



# Best Practices in State-Tribal Consultations

FINDINGS FROM WASHINGTON



## **Best Practices in State-Tribal Consultations: Findings from Washington**

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Submitted to:

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## Introduction

The Centers for Medicare & Medicaid Services (CMS) conducted a series of descriptive case studies examining how certain states engage in consultation with tribes and obtain the advice and input from programs operated by the Indian Health Service, tribes or tribal organizations under the Indian Self-Determination and Education Assistance Act (Pub.L. 93-638), or urban Indian health organizations under Title V of the Indian Health Care Improvement Act. Specifically, these case studies examined tribal consultation State Plan Amendments (SPAs) established by each state as required by Section 5006 of the American Recovery and Reinvestment Act of 2009 (ARRA). The project seeks to highlight best practices and lessons learned as perceived by both state and tribal participants, stemming from both successful and unsuccessful consultation efforts on Medicaid and Children's Health Insurance Program (CHIP) policies and mandates. Such strategies may provide the foundation for similar, successful consultation plans in other states.

Guided discussions centered on the consultation as required by ARRA. They did not focus on issues or consultation policies regarding 1115 Medicaid waiver regulations or state-based insurance marketplaces. CMS met with seven state and tribal representatives in the state of Washington, including representatives from the Washington Health Care Authority (HCA), the Department of Social and Health Services (DSHS), the regional Centers for Medicare & Medicaid Services (CMS) office, and the vice chairpersons from 2 of the 29 tribes located within the state. Input from the Indian Policy Advisory Committee (IPAC) and the American Indian Health Commission (AIHC), two organizations specifically listed in the state's tribal consultation plan as included participants, were also represented by these participants. IPAC was created by DSHS to guide implementation of state policy regarding and interaction with tribes. AIHC is a tribally run nonprofit that provides a collective forum of tribal viewpoints to address tribal-state health issues.

Analysis of data from these discussions revealed a consultation process based on a collaborative partnership and mutual respect between tribes and the state. This partnership receives support from high-level tribal leaders and state offices, including the state governor. However, Washington still struggles with issues of staff turnover and consultation requirements that negatively impact consultation effectiveness. Through the improved use of technology, demonstrated respect for tribal culture and tradition, and continued use of open and honest communication, Washington serves as a model of effective state-tribal consultation policy.

## Consultation in the State of Washington

Washington had already established a consultation process prior to the federal mandates established by Section 5006 of ARRA and Section 1115 of the Social Security Act (SSA). The Centennial Accord, established in Washington in 1989, recognizes and provides a framework for government-to-government relations and interaction between tribes and the state.

Washington created an additional State Plan Amendment (SPA) to satisfy the ARRA requirements requiring advice and input from health programs operated by the Indian Health

Service (IHS), tribes and tribal organizations, and urban Indian health organizations regarding issues having tribal implications related to Medicaid and the Children’s Health Insurance Program (CHIP). HCA and CMS participants described the most recent consultation plan, approved in 2011. The current consultation process has established a number of regular meetings, including:

- State staff-attended bimonthly AIHC meetings and ad hoc workgroups, and
- State staff-attended quarterly IPAC meetings and subcommittee meetings.

The state also regularly shares information via email with the tribal health officials and the Northwest Portland Area Indian Health Board, a nonprofit tribal advisory organization that serves federally recognized tribes throughout Washington, Oregon, and Idaho.

Within its SPA, Washington also established a process to notify tribes, Indian health programs, and urban Indian health organizations about new or amended SPAs, waivers, or demonstration projects. The state sends a notification letter, in a form of a “Dear Tribal Leader” letter to the aforementioned to tribes and IHS, tribally operated, and urban Indian programs (I/T/Us) at least 60 days prior to submitting the relevant change or policy. In expedited cases, 10-day notice is required. Tribal chairpersons receive a hard copy of the letter, while other parties (including tribal clinic directors, AIHC, the IHS Portland Area Office, and the state Office of Indian Policy) receive copies via email.

The letter describes the purpose of the item, such as a SPA or waiver, being submitted and any possible impact on tribes. Should no impact be identified, the state explains how it reached such a conclusion. A review document containing the text of the proposed SPA or waiver is provided, if available.

All hard copy and emailed letter recipients have 30 days (7 days in expedited cases) to respond with comments or to request in-person meetings or formal consultations. The state documents, reviews, and incorporates (if appropriate) any responses in a revised document. Any requested meetings are also scheduled.

## Findings from Guided Discussions

### Perceptions of the Washington Consultation Process

Both state and tribal participants agreed that consultations in Washington proved effective in bringing attention to various tribal health issues. One participant noted that issues affecting tribes often reflected similar, possibly unidentified health matters in the general state population as well:

*In many ways I think tribes are like the canary in the mine, because we do have an elevated responsibility to work with tribes, and so when something is not working well with us, it always begs me to ask, “How is it not working for the rest of society?” – DSHS participant*

Tribal respondents recalled a greater number of positive consultative experiences during discussions than state respondents, including consultations about premium cost exemptions for tribal members enrolled in the state's Basic Health program.

Several respondents, particularly state HCA participants, made reference to the value and frequency of informal consultations ("Little C," as several individuals referred to it) in maintaining successful formal consultations (or "Big C"), as well as the state-tribal relationship overall. Little C—which consist of individual workshops and presentations, emails, and phone calls—enables and maintains a more open, proactive channel of communication between stakeholders.

## Strengths of the Washington Consultation Process

### Collaboration and partnership

With some 29 different tribes located throughout Washington, participants acknowledged the need to approach the consultation process as partners. This allows both tribes and the state to engage as equal partners, each able to contribute individual and diverse tribal perspectives to the process, as well as addressing relevant interactions between the state and federal government. Participants noted that the failure to include tribes and I/T/Us as collaborative partners often resulted in ineffective consultation and poor tribal health outcomes. Policy or program decisions that fail to incorporate tribal input cannot effectively address tribal health issues. Such shortcomings then fail to impact or have a negative impact on tribal health outcomes.

*Probably not all states have that Centennial Accord, government to government... connection to begin with. I think that's really [what] this whole partnership [is]...it's a cultural partnership. – HCA participant*

### Involvement and support of tribal and state leadership

Both state and tribal respondents agreed that much of the success of the state-tribal consultation process is rooted in a succession of supportive government officials on the part of the state. These individuals established a precedent for respect of tribal sovereignty and fostered working government-to-government relationships with tribes. The continued involvement and support of state and tribal leaders during consultation increases the perceived significance of the consultation process:

*It's something that starts at the very...top end of leadership at both the tribal level and the executive of the state. – HCA participant*

*[The tribes] are our partners. We are in partnership with this, because we serve the citizens of Washington and so we need to go together. – DSHS participant*

### Mutual respect for all participants

Mutual respect includes acknowledgement of tribal culture and sovereignty as well as approaching these consultations as government-to-government interactions and understanding

the significance of that relationship. It includes open, transparent communication and an established history of respect for the input and integrity of stakeholders from all sides of the table. Both state and tribal participants noted that such trust and commitment contributes greatly to the success of these consultations throughout the state.

*I mean if it's government to government, that means respect to respect. – Tribal participant*

## Barriers to Effective Consultation

### Overburden brought by consultation efforts

Overburden refers to the strain that consultation requirements place on both tribal and state stakeholders. For example, respondents commented on the requirement to continually notify and consult with all tribes on a large number of issues that may lack relevance or significance to tribes. The effort to meet consultation policy requirements detracts from consultation effectiveness. As one participant described:

*It's like a formality bordering on ridiculous. – HCA participant*

### State and/or tribal staff turnover

The state of Washington recently appointed new Health Care Authority (HCA) administrative leaders and support staff, including the HCA tribal liaison. Similar personnel changes recently took place in the governor's administration and within tribal leadership and tribal councils. This turnover presents a particular challenge: respondents commented that incoming individuals—particularly those in high-level positions—often lack knowledge and understanding of the consultation process and the importance of the state-tribal relationship to consultative success:

*[W]hen change happens, like our having a new governor, it takes time again to...reeducate all the new people about the tribes of Washington. Although we've always been here, everything changes within the state all the time. – Tribal participant*

Based on participants interviewed, it requires considerable time and effort to provide new staff, both at the state and tribal level, with the education and training necessary to continue building and contributing to the consultation process.

### Uncategorized barriers

Some of the barriers described by state and tribal respondents did not fit into one particular category. Additional issues of note discussed by participants included:

- *The need to provide comprehensive information in a tangible format.* Due to historically negative experiences—where tribal leaders were provided only summaries or portions of text rather than full documents, leading to confusion and misinformation—more than a few tribal leaders prefer to receive formal, printed information during the consultation process, rather than receiving documentation electronically.

- *The need for discussion and information sharing prior to the consultation event.* Tribal participants discussed the need for tribes and tribal technical advisors to meet prior to the formal consultation event. This gives participants the chance to educate each other on unique tribal perspectives or positions, share information and prepare for the formal consultation encounter. Preparation prior to the consultation session allows more time to discuss pertinent tribal-specific issues and results in better and more consistent tribal presentations during the formal consultation event.

## Lessons Learned: Strategies for Building the Consultation Process

### Strategy 1: Share information in an accurate, timely manner.

- Individuals, particularly state government actors, should communicate regularly (via email, phone, etc.) with state and tribal stakeholders.
- Accurately present information, including hard or objectionable material.
- Encourage open discourse as well as active listening during communication exchanges.

Both tribal and state participants emphasized the significance of consultation as a means of engaging in genuine discussion regarding issues affecting tribal health. It provides both sides with a forum from which to speak. It also requires active listening by all parties in order to understand differing positions, actions, and perspectives. It does not, as many participants noted, require that the state meet every tribal demand or that tribes accept every proposal made by the state:

*One of the big sticking points that the tribes really wanted us to be mindful of...is consultation, especially in the Northwest, has to be meaningful. – DSHS participant*

*You know I don't have to always tell you "yes" for us to have a good relationship, but I have to be honest with you, and I have to be open with you, and I can't mislead you. And then we have a good relationship. – DSHS participant*

Such communication requires a high degree of transparency in terms of information and activity. It also requires a willingness to openly discuss issues or proposals that some may find unpleasant or contentious without misleading or misrepresenting the facts.

### Strategy 2: Use technology to increase access to and participation in the consultation process.

- Use video- and tele-conferencing technology, particularly in remote areas.
- Use webinars to increase participation and share information with participants.

The geographic distribution of tribes across any state, especially in Washington, mandates the concentrated effort to address transportation difficulties that may prevent tribal access to and participation in the consultation process. Respondents specifically mentioned the use of webinar technology as a way to provide tribes with a more convenient means of attending

formal and informal consultation events. State participants reported increased tribal participation in consultations after making webinar technology available:

*We started doing webinars. I mean I'll be honest: we started doing webinars somewhat [out] of a self-preservation technique to be sure we got the information out, but they just took off. So we've had one each month so far this year and gone from a handful of people, [of] tribes represented, to more than half of them. – HCA participant*

For tribes that lack the onsite capacity to host such technology, DSHS provides access to individual videoconference centers throughout the state. Access to these centers has enabled tribal stakeholders to participate in consultations without straining limited time and financial resources.

### **Strategy 3: Demonstrate respect for tribal sovereignty, culture, and tradition.**

- Tailor communication to reflect the sovereign status of participating tribes.
- Acknowledge and engage in tribal customs or traditions during consultation events as appropriate.

State participants in these discussions regularly referred to instances where the state demonstrated (or attempted to demonstrate) respect for the culture and traditions of the tribes with whom they consult. For example, the state rescheduled several formal consultation events to accommodate tribal activities that were not initially factored into the state meeting calendar. The state makes an effort to tailor communication efforts to be appropriate for the intended tribal recipient (for example: sending more formal communication to tribal chairmen rather than, or in addition to, email outreach). One state respondent recalled a consultation event that began and ended with a tribally led invocation:

*The very first consultation I was ever participating in was going to be a difficult issue. It started with the tribes doing an invocation. The tribal leadership did an invocation and it just set this tone of collaboration and honesty and integrity that I have never seen in any kind of a nontribal engagement. – DSHS participant*

Such actions contribute to increased ownership of the consultation process by tribal stakeholders and can contribute to the continued development of the tribe-state relationship.

### **Additional recommended strategies**

- Encourage and engage in regular informal communication with consultation with tribes and I/T/Us. This includes phone call and email exchanges, workshops, and presentations.
- Include and involve state and tribal leadership during consultation events. Obtain the expressed support of leadership in the consultation process.
- Ensure regular training and education for new state and tribal personnel about consultation processes and relationships.

- Allow adequate time for information sharing and discussion in preparation for the consultation event.