

National Indian Health Board



National Indian Health Board Resolution 22-04

SUPPORT FOR THE CODIFICATION OF ALL HHS FEDERAL/TRIBAL ADVISORY COMMITTEES

WHEREAS, the National Indian Health Board (NIHB), established in 1972, serves all federally recognized American Indian/Alaska Native (AI/AN) Tribal governments by advocating for the improvement of health, behavioral health, and public health services to AI/ANs and the fulfillment of the federal government's trust responsibility to AI/AN Tribal governments; and

WHEREAS, NIHB seeks to reinforce the sovereign rights of all federally recognized Tribal governments, to promote the highest levels of health for AI/AN people, and to advise the Federal government in the development of responsible health care and public health policy; and

WHEREAS, Indian nations and Tribes were sovereign independent nations long before the formation of the United States of America; and

WHEREAS, Tribal nations entered into hundreds of treaties, requiring the federal government to assume specific, enduring, and legally enforceable fiduciary obligations to the Tribes; and

WHEREAS, the terms codified in those Treaties – including for provisions of quality and comprehensive health resources and services – have been reaffirmed by the United States Constitution, Supreme Court decisions, federal legislation and regulations, and even presidential executive orders, and collectively form the basis for the federal trust responsibility; and

WHEREAS, it is the policy of the United States to support self-determination, self-governance, and self-sufficiency as outlined in the *Indian Self-Determination and Education Assistance Act of 1975* (ISDEAA) as amended, the *Self-Governance Act*, and other federal laws; and

WHEREAS, the *2021 Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*, President Biden noted that, "[h]istory demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations"; and

WHEREAS, the United States utilizes Tribal consultations and federal Tribal Advisory Committees (TACs) as mechanisms to engage with Indian Tribes, on a nation-to-nation basis, to advance the federal government's trust obligation to provide quality health services and to address policies specific to the respective agency; and

WHEREAS, the purpose of TACs is to seek consensus, exchange views, share information, provide advice and recommendations, advance Tribal priorities for that agency, and facilitate any other interaction related to intergovernmental responsibilities, the administration of agency programs policies, and budgets; and

WHEREAS, while TACs are not a substitute for Tribal consultation, TACs play an indispensable role in the nation-to-nation communications by offering Tribal representatives the opportunity to ensure that the priorities of Indian Country are represented in all phases of policy, program, and budget development; and

WHEREAS, Congress passed the *Federal Advisory Committee Act* (FACA) in 1972 to curb industry-run policy advisory committees and to ensure that advice by the various advisory committees formed over the years is objective and accessible to the public; and

WHEREAS, the *Unfunded Mandates Reform Act* (UMRA) was intended to enhance intergovernmental cooperation between the federal government and state, local, and Tribal governments that FACA previously hindered; and

WHEREAS, UMRA exempts federal TACs from the requirements of FACA to facilitate communication between "federal officials and elected officers of ... Tribal governments (or their designated employees with authority to act on their behalf)," without FACA hindering effective intergovernmental engagement; and

WHEREAS, the U.S. Department of Health and Human Services (HHS) and its operating divisions has numerous federal Tribal advisory groups, committees, and workgroups that are related to health care, all governed by UMRA, including but not limited to the HHS Secretary's TAC (STAC), the Centers for Disease Control and Prevention (CDC) TAC, and the National Institutes of Health (NIH) TAC; or any subsequent TACs that may be created; and

WHEREAS, HHS and its operating divisions narrowly interpret the UMRA exemption in a manner that prevents effective communication and collaboration between federal agencies and Tribal nations and greatly hinders Tribal self-determination; and

WHEREAS, due to federal agencies' narrow interpretation of UMRA, Tribes have little say in the organization and operation of most TACs, including the selection of TAC members, frequency and location of meetings, TAC priorities, agenda items, and who is permitted to speak during meetings, and

WHEREAS, such limited Tribal input into functioning of TACs is detrimental to Tribal self-determination, limits the effectiveness of TACs, and is in direct contradiction to the policies of the Biden administration; and

WHEREAS, it is a fundamental necessity to honoring Tribal sovereignty and self-determination that Tribes, through the mechanisms of their choice, have the authority to name the individuals who will represent them at the TAC tables, how they are selected, and who can speak during meetings; and

WHEREAS, codifying TACs into statute has been successful in expanding and clarifying the UMRA FACA exemption and forming TACs, like the Tribal Technical Advisory Group for the Centers for Medicare & Medicaid Services (TTAG), that empowers Tribal nations, elevates Tribal priorities, and provides Tribes a more effective mechanism to represent Tribal positions that inform federal programs and policies impacting Indian Country; and

NOW THEREFORE BE IT RESOLVED, the National Indian Health Board calls upon Congress to codify all current and any future Tribal Advisory Committees within the U.S. Department of Health and Human Services and its operating divisions; and

BE IT FURTHER RESOLVED, that such codification should expand the UMRA FACA exemption, reflect the principles of Tribal self-determination, allow Tribes maximum control over the composition and operation of all Tribal Advisory Committees, and clarify that Tribal Advisory Committees are always exempt from FACA restrictions; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of the National Indian Health Board until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the Board, with quorum present, on the 24th day of February, 2022.



William Smith
NIHB Chairperson

ATTEST:



Lisa Elgin
NIHB Secretary