



YUKON-KUSKOKWIM HEALTH CORPORATION

“Working Together to Achieve Excellent Health”

UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON “THE SUCCESSES AND SHORTFALLS OF TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT: TWENTY YEARS OF SELF-GOVERNANCE”

TESTIMONY OF GENE PELTOLA, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE YUKON-KUSKOKWIM HEALTH CORPORATION BETHEL, ALASKA

MAY 13, 2008

Good afternoon. Mr. Chairman and members of the Committee:

The Yukon-Kuskokwim Health Corporation has been contracting with the Indian Health Service since before the enactment of the Indian Self-Determination Act. Today we provide comprehensive healthcare to 28,000 largely Yupik Eskimo people across a roadless area the size of Oregon, where the average per capita income is \$15,000. Gas in our main hub city of Bethel is almost \$5 per gallon, and in our villages it is approaching \$7 per gallon, the same price we pay for milk. When considering the high energy, food and personnel costs against an Indian Health Service appropriation that does not allow for mandatory medical inflation costs, providing healthcare for our 58 tribes is a daily and extraordinary challenge.

This is especially true when considering the enormous health disparities our region faces. For example, Alaska Natives' leading cause of death is cancer. The Alaska Native cancer mortality rate is approximately 26% higher than for U.S. Caucasians. While cancer mortality for the rest of Americans is decreasing, it is increasing dramatically for Alaska Natives. Particularly disturbing are our region's high suicide rates. Our age-adjusted suicide rate for 15-19 year olds is 17 times the national average.

Over 20 years ago, former Chairman Inouye of this Committee wrote that the single greatest impediment to the success of tribal self-determination was the failure of the Indian Health Service to pay contract support costs. I can testify that what Chairman Inouye said in 1987 is just as true today.

In the just concluded fiscal year 2007, YKHC's annual true shortfall exceeded \$10 million for the very first time, and it has gone up approximately \$1 million each year as we seek to take on ever growing IHS programs in a climate of ever rising costs. This is truly a crisis.

Most people hear about “contract support costs” and their eyes glaze over. But these are very real costs, either the fixed costs of our overhead that are set by the government, based upon independent annual audits, or



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else the cost of providing workers compensation insurance, and health and retirement benefits to our staff. That’s what contract support costs are. They are fixed and they are real.

In 1992 and 1993, when we began operating the local IHS hospital, we suffered a shortfall of over \$2.2 million in contract support costs. The impact to YKHC was immediate: over 40 positions were laid off within months after hospital operations began. Subsequent rounds of reductions in force and layoffs occurred in 1997, 2006 and 2007.

These events have had a very severe impact on the quality of care that YKHC can provide. However, the impact is not just measured by the \$10 million shortfall. As a result of that underpayment, YKHC cannot employ as many primary care provider teams. The care that those teams provide to our patients is typically billed to Medicare, Medicaid, or private insurance when available. The result is that \$10 million in reduced direct care services translates into an additional \$6 million in lost revenues from these sources. So, the real loss is at least \$16 million to our programs, and even more when you consider that we direct those lost third-party revenues back into staffing additional teams throughout our villages.

Across Indian Country, we call this the compacting penalty, although it is equally applicable to self-determination contracting tribes. Any tribe taking on the administration of a federal trust program – whether from IHS or the BIA – has to be ready either to subsidize the trust responsibility (which we cannot do) or else essentially relieve the government of part of that trust responsibility by cutting the trust programs. Whether that means a police officer or a realty specialist for a tribe compacting with the BIA, or a doctor or a nurse for a tribal organization like ours compacting with the IHS, the cut is the same.

Nowhere else does the government deal with its contractors in this way. Whether it is Haliburton or Acme, Congress always makes the appropriations necessary to meet the government’s contract obligations. But even after the Supreme Court announced in the *Cherokee* case that our contracts are as good as gold, we continue to suffer enormous underpayments. This has got to change.

I have six recommendations.

First, the Committee should consider directing the General Accountability Office to study the actual impact of the continuing shortfalls tribes are suffering in their contract payments. I am sure YKHC’s experience is not unique, and hopefully a GAO report will help energize Congress to do its part in remedying the situation. As part of the GAO study, some examination should be made into IHS’s new policy, announced two years ago, not to provide any contract support costs whatsoever for any new contract or compact operation, regardless of circumstance, and notwithstanding Congress making available up to \$5 million for this purpose every year. The current situation is bringing to a stop all forward progress on tribal self-determination and self-governance.

I also recommend that the Committee request that IHS provide its own comprehensive report on its contract support cost shortfalls. IHS provided such a report to Congress in 1997 and a new report is long overdue. IHS should be instructed to work in close consultation with self-governance Tribes in the development of its report.



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Second, the Committee needs to look closely at what is going on with the BIA in this area. I know from our sister organization in Southwest Alaska, the Association of Village Council Presidents, that Tribes are experiencing a near 100% shortfall in the payment of their personnel costs associated with carrying out BIA contracts. Again, this means Tribes are either subsidizing or, in Alaska cutting, these vital trust services.

Third, the Committee needs to put a halt to the National Business Center’s unilateral change in its indirect cost practices. As a non-profit 100% of our Board costs are covered in our indirect cost pool. But the same is not true of tribal governments, and historically NBC has only permitted 50% of Tribal Council costs to be treated this way. But very recently, NBC eliminated even the 50% rule, now demanding timekeeping records from all Tribal Council members. The Committee should impose a moratorium on this change until there has been thorough Tribal consultation.

Fourth, the Committee should pressure the BIA to develop expertise in the details of contract support cost administration, now that the BIA has begun implementing its first-ever contract support cost policy in over 30 years. Congress depends heavily on the integrity of the data both agencies provide. If BIA’s data is not reliable, it jeopardizes all tribal self-determination.

Fifth, I would ask the Committee to look into the status of the pending contract support litigation. After 12 years of litigation, YKHC recently settled its old claims for approximately \$42 million. But this was the exception. For other Tribes, litigation is grinding on in various courts and Boards. One judge just ruled that tribes who stood by and waited to file their claims while the *Zuni* class action litigation was pending actually lost all their rights to pursue those claims. This was a shock, considering that in parallel litigation against the BIA, the very same tribes were years ago told that they could rely on a class action to protect their rights, and in fact they recovered their share of over \$100 million in damages awarded against the BIA.

The fairest approach would be for Congress to extend the statute of limitations for all tribal contractors to pursue their claims over historic IHS underpayments from prior years.

A more comprehensive approach would be a legislative change to create a new claim payment mechanism that would permit all tribes to receive appropriate compensation through the Judgment Fund, without draining litigation that takes years to resolve.

In the absence of reform in this area along these or some other lines, I am deeply concerned that YKHC’s experience will prove to be the exception, and that even the 15% of tribal contractors that have dared to litigate will never see their rights vindicated.

Finally, the current contract support shortfall of over \$100 million from IHS –which has received absolutely no increase in 6 years – and the \$40 million shortfall from the BIA, must finally be eliminated. In addition to the reforms proposed years ago in S. 2172 and HR 4148, this can be done through a combination of appropriation increases and by using agency collections and unobligated balances from prior years. In this respect, surely using leftover agency balances to meet the government's legal obligations to Indian tribes is a higher priority than to supplement internal agency operation as currently occurs.



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Ultimately, receiving full contract support costs is not just about money. For tribal organizations like YKHC it means being able to systematically address cancer, suicide and other health disparities.

Full contract support costs represent the ability to hire a provider to perform portable mammograms in our villages to detect breast cancers early in stage 1 when the 5 year survival rate is over 90% versus a later stage; it represents the ability to hire a counselor to deploy a community-wide behavioral health initiative in order to save a teenager from taking his own life.

The funding of full contract support costs and – more importantly – its relationship to directly improving American Indians’ and Alaska Natives’ health status, is a matter entirely within Congress’s power to address!

Thank you for the opportunity and honor to address your Committee today.