

1 **CENTERS FOR MEDICARE & MEDICAID SERVICES**
2 **TRIBAL CONSULTATION POLICY**
3 **DRAFT**

4
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26 **1. INTRODUCTION**

27
28 The Centers for Medicare & Medicaid Services (CMS) and Indian Tribes share the goals
29 of eliminating health disparities of American Indians and Alaska Natives (AI/AN) and
30 ensuring that access to Medicare, Medicaid, and the State Children’s Health Insurance
31 Program (SCHIP) is maximized. To achieve these goals, and to the extent practicable
32 and permitted by law, it is essential that federally recognized Indian Tribes and CMS
33 engage in open, continuous, and meaningful consultation. Effective consultation leads to
34 information exchange, mutual understanding, and informed decision-making.

35
36 The commitment of the United States government to consult with Indian Tribes has been
37 affirmed in Presidential Memoranda in 1994 and 2004, in Executive Orders issued by the
38 President in 1998 and 2000, in directives from the White House Domestic Policy Council
39 Working Group on Indian Affairs, and in recommendations from the Department of
40 Health and Human Services (HHS) Working Group on Consultations with American
41 Indians and Alaska Natives.

42
43 The Department of Health and Human Services (HHS) adopted a Tribal Consultation
44 Policy on January 14, 2005. Under the HHS Consultation Policy, every operating unit of
45 HHS shares in the Department-wide responsibility to coordinate, communicate, and
46 consult with Indian Tribes on issues that affect these governments. All operating

1 Divisions, including CMS, are responsible for conducting Tribal consultation on policies
2 that have Tribal implications.

3
4 This CMS policy on consultation complies with the Presidential Domestic Policy Council
5 and HHS policies regarding consultation with Tribal Governments.

6 7 **2. BACKGROUND**

8
9 Since the formation of the Union, the United States has recognized Indian Tribes as
10 sovereign nations. A unique government-to-government relationship exists between
11 Indian Tribes and the Federal Government. This relationship is grounded in numerous
12 treaties, statutes, and executive orders as well as political, legal, moral, and ethical
13 principles. This relationship is not based upon race, but rather, is derived from the
14 government-to-government relationship. The Federal Government has enacted numerous
15 regulations that establish and define a trust relationship with Indian Tribes.

16
17 This special relationship is affirmed in statutes and various Presidential Executive Orders
18 including, but not limited to:

- 19
20
- 21 • The Snyder Act, P.L. 67-85
 - 22 • Older Americans Act of 1965, P.L. 89-73, as amended;
 - 23 • Indian Self-Determination and Education Assistance Act, P.L. 93-638, as
24 amended;
 - 25 • Native Americans Programs Act of 1974, P.L. 93-644, as amended;
 - 26 • Indian Health Care Improvement Act, P.L. 94-437, as amended,
 - 27 • Social Security Act, Titles IXX, XX, XXI:
 - 28 • Unfunded Mandates Reform Act of 1995, P.L. 104-4;
 - 29 • Personal Responsibility and Work Opportunity Reconciliation Act of 1996,
30 P.L.104-193;
 - 31 • Presidential Executive Memorandum to the Heads of Executive Departments
32 dated April 29, 1994;
 - 33 • Presidential Executive Order 13084, *Consultation and Coordination with*
34 *Indian Tribal Governments* May 14, 1998;
 - 35 • Presidential Executive Order 13175, *Consultation and Coordination with*
36 *Indian Tribal Governments*, November 6, 2000; and
 - 37 • Presidential Memorandum, Government-to-Government Relationship with
38 Tribal Governments, September 23, 2004.

39 **3. TRIBAL SOVEREIGNTY**

40
41 This policy does not impair any rights of Indian Tribes, including treaty rights, sovereign
42 immunities or jurisdiction. Additionally, this policy does not diminish any rights or
43 protections afforded to AI/AN persons or other Tribal entities under federal law.

44
45 The United States, in accordance with treaties, statutes, Executive Orders (EO), and
46 judicial decisions, has recognized the right of Indian Tribes to self-governance and self-

1 determination. The United States continues to work with Indian Tribes on a government-
2 to-government basis to address issues concerning Tribal self-government, Tribal trust
3 resources, Tribal treaties and other rights.

4
5 Increasingly, this special relationship has emphasized self-determination and meaningful
6 involvement for Indian Tribes in federal decision-making (consultation) where such
7 decisions affect Indian Tribes. The involvement of Indian Tribes in the development of
8 public health and human services policy allows for locally relevant and culturally
9 appropriate approaches to public issues.

10 11 **4. POLICY**

12
13 The guiding principle of this policy is to ensure that, pursuant to the special relationship
14 between the United States and Indian Tribes, and to the greatest extent practicable and
15 permitted by law, broad based input is sought by CMS prior to taking actions that affect
16 Indian Tribes. Such actions refer to policies that have Tribal implications and that have
17 substantial direct effects on one or more Indian Tribes, on the relationship between the
18 Federal Government and Indian Tribes, or on the distribution of power and
19 responsibilities between the Federal Government and Indian Tribes.

20
21 Nothing in this policy waives HHS's or CMS's deliberative process privilege. In
22 specified instances where Congress requires CMS to work with Tribes on the
23 development of recommendations that may require legislation, such reports,
24 recommendations or other products are developed independent of CMS position.

- 25
26 **A.** CMS's consultation process will ensure meaningful and timely input by
27 Tribal officials in the development of policies that have Tribal
28 implications.
- 29
30 **B.** To the extent practicable and permitted by law, CMS will consult with
31 Tribes on regulations promulgated by the agency that are not required by
32 statute if they impose substantial direct compliance costs on Indian
33 Tribe(s).
- 34
35 **i.** A separately identified portion of the preamble to the
36 regulation as it will be issued in the *Federal Register* (FR),
37 provides a Tribal summary impact statement, which
38 consists of a description of the extent of the prior
39 consultation with Tribal officials, a summary of the nature
40 of their concerns and the agency's position supporting the
41 need to issue the regulation, and a statement of the extent
42 to which the concerns of Tribal officials have been met;
43 and makes available to the Administrator any written
44 communications regarding the proposed regulations
45 submitted to CMS by Tribal officials.

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- ii. To the extent practicable and permitted by law, CMS shall not promulgate any regulation that has Tribal implications and that preempts Tribal law without consultation prior to the formal promulgation of the regulation.
 - iii. CMS will consult with Tribal officials early and throughout the process of developing such proposed regulation; and
 - a. In a separately identified portion of the preamble to the regulation as it is to be issued in the FR, provided a Tribal summary impact statement, which consists of a description of the extent of the prior consultation with Tribal officials, a summary of the nature of their concerns, and the CMS position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met; and
 - iv. Make available to the Administrator any written communications submitted to the agency by Tribal officials.

26 C. The special “Tribal-Federal” relationship is based on the government-to-
27 government relationship. However, other statutes and policies exist that
28 allow communication with urban Indian organizations.
29

30 Even though some of the organizations and groups are not Indian Tribes,
31 CMS will hold separate informal with these entities. If CMS wants to
32 include organizations that do not represent a specific federally recognized
33 Tribal government on advisory committees or workgroups then Federal
34 Advisory Committee Act (FACA) requirements will be followed.
35

36 5. CMS CORE VALUES

37

38 The Centers for Medicare & Medicaid Services is guided by a set of core values:¹ public
39 service, integrity, accountability, excellence, and respect. These core values embody
40 CMS’s commitment to its programs and pledge to quality services and responsiveness to
41 beneficiaries, health care professionals, and partners. The attainment of CMS’s core
42 values cannot be achieved without effective Tribal Consultation.
43
44

¹ Taken from Centers for Medicare and Medicaid Services website
<http://www.cms.hhs.gov/about/corevalues.pdf>

1 **6. OBJECTIVES**

2
3 In order to fully effectuate this Consultation Policy, CMS will:

- 4
5 **A)** Establish improved communication channels with Tribal officials and
6 other AI/AN organizations, as necessary, to increase knowledge and
7 understanding of CMS’s programs: Medicare, Medicaid, and the State
8 Children’s Health Insurance Program;
9
10 **B)** Create opportunities for Indian Tribes to raise issues with CMS and for
11 CMS to seek consultation with Indian Tribes and AI/AN organizations
12 when new issues arise;
13
14 **C)** Establish a minimum set of requirements and expectations with respect to
15 consultation and participation for the levels of CMS management;
16
17 **D)** Conduct Tribal consultation when CMS’s policies will directly impact
18 Indian Health Service (IHS) and Tribally operated health programs;
19
20 **E)** Require States to consult with Indian Tribes in the development of
21 waivers;
22
23 **F)** Coordinate with IHS on issues of mutual concern ;
24
25 **G)** Coordinate among CMS Regional Offices and Central Office to assure
26 consistent policy interpretations; and
27
28 **H)** Provide technical assistance to Indian Tribes as requested.

29
30
31 **7. ROLES**

32
33 Achievement of the goals and objectives of this Consultation Policy requires a clear
34 definition of roles of the entities involved.

- 35
36 **A. Indian Tribe(s):** The government-to-government relationship between the
37 United States and Indian Tribes dictates that the principal focus of CMS
38 consultation is with individual Indian Tribes.
39
40 **B. Tribal Organizations.** Pursuant to the Indian Self-Determination and
41 Education Assistance Act, Pub.L. 93-638, as amended, Indian Tribes have
42 the authority to delegate their right to carry out programs of the Indian
43 Health Service to a “Tribal organization.” To the extent this has occurred,
44 CMS will provide such Tribal organizations an opportunity to fully
45 participate in Tribal consultation under this policy. Such participation will

1 not substitute for direct consultation with Indian Tribes, but shall occur in
2 addition to communication with Indian Tribes.

3
4 **C) Other Indian Organization(s).** It is frequently necessary that the CMS
5 communicate with Indian organization(s) and/or committees to solicit
6 consensual Tribal advice and recommendations. Although, the special
7 “Tribal-Federal” relationship is based on the government-to-government
8 relationship with Indian Tribe(s), other statutes and policies exist that
9 allow for consultation with Indian organization(s). These organizations by
10 the nature of their business serve and represent Indian Tribe(s) issues and
11 concerns that might be affected if these organizations were excluded from
12 the consultation process.

13
14 **D. IHS.** In both its capacity as a funding agency and as a direct provider of
15 health services, many of which are covered by Medicare and/or Medicaid,
16 IHS has a unique historical understanding and role that requires close
17 coordination with CMS. This is achieved through many HHS processes
18 and through the IHS/CMS Joint Steering Committee.

19
20 **E. CMS.**

21 i. **Central Office.** The CMS Central Office has oversight
22 responsibility for the Regional Office consultations, and
23 will as necessary identify issues on which the RO’s will
24 consult and otherwise help Regional Offices to carryout
25 their consultative responsibilities. The Central Office will
26 also address issues arising out of the consultation process
27 that require a new policy or clarification of a policy or the
28 establishment of a new policy as a result of statutory
29 changes. The Central Office will seek advice from the
30 Tribal Technical Advisory Group (TTAG) on the
31 consultative approach to be used and will use the TTAG in
32 policy deliberations to the extent practicable and permitted
33 by law.

34
35 ii. **Regional Offices.** The Regional Offices will have
36 primary responsibility for carrying out Tribal consultations
37 on an ongoing basis. The Regional Administrator will
38 ensure that the agency’s consultation process is carried out
39 in accordance with the agency’s consultation policy for the
40 Indian Tribe(s) within that region. To this end, the
41 Regional Offices will engage in and facilitate open and
42 meaningful consultation with Indian Tribe(s) to the extent
43 practicable and permitted by law. These consultations will
44 lead to information exchange, mutual understanding, and
45 informed decision-making.

1
2 **F. Tribal Technical Advisory Group**². The CMS Tribal Technical
3 Advisory Group is comprised of representatives of Tribal Governments
4 and Washington, D.C. based national Indian organizations that have been
5 authorized by Tribal leaders. The TTAG will serve as an advisory body to
6 CMS, providing expertise on policies, guidelines, and programmatic
7 issues affecting the delivery of health care for AI/ANs served through
8 programs funded in whole or part by CMS. Interaction by CMS with the
9 TTAG does not substitute for Tribal consultation, but assists CMS to make
10 consultation effective.

11 12 **8. TRIBAL CONSULTATION PRINCIPLES**

13
14 Trust among CMS, IHS and Indian Tribe(s) is an indispensable element in establishing a
15 good consultative relationship. To establish and maintain trust, consultation must occur
16 on an ongoing basis. Both CMS and Tribe(s), directly and through the TTAG, must be
17 able to raise issues that need to be addressed. The degree and extent of consultation will
18 vary and will be guided by advice from the TTAG.

19
20 This policy does not provide specific guidelines. All levels of CMS management, in
21 collaboration with the TTAG, shall follow the following steps to determine the nature and
22 extent of consultation that should occur to ensure that the requirements of this policy are
23 satisfied.

24
25 **A.** Identify the issue that triggers the need for consultation, including the
26 complexity, implications on funding, time constraints, policy, and programs
27 that may affect AI/ANs or Indian health programs, ;

28
29 **B.** Identify affected/potentially affected Indian Tribe(s) or AI/AN groups,

30
31 **C.** Identify the consultation process after considering the issue and Indian
32 Tribe(s) affected/potentially affected.

33
34 Consultation occurs whenever the CMS Administrator and Tribal Official(s), and/or their
35 designees, meet or exchange written correspondence to discuss any issue(s) concerning
36 either party. Consultation with a single Indian Tribe will not substitute for consultation
37 with all Tribes on issues that may affect more than one Tribe.

38
39 All CMS staff who have a role in the development or implementation of policy affecting
40 AI/AN or Indian Tribes shall participate in training on this CMS Tribal Consultation
41 Policy, its expectations, and its outcomes.

42 43 44 **9. CONSULTATION PROCESS**

45

² For more information, please refer to the TTAG Charter attached to this document.

1 CMS engages in consultation with Tribes about policy issues at a variety of levels
2 through a variety of methods to facilitate Tribal consultation on policies that directly
3 affect American Indians and Alaska Natives and Tribes.

4
5 **A. Direct Consultation by CMS**

6
7 **i. New or Changing Policy or Program Implementation**

- 8
9 a. When new policy, budgetary, or
10 implementation issues are identified on
11 which Tribal views have not been
12 previously obtained, CMS will conduct
13 national Tribal consultation to solicit
14 official Tribal comments and
15 recommendations. Such consultations
16 will be initiated by a written
17 communication directed to Tribal leaders
18 and Indian health programs explaining the
19 background, describing the proposed
20 action or request for guidance, and
21 requesting a response.
22
23 b. Face-to-face consultation sessions may
24 also be scheduled. These may be
25 scheduled as a single national meeting,
26 through a series of specially convened
27 regional meetings, or in conjunction with
28 other national and regional meetings.

29
30
31 **ii. Ongoing Consultation.**

- 32
33 a. Annually, through national and regional
34 consultation processes, CMS will provide
35 opportunities for Indian Tribes to identify
36 budgetary, policy, and implementation
37 issues that the Tribes believe need to be
38 addressed. CMS will participate in all
39 HHS regional and national consultations,
40 and, as requested in consultation meetings
41 sponsored by other HHS agencies or
42 Indian Tribes.
43
44 b. CMS will provide an opportunity for
45 submission of written comments during
46 any period of ongoing consultation.

1
2 c. Through its regional offices, CMS also
3 meets regularly with Indian Tribes. To the
4 extent issues of general application are
5 discussed in such meetings, reports will be
6 provided to CMS Central Office for
7 follow-up, as appropriate.
8

9 **iii. Consultation with One or More Individual Indian**
10 **Tribes.** An Indian Tribe may meet one-on-one or
11 correspond with CMS to address, or provide consultation
12 to CMS regarding, issues specific to that Indian Tribe.
13 Such communications constitute consultation under this
14 policy, but may not substitute for broader consultation as
15 provided in this policy when the issue may affect other
16 Indian Tribes.
17

18 **iv. Follow-up to Consultation.**
19

- 20 a. CMS will respond to all comments
21 provided in face-to-face sessions and
22 through written comment;
23
24 b. CMS will produce and make available to
25 Indian Tribes a report on the outcome of
26 each consultation through the HHS
27 annual reporting process; and
28
29 c. CMS will post all materials developed in
30 follow-up to consultation on the CMS
31 website AI/AN section and/or the National
32 Indian Health Board (NIHB) website.
33

34 **B. States.** Certain programs of CMS, such as Medicaid and SCHIP, are
35 carried out in partnership with States as required by statute. CMS will
36 work with States to assure they consult with the Tribes within their
37 borders as appropriate.
38

- 39 i. Upon a state's request, CMS will assist States to develop
40 models for meaningful consultation with Indian Tribes
41 consistent with the CMS Tribal Consultation Policy.
42
43 ii. CMS will recommend that States include meaningful
44 Tribal consultation in their State Medicaid Plans. CMS
45 will provide States with technical assistance in developing
46 these plans.

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- iii. Through its Regional Offices CMS will assist States and Indian Tribes with establishing and/or maintaining regular communication regarding State policy development and implementation; and operational issues, including eligibility, scope of covered services, and providers, billing and reimbursement, adequacy of resources, effect of the program on improving health status, and other issues.
- iv. As appropriate, CMS will communicate the information acquires through CMS/Tribal direct consultations to States. CMS will work through State/Tribal committees, CMS Regional Offices, and other vehicles to facilitate State/Tribal collaboration in responding to the input received through consultation.
- v. CMS will invite, and include, State governmental and health and human services experts in the Annual Regional Tribal Consultation sessions whenever Indian Tribes indicate that State/Tribal dialogue would enhance or strengthen CMS programs.
- vi. CMS will, to the extent practicable and permitted by law, assure that Indian Tribes are given notice of any State Plan amendment or waiver request that will have a significant direct impact on AI/ANs or Indian Tribes.
- vii. When CMS Central Office or a Regional Office foresees the possibility of a conflict between Tribal and State laws and Federally protected interests within its area of regulatory responsibility, CMS shall consult, to the extent practicable and permitted by law, with appropriate Indian Tribes and/or States in an effort to resolve the conflict.
- viii. CMS Regional Administrators and designated staff will measure and report on their interaction with States to facilitate and provide Tribal consultation technical assistance to States and Indian Tribes. Their efforts will be included in the division reports in the HHS Intergovernmental Affairs Annual Tribal Consultation Report.

10. JOINT TRIBAL/FEDERAL WORKGROUPS AND TASK FORCES.

- 1 **A. Joint Tribal/Federal Workgroups and Task Forces.** CMS may
2 establish or participate in workgroups, task forces or other groups or
3 committees with Indian Tribes and others to address issues affecting
4 AI/ANs and Indian Tribes.
5
- 6 **B. Limitations.** Neither interaction with the TTAG, nor with other
7 workgroups, task forces or committees, take the place of Tribal
8 consultation. Instead, this interaction is intended to enhance the
9 consultation process by gathering individuals with extensive knowledge of
10 particular policy, practice, issue or concern to work collaboratively and
11 offer recommendations for consideration by CMS.
12

13 **11. CMS BUDGET FORMULATION**

- 14
- 15 **A. Annual Budget Consultation.** HHS conducts an annual, Department-
16 wide Tribal budget consultation session to give Indian Tribes the
17 opportunity to present their budget recommendations to the Department to
18 ensure Tribal priorities are addressed.
19

20 CMS will comply with section 11 of the HHS Tribal Consultation Policy
21 regarding Budget Formulation. CMS will work with:
22

- 23 i. Regional Offices to identify Tribal budget priorities at the
24 local level and communicate these to Central Office;
25
- 26 ii. The TTAG to identify national program budget priority
27 recommendations; and
28
- 29 iii. CMS Centers to pursue funding of priorities as identified
30 by Tribes and the TTAG.
31

- 32 **B. Timeframe.** In order to ensure Indian Tribes are able to provide
33 meaningful input for the CMS budget request, CMS will utilize the
34 following timeframe to coincide with the HHS schedule.
35

- 36 i. **January** – CMS Office of Operations Management
37 (OOM) will notify Regions and Central Office to submit
38 budget requests for Tribal activities.
39
- 40 ii. **February** – CMS will compile budget requests from its
41 Regions and Central Office.
42
- 43 iii. **March** – CMS will present budget request summary to
44 TTAG for review, comment and prioritization. TTAG
45 will have the opportunity to add additional requests based
46 on their Strategic Plan priorities.

- iv. **April** – The TTAG will submit final budget recommendations to CMS as to budget priorities.
- v. **May** - Tribal and the TTAG presentation of national priorities and recommendations to the national HHS Tribal performance budget formulation and consultation session,
- vi. **Annually** – CMS will provide Tribes and TTAG the budget related information on an annual basis through the HHS Annual Tribal Consultation Report.

12. CMS TRIBAL CONSULTATION PERFORMANCE EVALUATION

A. Evaluation of implementation and outcome.

CMS is responsible for evaluating its performance under this Tribal Consultation Policy. To effectively evaluate the results of the consultation process and the ability of CMS to incorporate Tribal recommendations, CMS will assess its performance on an annual basis based on the reporting requirements outlined in the HHS consultation Policy.

13. MEETING RECORDS AND ADDITIONAL REPORTING

A. Meeting Records. CMS is responsible for making and keeping records of its Tribal consultation activity. All such records shall be made readily available to Tribes through the Annual HHS consultation report.

B. Reports to Tribes. CMS will comply with HHS annual reporting requirements.

C. CMS Website. All documents developed to communicate decisions arrived at through Tribal consultation and the report to Tribes will be posted on the CMS and/or NIHB website.

14. CONFLICT RESOLUTION

The intent of this policy is to provide increased ability to solve problems. However, inherent in the government-to-government relationship, Indian Tribe(s) may elevate an issue of importance to a higher decision-making authority.

CMS will establish a clearly defined conflict resolution process in collaboration with Indian Tribe(s), under which Indian Tribe(s): 1) bring forward concerns which have a substantially direct effect; and 2) apply for waivers of statutory and regulatory requirements that are subject to waiver by CMS.

15. EFFECTIVE DATE.

1
2 This Policy is effective on the date of signature by the CMS Administrator.
3

4 **16. SUMMARY**

5
6 CMS views Tribal consultation as an evolving process. The joint effort between the
7 Central Office and Regional Offices will provide for implementation of this Tribal
8 Consultation Policy. Together they will ensure implementation of the Policy, make
9 recommendations for revisions to the Policy based upon periodic assessments in
10 collaboration with the TTAG, and will assure that issues surfaced by the Tribes are
11 addressed timely.
12

13 **17. DEFINITIONS**

14
15 **Agency** – Any authority of the United States that is an “agency” under 44 USC 3502(1)
16 other than those considered to be independent regulatory agencies, as defined in 44 USC
17 3502 (5).

18 **Communication** – The exchange of ideas, messages, or information, by speech, signals,
19 writing, or other means.

20 **Consultation** – Between CMS and Indian Tribes, “consultation” means government-to-
21 government communication between agencies of the United States and Indian Tribes
22 (and their designees). .

23 **Coordination and/or Collaboration** – Working and communicating together in a
24 meaningful government-to-government effort to create a positive outcome.

25 **Deliberative Process Privilege** – Is a privilege exempting the government from
26 disclosure of government agency materials containing opinions, recommendations, and
27 other communications that are part of the decision-making process within the agency.

28 **Executive Order** – An order issued by the Government’s executive on the basis of
29 authority specifically granted to the executive branch (as by the United States
30 Constitution or a Congressional Act).

31 **Federally Recognized Tribal governments** – Indian Tribes with whom the Federal
32 Government maintains an official government-to-government relationship; usually
33 established by a federal treaty, statute, executive order, court order, or a Federal
34 Administrative Action. The Bureau of Indian Affairs (BIA) maintains and regularly
35 publishes the list of federally recognized Indian Tribes.

36 **Indian Organization** – Any group, association, partnership, corporation, or legal entity
37 owned or controlled by Indians, or a majority whose members are Indians.

38 **Indian Tribe** – Any Indian Tribe, band, nation or other organized group or community
39 including any Alaska Native village or regional or village corporation as defined in or
40 established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43
41 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and
42 services provided by the United States to Indians because of their status as Indians. (25
43 U.S.C. Sec 450b(e)).

44 **Indian** – Indian means a person who is a member of an Indian Tribe. (25 U.S.C.
45 450b(d)). Throughout this policy, Indian is synonymous with American Indian/Alaska
46 Native.

1 **CMS/IHS Joint Steering Committee** - Committee comprised of IHS and CMS
2 leadership to address issues common to both federal agencies.

3 **Policies that have Tribal Implications** – Refers to regulations, legislation, and other
4 policy statements or actions that have substantial direct effects on one or more Indian
5 Tribes, on the relationship between the Federal Government and Indian Tribes, or on the
6 distribution of power and responsibilities between the Federal Government and Indian
7 Tribes.

8 **Self-Government** – Government in which the people who are most directly affected by
9 the decisions make decisions.

10 **Sovereignty** – The ultimate source of political power from which all specific political
11 powers are derived.

12 **Substantial Direct Compliance Costs** – Those costs incurred directly from
13 implementation of changes necessary to meet the requirements of a federal regulation.
14 Because of the large variation in Tribes, “substantial costs” is also variable by Indian
15 Tribe. Each Indian Tribe and the Secretary shall mutually determine the level of costs
16 that represent “substantial costs” in the context of the Indian Tribe’s resource base.

17 **To the Extent Practicable and Permitted by Law** – Refers to situations where the
18 opportunity for consultation is limited because of constraints of time, budget, legal
19 authority, etc.

20 **Treaty** – A legally binding and written agreement that affirms the government-to-
21 government relationship between two or more nations.

22 **Tribal Officials** – Elected or duly appointed officials of Indian Tribes or authorized
23 inter-Tribal organizations.

24 **Tribal Organization** – The recognized governing body of any Indian Tribe; any legally
25 established organization of American Indians and Alaska Natives which is controlled,
26 sanctioned, or chartered by such governing body or which is democratically elected by
27 the adult members of the community to be served by such organization and which
28 includes the maximum participation of Indian Tribe members in all phases of its activities
29 (25 U.S.C. 450b(1)).

30 **Tribal Technical Advisory Group** – A group composed of individuals who are elected
31 Tribal officials and/or Tribal employees acting on their behalf, appointed by federally
32 recognized Tribal governments to serve as an advisory body to CMS providing expertise
33 on policies, guidelines, and programmatic issues affecting the delivery of health care for
34 AI/ANs served by Titles XVIII, XIX, and XXI of the Social Security Act or any other
35 health care program funded (in whole or in part) by CMS.

36 **Tribal Resolution** – A formal expression of the opinion or will of an official Tribal
37 governing body which is which is adopted by vote of the Tribal governing body.

38 **Urban Indian Organization** – A program funded by the Indian Health Service under
39 Title V (Section 502 or 513) of the Indian Health Care Improvement Act.