

DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE

Refer to: CAD

BEMIDJI AREA INDIAN HEALTH SERVICE CIRCULAR NO. 03-04

TRIBAL CONSULTATION AND PARTICIPATION POLICY

Sec.

1. Purpose
2. Background
3. Philosophy
4. Definitions
5. Objectives
6. Establishment of Advisory Organizations/Committees
7. Schedule for Consultation
8. IHS Budget
9. Critical Performance Element
10. Tribal Resolutions
11. Effective Date

1. PURPOSE. The Bemidji Area Indian Health Service (IHS), together with American Indian and Alaska Native (AI/AN) tribal governments and organizations in the Bemidji Area, hereby establishes this policy requiring consultation and participation by and between these governments on IHS program policies and activities.
2. BACKGROUND. A unique government-to-government relationship exists between AI/AN tribes and the Federal government. Treaties and laws, together with court decisions, have defined a relationship between the AI/AN people and the Federal Government that is unlike that between the Federal Government and any other group of Americans. The implementation of this policy is in recognition of this special relationship.
3. PHILOSOPHY. This policy is based on the following two foundations
 - A. Political/Legal Foundations.
 - (1) The Indian Self-Determination and Education Assistance Act, Public Law (P.L.) 93-638, as amended, states:

Section 3(a): "Congress...recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of...Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities."

Section 3(b): "The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and Indian people through effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."

- (2) The Indian Health Care Improvement Act, P.L. 94-437, as amended, states:

Section 2(b): "A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services."

- (3) Memorandum to the Heads of Executive Departments and Agencies from President William J. Clinton, April 29, 1994, states:

(b)*Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.*

- (4) Indian Health Service Tribal Consultation and Participation Policy No. 97-07 signed by Dr. Michael Trujillo on 7/25/97 was developed in consultation with tribal leaders and representatives. Dr. Trujillo's cover memo to the policy, which is incorporated into the Bemidji Area Tribal Consultation and Participation Policy, states:

"Chief among the provisions of the policy is a requirement that management at all levels of the IHS establish formal processes of tribal consultation and participation".

- (5) Executive Order 13175 of November 6, 2000 - Consultation and Coordination with Indian Tribal Governments from President William J. Clinton reaffirms and strengthens the United States government-to-government relationships with Indian tribes by stating:

*Policymaking Criteria: In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

- (a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from

the unique legal relationship between the Federal Government and Indian tribal governments".

"Section 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications".

- B. Ethical Foundation. The ethical foundation of this policy is the special relationship between sovereign governments; the United States and AI/AN tribal governments. This relationship is based on the cession of lands by AI/AN tribes in return for the provision of services by the United States. The AI/AN people have an inalienable right to self-government. Self-government means government in which decisions are made by the people who are most directly affected by those decisions. The United States has a moral obligation to promote consultation and participation with AI/AN tribal governments.

4. DEFINITIONS.

- A. Consultation. Consultation is an enhanced form of communication that emphasizes trust and respect. It is a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is integral to a process of mutually satisfying deliberations to result in collaboration and joint decision-making.
- B. Participation. Participation is effective, mutually satisfactory, joint decision-making. In true participation, an individual is not required to endorse or accept unilateral decisions made by either party.

5. OBJECTIVES.

- A. To formalize the requirement for consultation and participation by representatives of Tribal Governments in IHS policy development and program activities.
- B. To establish a minimum set of requirements and expectations with respect to consultation and participation for the three levels of IHS management: Headquarters, Area Offices, and Service Units.
- C. To identify critical events at which tribal consultation and participation will be required for the three levels of HIS management: Headquarters, Area Offices, and Service Units.
- D. To promote the development of innovative methods of obtaining consultation on issues from Tribal Governments and involving representatives in Agency decision-making processes.

- E. To charge and hold responsible the principal managers within the IHS Area including the Executive Leadership Team: Area Director, Deputy Director/Chief Medical Officer, Executive Officer and Self-Determination Director, and the Service Unit Directors for the implementation of this policy.

6. ESTABLISHMENT OF TRIBAL ADVISORY ORGANIZATIONS/COMMITTEES.

The principal focus for consultation and participation activities of the IHS is with individual tribal governments. However, it is frequently necessary that the IHS have organizations/committees in place from which to solicit consensual tribal advice and recommendations, and to involve tribes and tribal organizations in decision-making and policy development.

In consultation with elected tribal governments and tribal organizations, the Bemidji Area IHS identifies and assists in the support of tribal health advisory organizations/committees and workgroups that are issue-specific.

- A. Bemidji Area Office. The Area Director, in consultation with tribal governments, must designate an organization/committee representative of all Indian Health Service Units, Tribal governments, and urban Indian health organizations (I/T/Us) served by the Area Office. The designated organization, Bemidji Area Tribal Advisory Board (TAB), provides advice and consultation to the Area Director and principal managers. Meetings between the designated I/T/Us and Area Office management shall occur at least four times each year. The Area Director shall provide funding for travel and per diem to enable representatives of tribal governments and to meet with the Area Director and the executive management staff in the Area on a quarterly basis. Committees of the Bemidji Area TAB include:
- (1) Resource Allocation Committee (RAC). The RAC membership consists of TAB Members and other tribal representatives. The RAC meets as needed to review allocation methodologies for new funding and make recommendations to the Area Director.
 - (2) Health Facilities Committee. The Health Facilities Committee approves the Area Facility Plan, reviews and makes recommendations on new policies and procedures and also national issues. An annual meeting is held with all tribes for consultation.
- B. Service Units. The Service Unit has an established process, which is utilized by the Service Unit Director (SUD) and management/clinical staff for routine sharing of information. The SUD and management/clinical meet with tribal government officials (e.g., chairperson, tribal council on a mutually agreed to schedule).

7. SCHEDULE FOR CONSULTATION. The Bemidji Area IHS Managers must establish and adhere to a formal schedule of meetings to consult with tribal governments, tribal organizations and urban Indian health organizations

concerning the planning, conduct, and administration of IHS activities. Trust between the Bemidji Area IHS and tribal governments, tribal organizations and urban Indian health organizations are an indispensable element in establishing a good consultative relationship. The Area Director and Managers must involve tribal representatives in meetings at every practicable opportunity.

The Area Director meets with individual tribal leaders, tribal organization leaders and urban Indian health organizations in their communities on a three-year cycle.

The Bemidji Area Director holds spring and Fall All I/T/U Meetings to provide information on national and Area policy and other issues that impact I/T/Us and to solicit I/T/U consultation on these issues.

The Area Director or representative attends the following meetings at least annually:

1. Annual Meeting of Great Lakes Inter-Tribal Council
2. Midwest Alliance of Sovereign Tribes (MAST)
3. Minnesota Chippewa Tribe/Tribal Executive Committee
4. Wisconsin Health Director's Association
5. Minnesota Health Director's Meetings
6. Michigan Health Director's Association
7. Other tribal delegation meetings or other tribal organization and urban meetings upon request

8. IHS BUDGET.

A. Budget Formulation. The Bemidji Area IHS solicits the active participation of I/T/Us in the formulation of Indian Health Service's budget request and performance plans for the Government Performance and Results Act (GPRA). The formulation of the Budget request and GPRA involves the three levels of IHS management and requires tribal consultation and participation at each level.

- (1) Service Unit. Each SUD is responsible for meeting with tribes on an annual basis to ensure the tribes' participation in the budget formulation process and in identifying budget priorities.
- (2) Area Office. An Area-wide budget formulation team shall be established and composed of tribal and urban representatives and appropriate Bemidji Area IHS staff. The Area team is responsible for identifying Area-wide health priorities and budget priorities, within the parameters and guidelines provided by the Office of Management and Budget. Each Area Team provides input at every major stage of the budget formulation process, including briefing the Area Board Representatives to the NIHB.
- (3) Headquarters. The Director, IHS, and a Headquarters Budget Formulation Team composed of senior staff, utilizes recommendations of the Area Budget Formulation Teams to propose the annual IHS budget for submission to the Assistant Secretary for Management and Budget. Prior to

submission of the proposed IHS budget, the Director consults with tribal representatives to review health priorities and budget priorities at each stage of the budget formulation process.

- B. Budget Execution. It is Bemidji Area IHS policy to involve I/T/U'S in decision-making concerning the allocation of new funding (i.e. funding that is not base funding to a tribe or congressionally earmarked for specific tribes) this is provided as a result of the appropriations process. This policy is described in IHS Circular No.92-9, "Budget Execution Policy (Allocation of Resources)."

The appropriate consultative organizations for this purpose are described in Section 6 of this Circular. The RAC provides review and recommendation through the TAB to the Area Director. Following this process, a consultation letter with description of the methodology proposed is sent to tribal leaders and representatives for a comment and review period.

- C. Budget Information Disclosure. The Bemidji Area IHS develops a process whereby the I/T/U's are provided the following IHS budget related information on an annual basis: appropriations, allocation, expenditures, and funding levels for programs, functions, services, and activities.

9. CRITICAL PERFORMANCE ELEMENT. A critical performance element requiring the implementation of this policy shall be made part of the annual performance standards of the Bemidji Area Director.
10. TRIBAL RESOLUTIONS. Resolutions submitted by tribal governments to the IHS shall be referred to the appropriate IHS program office. The receipt of tribal resolutions shall be formally acknowledged by the IHS to the tribal government within 5 days. A substantive response, if required, must be forwarded to the tribal government within sixty days.
11. EFFECTIVE DATE. This circular is effective on the date of signature by the Bemidji Area Director, IHS.


Kathleen R. Annette, MD
Area Director

Bemidji Area Indian Health Service

5/5/03

Date