

National Indian Health Board



Submitted via email

November 10, 2020

The Honorable Catherine E. Lhamon
Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425

Re: Withholding of Report on COVID-19 Impacts on Indian Country

Dear Chair Lhamon:

On behalf of the National Indian Health Board (NIHB),¹ we write to share our grave concerns about the recent U.S. Commission on Civil Rights (USCCR) vote to withhold the publication of a report regarding COVID-19 impacts on Tribes. This report, which was intended to serve as an update to USCCR's 2018 "Broken Promises" report, would have provided a wealth of useful information to Indian Country and enabled us to respond more effectively to this disease. It would have also served as an advocacy tool, which we could have utilized to advocate for much needed policy changes. Despite the importance of this information, USCCR provided no public justification for this decision, which appears to have been made arbitrarily. We are concerned by this lack of transparency.

In July, NIHB offered written and verbal testimony to USCCR on how this disease was impacting Indian Country. We provided qualitative and quantitative information on the disparities in health outcomes between AI/ANs and the rest of the American population. We are disheartened that, even with this information and testimony, USCCR decided to not release this report to Tribes and the general public. In light of the information that we, and other Tribal organizations provided, this decision seems like a callous disregard for the difficulties faced by AI/AN populations. NIHB urges **USCCR to reverse this decision and provide this important information to Tribes.**

Trust Responsibility

We kindly remind USCCR that the United States has a unique legal and political relationship with Tribal governments established through and confirmed by the United States Constitution, treaties,

¹ Established in 1972, the National Indian Health Board (NIHB) is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/ANs). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

federal statutes, executive orders, and judicial decisions. Central to this relationship is the Federal Government's trust responsibility to protect the interests of Indian Tribes and communities, including the provision of health care to American Indians and Alaska Natives (AI/ANs). In recognition of the trust responsibility, Congress has passed numerous Indian-specific laws to provide for Indian health care, including laws establishing the Indian health care system and those providing structure and detail to the delivery of care, such as the Indian Health Care Improvement Act (IHCIA).² In the IHCIA, Congress reiterated that "Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people."³

We believe that USCCR's decision to withhold this information is an egregious violation of the trust responsibility. As an arm of the federal government, USCCR has a duty to share this information with Tribes so they can both directly respond to this pandemic and have the tools necessary to advocate for policy changes that will help them respond. It is important that Tribes have access to this information so they can fully understand the impact of this disease on Indian Country.

Broken Promises

In our written testimony to USCCR, NIHB stated, "[w]hen you compound the impact of broken treaty promises, chronic underfunding, and endless use of CRs, the inevitable result are the chronic and pervasive health disparities that exist across Indian Country. These inequities created a vacuum for COVID-19 to spread like wildfire throughout Indian Country, as it continues to do."⁴ We want to further emphasize this point. The current inequalities in Indian Country are the manifestation of years of policies that have been neglectful at best and outright harmful at worst. As the initial "Broken Promises" report states, "the Commission's current study reflects that the efforts undertaken by the federal government in the past 15 years have resulted in only minor improvements, at best, for the Native population as a whole. And, in some respects, the U.S. Government has backslid in its treatment of Native Americans."⁵ The United States government and its relationship with Tribes has been marked by broken promises and a continued refusal by the United States government to honor its trust and treaty obligations to Tribes. We believe that the refusal to release this report is the latest manifestation of that legacy of failure.

Health Disparities

The disparities in health outcomes between Tribal communities and the rest of the country is especially problematic. As we also stated in our testimony in July, "[o]n average, AI/ANs born today have a life expectancy that is 5.5 years less than the national average, with some Tribal communities experiencing even lower life expectancy. For example, in South Dakota in 2014,

² 25 U. S. C. § 1601 et seq.

³ Id. § 1601(1)

⁴ See "COVID-19 in Indian Country: The Impact of Federal Broken Promises on Native Americans." National Indian Health Board, July 17, 2020, 9

⁵ U.S Commission on Civil Rights. The Broken Promises Report: Continuing Federal Funding Shortfall for Native Americans (2018). 3-4

median age at death for Whites was 81, compared to 58 for American Indians.⁶ We are sure that you are aware of the impact that comorbidities such as diabetes may have on the fatality of this disease. In regards to comorbidities, we stated that “American Indians and Alaska Natives also have the highest Hepatitis C mortality rates nationwide, as well as the highest rates of Type 2 Diabetes, chronic liver disease and cirrhosis deaths. Further, while overall cancer rates for Whites declined from 1990 to 2009, they rose significantly for American Indians and Alaska Natives.”⁷ These statistics illustrate the vulnerability of Indian Country to COVID-19.

As it was when we testified in July, this disease is running rampant in Indian Country. According to the Centers for Disease Control and Prevention (CDC), for the week ending October 31, the age adjusted hospitalization rate for AI/ANs was 4.2 higher than it was for non-Hispanic white persons.⁸ This statistic is the manifestation of the disparities that we spoke of in July and illustrates why it is vitally important that we have access to a full slate of information on how this pandemic is impacting our populations.

Our own analysis, using CDC reported data, has even confirmed that AI/ANs are dying at rates that often greatly exceed their proportion of their state’s population. The following statistics, from a sampling of states, should be cause for reflection for the federal government. As of November 6, 2020⁹:

- In New Mexico, AI/ANs are 51.7% of COVID deaths but only 10.7% of the population.
- In Montana, AI/ANs are 41.5% of COVID deaths but only 8.2% of the population.
- In Wyoming, AI/ANs are 28.3% of COVID deaths but only 3.7% of the population.
- In Mississippi, AI/ANs are 2.7% of COVID deaths but only 0.8% of the population.

These statistics are the manifestation of disparities that we have previously highlighted. AI/ANs are more likely than the average American to suffer from ailments that make this disease even more fatal. **These statistics also spell out the reason why having access to this information is critical.** Tribes need to know the data about this disease, what the federal government has done to address the pandemic, whether it has been sufficient, and what gaps are remaining to be filled. It is unconscionable that a report would be prepared on this and not shared with Tribes, especially as our people are continuing to die from this disease.

⁶ South Dakota Department of Health. Mortality Overview. Retrieved from <https://doh.sd.gov/Statistics/2012Vital/Mortality.pdf>, see pg. 10 of NIHB testimony

⁷ “COVID-19 in Indian Country,” 10

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>

⁹ See more here: https://public.tableau.com/profile/edward.fox#!/vizhome/October232020WeeklyUpdateCovid-19Cases8_2millionand222000Deaths/NIHBWeeklyCovid-19UpdateNovember62020-SelectTopPanelstoAdvance

Lack of Infrastructure

When Senator Elizabeth Warren and Representative Deb Haaland asked USCCR to complete this report, they also inquired about the status of broadband infrastructure on Tribal lands.¹⁰ As we are sure you know, much of Indian Country is rural. In fact, 46.1% of AI/ANs live in rural communities, a rate which is over twice the percentage of the rest of the population.¹¹ We know that rural areas around the country struggle with broadband internet access, which has made the adoption of innovations such as telehealth more difficult in those spaces. The adoption of telehealth is essential for limiting in-person interactions at health facilities and slowing the spread of the disease. However this has been limited by the existing infrastructure issues in Indian Country, another symptom of the country's neglect of AI/AN people. According to a 2019 Federal Communications Commission (FCC) Report, only 46.6% of homes on rural Tribal lands had access to a fixed terrestrial broadband at standard speeds, an astounding 27 points lower than non-Tribal lands.¹² This is an unacceptable disparity and contributes to the difficulties that Tribes have had in addressing this pandemic. **Tribes deserve to know the full extent to which infrastructure disparities have exacerbated the impact of COVID-19 so they can effectively advocate for changes.**

Conclusion

We believe that there is no better opportunity for the United States government to honor its trust and treaty obligations than during a global pandemic. We urge USCCR to reverse its decision, and we urge you to release this report. We believe that not releasing this report represents the neglect of the trust and treaty obligations that the federal government has to AI/AN people. This disease has disproportionately impacted AI/AN populations and Tribes need access to as much information as possible as they work to get it under control. We also believe that this information will enable Tribes to more effectively advocate for much needed policy changes in order to effectively respond to the pandemic. In order to fully help Indian Country, **this report must be made available.**

¹⁰ See

<https://www.warren.senate.gov/imo/media/doc/2020.05.26%20Letter%20to%20U.S.%20Commission%20on%20Civil%20Rights%20re.%20COVID-19%20impacts%20on%20Indian%20Country.pdf>, 3

¹¹ Janice C. Probst, Fozia Ajmal, "Social Determinants of Health among Rural American Indian and Alaska Native Populations," Univ. of S.C. Rural and Minority Health Research Center, July 2019 https://www.sc.edu/study/colleges_schools/public_health/research/research_centers/sc_rural_health_research_center/documents/socialdeterminantsofhealthamongruralamericanindianandalaskanativepopulations.pdf

¹² "Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018," Federal Communications Commission, May 2019 <https://docs.fcc.gov/public/attachments/DOC-357269A1.pdf>

Sincerely,

A handwritten signature in black ink, appearing to read "Stacy A. Bohlen". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Stacy A. Bohlen
CEO
National Indian Health Board