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DHAT Legal and Policy Framework: the Affordable Care Act (ACA) and the Indian Health Care Improvement Act (IHCA)

**Presentation at the
National Indian Health Board
Agua Caliente, California**

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Sonosky, Chambers, Sachse, Miller & Munson, LLP**

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Washington DC

Juneau AK

Anchorage AK

Albuquerque NM

San Diego CA

Legal Framework of the DHAT Program

The Alaska Community Health Aide (CHAP) Program was developed in the 1950s in response to a tuberculosis epidemic, high infant mortality, high rates of injuries in rural Alaska, and other health concerns.

In 1968, the CHAP Program received formal recognition and Congressional funding.

The CHAP Program has had a long history of cooperation and coordination among the federal and Alaska state governments and tribal health programs.

Alaska State Medicaid pays for services provided by CHA/Ps, including dental health aides and therapists.



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Legal Framework (cont.)

In 1992, the Indian Health Care Improvement Act (IHCIA), was amended to provide for the Alaska CHAP Program.

The IHS was required to provide training for CHA/Ps, develop a curriculum (actually in place since 1976), and establish a CHAP Program Certification Board.

In 1998, the Alaska Area Native Health Service established the Community Health Aide Program Certification Board (CHAPCB), which adopted *Standards and Procedures* for the training, certification and practice of CHA/Ps.

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Legal Framework (cont.)

In November 2002, the *Standards and Procedures* incorporated standards for certification of dental health aides (DHAs), including dental health aide therapists (DHATs).

Only the DHATs generated push back from the dental associations. The Alaska Native Tribal Health Consortium successfully defeated litigation by the American Dental Association against DHATs .

In 2010, the ACA amended the IHCIA to allow national expansion of the CHA/P Program, subject to limitations on the scope of practice of DHATs.

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Types of Dental Health Aides

- Dental Health Aide Hygienist
- Expanded Function Dental Health Aide I and II
- Dental Health Aide Therapist (DHAT)

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Practice Parameters

The *scope of practice* of each level of DHA or DHAT is limited and defined. ~50 procedures vs ~500 for a dentist.

The *standard of practice* within the scope of practice is the same as for a licensed dentist.

All DHA or DHAT practice is subject to the *specific authorization* of the supervising dentist through direct supervision or standing orders.

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What Does the IHCIA Say Now?

25 U.S.C. § 1616/(d) (IHCIA § 119) authorizes the IHS to establish a national CHA/P Program in accordance with the program established in Alaska, with limitations:

- **Funds for Alaska program cannot be reduced;**
- **DHAT services are excluded from the program; and**
- **IHS is prohibited from filling any vacancy for a certified dentist with a DHAT.**

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The State Law Exception.

- **The DHAT exclusion does not apply in a State where DHAT or midlevel dental health provider services are authorized by State law.**
- **If an Indian tribe or tribal organization located such a State elects to use DHATs or other midlevel dental providers, the Secretary must facilitate implementation of the services selected.**
- **25 U.S.C. § 1616/(d)(3)**

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The Federal Law Exception

Nothing in § 119 “shall restrict the ability of the Service, an Indian tribe, or a tribal organization to participate in any program or to provide any service authorized by any other Federal law.” 25 U.S.C. § 1616/(e)



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“Licensed In Any State” Provision

25 USC § 1621t. Licensing. “Licensed health professionals employed by a tribal health program *shall be exempt, if licensed in any State, from the licensing requirements of the State in which the tribal health program performs the services described in the contract or compact of the tribal health program under the Indian Self-Determination and Education Assistance Act.*”



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Tribal Licensing

- **The Alaska DHA/T Program was initiated by Tribes and Tribal health organizations.**
- **Can Tribes create their own health care licensing structures, including DHA/Ts?**



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Tribal Licensing Issues

- **Developing standards.**
- **Training and credentialing.**
- **Billing Medicaid, Medicare, VA and private insurers.**



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Tribal Licensing Issues (con't)

- **Dentist supervision.**
- **Opposition from dental associations.**
- **State law jurisdictional issues.**



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Tribal Licensing Issues (con't)

- **Proceed cautiously and carefully!**
- **Talk to your attorneys.**



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Mr. Monkman is a partner in the Juneau office of Sonosky, Chambers, Sachse, Miller & Munson, LLP.

Mr. Monkman advises tribes and tribal organizations in all aspects of their health care operations, and defended the Alaska Native Tribal Health Consortium in litigation brought by the American Dental Association to block the Alaska Dental Health Aide program.

He is a graduate of Dartmouth College and Northeastern University School of Law.



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