

Draft date: 8/3/24

*2024 Summer National Meeting  
Chicago, Illinois*

**NAIC/AMERICAN INDIAN AND ALASKA NATIVE LIAISON COMMITTEE**

Wednesday, August 14, 2024

8:00 – 9:00 a.m.

Convention Center—S103—Level 1

**ROLL CALL**

Glen Mulready, Chair	Oklahoma	Alice T. Kane	New Mexico
Trinidad Navarro, Vice Chair	Delaware	Mike Causey	North Carolina
Lori Wing-Heier	Alaska	Jon Godfread	North Dakota
Peni Itula Sapini Teo	American Samoa	Andrew R. Stolfi	Oregon
Barbara D. Richardson	Arizona	Larry D. Deiter	South Dakota
Dean L. Cameron	Idaho	Jon Pike	Utah
Grace Arnold	Minnesota	Mike Kreidler	Washington
Chlora Lindley-Myers	Missouri	Nathan Houdek	Wisconsin
Scott Kipper	Nevada	Jeff Rude	Wyoming

NAIC Support Staff: Lois Alexander

**AGENDA**

1. Consider Adoption of its Spring National Meeting Minutes Attachment One  
—*Commissioner Glen Mulready (OK)*
2. Hear a Presentation on the American Indian Medical Education Strategies (AIMES) Alliance—*Spencer Davis, Leavitt Partners* Attachment Two
3. Hear Updates from States on Native Community Outreach  
—*Commissioner Glen Mulready (OK)*
4. Discuss Any Other Matters Brought Before the Committee  
—*Commissioner Glen Mulready (OK)*
5. Adjournment

## Draft Pending Adoption

Attachment –  
NAIC/Consumer Liaison Committee  
3/15/24

Draft: 3/28/24

NAIC/American Indian and Alaska Native Liaison Committee  
Phoenix, Arizona  
March 17, 2024

The NAIC/American Indian and Alaska Native Liaison Committee met in Phoenix, AZ, March 17, 2024. The following Liaison Committee members participated: Glen Mulready, Chair (OK); Lori K. Wing-Heier and Heather Carpenter (AK); Barbara D. Richardson represented by Catherine O’Neil (AZ); Dean L. Cameron represented by Shannon Hohl (ID); Chlora Lindley-Myers represented by Jo LeDuc (MO); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by John Arnold and Santana Edison (ND); Alice T. Kane (NM); Scott Kipper (NV); Andrew R. Stolfi represented by TK Keen (OR); Larry D. Deiter represented by Frank Marnell (SD); Jon Pike represented by Ryan Jubber (UT); Mike Kreidler represented by Todd Dixon (WA); Nathan Houdek represented by Timothy Cornelius (WI); and Jeff Rude (WY). Also participating was: (AK); Christina Miller (DE).

### 1. Adopted its 2023 Fall National Meeting Minutes

Director Wing-Heier made a motion, seconded by Commissioner Kreidler, to adopt the Liaison Committee’s (see *NAIC Proceedings – Fall 2023, American Indian and Alaska Native Liaison Committee*) minutes. The motion passed unanimously.

### 2. Heard a Presentation from First American Title Insurance Company on Requests by the Title Insurance Industry for Sovereign Immunity Waivers from Native American Tribes

Megan Powell (First American Title Insurance Company), chair of the Native American Lands Workgroup for the American Land Title Association (ALTA), said there are currently 574 tribes listed in the Federal Register published by the Bureau of Indian Affairs (BIA) that the U.S. federal government recognizes. Of those tribes, 347 are within the contiguous 48 states, and 227 are in Alaska. Powell said that non-recognized tribes can petition for federal recognition under 25 CFR Part 83, which requires a review by the Office of Federal Acknowledgement (OFA) within the U.S. Department of the Interior and uses anthropological, genealogical, and historical research methods to evaluate petitions. Powell said each federally recognized tribe is an independent sovereign nation that has a government-to-government relationship with the U.S. with inherent tribal powers, including the ability to form their own government, create their own laws, regulate land use, and create their own tribal court system. As sovereign nations, Powell said tribes enjoy the benefit of sovereign immunity. This means they cannot be made a party to a lawsuit filed in state or federal court without their consent provided through a waiver of their sovereign immunity.

Powell said title insurance policies are contracts between the insurer and the insured, so when a title policy is issued to a Native American tribe as the insured, the title insurance company asks the tribe to waive its sovereign immunity for that contract. Powell said the conditions section of the title insurance policy states, “This policy together with all endorsements, if any, issued by the Company, is the entire policy and contract between the Insured and the Company.” Powell said through their execution of an ALTA 48 Tribal Waivers and Consents Endorsement promulgated in 2022, the tribe waives sovereign immunity; waives exhaustion of defenses in tribal court; and consents to jurisdiction and venue in state and federal court. Powell said a sovereign immunity waiver is also required from an entity that is owned or controlled by the tribe, even if it was not organized under tribal law. This is because the tribal entity could be a limited liability company (LLC) and may claim that it is an extension

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of the tribe, and therefore entitled to the benefit of the tribe's sovereign immunity. Powell said a tribe cannot be sued in state or federal court unless it waives its sovereign immunity.

Powell said if there is a need to clarify coverage obligations due to a coverage dispute under the policy (regardless of who the insured is), the insurer will typically accept coverage with a reservation of rights. Then it will file a declaratory relief action in state court asking the court to clarify coverage obligations under the policy, which requires naming the insured as a party in the litigation. Powell said if a tribe that has not consented to be sued in state court is named as a defendant in such an action, the tribe can file a motion asking to be dismissed from the litigation. Powell said the reasons why such cases are not litigated in tribal court include: 1) 574 federally recognized tribes means that many different tribal courts are applying different tribal laws; 2) title insurance policies (the defined terms within the policy, underwriting, and fee structure) are based on state real property laws; 3) the title industry lacks experience and knowledge pertaining to tribal court rules and precedents; 4) there is a lack of tribal case law interpreting title insurance policy forms; and 5) the lack of certainty increases risk for policyholders and shareholders.

If the tribe refuses to give a waiver, Powell said a title insurer may decline to insure without a waiver or may assume the risk of not having the ability to seek a judicial determination of coverage obligations. Powell said if the insurer truly believes the company does not have a coverage obligation, the company may deny the claim. The litigation pertaining to the coverage obligation would then have to be forced by the tribe as a plaintiff through a bad faith action. Powell said the tribe would have to provide its own defense of the title issue in dispute while it is being litigated. However, Powell said if the insurer has a waiver of sovereign immunity and accepts the claim without a reservation of rights, the company will provide a defense until the coverage obligation is clarified by the court. Sometimes, Powell said tribes are willing to consent to state courts for jurisdiction and venue but do not want to waive sovereign immunity, which still prevents the insurer from being able to file an action in state court.

Powell said the following potential modifications to the ALTA 48 Endorsement are being considered at this time that would add provisions to the policy to clarify that the waiver: 1) pertains to determining coverage obligations and establishing title as insured only; and 2) does not extend to any action for monetary damages against the tribe. Powell said there are other sovereign immunity waivers. Powell said if an entity, such as a lender in a mortgage or a lessee in a lease, that the tribe is contracting with (not the tribe) is the named insured in a policy, it is common to require that the document being insured contain a waiver of sovereign immunity. Powell said in these examples, the company would want to see a sovereign immunity waiver in the mortgage and in the lease. Powell said a title insurance policy insures the validity and enforceability of the document, creating the insured interest. Powell said if the insurer must litigate validity or enforceability on behalf of an insured, the insurer wants the litigation to take place in state or federal court.

Commissioner Mulready asked if such waivers are necessary on and off tribal reservations. Powell said waivers are necessary regardless of location due to the inherent rights of tribes. Commissioner Mulready asked if the endorsement has been filed in all states. Powell said the endorsement had been filed in some, but not all states. The filing process takes time, so the company is in the process of filing the endorsement and using an existing document the company already has in the interim. Commissioner Mulready said if someone goes to a casino, the person has to sign a waiver, so he asked why the title waivers are held as a separate document. Powell said ALTA had lots of policy forms that were updated in 2021 and that the choice of law should be state law and the venue should be the state. However, the company cannot assume a policy with waiver of sovereign immunity, so it was left out of the policy. Powell said *McGirt v. Oklahoma* brought attention to the issue, indicating that companies cannot unilaterally assign tribes to give waivers.

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Commissioner Mulready said that during his tribal coffees in Oklahoma, he heard that only certain title companies are asking for waivers of sovereign immunity. He asked if ALTA had received any pushback on it. Powell said each company decides whether to require it, and ALTA does. Commissioner Mulready asked why waivers apply not only to tribes, but also to policies owned or controlled by an LLC. Powell said waivers are required if an LLC is organized under a tribe or via a steering direction whereby Section 17 tribal corporations get a passive investor to finance affordable housing with an option to buy. Superintendent Kane said in a recent court case, the reservation of rights was upheld while a declaration is being filed.

### 3. Discussed the Results of the Committee Member Survey on Topics and 2024 Deliverables

Commissioner Mulready said two responses were received to the survey on topics and asked that Committee members continue to send their responses due to the limited time given for such activity. Commissioner Mulready said the responses received would be distributed to all Committee members.

### 4. Discussed Other Matters

Commissioner Mulready thanked NAIC consumer representatives for their research and comments in bringing forward issues concerning the improper marketing of health insurance plans to the attention of the Improper Marketing of Health Insurance (D) Working Group.

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

SharePoint/NAIC Support Staff Hub/Committees/Consumer Cmte/2024 AIAN/Minutes AIAN\_SpNM\_CMTE



# AMERICAN INDIAN

MEDICAL EDUCATION STRATEGIES ALLIANCE



# AIMES Members as of August 2024



Seattle Indian Health Board  
*For the Love of Native People*



College of Human Medicine  
MICHIGAN STATE UNIVERSITY



ARKANSAS COLLEGE OF  
OSTEOPATHIC MEDICINE

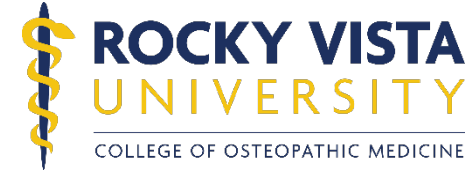


American College of  
Preventive Medicine



UTAH

SANFORD  
HEALTH



COLLEGE OF OSTEOPATHIC MEDICINE



RuralGME



OKLAHOMA STATE UNIVERSITY  
CENTER FOR HEALTH SCIENCES

HCSC

Health  
Care  
Service  
Corporation<sup>SM</sup>



DENVER HEALTH  
ACADEMIC AFFAIRS<sup>SM</sup>  
OFFICE OF EDUCATION

THCGME



American Association of Colleges of  
Osteopathic Medicine



TOURO COLLEGE  
OF OSTEOPATHIC MEDICINE

Harlem, NY | Middletown, NY | Great Falls, MT



TOURO  
UNIVERSITY  
CALIFORNIA

Germane  
SOLUTIONS



Mount  
Sinai



Office of Rural Health  
Area Health  
Education Center



WISCONSIN COLLABORATIVE for RURAL GME



ROCKY VISTA  
UNIVERSITY

MONTANA COLLEGE OF OSTEOPATHIC MEDICINE



CENTER FOR  
INDIGENOUS HEALTH

UW Medicine

UW SCHOOL  
OF MEDICINE

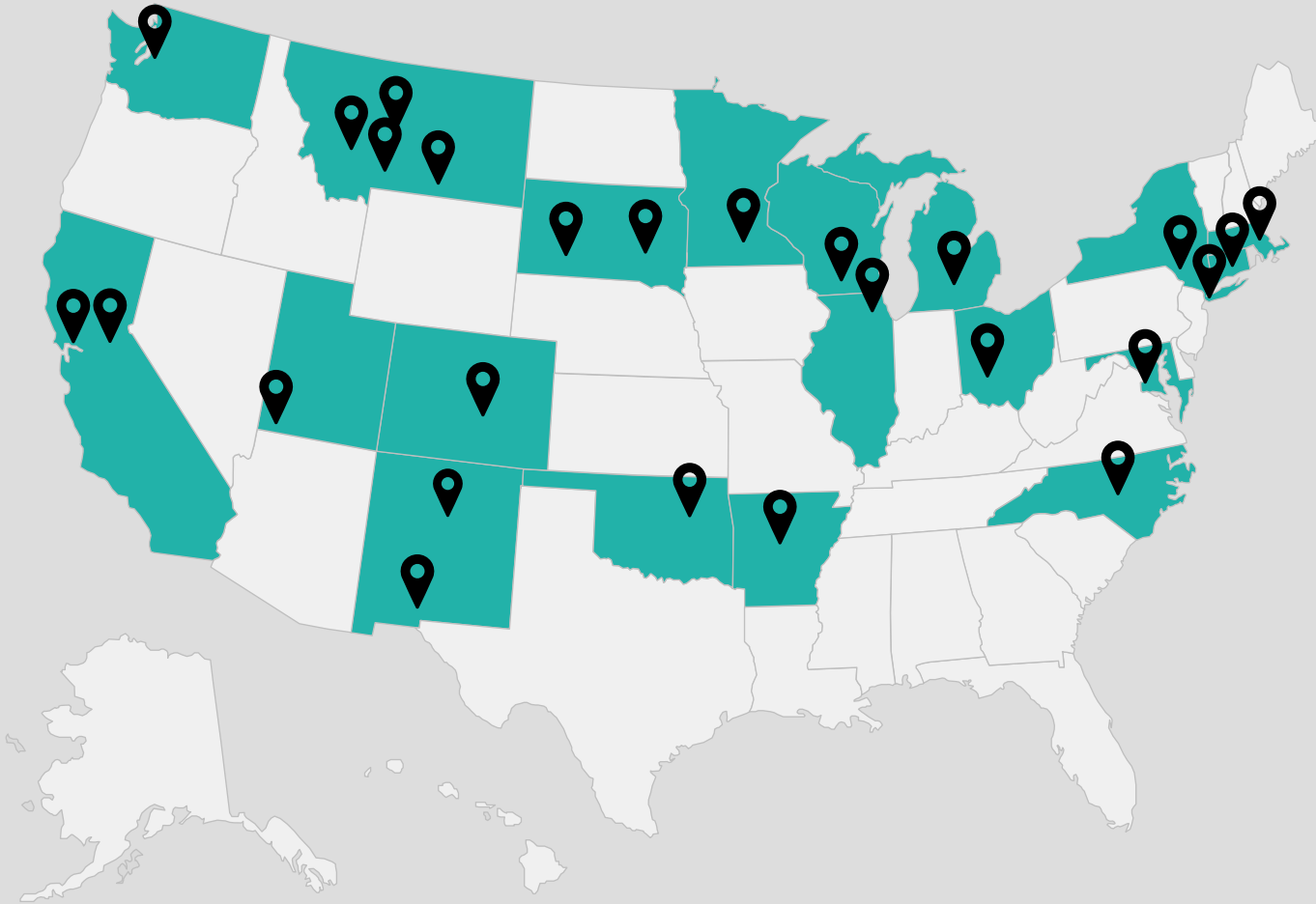


CHAPA-DE  
INDIAN HEALTH



Mashantucket  
Pequot Tribal Nation

# AIMES Members Span the Country



19 States



Seven Tribal Partners



14 Medical Schools

- 10 Osteopathic
- 4 Allopathic



4 Teaching Hospital Systems



1 Health Plan



1 Residency Program



5 Physician and Medical Education Advocates

# Who Are Our Leaders?



## Dr. Donald Warne: Alliance Convener

- Oglala Lakota tribe from Pine Ridge, South Dakota
- Co-Director of the Johns Hopkins Center for Indigenous Health.
- One of the world's preeminent scholars in Indigenous health, health education, policy and equity.



## Dr. Michael Toedt: Senior Advisor

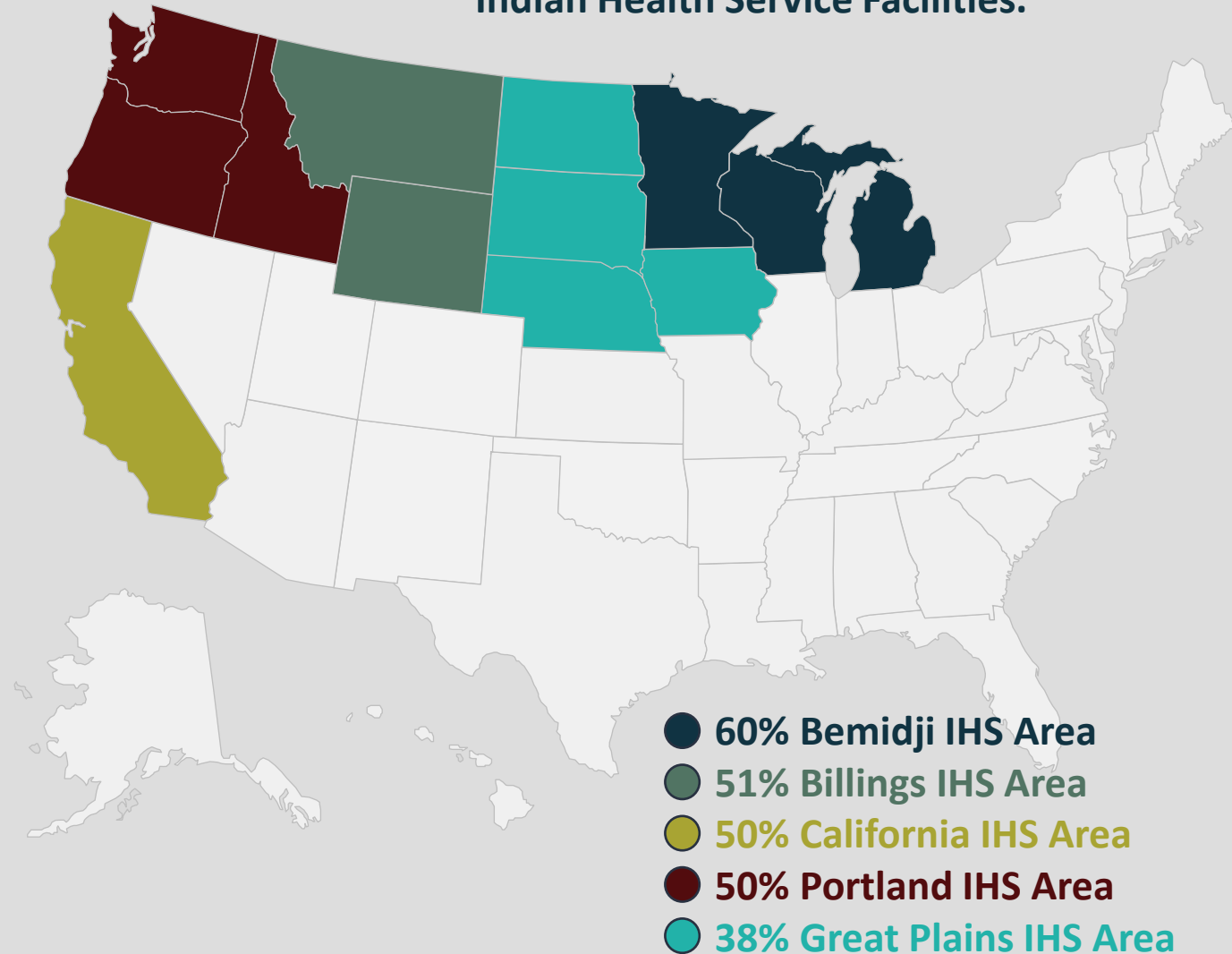
- Retired Assistant Surgeon General and USPHS Rear Admiral (Lower Half)
- Former Chief Medical Officer and acting Chief Medical Informatics Officer of the Indian Health Service.



# What Brought the Alliance Together?

- There are not enough physicians and other healthcare providers serving and staying in Indian Country.
  - The IHS vacancy rate averages about 26% overall but exceeds 50% in some areas.
- AI/AN individuals are dying younger and at higher rates of avoidable causes of death than other groups.
- With the AI/AN life expectancy now down to 65 years, an AI/AN child born today won't live long enough on average, to use Medicare.

Select Physician Vacancy Rates at Indian Health Service Facilities.



# Why Now?

**There are several indicators that show why *now* is the time to push for physician-GME in Tribal community policy changes.**

1. In the *Consolidated Appropriations Act, FY2023* (2022), Congress included a historic provision providing advance appropriations for the Indian Health Service (IHS).

2. Congress protected and kept in place the IHS advance appropriations when leaders negotiated and passed the *Fiscal Responsibility Act* in 2023.

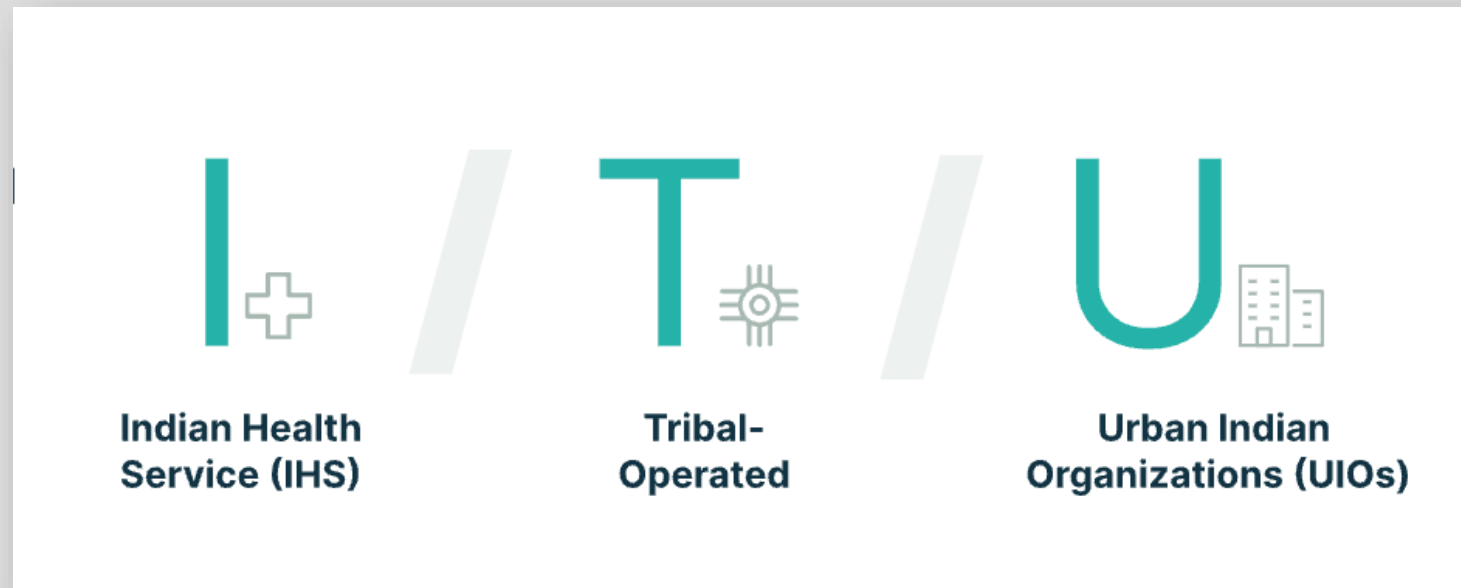
3. Congress is deeply concerned over ongoing physician shortages, particularly among underserved populations and locations.

4. Congress is open to new ideas, new funding, and ensuring that existing GME funding is going to where it is needed most.

# Indian Health 101

While IHS-operated medical facilities are frequently viewed by non-Tribal individuals as the most visible medical care provider in Indian Country, IHS is only part of the greater system that provides medical care to AI/ANs.

This system is referred to as the **I/T/U**, in reference to the three categories of participating facilities: **I** for IHS, **T** for Tribal-operated, and **U** for urban Indian organizations (UIOs).



# GME Background

## What is Graduate Medical Education (GME)?

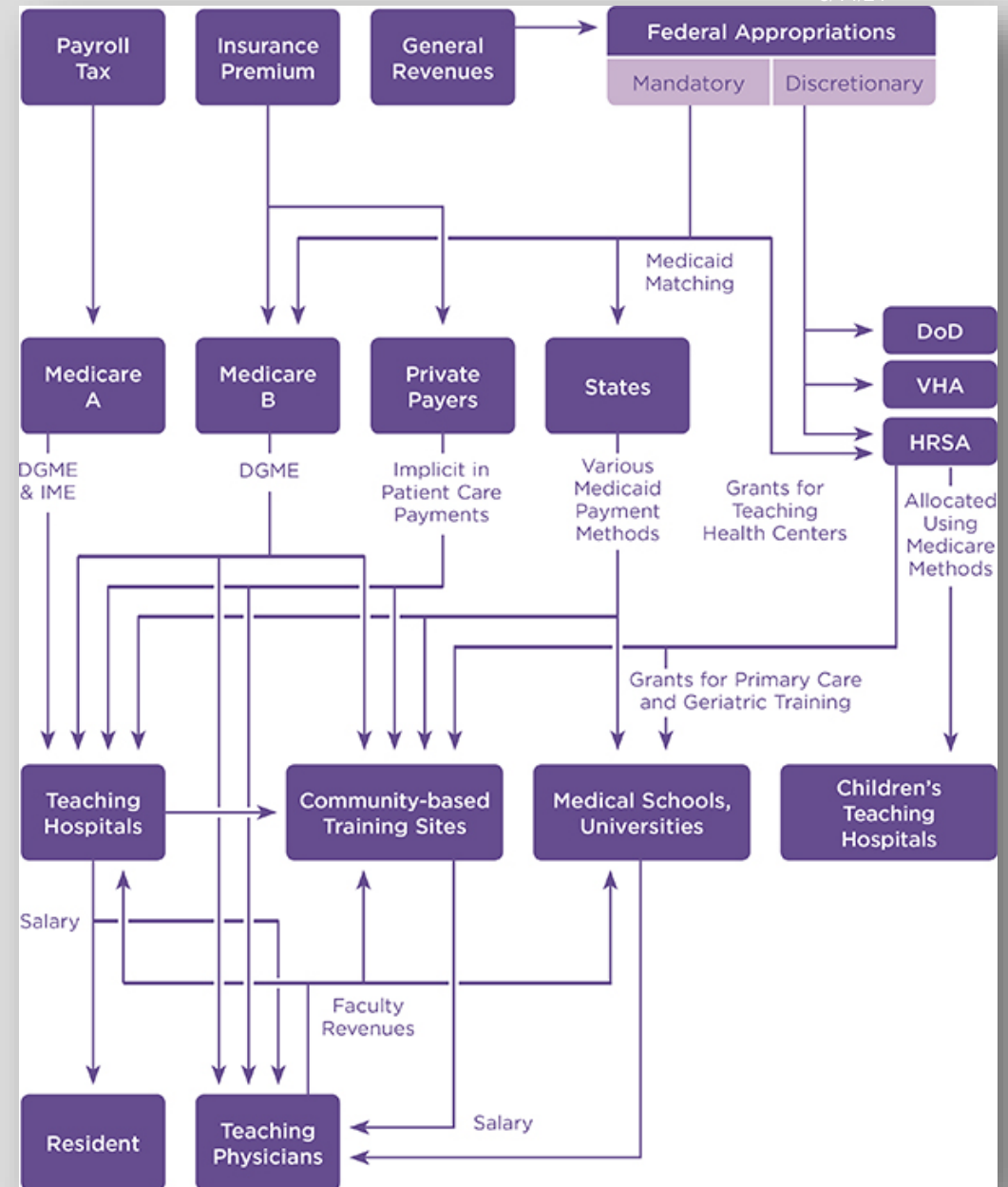
- GME is the period of education that physicians do after medical school where physicians gain specific skills and experiences in a particular medical specialty (residency) or subspecialty (fellowship).



# GME Background

## How can GME impact Tribal communities?

- Having GME (residents and fellows) provide care in Tribal medical facilities is an important and sustainable way to ensure there are enough medical providers.
- Training physicians (unlike traveling or locum tenens physicians) are more likely to continue practicing in the communities where they train and invest in those communities.
- Having physicians live in the community where they serve helps to create a more stable provider pipeline that will offer consistent, accessible, and culturally appropriate care to Tribal members.



# Alliance Policy Agenda Priorities

Tribal engagement  
and feedback

**Cultural Safety  
Best Practices  
for Existing  
GME Programs**

**Getting the Best  
Out of Existing  
Opportunities.**

**NASEM Report  
or Activities on  
Physician  
Shortages in  
Tribal  
Communities**

**Physician-GME  
in Tribal  
Community  
Pilot Program**



# What We're Accomplishing

Alliance members are hard at work collaborating and thinking of ways to advance GME in Tribal facilities.

- Established a formal, governing Charter.
- Continue to hold regular, monthly Alliance strategy meetings.
- Visited Washington DC on June 12-13 and had meetings with Congressional and Administration policymakers.
- Responded to the Senate Finance Committee's Medicare-GME RFI.
- Continue to generate a strong social media presence to draw attention to Tribal workforce issues.
- Currently working on constructive approaches to improve current GME programs, and advance opportunities for new I/T/U programs.



## Response to the Senate Finance Bipartisan Medicare GME Working Group

### Background

#### Tribal Affairs Generally

9.7 million American Indians and Alaska Natives (AI/ANs) live in the United States, comprising 574 federally recognized tribes spread across the country.<sup>1</sup> While it may be assumed that most AI/ANs live on one of the 324 designated Tribal Reservations and trust lands, or 221 Alaska Native village statistical areas, only 22 percent of AI/ANs live on reservations.<sup>2</sup> More than 70 percent of AI/ANs live in urban and metropolitan areas.<sup>3</sup> 25 percent of AI/ANs live in poverty, proportionately more than any other group, and more than double the rate of 11.5 percent of Americans generally.<sup>4</sup>

As noted in the National Indian Health Board's *Health Equity in Indian Country*:

*"American Indian and Alaska Native" is first and foremost a unique political status, and is only secondarily, and in specific contexts, a racial identity.*

The United States has recognized the sovereign status of AI/AN Tribes since the writing of the Constitution, and this status has been reaffirmed in court.<sup>5</sup> Because of their sovereign status, Tribes are often listed as the *third* sovereign in the United States, standing with the federal and state governments.<sup>6</sup>

Despite their sovereign status, Tribes rely upon the federal government to provide certain services.<sup>7</sup> This agreement has been enshrined in various treaties between Tribal nations and the federal government and is referred to as the federal Indian trust responsibility. That trust obligation has been described as "the unique and moral duty of the United States to assist Indians in the protection of their property

<sup>1</sup> Census Bureau 2023: Facts for Features: American Indian and Alaska Native Heritage Month: November 2023. <https://www.census.gov/newsroom/facts-for-features/american-indian-and-alaska-native-heritage-month-november-2023>

<sup>2</sup> <https://www.census.gov/newsroom/facts-for-features/american-indian-and-alaska-native-heritage-month-november-2023>

<sup>3</sup> National Council of Urban Indian Health (NCUIH) <https://www.ncuih.org/>

<sup>4</sup> National Council of Urban Indian Health (NCUIH) <https://www.ncuih.org/>

<sup>5</sup> National Council of Urban Indian Health (NCUIH) <https://www.ncuih.org/>

<sup>6</sup> National Council of Urban Indian Health (NCUIH) <https://www.ncuih.org/>

<sup>7</sup> National Council of Urban Indian Health (NCUIH) <https://www.ncuih.org/>





# AMERICAN INDIAN

## MEDICAL EDUCATION STRATEGIES ALLIANCE

Working Together to Expand GME in Tribal Communities



[aimesalliance.org](https://aimesalliance.org)



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