

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT

OF

ROBERT McSWAIN

DEPUTY DIRECTOR FOR MANAGEMENT OPERATIONS

INDIAN HEALTH SERVICE

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

HEARING ON

S. 235 - TO PROVIDE FOR THE CONVEYANCE OF CERTAIN PROPERTY

LOCATED IN ANCHORAGE, ALASKA, FROM THE UNITED STATES TO

THE ALASKA NATIVE TRIBAL HEALTH CONSORTIUM

JULY 31, 2013

STATEMENT OF THE INDIAN HEALTH SERVICE

Madam Chairwoman and Members of the Committee:

Good afternoon. I am Robert McSwain, Deputy Director for Management Operations of the Indian Health Service (IHS). I am pleased to have the opportunity to testify on S. 235, the "Alaska Native Tribal Health Consortium (ANTHC) Land Transfer Act", providing for the conveyance of Indian Health Service (IHS) real property located in Anchorage, Alaska to ANTHC.

The Indian Health Service (IHS) plays a unique role in the Department of Health and Human Services (HHS) because it is a health care system that was established to meet the federal trust responsibility to provide health care to American Indians and Alaska Natives (AI/ANs). The mission of the IHS, in partnership with American Indian and Alaska Native people, is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level. The IHS provides comprehensive health service delivery to approximately 2.2 million AI/ANs through 28 Hospitals, 61 health centers, 33 health stations and 3 school health centers. Tribes also provide healthcare access through an additional 16 hospitals, 235 health centers, 164 Alaska Village Clinics, 75 health stations and 6 school health centers. In support of the IHS mission, the IHS and Tribes provide access to functional, well maintained and accredited health care facilities and staff housing.

S. 235 would provide for the conveyance of certain property located in Anchorage, Alaska from the federal government to the Alaska Native Tribal Health Consortium (ANTHC) in Anchorage, Alaska. ANTHC assumed responsibility for the provision of the IHS-funded health care services in 1999 under the authority of the Indian Self-Determination and Education Assistance Act (ISDEAA). The federal property described in S. 235, which is used in connection with health and related programs in Anchorage, Alaska by the IHS, was transferred to ANTHC by quitclaim deed and recorded in the Anchorage Recording District on June 25, 2013.

On April 26, 2013, IHS executed a Memorandum of Agreement (MOA) with ANTHC, which sets forth terms and conditions under which easements will be established so IHS could transfer ownership of the Anchorage property to ANTHC by quitclaim deed. S. 235 provides for the conveyance of the Anchorage property from the United States to the ANTHC and proposes to replace the quitclaim deed transfer by authorizing the use of a warranty deed. The easements, which will be established under the MOA, must remain intact if a warranty deed is executed.

The IHS supports this bill because it views the proposed transfer as furthering the special partnership that exists with American Indian and Alaska Native tribal governments, and, moreover, is in keeping with the Presidential Memorandum on Administrative Flexibility as it pertains to tribal governments. It is important to emphasize that, as a normal practice, IHS does not transfer properties via the warranty

deed mechanism. However, we will support an exception in this case because of the ANTHC initiative to expand access to its health care system for IHS beneficiaries from throughout Alaska. This proposal will give the ANTHC flexibility to leverage additional resources because ownership of the property under a warranty deed will give them unencumbered ownership of the property described in S. 235.

IHS believes the language, relating to the following issues needs to be clarified and/or revised:

- Conveyance language should be revised to allow no less than 90 days to convey the property to ANTHC;
- Environmental Liability language needs to be clarified so the ANTHC is responsible for any environmental contamination which may have occurred since its control of the property began in 1999, or for contamination that may occur or arise “as of, or after, the date of the 2013 conveyance”; and,
- “Reversionary Clause” language should be clarified to apply in case of retrocession by ANTHC from their ISDEAA compact.
- Legal Description language needs to be changed to describe accurately the property to be conveyed: “Tract A-3A, Tudor Centre, according to plat no. 2013-43, recorded on June 20, 2013 in Anchorage recording district, Alaska, containing 2.79 acres more or less”.

We believe that reasons to use this mechanism in future cases are limited. IHS anticipates no problems with the quitclaim deed currently being processed by IHS for ANTHC. Traditionally, Alaska Tribal Health Organizations (THOs) have preferred to leave the title of their facilities previously operated by the IHS with the federal government, and the majority of the health care facilities used by the Tribes in the other 35 states are located on tribally owned lands. This warranty deed transfer would be the fourth of its kind in Alaska. IHS recently issued three warranty deeds authorized by Congress to transfer parcels of land to the Maniilaq Association previously transferred through a quitclaim deed. On other numerous occasions properties were transferred to Tribes or Tribal Organizations through quitclaim deeds.

We think retrocession is unlikely. We can count only four retrocessions since the enactment of ISDEAA in 1975. Three were only small program components which have been re-assumed by the Tribes. None of these retrocessions was in the Alaska Area.

We look forward to working with you, Madam Chairwoman, on measures to improve the health of the Alaska Native population. Madam Chairwoman, this concludes my testimony. I appreciate the opportunity to appear before you to discuss S. 235. I will be happy to answer any questions the committee may have. Thank you.