



# *American Indian Health Commission for Washington State*

---

**Chair**

**Marilyn  
Scott**

Upper Skagit  
Tribe

**Vice-Chair**

**Jim Sherrill**  
Cowlitz Tribe

**Secretary**

**Cheryl  
Kinley-  
Sanders**

Lummi Nation

**Treasurer**

**Bill Riley**  
Jamestown  
S'Klallam  
Tribe

**Member-At-  
Large**

**Brenda  
Nielson**  
Quileute Tribe

**Executive  
Director**

**Sheryl Lowe**

**Address:**

**P.O. Box 226  
Port Angeles,  
WA 98362**

**Phone:**

**360-797-  
1066**

**Fax:**

**360-779-  
1068**

**E-mail:**

**[aihc@aihc-  
wa.org](mailto:aihc@aihc-wa.org)**

July 14, 2010

The Honorable Susan Dreyfus  
Secretary  
Department of Social and Health Services  
626 8th Avenue, S.E.  
P.O. Box 45502  
Olympia, Washington 98504-5502

Dear Secretary Dreyfus:

Established in 1994, the American Indian Health Commission for Washington (AIHC) was created by Washington's federally recognized tribes, urban Indian health programs, and Indian organizations to provide a forum for tribal-state health issues. On behalf of our member Tribes, we are writing to you about our serious concerns related to the elimination of Registered Counselors and the meetings with DSHS staff related to their views about the application of licensing requirements to tribal Tribal mental health providers in order to continue to provide services and be reimbursed in the State's Medicaid program.

We are concerned that the recent discussions failed to adequately address the exemptions from State licensing that have been in place under Federal regulations and that were recently enacted under the Patient Protection and Affordable Care Act, Pub. L. 111-48, as amendments to the Indian Health Care Improvement Act, Pub. L. 94-437, (IHCIA). The disruption of mental health services that is occurring among tribal health programs as a result of the failure of the Medicaid program to continue to reimburse the services of the individuals who were previously Registered Counselors is very damaging to the ability of these tribal health programs to meet their obligations to provide services under their agreements between the Secretary of Health and Human Services, Indian Health Service (IHS), pursuant to the Indian Self-Determination and Education Assistance Act, as amended, Pub. L. 93-638, 25 U.S.C. 450 et seq., and inconsistent with the intent of Congress.

We believe that tribal mental health programs must be deemed to satisfy the requirements for affiliated agencies under WAC 246-810-016 or -017 without actually submitting themselves to State licensing. 42 CFR § 431.110(b) imposes Medicaid State plan requirements affecting participation by Indian Health facilities.

(b) State plan requirements. A State plan must provide that an Indian Health Service facility meeting State requirements for Medicaid participation must be accepted as a Medicaid provider on the same basis as any other qualified provider. However, when State licensure is normally required, the facility need not obtain a license but must meet all applicable standards for licensure. In determining whether a facility meets these standards, a Medicaid agency or State licensing authority may not take into account an absence of licensure of any staff member of the facility.

*Also see*, Section 408(a)(2) of the IHCIA, as amended, under which

[a]ny requirement for participation as a provider of health care services under a Federal health care program that an entity be licensed or recognized under the State or local law where the entity is located to furnish health care services shall be deemed to have been met in the case of an entity operated by the [Indian Health] Service, an Indian tribe, tribal organization, or urban Indian organization if the entity meets all the applicable standards for such licensure or recognition, regardless of whether the entity obtains a license or other documentation under such State or local law.

Moreover, we believe that the employees of tribal health programs are entitled to exemption from the registration requirements of chapter 18.19 RCW under WAC 246-810-011. We believe that at least two of the exemptions are specifically applicable. WAC 246-810-011(2) exempts "[t]he practice of counseling by an employee or trainee of any federal agency . . ." Tribal employees are treated as Federal employees for many purposes under the Indian Self-Determination and Education Act, including for tort coverage under the Federal Tort Claims Act. Similarly, they should be treated as Federal employees for the application of the exemption under WAC 246-810-011(2), otherwise a burden has been imposed on tribal mental health programs directly operated by IHS do not experience, which undermines achievement of the purposes of the ISDEAA.

In addition we believe that tribal employees should also be treated as exempt from under WAC 246-810-011(4) as employees of public and private nonprofit organizations or charities. Tribes are carrying out public entities. Failure to exempt their employees while exempting the employees of other public and nonprofit entities creates an artificial distinction to the disadvantage of the tribal health programs and the Indians who rely on those programs.

We believe the authority described above provides a basis for exemption from licensing requirements and for continuing Medicaid reimbursement without disruption. We request that you direct that outcome.

Tribes understand the necessity of certifying credentialing and licensing requirements for mental health providers and have been carrying out this responsibility for years. Tribes believe they are in the best position to conduct this review for themselves. Since the State cannot place a requirement on tribal programs to be "licensed or credentialed" and the state must accept Tribal providers on the same basis as other Medicaid providers as long as they meet applicable

standards for licensure. It seems feasible to allow Tribes to deem or attest that they meet state or other requirements (i.e. the IHS Standards of Care for mental health services).

AIHC appreciates the strong relationship the State has built with Tribes based on their inherent sovereignty. We believe the solution we have proposed above resolves a potential disruption of this very positive working relationship.

We look forward to receiving a positive response and continuing to work with the State to resolve these matters in a timely fashion. If you should have any questions concerning this issue, please feel free to contact Sheryl Lowe, Executive Director, at (360) 797-5736 or by email at [slowe@aihc-wa.org](mailto:slowe@aihc-wa.org).

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Scott".

Marilyn Scott  
AIHC Chairperson

cc: Roger Gantz,  
Deb Sosa,  
Victoria Roberts,  
Cecile Greenway, CMS-Region X Native American Contact