

## **CMS - Consultation Strategy**

This Centers for Medicare & Medicaid Services (CMS) policy on consultation with AI/AN Governments responds to the 1998 Executive Order on *Government-to-Government Relations with Native American Tribal Governments*, directives from the White House Domestic Policy Council Working Group on Indian Affairs, and recommendations from the Departmental Working Group on Consultations with American Indians and Alaska Natives. The guiding principle of the policy is to ensure that, pursuant to the special relationship between the United States Government and the Tribal Governments and to the greatest extent practicable and permitted by law, broad based input is sought by CMS prior to taking actions that have the potential to affect federally recognized tribes.

CMS acknowledges and accepts the following definition of consultation as developed by the HHS Working Group.

"Consultation is an enhanced form of communication which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in an effective collaboration and informed decision making."

CMS's consultation process will address all policies, regulations, and statutes applicable to the Medicare, Medicaid, and State Children's Health Insurance programs, including but not limited to eligibility, coverage, reimbursement, certification, and quality standards issues. With respect to the Medicaid program, CMS will require State participation in certain critical program change situations; such as, implementation of State-wide health care reform waivers and other waiver programs which clearly affect Indian people. CMS will strongly encourage the inclusion of Tribal groups in the development of other State health program proposals. All consultation processes will be mindful of the Government-to-Government relationship which exists between the Tribes and CMS.

### **A. Goals of the Consultation Strategy**

#### **CMS has two primary goals for its consultation process**

##### **1. Establishing and Maintaining Communications**

CMS shall establish improved communication channels with Tribal officials and other AI/AN organizations as appropriate to increase knowledge and understanding of the Medicare, Medicaid, and State Children's Health Insurance programs. CMS will, in turn, learn from Tribal governments and organizations of the needs and concerns of their members, providers and health care partners serving the AI/AN population. CMS shall consult with Tribes about communication methods.

A variety of methods and mechanisms will be necessary to effect communication with the more than 500 Federally recognized tribes; for example, use of the Internet and other information technology may be necessary and appropriate in many situations. In some cases, face-to-face

or other two-way communication will be needed, for example, the introduction of major legislative change in our programs.

2. Establishing and Maintaining Ongoing Consultation Mechanisms

As CMS enhances its communication channels with the Tribes, consultation will occur promptly and effectively and as an acknowledged part of daily business. CMS will share information with the Tribes and seek their input into proposed changes in the operation of the Medicare and Medicaid programs that have the potential to impact the lives of AI/AN individuals. Any proposed program changes will be communicated to the Tribes as early in the process as is practicable and appropriate.

Inherent in the ongoing consultation processes within CMS is the need for technical assistance to Tribes in realizing the full potential of the Medicare, Medicaid, and State Children's Health Insurance program benefits for AI/AN beneficiaries and for providers of health services. In addition, CMS will strive to resolve problems and issues in a focused manner which is, as always, mindful of the Government-to-Government relationship as well as legal, fiscal and political constraints.

**B. Responsibility for Consultation**

Responsibility for ensuring the consultation strategy is implemented, maintained, and continually improved and adapted to change, is vested in a joint partnership between CMS's headquarters and its regional offices. The Intergovernmental and Tribal Affairs Group (IGTAG), the Director of the Center for Medicaid and State Operations (CMSO), and the Regional Administrators with Seattle as the lead for all field activities, share joint responsibility for establishing effective communication mechanisms with Tribes and for ensuring effective ongoing consultation with Tribes.

**C. Implementation Steps**

1. Definition of Core Consultation Issues

The Regional Office and CMSO, including IGTAG, with consultation from Tribes will develop a core group of issues and activities on which consultation will be sought or the criteria that will be used to identify such issues. Waivers and legislation affecting Tribes are considered critical for consultation.

2. Training of Staff

CMS staff will participate in a training session on the Consultation Policy Statement and Agency expectations on a regular basis. The sessions may be by meeting, conference call, other broadcast or video format.

3. Ongoing Consultation with Tribes

Where feasible, it is assumed that there is great value to both the Tribes and federal staff to conduct regular face-to-face meetings with the Tribes and/or to seek opportunities to participate in meetings conducted for the Tribes by others. These face-to-face meetings will provide additional and more issue-specific opportunities for CMS staff to seek and receive

feedback from the Tribes on the consultation process, to provide technical assistance, and to assist in resolving problems and issues. Identification and resolution of issues will take place largely at the Regional level. Central Office personnel will be included in the consultation process and/or the Regional Office will provide information based on consultation in order to inform the policy making process.

#### **D. Additional Policies and Guidance in Consulting with Tribes**

1. A variety of mechanisms (e.g., Internet Web sites, meetings, telephones, newspapers, magazines and newsletters) will be explored and utilized to ensure timely and consistent exchange of information between the CMS Offices/Staff and the Tribes.
2. Consultation will occur directly between the CMS and the Tribes. While other interested organizations may also receive information and be asked for input, the primary mechanism for consultation by the CMS will be direct communication with the Tribes.
3. When consultation is sought from the Tribes, sufficient explanation of the issue and potential for impact on the Tribes will be provided by the CMS Office/Staff. All requests for input by the Tribes will state clearly what advice is requested and the time frame for response. As far as practicable, time frames will be of sufficient duration to allow communication by the Tribal Leaders with their constituency.
4. Tribes which provide advice or comments back to the CMS during a consultation process will be provided with timely feedback on the disposition of the issue for which consultation was requested. Time frames will be of sufficient duration to allow communication by the Tribal Leaders with their constituency.
5. CMS will ensure that states notify Tribes of proposed changes to state programs impacting Tribal members. CMS will also strongly encourage the inclusion of Tribal groups in the development of state proposals.
6. Although no government-to-government relationship exists between the CMS and urban Indian centers, significant numbers of AI/AN beneficiaries receive health services at these locations. Consultation with these centers is also encouraged whenever possible.

**Summary:** Consultation is viewed by the CMS as an evolving process. The joint partnership between the Center for Medicaid and State Operations (CMSO), Intergovernmental and Tribal Affairs Group (IGTAG), and the lead Regional Office will provide leadership for the implementation of the CMS Consultation Policy. Together the IGTAG and the lead Regional Office will ensure implementation of the Policy, make recommendations for revisions to the Policy based upon periodic assessments, and assure that issues surfaced by the Tribes are addressed promptly.