



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

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](#)

¹⁰ 42 U.S.C.A. § 18091; Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage, Fed. Reg. 78, 169 (Aug. 30, 2013) *available 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. §§ 1601-1683.

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 IHCA.
- 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 IHCA address these problems, and future legislation needed to improve the health of AI/AN communities.

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