Report to Congress to assess current readiness and propose recommendations for improving response capabilities. IHS has cooperated with the GAO in the development and completion of this study.

#### **IHS Partnerships**

IHS has devoted considerable effort to develop and share effective programs throughout the Indian health system. Strategies to address public safety and justice issues include collaborations and partnerships with consumers and their families, Tribes and Tribal organizations, Urban Indian health programs, Federal, State, and local agencies, as well as public and private organizations. We believe the development of programs that are collaborative, community driven, and nationally supported offers the most promising potential for long term success and sustainment. Our partnership and consultation with Tribes ensure that we are working together in improving the health of AI/AN communities. Examples include the Indian Health, HHS, Bureau of Justice Assistance and the Alliance of States with Prescription Monitoring Programs partnership to create a prescription drug data export solution capable of exchanging data with State Prescription Monitoring Programs; the IHS-VA Consolidated Mail Outpatient Pharmacy program that improves medication use adherence and safety; Combined drug abuse, prescription drug abuse and alcohol abuse partnership trainings.

## Summary

In summary, the Tribal Law and Order Act of 2010 requires a significant amount of interagency coordination and collaboration. The leverage and coordination of Federal efforts and resources will help to further the prevention and reduction activities at the national, Tribal, State, and local levels. No one individual, community, or agency can do this alone. It will take all of us to prevent and reduce alcoholism, addiction, alcohol and substance abuse, domestic violence, and sexual assault across AI/AN communities, reservations, and urban areas.

With the full weight of Tribal leadership, Federal agencies, individuals, and families working together, effective long-term strategic approaches to address behavioral health in Indian Country can be established and implemented. To adequately address the problem of public safety and justice, IHS is proactively focusing on behavioral health treatment and rehabilitation through partnerships and initiatives directed at minimizing the causes of such abuse (i.e., domestic violence, sexual assault, child sexual abuse, etc.). The IHS and its Tribal and Federal partners are committed to maximizing available resources to provide appropriate prevention and treatment services, as well as safe environments for AI/AN communities.

This concludes my remarks and I will be happy to answer any questions that you may have.

Thank you.

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<sup>i</sup> Substance Abuse and Mental Health Services Administration, Office of Applied Studies (June 24, 2010). *The NSDUH Report: Substance Use among American Indian or Alaska Native Adults*, Rockville, MD.

<sup>ii</sup> Age-adjusted rate per 100,000 population. Rates have been adjusted to compensate for misreporting of AI/AN race on state death certificates.

<sup>iii</sup> Unpublished data. OPHS/Division of Program Statistics (2003-2005 AI/AN age-adjusted rates based on 2000 census with bridged – race categories.)

<sup>iv</sup> U.S. Department of Health and Human Services. Indian Health Service. Trends in Indian Health, 2002-2003 Edition. Washington: Government Printing Office, Released October 2009. ISSN 1095-2896. p. 195.

<sup>v</sup> Centers for Disease Control and Prevention (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence-United States, 2005. *MMWR*, 57(05), 113-117. Retrieved March 2, 2010, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>

<sup>vi</sup> Sacred Circle and the National Congress of American Indians Task Force on Violence Against Women in Indian Country (2006, September). Restoration of Safety for Native Women. *Restoration of Native Sovereignty*, 5.

<sup>vii</sup> Department of Justice, Bureau of Justice Statistics National Crime Database.

<sup>viii</sup> Centers for Disease Control and Prevention (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence-United States, 2005. *MMWR*, 57(05), 113-117. Retrieved March 2, 2010, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>