

# 113 - Tribal Consultation Policy

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## INTRODUCTION

The mission of the Arizona Health Care Cost Containment System (AHCCCS) is to provide comprehensive, quality health care to those in need. AHCCCS and Indian Tribes in the State of Arizona (hereinafter referred to as “Indian Tribes”) share the common goal of decreasing health disparities and maximizing access to critical health services. In order to achieve this goal, it is essential that the AHCCCS Administration and Indian Tribes engage in open, continuous, and meaningful consultation on a government-to-government basis. True consultation consists of ongoing information exchange and mutual understanding which leads to informed decision-making.

## BACKGROUND

A unique government-to-government relationship exists between Indian Tribes and Federal and State Governments. Since the formation of the Union, the United States has recognized Tribal Governments as sovereign nations. Treaties and laws, together with court decisions, have defined a relationship between Indian Tribes and the Federal Government that is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous regulations and policies that establish and define a trust relationship with Indian Tribes (see Authority). As a state agency responsible for administering a federal program, the AHCCCS Administration recognizes that these regulations and policies play a significant

role in the AHCCCS Tribal Consultation Policy. As required by Executive Order 2006-14, which was signed by former Arizona Governor Janet Napolitano, AHCCCS shall implement the AHCCCS Tribal Consultation Policy to guide its work and interaction with federally-recognized tribes in Arizona. AHCCCS shall also designate staff to assume responsibility for the agency's implementation and serve as a point of contact for tribal issues. Furthermore, AHCCCS shall review the Tribal Consultation Policy each year and submit a report to the Governor and the Legislature to describe all action undertaken as a result of the implementation of these policies.

## **POLICY**

The guiding principle of this Policy is to ensure that, pursuant to the special relationship between the Indian Tribes and Federal and State Governments, reasonable notice and opportunity for consultation with Indian Tribes are provided by the AHCCCS Administration prior to implementing policy changes that are likely to have a direct effect on Indian Tribes. Policy changes that are likely to have a direct effect on Indian Tribes refer to actions that have Tribal implications with direct effects on one or more Indian Tribes, on the relationship between the State of Arizona and Indian Tribes, or on the distribution of power and responsibilities between the State of Arizona and Indian Tribes. AHCCCS recognizes that federal and state laws and regulations will be implemented as they apply to Indian Tribes receiving payments for services provided under the AHCCCS program.

## **PHILOSOPHY**

AHCCCS is the health care insurance provider for a considerable percentage of Arizona's American Indian population. The involvement of Indian Tribes in the development of AHCCCS policy allows for locally relevant and culturally appropriate approaches to important issues. Therefore, the AHCCCS Administration is committed to working with Indian Tribes to improve the quality, availability, and accessibility by eliminating barriers to care for American Indians in Arizona.

## **VISION**

Implementation of the AHCCCS Tribal Consultation Process requires a proactive bi-directional information sharing and advisory process that allows Indian Tribes to express policy positions and reactions to proposed policy changes. Consultation with Indian Tribes may be initiated by AHCCCS in the following scenarios, which differ with respect to the extent AHCCCS has control over shaping policy.

- AHCCCS proposes a policy or programmatic change where AHCCCS has control as to how the policy or programmatic change is shaped and implemented.
- State or Federal Law mandates a policy or programmatic change in which AHCCCS has limited or no control over shaping and implementing the policy or programmatic change.
- State or Federal Law mandates a policy or programmatic change in which AHCCCS has more control over shaping and implementing the policy or programmatic change.

Although there may be scenarios in which AHCCCS has limited control over shaping and implementing a policy or programmatic change, AHCCCS will provide information to Indian Tribes as to what changes may be expected prior to the enactment of laws by the state or federal

government that are likely to have a direct effect on Indian Tribes. AHCCCS will make information submitted by Indian Tribes on the effect of proposed changes available on the AHCCCS website.

## **OBJECTIVES**

In order to fully effectuate this Policy, the AHCCCS Administration will:

- Establish communication channels with the elected leader of each Indian Tribe and the appointed leadership for health services for each Indian Tribe. The AHCCCS Administration recognizes that a standing goal of working with Indian Tribes is to increase their knowledge and understanding of AHCCCS programs and policies.
- Seek timely consultation with Indian Tribes to discuss potential changes to policy that would have an impact on Indian Tribes.
- Allow for consultation with Indian Tribes in the development of new policy or a change in policy with substantial Tribal implications, including State Plan Amendments and Waiver proposals that will be submitted to the Centers for Medicare and Medicaid Services (CMS).
- Coordinate within the Agency to ensure consistent application of the Tribal Consultation Policy.
- Provide relevant background information on consultation topics given the scope of available AHCCCS administrative resources so that Indian Tribes may fully consider information when providing recommendations to AHCCCS. This information may include, but is not limited to, applicable statutes, regulations, policy, guidance, and agreements between AHCCCS and CMS.
- Seek formal written recommendations from Indian Tribes which include pertinent impacts of proposed changes.
- Provide opportunity on an ongoing basis for Indian Tribes to request tribal consultation on a specific topic or issue affecting one or more Indian Tribe(s).

## **PRINCIPLES**

Trust among the AHCCCS Administration and Indian Tribes is an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. The AHCCCS Administration, guided by the Tribal Relations Liaison, shall use the process as described in this Policy under “Consultation Process” to determine the nature and extent of consultation that should occur to ensure that the intent of this Policy is satisfied.

Consultation occurs whenever the AHCCCS Director and Tribal Official(s) and/or their designees, engage in oral or written communication to discuss an issue. Consultation with a single Indian Tribe will not substitute for consultation with other Tribes on issues that may affect more than one Tribe.

AHCCCS staff persons who have a role in the development or implementation of policy substantially affecting Indian Tribes shall understand the government-to-government relationship between the federal and state governments and Indian Tribes, the uniqueness of Indian Tribes,

the purpose of the AHCCCS Tribal Consultation Policy, its expectations, applicability, and its anticipated outcomes.

## **CONSULTATION PROCESS**

AHCCCS engages in consultation with Indian Tribes through a variety of methods and at a variety of levels about policy issues that have a direct affect Indian Tribes. Scenarios in which AHCCCS shall engage in the consultative process with Indian Tribes include, but are not limited to the following:

- Proposed amendments to the AHCCCS Tribal Consultation Policy
- Proposed or existing tribal/state/federal intergovernmental or contractual language revisions
- Proposed resource distribution methodologies that may affect payments made to Indian Tribes or Indian Health Service, Tribal programs operated under P.L. 93-638, and urban Indian health programs
- Proposed fee-for-service provider rate changes
- Proposed State Plan amendments, waiver renewals, and demonstration projects
- Proposed changes or limitation of eligibility or benefits
- Proposed gaming or other monetary distributions by tribal governments to eligible community members that may affect eligibility for AHCCCS programs

Direct Consultation by the AHCCCS Administration (See Attachment A – Flow Chart)

### **I. New or Revised Policy**

- A. When it appears that a new or revised AHCCCS policy may be needed, the AHCCCS Administration shall consider whether it is a policy change that is likely to have a direct effect on Indian Tribes.
- B. If a policy is identified that is likely to have a direct effect on Indian Tribes, the AHCCCS Administration shall make every effort to provide, no less than 45 days prior to implementation, written notice to Indian Tribes soliciting feedback and recommendations regarding the issue. Such solicitations shall be directed to the Tribal Official, and/or their designee, explaining the background, describing the proposed action, inviting Indian Tribes to a formal consultation meeting, and requesting a response within a given timeframe.
- C. If a Tribal Official and/or their designee, requests additional information or provides feedback regarding an issue, the AHCCCS Administration shall communicate, verbally or through written correspondence, with the official and/or their designee, to provide a timely and substantive response.
- D. Face-to-face, telephonic or web-based consultation sessions may be scheduled. Such sessions may be scheduled as a single statewide meeting, or in conjunction with other statewide meetings.
- E. The AHCCCS Administration will provide an opportunity for submission of written comments during any period of ongoing consultation. Written comments may be submitted electronically or by mail in a format most conducive for the Tribe, Indian Health Service (IHS), Indian Tribe, Tribal Organization, Urban Indian Organization, or other entity. In lieu of formal correspondence, Attachment B – Formal Recommendations may be submitted to AHCCCS.

- F. The AHCCCS Administration will also provide written notice and a solicitation for feedback to organizations such as the Advisory Council on Indian Health Care, the Inter Tribal Council of Arizona, the Indian Health Service Area Offices in Arizona, and urban Indian health programs in Arizona. Such communications do not substitute for direct communication with the individual Indian Tribes.
- G. AHCCCS will provide a written response to Indian Tribes regarding comments received and the outcome of the consultation process. AHCCCS may post relevant information on the AHCCCS website.

## II. Ongoing Consultation

- A. At least annually, AHCCCS will meet with Indian Tribes to review existing AHCCCS policies, regulations, anticipated budget changes, and their impact on Indian Tribes as well as provide opportunities for Indian Tribes to establish priorities for the year.
- B. A Tribal Official and/or their designee may formally request tribal consultation on a topic. In lieu of formal correspondence, Attachment C – Formal Request for Tribal Consultation may be submitted to AHCCCS.
- C. The AHCCCS Administration will continue to meet regularly with Indian Tribes. Such meetings may occur in person, telephonically or using web-based technology. To the extent issues of general application are discussed in such meetings, the Tribal Relations Liaison or other designated AHCCCS staff will provide follow-up, as appropriate.
- D. The AHCCCS Administration may request participation by other state agencies and/or the Centers for Medicare and Medicaid Services in the consultation process when appropriate.
- E. The AHCCCS Administration will participate in HHS regional consultations, and, as requested, in consultation meetings sponsored by HHS agencies, including the Centers for Medicare and Medicaid Services and the IHS, or Indian Tribes.

## **JOINT TRIBAL/STATE WORKGROUPS**

Joint Tribal/Federal Workgroups and Task Forces: The AHCCCS Administration may establish or participate in workgroups, task forces, or other groups or committees with Indian Tribes and others to address issues affecting Indian Tribes.

## **SOLICITATION OF ADVICE FROM INDIAN HEALTH PROGRAMS & URBAN INDIAN ORGANIZATIONS**

AHCCCS shall seek advice from designees of the IHS, Indian Tribes, Tribal Organizations, and Urban Indian Organizations on a regular, ongoing basis on the matters that are likely to have a direct effect on such entities. Scenarios that shall require solicitation of advice prior to submission include state plan amendments, waiver requests, and proposals for demonstration projects that are likely to have a direct effect on the aforementioned entities.

## **LIMITATIONS**

Interaction with the Advisory Council on Indian Health Care, other workgroups, task forces or committees will not take the place of Tribal consultation. This interaction is intended to enhance the consultation process by gathering individuals with extensive knowledge of particular policy,

practice, issues, or concerns to work collaboratively and offer recommendations for consideration by the AHCCCS Administration.

An official resolution and/or action approved by a quorum of the member tribes of the Inter Tribal Council of Arizona shall constitute a joint position presented by the Inter Tribal Council of Arizona. If a member tribe of the Inter Tribal Council of Arizona indicates in writing that the joint position of the Inter Tribal Council of Arizona is supported by such tribe, the documented support will be recognized as the position of the tribe.

## **SUMMARY**

The AHCCCS Administration views Tribal consultation as a dynamic process. Joint effort between the Indian Tribes, the AHCCCS Director, the Tribal Relations Liaison, and AHCCCS divisions will promote the objectives of the Tribal Consultation Policy. Together, they will further consistent implementation of the Policy and work to ensure that the Policy plays a meaningful role in addressing issues affecting Indian Tribes.

## **AUTHORITY**

The special relationship between the Federal Government and Indian Tribes is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

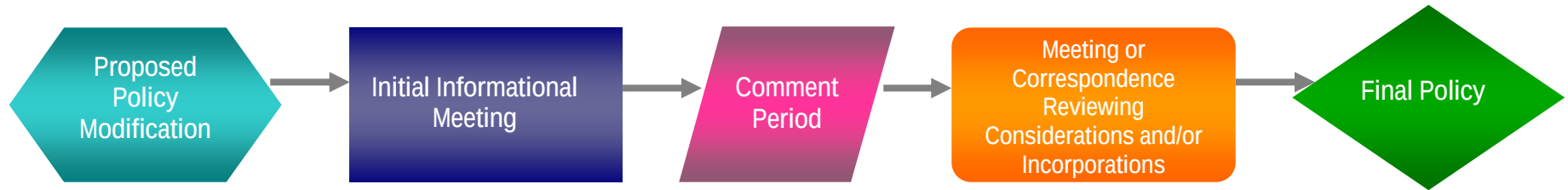
- The Snyder Act, P.L. 67-85
- Older Americans Act of 1965, P.L. 89-73 as amended
- Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended
- Native American Programs Act of 1974, P.L. 93-638, as amended
- Indian Health Care Improvement Act, P.L. 93-644, as amended
- Social Security Act, Titles XIX, XX, and XXI
- Unfunded Mandates Reform Act of 1995, P.L. 104-4
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193
- Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994
- Presidential Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004
- Executive Order 2006-14, Consultation and Cooperation with Arizona Tribes
- Children's Health Insurance Program Reauthorization Act of 2009, P.L. 111-3
- American Recovery and Reinvestment Act of 2009, P.L. 111-5

The Office of Intergovernmental Relations is responsible for this policy.

Revised Date: 06/08/2010

## Attachment A – Flow Chart

## Flow Chart – Direct Consultation by the AHCCCS Administration





## Attachment B – Formal Recommendations



## Tribal Consultation Form Formal Recommendations

Name of Submitter: \_\_\_\_\_

Title: \_\_\_\_\_

Program: \_\_\_\_\_

Tribe/Organization: \_\_\_\_\_

Description of Issue/Topic:

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Impact:

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Recommendation:

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment C –  
Formal Request for Tribal Consultation



# Tribal Consultation Form

## Formal Request for Tribal Consultation

Name of Submitter: \_\_\_\_\_

Title: \_\_\_\_\_

Program: \_\_\_\_\_

Tribe/Organization: \_\_\_\_\_

Description of Issue/Topic:

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Additional Information Pertaining to the Request:

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_