

Congress of the United States
Washington, DC 20510

July 1, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Dept. of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dr. Robert R. Redfield
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

Dear Secretary Azar and Director Redfield:

We write today seeking clarification of Centers for Disease Control and Prevention (CDC) policies and practices regarding Tribal epidemiology centers' (TECs) access to disease surveillance data, including data necessary to inform Native communities' response to the coronavirus disease of 2019 (COVID-19) pandemic.

Historically, infectious diseases have had disparate impacts on Native communities within the United States. Research and data available on previous pandemics caused by viral respiratory diseases, like H1N1, suggest American Indian and Alaska Native populations experienced a morbidity rate four-times higher than non-Native populations during these types of infectious disease outbreaks.¹ Many Tribal leaders and Members of Congress are deeply concerned this trend is continuing with COVID-19, particularly because more than one-third of American Indians and Alaska Natives are at high-risk of serious COVID-19 complications due to underlying health factors.² However, according to a recent *Politico* article,³ limitations on TEC access to national public health surveillance systems are hampering efforts by Tribes and Urban Indian Organizations to understand and respond to the full impacts of COVID-19 on their communities.

We are concerned that some of these limitations on access appear to violate federal law. Specifically, the *Indian Health Care Improvement Act* (IHCIA) designates TECs as public health authorities under the *Health Insurance Portability and Accountability Act* (HIPAA) Privacy Rule.⁴ This designation provides TECs with authority to access health information for the purposes of conducting public health disease surveillance equal to that held by the federal government, states, and territories. In addition, the IHCIA specifies that the Department of Health and Human Services (HHS) Secretary must grant TECs access to "data, data sets, monitoring systems, delivery systems, and other protected health information in the possession of the Secretary."⁵

¹ Stephanie Ebbs & Cheyenne Haslett, *Indian Country Faces Higher Risks, Lack of Resources in COVID-19 Fight*, ABC NEWS (Apr. 3, 2020), abcnews.go.com/Politics/indian-country-faces-higher-risks-lack-resources-covid/story?id=69957760&cid=clicksource_4380645_12_heads_posts_headlines_hed.

² Samantha Artiga & Kendal Orgera, *COVID-19 Presents Significant Risks for American Indian and Alaska Native People*, KAISER FAMILY FOUNDATION (May 14, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-presents-significant-risks-for-american-indian-and-alaska-native-people/>.

³ Darius Tahir & Adam Cancryn, *American Indian Tribes Thwarted in Efforts to Get Coronavirus Data*, POLITICO (Jun. 11, 2020), www.politico.com/news/2020/06/11/native-american-coronavirus-data-314527.

⁴ 25 U.S.C. § 1621m(e)(1).

⁵ 25 U.S.C. § 1621m(e)(2).

Accordingly, we request you answer the following questions within the next 30 days:

1. Do CDC policies and practices regarding TEC access to public health surveillance data, including the National Electronic Disease Surveillance System, comply with the data sharing requirements contained in section 214 of the IHCIA (25 U.S.C. 1621m)? If so, please explain how these policies or practices meet the requirements of IHCIA.
2. Will CDC promptly grant TEC requests for access to public health surveillance data, including the National Electronic Disease Surveillance System? If not, please explain why.
3. What actions are HHS and CDC undertaking to work with TECs, Tribes, and Urban Indian Organizations to improve understanding and address the impact of COVID-19 on Native communities?
4. What steps are HHS and CDC taking to—
 - a. Improve public health surveillance partnerships between states and TECs, Tribes, Urban Indian Organizations, and the Indian Health Service;
 - b. Ensure states understand TECs' status as public authorities under the HIPAA Privacy Rule; and
 - c. Work with states to ensure state laws do not incorrectly limit TEC access to relevant data available to other public health authorities?

Tribes, TECs, Congress, and the Administration all play important roles in tackling the health disparities Indian Country faces during the COVID-19 pandemic, but HHS and CDC must work to fully address public health data barriers for Native communities, starting with ensuring TECs have access to disease surveillance data guaranteed by law. We look forward to receiving your prompt response to our questions and continuing our shared work to fulfill the United States' trust and treaty responsibilities to Tribes and urban Native communities.

Sincerely,



Tom Udall
U.S. Senator



Patty Murray
U.S. Senator

/s/

Jon Tester
U.S. Senator



Frank Pallone, Jr.
U.S. Representative



Raul Grijalva
U.S. Representative



Ruben Gallego
U.S. Representative

/s/
Tammy Baldwin
U.S. Senator

/s/
Jeffrey A. Merkley
U.S. Senator

/s/
Martin Heinrich
U.S. Senator

/s/
Elizabeth Warren
U.S. Senator

/s/
Catherine Cortez Masto
U.S. Senator

/s/
Tina Smith
U.S. Senator

/s/
Jacky Rosen
U.S. Senator

/s/
Raul Ruiz, M.D.
U.S. Representative

/s/
Sharice L. Davids
U.S. Representative

/s/
Kurt Schrader
U.S. Representative

/s/
Peter A. DeFazio
U.S. Representative

/s/
Ben Ray Luján
U.S. Representative

/s/
Betty McCollum
U.S. Representative

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Deb Haaland
U.S. Representative

/s/
Xochitl Torres Small
U.S. Representative

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Daniel T. Kildee
U.S. Representative

/s/
Tom O'Halleran
U.S. Representative

/s/
Denny Heck
U.S. Representative

/s/
Markwayne Mullin
U.S. Representative

/s/
Joseph P. Kennedy, III
U.S. Representative