



THE AMERICAN INDIAN HEALTH COMMISSION



# Federal and State Laws for Sharing Health Information with Indian Health Care Providers

*An Overview for Health Care Providers in Washington State*

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## ***Disclaimer***

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## Introduction

Over the last several years, Indian health care providers (IHCPs) have reported to the American Indian Health Commission that health care providers, including hospitals, often refuse to disclose health information regarding their patients even when such disclosures are permitted under federal and state law. Failure to disclose such information has resulted in serious harm to several Tribal community members. Refusal to disclose information often stems from misinterpretation and/or misuse of privacy laws. In addition, many providers do not understand the unique legal authorities that many IHCPs possess as governments, providers, and crisis agencies.

This overview provides important federal and state laws that allow for the sharing of health information with IHCPs. Specifically, this overview will provide applicable laws under the Health Insurance Portability and Accountability Act, HIPAA, [42 C.F.R. Part 2](#), and/or the [Washington’s Uniform Health Care Information Act \(UHCIA\), chapter 70.02 RCW](#).



## Tribes and Indian Health Care Providers in Washington State

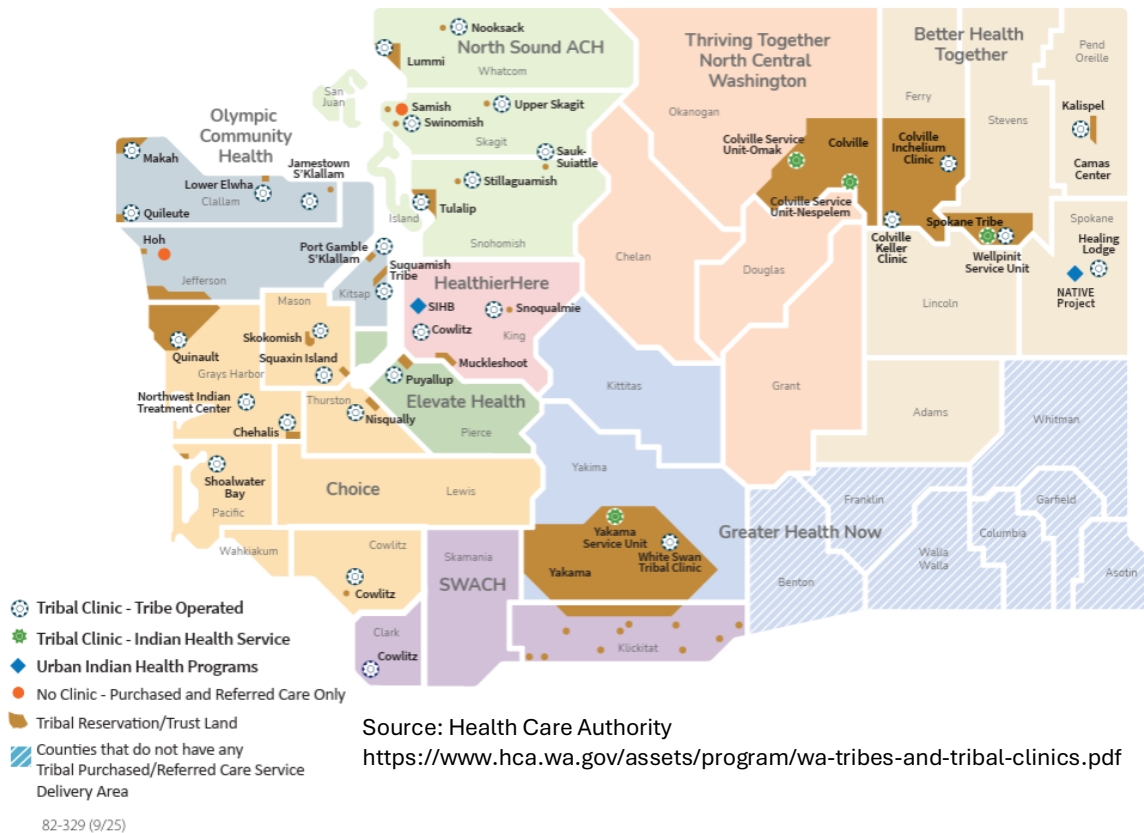
IHCPs have unique legal status under federal and state law and are located throughout Washington State. Federal law has established various types of IHCPs including those that are located on Tribal land and those that are located off Tribal land.<sup>1</sup> Most of the 29 Tribes have IHCPs located on Tribal land. In addition to those IHCPs, Washington State has two urban Indian health organizations: the Native Project in Spokane; and the Seattle Indian Health Board.

For questions about what services a particular IHCP provides, contact the Tribe or IHCP directly. The Volunteer of America for Western Washington [Tribal Service Profiles](#) may also provide helpful information. If you are unable to contact the IHCP, you can reach out to the Office of Tribal Affairs at the Health Care Authority at [tribalaffairs@hca.wa.gov](mailto:tribalaffairs@hca.wa.gov) for assistance.

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<sup>1</sup> See [25 U.S.C. § 1603](#); See also, [RCW 70.02.010](#) and [RCW 43.71B.010](#).

## Tribes and Indian Health Care Providers in Washington State



**Tribal Indian Health Care Providers.** In order to understand when you can share information with an IHCP in accordance with federal and state law, it is important to recognize that IHCPs located on Tribal land may also perform governmental functions pursuant to their sovereign authority. These governmental functions include protecting the health and safety of persons suffering from mental health and substance use disorders and protecting the safety of the community. This means that additional exceptions for sharing information may apply when the IHCP is also a government. Some of these functions include the following:

1. **Health Service Providers.** IHCPs in Washington State provide a variety of medical, dental, and behavioral health services, including outpatient mental health, outpatient substance use disorder (SUD), and inpatient SUD programs.
2. **Public Health Authorities.** Tribal governments and their IHCPs are considered public health authorities under HIPAA and state regulations.<sup>2</sup>

<sup>2</sup> 45 C.F.R. § 164.512(b)(1)(i). See also WAC 246-101-010.

3. **Behavioral Health Agencies and Designated Crisis Responders.** Most IHCPs in Washington State are recognized by the Washington State Department of Health as behavioral health agencies and provide some form of crisis services to their patients.<sup>3</sup> Washington Tribes also have the ability to have their own designated crisis responders who operate in the state system and may appear at your hospital or evaluation and treatment center.<sup>4</sup> In addition, Washington State recognizes the “sovereign authority of [T]ribal governments to act as public health authorities in providing for the health and safety of their community members including those individuals who may be experiencing a behavioral health crisis.”<sup>5</sup>

## Information Sharing with Indian Health Care Providers and Tribal Governments– Generally

Generally, hospitals and other health care providers should apply the same federal and state laws and regulations regarding the sharing of information in the same manner to IHCPs and Tribal law enforcement, Tribal courts, Tribal prosecuting attorneys, and Tribal public health authorities as they do for non-IHCPs and state and local law enforcement, courts, prosecuting attorneys and health departments/public health authorities.



Photo Courtesy of Native Project, Spokane

## Information Sharing for Behavioral Health Information

[Washington State's Uniform Health Care Information Act \(UHCIA\), chapter 70.02 RCW](#), provides stricter protections for mental health information than HIPAA and includes a list of exceptions for when this information can be disclosed without patient authorization.<sup>6</sup> Many of these exceptions include references to IHCPs, Tribal courts, and Tribal prosecuting attorneys. Below is a non-exhaustive list of when mental health information can be shared with an IHCP and/or Tribal government without patient authorization:

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<sup>3</sup> See [RCW 71.05.020\(9\)](#).

<sup>4</sup> See [RCW 71.05.020\(20\)](#) and [WAC 182-125-0100](#).

<sup>5</sup> See [RCW 43.71B.901](#).

<sup>6</sup> See [RCW 70.02.230](#) and [70.02.240](#).

**1. For Care Coordination.** Consistent with the requirements of HIPAA, to:

- a. An IHCP, who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or
- b. Any other person who is working in a care coordinator role for an IHCP or is under an agreement pursuant to HIPAA with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.<sup>7</sup>



**2. To IHCPs Carrying Out the Requirements of the Involuntary Treatment Act.** In communications between qualified professional persons to meet the requirements of [Washington State's Involuntary Treatment Act, chapter 71.05 RCW](#), including IHCPs, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- a. Employed by the facility;
- b. Who has medical responsibility for the patient's care;
- c. Who is a designated crisis responder;
- d. Who is providing services under chapter [71.24 RCW](#);
- e. Who is employed by a state or local correctional facility where the person is confined or supervised; or
- f. Who is providing evaluation, treatment, or follow-up services under [chapter 10.77 RCW](#).<sup>8</sup>

**3. To Treating IHCPs with Prescriptive Authority.** To current IHCPs, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months.<sup>9</sup>

**4. To Tribal Courts, Tribal Prosecuting Attorneys, and Tribal Law Enforcement**

- a. To Tribal corrections and law enforcement agencies all necessary and relevant

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<sup>7</sup> See [RCW 70.02.230\(2\)\(v\)](#) for requirements and limitations.

<sup>8</sup> See [RCW 70.02.230\(2\)\(a\)](#) for requirements and limitations.

<sup>9</sup> See [RCW 70.02.230\(2\)\(aa\)](#) for requirements and limitations.

information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public;<sup>10</sup>

- b. To Tribal Courts administering involuntary treatment or criminally insane proceedings;<sup>11</sup>
- c. To Tribal prosecuting attorneys carrying on unlawful firearm proceedings;<sup>12</sup>
- d. To Tribal law enforcement seeking information regarding a patient who has “threatened, or who is known to have been repeatedly harassed” a person;<sup>13</sup>
- e. To a Tribal prosecuting attorney as necessary for early or conditional release or a modification for inpatient treatment in accordance with involuntary treatment proceedings;<sup>14</sup> and
- f. Pursuant to lawful order of a court, including a Tribal court<sup>15</sup>

## **Additional Requirements for Substance Use Disorder Information**

[42 C.F.R. Part 2](#) is a separate federal law from HIPAA that applies specifically to SUD records and has more restrictive rules regarding disclosure of protected health information. [42 C.F.R. Part 2](#) generally prohibits the disclosure of protected health information without patient consent and provides these more limited exceptions:

- a. Notifications to medical personnel in a medical emergency;<sup>16</sup>
- b. Notifications to law enforcement;<sup>17</sup>
- c. Immediate threats to health or safety that do not involve medical emergencies or crimes on programs premises or against program personnel;<sup>18</sup>
- d. Reports of child abuse and neglect;<sup>19</sup>

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<sup>10</sup> See [RCW 70.02.230\(2\)\(i\)](#) for additional requirements and limitations.

<sup>11</sup> See [RCW 70.02.230\(2\)\(d\)](#) for specific requirements and limitations.

<sup>12</sup> See [RCW 70.02.230\(2\)\(n\)](#) for additional requirements for specific requirements and limitations.

<sup>13</sup> See [RCW 70.02.230\(2\)\(h\)](#) for additional requirements and limitations.

<sup>14</sup> See [RCW 70.02.230\(2\)\(g\)](#) for additional requirements and limitations.

<sup>15</sup> See [RCW 70.02.230\(2\)\(p\)](#).

<sup>16</sup> See [SAMHSA FAQ 7-9](#) for specific requirements. IHCPs are medical personnel.

<sup>17</sup> See [SAMHSA FAQ #5](#) for specific requirements.

<sup>18</sup> See [SAMHSA FAQ #5](#) for specific requirements

<sup>19</sup> See [SAMHSA FAQ #5](#) for specific requirements.

- e. Court Ordered Disclosures;<sup>20</sup>
- f. Public health Authorities, provided that the records disclosed are de-identified according to the standards established in the HIPAA Privacy Rule.<sup>21</sup>

When applying these exceptions, be sure to include Tribal law enforcement, Tribal courts, and Tribal public health authorities.<sup>22</sup>

**NOTE:** [42 C.F.R. Part 2](#) restricts the use of records and testimony in civil, criminal, administrative, and legislative proceedings against patients, absent patient consent or a court order.<sup>23</sup>

## Information Sharing with Tribal Public Health Authorities

Under [45 C.F.R. § 164.512\(b\)\(1\)\(i\)](#), hospitals 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.” The federal definition of public health authorities includes Tribal governments.<sup>24</sup>

## Resources

### Federal

[Health & Human Services Guidance on Care Coordination](#)

[Health & Human Services Guidance on Sharing of Mental Health Information](#)

[Health and Human Services Guidance on CFR Part 2 Health and Human Services Guidance on the Distinction between HIPAA Authorization and Consent](#)

### State

[Washington State Guidance on Sharing Substance Use Disorder Information \(HCA\)](#)

[Office of Tribal Affairs, Health Care Authority](#)

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<sup>20</sup> See [SAMHSA FAQ #5](#) for specific requirements.

<sup>21</sup> See [Fact Sheet 42 CFR Part 2 Final Rule](#).

<sup>22</sup> See [RCW 70.02](#) and [45 C.F.R. § 164.512\(b\)\(1\)\(i\)](#).

<sup>23</sup> See [Fact Sheet 42 CFR Part 2 Final Rule](#).

<sup>24</sup> See [45 C.F.R. §164.501](#).