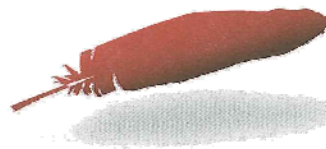


National Indian Health Board



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THE LEGAL FOUNDATIONS FOR DELIVERY OF HEALTH CARE TO AMERICAN INDIANS AND ALASKA NATIVES

Federal health care for American Indians and Alaska Natives is not part of the nation's social welfare program, nor is it insurance. Rather, it is a program founded upon the federal promise to provide health care services to American Indians and Alaska Natives; a federal promise made in treaties and authorized by the Constitution. This fact sheet traces the development of the federal-Tribal relationship and examines the trustee-beneficiary status that resulted from these interactions. It is from this complicated but venerable heritage that Indian health care claims its place in the American landscape of federal health care programs.

Constitution: The Source of Power

The Constitution entrusted the federal government with the power and authority to negotiate and make treaties with Indian Tribes:

- In Article I, Sec. 8, the Constitution grants Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”
- Article II, Sec. 2, states that the President “shall have [the] power, by and with the advice and consent of the Senate, to make treaties.”
- Article IV, Sec 3, gives the Congress the power “to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

Treaties: The Promise to Native Americans

Using the power granted by the Constitution, the federal government entered into treaties with Tribes. These treaties resulted from the desire of the federal government to acquire Indian land and to avoid hostilities with Tribes. In exchange for land and peace, sometimes requiring removal of Tribes, the federal government typically offered payment to be held in trust for Tribes, appointing itself trustee. Treaties stated that funds were to be spent for the welfare of Indians. In addition to the annuities promised, the federal government often promised the services of various tradesmen and professionals, including physicians, to aid Indian communities. Some treaties stipulated that buildings were to be constructed for physician residences or hospitals. In many treaties, the federal government also extracted the Tribes' declaration of dependence on the federal government.¹

Creating the Trust Relationship and the Duty to Provide Indian Health Care

Taken together, these regularly recited treaty terms reveal a fairly uniform set of promises: Tribes cede their land, and promise peace in exchange for benefits from the federal government and the right to occupy remaining (or substitute) lands. The treaties, as a compilation, created the trustee-beneficiary



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relationship between the federal government and Tribes. Tribes accepted treaty terms under pressure and reluctantly, often seeing no other means for continued survival. Once accepted, however, Tribes rightly and reasonably relied upon the promises of the federal government to provide benefits and annuities.ⁱⁱ

Supreme Court Cases: Making Explicit the Trust Relationship

In the *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831)ⁱⁱⁱ, Chief Justice Marshall observed the unique relationship forged between the United States and the Tribes. He also noted the special duty the federal government assumed in its dealings and agreements with American Indians. Marshall identified Indian Tribes as “domestic dependent nations” and observed that the relationship between Indians and the federal government was like that “of a ward to his guardian.” Subsequent court cases reinforced Marshall’s astute assessment, revealing a clearer picture of the trustee-beneficiary relationship between the federal government and Tribes.

Legislation: Renewing the Promise

On many occasions, the federal government has renewed its promise to provide health care for American Indians and Alaska Natives. These occasions include the Snyder Act of 1921 (25 USC 13) and the Indian Health Care Improvement Act (25 USC 1601) of 1976. These Acts provide explicit legislative authority for Congress to appropriate funds specifically for Indian health care. In addition to this explicit authorization, a number of other laws and court cases reaffirm the trust role of the federal government to Native Americans and the duty flowing from this special relationship.^{iv}

Affordable Care Act: Reauthorizing the Indian Health Care Improvement Act

In passing the Affordable Care Act, Congress also reauthorized and made permanent the Indian Health Care Improvement Act (IHCIA). In renewing the IHCIA, Congress reaffirmed the duty of the federal government to American Indians and Alaska Natives, declaring that “it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians --[] to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy[.]”^v With renewed authority in place and vows of duty reaffirmed, Tribes trust and expect that the federal government will keep its promise to provide health care for American Indians and Alaska Natives.

For more information on Indian Health, please contact Caitrin Shuy, Director of Congressional Relations at cshuy@nihb.org (202) 507-4085.

ⁱ For a good sampling of treaties, see <http://digital.library.okstate.edu/kappler/vol2/toc.htm>.

ⁱⁱ For a concise history on the topic, see William Canby, *American Indian Law in a Nutshell* (5th ed., West 2009).

ⁱⁱⁱ See <http://supreme.justia.com/us/30/1/case.html>.

^{iv} See Brett Lee Shelton, *Legal and Historical Roots of Health Care for American Indians and Alaska Natives in the United States*, Kaiser Family Foundation (2004), <http://www.kff.org/minorityhealth/upload/Legal-and-Historical-Roots-of-Health-Care-for-American-Indians-and-Alaska-Natives-in-the-United-States.pdf>.

^v Indian Health Care Improvement Act, §103(2009).

