November 30, 2022
Written Testimony of Sonya Tetnowski (NCUIH)
Senate Committee on Veterans Affairs

My name is Sonya Tetnowski, I am an enrolled member of the Makah Tribe and a Veteran of the United States Army. During my time serving the United States on Active Duty and in the Reserves, I deployed in support of Operations Desert Shield and Desert Storm and Operation Uphold Democracy. I currently serve as the President of the National Council of Urban Indian Health (NCUIH) and Chief Executive Officer of the Indian Health Center of Santa Clara Valley. I also have the honor of serving as the Co-Chair of the health subcommittee within the Department of Veterans Affairs (VA) first-ever Advisory Committee on Tribal and Indian Affairs. As a noncommissioned officer, I took an oath to place the needs of my Soldiers above my own, an oath I continue to strive to fulfill in my advocacy on behalf of Native veterans. Today, I am here on behalf of NCUIH, the national advocate for health care for the over 70% of American Indians and Alaska Natives (AI/ANs) living off-reservation, and the 41 Urban Indian Organizations (UIOs) that serve these populations. I would like to thank Chairman Tester, Ranking Member Moran, and members of the Senate Committee on Veterans Affairs for the opportunity to testify today on the vital topic of Native veterans.

We want to acknowledge the recent strides that the Department of Veterans Affairs (VA) has made in addressing its shortcomings in serving Native veterans. I have seen firsthand the drive and commitment of VA staff, like Stephanie Birdwell and Clay Ward in the Office of Tribal Government Relations, to better serve Native Veterans. NCUIH commends the VA for the creation of the Office of Tribal Health – an office we think has the potential to significantly improve health outcomes for Native veterans including those who do not live on reservations. Finally, we should recognize the recent revisions to the Veterans Health Administration (VHA) – Indian Health Service (IHS) Memorandum of Understanding (MOU) and associated Operational Plan, both of which commit the VHA and IHS to concrete steps to improve the quality of health care and services for Native veterans.

However, Native veterans continue to experience significant barriers to accessing the benefits and services they earned through their military service. This is all the more critical given the disparities Native veterans experience compared to other veterans in areas like health, employment status, and educational attainment. Accordingly, we respectfully request the following:

- Improve access to care for Native veterans at their provider of choice within the Indian healthcare or veterans' healthcare systems
- Advance appropriations for the Indian Health Service
- Increase outreach and technical assistance regarding the VA Reimbursement Program for UIOs
- Ensure the VA utilizes self-attestation in determining Native identity for VA copayment purposes

- Establish an Urban Confer Policy with the VA

Living Off of Reservation Land: Background on Urban Native Veterans

AI/ANs have a long history of distinguished service to this country. AI/ANs have historically served in the U.S. military at a higher rate than any other population and have served in all the nation's wars since the Revolutionary War.[1] Time and time again, Native service members have answered this Nation's call, fighting and dying for the United States even while being subjected to forced removal from their homelands, denial of citizenship, and treatment as second-class citizens when we returned home from war. In return for this service and our willingness to make the ultimate sacrifice for our Country, the United States promises Native veterans, like all veterans, world-class benefits and services.

NCUIH estimates that about 67 percent of the Native veteran population lives in metropolitan areas and we earned the same benefits to which all veterans are entitled. Urban Native Veterans experience the same poor physical and mental health outcomes as Native veterans in rural areas.[2] In fact, urban Native Veterans generally have lower incomes, higher unemployment, lower education attainment, higher VA-service-connected disability ratings, and generally live in poorer housing conditions than non-Native veterans also living in urban areas.[3] For example, 12.5 percent of Native veterans living in urban areas have a VA service-connected disability rating of 70 percent or higher, compared to 7.7 percent of non-AI/AN veterans in urban areas.[4]

Native Veterans and Urban Indian Organizations

Native veterans are entitled to receive healthcare through both the veterans' healthcare system and the Indian healthcare system. The Indian healthcare system consists of IHS, Tribal organizations, and UIOs, and is colloquially referred to as the I/T/U System. A study published in the Military Medicine Journal confirmed that more than 50 percent of Native Veterans use the I/T/U system for their health needs.[5] Many Native veterans who preferred using Indian healthcare services reported that this was because of its

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[1] Proclamation on National Native American Heritage Month, 86 C.F.R. § 60545 (2021), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/29/a-proclamation-on-national-native-american-heritage-month-2021/.

[2] Kimberly Huyser, Sofia Locklear, Connor Sheehan, Brenda Moore & John Butler, Consistent Honor, Persistent Disadvantage: American Indian and Alaska Native Veteran Health in the National Survey of Veterans, 33(7-8S) J. of Aging and Health 68S-81S, 70S (2021), https://journals.sagepub.com/doi/pdf/10.1177/08982643211014034

[3] U.S. Census Bureau, 2015-2019 American Community Survey 5-year Public Use Microdata Samples (2020), retrieved from https://usa.ipums.org/usa/sda/. Urban Veterans are defined as respondents who 1. Reside in a Public Use Microdata Areas (PUMA) which lies fully or partially within a Metropolitan Area with a population of 50,000 or more; 2.Were formerly in the armed forces or are currently in the armed forces. CODEBOOK for Variable Descriptions: https://sda.usa.ipums.org/sdaweb/docs/us2019c/DOC/nes.htm

[4] *Id.*

[5] Harada ND, Villa VM, Reifel N, Bayhylle R. Exploring veteran identity and health services use among Native American veterans. Mil Med. 2005 Sep;170(9):782-6. doi: 10.7205/milmed.170.9.782. PMID: 16261984.

increased accessibility, including location and shorter waiting times.[6] UIOs are a vital branch of the I/T/U system, and many offer a variety of health services, including cultural services, to our urban Native veterans. UIOs are especially critical to VHA and IHS' mission to improve care and access to services for Native veterans because of their deep ties to the Native community in urban areas. The 41 UIOs currently operate over 77 facilities, in 38 areas[7], and provide a wide range of services including primary care, behavioral health services, social & community services, and traditional medicine. UIOs currently serve seven of the ten metropolitan areas with the largest Native veteran populations, including Los Angeles, Phoenix, Dallas, Seattle, New York, Oklahoma City, and Chicago. In cities like Dallas, Chicago, or New York City UIOs are the only provider within the Indian health care system available to Native veterans. As providers of culturally competent care, UIOs are perfectly situated to further VHA and IHS's mission to improve the health care available to veterans.

It wasn't until December 2020, after tireless advocacy from NCUIH, that the *Health Care Access for Urban Native Veterans Act* (S. 2365) was included in the Consolidated Appropriations Act of 2021, which provided authority for UIO reimbursement from VA for these critical services to AI/AN veterans. We are grateful for the VA's commitment to working with UIOs and expanding care to urban Native veterans who defend our country.

Benefits and Access to Care at IHS Facilities

As I have already mentioned, Native veterans are eligible to receive health services at IHS and VHA facilities. This is because the United States owes Native veterans health care twice over: once because of the United States' trust responsibility to provide health services to Native people and once because of the United States' promise to provide health care to veterans. As this body set forth in the Indian Health Care Improvement Act, "[f]ederal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people."[8] Similarly, President Lincoln laid down the charge for the country "[t]o care for him who shall have borne the battle, and for his widow, and his orphan." This dual responsibility should lead to our Native veterans receiving the highest quality of care.

It is important to recognize the need for Native veterans to have the flexibility to seek care from the I/T/U system and the VHA as needed. Native veterans may prioritize receiving their care at a certain facility depending on the challenges they are facing. As

[6] *Id.*
[7] Harada ND, Villa VM, Reifel N, Bayhylle R. Exploring veteran identity and health services use among Native American veterans. Mil Med. 2005 Sep;170(9):782-6. doi: 10.7205/milmed.170.9.782. PMID: 16261984.
[8] 25 U.S.C. § 1601.

such, coordination between these two agencies is critical to best serve Native veterans. Native veterans deserve the right to choose to receive care at their preferred facilities, especially given the fact that many important cultural services are not available at VA facilities. We owe it to our Native veterans to have broader access to the benefits they are entitled to, especially their choice of where to receive care.

We request that Congress increase the oversight on the coordination between the VA and IHS, including requesting submissions of regular reports on the Memorandum of Understanding implementation and service delivery to Native veterans.

UIO Eligibility as Covered Facilities Under the VA PPGMER

Related to the right to choose care is the VA Pilot Program on Graduate Medical Education and Residency (PPGMER) Program. In the MISSION Act of 2018, Congress intended to expand veterans' access to medical care and enable them to seek quality health care outside the VA. As part of its strategy, Congress directed the VA to expand its existing medical residency program to underserved non-VA facilities and support the provision of healthcare that provides high-quality, culturally sensitive healthcare options for Native veterans. The PPGMER is the VA's efforts to meet the requirements of the MISSION Act.[9] However, VA's proposed implementing regulations only explicitly lists two of the three branches of the I/T/U healthcare system as eligible for placement of residents: Tribes or Tribal organizations, and facilities operated by IHS. UIOs are not listed, despite being the third branch of the I/T/U system.

Listing UIOs as covered facilities will help the VA ensure that it carries out Congress' intent to expand veterans' access to medical care and enable veterans to seek quality health care outside of VA. As mentioned before, access to culturally sensitive healthcare options can be difficult for Native veterans living in urban areas due to a lack of training in VA facilities and long distances to IHS and Tribal facilities, making UIOs ideal service providers to meet this need. Native veterans living in urban areas earn the same benefits to which all veterans are entitled to, which is why this expansion of eligibility to UIOs is critical.

Tribal Representation Expansion Project Expansion to UIOs

The need to better serve Native veterans goes beyond access to healthcare. For example, a recent VA initiative, the Tribal Representation Expansion Project (T.REP), strives to ensure that Native veterans have access to responsible, qualified representation in the preparation, presentation, and prosecution of their benefits claims before the VA by expanding certification

[9] NCUIH. Federal Comments to Deputy Chief Greenberg. RE: RIN 2900-AR01—VA Pilot Program on Graduate Medical Education and Residency. [PDF]. Available at: https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:f62a2395-030c-33be-b3f1-31c817ade4f0.

for employees of Tribal governments to represent Native veterans. However, this program does not include any expansion of accreditation opportunities for representatives of Native veterans living in urban areas[10]

Like AI/AN veterans living on Tribal trust land, AI/AN veterans living in urban areas face significant barriers to accessing representation on VA benefit claims based on their location. For example, according to VA's Accreditation Search tool, there are no accredited attorneys, claims agents, or Veterans Services Organizations (VSO) in the city of Flagstaff, AZ. There is just one accredited VSO representative.[11] Similarly in Helena, MT there is just one accredited attorney, no accredited agents or VSO representatives, and a single VSO.[12] Butte, MT has no accredited attorneys or agents, and just two VSO representatives.[13] There are just two accredited attorneys in the city of Santa Barbara, CA, no accredited agents, and a single VSO representative.[14] Manteca, CA is served by a single VSO representative.[15] Each of these cities is currently served by a UIO which, if included in T. REP, could provide access to accredited representatives for AI/AN veterans as well as the broader veteran population in these cities.

AI/AN individuals living in urban areas have maintained strong, vibrant, and distinct cultures and communities despite the federal government's attempts to force them to assimilate into mainstream culture through its Relocation and Termination policies.[16] In fact, UIOs "are an important support to Native families and individuals seeking to maintain their values and ties with each other and with their culture," which exist to provide "a wide range of culturally sensitive programs to a diverse clientele."[17] Even in cities which have significant numbers of accredited representatives, there is no guarantee that these representatives will be culturally competent. Further, like AI/AN veterans living in rural areas, AI/AN veterans may also lack trust in the federal or state government. As a result, UIOs are uniquely placed to help AI/AN veterans living in urban areas overcome cultural barriers in accessing representation in VA benefit claims.

NCUIH recommends that VA expand T. REP to allow UIOs to designate members of their staff as authorized to prepare, present, and prosecute VA benefit claims. Doing so will further VA's stated goal "to further facilitate access to culturally competent representation

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[10] National Council of Urban Indian Health (NCUIH). Federal Comments to Secretary McDonough. RE: The Tribal Representation Expansion Project. [PDF]. Available at: https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:62f567aa-26bf-3fe4-a999-e847a4290392.
[11] Department of Veterans Affairs, *Accreditation Search*, https://www.va.gov/ogc/apps/accreditation/index.asp (last visited Mar. 29, 2022).
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *E.g.*, Jennifer Bereskin, *Maintaining Traditions and Identity as Urban Indians*, FIRESTEEL (Oct. 5, 2021), https://www.ywcaworks.org/blogs/firesteel/tue-10052021-0942/maintaining-traditions-and-identity-urban-indians; National Urban Indian Family Coalition, *Urban Indian America: The Status of American Indian & Alaska Native Children & Families Today* (2008), https://assets.aecf.org/m/resourcedoc/AECF-UrbanIndianAmerica-2008-Full.pdf
[17] National Urban Indian Family Coalition, *supra* note 21 at 12.

for Native American Veterans,"[18] by providing AI/AN veterans living in urban areas, not just those living on Tribal trust lands, access to culturally competent representation on their VA benefit claims. Alternatively, NCUIH requests that VA establish a similar expansion project for UIOs. VA states that its goal is "to ensure that Native American Veterans have access to responsible, qualified representation in the preparation, presentation, and prosecution of their benefit claims before VA."[19] When this program was first announced, myself and NCUIH staff engaged on several occasions with VA officials to explain the need for a similar program for Native veterans living in urban areas, but so far they have been unwilling to expand this program. AI/AN veterans living in urban areas must not be left behind by VA. We urge the VA to either include UIOs in T. REP or establish an alternative expansion project so that it truly fulfills its goals and responsibilities to AI/AN veterans.

Advance Appropriations

As many Native veterans choose to use the I/T/U system to for their health care needs, a critical issue for their care is advance appropriations for IHS. Congress has provided advance appropriations for VHA since 2009. This gives the VHA budget certainty for two years at a time and means the healthcare which Veterans receive through VHA is protected from government shutdowns and stopgap funding.

Unfortunately, healthcare provided to Native people, including Native veterans, through IHS, Tribal facilities, or Urban Indian Organizations, is not similarly secure. In fact, the Indian Health Service is the only major federal healthcare program that is not protected. Whenever there is a gap or disruption in IHS funding, either as a result of a shutdown or continuing resolution, Tribes and Urban Indian Organizations are often forced to reduce or sometimes even cease healthcare services entirely. For some Native veterans, a Tribal or UIO facility is their only accessible provider of healthcare. As a result, even though VHA may continue operations during a shutdown, many Native veterans will still experience gaps in coverage when Tribal and UIO facilities are forced to reduce or shut down services due to a lack of funding.

Disruptions in federal funding quite literally put Native lives at risk. For example, during the 35-day government shutdown at the start of Fiscal Year 2019, 5 patients died and UIOs were forced to take drastic measures by laying off staff, slashing hours, reducing services, and even closing their doors due to lack of funding. My clinic also had to support an Urban Indian health clinic that needed assistance to stay open due to the funding delays. I urge this committee to help secure stable healthcare funding for all Native veterans, no matter where they live, by supporting advance appropriations for IHS.

[18] Department of Veterans Affairs, *supra* note 2.
[19] *Id.*

Increasing Outreach to UIOs on the VA Reimbursement Program

NCUIH advocated for years, and I testified multiple times before Congress, for the vital inclusion of urban Indian organizations in the VA reimbursement program. We are grateful to Chairman Tester, Ranking Member Moran, and members of this Committee for fixing a parity issue that was impacting the health care delivery for Native veterans. Unfortunately, many UIOs noted they are having difficulties enrolling in the VA reimbursement program, and so far, only one of 41 are currently enrolled. This is not because UIOs do not have the desire to enroll in the program. In fact, many UIOs like mine expressed direct interest in enrolling. Instead, many UIOs reported that they are unaware of whom to contact to begin the process of enrolling. It would be valuable if the VA could increase its outreach to help educate and assist UIOs in this process. With additional outreach and technical assistance from the VA, more UIOs would enroll in this program, amplifying their capacity to provide more robust health services to the Native veterans they serve.

Co-payments & Benefits Identification

It has been more than two years since NCUIH worked with Chairman Tester and Ranking Member on the PACT Act to remove copayments for Native veterans receiving healthcare and extend that to those who meet the statutory definition of the term 'Indian' or 'Urban Indian' set forth in the Indian Health Care Improvement Act, which encompasses a broad range of individuals. Yet, this has not been implemented since its passage.[20] It is our understanding that the VA is currently developing a regulation to implement this prohibition, and during his address at the National Indian Health Board's conference, Secretary McDonough promised that it will be issued by the end of the year. This Committee should encourage VA to require self-attestation or certification that a Veteran meets the definition of "Indian" or "Urban Indian" in implementing the copayment prohibition.

In a Federal Register notice concerning this issue, VA suggested that it is considering requiring Native veterans to show a Tribal identification card or a Certificate of Degree of Indian Blood. Doing so would potentially exclude many eligible Native veterans and subvert Congress' will to exempt all Native veterans meeting the definition of the term "Indian" or "Urban Indian" from VA copayments. For example, a Native veteran who is unhoused or low-income in an urban area may not have the ability to travel back to their Tribe to receive an identification card. That Native veteran might also have significant difficulty obtaining the required certified copy of a birth certificate needed to apply for a CDIB. In addition, in some cases, the Indian Health Care Improvement Act defines Indians and Urban Indians as descendants of Tribal citizens. Native veterans meeting that definition would not have the Tribal identification VA proposes to require.

[20] Public Law 94-437. Indian Health Care Improvement Act.

Ultimately, there is a significant portion of the Native veteran population who would not benefit from this identification statute. It is critical that VA utilizes self-attestation in determining Native identity for VA copayment purposes. Without self-attestation, Native veterans may be denied exemption from VA's copayment rules, which is directly contrary to Congress' intent to increase access to care and resources Native veterans have earned by reducing out-of-pocket costs and eliminating a disparity for Native veterans who receive health care at VA rather than IHS.

Urban Confer

An Urban Confer is an open and free exchange of information and opinions that leads to mutual understanding and comprehension and emphasizes trust, respect, and shared responsibility.[21] Urban Confer is an established mechanism for dialogue between federal agencies and UIOs. They are a response to decades of deliberate federal efforts (forced assimilation, termination, relocation) that have resulted in 70% of Native people living outside of Tribal jurisdictions. This has made Urban Confer integral to addressing the care needs of most Native people. Establishing an Urban Confer policy is consistent with the federal government's trust responsibility. Congress has declared "that it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians . . . to ensure maximum Indian participation in the direction of health care services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities."

Failure to communicate about policies impacting urban Natives is not only inconsistent with the government's trust responsibility, but it is contrary to sound public health policy. A VA Urban Confer Policy is especially important given that an estimated 67 percent of Native veterans live in urban areas.

Currently, Congress has only directed IHS to confer with UIOs.[22] Unfortunately, many agencies have interpreted this to mean that IHS alone has the requirement to confer with UIOs**.** NCUIH has heard from several agencies that they cannot confer with UIOs without legislative authority. While we disagree with this interpretation, we urge Congress to help us overcome this barrier to serving Native veterans and pass legislation establishing an Urban Confer policy with the VA. For example, during the rollout of COVID-19 vaccines, some of our clinics, unfortunately, didn't receive as many vaccines and in Montana, some veterans who went

[21] 25 U.S.C. § 1660d.
[22] NCUIH. Federal Comments to Acting Deputy to the Assistant Under Secretary for Health Julianne Flynn. RE: VA Updated Reimbursement Agreement Template. [PDF]. Available at: https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:582ce9a4-3459-34fc-9c75-296af5a48967.

to the VA to receive vaccines were told to go back to the “Indian clinic”. This shows the need for greater coordination among these entities serving our veterans. An Urban Confer policy would establish the necessary procedures for more direct and clear communication so that both the VA and UIOs can better serve the Native veteran population.

NCUIH supports the government-to-government relationship between Tribes and the United States and a robust Tribal Consultation process. It is important to note that Urban Confer policies do not supplant or otherwise impact Tribal consultation and the government-to-government relationship between Tribes and the United States. We simply seek to increase avenues of communication between the federal government and UIOs so that we can work together to better fulfill the trust responsibility and our duties to Native veterans no matter where they live.

In June, the Health Equity and Accountability Act was introduced with the first-ever legislative text establishing an urban confer policy with the VA. We would love to see this Committee include that language in future packages on Native health care and we can provide the text.

Conclusion

Thank you to the committee for allowing me to speak on the critical issues impacting our Native veterans. We owe it to our Native Veterans – including those of us who do not reside on reservations - to remedy these issues so they have greater access to the care they rightfully earned.