

Affirming Tribal Entitlement to Protected Health Information (PHI) to Support Sovereign Public Health Authority

Executive Summary

Tribal nations, as sovereign governments with inherent authority to protect and promote the health of their citizens, must be recognized as entities entitled to receive Protected Health Information (PHI). Under federal laws and principles of Tribal sovereignty, Tribes possess public health authority equal to that of state and local governments. This paper outlines the legal and public health justifications for ensuring that Tribal governments receive timely access to PHI to fulfill their critical health responsibilities.

1. Introduction: Tribal Sovereignty and Public Health

Tribal nations are not merely stakeholders in public health; they are sovereign governments with the legal and moral responsibility to protect the wellbeing of their citizens. This includes surveillance, emergency response, health promotion, and disease prevention. Denial of PHI access undermines Tribes' ability to perform these functions, exacerbates health disparities, and violates principles of federal Indian law.

2. Legal Basis for Tribal Access to PHI

2.1 Sovereign Status of Tribes

- Federally recognized Tribes possess inherent sovereignty that predates the U.S. Constitution.
- As governments, Tribes operate public health systems, enact laws, and enforce regulations.
- Recognition of Tribal authority is codified in the Indian Self-Determination and Education Assistance Act (ISDEAA) and upheld in numerous legal precedents.

2.2 HIPAA and Public Health Authority

- The Health Insurance Portability and Accountability Act (HIPAA) allows PHI disclosure to entities with public health authority for the purpose of preventing or controlling disease.
- According to the U.S. Department of Health and Human Services (HHS), public health authorities include “an agency or authority... that is responsible for public health matters as part of its official mandate.”
- Tribes, through their sovereign powers, clearly fall within this definition when carrying out public health functions.

2.3 CDC and HHS Recognition

- The Centers for Disease Control and Prevention (CDC) and HHS formally recognize Tribes as public health authorities.
- This designation authorizes the disclosure of PHI without individual authorization under HIPAA's public health exemption.

3. Practical Importance of PHI to Tribal Public Health

3.1 Surveillance and Epidemiology

- Access to PHI enables Tribes to monitor disease trends, investigate outbreaks, and implement control measures.
- Real-time PHI is essential for contact tracing, vaccination tracking, and emergency preparedness.

3.2 Data Sovereignty

- Tribes must have access to data on their own citizens to exercise their right to data sovereignty.
- Tribal Epidemiology Centers (TECs), established by Congress, are tasked with collecting and analyzing PHI to support Tribal public health decisions.

3.3 Health Equity and Justice

- Historical exclusion from data systems has hindered Tribes' ability to respond to health crises (e.g., COVID-19).
- Equitable access to PHI is critical for addressing systemic health disparities and ensuring justice in health outcomes.

4. Policy Recommendations

1. Affirm Tribal Public Health Authority

- NMDOH and departments/divisions within must formally recognize Tribes and TECs as public health authorities under HIPAA.

2. Ensure Routine PHI Access

- NMDOH should develop data-sharing agreements and protocols that include Tribal governments and TECs.

3. Support TEC Infrastructure

- Support Tribal Epidemiology Centers to securely handle PHI and integrate with broader public health surveillance systems.

5. Conclusion

Tribes are not merely participants in the public health system; they are foundational sovereign entities responsible for the health of their citizens. Denying them access to PHI contradicts both federal law and principles of equity. Recognizing and operationalizing Tribal entitlement to PHI is not only legally sound, but essential for advancing health justice in Indian Country.

References:

- Northwest Portland Area Indian Health Board (NPAIHB), Tribal Public Health Authority 101
- HIPAA Privacy Rule (45 CFR § 164.512(b))
- Indian Self-Determination and Education Assistance Act (P.L. 93-638)
- HHS Guidance on HIPAA and Tribal Public Health Authorities
- CDC Policy for Data Sharing with Tribal Epidemiology Centers