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# Collaborating with Sovereign Tribal Nations to Legally Prepare for Public Health Emergencies

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## Introduction

Public health preparedness, the readiness of the public health system to respond to specified health threats, is a critical concern for all jurisdictions, including sovereign Tribal Nations. Recent infectious disease outbreaks and natural and man-made disasters reinforce the need for agencies and partners who are legally prepared — that is, they understand how law can be used as a tool to enhance public health preparedness, and improve cross-jurisdictional coordination and collaboration.<sup>1</sup> Public health legal preparedness includes four core elements: (1) laws or legal authority to carry out public health goals; (2) competent public health professionals who understand how to apply relevant laws to public health goals; (3) information and best practices for use by public health professionals; and (4) coordinated legal authority across jurisdictions.<sup>2</sup>

This article explores Tribal concerns with respect to sovereignty and emergency preparedness, as well as the importance of collaboration and coordination across jurisdictions. Specific examples of collaborative efforts between Tribal and other governments are described, demonstrating that legal preparedness is often used by Tribal Nations to enhance collaboration and coordination with neighboring jurisdictions

through intergovernmental agreements; joint planning, training, and exercises; and shared resources.

## Tribal Sovereignty

Tribal Nations are sovereign entities with the inherent right to self-government, including the authority to create their own laws and protect the health and welfare of their citizens.<sup>3</sup> The United States (US) government's authority over Tribal Nations derives from the Indian Commerce Clause and presidential Treaty Power; the US Constitution grants Congress the power "to ... regulate commerce with foreign nations, and among the several states, and with the Indian tribes," while the President is empowered to enter into treaties, including Indian treaties, with the consent of the Senate.<sup>4</sup> In a series of US Supreme Court decisions dubbed the Marshall Trilogy, Chief Justice John Marshall established federal primacy in Indian affairs, over states and individuals; characterized Indian Tribes as "domestic dependent nations," thereby recognizing Tribal sovereignty; and excluded states from exercising power over Indian affairs.<sup>5</sup>

Currently, there are 573 federally recognized Indian Tribes in the US,<sup>6</sup> each of whom maintains a government-to-government relationship with the US government. In addition, the US government has a trust responsibility to Tribal Nations based upon peace treaties where the US made certain guarantees to Indian Tribes in exchange for Tribal land.<sup>7</sup> Under this legal obligation, the US government "has charged itself with moral obligations of the highest responsibility and trust" toward Indian Tribes.<sup>8</sup> States have no authority over Tribal governments unless expressly authorized by Congress.<sup>9</sup> Although not subordinate to states, Tribes, as well as neighboring jurisdictions, frequently collaborate and cooperate with states through

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intergovernmental agreements on matters of mutual concern, such as environmental protection, law enforcement, economic development, and emergency management.

### **Tribal Nations and Public Health Emergency Preparedness**

Tribal Nations have reason to be concerned about emergency preparedness, as infectious diseases have disproportionately affected their communities. For example, HIV and tuberculosis mortality rates are much higher for the American Indian/Alaska Native (AI/AN) population.<sup>10</sup> In 2011, among all races and ethnicities, the AI/AN population had the second highest rates of chlamydia and gonorrhea and the third largest rates of primary and secondary syphilis.<sup>11</sup> Moreover, mortality rates for the AI/AN population during influenza pandemics were roughly four times that of other groups.<sup>12</sup>

### **The Importance of Collaboration**

Responding to public health emergencies requires coordination and collaboration among jurisdictions, as threats to public health rarely follow geographical boundaries. The US government's interactions with Tribal Nations over time have resulted in the creation of different types of Tribal communities, which can impact how collaboration and coordination occurs. Some Tribal Nations have a small land base that is highly integrated into the surrounding non-Indian community, while other Tribal Nations have a large, more self-contained land base. In addition, as a result of historical US government policies, a significant portion of Indian land was sold or transferred to non-Indian parties. However, this land remained within reservation boundaries.<sup>15</sup> This means that, for certain Tribes, land ownership varies tremendously among numerous parties, leading to a "checkerboard" pattern of jurisdiction and legal authority.

**Tribal Nations across the United States are establishing both formal and informal partnerships and collaborations to increase their preparedness, response, and recovery capacity. These collaborations occurred between Tribal, state, and local governments. For a successful collaborative relationship, all jurisdictions must commit to developing a relationship built on mutual respect and understanding, open communication, cooperation, and acceptance.**

Tribal Nations are also concerned with natural and man-made disasters. Recent events that particularly impacted Tribal Nations include Hurricanes Irma, Florence, and Michael; tornadoes in Oklahoma and Texas; flooding in the Midwest and Great Plains; oil spills and pipeline leaks in South Dakota; and wildfires in California and Washington state.

The opioid crisis currently ravaging the US has significantly impacted the AI/AN population. Data appear to indicate that there has been a substantial increase in AI/AN opioid overdose deaths over the last two decades, with certain regions of Indian Country experiencing higher overdose deaths than others.<sup>13</sup> In addition, Tribal maternal-child health has been impacted, as many opioid-dependent Tribal children are born.<sup>14</sup> In response to the opioid crisis, several Tribal Councils declared states of emergency, including Mashpee Wampanoag Tribe, Red Lake Nation, White Earth Nation, and Leech Lake Band of Ojibwe.

In addition, the extent of public health infrastructure, including public health departments and public health codes, greatly varies among Tribal Nations.<sup>16</sup> These variations in jurisdiction, legal authority, and infrastructure make navigating public health and emergency response in Indian Country challenging. Thus, Tribal Nations recognize that it is beneficial to formalize arrangements with neighboring jurisdictions and state governments to combine resources in the event of a disaster or emergency.<sup>17</sup>

### **Examples of Tribal Collaborations**

The Tribal Legal Preparedness Project (TLPP), at the University of Pittsburgh Graduate School of Public Health, was established to assist Tribal Nations interested in enhancing their public health legal preparedness capacity.<sup>18</sup> Through numerous listening sessions, TLPP gathered information regarding Tribal-specific emergency preparedness concerns, as well as best practices among Tribal Nations regarding public health legal preparedness. Tribal Nations across the United States are establishing both formal and

informal partnerships and collaborations to increase their preparedness, response, and recovery capacity. These collaborations occurred between Tribal, state, and local governments. For a successful collaborative relationship, illustrated in the examples below, all jurisdictions must commit to developing a relationship built on mutual respect and understanding, open communication, cooperation, and acceptance.<sup>19</sup>

#### *Taos Pueblo*

Taos Pueblo collaborated with the state of New Mexico to improve the Tribal Nation's legal preparedness. Taos Pueblo Risk Management and Health & Community Services Divisions updated the Pueblo's Emergency Operations Plan (EOP) to make it more relevant to the Pueblo's structure and current areas of concern. To achieve its goal, Taos Pueblo agencies worked with an Emergency Preparedness Specialist from the New Mexico Department of Health (NMDOH) to complete the EOP update in October 2017.

To operationalize and exercise the plan, Taos Pueblo and NMDOH conducted the first ever Taos Pueblo tabletop exercise on November 14, 2017 using a winter storm as an example. In total, 30 Tribal members and 14 non-Tribal agencies participated; these non-Tribal agencies gained valuable hands-on experience with working with a pueblo. With the permission of the Taos Pueblo Governor, the New Mexico Air National Guard and Air Medical Services brought helicopters to the exercise for demonstration.

#### *Cherokee Nation*

The Cherokee Nation has partnered with state and local governments in a variety of ways to facilitate emergency management and response. Through a Memorandum of Understanding (MOU), the Cherokee Nation has become the regional warehouse for the Strategic National Stockpile (SNS) for medical countermeasures. Under the MOU, the Cherokee Nation is responsible for the security, transportation, delivery and distribution of SNS assets in the Northeast Oklahoma region. In addition, the Cherokee Nation assists communities in its region with proactive planning, mitigation, and response for flooding and wildfires.

The Cherokee Nation is one of the first Tribes to have a Type 3-level all hazard incident management team (AHIMT). A Type 3-level AHIMT, which has members from a variety of disciplines and agencies, can respond quickly to major and complex incidents and provide significant resources.<sup>20</sup> They remain active and on scene for several days to help coordinate disaster response with other agencies. The Cherokee Nation's Type 3-level AHIMT, one of 120 in the US, has deployed during tornados in Oklahoma as well

as during Hurricanes Irma and Florence. In addition to emergency management, Cherokee Nation's Type 3-level AHIMT includes members from public health, land surveillance, data officials, and law enforcement.

#### *Northwest Tribal Emergency Management Council*

Some Tribal Nations do not have the capacity to plan for and respond to emergencies on their own and rely on collaborations with other Tribes. The Northwest Tribal Emergency Management Council (NWTEMC), formed in 2004, is a consortium of Tribes in the Northwest region of Washington State that provides such assistance to Tribal Nations.<sup>21</sup> The NWTEMC currently serves 272 Tribes in Washington, Oregon, Idaho, and Alaska to share information and solidarity regarding homeland security, emergency management, and public health issues pertaining to Tribal communities. The NWTEMC also works closely with state, regional, and federal partners.

The NWTEMC's mission is to build partnerships, develop comprehensive emergency planning documents, and work together to share resources, knowledge, and skills. For example, by sharing employees like grant writers, Tribes can use saved funds for other needed resources, such as an attorney. In addition, the NWTEMC provides assistance to member Tribes regarding numerous planning projects and trainings, including interoperable emergency communications, hazard mitigation, incident command, and cybersecurity. The NWTEMC also sponsors an annual Regional Joint Tribal Emergency Preparedness Conference and co-sponsors an annual National Tribal Emergency Management Conference with other Tribal emergency management organizations.

## **Conclusion**

Public health legal preparedness is critical to emergency preparedness for all jurisdictions. Sovereign Tribal Nations often use legal preparedness to collaborate with neighboring jurisdictions through intergovernmental agreements; joint planning, training, and exercises; and shared resources. Important relationships between agencies and individuals develop from these collaborations. During disasters and emergencies that pay no heed to geographic boundaries, these relationships allow for a more coordinated and effective response and recovery.

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