The NAIC/American Indian and Alaska Native Liaison Committee met in Austin, TX, Dec. 8, 2019. The following Liaison Committee members participated: Michael Conway, Chair (CO); Lori K. Wing-Heier, Vice Chair (AK); Trinidad Navarro (DE); Matthew Rosendale represented by Bob Biskupiak (MT); Mike Causey represented by Tracy Biehn (NC); Jon Godfread represented by Johnny Palsgraaf (ND); John G. Franchini represented by Sarah Grisham (NM); Glen Mulready represented by Ron Kreiter (OK); Andrew Stolfi (OR); Larry Deiter represented by Frank Marnell (SD); Mike Kreidler (WA); and Mark Afable represented by Olivia Hwang (WI). Also participating were: Brian Fordham (OR); and Todd Dixon (WA).

1. **Adopted its Summer National Meeting Minutes**

   Director Wing-Heier made a motion, seconded by Ms. Biehn, to adopt the Liaison Committee’s Aug. 4 minutes (see NAIC Proceedings – Summer 2019, NAIC/American Indian and Alaska Native Liaison Committee). The motion passed unanimously.

2. **Heard a Presentation on Improving How the States Work with Tribes**

   Vicki Lowe (American Indian Health Commission—AIHC) said she had worked with American Indian tribes for over two years. During that time, she has learned that the most important issue for tribes is sovereignty, which, along with Indian law, reigns over all else. She said tribes are distinct political communities. She said tribal sovereignty is exercised each time a tribe governs their own people, resources and lands. She said tribal powers include the establishment of government; the determination of membership; the policing and administration of justice; and the exclusion of people from reservation, charter business organizations, and sovereign immunity. Tribal sovereignty in practice means that tribes have the authority to govern themselves. Ms. Lowe said sovereignty ensures control over the future of the tribes and encourages the preservation of tribal culture, religions and traditional practices. She said 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 impose taxes in certain situations. She said a lack of understanding of Indian law can have detrimental impacts to tribal governments, American Indians and Alaska Natives (AI/AN). She said one example was seen during a recent outbreak of measles when tribal leaders sought to distribute the limited vaccine themselves within their own tribes, giving the highest priority to the elderly and the very young. However, local health authorities had different priorities—giving the highest priority of the limited vaccine to those with chronic health conditions. The tribe refused to follow these priority guidelines, so the tribes received no vaccine, which resulted in many cases of measles that lead to deaths in tribal communities.

   Ms. Lowe said in order to understand the Indian Health Care Delivery system, it is necessary to go back before relationships were established between the tribes and the federal government. She said prior to such contact in the 1880s, indigenous people lived everywhere across what is now known as the U.S., with many tribes inhabiting several states. She said history is the key to understanding Indian law more than any other type of law. She said it is heavily intertwined with federal Indian policy, which shifts back and forth with the flow of popular and governmental attitudes toward American Indians. She said Indian law is the body of law dealing with the status of Indian tribes and their relationship with the federal government and the consequences/impact of that legal status/relationship for tribes and their members, states and citizens, as well as the federal government and local jurisdictions. She said understanding and respecting Indian law can bring about great improvements for tribal nations—AI/AN—and benefit the citizens of each state. She said in 2010, the Washington Department of Social and Health Services, in conflict with federal law, attempted to require tribal health programs to obtain state licensure for their facilities. She said an 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. She also said that a Washington court’s failure to recognize a tribal health programs as a licensed or certified facility can result in AI/AN unable to receive treatment from their tribal health program medical home. She said tribal members have triple citizenship—as Tribal citizens, Federal as America citizens, and as citizens of the state in which they live.

   Ms. Lowe said Executive Order 13175: “Consultation and Coordination with Indian Tribal Governments,” which was issued by U.S. President Bill Clinton on Nov. 6, 2000, requires federal departments and agencies to consult with Indian tribal governments when considering policies that would affect tribal communities, and it reiterates the federal government's
previously acknowledged commitment to tribal self-government and sovereignty. She said based on this federal law, tribal
governments have a government-to-government relationship with the federal government. She said tribal governments are not
stakeholders, minority groups, or other community groups. She said they are consulted with as governments, which means
there are certain notice requirements for federal and state policies and actions that other stakeholders do not have. She said
through the Centennial Accord of 1989, Washington established a unique relationship with tribes that honors the government-
to-government relationship. She said the accord is an agreement between Washington and the tribes in which each party
“respects the sovereign status of the parties, enhances and improves communications between them, and facilitates the
resolution of issues.” She said at the state level, Chapter 43.376 RCW requires state agencies to “make reasonable efforts to
collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affect
Indian tribes…”. She said it requires state agencies to “develop a consultation process that is used by the agency for issues
involving specific tribes.” She said RCW 43.376.050 also requires that: 1) at least once a year, the governor and other statewide
elected officials must meet with leaders of Indian tribes to address issues of mutual concern; 2) the governor must maintain,
for public reference, an updated list of the names and contact information for the individuals designated as tribal liaisons and
the names and contact information for tribal leadership as submitted by an Indian tribe; and 3) an annual meeting between the
governor and tribal leaders take place. She said it requires five state agency duties in establishing a government-to-government
relationship with the tribes. State agencies must:

1. Collaborate. Make reasonable efforts to collaborate with Indian tribes in the development of policies, agreements and
program implementation that directly affect Indian tribes.
2. Consultation Policy. Develop a consultation process that is used by the agency for issues involving specific Indian
tribes.
3. Tribal Liaison. Designate a tribal liaison who reports directly to the head of the state agency.
4. Training. Ensure that tribal liaisons who interact with Indian tribes and the executive directors of state agencies receive
training, as described in this chapter.
5. Reporting. Submit to the governor on activities of the state agency involving Indian tribes on implementation of this
chapter.

Ms. Lowe said when things go south in a consultation, tribal leaders often cite one of the following as the cause:

- A misunderstanding of the difference between collaboration and consultation.
- Consultation is a formal process with specific requirements established in advance regarding:
  - The level or depth of the required consultation—it must be meaningful.
  - The result or goal of the consultation—it must be a regular, ongoing exchange of information and opinions
resulting in a mutual understanding between Indian tribes as sovereign nations and the state on all policies and
actions that directly affect Indian tribes.
  - Who the required parties to the consultation are.
    - The Insurance Commissioner, Chief Deputy Insurance Commissioner, or Deputy Insurance Commissioner
with the appropriate decision-making authority.
    - Indian tribes represented by the Tribal President, Tribal Chair, Tribal Governor, an elected or appointed
Tribal Leader, or their authorized representative(s).
    - Urban Indian Health Programs.
    - AIHC Board Chair or authorized representative who has the authority to make decisions on behalf of the
AIHC. The AIHC is a not-for-profit entity that works on behalf of the Indian tribes and two urban Indian
health organizations in Washington on health policy and priority AI/AN health issues that improve the
Washington tribal health delivery system and the health of individual AI/AN residents. The AIHC does not
represent any Indian tribe or Indian Health Service (IHS), Tribes and Tribal organizations, and urban Indian
organizations (I/T/U) Provider.
    - Tribal organizations organized under the Indian Self-Determination and Education Assistance Act (P.L. 93-
  - When tribal consultations must occur: prior to implementation of all Office of the Insurance Commissioner’s
(OIC) policies and actions that directly affect Indian tribes except for emergency rulemaking, which means the
development of policies, agreements and program implementation by the OIC that have substantial direct effects
on Indian tribes or the relationship between the OIC and Indian tribes, and which may include rulemaking,
interpretable and policy statements. These include, but are not limited to, rules regarding consumer access to health
care providers/essential community provider provisions and health insurance issuer contract requirements.

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Ms. Lowe said tribal leaders are very familiar with the consultation policy, so agency staff and its leaders must be as well. She said common pitfalls are: 1) the agency does not keep its tribal liaison informed at the policy level; 2) an improper determination has been made regarding tribal implications; 3) agency staff are not following the consultation procedure due to a lack of training, awareness, willingness or presence; 4) tribes are engaged or consulted too late in the process; and/or 5) tribes are improperly viewed as stakeholders and not as sovereign governments.

Director Wing-Heier asked how often consultations are typically held. Ms. Lowe said consultations are held whenever needed, if they are needed more often than the required annual consultation.

Commissioner Conway asked Ms. Lowe to elaborate a little more on what happened with the H1N1 incident. Ms. Lowe said most of what the U.S. Centers for Disease Control and Prevention (CDC) does has been unclear because the federal government does not know what effect tribal implications have on the states, and the states are used to having total jurisdiction over everything. She said the local health offices are used to being an authority all unto themselves. She said they were very strictly following the instructions they had been given due to the limited number of vaccines available, so they would not give tribes any vaccine, as the tribes refused to follow those rules.

To our knowledge, there has been no response to this letter. However, OMH Press Secretary Tony Welch, in response to questions about the removal of this information from the OMH website, commented the following to Government Executive:

a. “As is standard website management practice, the Office of Minority Health [OMH] routinely reviews and updates the content on the OMH website. We also continue to make improvements to the site by reorganizing content on the site,” OMH Press Secretary Tony Welch said. He said some of the materials cited by the Web Integrity Project (WIP) have been “restructured” and made available.

b. “As with the ACA, which is administered by the Centers for Medicare and Medicaid Services,” he continued. The minority health office “regularly supports the initiatives of other federal offices, summarizing or linking to their information and resources. When OMH updates its pages, information that has left the OMH site is still available to the public.”

One of the items initially removed from the OMH website included “ACA Guidance for American Indians and Alaska Natives.” This page featured an infographic providing an overview of how to receive benefits under the ACA. While this page is no
There is an article on the Administration for Children and Families website, also run by the HHS, titled “American Indians/Alaska Natives and the Affordable Care Act – General Information,” which includes a link directing users to the resource “Health coverage for American Indians & Alaska Natives” on the HealthCare.gov website.

A May 2019 article in MedPage Today states that for over a two-year period, “the Department of Health and Human Services has been removing or downplaying information about the rights, benefits, and services granted by the Affordable Care Act.” This is based on a report from the WIP, which is an arm of the Sunlight Foundation. The article goes on to say that since 2017, the HHS has removed at least 85 fact sheets, press releases, and other informational documents from its websites. In addition to minority health, the website changes have affected several issues, including climate change and women’s health. In March 2019, the Sunlight Foundation and American Oversight jointly filed a lawsuit in the U.S. District Court for the District of Columbia to compel the HHS to release records related to the Office of Women’s Health’s removal of fact sheets and other public information on multiple issues, including lesbian and bisexual health and affordable breast cancer screenings. This lawsuit is the result of unsuccessful Freedom of Information Act (FOIA) requests, and it seeks injunctive relief to require the delivery of documents related to the HHS’s communications with the public affairs firm Hager Sharp, which runs the website for the Office of Women’s Health. The lawsuit also calls for the delivery of communications involving website user messages to the women’s health website and the agency’s handling of the website.

No lawsuit has been filed to compel similar documents from the HHS regarding federal health care information specific to tribal communities removed from the OMH website, and we are unaware if any FOIA requests have been made. Federal agencies retain much of the responsibility and discretion to determine what information is posted to their websites and what deleted content is retained as federal records.

Ms. Weatherford said for next steps, NAIC legal staff could coordinate with HHS contacts on the hill, and they would also be happy to continue to track the progression of the lawsuit with reporting feedback to the Liaison Committee.

Commissioner Conway asked if it seemed like the OMH was going to respond to those FOIA requests. Ms. Weatherford said the OMH declined to respond to the FOIA requests. Commissioner Conway asked how the OMH declined. Ms. Weatherford said the OMH relied on some exceptions to the FOIA law that this group disagreed with. Commissioner Conway asked if the NAIC could provide resources to file FOIA requests or if the NAIC could help in pulling these resources off the HHS website in order to put the resources on the NAIC website or on the states’ websites. Ms. Weatherford said she would take this request to the NAIC Legal Division and then respond to the Liaison Committee.

4. Discussed Other Matters

Commissioner Conway said one of the Liaison Committee members, Superintendent Franchini, sent three of his staff members to participate with Lois Alexander (NAIC) at the Liaison Committee’s information booth during the 76th Annual Convention and Marketplace held by the National Congress of American Indians (NCAI) in Albuquerque, New Mexico Oct. 20–25, 2019. Hundreds of AI/AN were assisted with their insurance concerns by these Liaison Committee representatives.

Having no further business, the NAIC/American Indian and Alaska Native Liaison Committee adjourned.