



HEALTH LEGISLATION UPDATE

Assembly of First Nations

Health Sector

October 26, 2022





Purpose

- To provide a health legislation update to the Southern First Nations Secretariat from the AFN National Office
 - Extended Timelines
 - AFN Resolutions





Introduction

- ***AFN Resolution No. 69/2017 Exploring a Legislative Base for First Nations Health*** was the catalyst for the AFN Health Sector's work on this file. Chiefs directed AFN to:
 - Examine options related to federal First Nations health legislation that would articulate federal obligations towards First Nations health, reflective of inherent, Treaty and international legal obligations, as well as the nation-to-nation relationship
 - Develop tools to aid interested First Nations communities in developing their own positions related to federal legislation on First Nations health





Extended Federal Timelines

- Current status:
 - AFN is aligning with ISC’s extended timelines. ISC now plans to introduce Indigenous Distinctions-Based Health Legislation in Winter (January) 2024 which is a 2-year extension.
 - AFN has been receiving regular outreach from communities and organizations seeking more information and has had meetings to provide an overview and to answer questions.
 - AFN’s mandate for this work is outlined in *Resolution No. 69/2017 Exploring a Legislative Base for First Nations Health* and *Resolution No. 18/2021 Supporting First Nations Participation in Dialogue on Health Legislation*.





AFN Resolution No. 18/2021

AFN Resolution No. 18/2021 *Supporting First Nations Participation in Dialogue on Health Legislation*

- *1. Call on Canada to honour its commitment to the United Nations Declaration on the Rights of Indigenous Peoples by respecting First Nations autonomy to exercise their jurisdictions in the area of health, including the choice of whether to participate in health legislation discussions or to seek alternative approaches.*
- *2. Call on Canada to seek direction from First Nations on how potential legislation will embed inherent, Treaty and International obligations, including direction about the non-derogation, non-abrogation and non-prejudicing of inherent rights and inherent rights protected by Treaty to health.*
- *3. Direct the AFN to call upon Indigenous Services Canada (ISC) to engage in a focused dialogue with First Nations to define and identify the protocols, elements and processes by which to enter into discussions on health legislation.*





AFN Resolution No. 18/2021

- 4. *Direct the AFN to call upon ISC to ensure that the timelines for engagement on health legislation are reflective of First Nations’ needs and capacities and not those of the federal government.*
- 5. *Direct the AFN to call upon ISC to ensure that provincial and territorial governments are included in the discussions related to health legislation and that any discussions need to consider First nations’ unique regional health landscapes.*
- 6. *Direct the AFN to call upon ISC to ensure individual First Nations are fully and sustainably funded to allow for their full, direct, and unfettered participation in all legislative discussions.*
- 7. *Direct the AFN to advocate for regional engagement processes in relation to health legislation which promotes First Nations participation and lead national level dialogue and engagement.*





Supporting First Nations

- AFN continues to advocate for funding from the federal government to support First Nations participation in discussions about health legislation.
- There was \$15.6 million set aside for this budget line item in the 2020 Fall Economic Statement. Most of the funding set aside for Indigenous distinctions-based health legislation went to regional engagement that ISC is responsible for.
- Any legislative process cannot impact those communities that wish to pursue a different avenue to reclaim jurisdiction over their health care.





Supporting First Nations

- AFN is planning a National Forum for First Nations-led dialogue in 2023.
- AFN is co-analysing First Nations engagement reporting from the national level to inform ISC's *What We've Heard Summary Report* (November 1, 2022). AFN participates among other Indigenous Partners on ISC's Indigenous Health Legislation Co-Analysis Working Group.
- AFN research supports First Nations for engagement; including 14 co-development principles, and 2 legal options to guide First Nations discussions.





Legal Discussion Paper

- ***Indigenous Health Care Legislation*** is a preliminary discussion paper written for AFN by **Nahwegahbow Corbiere** dated March 31, 2020.
- An Executive Summary was shared and discussed with First Nations at the AFN AGA Health Dialogue Session on July 4, 2022. AFN staff, ISC representatives and legal experts were present to answer questions.
- The paper provides an overview of several issues to consider prior to co-developing Indigenous health care legislation:
 - Rights-based considerations,
 - Fiduciary duty of the federal Crown, and
 - Strategies to maintain good relations between First Nations and the Federal Government.



Legal Options



The Executive Summary from Nahwegahbow Corbiere outlines 2 potential legal options for First Nations health legislation:

A) Legislation that sets out an entirely new First Nations Healthcare Law regime, the provisions of which would apply to all First Nations in Canada;

OR

B) Legislation that allows individual First Nations to adopt their own Healthcare law.



Next Steps



- AFN Health Sector meets regularly on health legislation matters with the members of the Chiefs on the Chiefs Committee on Health and the National First Nations Health Technicians Network.
 - What feedback should be included in AFN's review of the upcoming *What We Heard Summary Report* being published by ISC in November?





Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.





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Questions?

For Additional Information: www.afn.ca

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