Indian Health Service Testimony

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Legislative Hearing before the
Senate Committee on Indian Affairs

S. 3022, the ''IHS Workforce Parity Act of 2023'', and
S. 2385 the ''Tribal Access to Clean Water Act of 2023''

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Good afternoon, Chairman Schatz, Vice Chair Murkowski, and Members of the Committee. Thank you for the opportunity to provide testimony on two important legislative proposals before your Committee, and for your continued support for Department of Health and Human Services (HHS or Department) efforts to improve the health and well-being of American Indians and Alaska Natives (AI/AN). Your consideration today of Senator Cortez Masto's *IHS Workforce Parity Act of 2023*, and Senator Bennet's *Tribal Access to Clean Water Act of 2023* underscores that commitment to improving the quality of life in Indian Country.

I am Melanie Anne Egorin, the Assistant Secretary for Legislation (ASL) at HHS. My office serves as the primary link between the Department and Congress. The Office of the ASL provides technical assistance on legislation to Members of Congress and their staff, facilitates informational briefings relating to Department programs to support policy development by Congress, and supports implementation of legislation passed by Congress.

The Department has been pleased to collaborate with Congress and this Committee to investigate the many challenges facing Indian Country. We have been engaged specifically in recent months as the Committee has examined issues with water access in Native communities, and operational challenges such as workforce recruitment and retention, and the direct and secondary impacts that the Indian Health Service has faced in combatting the growing fentanyl crisis. As both IHS Director Roselyn Tso and Deputy Director Benjamin Smith have respectively testified to this committee, we remain committed to working with Congress to improve health for AI/AN communities including finding solutions to challenges related to clean water access and workforce shortages. We are deeply appreciative of the work of Senators Cortez Masto and Bennet to draft legislation that aims to tackle some of these urgent problems in Indian Country.

The IHS, as a rural health care provider, experiences difficulty recruiting and retaining health care professionals. In particular, recruiting physicians and other primary care clinicians has been especially challenging. There are currently over 1,856 IHS vacancies for health care professionals including: physicians, dentists, nurses, pharmacists, physician assistants, and nurse practitioners. Staffing shortages are particularly prevalent in the behavioral and mental health fields, which has only exacerbated the concurrent substance use crisis and suicide crisis that

tribes across the country are facing in their communities. AI/ANs overdose mortality rates and suicide rates remain the highest compared to other racial and ethnic groups.

Workforce challenges – and the impacts on care that come with them – are one of the top concerns raised to the Department by tribes. The IHS continues to support new strategies to develop the workforce and leverage advanced practice providers and paraprofessionals to improve the access to quality care in AI/AN communities. Ultimately, the Indian Health Service needs additional authorities and resources to build out their workforce pipeline. That is why the President's budget has included a number of proposals dating back to Fiscal Year 2019 that have sought to make the IHS more competitive with other federal agencies in their hiring process and reduce systemic barriers to recruitment and retention. HHS looks forward to working with Congress on policy solutions to this effect, several of which are outlined below.

I want to also reiterate that the Biden-Harris Administration agrees that water is a sacred resource that must be protected. The Administration and HHS have worked hard to make good on decades of chronic underinvestment in infrastructure for AI/AN communities. The bipartisan efforts of Congress – including many champions in this room – helped to ensure that critical funds for clean drinking water and modern wastewater and sanitation systems were included in the Infrastructure Investment and Jobs Act (IIJA). The Department of Health and Human Services and the IHS are grateful for this partnership with Congress, and our shared commitment to ensure that this historic funding is implemented successfully and that these dollars reach Indian Country as quickly as possible. That being said, too many tribal families still do not have access to clean water and reliable wastewater infrastructure.

S. 3022, IHS Workforce Parity Act of 2023

The *IHS Workforce Parity Act*, would amend the Indian Health Care Improvement Act to allow recipients of the IHS scholarship and loan programs to fulfill their service obligations through half-time clinical practice.

Under current law, the *Indian Health Care Improvement Act* requires recipients of IHS Health Professions Scholarships or loan repayments to provide clinical services on a full-time basis. The Public Health Service Act (PHSA) was amended by the Patient Protection and Affordable Care Act (ACA) to permit certain National Health Service Corps (NHSC) loan repayment and scholarship recipients to satisfy their service obligations through half-time clinical practice for double the amount of service time or, for NHSC loan repayment recipients, to accept half the loan repayment award amount in exchange for a two-year service obligation fulfilled on a half-time basis. The PHSA defines "full-time" clinical practice as a minimum of 40 hours per week, for a minimum of 45 weeks per year. It also defines "half-time" as a minimum of 20 hours per week, for a minimum of 45 weeks per year.

The *Indian Health Care Improvement Act* would permit both IHS Health Professions Scholarship and loan repayment recipients to fulfill service obligations through half-time clinical practice, under authority similar to that now available to the NHSC Loan Repayment Program (LRP) and Scholarship Program. Thus, if similar authority provided in section 331(i) of the PHSA were extended to IHS, IHS loan repayment and scholarship recipients would have more options and

flexibility to satisfy their service obligations through half-time clinical work for double the amount of service time or to accept half the amount of loan repayment award in exchange for a two-year service obligation. This legislative change would create parity between IHS and the NHSC programs and enable IHS to make better use of these tools to recruit and retain key professionals in a highly competitive environment.

S. 3022 as drafted attempts to model the language used in the NHSC demonstration language. It should be noted, however, that the NHSC language combines the two programs – Scholarship and LRP – in their language whereas S. 3022 separates Scholarship and LRP. Additionally, IHS is still examining how the text in S. 3022 might apply to the IHS Health Professions Scholarship, a tool that plays a significant role in the recruitment and retention of the health care professionals needed to fill workforce vacancies. Lastly, the NHSC language goes further in that the recipient has to agree to the conversion to full-time equivalents in determining damages if a breach occurs. IHS would like to work with the drafters of S. 3022 to ensure the language fits within the IHS Scholarship and Loan Repayment Program.

The *IHS Workforce Parity Act* is certainly aligned with the goals of the IHS in many respects. The Fiscal Year (FY) 2024 President's Budget includes a similar proposal to permit both IHS scholarship and loan repayment recipients to fulfill service obligations through half-time clinical practice. The ability to provide scholarship and loan repayment awards for half-time clinical service would make these recruitment and retention tools more flexible and cost-effective, providing incentives for an additional pool of clinicians and other medical providers that otherwise may not consider a commitment to the IHS federal, tribal, and urban Indian sites. Having similar authority as the NHSC would increase the ability of the IHS to recruit and retain health care clinicians to provide primary health care and specialty services and otherwise support the IHS and HHS priorities.

Additional half-time direct care employees could also reduce the number and cost of Purchased/Referred Care program referrals, especially at sites that do not need full-time specialty care services. There are also a number of smaller rural IHS sites where clinicians will be able to provide a minimum of half-time clinical services with the remainder of their time devoted to much needed administrative/management responsibilities. This proposal will provide flexibility for providers who might not otherwise consider service in the IHS by allowing part-time practice in IHS to coincide with a part-time private practice, as well as part-time practice in the IHS combined with part-time administrative duties within the IHS.

Human Resources Proposals

As the IHS continues to prioritize recruitment and retention of providers in our system, we would encourage members of this Committee to review other proposals in the FY 2024 President's Budget that would better enable the IHS to attract top talent. Many of these proposals are budget neutral – small fixes that would have a major impact on the efficacy and quality of the IHS.

For example, the IHS seeks a tax exemption for Indian Health Service Health Professions Scholarship and Loan Repayment Programs. Exempting the IHS Loan Repayment Program

would allow the IHS to award an additional 190 loan repayment contracts in a given year. Thus, the IHS would be better able to increase the number of health care providers entering and remaining within the IHS to provide primary health care and specialty services.

The agency is also seeking the discretionary use of all Title 38 Personnel authorities that are currently available to the Veterans Health Administration to pay higher salaries and offer more flexible time off to their providers. Typically, the private sector can offer candidates better scheduling options and paid time off — particularly important benefits to providers who serve in remote and rural locations. The VHA has demonstrated the impact of these authorities on public sector's ability to hire for these critical roles, particularly in rural areas. As such, the IHS faces specific public sector competition in the area of annual leave accrual. Supervisors report anecdotally that the IHS has lost many candidates to the private sector and VHA due to this difference in accrual rates.

The IHS also seeks permanent authority to hire and pay experts and consultants. Hiring experts and consultants is another tool IHS can use to strengthen its workforce and better serve the AI/AN population. These highly specialized individuals can bring added skills, knowledge, and expertise to meet mission-critical tasks. To combat future pandemics, emergencies, and unique health-care challenges, it would be beneficial to hire experts and consultants to provide additional high-level resources to the IHS unavailable within the current workforce.

Additionally, the IHS seeks legislative authority to conduct mission critical emergency hiring needs beyond 30-day appointments. Critical hiring occurs when an agency needs to fill positions to meet agency requirements brought on by natural disasters, emergencies, or threats. The IHS has previously used this hiring authority to fill positions in nursing, facility management, radiology, and many other critical areas to ensure the operation of IHS facilities and quality patient care. Lengthening emergency hire appointments from 30 to 60 days would better enable the IHS to effectively provide services and staff health care facilities from both an operational and budgetary perspective. The effort to hire, onboard, and vet candidates through the pre-clearance and background investigation process is significant, reducing the benefit of this hiring tool.

S. 2385, Tribal Access to Clean Water Act of 2023

The *Tribal Access to Clean Water Act* (S.2385) aims to expand HHS' role in providing access to reliable, clean, and drinkable water on tribal lands. While this legislation has cross cutting implications for multiple federal agencies, I will focus on the provisions that pertain to HHS and IHS' Sanitation Facilities Construction Program.

The IHS is required by statute to maintain an inventory of sanitation deficiencies for existing Indian homes and communities, to prioritize those deficiencies, and to annually report those deficiencies to Congress. Since 1989, the IHS has annually reported these needs to Congress in the form of projects, which are currently catalogued in the Sanitation Deficiency System (SDS). Projects are identified by the facilities to be provided, the cost of those facilities, and the number of homes to be served by the facilities. Funding for projects is distributed to the IHS Areas based

on an allocation formula that takes into account the relative needs identified in each IHS Area's SDS inventory. The Sanitation Facilities Construction (SFC) program employs a cooperative approach for planning, designing, and constructing sanitation facilities serving American Indian and Alaska Native communities. Each project is initiated at the request of a Tribe or Tribal Organization, and coordination is maintained throughout project planning, design, and construction.

IHS is currently still reviewing the language and implications of S.2385. The bill would amend current law related to the ''Indian homes, communities, and lands'' for which the Secretary has authority to construct, improve, extend, or otherwise provide and maintain essential sanitation facilities, to include community structures that are essential to the life of a AI/AN community. These community structures are further defined as facilities that provide indispensable educational, economic, and community services, such as schools, hospitals, nursing homes, teachers' homes, tribal offices, and post offices. The bill would also authorize funds to construct, improve, or maintain essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage-disposal and waste-disposal facilities, for community structures. Finally, the Tribal Access to Clean Water Act would authorize the Secretary to provide financial assistance for the operation and maintenance of water facilities serving AI/AN communities. It includes language that would prioritize funding awards for the maintenance of water facilities in order of the facilities that are in the most need of assistance.

I do want to highlight that this bill appears to be in conflict with the current IHS authority. Statute currently authorizes IHS to provide necessary water and sewer for "Indian homes, communities, and lands" Under existing law, the phrase Indian homes, communities, and lands is undefined. IHS has interpreted this authorization as being related to the provision of services to AI/AN and generally barring the use of SFC project funds for commercial establishments and facilities associated with non-Indians. IHS policy reflects this interpretation by requiring Indian communities to identify matching funds to be used in IHS-funded projects to cover the cost of these ineligible facilities. The draft legislation would provide a definition for "Indian homes, communities, and lands" that is inconsistent with the current IHS policy and potentially inconsistent with statutory mandates regarding the provision of services by IHS to non-Indians. This new definition could cause the IHS challenges in the orderly administration of the program in the form of final offers or Title I proposals seeking to compel allocations of IHS's appropriation in ways that depart from the current formula-based approach, which treats all Tribes equally, focuses only on IHS beneficiaries, and does not subsidize commercial establishments.

The IHS would like to work with the bill sponsors and the Committee to determine how best to serve the non-eligible homes and commercial properties, including those listed in this bill, that are located within tribal Communities. The IHS would also like to continue to work with the drafters of S. 2385 to ensure compatibility with the IHS Sanitation Facilities Construction Program's existing authorities.

Thank you again for the opportunity to testify today, and thanks to Senators Cortez Masto and Bennet, who have led these legislative efforts to fix systemic challenges in Indian Country. We look forward to continuing our work with Congress on these bills and as always, welcome the

opportunity to provide technical assistance as requested by the Committee or its Members. HHS is committed to working closely with tribal communities and other external partners and understands the importance of working together to address the needs of American Indians and Alaska Natives.