DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES

Policy and Plan for Native American Consultation

I. Purpose

The Administration for Children and Families (ACF), as an Operating Division within the Department of Health and Human Services, hereby establishes a Native American consultation policy/plan with American Indian Tribes, Alaska Native villages and Native American organizations, including Native Hawaiian and Native American Pacific Islanders. Where appropriate, ACF will also consult with other eligible Native American entities such as urban Indian centers; tribally controlled community colleges; Alaska Native Regional Corporations and others as defined in program guidance. This policy is a living document that encourages ongoing comments from Indian Country and the Native American community. It was developed based upon:

- Input of all programs within ACF, many of which already consult with Tribes and Native American communities/organizations.

- Input from Tribes and communities to ensure a consultation policy that reflects the goals of all partners involved.

As recommended in Secretary Shalala's memorandum of August 7, 1997 to the heads of Operating Divisions and Staff Divisions, the guidelines provided by the HHS Working Group on Consultation with American Indians and Alaska Natives serve as the framework for the ACF Policy and Plan.

II. Background

A unique, government-to-government relationship exists between the U.S. government and federally recognized Tribes and Alaska Native villages. This relationship is based on the Constitution, treaties, statutes, court decisions and Executive Branch policies, as well as moral and ethical considerations. Certain benefits provided to Indian people through legislatively enacted federal programs are based on this trust relationship. Other statutes and policies exist that provide the foundation for consultation with non-federally recognized Tribes and Native American organizations.

On April 29, 1994 President Clinton affirmed this government-to-government relationship and

called on all government agencies to consult with Tribes. As a result, the Domestic Policy Council's Working Group on Indian Affairs, chaired by Secretary Babbitt, requested a consultation policy and plan from each Department. A HHS Tribal Consultation Workgroup, representative of all OPDIVs/STAFFDIVS, was tasked with developing the Department policy and plan. On August 7, 1997, Secretary Shalala signed the HHS official policy, designating the Office of Intergovernmental Affairs (IGA) as point of contact for tribal consultation. She also requested that each OPDIV/STAFFDIV develop its own, individualized plan consistent with the Workgroup report.

III. Foundations

Support for Native American consultation is based primarily on the following considerations:

Political and legal:

- References to tribal consultation can be found in the Indian Self-Determination and Education Assistance Act, P.L. 93-638, Sections 3(a) and 3(b) as amended; the Indian Health Care Improvement Act, P.L. 94-437, Section 2(b), as amended; and the unfunded Mandates Reform Act of 1995, P.L. 104-4.

- In his April 29, 1994 Executive Memorandum to the heads of federal agencies, President Clinton reaffirmed the government-to-government relationship between Indian Tribes and the federal government, and directed each executive department and agency to consult with tribal governments prior to taking actions that affect them.

- References to the federal government's relationship with non-federally recognized Tribes and Native American organizations and communities can be found in a number of statutes. Examples include: 25 U.S.C. 1653, administered by the Indian Health Service (IHS); Sec. 802 [42 U.S.C. 2991b], administered by the Administration for Native Americans (ANA); and 42 U.S.C. 8621 et seq., administered by the ACF's Office of Community Services.

Ethical:

- The ethical foundation for this consultation policy is the government-to-government relationship, based on the Constitution, treaties and the cession of lands by American Indians and Alaska Natives in return for the provision of services by the federal government. The federal government's moral obligation to Indian people is derived from this trust relationship.

IV. Definition

Consultation, as defined in the HHS consultation policy, 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 effective collaboration and informed decision making."

V. ACF Policy and Plan

In her August 7, 1997 memorandum, Secretary Shalala accepted the HHS Working Group recommendation that "each OPDIV should prepare a draft policy/plan for a consultation process". This policy/plan is a dynamic document that continues to encourage feedback from Tribes and Native communities to ACF.

ACF's Native American consultation policy is divided into two areas -- those issues which are of broad, ACF-wide concern and will be addressed at the OPDIV level; and others which can be addressed by ACF Program offices. The following is an outline of these policies at both levels:

ACF-WIDE POLICY

Form an ACF Working Group on Native American Consultation. Although there are a number of ACF tribal working groups that convene for specific purposes, this would be a formal, ACF-wide workgroup consisting of representation from all ACF Central and Regional offices, including OLAB, OPRE, ORO and OGC. This Working Group on Native American Consultation meets on a regular basis to:

1) Facilitate the process of consultation by ACF programs and the reporting of these activities, as the core of ACF consultation policy.

2) Serve as the link between Programs; staff offices, Intra-Departmental Council on Native American Affairs (IDCNAA), Office of the Assistant Secretary, Office of Intergovernmental Affairs (IGA), and the HHS Working Group on Consultation with American Indians and Alaska Natives.

3) Identify issues for consultation through the establishment of a Native American Focus Group. Representatives would include individuals from those Tribes and organizations listed under Section I, "Purpose", of this document. The ACF Working Group will coordinate with the Focus Group to ensure early inclusion of our partners in this process.

4) Prepare an annual report for submission to IGA by December 31 of each year.

Designate Single Point of Contact (SPOC) Office. The IDCNAA will serve as the SPOC and will coordinate directly with the senior Native American Advisor in IGA and the ACF Executive Secretariat to properly route and disseminate information, memoranda, control correspondence and other materials to ACF Program offices. This SPOC will also have the responsibility of being the point from which Tribes and organizations are referred to the appropriate ACF program staff contact responsible for tribal issues.

The IDCNAA will also ensure that ACF-wide information is on the **ACF/ANA Tribal Resource Web Site** - www.acf.dhhs.gov/programs/ana/council.htm - and on other net sources and sites, as well as those created by individual Program offices. Agency-wide information dissemination, closely coordinated with OPA where appropriate, is also accomplished through other media mechanisms such as telephones, newspapers, magazines, and newsletters to reach those who are not connected through the Internet.

Conferences and meetings. ACF-OAS will coordinate with ACF Tribal Workgroup, the IDCNAA to ensure Native American participation in ACF-wide meetings, conferences, forums, and workshops. When possible, the Assistant Secretary or Principal Deputy Assistant Secretary will meet with Native American leaders at selected conferences/meetings to discuss cross-cutting issues of importance to AI/AN, and Native American communities. This does not replace the ongoing consultation conducted by individual ACF Program offices, but is intended to occur at meetings of national significance and high attendance of tribal leaders, e.g. National Congress of American Indians (NCAI). Conference reports outlining discussion and consultation will be provided to ACF offices and partners for follow-up and feedback.

Written policy-making. When issuing policies that either directly impact AI/ANs or have the potential to affect them, ACF program and staff offices must ensure adequate circulation of these policies to all interested parties.

Performance Standards and Measurement. A critical performance element requiring implementation of this policy shall be made part of the Annual Performance Plan of ACF Senior Management, in those offices where there are specific tribal activities.

PROGRAM OFFICE POLICY

Consultation Policy and Plan Development. Each individual Program is empowered to develop tribal consultation plans that are specifically tailored to their legislative authorities and programmatic concerns. While all ACF components have great latitude in the development of these policies and plans, the implementation of such policies and plans for each Program office should include accomplishing the following:

1) Involvement of partners in the decision-making process; share proposed written policies with Tribes and Native American organizations.

2) Designation of an official staff contact as responsible for the initial coordination and facilitation of the Program office interaction with Tribes and Native American organizations; also serves as the Program SPOC for interaction with offices and workgroups within HHS on AI/AN issues.

3) Assistance to states in their efforts to develop policies and plans to ensure full consultation with all Tribes and Native American organizations.

4) Designing mechanisms to ensure accountability among Program managers, CO and RO staff, and our various partners in carrying out the HHS and ACF Native American consultation

   policies. Incorporate these responsibilities into performance plans for Program management and staff.

5) Ensuring timely feedback to Tribes and Native American organizations on resolution of issues for which consultation has been requested.

6) Ensuring agency-wide information dissemination of the consultation policy and plan on the ACF/ANA Tribal Resource Web Site, as well as all other net sources and sites. Policy and plan information will also be available through a link from the ACF/ANA Tribal Resource Web Site to other net sources and sites. Also included will be other media mechanisms such as telephones, newspapers, magazines, and newsletters to reach those who are not connected with the Internet.

7) Preparation of an annual report by each Program Office on previous fiscal year consultation activities, to be submitted to IDCNAA by November 15 each year. IDCNAA will then compile the Program reports into a single ACF report to be submitted to IGA by December 31 of each year.

VI. Summary

ACF continues to move forward with Department-wide policy recommendations. Initially an ACF Working Group on Native American Consultation was formed with representation from each program office, as well as OLAB, OPRE and OPA. Specific ACF programs have already institutionalized their individual consultation sessions. These programs include the Temporary Assistance for Needy Families (TANF), Office of Child Support Enforcement, Child Care, Head Start and the Children's Bureaus and the Administration for Native Americans.

VII. Contact

Sharon McCully in the Administration for Native Americans' IDCNAA is the point of contact for the ACF Policy and Plan for Native American Consultation. She may be reached by telephone @ (202) 690-5780 telephone, by fax @ (202) 690-7441 or by E-mail smccully@acf.dhhs.gov.

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Administration on Aging

Plan on Consultation with American

Indian/Alaska Native Tribes and Indian Organizations

1. BACKGROUND

The United States (U.S.) government and the governments of American Indians and Alaska Natives (Al/AN or Indian people) have a unique government-to-government relationship based on the U.S. Constitution, treaties, Federal statutes, court decisions, and Executive Branch policies, as well as moral and ethical considerations. Increasingly this special relationship has emphasized self-determination for Indian people and meaningful involvement by Indian people in federal decision making (consultation) where such decisions affect Indian people, either because of their status as Indian people or otherwise.

Consistent with these principals, the President issued an Executive Memorandum on April 29, 1994, titled, "Government-to-Government Relationship with Native American Tribal Governments." This Memorandum states that in all activities relating to or affecting the government or treaty rights of Indian tribes, the executive branch shall:

a. operate within a government-to-government relationship with federally recognized Indian tribes;

b. consult, to the greatest extent practicable and permitted by law, with Indian tribal governments before taking actions that affect federally recognized Indian tribes;

c. assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken;

d. remove procedural impediments to working directly with tribal governments on activities that affect trust property or governmental rights of the tribes; and

e. work cooperatively with other agencies to accomplish these goals established by the President.

The President issued Executive Order 13084, dated May 14, 1998 and titled "Consultation and Coordination with Indian Tribal Governments", to establish regular and meaningful consultation and collaboration with Indian tribal governments:

a. in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities;

b. to reduce the imposition of unfunded mandates upon Indian tribal governments; and

c. to streamline the application process for and increase the availability of waivers to Indian tribal governments.

On August 7, 1997, the Secretary, Department of Health and Human Services (DHHS) issued a memorandum establishing the DHHS policy on consultation with American Indian/Alaska Native Tribes and Indian organizations. In addition to establishing DHHS wide policy, this memorandum directed each agency to develop their own individualized consultation plan consistent with DHHS policy.

Consultation examples include:

a. Provisions in the Older Americans Act (42 U.S. C. 3001) (OAA) that state:

"The Assistant Secretary shall consult and coordinate with State agencies, area agencies on aging, and recipients of grants under title VI in the development of federal goals, regulations, program instructions, and policies under this Act (Sec. 203A); and "the Assistant Secretary shall, in developing priorities, consistent with the requirements of this title, for awarding grants and entering into contracts under this title, consult annually with State agencies, area agencies on aging, recipients of grants under title VI, institutions of higher education, organizations representing beneficiaries of services under this Act, and other organizations, and individuals, with expertise in aging issues (Sec 402 d)."

b. Departmental regulations implementing the Indian Self-Determination Act, as amended, such as:

"It is the policy of the Secretary to facilitate the effort of Indian tribes and tribal organizations to plan, conduct, and administer programs, functions, services and activities, or portions therof, which the departments are authorized to administer for the benefit of Indians because of their status as Indians…"

c. Federal laws such as the Unfunded Mandates Reform Act of 1995, P.L. 104-4, which states:

"The purposes of this Act are.., to assist Federal agencies in their consideration of proposed regulations affecting. . . Tribal governments by. .. requiring that Federal agencies develop a process to enable.. .Tribal governments to provide input when Federal agencies are developing regulations, and requiring that Federal agencies prepare and consider the budgetary impact of Federal regulations containing Federal mandates upon. . . Tribal governments before adopting such regulations (Sec.2)."

2. PURPOSE

To establish an Administration on Aging (AoA) policy on consultation with Al/AN tribal governments; reaffirm the AoA's recognition of the sovereign status of federally recognized Indian tribes; to reaffirm adherence to the principles of government-to-government relations; to inform AoA personnel, other federal agencies, federally recognized Indian tribes, the aging network, and the public of AoA's working relationships with federally recognized Indian tribes.

3. DEFINITION

Consultation: 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 lead to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decision making.

4. AOA PARTICIPATION IN DEPARTMENT LEVEL ACTIONS

Consistent with the DHHS policy, AoA will provide a list of suggested participants to attend the annual meeting convened for the department. The purpose of this annual meeting is to provide and opportunity for Indian people to present their appropriation needs and priorities. This meeting will take place before AoA submits its budget requests to the department (probably in May of each year). Before each meeting, a summary of the previous year's departmental budget will be made available as a basis for discussion to all consultation participants.

The AoA will coordinate with other agencies in determining other issues or priorities for legislation or cross cutting initiatives require department level consultation.

The AoA designated single point of contact for program information and assistance will be the Director of American Indian, Alaskan Native, and Native Hawaiian Programs.

5. AOA LEVEL ACTIONS

a. With advice and consultation from tribal governments, AoA will identify critical events at which tribal consultation and participation will be required. This will be accomplished within 120 days of approval of this plan.

Although the principal focus for consultation and participation activities of AoA is with individual tribal governments, it is important that AoA solicit advise and involvement from title VI directors, national Indian aging organizations, and other Al/AN organizations interested in issues affecting Al/AN elders.

Focus group sessions will be held to solicit tribal comments and recommendations on legislation and budget matters affecting Al/AN elders. Issue sessions at roundtables, forums, and meetings will provide the opportunity for meaningful and effective participation by Al/AN elders and organizations in the planning of the AoA programs and services.

The Government Performance and Results Act (GPRA) is intended to help Federal programs succeed by identifying what constitutes successful program performance, what resources are needed and what challenges exist which affect achieving success. GPRA also requires accountability. Consultation with Al/AN will assures that the AoA programs achieve success.

b. The AoA will assist states in developing mechanisms for consultation with their Al/AN governments and Indian organizations before taking any actions that affect these governments and/or Indian people. States will receive assistance in developing state plan assurances for the delivery of services to older Indians.

State consultation with Al/AN should be done in a meaningful manner that is consistent with the definition of "consultation" as defined in this policy plan.

AoA will assure that State plans on consultation with Al/AN are successful by convening conferences with States, Al/AN tribes and organizations, and Area Agencies on Aging to develop a set of consultation protocols. The developed protocols will be used in the evaluation of States efforts to consult with Al/AN governments and organizations. Technical assistance and monitoring will be provided by AoA Regional Office staff.

Specific mechanisms that will be used to consult with tribal governments are: mailings, meetings, teleconferences, and roundtables.

c. The OAA authorizes three programs which are especially relevant to Al/AN elders:

1) Title VI promotes the delivery of supportive services, including nutrition services to American Indian, Alaskan Native, and Native Hawaiians;

2) Title Ill encourages and assist State and Area Agencies on Aging to concentrate resources in order to develop a greater capacity and foster the development and implementation of comprehensive and coordinated systems to serve older individuals; and

3) Title IV provides grant support to expand the nation's knowledge and understanding of

aging and the aging process and design and test innovative ideas in programs and services for older individuals.

With respect to these programs, the AoA will make available sufficient background information to Al/AN tribes on which consultation is requested. There will be a clear statement of the advice requested, and a specific time frame for response from consulted entities, a clear indication of who should receive the reply, and a clear statement of potential impact on Indian people.

d. The AoA upon completion of consultation will determine if there are any unresolved issues that would benefit from ongoing involvement of Al/AN elders in implementation and evaluation. The AoA will include a mechanism to address this need.

e. The AoA will consult with Al/AN leaders on the "reviewed" policy/plan to provide for effective and meaningful participation by Al/AN.

f. The single point of contact within AoA for tribal governments and other Indian people, at a level with access to all OPDIV/STAFFD IV, is the Director, Office for American Indian, Alaskan Native, and Native Hawaiian Programs. This office will assist the department's point of contact in the IGA in accessing department-wide information and will provide a single entry point to HHS-wide information.

g. The AoA's consultation plan will be posted on the AoA website homepage, appropriate American Indian websites, and published in the Federal Register soliciting comments. Tribes will be given access to AoA's consultation with sufficient time to respond before any final decisions are made.

h. The AoA will continue to inform tribal leaders on consultation policy by holding meetings, roundtables, teleconferences, forums, and placing information on the AoA website homepage and other appropriate websites. AoA will also do mass mailings on specific consultation issues.

SUMMARY:

The AoA considers consultation an evolving process. The AoA's central and regional offices have established relationships with Tribal governments and organizations with whom they communicate about the AoA programs. This joint partnership will ensure implementation of the consultation plan, make recommendations for revisions based upon periodic assessments and assure that Tribal issues are promptly addressed.

American Indian/Alaska Native Consultation Plan

Agency for Healthcare Research and Quality

I. BACKGROUND

On April 29, 1994 President Clinton issued an Executive Memorandum addressing government-to-government relations with American Indian and Alaska Native (AI/AN) tribal governments (see Tab A). As part of that Executive Memorandum, the President directed that each Department "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."

In response to this directive, the Domestic Policy Council's (DPC's) Working Group on Indian Affairs spent over a year attempting to develop a government-wide tribal consultation policy. The DPC decided that such a uniform policy by all federal agencies was not feasible or desirable and recommended that each Department develop its own individualized consultation policy. The DPC identified six points that should be addressed by each Department's consultation policy (see Tab B).

In response to these actions, the Department of Health and Human Services (DHHS) formed a Working Group on Tribal Consultation, co-chaired by Dr. Jo Ivey Boufford, Office of Public Health Science (OPHS), and Dr. Michael Trujillo, Director, Indian Health Service (IHS). The group developed a departmental consultation plan which calls for Agency-specific plans to be developed and joined together along with any other Department-wide consultation processes deemed necessary (see Tab C).

Recently, on November 6, 2000, the President issued a new Executive Order on "Consultation and Coordination with Indian Tribal Governments." This Executive Order, which revoked a previous Executive Order issued on the same subject of May 14, 1998 (E.O. # 13084), emphasizes the unique government-to-government relationship between the federal government and tribal governments and the right of tribes to self-government. Among other things, the Executive Order requires that each federal department have a process in place to ensure "meaningful and timely" input by tribal officials in the development of regulatory and other policies that have "substantial direct effects" on one or more tribes, the relationship between the Federal Government and tribes, or the distribution of power between the Federal Government and tribes.

II. DEPARTMENTAL CONSULTATION PLAN

The departmental plan lays out the legal foundations and overall policy decisions which are to guide Agencies (see Tab C). It also lays out the following definition of "consultation."

> "Consultation is an enhanced form of communication which emphasizes trust and respect. It is a 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 mutually satisfying collaboration and decision making."

The departmental plan also lays out the foundations for conducting consultation with both federally-recognized tribes and other, non-federally recognized AI/AN organizations (see pages 1-5, Tab C).

Among other key points, the departmental plan:

- recommends that the IHS, the Administration for Native Americans (ANA), and the Office of Minority Health (OMH) convene an annual consultation meeting of representatives from AI/AN organizations on behalf of the Department;

- establishes a single point-of-contact that can provide AI/AN leaders with easy access to Departmental program information and assistance;

- requires that each Agency develop an explicit proposal for a consultation process; and

- directs that Agencies use the Internet in communicating with AIs/ANs.

III. AHRQ CONSULTATION PLAN

Consistent with Departmental policy, it will be the policy of the Agency for Healthcare Research and Quality (AHRQ) to consult with AI/AN tribal governments and other AI/AN organizations, as appropriate, to the greatest practicable extent before taking actions that significantly and/or uniquely affect them and/or their communities. This consultation plan will be updated as tribal consultation needs become more clear or change.

In line with departmental guidance found in Tab C, AHRQ proposes to do the following.

- Information--AHRQ will send a package of information on the Agency, its mission, the type of work it undertakes, accomplishments, etc. to all AI/AN tribal governments and other organizations included in the universe of groups from which the departmental consultation group is drawn. AHRQ will request input from the tribes and other AI/AN organizations contacted on their consultation needs, desires, and expectations. More specifically, the Agency will seek input on what subjects or issues the Agency should seek consultation, how often, and with whom the Agency should work.

- Consultation--Pending input from tribal governments and other AI/AN organizations (see above), AHRQ will piggy-back on the annual departmental AI/AN consultation meeting to discuss pending proposals, programmatic activities, and/or budgetary changes significantly affecting AI/AN tribal governments, other AI/AN organizations, and their communities.

- If there is a need for consultation between annual meetings in order to gain input from tribal governments and other appropriate AI/AN organizations early in a decision making process, AHRQ will either: 1) pull together a meeting of the departmental advisory group of tribal leaders and leaders of other appropriate AI/AN organizations used during annual budget consultations; 2) consult with the members of that group through conference calls, mail, etc.; or 3) send out a mailing to all tribal governments and other appropriate AI/AN organizations from which AHRQ is seeking input.

- Feedback--On any matters for which AHRQ seeks consultation, it will provide feedback to, at minimum, those from whom the Agency sought input, if not all tribal governments and leaders of all other affected AI/AN organizations.

- Communication on the Internet–Consistent with departmental policy, AHRQ will post its consultation plan on its Home Page on the Internet--www.ahrq.gov–and seek to link it to other webpages frequented by AI/AN leaders, including those of the IHS, Association of American Indian Physicians, and Codetalk . The AHRQ website includes a large amount of information about the Agency and its work.

- Communication will not be limited to the Internet. A copy of the consultation plan and subsequent requests for consultation will also be sent to all tribal governments and other appropriate AI/AN organizations by regular mail.

Agency for Toxic Substances and Disease Registry

Consultation and Coordination Policy with Indian Tribal Governments

ATSDR's mission is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR is committed to assisting tribal governments meet the environmental health needs of their people. ATSDR continues to work to improve its communication and cooperation with tribes. This new policy is in response to the Presidential Executive Order 13084, Consultation and Coordination With Indian Tribal Governments, May 14, 1998, and affirms the current ATSDR Policy on Government-to-Government Relations with Native American Tribal Governments (61 FR 42255). The policy focuses on environmental health issues related to the release of hazardous substances into the environment.

Consultations between ATSDR and tribal governments will continue to ensure effective collaboration in identifying, addressing, and satisfying the needs of tribal communities affected by hazardous substances. Consultation enables ATSDR staff and tribal members to interactively participate, exchange recommendations, and provide input on environmental health activities.

As defined by ATSDR, the new policy supports

(1) a consultative process with tribal nations and their members to work together to address tribal environmental public health needs

(2) mutual trust, respect, and shared responsibilities between all participating parties

(3) open communication of information and opinions leading to mutual interaction and understanding.

ATSDR

- Respects and honors the sovereignty of the tribes, the responsibilities and rights to self-governance, and the differences between tribal nations and individuals.

- Consults with tribal governments to ensure community concerns and impacts are carefully considered before the Agency takes action or makes decisions affecting tribal communities.

- Maintains government-to-government relationships with tribal governments.

- Ensures ongoing communication with tribal governments, communities, and individual tribal members to define concerns about possible health impacts from exposure to hazardous substances.

TRIBAL CONSULTATION PLAN
Centers for Disease Control and Prevention

Introduction/Background

The Centers for Disease Control and Prevention (CDC) is committed to improving the public health of American Indian/Alaska Native (AI/AN) communities, and recognizes both the unique relationship it has with its AI/AN constituents and the cultural diversity of that constituency. To formally guide its efforts to develop and implement a tribal consultation policy, CDC has established an agency-wide Tribal Consultation Working Group (TCWG), four members of which are American Indians. In addition to the TCWG, CDC has established two full-time professional staff positions within the Office of the Director to help plan and coordinate CDC programs for AI/AN communities: 1) the American Indian/Alaska Native Health Program Specialist and 2) the Senior CDC/ATSDR Tribal Liaison. Located in Atlanta, GA and Albuquerque, NM, respectively, these CDC staff members report directly to the Associate Director for Minority Health and serve as CDC points-of-contact for programs/issues relevant to issues of AI/AN public health (Appendix 1).

CDC's commitment to AI/AN public health is further demonstrated by the active engagement of more of its professional staff in broader, more systematic efforts to partner with AI/AN communities across the United States. Prominent among these efforts is the placement of CDC staff in situations that enhance tribal access to CDC personnel and resources (e.g., at least 12 CDC professionals field-assigned to work exclusively on AI/AN issues in Indian Country). CDC is also expanding its partnerships with the Indian Health Service (IHS) through multiple intra-agency agreements, collaborative projects, and the establishment of a Senior IHS-CDC Policy Group. A priority for IHS-CDC partnerships is the expansion of the Tribal Epidemiology Centers Program. Overall, CDC and its partners (tribal governments/communities, state health departments, academic institutions, and other federal organizations) are addressing multiple health issues that affect AI/AN communities including, but not limited to, diabetes, injuries, tobacco use, cardiovascular health, cancer, maternal-child health, and infectious diseases such as HIV/AIDS, other sexually transmitted diseases, hepatitis, antibiotic-resistant bacterial infections, and hantavirus.

The CDC Mission

The mission of the Centers for Disease Control and Prevention is to promote health and quality of life by preventing and controlling disease, injury and disability. CDC accomplishes its mission by working with partners throughout the United States and the world to monitor health, detect and investigate health problems, conduct applied research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training. CDC's priorities are:

- Strengthen science for public health action
- Collaborate with health care partners for prevention
- Promote healthy living at all stages of life
- Work with partners to improve global health

CDC Policy on Tribal Consultation

The Centers for Disease Control and Prevention will honor the sovereignty of American Indian/Alaska Native Governments, respect the inherent rights of self governance and commit to work on a government-to-government basis. The CDC will confer with Tribal Governments, Alaska Native Organizations and AI/AN communities, before taking actions and/or making decisions that affect them. Consultation will include all AI/AN governments and organizations.

As does the Department of Health and Human Services, CDC considers consultation to be "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 effective collaboration and informed decision-making."

Development and Implementation of the CDC Tribal Consultation Policy

In addition to the establishment of the CDC TCWG and primary points-of-contact within the Office of the Director, CDC has implemented an annual budget planning and priorities meeting wherein tribal leaders and other representatives can consult with CDC leadership early in the FY budget development process. This yearly process will serve to facilitate the development of new budget initiatives and increase the consideration of AI/AN public health issues by CDC's various centers, institutes, and offices.

The next steps in CDC's tribal consultation development process will be to systematically solicit tribal input. This process will begin with broad-based notification of tribal leaders, AI/AN organizations, community members, and others that CDC is developing it's formal tribal consultation policy and is seeking AI/AN input regarding the implementation of that policy. Publications and organizations to target for notification include, but are not limited to, *Indian Country Today*; *Indian News*; the National Congress of American Indians; the National Indian Health Board; the newsletters of the American Indian Science and Engineering Society and American Indian Higher Education Consortium; *Tribal College Journal*; tribal health department newsletters; and AI/AN-focused websites. Thereafter, presentations/workshops will be developed wherein CDC senior staff have the opportunity to present Agency intentions and solicit input from elected tribal leaders regarding the content, steps, and program needs for CDC's Tribal Consultation Policy. These presentations/workshops would be held in conjunction with established national and regional AI/AN meetings as outlined below:

National Meetings:
National Congress of American Indians
National Indian Health Board
Association of American Indian Physicians
Indian Health Service Annual Research Conference
Indian Health Leadership Council of the IHS

Regional Health Board Meetings*
Aberdeen Area
Alaska Area
Albuquerque Area
Billings Area
Bemidji Area
California Area
Nashville Area
Navajo Area
Oklahoma Area
Phoenix Area
Portland Area
Tucson Area

*(*NOTE:* The CDC will invite **all Tribal leaders and representatives** within the each respective region regardless of whether or not they are affiliated with the Area Health Board or National Organization.)

The document attached as Appendix 2 (Request for Comments Worksheet) has been used to solicit tribal input about this development process. It was distributed at the DHHS National Tribal Consultation Forum in Washington, D.C. in July, 2000 and again at the National Indian Health Board conference in Billings, MT in August, 2000.

Upon completion of the national/regional meetings, a draft tribal consultation implementation document will be prepared and submitted to NIHB, NCAI, and tribal governments for review and final comment. Thereafter, the finalized document will be presented to NCAI for final approval by resolution. Once this resolution is enacted, the final document will be published in the Federal Register, posted on appropriate federal and AI/AN websites, and made widely available to AI/AN governments and organizations.

Framework for Tribal Consultation

In order to facilitate discussion and identify key areas of focus for the consultation process, the CDC TCWG has proposed a framework for tribal consultation. The intent of this framework is to establish a mutually acceptable process of communication between AI/AN people and CDC. The task is to establish protocol and to identify health problems and priorities for both entities so that the needs of AI/AN populations are incorporated into CDC plans and programs.

The following areas are not mutually exclusive or all inclusive with respect to consultation; they represent some of the issues that can assist us in guiding the process of implementing the CDC tribal consultation policy. Potential topical areas for tribal consultation include:

- **Infrastructure and Support**
- **Budget, Policy Initiatives and Resource Allocation**
- **Program Development and Implementation**
- **Research**
- **Surveillance**
- **Technical Assistance, Capacity Building and Training**
- **Communication**
- **Building Stronger Linkages**
- **Monitoring, Evaluation and Quality Assurance**

Conclusion

As recently reaffirmed by Executive Order No. 13175 (November 6, 2000), the United States government maintains a unique relationship with American Indians and Alaska Natives (AIs/ANs). Based upon Article I, Section 8 of the United States Constitution, in addition to numerous treaties, legislation, Supreme Court decisions, and Executive Orders, the U.S. government must relate to federally recognized tribes on a government-to-government basis. Inherent to this relationship is the federal trust responsibility, which, in part, includes an obligation to ensure that tribal members attain the highest health status possible. As a federal agency, CDC recognizes its special obligations to, and unique relationship with, the AI/AN segment of the U.S. population, and is committed to fulfilling its critical role in assuring that AI/AN communities are safer and healthier.

Appendix

1. Points of contact for AI/AN health within CDC
2. Request for Comments Worksheet

Appendix 1.

CDC Contacts for American Indian/Alaska Native Activities:

In Atlanta:

Position: American Indian/Alaska Native Health Program Specialist, Office of the Director, CDC, Atlanta, GA.

Purpose: To serve as an advisor to the Associate Director and be responsible for the planning, coordination, and evaluation of health prevention, educational programs, and research specifically for American Indian/Alaska Native (AI/AN) governments and organizations.

Contact: Dean Seneca, MPH*
Office of the Associate Director for Minority Health,
Office of the Director,
Centers for Disease Control and Prevention, MS-D39
1600 Clifton Rd., NE
Atlanta, GA 30333
(404) 639-7220 - TEL; (404) 639-7039 - FAX
E-Mail: zkg8@cdc.gov

**Note:* Mr. Seneca is in transition to the Agency for Toxic Substances and Disease Registry; we will announce the name of his replacement as soon as this information is available.

In Albuquerque:

Position: Senior CDC/ATSDR Tribal Liaison; Office of the Director, CDC; c/o IHS Epidemiology Program, Albuquerque, NM

Purpose: Strengthen inter-governmental response to tribal public health needs through consultation, networking, strategic planning, and improved coordination among federal and state governments, tribal communities, urban Indian health programs, and academic institutions.

Contact: Ralph T. Bryan, MD
Senior CDC/ATSDR Tribal Liaison
Office of the Associate Director for Minority Health,
Office of the Director,
Centers for Disease Control and Prevention
c/o IHS Epi Program
5300 Homestead Rd. NE
Albuquerque, NM 87110
(505) 248-4226 - TEL; (505) 248-4393 - FAX
E-Mail: rrb2@cdc.gov

Appendix 2. Request for Comments Worksheet

Please complete the following questions regarding the Centers for Disease Control and Prevention (CDC) **Tribal Consultation Policy**. Please **PRINT.** Thank you.

1. What do you consider most important regarding Tribal Consultation?

2. At this stage of development, does the consultation policy/approach clearly state the intent of the CDC in assisting American Indian/Alaska Native (AI/AN) governments and organizations in providing health promotion and disease prevention services?

3. What services and technical assistance would you like CDC to provide as part of the Consultation Policy?

4. Would you recommend/prefer to have a National or Local AI/AN organization assist CDC in the exchange of dialogue as a method for developing its Tribal Consultation Policy? (If so, please provide us with the name of an organization you would recommend.)

Please tell us who you represent. Check all that apply. Thank you

___ Elected Tribal Official
___ Tribal Member
___ Tribal Representative
___ Tribal Elder
___ Other - please tell us more _____

___ Community-based organization
___ Clinician
___ Professional association
___ Academic institution

Optional: Your Name_____ Phone:_____
Fax:_____

U.S. FOOD AND DRUG ADMINISTRATION
CONSULTATION POLICY - TRIBAL GOVERNMENTS

I. MISSION

The Food and Drug Administration (FDA) is a science-based regulatory and consumer protection agency. FDA accomplishes its mission by enforcing the Food, Drug and Cosmetic Act (the Act) and subsequent regulations.

FDA is responsible for ensuring that: (1) Foods are safe, wholesome and sanitary; human and veterinary drugs, biological products, and medical devices are safe and effective; cosmetics are safe; and electronic products that emit radiation are safe; (2) regulated products are honestly, accurately and informatively represented and meet the law and FDA regulations; (4) noncompliance is identified and corrected; and that (5) any unsafe or unlawful products are removed from the marketplace.

II. TRUST RESPONSIBILITIES

The special relationship between the Federal government and the tribes is grounded in many historical, political, legal, moral, and ethical considerations. Involvement by Indian people in Federal decision-making has increased where such decisions affect Indian people, either because of their status as Indian people or otherwise.

FDA will work to meet its responsibilities to tribes. These responsibilities are derived from the Federal trust doctrine (i.e., the trust obligation of the United States Government to the tribes, and Treaties, Executive Orders, Agreements, Statutes, and other legal obligations between the Federal government and the tribes.

III. GOVERNMENT TO GOVERNMENT RELATIONS

This policy[1] covers FDA's intent, to the extent permitted by law, to interact and work with federally recognized American Indian and Alaska Native governments (hereinafter referred to as "tribes[2].") This policy outlines FDA's intent to:

- support tribal self-governance and government-to-government relations between the United States and the tribes;

- recognize the importance of increasing understanding and addressing tribal concerns, past, present, and future; and

- recognize the importance of addressing tribal concerns before reaching decisions on matters that may significantly impact on protected tribal resources[3], tribal rights, and Indian lands[4].

    - FDA will work to build stable and enduring relationships with tribes by:

- communicating with tribes on government-to-government basis in recognition of their sovereignty,

- requiring meaningful communication with the tribes to address concerns between the tribes and the Agency at both the tribal leadership-to-Agency level and the tribal staff-to-regional and district staff levels, and

- designating appropriate senior points of contact within FDA to ensure that tribal inquiries are channeled to appropriate officials within FDA and receive timely responses.

V. CONSULTATION

Through this policy, consultation means, an enhanced form of communication that 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 important to a deliberative process that results in mutually satisfying collaboration and decision making. Examples of consultation may include:

- assessing the effect of proposed FDA actions that may have the potential to significantly affect protected tribal resources[3], tribal rights, and Indian lands before decisions are made;

- providing affected tribes an opportunity to participate in the decision-making process that will ensure these tribal interests are given due consideration in a manner consistent with tribal sovereign authority;

- taking appropriate steps to remove any procedural or regulatory impediments to FDA working directly and effectively with tribes on activities that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian lands;

- working with other federal and state agencies and tribally recognized entities, in consultation with tribes, to minimize duplicative requests for information from tribes.

- consulting consistent with government-to-government relations and in accordance with protocols mutually agreed to by a particular tribe and FDA, including necessary dispute resolution processes;

- providing timely notice to, and consulting with, tribal governments prior to taking any actions that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands; and

- consulting and negotiating in good faith throughout the decision-making process.

    - Through this consultation process FDA, tribes, and tribally recognized entities, may work to accomplish goals such as:

- to express of views on a particular policy, proposed action or activity, and elicit tribal reactions.

- to bring a tribal initiated health issues to the FDA's attention to obtain the Agency's perspective on the issue.

- to educate tribes about issues, activities, or programs resulting in a greater understanding of the FDA.

- to enhance local consultations and collaborations between the FDA field offices closest to tribal governments, when appropriate,

- to improve access of American Indians and Alaska Natives to FDA generated information on health risks and policy issues,

VI. NATURAL AND CULTURAL RESOURCES PROTECTION

FDA recognizes and respects the significance tribes ascribe to certain natural resources and properties of traditional or customary religious or cultural importance by:

- Taking actions consistent with the conservation of protected tribal resources and in recognition of Indian treaty rights to fish, hunt, and gather resources at both on-and off-reservation locations;

- enhancing, to the extent permitted by law, tribal capabilities to effectively protect and manage natural and cultural tribal trust resources whenever FDA acts to carry out a program that may have the potential to significantly affect those tribal trust resources;

- developing tribal specific protocols to protect, to the maximum extent practicable and consistent with the Freedom of information Act, Privacy Act, National Historic Preservation Act, and Archeological Resources Protection Act, tribal information regarding protected tribal resources that has been disclosed to, or collected by the FDA.

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1. This policy is not intended to, and does not, grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created or created under existing law. Nor shall this policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, or treaty rights, or other rights or any Indian tribes, or to preempt, modify, or limit the exercise of any such rights.
2. As defined by most Department of Interior/Bureau of Indian Affairs lists of tribal entitles published in Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act.
3. Protected Tribal Resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders or agreement, and that give rise to legally enforceable remedies.

4. Indian Lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

HEALTH CARE FINANCING ADMINISTRATION
POLICY STATEMENT FOR CONSULTATION WITH
AMERICAN INDIAN/ALASKA NATIVE (Al/AN) GOVERNMENTS

This Health Care Financing Administration (HCFA) policy on consultation with Al/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 HCFA prior to taking actions that have the potential to affect Federally recognized tribes.

HCFA 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."

HCFA' 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, HCFA 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. HCFA 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 HCFA.

A. Goals of the Consultation Strategy

HCFA has two primary goals for its consultation process:

1. Establishing and Maintaining Communications

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

consult with Tribes about communication methods.

A variety of methods and mechanisms will be necessary to effect communication with the *558* 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 HCFA enhances its communication channels with the Tribes, consultation will occur promptly and effectively and as an acknowledged part of daily business. HCFA 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 Al/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 HCFA 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 Al/AN beneficiaries and for providers of health services. In addition, HCFA 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 HCFA'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 Administrator in 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

HCFA 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 HCFA 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 HCFA Offices/Staff and the Tribes.

2. Consultation will occur directly between the HCFA and the Tribes. While other interested organizations may also receive information and be asked for input, the primary mechanism for consultation by the HCFA 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 HCFA 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 HCFA 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. HCFA will ensure that states notify Tribes of proposed changes to state programs impacting Tribal members. HCFA 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 HCFA and urban

Indian centers, significant numbers of Al/AN beneficiaries receive health services at these locations. Consultation with these centers is also encouraged whenever possible.

Summary: Consultation is viewed by the HCFA 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 HCFA 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.

HEALTH CARE FINANCING ADMINISTRATION
REGIONAL NATIVE AMERICAN COORDINATORS (NACs)

Region & State	NAC	Phone, E-mail Address & Fax Number
Region I - Boston States: CT, ME, MA, NH, RI, VT	**Irv Rich** DHHS/HCFA John F. Kennedy Federal Bldg., Room 2325 Boston, MA 02203-0003	**(617) 565-1247** Irich@hcfa.gov (617) 565-1083 (fax)
Region II - New York States: NJ, NY	**Carol Conciatori** **-or-** **Joel Truman** DHHS/HCFA 26 Federal Plaza, Room 3811 New York, NY 10278-0063	**(212) 264-3889** Cconciatori@hcfa.gov (212)264-3926 Jtruman@hcfa.gov (212)264-6814 (fax)
Region III - Philadelphia States: DE, DC, MD, PA, VA, WV	**Carol Messick** DHHS/HCFA 3535 Market Street, Rm. 3100 Philadelphia, PA 19104	**(215) 861-4244** Cmessick@hcfa.gov (215) 861-4240 (fax)
Region IV - Atlanta States: FL, GA, KY, MS, NC, SC, TN	**Carol Langford** DHHS/ HCFA Atlanta Federal Center Suite 4T20 61 Forsyth Street Atlanta, GA 30303-8909	**(404) 562-7412** Clangford@hcfa.gov (404) 562-7483 (fax)
Region V - Chicago States: IL, IN, MI, MN, OH, WS	**Pamela Carson** **-or-** **Ruth Hughes** DHHS/HCFA 233 N. Michigan Avenue Suite 600 Chicago, IL 60601	**(312) 353-0108** Pcarson@hcfa.gov **(312) 353-1670** Rhughes@hcfa.gov (312) 353-1787 (fax)
Region VI - Dallas States: AR, LA, NM, OK, TX	**Dorsey Sadongei** DHHS/HCFA 1301 Young Street, Rm. 833 Dallas, TX 75202	**(214) 767-3570** Dsadongei@hcfa.gov (214) 767-0270 (fax)
Region VII- Kansas City States: IA, KS, MO, NE	**Sharon Taggart** DHHS/HCFA Richard Bolling Federal Bldg. Room 227 601 East 12th Street Kansas City, MO 64106-2808	**(816) 426-3406, ext., 3320** Staggart@hcfa.gov (816) 426-3851 (fax)

Region & State	NAC	Phone, E-mail Address & Fax Number
Region VIII - Denver States: CO, MT, ND, SD, UT, WY	**Robert Lyon** DHHS/HCFA 1600 Broadway, Suite 700 Denver, CO 80202	**(303) 844-7114** Rlyon@hcfa.gov (303) 844-7054 (fax)
Region IX - San Francisco States: CA, HI, NV	**Jean Fleury** DHHS/HCFA 75 Hawthorne Street 5th Floor San Francisco, CA 94105-3903	**(415) 744-3509** Jfleury@hcfa.gov (415) 744-3517 (fax)
Region X - Seattle States: AK, ID, OR, WA	**Ernest Kimball** DHHS/HCFA 2201 Sixth Avenue, Rm. 911 Seattle, WA 98121-2500	**(206) 615-2428** Ekimball@hcfa.gov (206) 615-2363 (fax)

7/21/00

HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)
AMERICAN INDIAN/ALASKA NATIVE POLICY STATEMENT
AND
TRIBAL CONSULTATION PLAN

Policy Statement

The mission of the Health Resources and Services Administration (HRSA) is to improve the health of the Nation by assuring quality health care to underserved, vulnerable, and special need populations and by promoting appropriate health professions workforce capacity and practice, particularly in primary care and public health. Within the purview of this mission, it is the policy of HRSA to invite participation by elected Tribal officials and to solicit assistance from Tribal senior staff, tribal organizations, and other Indian people regarding the conceptualization, development, and implementation of culturally appropriate HRSA policies and programs that will directly or indirectly have an impact.

Applicable statutes and policies pertaining to this policy are attached.

For the purposes of this plan, consultation is defined as follows:

Consultation is an enhanced form of communication which emphasizes trust and respect. It is a 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 mutually satisfying collaboration and decisionmaking whenever possible.

HRSA's Action Plan for Tribal Consultation

HRSA recognizes its Federal responsibilities under applicable statutes and policies and will consult and cooperate with American Indian/Alaska Native (AI/AN) tribes and other Indian people. Consultation will occur directly between HRSA and the Tribes. While other interested organizations may also receive information and be asked for input, the primary mechanism for consultation will be direction communication with Tribes. HRSA will fulfill these consultation responsibilties in the following ways:

- take the lead in developing integrated and linguistically and culturally appropriate systems of care and an appropriate health workforce within the U.S. to help assure access to essential health care of high quality, independent of cultural and linguistic factors, geographic location, or economic circumstances through innovative and supportive collaborations with Tribal governments and partnerships with American Indian and Alaska Native organizations and with Indian people.

- ensure that cultural competence is an integral component of HRSA programs targeted to AIs/ANs by developing partnerships with local tribal governments and communities, universities that serve the AI/AN population, spiritual and non-traditional healers and national and community based organizations.

- strengthen and enhance Federal partnerships with States to ensure that the health needs of Indian people within States are being met.

- identify barriers and problems related to access to care for AIs/ANs and develop targeted strategies to eliminate these barriers, with the goal of increasing access to care.

- establish and maintain a more focused and expanded approach to communicating and consulting with AI/AN tribes and other Indian people on an on-going basis.

- develop an overall communication plan for utilizing the many communication pathways available to involve Indian people in HRSA decisionmaking, including developing innovative ways to provide information on programs to tribes and gain their feedback using telecommunications technology, telephone contact, tribal newsletters, indigenous networks, and points of contact within tribes.

- inform Indian tribes of upcoming program announcements for which they may qualify and invite them to participate in technical assistance workshops to increase their involvement in HRSA programs.

- consult to the greatest extent practicable and to the extent permitted by law, with tribal governments and other Indian people prior to taking actions that affect them, including in the development of any program, project, conference, or other activity directed to AI/AN communities.

- foster dialogue and seek advice on practical approaches to sustain participation in decisionmaking and outreach initiatives by Indian populations. Feedback to tribes on issues for which they provided input will be an important part of this process.

- work with other OPDIVs (especially the Indian Health Service (IHS)), Federal agencies, State, local, and tribal governments to develop and support new partnerships to provide improved health care services to Indian people.

- ensure that HRSA's Strategic Plan takes into consideration the health needs of AIs/ANs.

- develop outcome and other measures as a necessary component for increasing customer satisfaction with HRSA policies and programs.

- increase efforts to recruit AIs/ANs to participate in advisory committees, grant and peer review committees, and other internal review groups within HRSA to ensure that health issues affecting AIs/ANs are considered in the planning stages of program development. Tribal governments and organizations from across the country will be invited to submit lists of recognized experts from their communities to serve on these bodies. A target goal of 5% representation will be established for these efforts.

- seek advice from AI/AN health professions groups and individuals on optimum ways to increase the number of health professionals from these populations in the workforce.

- encourage health professions schools to improve linkages with local tribes and health care providers to develop partnerships to increase the number of AI/AN health care professionals in the workforce.

- develop a network of AI/AN contacts in consultation with Indian people, members of whom will be part of HRSA's constituency lists.

- utilize the Regional Offices and HRSA's field staff as a mechanism for contacting tribes in specific areas.

- provide a single point of contact for information and outreach on HRSA programs affecting AIs/ANs in the Office of Minority Health.

Instituting initial consultation with Tribal governments and organizations from all regions on the proposed plan will take place in collaboration with the Indian Health Service, the National Indian Health Board, and other Federal agencies, and through HRSA's Field Coordinators in the regions. Information about HRSA programs will be made available on the Internet and through other sources, along with a letter from the Administrator to tribal governments, indicating his support of the consultation initiative and inviting their involvement and input on HRSA policies and programs. This letter will also be shared with health centers receiving HRSA funding. Routine government-to-government communication processes will be developed to assure that AI/AN tribes have full opportunity to participate in HRSA-supported programs as they see fit, in the same way that interface with State governments is taking place.

It is expected that the plan will be a dynamic instrument which evolves and changes as it is implemented. HRSA's consultation plan will provide a communications pathway through which on-going consultation with AI/AN leaders will occur at each stage of the process.

Included in this plan will be identification of issues for which regular consultation is desirable and a mechanism for obtaining this consultation. Throughout this process, HRSA's Strategic Plan and the relevant laws and policy concerning AIs/ANs will be the guiding documents. HRSA will explore opportunities for improved coordination and collaboration with IHS; other Federal, Regional, State, and local agencies; Tribal Councils and health departments; and national organizations representing Indian peoples as the plan is implemented and refined.

<u>Central Point of Contact for HRSA on This Initiative:</u>

HRSA's Office of Minority Health (OMH) will be the central point of contact for this initiative for the Agency. OMH provides leadership Agencywide for programs and activities that address the special health needs of racial/ethnic minorities,

In order to develop a consultation plan which takes into account the comprehensive issues surrounding the health care needs of Indian people, OMH will act as the coordinating point for

developing this plan and work in collaboration with other offices and Bureaus to provide technical assistance and guidance in implementing its provisions.

In line with HRSA's goals and objectives related to supporting the development of comprehensive, culturally competent, family-centered, efficiently-managed community based networks of care, OMH will provide technical assistance to ensure that the health concerns of Indian people are integrated into the program development and implementation activities of the Agency within the context of overall minority health concerns. Efforts will be made to ensure that reporting requirements are consistent with other initiatives within HRSA and that evaluation of the consultation process is conducted.

OMH will increase liaison efforts with HRSA Bureaus and offices to help the Agency recruit AI/AN and other minority representatives for HRSA advisory bodies, such as ad hoc committees, peer review committees, grant review groups, and workgroups to ensure an improved process which takes into account the health concerns of Indian populations, as identified through the consultation process.

Overall Communications Strategy:

Since successful consultation hinges on effective communication and public participation strategies, an overall communication strategy will be developed by OMH, in collaboration with the Office of Communications and OIRM and its Internet Staff, to be considered by Bureaus/offices in exploring mechanisms for consulting with AIs/ANs. One of HRSA's goals and objectives is to ensure that information technology is cost-effective and its benefits are shared by all. With this goal in mind, HRSA will utilize appropriate communication technologies available to the Agency to provide information on HRSA programs and develop a mechanism for input from Indian peoples. These strategies will include mailing consultation requests directly from a master contact list maintained by Tribes in the Office of the Secretary, as well as using available Internet capabilities, such as HRSA's Homepage and the Homepages of Bureaus/offices, and linking with systems in other Agencies such as the IHS Codetalk System, the OMH/OS Native American Health Information Service, the OMH AAIP Home Page, and other Internet networks which are targeted to reaching tribes, tribal organizations, tribal colleges and universities, private Indian organizations, national Indian organizations, state and local governments, as well as other agencies. Other technological avenues which may lend themselves to facilitating consultation include satellite teleconferencing and telemedicine systems. Telephone teleconferencing may also be a useful tool.

Other communication mechanisms that will be explored for expanding outreach, disseminating information, and gaining input on issues include meetings at the national, regional, state, and local levels with Tribal government officials as well as national groups representing Indians. Agency clearinghouses, including the Minority Health Resource Center; tribal newsletters and health information at community, migrant, and rural health centers serving Indians; and school-based health programs may also be effective avenues for disseminating information on HRSA programs and gaining tribal input. Opportunities for consulting with tribal leaders early in the development of any program, project or conference about health care services will be a particular focus.

The Role of Field Staff

HRSA Field Coordinators, and other field staff dedicated to maternal and child health programs and primary care programs related to community, rural, and migrant health centers, the homeless, the national health service corps, and other programs for special populations coordinate programs throughout states and regions. They are working on the front lines with Indian people, therefore, their input is critical in designing effective consultation mechanisms. The field computer network could be used for tribes to contact the Regional offices through E-mail to be in more direct contact with field staff. In coordination with IHS field offices, Field Coordinators will also help bring together key players with a mutual interest in enhanced consultation on HRSA issues and programs including representatives from state and local governments, public health, academia, and the private sector to address specific issues of concern to tribes in their geographic areas.

Attached are the initial cross-cutting issues identified by HRSA on which consultation could be sought. Also attached is information on Bureau/specific issues related to existing HRSA programs which can provide a communications pathway for developing improved linkages with tribes during the consultation process.

INITIAL CROSS-CUTTING ISSUES IDENTIFIED ON WHICH CONSULTATION COULD BE SOUGHT:

Criteria for identifying areas of consultation should be based on data profiling of AI/AN health status and input from AIs/ANs. A review of current HRSA data collection strategies would be useful for exploring ways to better identify issues, develop a needs assessment process, and improved outcomes measurement, since many HRSA programs do not collect sufficient data on racial/ethnic minorities served.

Several initial cross-cutting areas have been identified for consideration and consultation with Tribal governments, Indian organizations, and Indian people during plan development and implementation. They include:

Cultural Competence

HRSA is committed to the principle that health services programs must be community-driven and culturally relevant in order to be effective. For this reason, cultural competence is a critical component which is being integrated throughout the Agency into systems of care tailored to AI/AN and other minority communities. Additional efforts to train HRSA staff in cultural competency principles related to health care delivery will be undertaken.

As noted by IHS in their publication on comprehensive health care programs for AI/AN groups, the traditional beliefs of Indian people regarding wellness, sickness, and treatment are very different from the medical model or public health approach used in training health care providers

today. Medical treatment provided to a person with this wellness belief system requires the consideration and integration of their beliefs with western medical practice. Because of the diverse tribal cultures within the AI/AN population, input is critical during program planning, design, and implementation. One important aspect of designing culturally competent programs for Indian people is taking into consideration the role of non-traditional Indian healers who are recognized and respected by tribes as important contributors to the health and wellness of Indian people and preservers of the culture and traditions of tribes. This is also consistent with the purposes stated in Executive Order 13021 on Tribal Colleges and Universities, one of which is to help to promote the preservation and the revitalization of AI/AN languages and cultural traditions.

Women's Health

One goal of the HRSA women's health agenda is to build the information capacity about women served by HRSA programs to determine unmet health needs. Tribal consultation would facilitate the development of this information. Use of the OWH National Women's Health Information Center to disseminate information about HRSA programs to AI/AN women and obtain feedback will be considered as one way to improve the interactive communication process needed to facilitate appropriate consultation. HRSA will explore other opportunities for enhanced consultation with AI/AN women on HRSA policies and programs affecting them.

Budget Formulation and Legislation

HRSA has no established consultation process for interacting with AIs/ANs prior to submitting the HRSA budget to the Secretary or commenting on legislative proposals affecting HRSA. HRSA participated in the Department's budget meetings with Tribal governments and organizations in 1999 and 2000. HRSA's first budget consultation meeting is in the planning stages for April 2001. Further mechanisms can be developed on this issue after input from tribes during the first round of these discussions.

With regard to receiving input from AIs/ANs on proposed legislation affecting HRSA, HRSA's Office of Planning, Evaluation, and Legislation will identify issues on which consultation is appropriate, as they arise, and use established communication pathways identified in the Consultation Plan to obtain that input.

Managed Care

One of HRSA's goals and objectives related to managed care is to focus on working with providers and managed care organizations through community-based partnerships to assure participation of HRSA providers to promote and facilitate access to, and utilization of, appropriate services and treatment follow-up for underserved, vulnerable, and special need populations in managed care plans. In line with these objectives, HRSA will identify any issues which impact on Indian populations and assure that they are considered as opportunities for consultation during program development. Since managed care may pose access problems to AI/AN communities, there is a need for a better understanding of whether managed care has affected Indian clients at community, migrant, and rural health centers, including centers which

serve Indians in urban settings, and whether managed care has affected maternal and child health and HIV/AIDS populations receiving care under the Ryan White Care Act. Consultation with leaders of organizations representing Indians served at these centers and with clients themselves can help HRSA to identify problems, if there are any, and address them.

Violence Prevention

HRSA has established the National Family and Intimate Violence Prevention Initiative to combat violence at the national level through HRSA programs. The Advisory Board established to set the parameters for the first national meeting on this initiative included AI/AN representation. The outcome of that meeting was a HRSA Action Plan to address violence prevention. The Advisory Board designing a two-part national satellite training series on combating domestic violence included Indian representation. The panels for both broadcasts included tribal representatives. As programs are developed Agencywide under this initiative, HRSA will continue to seek consultation with Tribal governments and organizations to assure that our programs effectively target Indian people.

Small and Disadvantaged Business Opportunities

Activities for increasing the involvement of AI/AN-owned businesses in HRSA's contract activities have been an on-going consideration for the Agency. HRSA has partnered with IHS in several conferences on this topic. Invitees included representatives of AI/AN-owned businesses.

BUREAU SPECIFIC ISSUES:

Although examples of Bureau-specific issues which have been identified as appropriate for consultation with Tribal governments, tribal organizations, and Indian people are listed below, along with some of the programs in place which are helping to establish improved communication between Indian people and HRSA, many other issues and programs can be identified and refined as HRSA's consultation plan is implemented.

Maternal and Child Health:

- Recognizing the need for increased consultation on issues affecting maternal and child health, HRSA has established the Office of State and Community Health (OSCH) within its Maternal and Child Health Bureau (MCHB). This office coordinates the provision of technical assistance and consultation for programs Bureau-wide, in collaboration with other MCHB Divisions, agencies, and organizations and is responsible for providing assistance to State and community health activities for funded projects such as the ones currently active in Indian communities/tribal areas. State MCH agencies cooperate with Indian communities to determine the best methods for serving mothers and children.

- The MCH Partnership for Information and Communication Interorganizational Work Group (PIC) enhances communication between HRSA and a diverse group of leaders and policy makers. PIC members undertake a wide variety of program initiatives including technical assistance, responding to information requests, and consultation to specific target audiences.

HRSA will collaborate with this group to identify areas for enhanced consultation with AI/AN communities.

- Healthy Start projects have been funded with several Indian tribes in 19 reservation and Indian communities in a four-state area. Communication linkages between the project's central office and service areas consist of: monthly conference calls; quarterly meetings; mandatory training sessions; annual service area evaluations; biweekly mailings; broadcast faxes; Master serve and satellite stations (computer networking system); workgroups and individual contacts.

  This project could be utilized as a model to disseminate information and obtain greater feedback from tribes in the area. Available consultation mechanisms established through this project, including a state-of-the-art computer network, and guidance and training to project staff on case management and outreach activities, could be evaluated from the standpoint of improving consultation mechanisms with tribes and replicating successful consultation models. Since the majority of the target population is identified as IHS user population, best methods of partnership with IHS on Healthy Start projects could also be identified.

- Issues related to fetal alcohol syndrome and injury prevention among Indian populations have been identified as of special concern. HRSA participates in an Inter-agency committee on fetal alcohol syndrome and education on this issue has been part of the Healthy Start program. Increased consultation with tribes involved in the project would be beneficial, especially if funds are received for replication. HRSA has also funded, in collaboration with other OPDIVS, states, Indian tribes, and other partners the Adolescent Suicide Prevention Initiative through Regions 8 and 10. This project consults with tribes on model programs for prevention and intervention which can be used for replication.

- Other areas where HRSA has consulted with tribes include implementation of the Children's Health Insurance Program. Linkages made with tribes as these programs are established across the country offer new routes for ongoing consultation on maternal and child health issues.

<u>HIV/AIDS:</u>

- HIV/AIDS is an escalating problem within Indian communities. To address this problem, HRSA has developed a partnership through its HIV/AIDS Bureau (HAB) with AI/AN tribal leaders, communities, and constituents regarding HIV services and the CARE Act that can be utilized to identify enhanced consultation models on HIV/AIDS services. Periodic consultations have enhanced the program's appreciation of the barriers and facilitators to HIV care among Indian people. The approaches developed by HRSA to meet the need for effective and relevant HIV care have consistently stressed Indian self-determination.

  Activities which have been undertaken as a result of this consultation have included: improving program guidance to reflect the epidemic within Indian nations, tribes, and communities; developing a Special Projects of National Significance (SPNS) initiative

that identified and funded innovative projects delivering HIV services to Indian people living with HIV; and funding a national evaluation of these projects. Currently, HRSA is implementing the reauthorized CARE Act with revisions that direct the SPNS program to include projects that "ensure the ongoing availability of services for Native American communities to enable such communities to care for Native Americans with HIV disease." Consultation with tribes is an integral part of these SPNS programs and provides models for enhancing consultation activities on HIV/AIDS.

Other HIV/AIDS activities conducted with AI/AN consultation and participation have included: conducting a work group on barriers to HIV care, composed of 20 AI/AN people living with HIV: women, men, service providers, researchers, and activists. They provided accounts of barriers to HIV care, described strategies to reduce barriers, and made recommendations for improving access to Federal HIV services.

A basis for enhanced consultation with representatives of the Navajo Nation was established when HRSA received a tribal delegation. Issues surrounding the Federal response to HIV within the Navajo Nation were discussed, and HRSA staff were invited to visit and learn about local conditions. Included in this visit were additional visits to five Indian nations in Arizona and New Mexico. Tribal leaders, local health providers, and people living with HIV discussed service delivery issues and their recommendations. This consultation pathway can be utilized to identify ways to build on these established relationships and develop additional opportunities for consultation.

Organ Donation:

- The percentage of organ donations by members of AI/AN communities is low. Improved consultation mechanisms established with Indians may provide a communications pathway to discuss issues related to organ transplantation and develop culturally competent programs which may increase organ donations from Indian people.

Health Professions Workforce Development

In line with HRSA's goals and objectives to increase the number of underrepresented minorities and disadvantaged individuals going into the health professions, to reflect more closely the ethnic and racial diversity of target populations, HRSA will work with other Federal agencies, Regions, States, Tribal governments, and academia to promote training and education programs to ensure that the current and future workforce has the skills and capacities to meet health care needs.

- Increasing the number of underrepresented minorities, including Indians, in the health care workforce has been identified as a severe problem. Several programs within HRSA's Bureau of Health Professions (BHPr) are geared to increasing the number of
- underrepresented minorities in the health professions. They include the Centers of Excellence (COE) in Minority Health Professions Education program; the Health Career Opportunities program, which educates minorities in the health professions; and programs for

disadvantaged students in the health professions. AI/AN students are eligible for these programs.

- COEs serving AIs/ANs were funded in FY 2000 at the University of Oklahoma Health Sciences Center, the University of Washington School of Medicine, and the University of Minnesota School of Medicine. In line with the President's Executive Order 13021 on Tribal Colleges and Universities, HRSA will be examining ways of expanding access to Federal resources for tribal colleges and universities. Consultation with the American Indian Higher Education Consortium, which represents tribal colleges and universities at the national level, has been developed as one of the first steps in the consultation plan to determine how best to address health professions education issues related to AIs/ANs. Other linkages with institutions of higher education are underway.

- Issues related to creating an educational pipeline which can carry students through grade school, high school, college, and into health professions training have been identified as a problem for minority groups, including Indians. As a result, models for supporting efforts to encourage minority youth to pursue careers in the sciences and math, leading to health professions careers, are being developed for minority populations. Consultation with AI/AN groups on pipeline issues can help HRSA to develop more effective programs under the new Executive Order. These consultations will take place at the national, regional, state, and local levels. Opportunities for supporting these efforts will be explored as HRSA implements the provisions of the order. An additional effort that has been initiated is a Native American Summer Youth Initiative which brings students into the Agency to encourage them to enter health professions careers.

- Development of curricula which train health professionals to deliver culturally competent care to AI/AN populations is an identified need. AI/AN faculty development is an integral component of this effort to appropriately train health care professionals to serve Indian people. These issues would benefit from consultation with AI/AN groups representing the tribal colleges and universities and other institutions of higher education which serve AIs/ANs as well as with organizations representing AI/AN health professionals.

<u>HRSA's Role in Delivering Primary Health Care to AI/AN Populations</u>:

Although IHS has major responsibility for the delivery of primary health care to Indian people, HRSA is involved in this issue through a variety of programs as a partner. Examples of these programs are outlined below.

- Through its Bureau of Primary Health Care (BPHC), Urban Indian Health Programs which are Federally Qualified Health Centers are eligible to receive funds. Three Centers currently receive funds. Other HRSA community, rural, and migrant health centers also serve AI/AN populations. HRSA will identify opportunities within these centers for providing information about programs for which AIs/ANs may be eligible, as well as identify health care issues of concern to AI/AN populations which would benefit from consultation.

BPHC recently funded a Healthy Schools/Healthy Communities program on the Leech Lake reservation. This project will expand activities in the school clinic to include outreach into the community. Projects under this program reach directly into Indian communities and provide additional avenues for building on established linkages with Tribal governments.

- Other consultation mechanisms that can be put in place with Tribal governments to enhance HRSA's work in the delivery of integrated, culturally competent health care include representation on committees and workgroups dealing with issues such as cultural competence, the impact of Medicaid and managed care reform on HRSA clients, and other primary care delivery issues. Consultation will also be sought on the placement of Indian providers in high impact underserved areas, e.g., urban Indian communities. In response to HRSA's goals to improve the ability to measure unmet needs of HRSA target populations for health care services, training, and other interventions, consultation will be sought with AIs/ANs in the design of evaluation tools to assess health outcomes for AIs/ANs served by HRSA health delivery programs.

STATUTES AND POLICIES APPLICABLE TO TRIBAL CONSULTATION ACTIVITIES

I. Introduction

The United States government and the governments of American Indians and Alaska Natives (AI/AN or Indian people) have a "government-to-government" relationship based on the U.S. Constitution, treaties, Federal Statutes, court decisions, and Executive Branch policies, as well as moral and ethical considerations. This special relationship also constitutes a trust relationship between these two governments. Certain benefits provided to Indian people through Federal legislatively enacted programs flow from this trust relationship. These benefits are not based upon race, but rather, are derived from the government-to-government relationship. A vital component of this relationship is consultation between the Federal and tribal governments. In cases where the government-to -government relationship does not exist, as with urban Indian centers, Inter-tribal organizations, state-recognized tribal groups, and other Indian organizations, consultation is encouraged to the extent that there is not a conflict-of-interest in the above stated Federal statutes or the Operating Division/Staff Division (OPDIV/STAFFDIV) authorizing legislation. Some aspects of this consultation are set out in statute and administrative policy.

II. Foundations

A. Federally Recognized Tribes and Organizations

The special relationship between the U.S. government and tribal governments is grounded in many historical, political, legal, moral, and ethical considerations. Increasingly, this special relationship has emphasized self-determination for Indian people and meaningful involvement by Indian people in Federal decision making (consultation) where such decisions affect Indian people or otherwise. Consultation examples include:

1. A provision in the Indian Self-Determination and Education Assistance Act, P.L 93-638, as amended, codified at 25 U.S.C. 450a states that:

> "(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."
>
> "(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 as a whole through . . . effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."

2. Regulations implementing the Indian Self-Determination Act, as amended, contain the following provisions:

> 25 C.F.R. 900.3(a)(2): " Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services . . . ."
>
> ******
>
> 25 C.F.R. 900.3(b)(1): "It is the policy of the Secretary to facilitate the effort of Indian tribes and tribal organizations to plan, conduct, and administer programs, functions, services and activities, or portions thereof, which the Departments are authorized to administer for the benefit of Indians because of their status as Indians . . . ."

3. The Indian Health Care Improvement Act, P.L. 94-437, contains a "Congressional Finding [ ]," codified at 25 U.S.C. 1601, that:

> "(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."

4. The Unfunded Mandates Reform Act of 1995, P.L. 104-4 states:

> Section 2. "The purposes of this Act are . . . to assist Federal agencies in their consideration of proposed regulations affecting . . . Tribal governments by . . . requiring

that Federal agencies develop a process to enable . . . Tribal governments to provide input when Federal agencies are developing regulations; and requiring that Federal agencies prepare and consider the budgetary impact of Federal regulations containing Federal mandates upon . . . Tribal governments before adopting such regulations."

5. The President's Memorandum of April 29, 1994, to Heads of Executive Departments and Agencies titled, "Government-to-Government Relationship with Native American Tribal Governments." This memorandum outlines the key concepts of consultation.

B. Non-Federally Recognized Tribes and Other Indian People

Indian people are often significantly or differentially affected by the Department of Health and Human Services (HHS) actions, may have special needs that HHS policy makers may not be sensitive to, may make especially valuable contributions to policy formulation and program administration because of their unique perspectives, and may be expressly mentioned in HHS statutes, or need to be effectively and efficiently served as a part of the HHS' mission.

Although the special "tribal-federal" relationship is based in part on the government-to-government relationship, other statutes and policies exist that allow for consultation with non-federally recognized tribes and other Indian organizations that, by the mere nature of their business, serve Indian people and might be negatively affected if excluded from the consultation process.

1. A statute administered by the Indian Health Service (IHS), 25 U.S.C. 1653, requires the Secretary of HHS to enter into contracts with or issue grants to urban Indian organizations to assist such urban centers for the provision of health care and referral services for urban Indians residing in the urban centers in which such organizations are situated. (42 U.S.C. 1654 authorizes grants and contracts with urban Indian organizations to determine the health status and unmet health needs of urban Indians).

2. A statute administered by the Administration for Native Americans (ANA), Sec. 802. [42 U.S.C. 2991b] provides financial assistance for Native American projects, including but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaska Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit agencies serving Native Hawaiian, and Indian and Alaska Native organizations in urban and rural areas that are not Indian reservations or Alaska Native Villages, for projects pertaining to the purpose of this title. The Commissioner is authorized to provide financial assistance to public and nonprofit private agencies serving other Native American Pacific Islanders (including American Samoan Natives) for projects pertaining to the purposes of this act. In determining the projects to be assisted under this title, the Commissioner shall consult with other Federal agencies for the purposes of eliminating duplication or conflict among similar activities or projects and for the purpose of determining whether the findings resulting from those projects may be incorporated into one or more programs for which those agencies are responsible. Every determination made with respect to a request for financial assistance under this section shall be made without regard to whether the agency making such request serves, or the project to be assisted is for the benefit

of, Indians who are not members of a federally-recognized tribe. . . ." The statute (42 U.S.C. 2991b-2(c)(2)) also requires that the ANA Commissioner "serve as an effective and visible advocate for Native Americans . . .;" while 42 U.S.C. 2991b-2(d) establishes, in the Office of the Secretary, the Intra-Departmental Council on Native American Affairs. Among its responsibilities, 42 U.S.C. 2991b-2(c)(3) requires that this Council assist the Commissioner in "coordinating activities within the Department leading to the development of policies, programs, and budgets, and their administration that directly affect Indian and other Native populations. . . "

3. A statute administered by the Administration for Children and Families that establishes the Low Income Home Energy Assistance Program (42 U.S.C. 8621 et seq.) and its implementing regulations (45 C.F.R. 96.48) make clear that Federal and state recognized tribes may receive direct funding under this block grant.

4. A statute administered by the Health Resources and Services Administration that establishes the Centers of Excellence in Minority Health Program (42 U.S.C. 293c(c)(4), (d)(3), (e)) provides for funding of programs of health professions education at Native American Centers of Excellence.

Other HHS components that rely on more general statutory consultation language also conduct activities that directly affect Indian people.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE
ROCKVILLE, MARYLAND 20857

Refer to: OD/OTP

INDIAN HEALTH SERVICE CIRCULAR NO. 97-07

TRIBAL CONSULTATION AND PARTICIPATION POLICY

Sec.

1. PURPOSE. The Indian Health Service (IHS), together with American Indian and Alaska Native (AI/AN) tribal governments and organizations, 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."

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 the 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 IHS management: Headquarters, Area Offices, and Service Units.

D. To promote the development of innovative methods of obtaining consultation on issues from tribal representatives and involving representatives in Agency decision making processes.

E. To charge and hold responsible the principal managers within the IHS (the Director, Deputy Director, Chief Medical Officer, Director of Headquarters Operations, Director of Field Operations, Senior Advisor to the Director, Area Directors, Headquarters Office Directors, and 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 in decision-making and policy development.

In consultation with elected tribal governments, the IHS identifies and assists in the support of tribal health advisory organizations/committees.

A. Headquarters. The National Indian Health Board (NIHB) serves as the advisory organization and a major source of consultation and advice on issues of national importance. Support for the NIHB is negotiated by the Director, IHS, and the Board of Directors of the NIHB. Meetings between IHS management

and the Board of Directors of the NIHB are scheduled on a quarterly basis.

B. Area Offices. Each Area Director, in consultation with tribal governments, must designate an organization/committee representative of all tribal governments served by the Area Office. The designated organization shall provide advice and consultation to the Area Director and Area office staff. Meetings between the designated tribal organization and Area Office management and staff shall occur at least four times each year. In lieu of establishing a formal organization/committee, Area Directors provide funding for travel and per diem to enable representatives of tribal governments to meet with the Area Director and the executive management staff in the Area on a regular basis (at least quarterly).

C. Service Units. The Health Advisory Board established at each IHS service unit is the organization utilized by the Service Unit Directors (SUD) and management/ clinical staff for regular consultation and participation purposes. Each SUD and his/her staff meets with tribal government officials (e.g., chairperson, tribal council on a mutually agreed to schedule).

7. SCHEDULE FOR CONSULTATION. Managers in the IHS must establish and adhere to a formal schedule of meetings to consult with tribal governments and representatives concerning the planning, conduct, and administration of IHS activities. Trust between the IHS and tribal governments and organizations is an indispensable element in establishing a good consultative relationship. Managers in the IHS must involve tribal representatives in meetings at every practicable opportunity.

The IHS managers are encouraged to establish additional forums for tribal consultation and participation, and for information sharing with tribal leadership.

8. IHS BUDGET.

A. Budget Formulation. The IHS managers are to solicit the active participation of tribes and tribal organizations in the formulation of the President's proposed budget for the IHS. The formulation of the President's budget 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 representatives and appropriate 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 the recommendations of the Area teams to propose the annual IHS budget for submission to the Assistant Secretary for Management and Budget. Subsequent to the 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 IHS policy to involve tribal governments 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. 92-5, "Budget Execution Policy (Allocation of Resources)."

The appropriate consultative organizations for this purpose are described in Section D. of this Circular, or may be any other organizations or mechanisms as agreed to by the Area Director and tribal governments.

C. Budget Information Disclosure. The IHS managers must initiate a process whereby the tribes and tribal organizations 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 principal managers in the IHS.

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/organization. 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 Director, IHS.

/s/ Michael H. Trujillo, M.D.

Michael H. Trujillo, M.D., M.P.H., M.S.
Assistant Surgeon General
Director, Indian Health Service

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Substance Abuse and Mental Health Services Administration
Tribal Consultation Plan

Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA), an Operating Division of the Department of Health and Human Services (HHS), has a well established track record in working with American Indian and Alaska Native (AI/AN) populations, including close collaboration with the Indian Health Service (IHS).

SAMHSA, the successor to the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) was established by legislation, P.L. 102-321, on July 10, 1992. The 1992 legislative mandate established three entities within SAMHSA, the Center for Mental Health Services (CMHS), the Center for Substance Abuse Prevention (CSAP), and the Center for Substance Abuse Treatment (CSAT).

SAMHSA's mission is "to improve the quality and availability of prevention, treatment and rehabilitation services in order to reduce illness, death, disability and cost to society resulting from substance abuse and mental illnesses." Working for and with American Indian and Alaska Native communities has always been an integral part of SAMHSA's mission and practices. Most of SAMHSA's AI/AN efforts have been with community based organizations and National organizations, such as the National Association for Native American Children of Alcoholics (NANACOA). Although past consultative processes have been ad hoc and related to specific projects, during the development of the SAMHSA Strategic Action Plan, SAMHSA widely and formally reached out to communities throughout the Nation.

Background

This plan is designed to satisfy the mission of SAMHSA with respect to American Indians and Alaska Natives and to comply with the following Legislative and Executive Branch mandates:

- The Indian Self-Determination and Education Assistance Act, P.L. 93-638, 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."

- The Indian Health Care Improvement Act, P.L. 94-437, 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."

- Memorandum for the Heads of Executive Departments and Agencies from President Clinton, April 29, 1994, states: "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

action that affects 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."

I. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000 (supercedes Executive Order 13084 of the same title), provides instructions to agencies related to their policymaking, legislative and regulatory activities, and states: "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."

Over the past years, SAMHSA has carried out consultations with tribal communities on an ad hoc, informal basis. For example, SAMHSA has many activities and programs involving tribal communities and routinely consults with the Agency's American Indian/Alaska Native grantees. However, when the new SAMHSA organization was established in 1992, SAMHSA formally consulted with AI/ANs, through focus groups, on the development of the SAMHSA Strategic Action Plan.

The SAMHSA Tribal Consultation Plan outlined here adheres to the guidance provided by the Domestic Policy Council Working Group on Indian Affairs.

Guiding Principles

SAMHSA's Plan is based on the following definition of consultation proposed by the Departmental Work Group on American Indian Consultation: "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 mutually satisfying collaboration and decision making."

A major underpinning of SAMHSA's Plan is that there is a special relationship between the government of the United States and tribal governments which is grounded in many historical, political, legal, moral, and ethical considerations. Although this Plan is not confined to consultation with Federally recognized tribes alone, it recognizes and respects the government-to-government level of the consultation.

While this Plan puts in place a formal consultation process, it continues to encourage use of the very effective personal and ad hoc communications that have served SAMHSA well in the past. The Plan's goal is to expand SAMHSA's communication circle with tribal governments and communities.

SAMHSA's Tribal Consultation Plan

Consultation between SAMHSA and tribal governments cannot and should not be limited to one or a few strictly defined pathways but must be both flexible and structured. Further, the

consultation process will be specifically related to the work and mission of SAMHSA which is to improve the quality of substance abuse prevention and treatment and mental health services. Although SAMHSA has engaged in much dialogue with American Indians and Alaska Natives over many issues, there continues to be the need for more discussions about the best mechanisms for facilitating consultation. SAMHSA will seek guidance and participation of tribal governments in consulting about existing and planned activities and projects. SAMHSA is committed to including tribal government leaders and their staff in discussions about issues, concerns and priorities pertaining to substance abuse and mental health related activities.

Methodology

With the agreement of tribal governments, SAMHSA's Consultation Plan should establish a communication strategy with the following characteristics:

- A mutually agreed upon, prioritized list of specific issues or areas should be developed;
- The timing of the consultation should be such that tribal recommendations can be considered in SAMHSA's decision making processes;
- The communication channels established should be mutually acceptable and practical. They may range from the use of electronic media to face to face discussions;
- In preparation for consultation, all parties will be provided with adequate background information and time to review the information, such that the consultation is maximally effective;
- In addition to background information, the consulting parties will be provided with a clear statement of the nature of the advice sought;
- Organizations and individuals consulted will be given a specific and reasonable time to respond, and feedback will be provided to the consulting parties within a reasonable time frame; and
- Organizations consulted will be provided with a specific SAMHSA point of contact for response. The single point of contact for coordination of the formal process of consultation with tribal governments will be the Office of Policy and Program Coordination (OPPC), within the Office of the Administrator, which has responsibility for intergovernmental activities, including liaison with the HHS Office of Intergovernmental Affairs.

Mechanisms for Additional Consultation

- SAMHSA will continue to explore a number of avenues of outreach to tribal governments. They could include paper and visual media, electronic communications via Internet, teleconference, video conference, etc.

- SAMHSA will continue to collaborate with the HHS Office of Minority Health (OMH) and IHS in working with the OMH regional health coordinators and the IHS area offices to facilitate and coordinate consultation.

- As SAMHSA develops its linkages with tribal colleges and universities, these institutions may also serve to strengthen the communications/consultation links between SAMHSA and tribal governments.

- SAMHSA will also explore the possibility of participating in key AI/AN meetings, such as those of the National Indian Health Board and the National Congress of American Indians, as another means of fostering consultation and collaboration.

Areas for Further Exploration

Areas for further exploration with tribal government leaders and their staff include the following recommendations and issues:

- Tribal governments should be consulted early in the development of any program, project, conference or other activity directed to their communities.

- State block grant and program funding pose problems for tribal governments. There are some models of cooperation and mutual respect between tribal and State governments, and AI/AN prevention programs. These models should be identified and shared with the tribal governments as well as the States.

- To address the goals of local development and empowerment, the technical assistance requirements of tribal communities need to be addressed.

- Tribal communities need culturally competent services which require that service providers and outside evaluators be representative of the population served. When this is not possible, professionals involved in service delivery need to be aware and respectful of traditional methods of healing practiced by tribal communities, and be exposed to culturally competent curricula and cultural competency training.

- Service system changes, particularly Medicaid shifts to managed care, may pose additional access problems to tribal communities, especially in the areas of mental health and substance abuse services. These communities would benefit from greater technical assistance in the area of increased understanding of managed care.

Future Directions

- Program Development -- SAMHSA is currently undergoing a change in its programmatic focus. SAMHSA intends to expand and share the knowledge developed about the most effective methods of delivering substance abuse and mental health services to all communities. A key to effective services for tribal communities is culturally appropriate care and a recognition of the value of many traditional healing practices. Such healing practices

have benefited these communities and should be respected as well as integrated into SAMHSA service models. SAMHSA will seek guidance from tribal communities to assist in developing programs that include this traditional health knowledge.

- Policy Development -- SAMHSA has sought and will continue to seek policy guidance from the AI/AN representatives and experts who serve on SAMHSA advisory councils and other panels.

- Budget Development -- SAMHSA will work with the HHS Office of Intergovernmental Affairs and the Assistant Secretary for Management and Budget, as well as the Indian Health Service, in the implementation of the findings and recommendations from the HHS budget consultation conferences.

- Legislation Development -- SAMHSA will work with the HHS Assistant Secretary for Legislation and IHS in providing legislative consultation to tribal governments.

SAMHSA Tribal Consultation Point of Contact

The coordination of issues involving tribal consultation is focused in the Office of Policy and Program Coordination within SAMHSA's Office of the Administrator. OPPC's focal point person for intergovernmental affairs, including tribal consultation, is:

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