2015 Spring National Meeting  
Phoenix, Arizona

NAIC/AMERICAN INDIAN AND ALASKA NATIVE LIAISON COMMITTEE  
Monday, March 30, 2015  
1:00 – 2:00 p.m.  
Phoenix Convention Center North—Rm 131—Street Level

ROLL CALL

John D. Doak, Chair  Oklahoma  Scott J. Kipper  Nevada  
Lori K. Wing-Heier, Vice Chair  Alaska  John G. Franchini  New Mexico  
Jim L. Ridling  Alabama  Wayne Goodwin  North Carolina  
Dave Jones  California  Laura N. Cali  Oregon  
Marguerite Salazar  Colorado  Larry Deiter  South Dakota  
James Stephens  Illinois  Mike Kreidler  Washington  
Ken Selzer  Kansas  Ted Nickel  Wisconsin  
Monica J. Lindeen  Montana

AGENDA

1. Consider Adoption of Nov. 18 Minutes—Commissioner John D. Doak (OK)  
   Attachment One

2. Hear a Presentation on American Indian Tribes in Colorado—Commissioner Marguerite Salazar (CO)

3. Hear a Presentation on Tribal Liaison Development—Charles C. Caldwell (Midlands Management Corporation)

4. Discuss Any Other Matters Brought Before the Committee—Commissioner John D. Doak (OK)

5. Adjournment

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Draft: 12/4/14

The NAIC/American Indian and Alaska Native Liaison Committee of the NAIC/Consumer Liaison Committee met in Washington, DC, Nov. 18, 2014. The following Committee members participated: John D. Doak, Chair, and Buddy Combs and James Mills (OK); Lori K. Wing-Heier, Vice Chair (AK); Dave Jones represented by Joel Laucher and Geoff Margolis (CA); Marguerite Salazar and Peg Brown (CO); Monica J. Lindeen and Christina Goe (MT); Scott J. Kipper represented by Glenn Shippey (NV); John G. Franchini (NM); Wayne Goodwin represented by Jean Holliday and Carla Obiol (NC); Merle D. Scheiber (SD); Mike Kreidler and Jeff Baughman (WA); and Ted Nickel represented by J.P. Wiesie (WI). Also participating were: Jim L. Ridling (AL); and Todd E. Kiser (UT).

1. Adopted its Sept. 30 and Aug. 18 Minutes

Commissioner Doak asked if Committee members had any revisions to the Sept. 30 or Aug. 18 minutes. Hearing none, Superintendent Franchini made a motion, seconded by Commissioner Salazar, to adopt the Committee’s Sept. 30 (Attachment One-A) and Aug. 18 (see NAIC Proceedings – Summer 2014, NAIC/Consumer Liaison Committee, Attachment One) minutes. The motion passed.

2. Heard a Presentation on Federal Involvement with American Indian Tribes

Lisa J. Wilson (U.S. Center for Consumer Information and Insurance Oversight—CCIIO) said that the reforms included in the federal Affordable Care Act (ACA) benefit the tribal community by lowering health care costs, guaranteeing more health choices and enhancing the quality of care. In addition, she said the ACA provides state Medicaid programs new opportunities to cover additional low-income adults; simplifies the eligibility rules for Medicaid and the Children’s Health Insurance Program (CHIP); allows consumers to compare available insurance options based on price, benefits, quality and other features that may be important to them; permits eligible consumers to receive affordable health care coverage through the health insurance marketplace; and strengthens and improves Medicare. Ms. Wilson said the ACA makes special improvements to the health of those in Indian country. She said the provision of health care services to American Indians and Alaska Natives is a key component of the federal government’s trust responsibility, and the updating and permanent authorization of the Indian Health Care Improvement Act, 25 U.S. Code Chapter 18 (IHCIA) helps to fulfill this responsibility. Ms. Wilson said the law also offers American Indians and Alaska Natives more options for health insurance, while continuing to permit American Indians and Alaska Natives to get their health care through Indian Health Service (His)/Tribal/Urban Indian Health (I/T/U) clinics.

Ms. Wilson said American Indians and Alaska Natives need health insurance coverage even though health care services can be obtained from an I/T/U program because the ACA does not change American Indians and Alaska Natives eligibility to get health care through an I/T/U clinic. She said that American Indians and Alaska Natives who enroll in a marketplace health plan, Medicaid or CHIP can continue to receive services from their I/T/U clinic the same way they do now. Ms. Wilson said that by enrolling in a marketplace health plan, Medicaid or CHIP, American Indians and Alaska Natives benefit by having greater access to services that may not be provided by their local I/T/U clinic, and the tribal communities benefit through increased resources to their I/T/U programs. She said that by enrolling in a qualified health plan (QHP), Medicaid or CHIP, American Indians and Alaska Natives have greater access to services that may not be available through their I/T/U provider. Also, when services are provided by HIS hospitals and clinics, these Indian health programs benefit because they can bill the insurance company and bring important resources to their programs. Ms. Wilson said these new resources can help strengthen Indian health programs for the future. She said a visit to a tribal clinic or hospital can be billed to insurance and in turn there will be more resources for the clinic. Ms. Wilson said insurance will pay instead of contract health services, now known as purchased/referred care (PRC). She said more health care needs can be met and more American Indians and Alaska Natives will have the security and peace of mind of health coverage and that more PRC funds will be available to help tribal members. The ACA has the potential to benefit all American Indians and Alaska Natives. No one plans to get sick or hurt, but most people need to get treated for an illness or injury at some point, and health insurance helps pay these costs. If more individuals in Indian country have health coverage, more will have the peace of mind and security knowing that they have
Ms. Wilson said the ACA includes special protections for American Indian and Alaska Natives; for example, American Indians and Alaska Natives enrolled in a QHP can continue to receive services from the Indian health system; there is no cost-sharing for services provided by the IHS (including Section 638 contract health services), Indian tribe, tribal organization or urban Indian organization, or through referral under contract health services; and members of federally recognized tribes and other individuals eligible for services from IHS are exempt from the shared responsibility payment for maintaining minimum essential coverage. To further expand on zero cost-sharing, she said members of federally recognized tribes enrolled in a QHP offered through the marketplace will not have cost-sharing with respect to essential health benefits that are covered through the plan. While American Indians/Alaska Natives are NOT exempt from paying premiums, Ms. Wilson said they may be able to get lower costs on monthly premiums through a new tax credit that is paid to insurance plans each month to reduce an individual’s premium. She said eligibility for the tax credit depends on income, family size and access to other coverage. Ms. Wilson said members of federally recognized tribes can use tax credits to pay for premiums for certain plans and still receive cost-sharing reductions. She said the type of cost-sharing reduction depends on income and whether an individual is enrolled in a zero cost-sharing plan or a limited cost-sharing plan. Additionally, Ms. Wilson said that American Indians/Alaska Natives eligible for I/T/U health care do not have to have health insurance if they do not want it. She said they are exempt from the requirement to get and maintain minimum essential coverage and, therefore, are exempt from the individual responsibility payment. Ms. Wilson said members of federally recognized tribes also have special enrollment periods, so they can change their enrollment status in any plan through the marketplace once a month. She said that if American Indians/Alaska Natives enroll in a health insurance plan through the marketplace, they can still get (or keep getting) services from the I/T/U programs.

Ms. Wilson said the application process provides for an American Indian or Alaska Native to attest that he or she is a member of a federally recognized tribe. She said the attestation is used to determine eligibility for cost-sharing exemptions and monthly special enrollment periods. Ms. Wilson said marketplaces must verify the attestation of Indian status through documentation provided by the federally recognized tribe. She said that, at this time, there are no electronic data sources available to the marketplace that have been approved by the U.S. Department of Health and Human Services (HHS) to support verification. Therefore, the marketplace will implement a paper documentation process for the verification of Indian status. The marketplace will accept documentation issued by a federally recognized tribe evidencing membership. For Medicaid, tribal members will be asked if they could receive services from an I/T/U provider. A state may require verification under Medicaid, but does not have to ask for proof. Ms. Wilson said most people must now have minimum essential health coverage or pay a fee called a “shared responsibility payment.” She said that if an individual does not have a certain level of health coverage (employer coverage, Medicare, Medicaid, CHIP, TRICARE, certain coverage through the U.S. Department of Veterans Affairs (VA), an individual policy or a plan in the marketplace) the individual may have to pay a fee with his/her tax return and, starting with the 2014 federal tax return in 2015, the tax starts at $95 per year or up to 1% of income, whichever is greater, and, by 2016, it will rise to $695 per year per person or 2.5% of income, whichever is greater. The tax is capped at $285 in 2014, but the tax cap rises to $2,085 in 2016.

Ms. Wilson said the rule provides a hardship exemption category for American Indians and Alaska Natives and other individuals who are eligible to receive services through an I/T/U clinic. She said all American Indians and Alaska Natives who are eligible to receive services from an Indian health care provider will be exempt from the “shared responsibility payment”; however, in order to receive an exemption, members of federally recognized tribes and individuals who are not members of federally recognized tribes, but are eligible to receive services from an Indian health care provider may apply through the marketplace or handle this through the tax-filing process. Ms. Wilson said American Indians/Alaska Natives receiving the exemption can be enrolled in Medicaid, CHIP or a QHP offered through the health insurance marketplace, if deemed eligible. Ms. Wilson said there are several resources available to help with enrollment, including a toll-free call center and website with plan-comparison tools. She said there are also several programs to help with the process of enrolling and using health insurance, including the navigator program in 150 languages, including some native languages such as Yupik and Navajo, with the possibility of more native languages being added. Ms. Wilson said community-based organizations, agents and brokers, along with trained enrollment assisters at I/T/U clinics will also play a large role in helping people apply for health insurance coverage. CMS’ regulations permit agents and brokers to help consumers and small businesses enroll through the marketplace if the state permits. She said it is important to note that some of the assistance resources (marketplace call centers, websites and navigators) will be unbiased and impartial, while others (agents and brokers, as well as issuer websites and call centers) will not be unbiased and impartial.

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Commissioner Salazar asked Ms. Wilson if she had the total number of tribal members, how many of those who self-identify and if she had any data on cost-sharing plans. Commissioner Doak said he is also interested in having these numbers and asked Ms. Wilson if she could share this information with the Committee members.

Commissioner Kreidler said Washington has seen an increase in the essential community providers increase to 20% and that the state had built in safeguards to ensure standards continued to be met.

Mr. Wieske asked Ms. Wilson if she could share the contact information for the regional tribal directors with the Committee. Ms. Wilson said she would provide a list of CCHIO contacts by region and membership numbers by state to Lois Alexander (NAIC) for distribution to the Committee.

3. Heard a Presentation on Alaska Natives

Director Wing-Heier said that when Alaska became a state in 1959, not all of the Alaska Natives were fully informed of the implications of statehood, particularly the state’s right to claim lands deemed vacant. She said negotiations to resolve the disputes began in 1968 with then Alaska Gov. Walter Hickel; it continued when he was appointed by President Richard Nixon as secretary of the U.S. Department of the Interior; and, in 1971, the federal Alaska Native Claims Settlement Act (ANSCA) was signed by President Nixon. Director Wing-Heier said that, under ANSCA, while Alaska Natives reserved their rights to tribal lands in order to maintain their heritage, others desired certain tracts for industry including the exploration of oil. She said that, under ANSCA, Alaska Natives received 44 million acres of land (about one-ninth of the state) and $963 million. Director Wing-Heier said that, with regard to the corporations, each corporation is associated with the natives or the traditional tribes from that particular region, with 208 village corporations in addition to the regional corporations encompassed 227 recognized tribes (226 today). She said a thirteenth corporation was later enacted for Alaska Natives living outside of Alaska without ties to any particular region. She also said with the land selection and the infusion of cash, ANSCA provided for the tribes to engage in capitalism. Director Wing-Heier said that, based on heritage, the Athabaskan tribe is in the largest land central section that includes Fairbanks; the Inupiaq and St. Lawrence Island Yup’ik tribes are in the second-largest land section to the north that includes Nome; the Yup’ik and Cu’pik tribes are in the southwest corner of the state; the Aleut and Alutiiq are in the central part of southern Alaska that includes Anchorage and Kodiak; and the Tingit, Haida, Eyak and Tsimshia are in the southeast corner of the state that includes Juneau. However, the land division sought to maintain a balance of the value of both surface and subsurface resources amongst the tribes, with the sharing of a percentage of the subsurface resources in some sections with tribes in other section without subsurface resources, so the 12 corporations are split differently with the Arctic Slope Corporation in the north; the Nana, Bering Strait, Calista and Aleut in the east; Doyon in the central part of the state; Cook Inlet, Bristol Bay and Koniag in the south; and Ahtna, Chugach and Sealaska in the east.

Director Wing-Heier said this idea was supported by the Alaska Federation of Natives, who believed that the Alaska Natives would have to become contributing members of the economy, the capitalist system, to survive. The intent was to preserve the culture and the traditions by bringing economic development into the region and allowing the Alaska Natives to remain in their traditional villages. She said each Alaska Native was given 100 shares of stock in their corporation, with the same being granted to anyone with one-fourth blood quantum. Director Wing-Heier said five of the 13 regional corporations have amended their bylaws to issues shares to Alaska Natives born after Dec. 18, 1971. She said the concentration of tribal members in Alaska is different than that in the Lower 48. She also said that the corporations are subject to state’s corporate laws, including securities laws and proxy regulations; that corporations do not retain tribal sovereign immunity; that jurisdiction for the corporations would be either state or federal court; and that there are approximately 80 tribal courts in Alaska that have jurisdiction over tribal members only on limited issues such as divorce, child custody, domestic violence, adoption and marriage. Director Wing-Heier said tribal members entered the business world in such areas as hospitality, including hotels and catering; oil and gas exploration and development including support to the industry; construction, lumber; commercial fishing and seafood processing; transportation and logistics; refining and petroleum distribution; engineering and aerospace; information and technical solutions; health care; tourism; military base support; real estate and property development; and mining including coal, zinc and other minerals. She said that, in 2013, the Alaska 49ers (the 12 original corporations) earned between $116 million and $2.5 billion, so the corporations are doing well and continue to promote health, education and welfare.
4. Heard a Presentation on American Indian Tribes in Oklahoma

Mr. Combs said Oklahoma has 38 federally recognized tribes: Absentee-Shawnee Tribe of Indians; Alabama-Quassarte Tribal Town; Apache Tribe; Caddo Nation of Oklahoma; Cherokee Nation; Cheyenne-Arapaho Tribes; Chickasaw Nation; Choctaw Nation of Oklahoma; Citizen Potawatomi Nation; Comanche Nation; Delaware Nation; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Iowa Tribe of Oklahoma; Kaw Nation; Kialoegee Tribal Town; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Miami Tribe of Oklahoma; Modoc Tribe of Oklahoma; Muskogee (Creek) Nation; Osage Tribe; Ottawa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians; Pawnee Nation of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Sac & Fox Nation; Seminole Nation of Oklahoma; Seneca-Cayuga Tribe of Oklahoma; Shawnee Tribe; Thlopthlocco Tribal Town; Tonkawa Tribe of Indians of Oklahoma; United Katoowah Band of Cherokee Indians in Oklahoma; Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakoni); and Wyandotte Nation.

He said these tribes came to Oklahoma from almost every state in America and that most of the tribal lands are located in the northeast and central parts of the state. Mr. Combs said federal recognition of these tribes includes U.S. support of tribal sovereignty and self-determination; that tribes can create their own governments with their own laws; tribes have the power to tax, license and regulate activities, and exclude others from their territories; and that tribes can create government-to-government relationships. He said that, according to a 2012 Oklahoma City University Study, tribal economic development includes $10.8 billion (7%) impact on the state economy and supports the equivalent of 87,174 jobs with business activities that include professional services, hospitality and entertainment, and gaming and retail, with expenditures of $1.5 billion in direct payroll, $792 million of which goes to Oklahoma entities. Mr. Combs said that, as part of the state’s tribal outreach, the governor’s office has created a Native American affairs liaison, whose primary focus is on state-tribal relations. This liaison advises the governor on Native American affairs, monitors Oklahoma/tribal compacts, and monitors the interactions and consultations between state agencies and tribal governments. Another part of the state’s tribal outreach is the Oklahoma Insurance Department’s training of Medicare Assistance Program (MAP) counselors; National Council of Urban Indian Health Medicare webinars; and its Medicare waste, fraud and abuse toolkit – International Association for Indigenous Aging, with Commissioner Doak leading this part of the statewide tribal outreach.

5. Heard a Presentation on American Indian Tribes in Montana

Commissioner Lindeen said Montana has received feedback that there is confusion over how the ACA would impact American Indians. She said that she had always worked to maintain an open relationship with tribal leaders in Montana and that the Montana department has worked with partners across the state to organize multiple tours to Indian country to talk about the ACA. Commissioner Lindeen said she has traveled nearly 2,500 miles back and forth across Montana to hear concerns from tribal leaders and community members about health care and to offer her assistance in navigating their confusion about health insurance. She said she some of her takeaways are that 6.5% of Montanans are American Indian or Alaska Native; that Montana has seven Indian reservations and 12 tribal nations; that an eighth “landless” tribe, the Little Shell Chippewa, is currently seeking federal recognition as follows: Blackfeet Nation; Chippewa Cree Tribe; Crow Nation; Confederated Salish & Kootenai Tribes; Fort Belknap Assiniboine and Gros Ventre Tribes; Fort Peck Assiniboine and Sioux Tribes; Little Shell Chippewa Tribe; and Northern Cheyenne Tribe.

Commissioner Lindeen said the ACA provides federally recognized tribal members with special benefits such as $0 cost-sharing for members of federally recognized tribal members under 300% of the Federal Poverty Level (FPL) and exemptions for tribal members and IHS-eligible individuals. She said that many American Indians can qualify for low or $0 premium plans with $0 cost-sharing, whereby the IHS can direct-bill insurance companies. Commissioner Lindeen said the Indian reservations in Montana are mainly in remote rural areas with limited economic opportunities, so poverty is prevalent. She said the median income of an American Indian/Alaska Native household in 2011 for a family of four was $35,192, which is between 100% and 300% of the FPL, well within the eligibility limits for $0 cost-sharing and low premiums; and 30% lower than the national average. Commissioner Lindeen said Montana’s median household income for a family of four is $45,456. She said the ACA assists in improving the quality of care but, currently, the IHS cannot meet all of the needs of Indian people, so necessary health care services are often funded at only about 60%, leading to a system of rationed health care and she has seen how life-changing these benefits can be for Indian communities.
Commissioner Lindeen said the Montana department could not have organized the ACA tour without its partners: the tribal health departments; the IHS; the Montana Department of Public Health and Human Services (DPHHS); urban health centers; certified application counselors (CACs) and navigators; insurance companies and certified enrollment counselors (CECs); and tribal advocacy groups. She said community leaders were essential to helping provide validation for, and motivation to attend, the events and that local support was directly tied to an event’s success. She also said the best events had energized community leaders pushing for a high turnout and were the ones with active local partners who knew and understood their community. Commissioner Lindeen said both the DPHHS and the IHS are important because the communities were familiar with IHS, and sometimes DPHHS is able to be a buffer between concerns about IHS and the tour. She said both had great perspectives, making the panels valuable, as was the new navigator group in Montana this year: the Montana-Wyoming Tribal Leaders Council. An overview of the tours started with a tribal council meeting followed by tribal community meetings that included introductions by community leaders, a panel presentation with the Montana department, the IHS and DPHHS; a question-and-answer session; enrollment opportunities with assisters, navigators, CACs and insurance companies; and continuing education for assisters. She said there were two meetings on each reservation—one with the tribal council and one with the tribal community—which underscored the importance of having face-to-face conversations. She also said the assisters were invaluable, because the CECs and insurance companies provided information on plans, but the assisters had laptops to enroll individuals on the spot.

Commissioner Lindeen said the tour encountered a myth in many communities that American Indians are automatically exempt from the ACA mandate. She said they faced difficulties in talking about health insurance, because health insurance is an unfamiliar concept for American Indians who are familiar with using IHS clinics for care, so the Montana department simplified its message to, “Apply for health insurance or apply for an exemption, but YOU CAN’T DO NOTHING.” She also said tribal members were encouraged to work with their local IHS, CACs and other assisters to make a decision about insurance or exemption, giving a simple explanation of the benefits American Indians could receive, the difference between IHS-eligible American Indians and federally recognized tribal members under the ACA, with the IHS, DPHHS and the Montana department all speaking to the direct impact and importance of additional revenue for the IHS through insurance. Commissioner Lindeen said the takeaways from the tours were that this is the first step in a long journey; that more education is needed; that individuals sought exemptions to avoid dealing with confusion about the ACA and health insurance, but community leaders were able to speak to the importance of additional revenue sources for the IHS, which would help bring back care, such as local diabetes clinics, that were cut many years ago. She said who delivers the message is key, with community leaders and elders being the wisest choice. She also said that, at times, the conversations became less about the ACA and more about problems with the IHS and the need for significant improvements. Commissioner Lindeen said that, with regard to the letter on the tribal employer mandate, tribal governments expressed concerns about the employer mandate and confusion over why the employer mandate applied to Indian nations, because tribes are sovereign and are the largest employers on most Indian reservations. She said the Montana department sent a letter to former HHS Secretary Kathleen Sebelius, which included the following:

“All of these observations led me to urge you to reconsider and provide an exemption for tribal employers. As sovereign nations, they deserve different treatment under the law. In addition, the special trust and legal responsibility that the federal government has to improve the health status of Indian people is also an important consideration when making this decision.”

Commissioner Lindeen’s March 10 letter to HHS (Attachment One-B) was subsequently forwarded to the U.S. Centers for Medicare & Medicaid Services (CMS). Commissioner Lindeen said there has been limited response from HHS or CMS.

Commissioner Doak asked if Montana had any tribal staff. Commissioner Lindeen said the Montana department does not, but the Montana governor’s office does.

6. Heard a Presentation on American Indian Tribes in New Mexico

State Sen. Benny Shendo (D-NM) said he wants to bring to the attention of the Committee an insurance issue that is unique to tribal members in that employees of casinos are faced with having to take a penalty for not having coverage under the ACA when they simply cannot afford the coverage offered and cannot get an exemption even though their employers are already exempt. He thanked Commissioner Lindeen for her letter to former HHS Secretary Sebelius, which described this issue in detail and which has been forwarded to CMS, indicating that it is unfortunate that neither HHS nor CMS has responded to Commissioner Lindeen’s request.
7. **Discussed Other Matters**

Commissioner Doak said one of the insurance-related issues that are unique to tribal members that this Committee had identified included the translation of insurance to tribal members, as, in most tribal languages, there is no direct translation. He also asked Committee members where they saw the Committee going from here, suggesting conference calls to develop a plan for next year, perhaps smaller group meetings, to identify the issues and set interim goals with an end goal in mind. Superintendent Franchini said guidelines are needed for tribal consumers to protect themselves so agents would not be able to take advantage of them, which happened at one of New Mexico’s pueblos. Mr. Wieske said Wisconsin has seen similar instances of this, as well through their complaint process and suggested designing a system that would possibly tag such complaints. Director Wing-Heier said Committee members might want to consider taking more interest in the Keystone XL pipeline because, if it passes, it would most certainly go through tribal lands, potentially causing the same type of corporations to be formed as was the case in Alaska.

Having no further business, the NAIC/American Indian and Alaska Native Liaison Committee adjourned.