History of the Arizona Advisory Council on Indian Health Care

Timeline

AHCCCS Implemented	1981
SB 1348 changed name of All Indian Task Force to Arizona Advisory Council on Indian Health Care (AACOIHC) and formalized membership and duties; first meeting held	1989
HB 2351 clarified AACOIHC composition and relationship with tribes	1990
HB 2049 eliminated requirement that AACOIHC submit annual report to the Governor and Legislature	2003
AACOIHC Statues Committee formed	2014
HB 2312 implemented many of the statues changes recommended by AACOIHC	2016

1988	"Indians and AHCCCS" Conference led to creation of All Indian Task Force
1990	AACOIHC held public hearings with tribes throughout state and hosted inter-governmental conference
2001	SB 1577 modified state statutes regarding tribal government authority to perform medical eligibility determination
2006	Governor's Executive Order on tribal consultation policies for all state agencies
2015	Tribal Consultation Meeting on input regarding proposed statutes changes

Mission

The mission of the Arizona Advisory Council on Indian Health Care (AACOIHC) is to advocate for increasing access to high quality health care programs for all American Indians in Arizona.

Origins

The 1975 Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, gave Indian tribes the authority to contract with the federal government to operate programs serving their tribal members and other eligible persons. Such tribally-operated programs became known as "638" programs.

In 1981, the Arizona Legislature created the Arizona Health Care Cost Containment System (AHCCCS) as its Medicaid program for low-income state residents. On October 1, 1982, Arizona became the last state in the nation to implement a Medicaid program, and the first to implement a statewide, Medicaid managed care system using prepaid, capitated arrangements with contracted health plans. While numerous other states provide some services through managed care, Arizona is unique in that, once an individual is enrolled in the Medicaid program, all services are provided in a managed care setting.

Until the creation AHCCCS, health care for Native Americans was funded with dederal dollars through the Indian Health Service (IHS). However, the AHCCCS program meant there was another possible funding mechanism and model of care. This led to major disagreements about who would be responsible and pay for health care for Native Americans. The state's position was that the federal government should be responsible. Many state legislators and policy makers saw health care for Native Americans as a federal responsibility, not a state responsibility. (Medicaid draws federal dollars at a rate of $2 in federal funds per $1 in state funds.) Tribal representatives said that IHS appropriations were not adequate and Native Americans should be eligible for AHCCCS.

Legal action was taken to resolve disagreements about the roles of the state, the federal government, and the tribes in providing equitable health care for all Native Americans, regardless of whether they were on or off reservation. A settlement mandated that AHCCCS provide health care services for Native Americans.

Tribal members who lived on reservation typically received health care through IHS facilities. Funding originated with the federal Health Care Financing Administration (HCFA, now known as The Centers for Medicare & Medicaid Services or CMS) and was passed through AHCCCS to the Indian Health Service. Native Americans living off reservation were eligible for the capitated AHCCCS plans that were open to other Arizona residents.

During this time period, tribal governments saw their members struggling to receive quality health care and wanted a larger voice in shaping health care policies that would be more responsive to their people.

In January 1988, the Tohono O'Odham Nation hosted "Indians and AHCCCS," a conference in Tucson that gathered representatives from Arizona's tribes to address these issues. This led to the creation of an All Indian Task Force designed to promote the development of a coordinated health care system for Native Americans in the State of Arizona.

The AHCCCS Omnibus bill of 1989 was passed as SB 1348 and signed into law by Governor Rose Mofford. This changed the name of the All Indian Task Force to the Advisory Council

on Indian Health Care and formalized its membership and duties. ARS 36-2902.01 dealt with membership and called for twenty tribal members and three state representatives from AHCCCS, the Arizona Department of Health Services (ADHS), and the Arizona Department of Economic Security (ADES). Federal representatives from HCFA, the Indian Health Service, and the Bureau of Indian Affairs were to be invited by the AACOIHC to provide technical assistance as needed. A representative from the Veterans Administration was added in 1990.

ARS 36-2901.02 dealt with the duties of the AACOIHC, including developing a comprehensive health care system and financing for Native Americans, requiring the AACOIHC to send a yearly report of its findings and recommendations to the Governor and Legislature, and submitting the necessary state appropriation for its work.

Early Actions

One of the fundamental principles that informed the work of the AACOIHC was that tribal governments must be recognized as sovereign Nations in planning for the health care system and consulted in health care policy development. Any successful effort to address the health care concerns of Native Americans in Arizona required good faith collaboration and communication among tribes, counties, the State of Arizona, and federal entities.

The first organizational meeting of the Advisory Council on Indian Health Care was held on Tuesday, October 24, 1989. At this meeting the official appointments by the Governor were announced and election of the AACOIHC members took place. Additional meetings followed that developed strategies to carry out the Council's mandate.

As part of these strategies, the AACOIHC developed a public input mechanism that would allow tribal members to speak about their health care concerns through hearings conducted statewide in 1990. These public hearings were hosted by various tribes, held at tribal locations, and attended by tribal members, leaders, and administrators.

Reuben Howard, Health Director of the Pascua Yaqui Tribe, said that the creation of the Council was essential to establish much-needed communications between state agencies and tribes. The Council brought attention to health care issues affecting Native Americans. Without the Council, tribes would not have had a forum to present issues to the Legislature and Governor.

The AACOIHC hearings identified many issues in operational, administrative, legislative, and legal areas concerning accessible, equitable, and quality health care. Recurring themes included cumbersome eligibility policies and process, lack of services, minimal or difficult access to services, a lack of public information, the need for training and technical assistance, and concerns about county, state, and federal agencies fulfilling their responsibilities.

After the public hearings were concluded, the AACOIHC hosted a conference that brought together tribes, AHCCCS, the Office of the Governor, state legislators, IHS, HCFA, and others to discuss the findings and develop action plans to address the issues. A major area of focus at the conference was communication and consultation. At that time, no formal communication protocol had been established to involve tribal governments through consultation about operations, financing, and policies developed by AHCCCS and other state agencies.

Specific areas of discussion were training and technical assistance, direct funding from HCFA to tribes, waiver of federal and state regulations to enhance a tribal–federal relationship, tribally based rates of reimbursement for Medicaid Services, authority for tribes to conduct eligibility determinations, authority of tribes to certify their own providers, and adequate funding for the AACOIHC.

Following the conference, the AACOIHC issued the following declaration of core principles:

> The Advisory Council on Indian Health Care recommends that the State of Arizona, through AHCCCS, and the federal government, through HCFA, work with tribes to develop a tribal-federal relationship for the provision of Medicaid services. This recommendation is made with the understanding that the State of Arizona is still responsible for providing health care to American Indians, but also with the understanding that Indian tribes have a unique government-to-government relationship with the federal government, in this case, the Health Care Financing Administration.

Defining Key Roles

One of the most important accomplishments of the AACOIHC was to define the roles and responsibilities of each major component in an Indian health care system. Without a clear definition of these roles and responsibilities for tribes, the state, and federal agencies, a comprehensive system that met the needs of all Native Americans would not be attainable. The key role for the three components of the systems as defined by the AACOIHC included:

> Tribal Role:
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> Indian tribal governments are the central point of any system involving American Indians. They are in the best position to develop, maintain, and expand Indian health care programs. Tribal governments, because of their unique status as sovereign nations, have a government-to-government relationship with state and federal agencies. The Indian Self-Determination and Education Assistance Act and the Indian Health Care improvement Act, as well as other federal Indian laws and legislation, give tribes a broad, comprehensive contracting authority. Tribal governments are the true foundation upon which the components of an Indian Health care delivery and financing system are built.
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> State Role:
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> The role of the State of Arizona in this framework is very important because tribal members are also state residents. AHCCCS contracts with health plans to provide direct health services for low-income Arizonans. It also has the authority to enter into Intergovernmental Agreements with tribal governments, with the authority to modify the programs be more culturally appropriate to Native Americans. AHCCCS also has a close working relationship with the Governor's Office and the state Legislature. This relationship could serve as a mechanism to amend and modify state statutes to enhance the provision of Title XIX Medicaid services to Native Americans.
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> Federal Role:
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> The Health Care Financing Administration (now CMS) has a vital role since it has waiver authority for Medicaid Programs and Medicaid Demonstration Projects. With

> this administrative authority, HCFA can enhance the development of an Indian health care delivery system by working directly with tribes, incorporating tribal policy recommendations for the provision of long-term care services, and waiving regulations within their authority that are barriers to development of an Indian health care delivery system. HCFA, through its Office of Research and Development, can work with tribes to do tribal-specific research studies on Indian health care problems, such as diabetes and prenatal care, or conduct policy studies in cooperation with tribes.

This brief but critical clarification of the roles of tribal governments, AHCCCS and HCFA by the AACOIHC set the tone for a more positive relationship among these entities.

Key Dates

1990

The need for more clarity in how the AACOIHC was composed and managed led to an update in 1990. HB 2351 established the relationship between the tribes and council members, adding that the twenty tribal members are to be nominated by their tribe and appointed by the Governor. This also clarified that the AACOIHC should have a chairman and a vice chairman who are members of an Arizona Indian tribe, elected to one-year terms in October of each year. It also established that the AACOIHC would hire and employ a Director with specific responsibilities, who in turn hires and employs any additional staff. One of responsibilities of the Director was sending the amount of appropriation needed for the AACOIHC's work to AHCCCS.

Importantly, this update established the legal requirement that the health care delivery system be designed to be specific to each Arizona Indian tribe. It also established the legal basis for the advocacy role of the AACOIHC for tribal, state, and federal policies that support the design and implementation of health care delivery and financing systems specific to each Arizona Indian tribe.

2001

SB 1577 made changes to AHCCCS and modified state statutes to add the requirement that the AACOIHC, working with the state administration, request a federal waiver from the U.S. Department of Health and Human Services that allows tribal governments that perform eligibility determinations for the Temporary Assistance for Needy Families (TANF) program to also perform the medical eligibility determination for tribal members. If such a waiver were to be approved, it would require the state to provide the state matching monies for the administrative costs associated with the Medicaid eligibility based on federal guidelines. The tribes would be responsible for paying any federal sanctions for incorrect eligibility determinations.

2003

HB 2049 revised state statutes for many state agencies. For the AACOIHC, it deleted the requirement that the AACOIHC submit an annual report to the Governor and Legislature.

2006

Although not specific to AACOIHC's history, a related development was Governor Janet Napolitano's Executive Order (EO) 2006-14, "Consultation and Cooperation with Arizona Tribes," issued on September 14, 2006. The EO was developed in response to requests from

leaders of Arizona's 22 Indian Tribes and established the following requirements for all Executive Branch agencies, including AHCCCS:

1. Develop and implement tribal consultation policies.
2. Designate a member of their staff to assume responsibility for the agency's implementation of the tribal consultation policy and act as the principal point of contact for tribal issues.
3. Review their tribal consultation policies each year and submit an electronic report to the Governor and the Legislature to describe all actions taken.

2006-2013

During Fred Hubbard's tenure as AACOIHC Executive Director from 2006-2013, he visited almost all of Arizona's tribes to talk about the purpose of the Council and how it could assist the tribes. (The Navajo Nation and Gila River Indian Community did not choose to have him visit.) Tribal representatives shared with him their frustrations and provided information on health inequities and health care deficiencies. The lack of health care providers was a major problem for tribes with 638 programs as well as for tribal members receiving care through IHS facilities and through AHCCCS. Mr. Hubbard reported that the AACOIHC did not have the resources to respond to tribes' needs and requests as quickly or as fully as desired.

2014

A technical change was made to many Arizona statutes, including those that govern the AACOIHC, to replace the terms "disabled," "handicap," handicapped," and "handicapping" with the term "persons with disabilities."

2014-2016

In June 2014, the AACOIHC formed a Statutes Committee for the purpose of generating amendments to the current laws in order to improve Indian health care. The amendments were intended to assist the AACOIHC in being current with tribal health care needs and the changing health systems and environments. Through a series of meetings, the Statutes Committee created a draft statute amendment document that was presented during a Tribal Consultation Meeting on June 15, 2015, where participants provided input and feedback. The participants represented seven Arizona tribes, the AACOIHC, the Inter Tribal Council of Arizona, Representative Jennifer Benally, and several state agencies. There was overall support for amending the statutes as proposed, with helpful points of clarification added by participants.

The AACOIHC presented these proposed changes to the Arizona Legislature during the 2016 Session. The Legislature passed HB 2312, which was then signed into law. This adopted many of the changes that the AACOIHC requested, including:

- Stating the purpose of the AACOIHC, which is to give tribal governments, tribal organizations, and urban Indian health care organizations in the state of Arizona representation in shaping Medicaid and health policies and laws that impact their service population.
- Changing the membership to be less tied to specific areas of focus such as health care agencies or social service agencies.

- Including a member to be recommended from each of the 22 federally recognized American Indian tribes in Arizona.
- Adding a representative from the Inter Tribal Council and a representative from an urban Indian Health Organization.
- Adding a representative from the Arizona Early Childhood Development and Health Board (First Things First).
- Changing the term of office for the Chairman and Vice Chairman from one to two years and the time of their elections from October to July.
- Adding a duty to conduct and commission studies and research to further the purpose of the AACOIHC and address health care disparities among Native Americans in the state.
- Adding a duty to conduct public hearings to gather input and recommendations from tribal populations.
- Adding the ability to apply for and seek grants, contracts, and funding to further the purpose of the AACOIHC, without diminishing the Council's annual appropriation from the state.
- Clarifying that waivers for TANF eligibility determination should be done in conjunction with each specific tribe.
- Clarifying and expanding on some of the existing AACOIHC duties.

Several of the AACOIHC's recommended changes to the statutes were not in the final legislation. These included:

- Adding a requirement that the Chairman and Vice Chairman be tribal representatives, not one of the state agency representatives (but keeping the requirement that both be a member of a tribe).
- Requiring the Governor to appoint nominees to the AACOIHC within 60 days of their nomination.
- Adding an agency representative from the Department of Child Safety (DCS).
- Adding advocacy as an explicit duty of the Council Director.
- Adding a statement that the appropriations for the AACOIHC should be commensurate with the administrative and operational needs of the Council to provide advocacy and technical assistance to tribes and urban Indian health care organizations.

Interviews

Interviews for this history were conducted with the following:

Reuben Howard, Health Director, Pascua Yaqui Tribe

Fred Hubbard, former President, Arizona Rural Health Association; former Executive Director, Arizona Advisory Council on Indian Health Care

Leonard Kirschner, MD, MPH, former Director, Arizona Health Care Cost Containment System

Alida Montiel, Health Systems Analyst, Inter Tribal Council of Arizona