

Administrative Policies and Procedures

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. 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 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 play a significant role in the AHCCCS Tribal Consultation Policy.

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 regarding high-level policy changes that significantly impact Indian Tribes. High-level policy changes that significantly impact Indian Tribes refer to actions that have substantial 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.

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 to care for American Indians in Arizona.

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 high-level policy that would have a significant impact on Indian Tribes.
- Allow for consultation with Indian Tribes in the development of new policy with substantial Tribal implications, including State Plan Amendments and Waiver proposals.
- Coordinate within the Agency to ensure consistent application of the Tribal Consultation Policy.

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 in 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 purpose of the Policy, its expectations, and its anticipated outcomes.

CONSULTATION PROCESS

AHCCCS engages in consultation with Indian Tribes about policy issues at a variety of levels and through a variety of methods to facilitate Tribal consultation on policies that directly affect Indian Tribes.

Direct Consultation by the AHCCCS Administration

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 high-level policy change that is likely to have a significant impact on Indian Tribes.
- B. If a high-level policy is identified that is likely to have a significant impact on Indian Tribes, the AHCCCS Administration shall provide timely written notice to Indian Tribes soliciting feedback and recommendations regarding the issue. Such solicitations shall be directed to Tribal Official, and/or their designee, explaining the background, describing the proposed action, 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 may 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, and the Indian Health Service Area Offices in Arizona. Such communications do not substitute for direct communication with the Indian Tribes.

II. Ongoing Consultation

- A. The AHCCCS Administration will participate in HHS regional consultations, and, as requested, in consultation meetings sponsored by HHS agencies, the Indian Health Service or Indian Tribes.
- B. The AHCCCS Administration will provide an opportunity for submission of written comments during any period of ongoing consultation.
- 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.

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.

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.

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 dates 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

The Office of Intergovernmental Relations is responsible for this policy.

Effective Date: 08/12/2008