TESTIMONY OF BUFORD ROLIN
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BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

HEARING ON H.R. 5608: CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS ACT

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1324 LONGWORTH HOUSE OFFICE BUILDING

Good Morning, Chairman Rahall and Ranking Member Young and members of the Committee. I am Buford Rolin, Chairman of the Poarch Band of Creek Indians, Chairman of the Tribal Leaders Diabetes Committee (TLDC), Co-Chairman of the Tribal National Steering Committee (NSC), and Vice-Chairman of the National Indian Health Board (NIHB).

It is a pleasure to be here today to discuss with you H.R. 5608, a bill to establish meaningful consultation and collaboration with Tribal officials in the development of Federal policies by the Department of Interior (DOI), Indian Health Service (IHS), and the National Indian Gaming Commission (NIGC). As Chairman of the Poarch Band and as Chairman of the TLDC, I have personal knowledge of how important it is for Federal agencies to consult with Tribes in the development of policies that will impact Tribal communities.

The United States has a unique legal relationship with Indian Tribes as found in the U.S. Constitution and reconfirmed and upheld by U.S. Supreme Court decisions, Federal laws, regulations, and policy. For over 200 years, the United States has interacted with Indian Tribes on a government to government relationship. This special relationship between the United States and Tribes is unlike any other relationship with other groups of

Americans. Meaningful consultation between Tribal governments and the United States is an integral component of this relationship.

Pursuant to Presidential Executive Orders, the IHS has a long standing policy of consulting with Indian Tribes in implementing federal laws, regulations, and policies, see IHS Tribal Consultation Policy, IHS Circular No. 97-07. As stated in the IHS policy, one of the underlying foundations for Tribal consultation is the United States' moral obligation to promote consultation and participation with Tribal governments. The IHS, through consultation with Indian Tribes, has successfully implemented several laws impacting Tribal communities: Titles I and V of the Indian Self-Determination and Education Assistance Act (ISDEAA), the Indian Health Care Improvement Act (IHCIA), and the Special Diabetes Programs for Indians (SDPI). It is because of Tribal consultation that these programs operate successfully both for the benefit of the Federal government and the intended Tribal communities.

As Chairman of the Poarch Band, I have first hand experience as to how Tribal consultation has contributed to the successful implementation of the ISDEAA. The Poarch Band is a Self-Governance tribe that operates the Poarch Band Tribal Health Center in Atmore, Alabama. The health center provides primary care, pharmacy services, mental health, community health and a wide range of other services.

Currently over 70 Tribes operate health programs under Title V. The success of the Tribal Self-Governance program is, in part, due to the extensive Tribal consultation in implementing the Title V regulations. The IHS established a negotiated rulemaking committee, consisting of Tribal leaders and federal officials. Because Tribes sat across the table from federal officials to draft regulations, Tribal input was provided in the initial development and continued until the final Title V regulations were promulgated. Because the Tribes were part of the regulatory process, the regulations have been implemented in an efficient and effective manner.

As Co-Chair of the Tribal NSC for the reauthorization of the IHCIA, again, I know first hand how important Tribal consultation is in the development of legislation impacting Tribal communities. In 1999, the IHS formed the Tribal NSC as an advisory group to provide Tribal input and advice regarding reauthorization of the IHCIA, set to expire in 2000. The NSC, consisting of Tribal representatives from each of the 12 geographic areas of

the IHS, drafted the reauthorization bill that serves as the basis for the IHCIA reauthorization bills, S. 1200 and H.R. 1328, introduced in the 110th Congress. The Tribal NSC continues as an effective advisory group providing Tribal input and advice to the Administration and Congress regarding the IHCIA.

As Chairman of the TLDC, I have had the unique opportunity to work closely with Dr. Kelly Acton, Director, IHS Division of Diabetes Treatment and Prevention Program, to oversee the development of many of the culturally sensitive and appropriate diabetes programs throughout Indian Country. In 1998, the IHS formally established the TLDC to provide advice and input on diabetes-related issues. The TLDC's collaborative effort with the IHS has been an important outcome of the SDPI. The IHS recognized from the start of this program that it would have to make careful choices about where to invest the SDPI funds and knew these choices would best be made with input from Tribal leaders.

Through consultation - the IHS, Tribal and urban diabetes programs have developed and implemented a variety of community and education programs that reflect the specific needs of their local communities. The SDPI has made a difference – the mean blood sugar level (A1C) in Indian communities has decreased from 9% in 1996 (before the SDPI) to 7.85% in 2007 (after the SDPI). This is a major achievement because scientific research shows that a 1% decrease translates to a 40% reduction in diabetes-related complications, such as blindness, kidney failure, and amputations.

Although the TLDC was established in 1998, it was formally chartered in June 2007. The charter outlines the role of the TLDC in providing broad-based advice to IHS on diabetes and related chronic disease issues. One of the responsibilities of the TLDC is to provide advice and guidance to ensure the incorporation of appropriate culture, traditions, and values in the development of diabetes programs, research and community-based activities.

The TLDC also makes recommendations regarding the distribution of SDPI funds. On December 29, 2007, the SDPI was reauthorized for another year – through FY 2009 – at a funding level of $150 million. On February 7-8, 2008, the TLDC met to discuss and make recommendations to the IHS regarding the new SDPI funding for FY 2009. The TLDC recommended that Area Tribal Consultation be held to seek input on the allocation of funds for this one year of funding. We are just getting the results back from the

Area consultation meetings and the TLDC is in the process of making final recommendations to the IHS as to the distribution of FY 2009 funding.

The SDPI has been a tremendously successful program – and I believe, the major contributing factor to its success is because the program was developed and implemented through an extensive and meaningful consultation process. Consultation took place at the local Tribal level and through close collaboration between the TLDC and the IHS Division of Diabetes.

Chairman Rahall and Congressman Kildee, I appreciate that H.R. 5608 has been introduced to codify the Federal government's responsibility to consult with Tribal governments regarding legislation, regulations, and policies having Tribal implications. However, with all due respect, I have concerns that the legislation as currently drafted only applies to the DOI, IHS, and NIGC.

Tribal health programs interact with other agencies within the Department of Health and Human Services. It is critical that these agencies consult with Tribal governments because many of these agencies – Centers for Medicare & Medicaid Services (CMS), Substance Abuse and Mental Health Services Administration (SAMHSA), Centers for Disease Control (CDC), Health Resource Services Administration (HRSA) – implement legislation, regulations, and policies that have major Tribal implications.

The Department issued a Tribal Consultation Policy, revised February 1, 2008, requiring all HHS agencies to consult with Tribal governments. The CMS, SAMSHA, and CDC have established Tribal advisory groups to provide advice and input to the agencies in implementing policies impacting Tribal communities. The Tribal advisory groups are not a substitute for Tribal consultation with over 560 Federally-recognized Tribes. The Tribal advisory groups are an effective forum for the HHS agencies to obtain preliminary advice and input from Tribal leaders with particular expertise.

I have provided good examples of why Tribal consultation is important and how it can lead to the successful implementation of Federal programs in Tribal communities. But when Tribal consultation is not conducted or not conducted in a meaningful manner – implementation of Federal policy impacting Tribal communities can lead to potentially devastating results.

I am concerned that by only including IHS in H.R. 5608, and not all of the HHS agencies, that this could send a message to those other HHS agencies that they are not required to consult with Tribes. HHS should be specifically referenced in H.R. 5608. The HHS Tribal Consultation Policy requires all of the agencies to consult with Tribes in the development of policies and regulations having Tribal implications - but the HHS policy is not always followed. Many of the HHS agencies do not have long standing policies of consulting with Tribes and their process for obtaining feedback from constituency groups, such as State governments, have not been modified to include Tribal governments. Of particular concern are CMS policies and regulations that have Tribal implications – over 35% of the IHS actives users are Medicare and Medicaid eligible. The IHS and Tribal health programs are participating Medicare and Medicaid providers. Unfortunately, the CMS recently published proposed Medicaid rules, with Tribal implications, without first consulting with Tribal governments. I have included as an attachment to my written testimony the Tribal comments submitted expressing concerns regarding the lack of Tribal consultation in the development of one of those proposed rules, CMS-2244-P [State flexibility to impose premiums and cost sharing requirements].

As Chairman of my Tribe, I know there are other Federal agencies that have Tribal consultation policies, such as the Department of Housing and Urban Development, Department of Transportation, Environmental Protection Agency – to name a few. By H.R. 5608 not including all Federal agencies, I reiterate my concern that their omission might be interpreted as not requiring Federal agencies (other than those named in H.R. 5608) to consult with Tribes pursuant to Executive Orders.

I respectfully recommend that H.R. 5608 be amended to apply to all Federal agencies, but at a minimum, apply to all agencies in HHS. In addition or in the alternative, I recommend a provision be inserted to clarify that codification of Tribal consultation requirements as to DOI, IHS, and NIGC does not abrogate the responsibility of other Federal agencies to consult with Tribal governments.

I appreciate the opportunity to comment on H.R. 5608 and I am available to answer any questions the Committee might have.

Attachment: CMS TTAG letter commenting on lack of Tribal consultation in publication of Medicaid proposed rule – CMS -2244-P