

Exchanging Public Health Data with Tribal Jurisdictions

American Indian Health Commission

June 27, 2023



Overview

Exchanging Public Health Data with Tribal Jurisdictions



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SCENARIO — Tribal Jurisdiction Access to Public Health Data

- Friday, August 26: Tribe X has a public health officer and tribal council that serves as the public health board for the Tribe. The Tribal clinic has the capacity/capability to conduct mass testing and vaccines and provide treatments for the Monkeypox virus.
- Friday, September 16: The state department of health receives reports of 10 Monkeypox virus cases from the regional hospital and private healthcare providers' labs near Tribe X's reservation.
- Wednesday, September 21: After analyzing the data, the state department of health determines that 6 of the cases reside on Tribal lands.
- Thursday, September 22: The state department of health provides the local health jurisdiction with information about the 10 cases.
- Friday, September 23: 6 or more tribal community members have been sick with Monkeypox virus for over 1 week. Each of these individuals are employed in the neighboring county. The Tribe is not aware there is an outbreak in the community and thus has not provided care or responded to prevent further spread of disease. Neither the state nor the local health jurisdiction have the authority to exercise public health powers on tribal land.

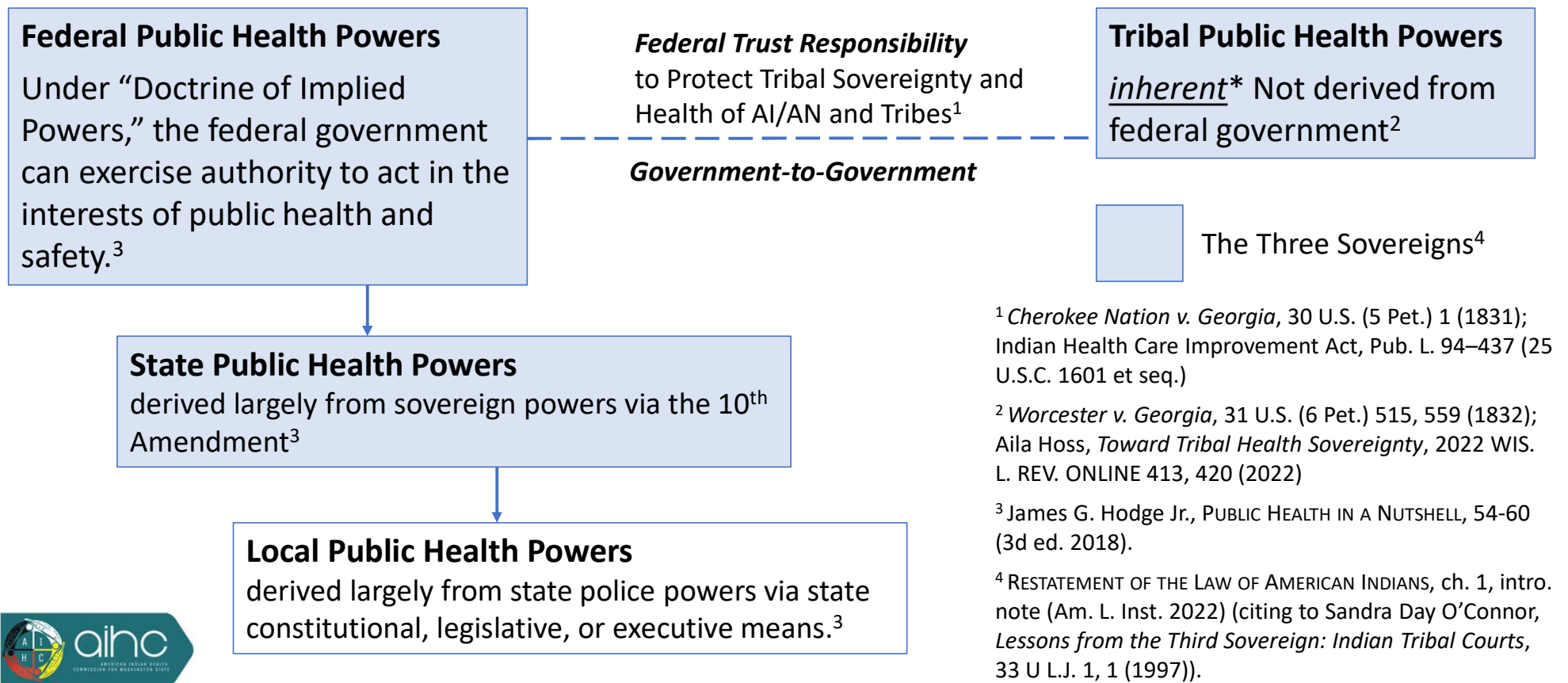


Part One

Tribal Governments in Relation to State, Federal, and Local Governments



Public Health Governmental Powers: Jurisdiction, Jurisdiction, Jurisdiction



¹ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); Indian Health Care Improvement Act, Pub. L. 94-437 (25 U.S.C. 1601 et seq.)

² *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832); Aila Hoss, *Toward Tribal Health Sovereignty*, 2022 WIS. L. REV. ONLINE 413, 420 (2022)

³ James G. Hodge Jr., PUBLIC HEALTH IN A NUTSHELL, 54-60 (3d ed. 2018).

⁴ RESTATEMENT OF THE LAW OF AMERICAN INDIANS, ch. 1, intro. note (Am. L. Inst. 2022) (citing to Sandra Day O’Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 33 U L.J. 1, 1 (1997)).



Part Two

Tribal Public Health Jurisdiction





Tribal Public Health Jurisdiction

Tribal governments are public health jurisdictions with inherent legal authorities and powers equal to or greater than state and local governments.*

**Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832); *See also, Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 at 16 (1831).



Tribal Public Health Powers

Tribal jurisdictions exercise a wide range of governmental public health powers including, but not limited to, the following functions:

Declare	Order	Close	Establish	Investigate	Surveil
Declaring public health emergencies	Ordering mandatory isolation and quarantine	Closing businesses and off-reservation borders	Establishing priority groups and service populations for dispensing vaccines	Performing case and contact investigations	Conducting data surveillance

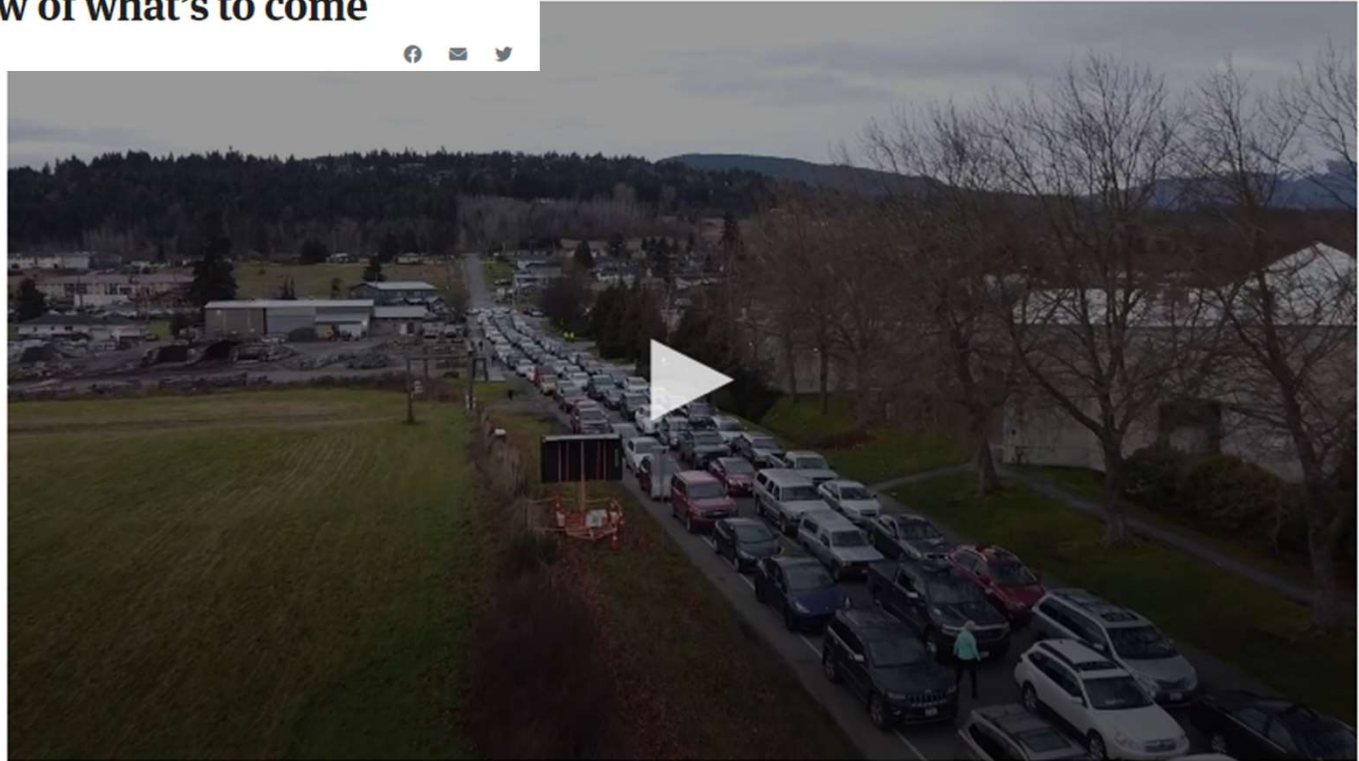
Health | Local News | Northwest | Puget Sound

Huge response to a mass COVID-19 vaccination site in Sequim is likely preview of what's to come

Jan. 14, 2021 at 6:54 pm | Updated Jan. 19, 2021 at 10:32 am



“The clinic vaccinated about **500** people in four hours....”

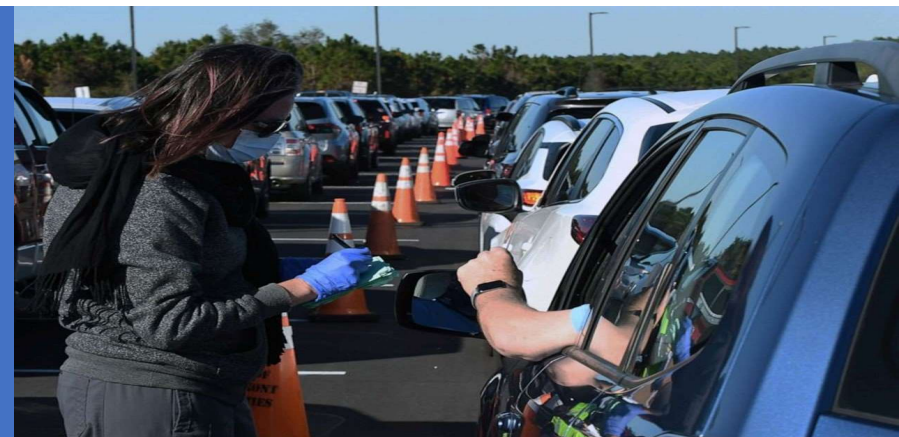



Hundreds of Sequim residents waited for a drive-through clinic operated by the Jamestown S'Klallam Tribe. Clallum County is starting to vaccinate residents who are 70 and older ahead of the state's vaccination schedule. (Courtesy of James Castell)

<https://www.seattletimes.com/seattle-news/health/huge-response-to-a-mass-covid-19-vaccination-site-in-sequim-is-likely-preview-of-whats-to-come/>

Part Three

Exchanging Public Health Data with Tribal Jurisdictions





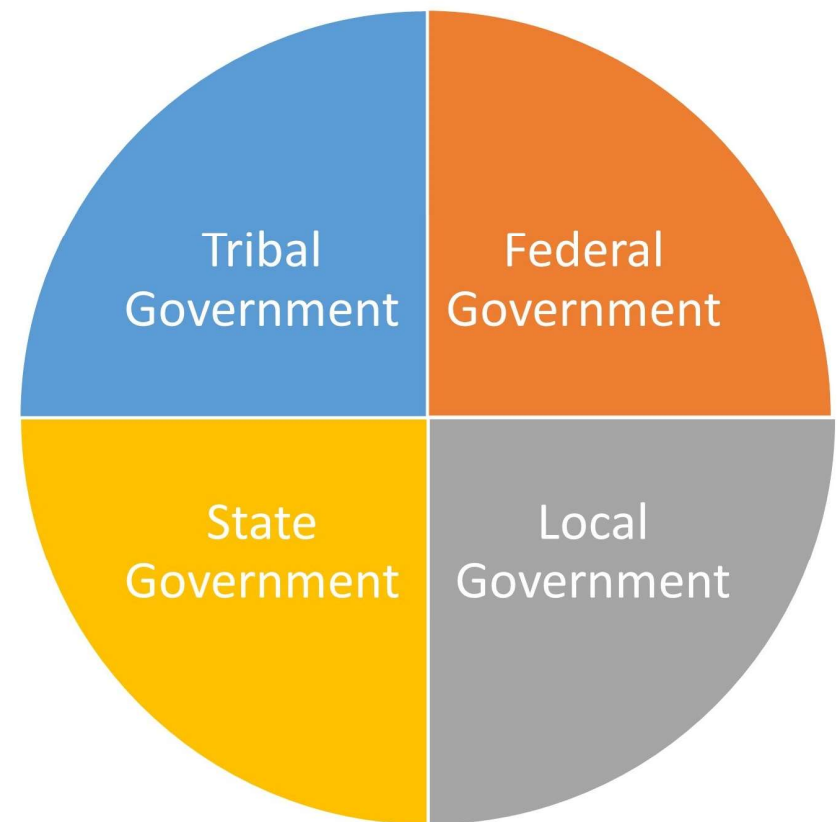
“Tribes having direct access to their own data is critical for tribal governments to make decisions for the protection of our citizens within our jurisdictions.”

**-Marilyn Scott, Chairwoman
Upper Skagit Tribe**



Exchanging Public Health Data with Tribal Jurisdictions

Federal, state, and local jurisdictions can exchange public health data with tribal jurisdictions. Under 45 C.F.R. § 164.512(b)(1)(i), covered entities can “disclose protected health information, without authorization, to public health authorities who are legally authorized to receive such reports for the purpose of preventing or controlling disease, injury, or disability.” (emphasis added). The federal definition of public health authorities includes tribal governments.



Federal Definition of Public Health Authority

45 C.F.R. § 164.501

an agency or authority
of the United States

a State

a territory

a political subdivision of
a State or territory

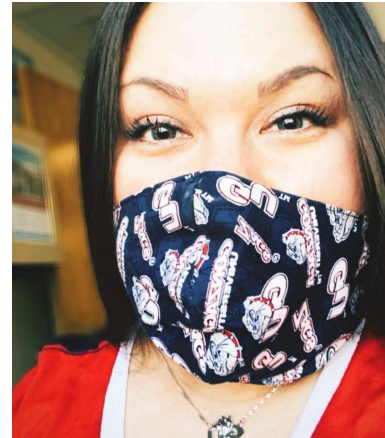
an Indian tribe

a person or entity acting
under a grant of
authority from or
contract with such
public agency



Impacts of Withholding Public Health Data from Tribal Jurisdictions

If a serious disease outbreak occurs on tribal land, and the tribal government does not receive public health data in a timely manner, that outbreak could spread more broadly within the Tribe's community and into neighboring jurisdictions.



Part Four

Tribal Data Sharing Agreements



Tribal Data Sharing Agreements

Definition and Purpose

A tribal data sharing agreement is an agreement between a tribal jurisdiction and a federal, state, or local jurisdiction that addresses:

- (1) collecting, managing, using, disclosing, and safeguarding tribal and American Indian and Alaska Native information and data; and
- (2) providing tribal jurisdictions equitable access to public health data.

Benefit

These types of agreements can

- leverage public health resources through the sharing of public health data across multiple jurisdictions;
- increase a government's capacity to respond to a public health emergency;
- reduce the cost of public health response; and
- improve the overall effectiveness and efficiency of public health response.



Components

Ownership

Recognition of Tribal ownership in data about their Tribe and their people

Protection

Requirements for the federal/state/local jurisdiction to protect Tribal and AI/AN data

Access

Requirements for equitable access to public health data for a tribal government to be able to perform their governmental duties

Gov-to-Gov

Requirements for a government-to-government relationship through Tribal decision-making/input on federal and state government use of tribal and AI/AN data



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Thank you

