



#### Pulling Together for Wellness

Established in 1994, the American Indian Health Commission is a Tribally-driven, non-profit organization providing a forum for the twenty-nine tribal governments and two urban Indian health programs in Washington State to work together to improve health outcomes for American Indians and Alaska Natives.

### Land Acknowledgement

I would like to begin by acknowledging that as we gather today, we are all on the ancestral homelands of indigenous people. Where I live, that is the S'Klallam People, who have lived on these lands from time immemorial. Please join me in expressing our deepest respect and gratitude for our indigenous neighbors, the S'Klallams and other Salish people, for their enduring stewardship and protection of our shared lands and waterways.

nəxwsλãyəm'(new-skly-um) means S'Klallam.

The S'Klallams are the Strong People.



Understanding and respecting Indian law and policy can bring about great improvements for the Tribal nations and American Indian and Alaska Native people <u>AND</u> benefit the citizens of the state of Washington.



## LEGAL AND HISTORICAL FOUNDATIONS OF THE INDIAN HEALTH SYSTEM

### NATIVE AMERICAN NATIONS



Prior to the establishment of the United State government, Tribal nation were negotiating treaties with Spain and England.

At first, the United States government used treaty making to encourage stable relationships and trade with the Tribes.

Treaty making was a method used to take Indian Land.

370 Indian Treaties were made with the U.S. Government and Indian Tribes from 1789 to 1871.

Changes in administrations and westward expansion changed what was negotiated in treaties.

Under Andrew Jackson, federal policy for treaty making with Tribes changed from alliance to open Indian land for settlement by non-Indians.

#### TREATY MAKING



### U.S. RECOGNITION OF TRIBAL SOVEREIGNTY

The U.S. Constitution mentions Indian Tribes:

Article 1, section 8, clause 3, Congress is the branch of government authorized to regulate commerce with "foreign nations, among the several states, and with Indian Tribes."

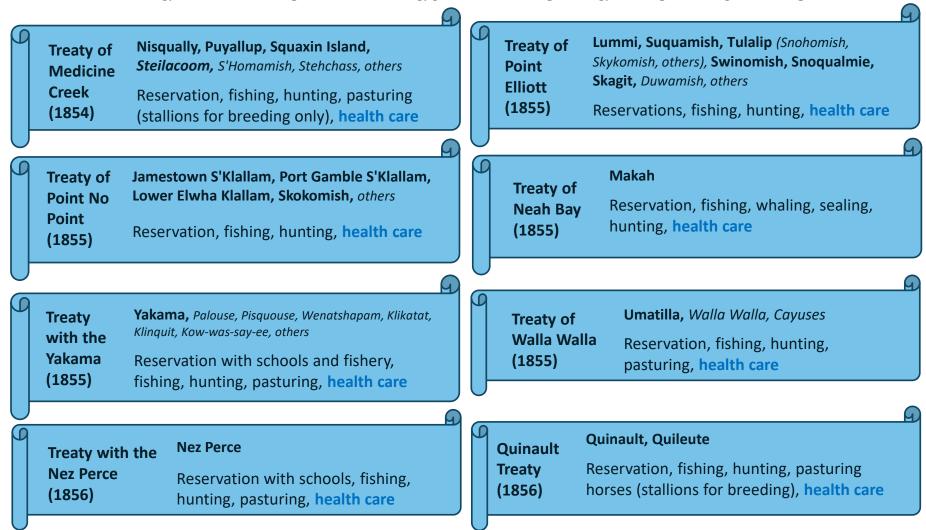
Article 2, Section 2, Clause 2 of the U.S. Constitution empowered the President to make treaties, including Indian Treaties.

Article 4, states that all treaties entered by the United States "shall be the supreme Law of the Land."



### 1854-56: TREATIES WITH TRIBES IN WASHINGTON TERRITORY

EIGHT TREATIES WERE "NEGOTIATED" DURING THESE TWO YEARS



### Congress ended **Treaties** Making with Tribes in 1871

Today, the subject of Indian treaties is a closed account in the constitutional law ledger. By a rider inserted in the Indian Appropriation Act of March 3, 1871, it was provided:

"That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: Provided, further, that nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe."

25 U.S.C. § 71

#### 29 Federally Recognized Tribes in Washington State



















Spokane Tribe of Indians







**INDIAN** 

























Quilente Tribe







# TWO IMPORTANT THEMES FOR INDIAN LAW

### THEME 1 -> Sovereignty

# TRIBES = <u>Independent entities</u> with inherent power of self-government

See American Indian Law in a Nutshell, William Canby, Jr., 6<sup>th</sup> Edition

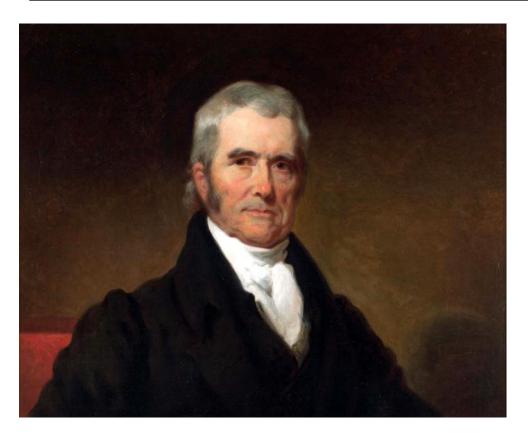
#### TRIBAL SOVEREIGNTY

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.

<u>Worcester v. Georgia</u> (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)

# 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 (8<sup>th</sup> 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



### 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



## FIVE IMPORTANT FEDERAL INDIAN HEALTH CARE STATUTES

Snyder Act of 1921

Indian Self-Determination and Education Act of 1975

Indian Health Care Improvement Act of 1976

Patient Protection and Affordable Care Act of 2010

Indian Health Care Improvement Act Reauthorization and Extension Act

# FEDERAL TRUST <u>TREATY</u> 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."

# 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."

# INDIAN HEALTH CARE DELIVERY SYSTEM



IHS Facility (Direct Site)
25 USC § 1661

Tribal Compact/Contract
Tribes
25 USC § 450 et. seq.

Urban Indian Health Care Providers 25 USC 1603 § (29)

## INDIAN HEALTH CARE PROVIDER DEFINED WAC 284-170(16)

- (16) "Indian health care provider" means:
- (a) The <u>Indian Health Service</u>, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. Sec. 1661;
- (b) <u>An Indian tribe</u>, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), that operates a health program under a <u>contract or compact</u> to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. Sec. 450 et seq.;
- (c) <u>A tribal organization</u>, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. Sec. 450 et seq.;
- (d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. Sec. 47 (commonly known as the Buy Indian Act); or
- (e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. Sec. 1603(29).

### INDIAN HEALTH SERVICES (IHS)

- An agency in the Department of Health and Human Services.
- Provides health care for approximately 2.56 million eligible Al/AN through a system of programs and facilities located on or near Indian reservations, and through contractors in certain urban areas.
- IHS defines eligible individuals as persons who are of Indian descent and are members of their community. 42 C.F.R. § 136.12 (a)(1)



#### IHS FACILITY - DIRECT SERVICES TRIBES



IHS services are administered through a system of 12 Area offices and 170 IHS and tribally managed service units:

Direct Service Tribes (DST) receive primary health care services from the Indian Health Service.

These services include direct patient care such as internal medicine, pediatrics, women's health, and dental and optometry services.

Service Units on the Colville, Spokane, and Yakama reservations



# TRIBAL COMPACT AND CONTRACT TRIBES

Titles I and V of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended), provide Tribes the option of exercising their right to self-determination by assuming control and management of programs previously administered by the federal government.

Since 1992, the Indian Health Services has entered into agreements with tribes and tribal organizations to plan, conduct, and administer programs authorized under Section 102 of the Act.

Today, over half of the Indian Health Services appropriation is administered by Tribes, primarily through self-determination contracts or self-governance compacts.

28 Tribes administer Indian Health Services funds to provide health care services in Washington State. These tribes provides both direct care and contracted care.

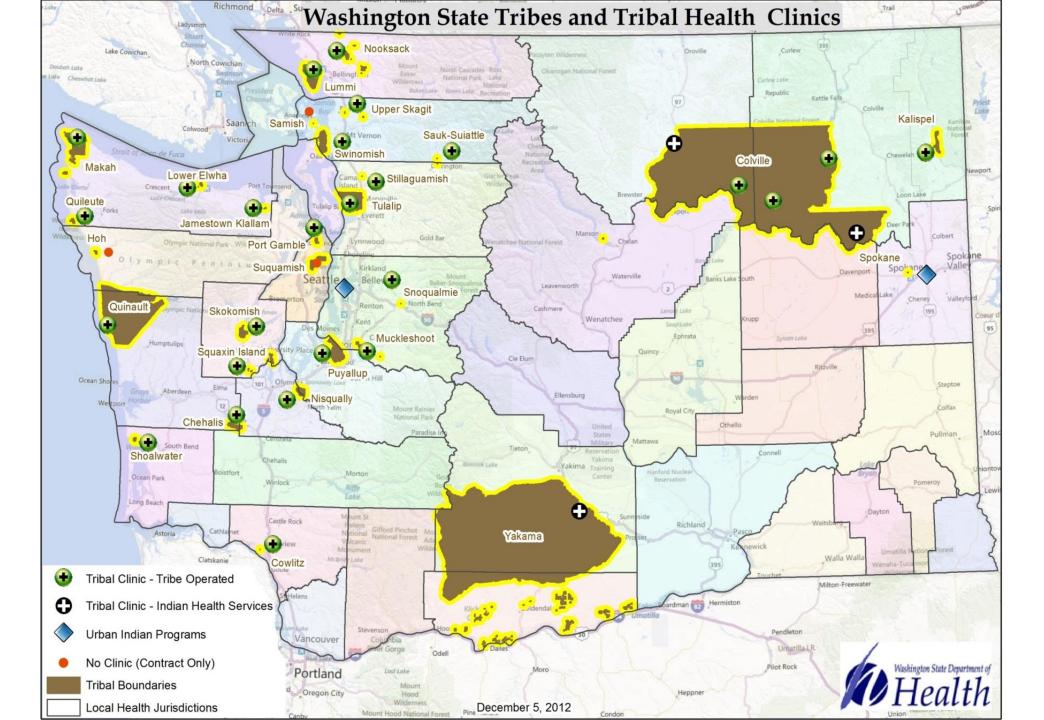
# URBAN INDIAN HEALTH PROGRAMS

Title VI of the Indian Health Care Improvement Act authorizes the Indian Health Services to fund urban Indian organizations to provide health care and referral services to the urban Indian populations. 25 U.S.C. 1651-1660d.

As of 2014, Indian Health Services provides contracts and grants to 33 urban-centered, nonprofit urban Indian organizations providing health care services at 57 locations throughout the U.S.

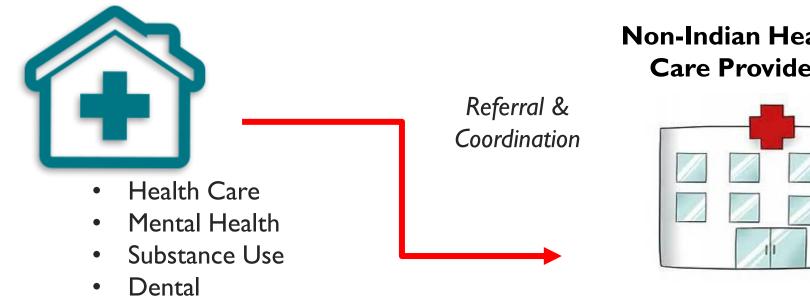
2 Urban Indian Health Programs: Seattle Indian Health Board and NATIVE Project of Spokane





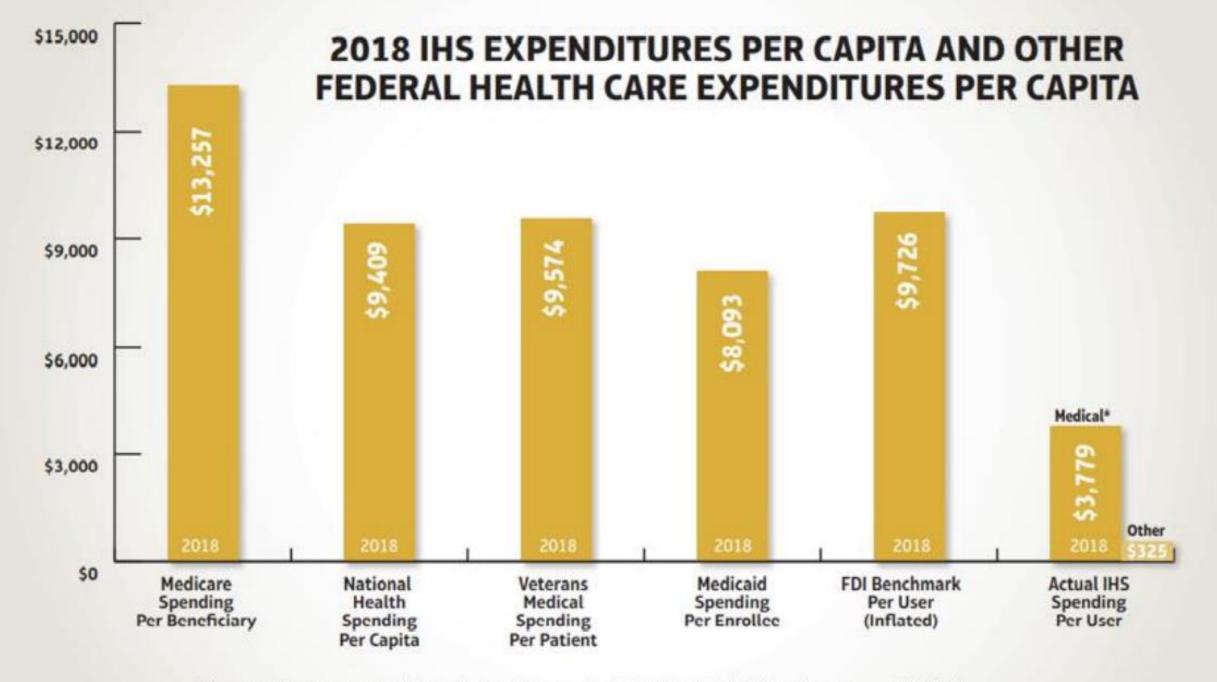
#### **PURCHASED AND REFERRED CARE** PAYING FOR CARE REFERRED OUTSIDE THE INDIAN **HEALTH CARE SYSTEM**

**Indian Health Care Provider** 



**Non-Indian Health Care Provider** 

- Specialty Care
- Inpatient Care



<sup>\*</sup>Payments by other sources for medical services provided to AIANs outside IHS is unknown.

# GOVERNMENT TO GOVERNMENT RELATIONSHIP WITH TRIBES

FEDERAL AND STATE LEVEL

### GOVERNMENT-TO-GOVERNMENT

AT THE FEDERAL LEVEL

**Executive Order 13175 - "Consultation and Coordination with Indian Tribal Governments"** 

Issued by U.S. President Bill Clinton on November 6, 2000.

Requires federal departments and agencies to consult with Indian tribal governments when considering policies that would impact tribal communities

Reiterates the federal government's previously acknowledged commitment to tribal self-government and sovereignty



### GOVERNMENT-TO-GOVERNMENT

AT THE STATE LEVEL

#### **Centennial Accord of 1989:**

Agreement between the State of Washington and the Tribes where each party "respects the sovereign status of the parties, enhances and improves communications between them, and facilitates the resolution of issues."



### GOVERNMENT-TO GOVERNMENT

AT THE STATE LEVEL

#### Chapter 43.376 RCW:

In 2012, Washington State codified that state the intent of the Centennial Accord. This includes requiring all state agencies to have a formal consultation policy.

The Governor's Office of Indian Affairs, GOIA, is the office that connects the Tribal Leadership to the Governor.



### RECENT WASHINGTON STATE LEGISLATION

### WASHINGTON INDIAN HEALTH IMPROVEMENT ACT INTENT

"Ensure the highest possible health status for American Indians and Alaska Natives and to provide all resources necessary to effect that policy;

Ensure tribal self-determination and maximum participation by American Indians and Alaska Natives in the direction of health care services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of tribes and American Indian and Alaska Native communities;

These health disparities are a direct result of both historical trauma, leading to adverse childhood experiences across multiple generations, and inadequate levels of federal funding to the Indian health service"

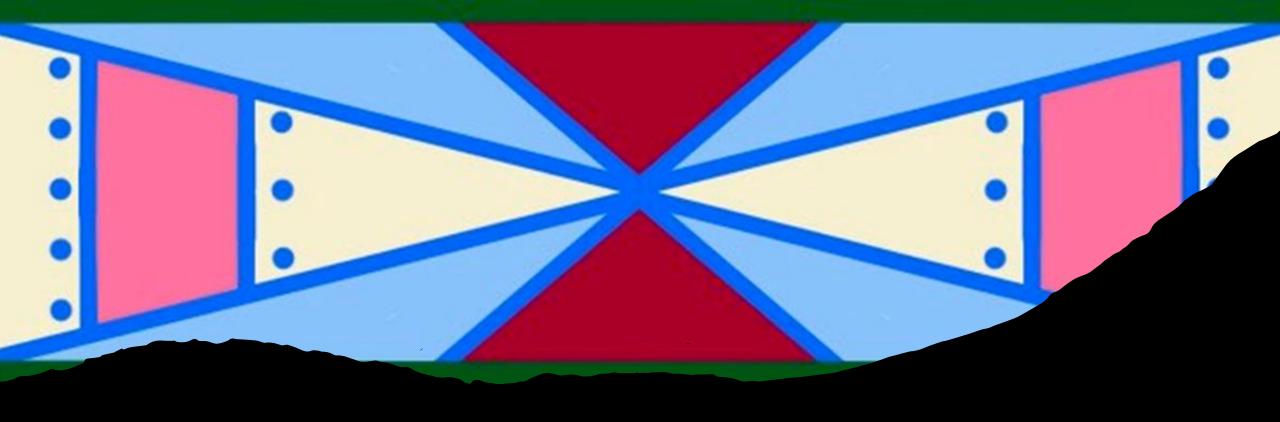
RCW 43.71B.901

### WASHINGTON INDIAN BEHAVIORAL HEALTH ACT INTENT:

"A drug overdose death rate in 2016 in this state that is three times higher than the national American Indian and Alaska Native rate and has increased thirty-six percent since 2012 and almost three hundred percent since 2000 in contrast to a relatively stable rate for the state overall population. Over seventy-two percent of these overdose deaths involved an opioid;

A suicide mortality rate in this state that is more than one and four-fifths times higher than the rate for non-American Indians and Alaska Natives. Since 2001, the suicide mortality rate for American Indians and Alaska Natives in this state has increased by fifty-eight percent which is more than three times the rate of increase among non-American Indians and Alaska Natives. Nationally, the highest suicide rates among American Indians and Alaska Natives are for adolescents and young adults, while rates among non-Hispanic whites are highest in older age groups, suggesting that different risk factors might contribute to suicide in these groups; and

A rate of exposure to significant adverse childhood experiences between 2009 and 2011 that is nearly twice the rate of non-Hispanic whites;"



### Tribal Behavioral Health Crisis Response:

Washington BH Conference June 15, 2023 Kathryn Akeah, AIHC

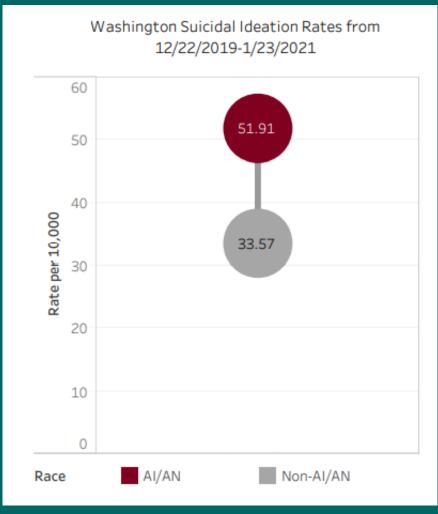
### NATIVE AMERICAN NATIONS



### Why is this so Important?

#### **Washington State Statistics**

- Between 2001 and 2016, the rate of suicide mortality for Al/AN in Washington State increased by 58%.
- Recent data on emergency room visits for AI/AN with Suicide Attempt in Washington report 400 suicide attempts between 12/22/2019-1/23/2021.\*
- During the COVID-19 pandemic, AI/AN suicide related emergency department visits increased by 23%.\*
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### History of Tribal Efforts to Improve Access

When it come to mental health crisis services, Washington State and the behavioral health system have treated Tribes as providers instead of governments. The managed care system often conflicts with federal laws on tribal sovereignty and the federal trust responsibility. Failure to recognize Tribes as governments and to comply with state and federal laws results in delay in or lack of Al/AN access to behavioral health services.

The 2013 Tribal Centric Behavioral Health report to the legislator addressed the failures of managed care in Indian country and identified key strategies to improve the coordination between Tribes and the (then) Mental Health Crisis system in our state. However, by 2016, these strategies had yet to be implemented. Instead, the State was applying for a Medicaid Waiver to incorporate substance use disorder services into a system that Tribal Leaders said was not working for the Al/AN population in Washington State. Tribes fought to ensure that Al/AN would be exempt from the Medicaid managed care system.





- RSN, BHOs and now BH/ASOs are not clear on how to work with FFS patients and Indian Health Care Providers
- Non-Tribal Providers often consider the FFS program as "not having coverage." This common misclassification is significant since 60% of AI/AN population enrolled in Medicaid are in the Fee for Services Program
- Lack of access to voluntary in-patient treatment impacts the ability to help those in crisis
- Tribes and Indian Health Care Providers are not directly funded to provide crisis care

### Tribal BH Crisis Response Activities

- •Tribal Centric Behavioral Health Advisory Board/Tribal 988 Subcommittee
- •State legislation changes: 2020 Washington Indian BH Act and 2024 updates
- •Training: MCO, ACH, DCR Academy, Forensic Navigators, BH Providers, OBHA
- •Tribal BH Code template development
- Behavioral Health Hub
- Native and Strong Lifeline (Tribal 988)

- Tribal DCR Planning Meetings
- Tribal BH Crisis Response Planning
- DCR protocols and WACs
- Information gathering with Tribal BH professionals, medical directors, attorneys, judges, police, plus treatment facilities
- •Sustainability planning: case rate, potential for 988 related pilot projects, billing guidance
- Upcoming: 1134 and 5120 feedback on WAC development

### Washington Indian Behavioral Health Act

March 2020



Reflections in Calm Times, photo by Roxanne Best, Colville

### Washington Indian Behavioral Health Act of 2020

The Indian Behavioral Health Act of 2020 was enacted to:

- i. Including Indian health care providers among entities eligible to receive available resources as defined in RCW 71.24.025 16 for the delivery of behavioral health services to American Indians and Alaska Natives;
- ii. Strengthening the state's behavioral health system crisis coordination with tribes and Indian health care providers by removing barriers to the federal trust responsibility to provide for American Indians and Alaska Natives; and
- iii. Recognize the sovereign authority of tribal governments to act as public health authorities in providing for the health and 24 safety of their community members including those individuals who may be experiencing a behavioral health crisis.

# Tribal Centric Behavioral Health Advisory Board

2019 - Present Day



River of Life by Zeke Serrano, Quinault

#### **TCBHAB**

- Oversees the planning, implementation, and operation of Tribally operated inpatient behavioral health facilities across Washington State.
- Provides strategic insight and prioritization of behavioral health system changes that support Tribes and Urban Indian Health Organizations as they expand their services, including services in behavioral health crisis response. (Especially HB 1477 and soon 1134 and 5120)

### Tribal Behavioral Health Codes

2019 - Present Day



Little Root Digger Hands by Roxanne Best, Colville

### Tribal Authority and Sovereignty

Tribes have inherent power to govern their people. \*

Tribes need no authority from the federal or state government to govern their own people. \*

Tribes do not need to have behavioral health codes to provide crisis care to their population

Tribes are both governments and public health authorities

Tribal Leaders, attorneys and staff are the experts in this

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

# Tribal Designated Crisis Responders

2020 - Present Day



Dragonfly baskets by Bobbie Bush, Chehalis

Initial Assessment & Petition Detention **Tribal DCR** BH-ASO "County" DCR

Involuntary Treatment Order

Treatment Facility

Discharge Planning & Follow Up

**Tribal Location** 

Non-Tribal E & T, hospital, or jail

State (Superior) Court

**Tribal Court** 

**Tribal Court** 

State (Superior) Court

**Tribal E & T** 

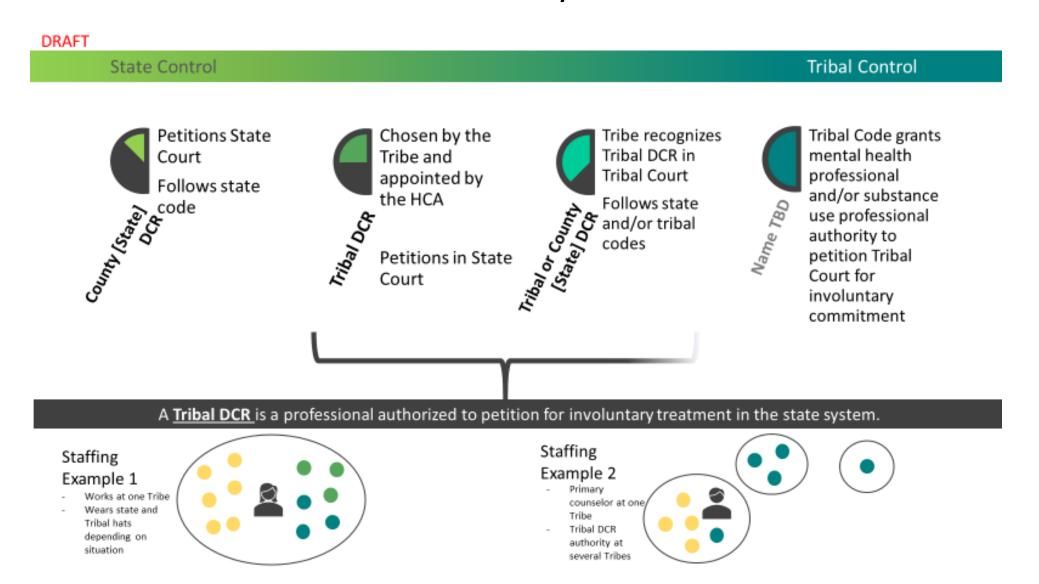
Non-Tribal E & T

**IHCP BH Services** 

Non-Tribal BH Services



### Models for Assessment, Detention, and Petition Decisions for Involuntary Treatment



### Tribal Mobile Crisis Teams

Informal networks have always existed.

Formalized teams are In various planning and starting stages, may or may not have a Tribal DCR on the team.

Will coordinate with state/county services as needed.



Creation by Zeke Serrano, Quinault

### Tribal DCR & MCT Engagement

Depending on the Tribe and services available, a Tribal DCR and/or Mobile Crisis Team may,

- Be part of a BH care team, or multi-specialty team
- Train and coordinate with other services such as, law enforcement, justice, housing, family services, etc.
- Be contracted or employed by the Indian Health Care Provider
- Provide crisis assessment at one or more Tribes
- Coordinate with the Native Resource Hub
- Follow the client from first notification through discharge and referral
- Be dispatched by Native & Strong Lifeline (988), RCL, Tribal Dispatch, 911 PSAP, or other agreed upon process



Omak Lake in Spring, photo by Roxanne Best, Colville

### Tribal Crisis Coordination Plans

2020 - Present Day



AwniMitaat-Sacred Three by Jon Olney Shellenberger, Yakama

# AIHC Revisions to Crisis Coordination Protocols

- 1. Clarify roles and responsibilities of managed care entities, evaluation and treatment facilities, and hospitals in providing crisis care services that involve an AI/AN and/or an Indian health care provider
- **2. List common Tribal practices** for crisis coordination. Tribes can choose from the options or add their own.
- 3. Provide a mechanism for **corrective action** when protocols are not followed
- 4. Ensure that all recent updates to RCW, WACs, and State managed care contract requirements that provide AI/AN and IHCP protections are incorporated in the protocols



### Today's Takeaways

- Get comfortable asking about Tribal affiliation as away to expand services
- Once established, follow Tribal Crisis Coordination Protocols
- Build a relationship with Indian Health Care Providers in your area
- Be ready to refer to culturally appropriate services



### Thank you

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