

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Nebraska1.4 Tribal Consultation Requirements

Section 1902(a)(73) of the Social Security Act (the Act) requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular, ongoing basis from designees of Indian health programs, whether operated by the Indian Health Service (IHS), Tribes or Tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), or Urban Indian Organizations under the Indian Health Care Improvement Act (IHCIA). Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program (CHIP). Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian organizations.

**Please describe the process the State uses to seek advice on a regular, ongoing basis from federally-recognized tribes, Indian Health Programs and Urban Indian Organizations on matters related to Medicaid and CHIP programs and for consultation on State Plan Amendments, waiver proposals, waiver extensions, waiver amendments, waiver renewals and proposals for demonstration projects prior to submission to CMS. Please include information about the frequency, inclusiveness and process for seeking such advice.**

The Division of Medicaid and Long-Term Care (MLTC) meets on a quarterly basis or as needed with the tribes (Omaha, Ponca, Santee Sioux and Winnebago) and with the CMS Native American contact to discuss relevant Medicaid/CHIP matters that impact the tribes and to invite discussion and comments for consideration.

Effective September 1, 2010, MLTC implemented a policy regarding seeking consultation from all federally recognized tribes, Indian Health Service and Urban Indian Organizations within the state regarding State Plan Amendments (SPA), proposals for demonstrations, and waivers, including proposed, extensions, amendments and renewals,

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which may have an impact on those entities. All proposed SPA's, waivers, and demonstrations will be sent to the Tribes for comment, not just those that we believe will directly impact the tribes. However, purely technical changes that have no impact on the substance of the topic (such as pagination, renumbering of lists, etc.) will not be submitted to the Tribes.

Proposed SPA's, waivers, and demonstrations are routed to the tribes for comment/input prior to submitting to CMS. The Division of Medicaid and Long-Term Care consults with the tribes by notifying designated tribal entities electronically via email with a description of the proposed change(s). The tribal liaison, which is a position designated by the Division of Medicaid and Long-Term Care, is responsible for maintaining a complete list of tribal contacts and their respective email and mailing addresses. The tribal contact list is updated at the tribal consultation meetings and was last updated at the tribal consultation meeting held in November, 2010. The proposed SPA, waiver, or demonstration is submitted to Tribal Clinics, Health Centers, the IHS Hospital, and to the Nebraska Urban Indian Health Coalition for comment. The tribes have 30 days to respond or comment to the proposed SPA, waiver or demonstration from the date the required notice is submitted to the tribes. Following the 30 day period, if no comment is received from the tribes, the Division of Medicaid and Long-Term Care is authorized to submit the SPA, waiver or demonstration to CMS. The CMS Native American Contact is copied in this process by the MLTC to detail our efforts to secure comments/input from the Tribes.

If comments are, in fact, received from the tribes, the same is relayed to the Division Director for further consideration. In situations where comments are received from the tribes, the consultation process time-frame shall extend to a 60 day time period from the date the required notice was submitted to the tribes so that the Division of Medicaid and Long-Term Care can address such comments as set forth below. Following the 60 day period after comments are received from the tribes, the Division of Medicaid and Long-Term Care is authorized to submit the SPA, waiver or demonstration to CMS.

If one tribe has a question or concern about a SPA, waiver amendment, waiver extension, waiver renewal or demonstration proposal, that concern would be communicated and transmitted electronically via e-mail to all other tribes and tribal entities by the tribal liaison. Such communication will specify who raised the concern or comment, the specific nature of the concern or comment, and what the Department proposed to do in response to that concern or comment in an attempt to address or resolve the concern. A management decision is then made as to whether additional action (telephone conferences, meetings, research, etc.) would be appropriate under the circumstances prior to submitting the SPA, waiver or demonstration to CMS.

Comments from the Tribes, or the lack of comments/response, are reported to the CMS Native American Contact, as well as our response/resolution to those comments.

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The consultation process established by the Department is based in part on face to face visits and discussions with various tribal entities and the Nebraska Department of Health and Human Services. At the November 29, 2010 meeting, discussions were initiated relating to the proposed SPA consultation process. Tribal Liaison shared the written policy of the Department as it existed at that time regarding the proposed consultation process. Comments from the tribes regarding the process and how it might impact the tribes were noted and later expressed to state Medicaid management. At the November meeting, it was proposed by the Department that the tribes be given notice regarding all proposed SPA's and waivers, not just those that the Department thought might have some impact on the tribes. Some members expressed the Department should indicate to the tribes which SPA's and waivers had a direct impact on the tribes in its opinion. The tribes also expressed that it would be helpful to have a process in place to share comments and Department responses to those comments during the consultation process. These suggestions were discussed with Medicaid administrators and adopted by the Department. Current policy is that if one tribe has a question or concern about a SPA or waiver, that concern will be made known to all the tribal entities by the Department, as well as making it known how the Department attempted to resolve the concern. In order to facilitate the consultation process, the Department will, in advance of the consultation meeting, provide the tribes with a formal agenda describing the SPA's and waivers that might have relevance to the tribes, as well as other information that will be addressed by the Department. The Department will take minutes of the meeting, which will be available on request, and maintain a record of the same. The Department will ensure that a current roster of participants is kept and maintained, indicating participant's names, addresses, telephone numbers, and with which group they are associated.

**Please describe the consultation process that occurred specifically for the development and submission of this State Plan Amendment, when it occurred and who was involved.**

Initial Amendment

In January of 2010, the State received guidance from CMS, SMDL# 10-001, that set forth the general requirements expected of States to alert tribal entities to proposed State Plan Amendments, waivers, and demonstrations. On February 18, 2010, a Nebraska State/Tribal Consultation Meeting was held. Attending were representatives from the various Tribes in Nebraska, Indian health providers, the Native American Contact from CMS, the Nebraska Medicaid tribal liaison, and the Nebraska Medicaid Director. The tribal consultation issue was discussed in general terms at the meeting and the Tribes expressed a desire to become involved in the consultation process.

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Following this, a written process was developed by Nebraska Medicaid outlining the process for the State to follow to secure consultation with the Tribes prior to the State submitting a SPA, waiver, or demonstration. The proposed process was reviewed and approved by Nebraska Medicaid administration. In June, 2010, the protocol for consultation was shared with Medicaid Division staff and sent to the tribal entities.

In October 2010, the State received additional guidance from CMS regarding the consultation process required with tribal entities prior to submitting a SPA, waiver, or demonstration to CMS. The guidance suggested that states should submit to the Tribes a comprehensible summary of the effect of the proposed SPA, waiver, or demonstration rather than merely submitting the SPA, waiver, or demonstration documents. Nebraska Medicaid revised the protocol for submitting a SPA, waiver, or demonstration and securing tribal consultation and communicated to Medicaid Division staff. On November 2, 2010, the State notified all tribal entities its intent to submit a SPA regarding the tribal consultation process. The letter outlined a summary of the consultation process set forth in the revised protocol.

The tribal consultation issue was discussed in detail at a November 29, 2010 Nebraska State/Tribal Consultation Meeting. Attending were representatives from the various Tribes in Nebraska, Indian health providers, the Native American Contact from CMS, and the Nebraska Medicaid tribal liaison. The tribal consultation issue was discussed in detail at the meeting.

#### Prior Amendment

A communication was sent to all tribal entities June 2, 2011, advising them of the technical changes and it was also discussed at a meeting with them July 12, 2011.

#### Current Amendment

A communication was sent to all tribal entities September 7, 2011 advising them that the Department intended to submit a SPA to change the current consultation process, allowing the tribes 30 days to respond to proposed SPA's, waivers or demonstrations and establishing a 60 day time-period for the consultation process if comments were received from the tribes.

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