Public Health Law

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention

The Affordable Care Act & American Indian and Alaska Native Communities: Selected Readings and Resources

Tribes are sovereign nations that maintain a government-to-government relationship with the United States.[1] There are currently 566 federally recognized tribes throughout the contiguous United States and Alaska.[2] Because tribes are sovereign governments, tribal authority cannot be infringed upon by states.[3] However, the US Supreme Court has held that Congress has the authority to legislate on tribal issues.[4] In addition to political sovereignty, tribes exercise cultural sovereignty in the form of traditions and religious practices unique to each tribe's history and culture.[5] Cultural sovereignty "encompasses the spiritual, emotional, mental, and physical aspects" of native people's lives and serves as a foundation to tribal exercise of political sovereignty.[6]

The federal government also maintains a trust responsibility toward tribes based on treaties, agreements, statutes, and case law.[7] This trust responsibility is "a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native (AI/AN) tribes and villages."[8]

In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA).[9] The ACA and subsequent regulations established a requirement for individuals to maintain minimum health insurance

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[1] COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, § 4.01[1][a] (Nell Jessup Newton et al. eds., 2012).
[2] Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs, Fed. Reg. 77, 155 (Aug. 10, 2012) *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf.
[3] *Williams v. Lee*, 358 U.S. 217, 271 (1959). Note Public Law 280 and other jurisdictional exceptions are applicable in a handful of states.
[4] *Ex Parte Crow Dog*, 109 U.S. 556, 572 (1883); *United States v. Kagama*, 118 U.S. 375, 384–5 (1886).
[5] Wallace Coffey and Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STAN. L. & POL'Y REV. 191, 196 (2001).
[6] *Id.* at 210.
[7] *What is the federal Indian trust responsibility*, BUREAU OF INDIAN AFFAIRS, http://www.bia.gov/FAQs/index.htm (last visited Jul. 19, 2013); *Seminole Nation v. United States*, 316 U.S. 286 (1942).
[8] *See What is the federal Indian trust responsibility*, *supra* note 7.
[9] The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010).

coverage, established the Health Insurance Marketplace for individuals to secure coverage, and a an individual responsibility payment for those who do not maintain minimum coverage.[10] The ACA establishes special insurance exchange enrollment periods and individual mandate exemptions for AI/AN individuals.[11]

The ACA also permanently reauthorized the Indian Health Care Improvement Act (IHCIA).[12] Originally passed in 1976 and subsequently amended, IHCIA authorizes programs to support Indian healthcare professionals and healthcare professionals working for Indian healthcare providers through scholarships, trainings, and loan repayment programs.[13] IHCIA's 2010 reauthorization included various provisions to improve the retention and recruitment of Indian healthcare providers,[14] the quality of healthcare facilities,[15] and the Indian healthcare system.[16]

The following readings and resources describe and discuss the ACA's and IHCIA's impact on AI/AN communities. The resources were collected from June 2013 through August 2014 using online databases.[17]

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Briefs, Fact Sheets, and Summaries

These resources describe ACA and IHCIA provisions that impact AI/AN communities.

- Implications of Health Reform for American Indian and Alaska Native Populations
  Carolyn Ingram, Shannon M. McMahon, and Veronica Guerra & Alice Weiss, STATE HEALTH REFORM ASSISTANCE NETWORK (February 2012).
- Patient Protection and Affordable Care Act: Summary of Indian Health Provisions

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[10] 42 U.S.C.A. § 18091; Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage, Fed. Reg. 78, 169 (Aug. 30, 2013) *availablat at* http://www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21157.pdf.
[11] 42 U.S.C.A. § 18031(c)(6)(D); Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions, Fed. Reg. 78, 126 (Jul. 1, 2013) *available at* http://www.gpo.gov/fdsys/pkg/FR-2013-07-01/pdf/2013-15530.pdf.
[12] 25 U.S.C.A. § 1680*o*.
[13] Indian Health Amendments of 1992, Pub. L. No. 102-573, § 101, 106 Stat. 4526 (1992) (codified at 25 U.S.C. §§ 1601 et seq.).
[14] 25 U.S.C.A. §§ 1611–1616q.
[15] 25 U.S.C.A. §§ 1631–1638g.
[16] 25 U.S.C.A. §§ 1601–1602.
[17] PHLP utilized WestlawNext to conduct searches for legal publications and Google for additional resources.

NATIONAL INDIAN HEALTH BOARD (May 12,2010).

- The Health Insurance Marketplace for American Indians and Alaska Natives
  TRIBALHEALTHCARE.ORG (July 2013).
- The Indian Health Care Improvement Reauthorization and Extension Act
  NATIONAL INDIAN HEALTH BOARD (May 12, 2010).
- The Indian Health Care Improvement Act Reauthorization and Extension as Enacted by the ACA: Detailed Summary and Timeline
  Elaine J. Heisler, CONGRESSIONAL RESEARCH SERVICE (Dec. 14, 2011).

Resources on Enrollment and Exemptions

The following resources help AI/AN individuals understand the opportunities available under the ACA and gives direction for enrollment and exemption applications.

- Affordable Care Act
  CENTERS FOR MEDICARE & MEDICAID SERVICES (last visited Dec. 22, 2014).
- Affordable Care Act
  INDIAN HEALTH SERVICE (last visited Dec. 22, 2014).
- Health Coverage for American Indians and Alaska Natives
  HEALTHCARE.GOV (last visited Dec. 22, 2014).
- Health Insurance Marketplace: What it Means for American Indians and Alaska Natives and Alaska Natives
  HEALTH INSURANCE MARKETPLACE (last visited Dec. 22, 2014).
- Health Insurance Marketplaces: Basics 101
  NIHB TRIBAL HEALTH REFORM RESOURCE CENTER (last visited Dec. 22, 2014).
- The Affordable Care Act and American Indian and Alaska Natives
  NATIVE EXCHANGE (last visited Dec. 22, 2014).
- TRIBALHEALTHCARE.ORG
  TRIBAL HEALTHCARE (last visited Dec. 22, 2014).

Scholarly Articles

- American Indian Health Policy: Historical Trends and Contemporary Issues
  Donald Warne and Linda Bane Frizzell, 104 AM. J. OF PUBLIC HEALTH No. S3, S263–7 (June 2014).
  Summarizes the history of Indian health policy, including a discussion on ACA and IHCIA.
- Hard Out Here for an American Indian: Implications of the Patient Protection and Affordable Care Act for the American Indian Population
  Alex Dyste, Student Article, 32 LAW & INEQ. 95 (Winter 2014).
  Discusses potential shortcomings of the ACA with regard to Indian health and potential remedial measures in the implementation of the ACA and its impact on AI/AN communities.
- Native American Health Care: Is the Indian Health Care Reauthorization and Improvement Act of 2009 Enough to Address Persistent Health Problems Within the Native American Community?
  Koral E. Fusselman, Student Note, 18 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 389 (2012).
  Identifies three major healthcare problems affecting AI/AN communities, how the ACA and IHCIA address these problems, and future legislation needed to improve the health of AI/AN communities.

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This document was developed by Aila Hoss, JD, Oak Ridge Institute for Science and Education Fellow, with the assistance of Matthew Penn, JD, MLIS, Director, Akshara Menon, JD, MPH, Oak Ridge Institute for Science and Education Fellow, and Katherine Darracott, Summer 2014 extern, with the Public Health Law Program (PHLP) within the Centers for Disease Control and Prevention's (CDC's) Office for State, Tribal, Local and Territorial Support. For further technical assistance with this resource list, please contact PHLP at phlawprogram@cdc.gov. PHLP provides technical assistance and public health law resources to advance the use of law as a public health tool. PHLP cannot provide legal advice on any issue and cannot represent any individual or entity in any matter. PHLP recommends seeking the advice of an attorney or other qualified professional with questions regarding the application of law to a specific circumstance. The findings and conclusions in this summary are those of the authors and do not necessarily represent the official views of CDC.

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