PUBLIC POLICY MEMO

A CHALLENGE TO SOVEREIGNTY: BARRIERS TO INCREASING LONG TERM CARE WORKFORCE IN TRIBAL COMMUNITIES

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Problem/Issue:

Healthcare workforce shortages are a barrier to achieving health outcomes for Tribal communities. In the next 30 years, we are expected to see the population of American Indian/Alaska Natives that are 65 and older grow to almost .7% of the total 65 and over AI/AN population (Manson & Buchwald, 2022). In an already overburdened healthcare delivery system the anticipation of this increase leaves sovereign Tribal nations reliant on state long-term care delivery systems that are neither culturally relevant, nor located in their home communities. A possible remedy to this situation is the bolstering of state long-term services and supportive programs such as the individual provider (IP) [1]. The IP position seeks to train and certify individuals to become a caregiver and provide home care to their loved ones in their communities. However, in order to be a paid caregiver, the requirements of an IP include: receiving training that is provided by the Service Employees International Union (SEIU), join the Consumer Direct Care Network Washington (CDWA), and opt in with SEIU to be paid (*Becoming a paid caregiver*, DSHS,2024). Though unions serve to provide oversight to ensure employees are receiving equitable pay, fair/just treatment, and protection from employers, they are not in the business of upholding Tribal sovereignty. Unions receive oversight from the National Labor Relations Board (NLRB), which historically has considered Tribal sovereignty an afterthought when developing unions and imposing rules, regulations, and requirements on a sovereign government which includes how they may provide care for their relatives on their homelands.

[1] "Individual provider" means a person, including a personal aide, who, under an individual provider contract with the department or as an employee of a consumer directed employer, provides personal care or respite care services to persons who are functionally disabled or otherwise eligible under programs authorized and funded by the medicaid state plan, medicaid waiver programs[,] chapter **71A.12** RCW, RCW **74.13.270**, or similar state-funded in-home care programs.

Background/Key Findings:

In 2017 the Tribal Labor Sovereignty Act (TLSA) was introduced as bi-partisan legislation to correct a 2004 decision interpreting the National Labor Relations Act (NLRA)of 1935 by the NLRB that effectively failed to recognize Tribal nations as sovereign governments in their definition of employer and stripped away 70 years of precedent (Keel, 2018). The 2017 TSLA legislation would have amended the NLRA to include clarification that the law does not apply to any enterprise or institution owned and operated by an Indian tribe and located on tribal land. The TLSA was re-introduced in 2021, 2022, and 2023 but only introduced with no further action taken. The TSLA served to challenge the NLRB jurisdiction which states: "The Board asserts jurisdiction over the commercial enterprises owned and operated by Indian tribes, even if they are located on a tribal reservation. But the Board does not assert jurisdiction over tribal enterprises that carry out traditional tribal or governmental functions" (*Jurisdictional Standards*, National Labor Relations Board, 2024).

Conclusion/Recommendation:

Caregiving is not only a traditional practice but a traditional tribal function within Tribal communities that ensures the health of the individual and the health of the community. Additionally, sovereignty is the inherent right to self-govern, ensuring Tribes the right to make decisions regarding their people, including the training and employment requirements of their caregivers. I would recommend that the state not only look at the benefits of unions for Washingtonians, but the unintentional degradation of sovereignty that is imposed by not championing tribally led efforts at providing care to their communities.

References

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