

American Recovery and Reinvestment Act (ARRA) Section 5006

Centers for Medicare & Medicaid Services

ARRA Medicaid Guidance on Indian Health Care



CMS Defines “Indians”

- On July 1, 2010, the Centers for Medicare & Medicaid Services (CMS) published a final rule that adopts a definition of “Indian” in its implementation of the cost-sharing protections made available under Sec. 5006 of the ARRA.
- The CMS regulation defines “Indian” consistently with the Indian Health Service (IHS) regulations on eligibility for services, covering both American Indians and Alaska Natives (AI/ANs).

ARRA Protections for AI/ANs in Medicaid and Children's Health Insurance Program (CHIP)

View the full letter here:
<http://www.cms.gov/smdl/downloads/SMD10001>.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations

SMDL#: 10-001
ARRA #: 6

January 22, 2010

Re: ARRA Protections for Indians in Medicaid and CHIP

Dear State Medicaid Director:

This letter is one of a series that provides guidance on the implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111-5. Section 5006 of the Recovery Act provides protections for Indians in Medicaid and the Children's Health Insurance Program (CHIP). The amendments made by this section were effective on July 1, 2009. This letter provides a brief overview to assist States with implementation of these new provisions for Indians in your programs.

Section 5006 of the Recovery Act provides certain premium and cost-sharing protections under Medicaid and exemption for certain Indian-specific property from consideration in determining Medicaid eligibility and from Medicaid estate recovery. It also provides certain Medicaid managed care protections for Indian health programs and Indian beneficiaries and establishes new requirements for consultation on Medicaid and CHIP with Indian health programs. The new provisions are described in greater detail below.

Premium and Cost-Sharing Protections Under Medicaid

The Social Security Act (the Act) allows States to impose enrollment fees, premiums, cost-sharing and similar charges under certain conditions on Medicaid participants under title XIX and CHIP participants under title XXI of the Act. The Medicaid provisions are at section 1916 of the Act for nominal premiums and cost-sharing and at section 1916A of the Act for alternative premiums and cost-sharing, as authorized by the Deficit Reduction Act of 2005 (DRA), Public Law 109-171. CHIP provisions can be found at section 2103(e) of the Act.

Section 5006(a) of the Recovery Act amends sections 1916 and 1916A of the Act, to preclude States from imposing Medicaid premiums or any other Medicaid cost sharing on Indian applicants and participants served by Indian health providers and to assure that Indian health providers, and providers of contract health services (CHS) under a referral from an Indian health provider, will receive full payment. These provisions apply to the Medicaid program. Premiums and cost-sharing exemptions for Indians under CHIP are not affected. These provisions became effective **July 1, 2009**. Specifically, section 5006(a):

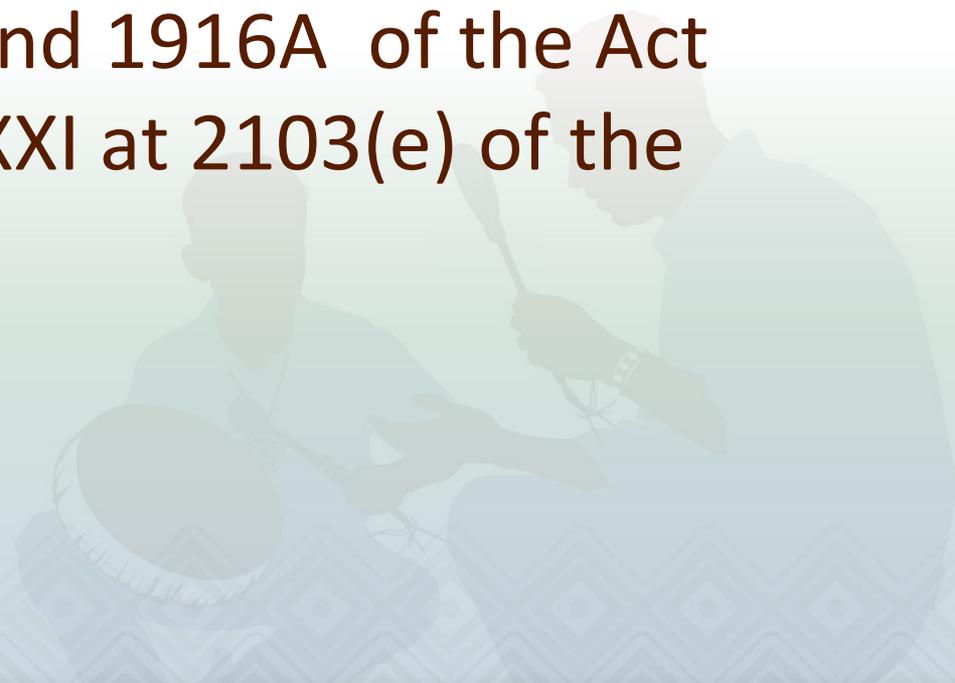
ARRA Protections for American Indians/Alaska Natives in Medicaid and CHIP

- Protections
 - Cost-sharing protections
 - Other various exemptions
- Who's covered
 - AI/AN Medicaid beneficiaries and participants served by Indian health providers



Provision Overview

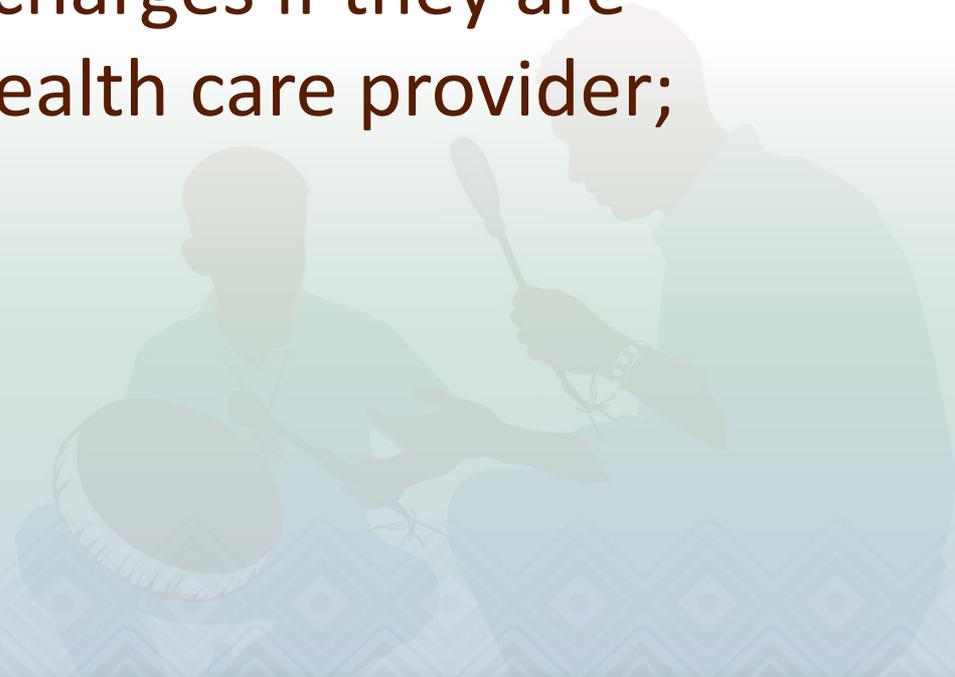
The Social Security Act (the Act) allows states to impose enrollment fees, premiums, cost sharing and similar charges to Medicaid participants under Title XIX at 1916 and 1916A of the Act and to CHIP under Title XXI at 2103(e) of the Act.



EXEMPTIONS

Section 5006 of the ARRA

1. Exempts American Indians/Alaska Natives (AI/ANs) from paying enrollment fees, premiums, or similar charges if they are served by an Indian health care provider;



EXEMPTIONS

Section 5006 of the ARRA

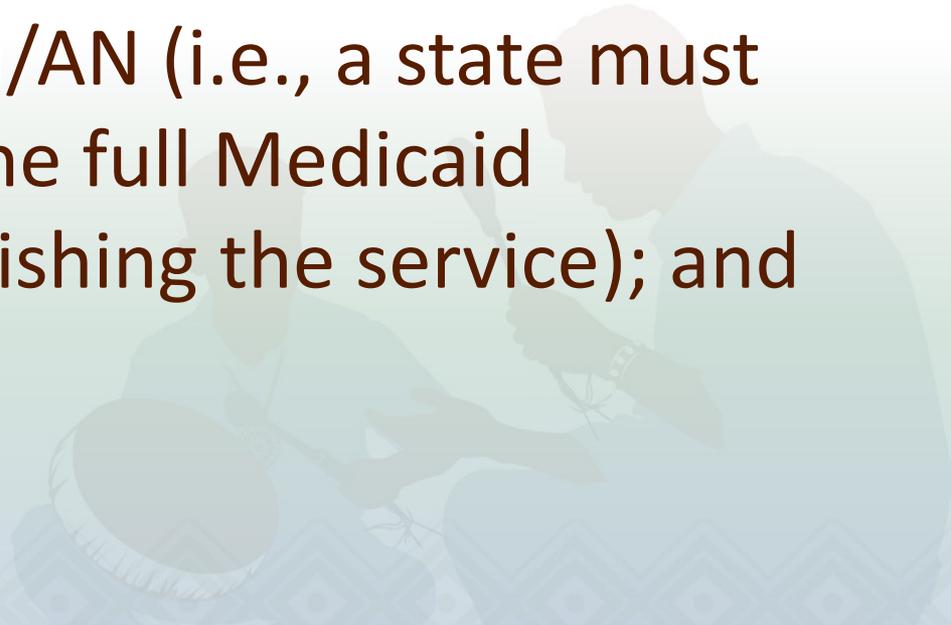
2. Amends 1916 of the Act to preclude states from imposing any cost sharing to AI/AN Medicaid participants effective July 1, 2009, under certain circumstances;



EXEMPTIONS

Section 5006 of the ARRA

3. Prohibits any reduction in payment due under Medicaid to the Indian health care provider serving an AI/AN (i.e., a state must pay these providers the full Medicaid payment rate for furnishing the service); and



EXEMPTIONS

Section 5006 of the ARRA

4. Exempts AI/ANs from paying a deductible, coinsurance, copayment, or similar charges for Medicaid-covered services if they are served by an Indian health care provider.



CHIP

Note: The ARRA did not change the cost-sharing exemptions in CHIP. **CHIP exempts *all* AI/ANs from cost sharing.** (See 42 CFR § 457.535.)



The “what,” “who,” and “when” of exemptions in cost sharing



What Is Exempted in Cost Sharing?

- Premiums
- Enrollment fees
- Application fees
- Coinsurance
- Deductibles
- Copayment
- Similar charges



Who Is Exempted in Cost Sharing?

- An AI/AN determined to be eligible to receive services from Indian health care providers pursuant to 42 CFR § 136.12*. (See also 25 USC §1603(c) and (f).)
- Individuals eligible for the Section 1115 waiver (demonstration projects).

* Includes AI/ANs *if they have received or would be eligible to receive* an item or service furnished by an Indian health provider.

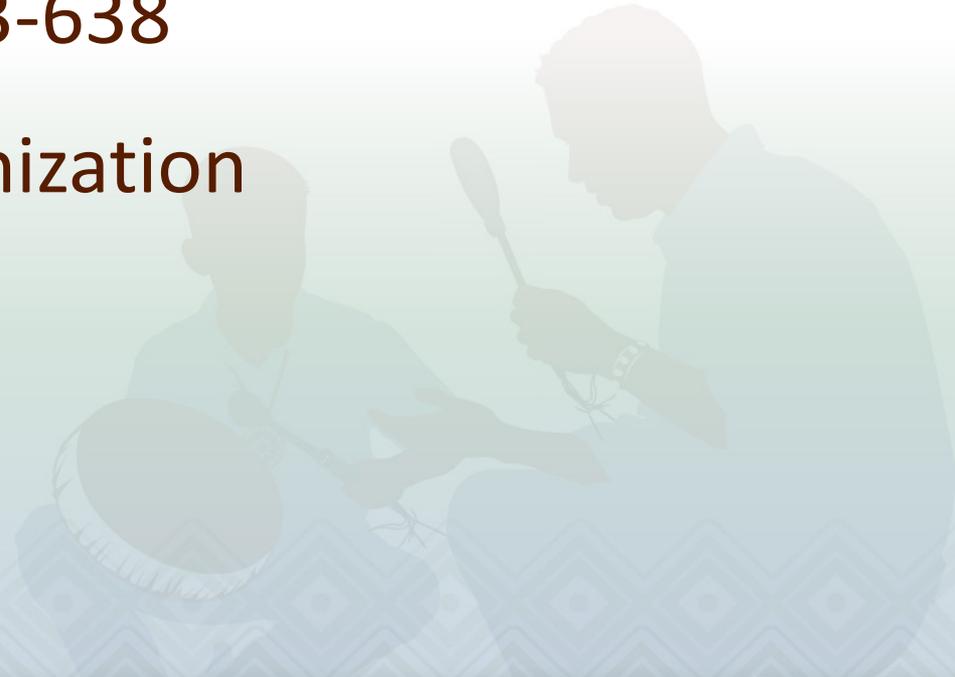
When are Coinsurance, Copayments, and Deductibles Waived?

- When a Medicaid service *is provided* by an Indian health provider
- When a Medicaid service is provided by a non-Indian health provider under a Contract Health Service Referral

*Note the difference between premium and enrollments fees from other cost sharing.

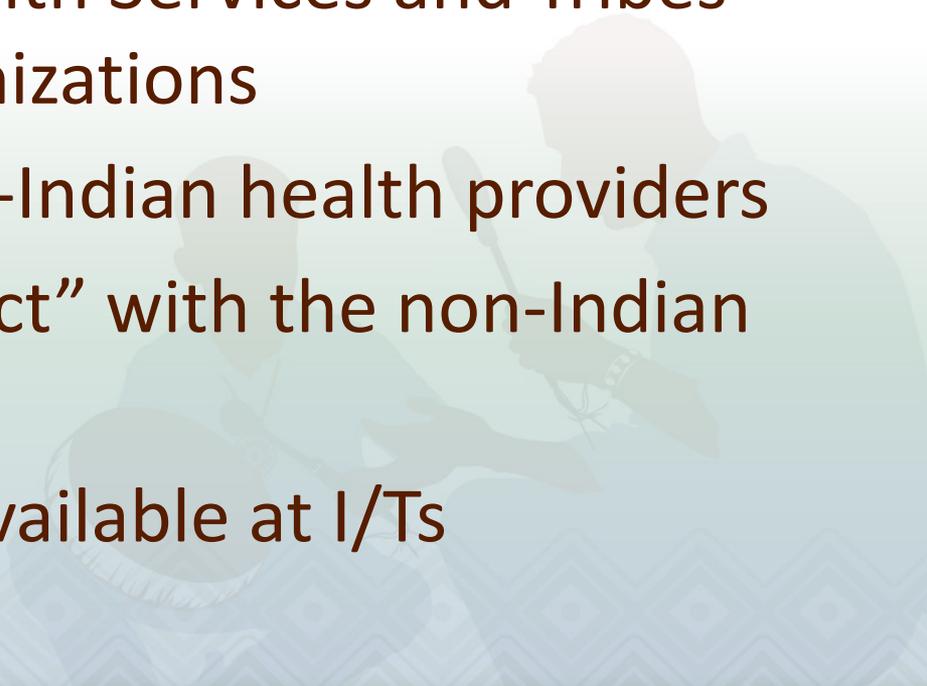
Providers of AI/AN Health: I/T/U

- *I* - Indian Health Service (IHS) provider
- *T* - Tribal health provider or Tribal Organization operating under P.L. 93-638
- *U* - Urban Indian Organization



Contract Health Services

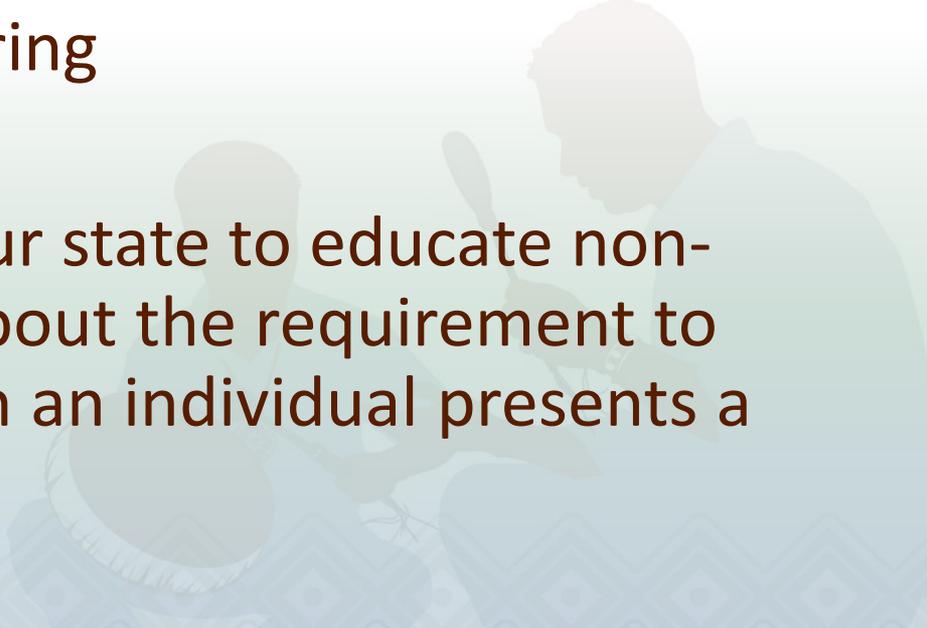
What are Contract Health Services for AI/ANs?

1. Contract Health Services (CHS) programs are operated by Indian Health Services and Tribes—not Urban Indian Organizations
 2. Make payments to non-Indian health providers
 3. Don't require a “contract” with the non-Indian health provider
 4. Used for services not available at I/Ts
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Cost-Sharing Exemptions

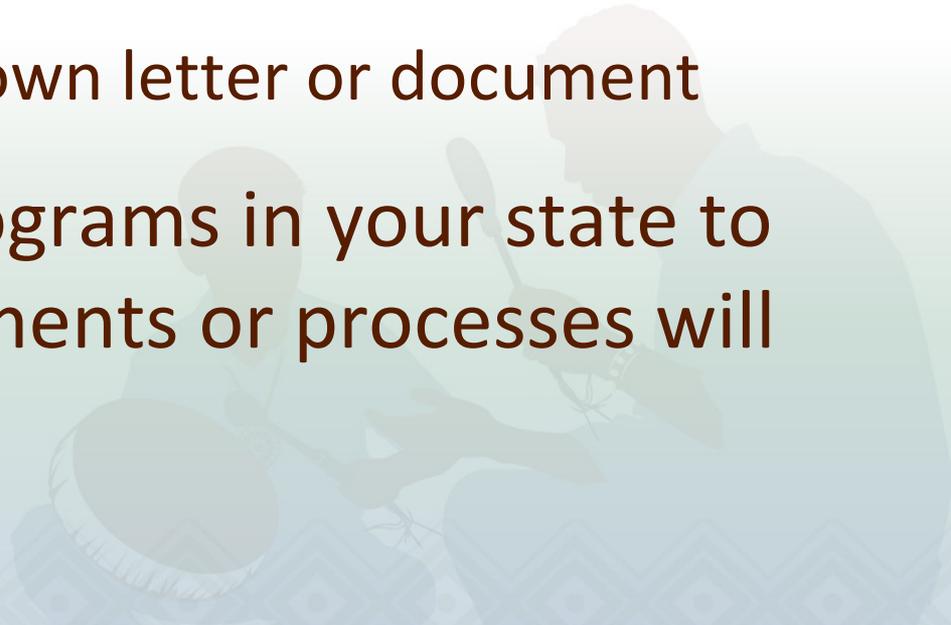
- AI/AN Medicaid recipients with a letter from an I/T/U indicating eligibility for services are exempt from paying premiums and enrollment fees
- I/T/Us services and CHS-referred services are exempt from cost sharing

Important: Encourage your state to educate non-Indian health providers about the requirement to exempt cost sharing when an individual presents a CHS referral.



Cost-Sharing Exemptions

- IHS has provided its health care providers with a standard letter to prove eligibility for I/T/U services.
 - I/T/Us may use their own letter or document
- Work with the CHS programs in your state to determine what documents or processes will be used for referral.



Prohibition on the Reduction in Payment to Providers

- In addition to protecting AI/ANs from cost sharing, ARRA prohibits any reduction in payment due under Medicaid.
- This includes:
 - Any Indian health provider (I/T/U)
 - Any non-Indian health provider for a service or an item furnished at any facility through a CHS referral

ARRA AI/AN Resource Exclusions

The ARRA requires states to exclude:

1. Property (including real property and improvements) held in trust on or near AI/AN lands*
2. Ownership interests in rents, leases, royalties, or usage rights related to natural resources resulting from the exercise of federally protected rights
3. Property with unique religious, spiritual, traditional, or cultural significance to AI/AN people

* See ARRA Sec. 2006 (b) for precise definition of AI/AN lands

Notes about ARRA AI/AN Resource Exclusions

- These exclusions are in addition to already excluded resources under federal law.
- Resources converted to cash or other property are *not* treated as income. Casino earnings are *not* excluded from usual income and resource rules.
- States should consult tribes regarding items of spiritual or religious significance or items used to support a traditional lifestyle.

ARRA Managed Care Protections for AI/ANs and Indian Health Providers

- Individuals and groups impacted
 - AI/AN Medicaid and CHIP beneficiaries*
 - Indian health providers in Medicaid and CHIP
 - Managed Care Organizations (MCOs)
 - Primary Care Case Management (PCCMs)
- Provides that an AI/AN enrolled in a managed care network can choose to receive covered services at an I/T/U
- Requires that the AI/AN enrollee be allowed to choose an I/T/U as the primary care provider if the given I/T/U has the necessary capacity to serve in such a role

* Applies to AI/ANs enrolled on a mandatory or optional basis. Note: Medicaid requires a waiver for mandatory enrollment of AI/ANs, while CHIP does not require a waiver for mandatory enrollment of AI/ANs.

ARRA Tribal Consultation Provisions

Sec. 5006 (e)

- The U.S. Department of Health and Human Services (HHS) has an obligation to maintain a Tribal Technical Advisory Group (TTAG) within CMS.
 - The TTAG has tribal representatives appointed from the 12 IHS service areas, a representative of the IHS, and a National Urban Organization.

ARRA Tribal Consultation Provisions

Sec. 5006 (e)

- States are required to *seek advice* on a regular, ongoing basis from designees of the Indian health programs* and Urban Indian Organizations concerning Medicaid and CHIP matters that have a direct effect on AI/ANs or Indian health programs.

* “Indian health programs” includes IHS providers and Tribal health providers/organizations operating under P.L. 93-638

TRIBAL-STATE RELATIONS

ON HEALTHCARE

Promising Practices

Lessons learned from Alaska, Oklahoma, Oregon, Montana, New Mexico, North Dakota, and South Dakota



Promising Practices: Introduction

- Researcher
 - Kauffman and Associates, Inc. (KAI) conducted interviews and focus groups with state and tribal officials
- Methodology and Goals
 - Semistructured interviews and focus groups sought to generate information concerning consultation requirements, success stories, challenges, and ideas to improve the consultation process
 - The seven states selected represent a diverse array of tribal cultures, geographies, and barriers related to state-tribal consultation

Barriers to Consultation

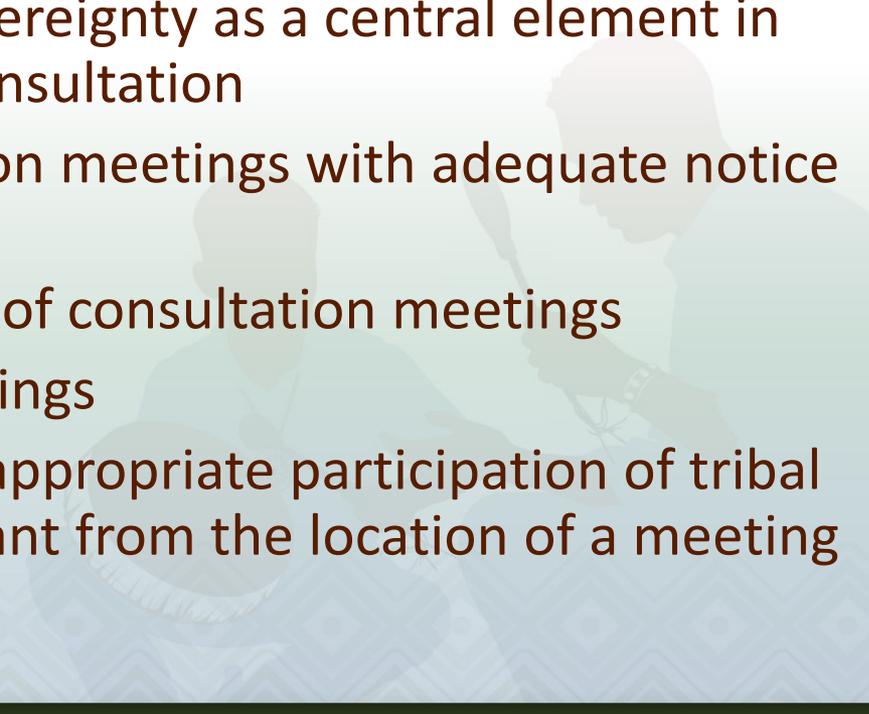
- Lack of formal consultation policies and procedures
- Specific procedural gaps
- Lack of adequate notice for consultation meetings
- Failure to schedule regular consultation meetings
- Geographic isolation
- Failure of tribal leaders to attend consultation meetings
- Turnover among tribal and state leaders



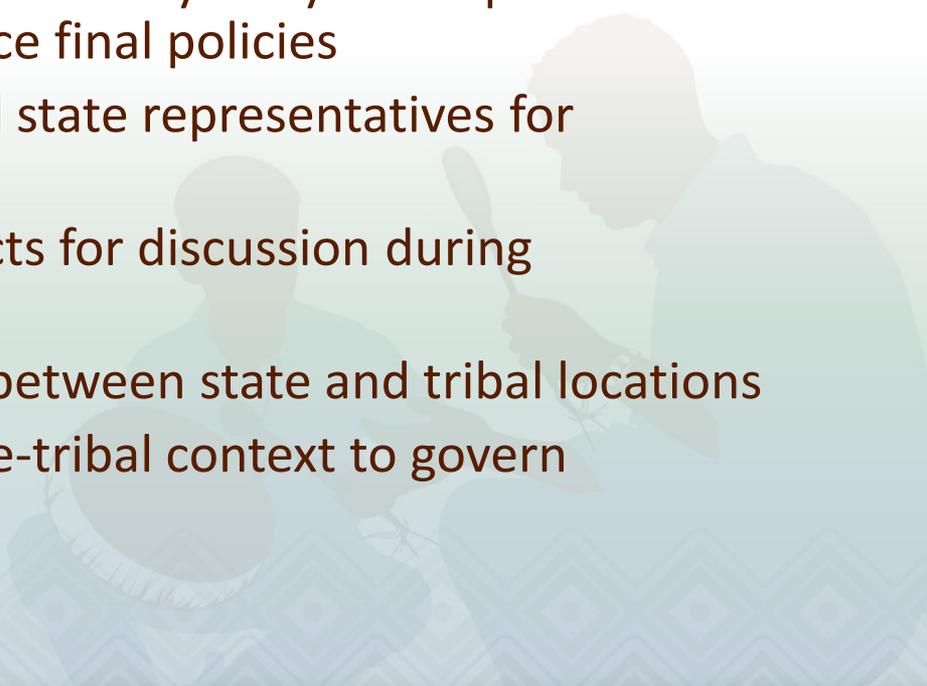
Barriers to Consultation

- State officials may not know the appropriate tribal officials to notify about meetings
 - Issues brought to consultation are not appropriate matter for consideration
 - Tribal and state leaders may not be adequately prepared for consultation prior to a meeting
 - Some state officials fail to travel to reservation
 - Unique barriers and issues
 - Alaska: Federal mandates for consultation may not fit the context of state-tribe relationships
 - North Dakota: Complications occur when a tribe straddles the border between two states.
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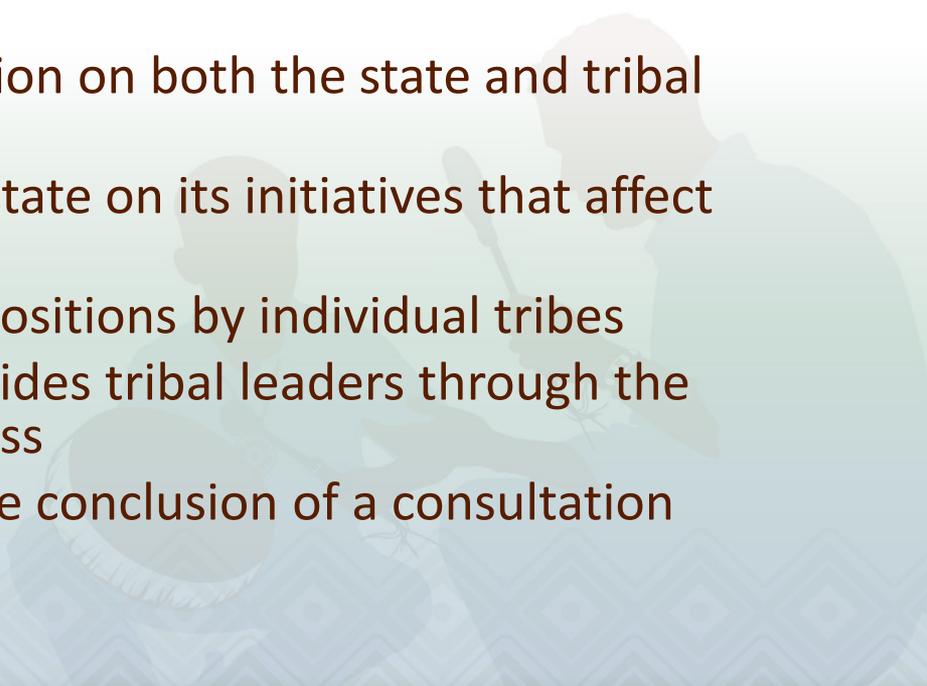
Effective Consultation Approaches

- State or agency policy that mandates consultation and outlines the consultation process
 - State's recognition of tribal sovereignty as a central element in government-to-government consultation
 - Regularly scheduled consultation meetings with adequate notice about dates of the gatherings
 - A tribal voice in the scheduling of consultation meetings
 - Face-to-face consultation meetings
 - Provisions that encourage the appropriate participation of tribal leaders who are physically distant from the location of a meeting
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Effective Consultation Approaches

- Procedures to ensure that state officials have records of appropriate tribal contacts
 - Meaningful dialogue that occurs sufficiently early in the process to ensure that tribal positions influence final policies
 - Adequate preparation by tribal and state representatives for consultation meetings
 - Identification of appropriate subjects for discussion during consultation
 - Consultation meetings that rotate between state and tribal locations
 - Policies that specifically fit the state-tribal context to govern consultation process
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- A faint, light-colored silhouette of two people sitting on the floor in a consultation meeting. One person is on the left, and the other is on the right, leaning forward. The person on the right appears to be holding a drumstick or a similar object. The background of the slide features a repeating geometric pattern of diamonds and squares.

Effective Consultation Approaches

- Across-state-border policies for consultation by tribes that occupy more than one state
 - Training for tribal and state officials concerning the nature of consultation
 - Outspoken advocates for consultation on both the state and tribal sides of the process
 - The publication of a report by the state on its initiatives that affect tribes in the state
 - The development of consultation positions by individual tribes
 - The development of a form that guides tribal leaders through the elements of the consultation process
 - Effective follow-up policies after the conclusion of a consultation
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- A faint, light-colored silhouette of two people is visible in the background on the right side of the slide. One person is seated and appears to be speaking into a microphone, while the other person stands next to them, also facing the same direction. The background of the slide features a repeating geometric pattern of diamonds and squares.

Questions?

- [Contact information]

