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Best Practices for Coordinating with Tribal Public Health Jurisdictions

August 19, 2022

Heather Erb
American Indian Health Commission
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aihc

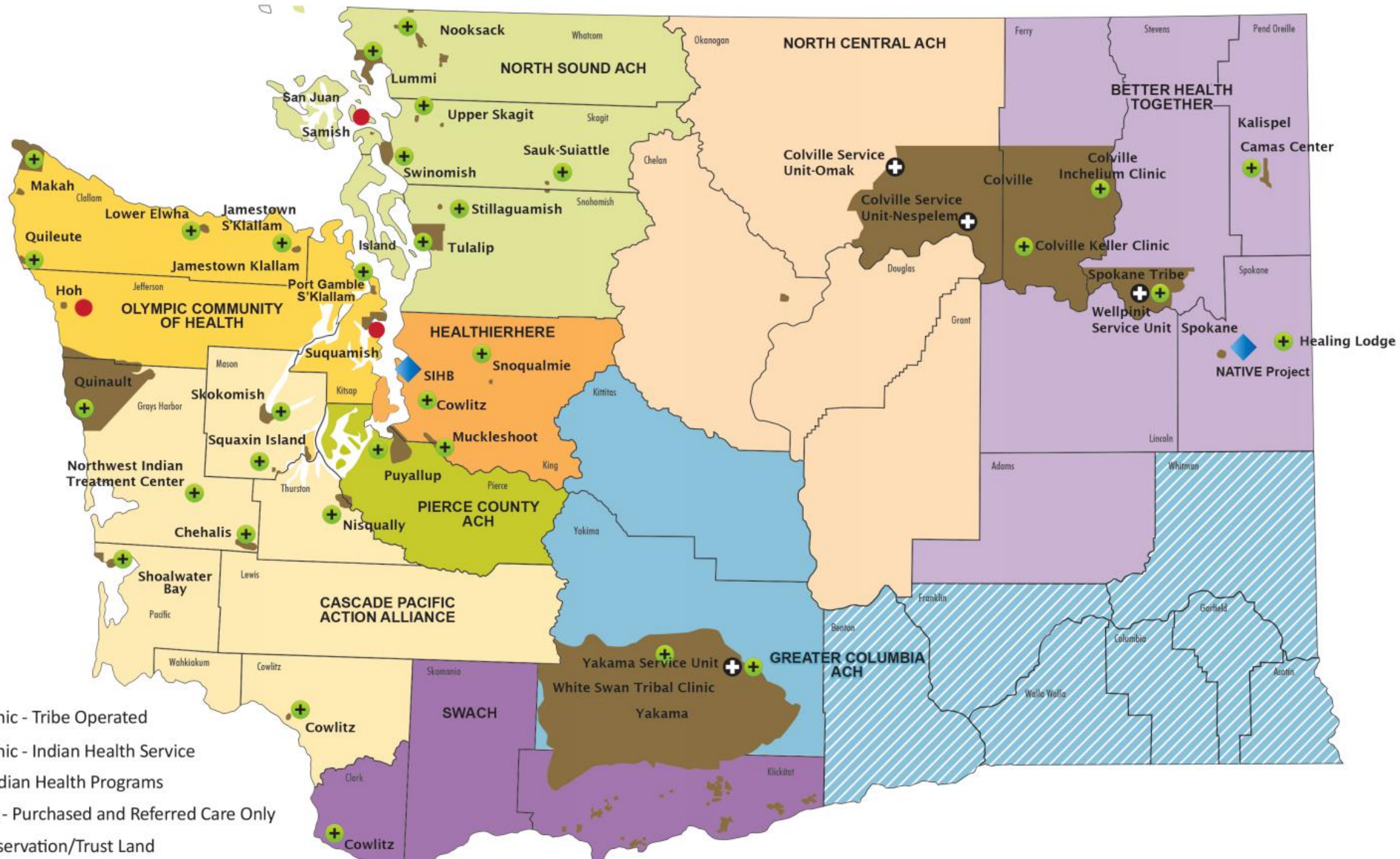
The American Indian Health Commission was created in 1994 by Washington's federally recognized tribes, urban Indian health organizations, and other Indian organizations to address tribal-state health issues. AIHC's mission is to improve the health status of American Indian and Alaska Native (AI/AN) people through tribal-state collaboration on health policies and programs. The Commission's work is directed by the 29 federally-recognized Tribes and 2 urban Indian health organizations in Washington. Delegates are officially appointed by tribal councils and urban Indian health organization boards to represent each individual Tribe and urban Indian health organization.



Why is coordination and collaboration between tribes, local governments, and states vital to community health and safety?



Public health issues and emergencies know no
boundaries



- + Tribal Clinic - Tribe Operated
- + Tribal Clinic - Indian Health Service
- ◆ Urban Indian Health Programs
- No Clinic - Purchased and Referred Care Only
- Tribal Reservation/Trust Land

Lack of understanding of federal Indian law and respect for tribal sovereignty can have detrimental impacts to tribal governments and to American Indians and Alaska Natives.

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2009 H1N1 OUTBREAK

FAILURE TO DELIVER MEDICAL COUNTERMEASURES TO SOME WA TRIBES

A small number of Washington tribes made plans to administer vaccine to elders before children. Some local health jurisdictions (LHJs) responsible for coordinating delivery of vaccines and antivirals to tribes argued this approach would be in conflict with CDC guidelines. On that basis, those LHJs did not distribute the tribes' allocated MCMs to the tribes.



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TRIBAL IMPACTS

FAILURE TO RECOGNIZE TRIBAL HEALTH PROGRAMS AS LICENSED OR CERTIFIED

A health insurance issuer's failure to recognize a tribal health program as a licensed or certified facility can result in loss of funds for critically underfunded tribal health programs

A Washington state court's failure to recognize a tribal health program as licensed or certified facility resulted in American Indians and Alaska Native unable to receive treatment from their tribal health program



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Suicide Crisis in American Indian and Alaska Native Population

American Indian and Alaska Natives (AI/AN) between the ages of 10 and 29 account for **63%** of Washington state emergency department visits for suicide attempts in 2020.*

Since 2001, the suicide mortality rate for AI/AN in Washington state has increased by **58%** which is more than **3x** the rate of increase among non-AI/AN. Nationally, the highest suicide rates among (AI/AN) are for adolescents and young adults.**

*"Trends in Suicide-Related Emergency Department Visits among American Indians and Alaska Natives in Washington During COVID-19," Northwest Indian Health Board. <https://www.npaihb.org/wp-content/uploads/2021/05/WA-Suicide-ED-fact-sheet.pdf>.

**RCW 43.71B.901 citing to research by Northwest Tribal Epidemiology Center

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Understanding and respecting Indian law and policy and tribal sovereignty can bring about great improvements for tribal nations and American Indian and Alaska Native people AND benefit the neighboring state and local jurisdictions.



Protective Factors in Tribal and Urban Communities*

- The Tribe as a large extended family, with responsibility to take care of each other
- Respect for the elders, grandmas and grandpas as teachers, responsible for sharing their wisdom and watching out for generations to come
- Aunties and uncles as disciplinarians, reinforcing proper behavior in a clear but loving ways, through human and animal stories

*Slide courtesy of Vicki Lowe- Executive Director for the American Indian Health Commission



Protective Factors in Native Ways of Thinking*

- Generosity as a symbol of wealth, assuring that contributing members of the community are honoring and caring for each other, or wealth is determined by what you give, not by what you receive or acquire.
- The importance of striving to live in balance so all our needs get the attention they deserve.
- Our relationships and recognition that we are connected to each other and all things.

*Slide courtesy of Vicki Lowe- Executive Director for the American Indian Health Commission



5 Best Practices for Coordinating with Tribal Public Health Jurisdictions

1. Conduct regular **staff trainings** on Indian Health Law 101;
2. Ensure **state and local laws, regulations, and policies** contain language that recognizes and includes tribal public health jurisdictions (e.g. required notification, disclosures exceptions, involuntary treatment procedures);
3. Ensure **medical countermeasures (MCM) plans** are consistent with federal Indian law and provide procedures for coordinating distribution of MCM to Tribes;
4. Execute **mutual aid agreements** for public health incidents; and
5. Execute **data sharing agreements** that include tribal data sovereignty principles.

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Best Practice #1:

Conduct Regular Staff Trainings on Indian Health Law 101

Sources for Indian Health Law Trainings

- Your neighboring Tribes
- Your neighboring Indian Health Care Providers
- Tribal Health Organizations
- Indian Law Professors

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TWO IMPORTANT THEMES FOR INDIAN LAW

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THEME 1 → Sovereignty

TRIBES = Independent entities with
inherent power of self-government

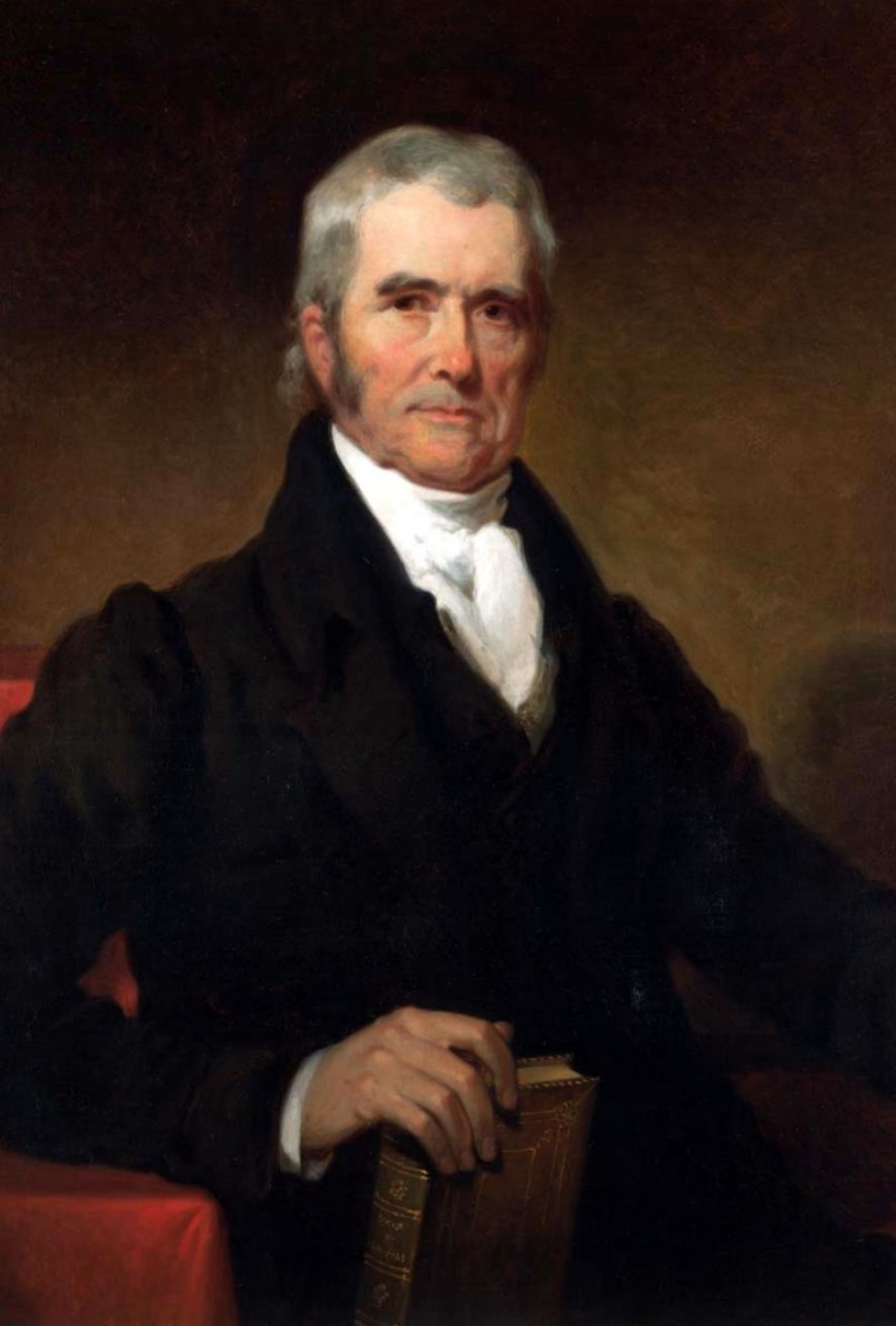
See American Indian Law in a Nutshell, William Canby, Jr., 7th Edition

TRIBAL SOVEREIGNTY

Tribal Sovereignty predates the formation of the United States government.

Prior to contact, Tribal governments had complete sovereignty.

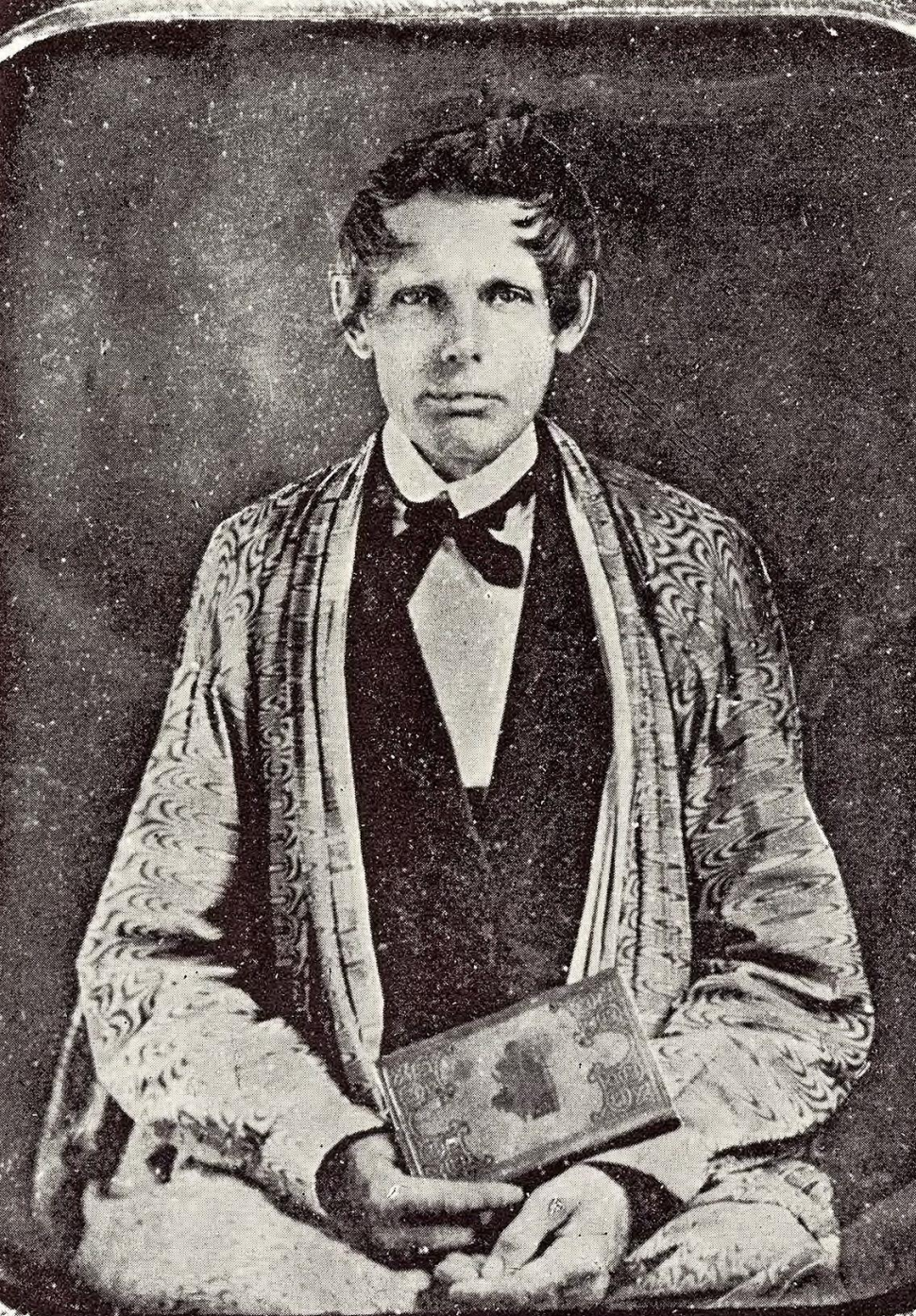




THE MARSHALL TRILOGY

- Johnson v. M'Intosh (1823) ruling used the Discovery Doctrine to establish the nature of Indian title. Upon "discovery" the Indians had lost "their rights to complete sovereignty, as independent nations," only retaining a "right of occupancy" in their lands.
- Cherokee Nation v. Georgia (1831) held that the tribe was not a foreign nation, rather a "domestic dependent nation" subject to the sovereignty of the United States federal government.
- Worcester v. Georgia (1832) ruled that tribal sovereign powers were not relinquished when Indian tribes exchanged land for peace and protection.

"The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial..." Worcester v. Georgia, 31 U.S. 515, 559 (1832)



U.S. RECOGNITION OF TRIBAL SOVEREIGNTY

Indian nations within the United States possess the inherent power to govern.

“The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial...”

Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559 (1832)

SOVEREIGNTY IS AN INHERENT POWER

In contrast to a city, who derives certain powers to enact regulations from the State, a tribe's power is inherent, and the tribe needs no authority from the federal government.

Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (8th Cir. 1956); Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 149 (1982).

TRIBAL SOVEREIGNTY IN PRACTICE

AUTHORITY TO GOVERN

Sovereignty ensures control over the future of the tribes and encourages preservation of tribal culture, religions, and traditional practices.

Tribes have the authority to, among other things, govern their people and their land; define their own tribal membership criteria; create tribal legislation, law enforcement and court systems; and to impose taxes in certain situations.*

*Building Bridges for the New Millennium: Government to Government Implementation Guidelines, May 18, 2000



Tribal Nations' Sovereign Authority to Act as Public Health Authorities*

- **Tribal nations possess the inherent power to exercise their public health authority within their jurisdictions.** This governmental authority includes, but is not limited to, the power to conduct isolation and quarantine, perform case and contact investigations, dispense and distribute vaccines, close off reservation borders to protect Tribal citizens, **conduct data surveillance, and protect the use of their nation's public health data by outside entities.**
- No state government nor other party may divest a Tribe of their authority to conduct such activities.
- No federal law has divested Tribes of their public health authority.
- Instead, both the federal government and the State of Washington have recognized the sovereign authority of Tribes to act as public health authorities under 45 CFR § 164.501 and RCW 43.70.512(1).

*For an overview of Tribal public health authority, see Aila Hoss, *Toward Tribal Health Sovereignty*, 419 U. Wis. L. Rev. 2022 (2022). You can find this article in [Wisconsin Law Review Symposium, *The Restatement of the Law of American Indians*](#).

THEME 2 → TRUST RESPONSIBILITY

Trust responsibility is a legally enforceable obligation of the United States to protect tribal self-determination, tribal lands, assets, resources, and treaty rights, as well as carry out the directions of federal statutes and court cases.*

*Building Bridges for the New Millennium: Government-to-Government Implementation Guidelines, State-Tribal Workgroup, May 18, 2000.



FEDERAL TRUST TREATY RESPONSIBILITY TO PROVIDE HEALTH CARE TO AI/AN

“And the United States finally agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of ...medical attendance to be defrayed by the United States, and not deducted from the annuities.”

Treaty of Point Elliot, 1855, Article 14

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FEDERAL TRUST STATUTORY RESPONSIBILITY TO PROVIDE HEALTH CARE TO AI/AN

Under the Indian Health Care Improvement Act (IHCIA), “[f]ederal health services to maintain and improve the health of the Indians are ... required by the Federal Government’s historical and unique relationship with, and resulting responsibility to, the American Indian people.”

25 U.S.C. § 1601(a)

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Best Practice #2:

Ensure State and Local Laws, Regulations, and Policies Contain Language Recognizing and Including Tribal Public Health Jurisdictions

Best Practice: Include Tribal Public Health Jurisdictions in State and Local Laws

- State laws should clearly recognize that Tribes are sovereign nations with the power to act as public health authorities
- State laws should properly include and coordinate tribal governments in the provision of state services such as involuntary treatment and communicable disease control

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Federal Recognition of Tribal Public Health Jurisdictions

Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an **Indian tribe**, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

45 CFR § 164.501

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Example State Law Recognizing Tribal Public Health Jurisdictions

“Protecting the public's health across the state is a fundamental responsibility of the state and is accomplished through the governmental public health system. **This system** is comprised of the state department of health, state board of health, local health jurisdictions, **sovereign tribal nations**, and **Indian health programs.**”

Revised Code of Washington (RCW) 43.70.512(1)

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Best Practice: Include Tribal Public Health Jurisdictions in State Laws

“The legislature, therefore, intends to: Recognize the sovereign authority of tribal governments to act as public health authorities in providing for the health and safety of their community members”

Revised Code of Washington (RCW) 43.71B.901(2)(g)

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**WASHINGTON INDIAN HEALTH IMPROVEMENT ACT
SB 5415**

**FEDERAL AND
STATE LAWS
RECOGNIZE
TRIBAL NATIONS
AS
PUBLIC HEALTH
JURISDICTIONS**

See 45 CFR § 164.501 and
RCW 43.70.512(1)

**Examples of Exercising
Tribal Public Health Authority & Jurisdiction**

Accessing and Using
State Public Health Data
Systems

Accessing and
Dispensing Vaccines

Coordination with Tribal
Emergency Response

Northwest Laboratory in Bellingham now able to test for coronavirus, should speed tests



BY DAVID RASBACH

MARCH 30, 2020 01:12 PM, UPDATED MARCH 30, 2020 01:12 PM



Bellingham Herald, March 30, 2020, “Northwest Laboratory in Bellingham now able to test for coronavirus, should speed tests.”

“While Bull said the lab will be working in conjunction with the Public Health Lab and the Washington State Department of Health, Northwest Laboratory will be working closely with the Whatcom County Health Department, the Skagit County Public Health Department, Lummi Public Health Department and PeaceHealth for the testing needs of this region.”

SOURCE: <https://www.bellinghamherald.com/news/coronavirus/article241627986.html>

Native American tribe takes trailblazing steps to fight Covid-19 outbreak

Lummi nation will open a pioneering field hospital to treat patients in wave of strong public health measures

**THE
GUARDIAN**

“The Lummi want to help. Dr Lane said: ‘The Lummi believe in controlling our own destiny. We don’t count on help reaching us, but the hospital is something we can do to help the community.’”

Dr. Dakotah Lane, Lummi Nation Health Director

SOURCE: <https://www.theguardian.com/us-news/2020/mar/18/covidcoronavirus-native-american-lummi-nation-trailblazing-steps>

DRAFT POLICIES, GUIDANCE, AND PLANS

- State statutes
- Tribal provisions within local and state medical countermeasures plans and other emergency plans
- CDC guidance



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Best Practice #3:

Ensure Medical Countermeasures (MCM) Plans Are Consistent with Federal Indian Law and Provide Procedures for Coordinating Distribution of MCM to Tribes

2009 H1N1 OUTBREAK

FAILURE TO DELIVER MEDICAL COUNTERMEASURES TO SOME WA TRIBES

A small number of Washington Tribes made plans to administer vaccine to elders before children. Some local health jurisdictions (LHJs) responsible for coordinating delivery of vaccines and antivirals to tribes argued this approach would be in conflict with CDC guidelines. On that basis, those LHJs did not distribute the tribes' allocated MCMs to the tribes.



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Never Again

American Indian Health
Commission Goal:

Assure the appropriate
amount and type of MCM
reach every Tribe quickly
during every public health
emergency



Distribution of Medical Countermeasures to Tribes

Each time an incident occurs, a Tribe has the sovereign authority to choose how medical countermeasures are distributed to their community by federal, state, and or local governments



State and Local Health Jurisdiction Role in Distribution of Medical Countermeasures to Tribes

- States are responsible for ensuring that MCMs are distributed to Tribes*
- In Washington, the State committed to distributing MCMs directly to each of the tribes or coordinating with federal and/or local health jurisdictions to distribute MCMs to tribes.



*"Receiving, Distributing, and Dispensing Strategic National Stockpile Assets: A Guide to Preparedness, *Version 11*, p. 5-6 (electronic version), p. 1-2 (print copy)



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
PO Box 47890 • Olympia, Washington 98504-7890
Tel: 360-236-4030 • 711 Washington State Relay

September 3, 2020

Steve Kutz, Chairman
American Indian Health Commission
808 North 5th Avenue
Sequim, Washington 98382

Dear Chairman Kutz:

SUBJECT: Medical Countermeasures Tribal-State-LHJ Coordination Plan

On August 12, 2020, the Department of Health (DOH) hosted a consultation with the AIHC, tribal nations, and other Indian health organizations to be prepared for the eventual distribution of medical countermeasures related to the COVID-19 pandemic. The recommendations were shared with consultation partners and a comment period was held open on them through August 31, 2020. During that period, there was a single comment submitted to DOH from AIHC. It was incorporated into the final actions I have now approved, which are as follows:

1. Starting September 1, 2020, DOH staff from both the Emergency Preparedness and Response Division and the Prevention and Community Health Division/Office of Immunization and Child Profile will work together with tribal and local health jurisdiction (LHJ) leaders and representatives to support successful tribal-state-local health partnerships for the distribution of medical countermeasures, including vaccines.
2. By October 1, 2020, the Tribal-State-LHJ Medical Countermeasures Guide will be finalized to include this language on page 1, paragraph 2, under the Tribal Sovereign Authority Regarding Medical Countermeasures: **For each incident, the Tribe, not the local health jurisdiction or Washington State, shall determine the Tribe's service population. Each Tribe will coordinate with the State on the specific allocation of MCM to be distributed to the Tribe.**
3. By October 1, 2020, DOH will incorporate the following language into Annex 9, page 6, first item under the Tribal Sovereign Authority Regarding Medical Countermeasures: **For each incident, the Tribe, not the local health jurisdiction nor Washington State, shall determine the population the Tribe will serve to provide MCM, and each Tribe will coordinate with the State on the specific allocation of MCM to be distributed to the tribe.**

“ For each incident, the Tribe, not the local health jurisdiction or Washington State, shall determine the Tribe's service population. Each Tribe will coordinate with the State on the specific allocation of MCM to be distributed to the Tribe.”

“For each incident, the Tribe, not the local health jurisdiction nor Washington State, shall determine the population the Tribe will serve to provide MCM, and each Tribe will coordinate with the State on the specific allocation of MCM to be distributed to the tribe.”

Federal Government (SNS) → Washington State

OPTION 1
Tribe → State

TRIBE
sends staff
and vehicle
to pick up
MCM at
STATE RSS
location

OPTION 2
State → Tribe

STATE
delivers
directly to
TRIBAL
location

OPTION 3
State → LHJ → Tribe

STATE delivers Tribal
allocation to Local
Health Jurisdiction (LHJ)

TRIBE and LHJ
coordinate
conveyance of
MCMs to **TRIBE**

OPTION 4
Tribe
Contacts
Feds (CDC)

Delivery of MCMs to tribes will occur, dependent upon the facts and circumstances of the incident, through federal coordination with the State or other entity*

*"Receiving, Distributing, and Dispensing Strategic National Stockpile Assets: A Guide to Preparedness, Version 11, p. 5-6 (electronic version), p. 1-2 (print copy)"



CDC Guidance

“[E]ach tribal nation has the sovereign authority to provide for the welfare of its people and, therefore, has the authority to:

- Choose among the jurisdiction or Indian Health Service (IHS) options for accessing vaccine.
- Determine the population(s) it chooses to serve.
- Choose how vaccines are distributed to its community.
- Establish priority groups when there is a limited supply of COVID-19 vaccine or other accompanying resources.”

CDC Guidance Cont.

“Jurisdictions should reach out to tribal nations within their respective areas for involvement in planning efforts.”

“Jurisdictions must include each tribe’s preference for COVID-19 vaccine distribution to ensure vaccine is effectively delivered to tribal nations and their communities. State and local jurisdictions should also engage with Urban Indian Health Centers (UIHCs).”

“Details of engagement with tribal nations and other tribal entities should be included in jurisdiction COVID-19 vaccination plans.”

“The jurisdictional planning process should include state-recognized tribes, unrecognized tribes, and American Indian/Alaska Native individuals who are included in state-recognized tribes because the option to access COVID-19 vaccine through IHS may not be possible for these communities.”



TRIBAL MCM DISTRIBUTION PREPAREDNESS: BEST PRACTICES

1. Provide opportunities for tribes, local health jurisdictions and state agencies to learn each others' plans, capabilities, and resources, and develop collaborative relationships
2. Review federal and state guidance on tribal MCM distribution; identify and address gaps
3. Assure tribes have detailed information about the options available to them for MCM distribution

TRIBAL MCM DISTRIBUTION PREPAREDNESS: BEST PRACTICES

4. Develop a process for tribes to select a “placeholder” default distribution option
5. Develop a process for tribes and local health jurisdictions to document their MCM distribution profile (locations, equipment, staffing, etc.)
6. Advocate for federal and state guidance that includes information on tribal sovereignty and clarifies the role of local governments is to convey MCM to tribes, not to assert authority regarding distribution and/or dispensing



What Happens When Federal and State Governments Respect Tribal Sovereignty...

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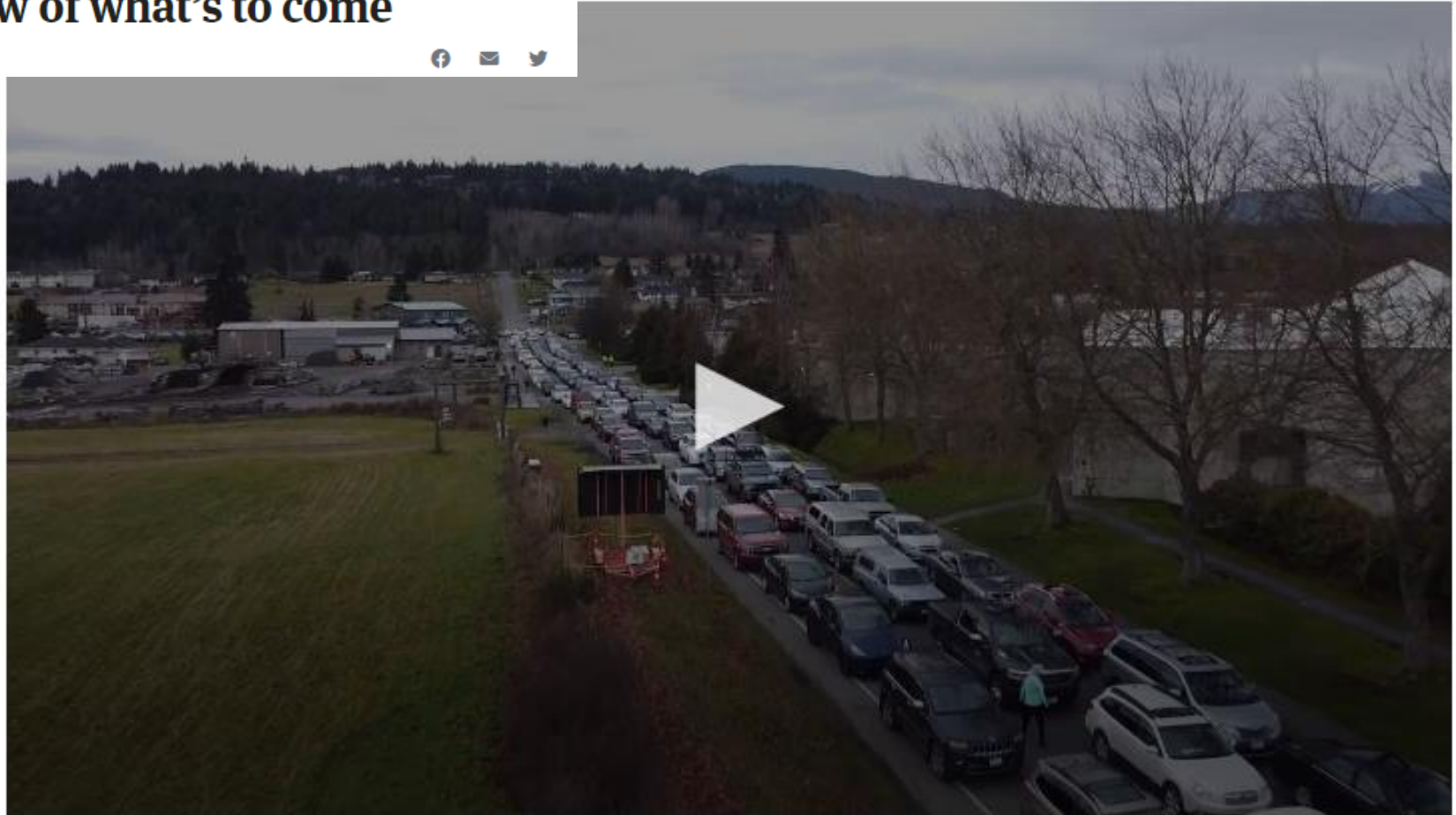
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Huge response to a mass COVID-19 vaccination site in Sequim is likely preview of what's to come

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/>

Education | Education Lab | Health

Teachers crying tears of gratitude as Washington tribes help speed COVID-19 vaccines to them

March 18, 2021 at 6:00 am | Updated March 18, 2021 at 9:39 am

The Seattle Times

<https://www.seattletimes.com/education-lab/tribal-governments-in-washington-help-speed-teacher-vaccination-effort/>



How a Native American COVID-19 vaccine rollout is a model for community-centered approaches

Feb. 1, 2021 at 6:00 am | Updated Feb. 1, 2021 at 7:04 pm



The Seattle Times

<https://www.seattletimes.com/seattle-news/health/we-take-it-for-our-community-how-a-native-american-survey-and-vaccine-rollout-models-a-community-centered-approach/>

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Best Practice #4:

Execute Mutual Aid Agreements for Public Health Incidents

“Success in responding to a major incident depends on **pre-incident marshalling of resources**. Mutual aid agreements and other intergovernmental arrangements for emergency management and response are key tools for marshalling resources”

E. Abbott and O. Hetzel, Homeland Security and Emergency Management: A Legal Guide for State and Local Governments, p. 251.

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What is a Mutual Aid Agreement?



According to FEMA, “mutual aid agreements and assistance agreements are agreements between agencies, organizations, and jurisdictions that provide a mechanism to quickly obtain emergency assistance in the form of personnel, equipment, materials, and other associated services.”

The primary objective is to facilitate rapid, short-term deployment of emergency support prior to, during, and after an incident.

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MUTUAL AID AGREEMENTS

Thirteen tribes and twelve local health jurisdictions have signed on to either the *Mutual Aid Agreement for Tribes and Local Health Jurisdictions in Washington State* or the *Olympic Regional Tribal Public Health Mutual Aid Agreement*.

Mutual Aid Resources available at <https://aihc-wa.com/pulling-together-for-wellness/tribal-local-health-mutual-aid/>

MUTUAL AID AGREEMENT FOR TRIBES AND LOCAL HEALTH JURISDICTIONS IN WASHINGTON STATE

This Mutual Aid Agreement for Tribes and Local Health Jurisdictions in Washington State ("Agreement" or "MAA") is made and entered into by the signatory Local Health Jurisdiction(s) within the State of Washington that operate(s) a public health department(s) or division(s) within their county government(s) and the signatory Tribal Government(s) individually with all other signatory parties legally joining the Agreement.

1. **PURPOSE.** Each Party recognizes that public health emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and for best use of available assets. This Agreement shall provide for mutual assistance among the Parties in the prevention of, response to, mitigation of and recovery from, any public health emergency, public health disaster, or public health incident. The intent of this Agreement is to make equipment, personnel and other resources available to other Parties to the Agreement.
2. **DEFINITIONS.**
 - a. **Assistance:** Assistance means personnel and resources provided by a Responding Party in response to a request from a Requesting Party.
 - b. **Authorized Representative:** The person or persons designated by each Party on the Mutual Aid Request Form to request Assistance from or grant assistance to another Party pursuant to the terms of this Agreement.
 - c. **Public Health Officer:** The legally qualified individual who has been appointed as the health officer for the tribe, county or district public health jurisdiction, whose qualifications are set forth in tribal code or in RCW 70.05 and RCW 70.08 et seq.
 - d. **Mutual Aid:** A prearranged written agreement whereby assistance is requested and may be provided under the terms of this Agreement between two or more jurisdictions during a public health incident, emergency or disaster, or related to day-to-day public health services, communicable disease outbreak, isolation and quarantine public health services, or any other public health service or action permitted by law.
 - e. **Mutual Aid Request Form:** The form used between the Responding and Requesting Parties to facilitate requests for mutual aid, estimate reimbursement costs, and assist in proper record keeping.
 - f. **Operational Control:** Operational control means the limited authority to direct tasks, assignments, and use of assistance provided pursuant to a request for assistance under this Agreement to address: (a) response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercise in preparation for an emergency. "Operational control" does not include any right, privilege, or benefit of ownership or employment such as disposition, compensation, wages, salary, pensions, health benefits, leave, seniority, discipline, promotion, hiring, or firing.
 - g. **Period of Assistance:** The period of time beginning with the departure of any personnel, equipment, materials, supplies, services, and/or related resources of the

American Indian Health Commission Mutual Aid Project Participation

Operational Staff

Attorneys



 County

 Tribal

22 Tribes

13 Counties



"SEND THIS BACK TO THE LEGAL DEPARTMENT, I THINK THEY COULD MAKE IT MUCH MORE COMPLICATED THAN THIS ..."

“In Clallam County, I tried to get the County and the four local Tribes to establish an agreement. We created draft documents, but the project crashed and burned when the lawyers got involved.”

*Dr. Tom Locke, Local Health Officer,
discussing Olympic MAA Process*

Coordination between Tribes and Non-Tribal Governments

- Complexity of Indian jurisdictional law intersecting with local, state, and federal law requires advanced planning
- Federal law and guidance may not address every situation



Unique Legal Considerations of Tribal Mutual Aid Agreements

Tribal Granting of Temporary Authority to Local Public Health Officer

Unless a Tribal Government specifically grants temporary authority to a Local Public Health Officer, that Health Officer has NO JURISDICTION on tribal lands



Unique Legal Considerations of Tribal Mutual Aid Agreements

Tribal Sovereign Immunity

- 3rd Party Liability
- Indemnification

Dispute Resolution

- Binding Arbitration
- Governing Law
- Venue



6 Key Benefits of Tribal-LHJ MAA

1. Helps a government fulfill its duty to protect the lives, health and welfare of its people from public health threats
2. Faster and more organized access to resources from other jurisdictions in time of need
3. Reduces/prevents legal disputes that may occur after a joint response to an incident or emergency

6 Key Benefits of Tribal-LHJ MAA

4. Facilitates the ability for an impacted government to receive reimbursement from FEMA and Washington State (See FEMA Disaster Assistance Policy, DAP9523.6)
5. Opportunity for governments to better understand each jurisdiction's system of government and builds relationships
6. **Provides a tool to support regional partners to regularly exercise emergency response practices and strengthen the region's capacity to respond and recover from incidents and emergencies**

MAA is Not a Future Promise to Provide Aid

A signed agreement does not obligate the provision or receipt of aid, but rather provides a tool for use should the incident dictate a need.

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Lessons Learned

- Trust is key
- History is always in the room
- Working with governments that possess different immunity laws remains a challenge
- Parties must weigh risk of entering into agreements vs. not entering into agreements



AIHC MUTUAL AID PROJECT

Mutual Aid Agreement for Tribes and Local Health Jurisdictions In Washington State

<http://www.aihc-wa.com/aihc-health-projects/emergency-preparedness/mutual-aid-project/>

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Best Practice #5:

Execute Data Sharing Agreements that Include Tribal Data Sovereignty Principles

Recent Examples of Barriers to Tribal Data Sovereignty and Tribal Jurisdiction

1. Non-Tribal governments responding to national media requests that include tribal data without tribal input
2. Government use of non-official data about Tribes in official public documents without Tribe's permission
3. Sharing individual Tribes' vaccine allocations without Tribe's permission
4. Impeding tribal health jurisdiction's access to public health data essential to exercising their public health authority and performing their governmental functions

Data Sovereignty

“Indigenous data sovereignty is the right of a nation to govern the collection, ownership, and application of its own data”

- U.S. Indigenous Data Sovereignty Network, <http://usindigenousdata.arizona.edu/about-us-0>





Four Core Tribal Data Sovereignty Principles



Principle # 1

Only a Tribe has the sovereign authority to determine how their data may or may not be used.*

*See Network for Public Health Law, <https://www.networkforphl.org/resources/data-governance-strategies-for-states-and-tribal-nations/?msclkid=d41c5fbda92d11ecb58179dd429446a4>





Principle # 2

“When a jurisdiction reports on or about American Indian or Alaska native peoples, it should meaningfully partner and consult with Tribal leaders on the analysis and interpretation of the data.”*

*See Network for Public Health Law, <https://www.networkforphl.org/resources/data-governance-strategies-for-states-and-tribal-nations/?msclkid=d41c5fbda92d11ecb58179dd429446a4>





Principle # 3

Tribes retain an ownership interest in data, even when the Tribe's data are located in a state, federal or other dataset. This interest remains when the Tribe's data are aggregated with other data.*

*See PolicyLink, [10-Design-Principles-For-Online-Data-Tools.pdf \(nationalequityatlas.org\)](https://www.nationalequityatlas.org/10-Design-Principles-For-Online-Data-Tools.pdf) page 15



Principle # 4

Tribes must have equitable access to data needed to perform their governmental duties.*

*See PolicyLink, [10-Design-Principles-For-Online-Data-Tools.pdf \(nationalequityatlas.org\)](https://www.nationalequityatlas.org/10-Design-Principles-For-Online-Data-Tools.pdf) page 14

Overview of Washington DOH-Tribe Data Sharing Agreement



Tribal Data Sharing Agreements

Key Provisions

An agreement that closely aligns with legal principles of Tribal data sovereignty includes:

1. Recognition Tribal ownership in data about their Tribe and their people
2. Requirements for state to protect Tribal and AI/AN data
3. Establishes more equitable access to AI/AN data to perform their governmental duties
4. Requirements for government-to-government relationship through Tribal decision-making/input on federal and state government use of tribal and AI/AN data



Section 3: Recognition of Tribal ownership of data about their Tribe and their people

OWNERSHIP OF DATA

Unless otherwise provided by law and subject to the restrictions and limitations in this agreement, [INSERT THIS LANGUAGE FOR TRIBES ONLY] the [NAME OF TRIBE] and DOH have joint ownership in data and information regarding the Tribe, its tribal citizens, and persons who reside within the Tribe's jurisdiction, under this Agreement. These data and information include, but are not limited to, data in the DOH database systems referenced in any Exhibits attached to this Agreement.



Section 5: Requirements for state to protect Tribal and AI/AN data

DATA GOVERNANCE

Subject to any limitations provided in subsection 5E, this section provides the conditions under which the Washington State DOH collects, manages, uses, discloses, and safeguards Tribal and American Indian and Alaska Native Information and data.



Section 6: Establishes more equitable access for Tribes to AI/AN data needed to perform their governmental duties

ACCESS TO DOH DATASETS/DATABASES

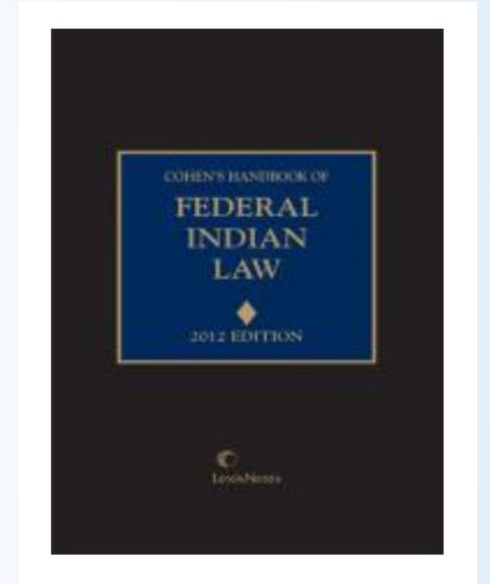
- Statewide read of WDRS for COVID-19 events (See Exhibit I)**
- Statewide write access of WDRS for COVID-19 events**
- Linked COVID-19 Immunization Administration Data in WDRS (See Exhibit II)**
- Linked COVID-19 Death Data in WDRS (See Exhibit III)**
- Linked COVID-19 syndromic surveillance data in WDRS (See Exhibit IV)**
- Linked COVID-19 CREST case investigation data in WDRS (See Exhibit V)**
- COVID-19 WDRS system read access for the Urban Indian Health Institute**
- COVID-19 CREST system read access (case and contact investigation data) for Tribes (See Exhibit VI)**
- COVID-19 CREST system write access (case and contact investigation data) for Tribes**
- COVID-19 CREST system read access for Urban Indian Health Institute**
- Read access to WDRS for non-COVID conditions. (See Exhibit XX)**
- Write access to WDRS for non-COVID conditions.**
- Washington State Immunization Information System or WAIS Viewing (See Exhibit XY)**
- Washington State Immunization Information System or WAIS Exchanging (See Exhibit XY)**

[NAME OF TRIBE OR UIHI] can choose to request access to additional DOH datasets and databases, and any access provided to additional datasets and databases will be added in the form of an Exhibit attached to this Agreement and executed by both



Indian Law Resources

- Your neighboring Tribe's publications, codes, resolutions
- Restatement of the Law, The Law of American Indians
- Cohen's Handbook of Federal Indian Law
- American Indian Law in a Nutshell



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