

From: Carolyn Hornbuckle [mailto:CHornbuckle@nihb.org]

Sent: Tuesday, July 01, 2014 1:38 PM

Please distribute widely.

Good Afternoon,

Based upon several requests, comment period for the Health Resources and Services Administration (HRSA) Tribal Consultation Policy has been extended for an additional 30 days through Monday, July 28, 2014 (the original comment period was set to end June 27, 2014).

HRSA has asked for input regarding the current HRSA Tribal Consultation Policy (attached). HRSA policy requires review of the consultation policy every two years, and revision to the policy if necessary. HRSA is seeking Tribal input and asks for comments no later than Monday, July 28, 2014.

Please continue to send comments to the dedicated mailbox: aianhealth@hrsa.gov

Thank you,
Carolyn

Carolyn Angus-Hornbuckle
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National Indian Health Board
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202-507-4084

NIHB Mission Statement:

One Voice affirming and empowering American Indian and Alaska Native peoples to protect and improve health and reduce health disparities.



MAY 28 2014

Dear Tribal Leader:

The Health Resources and Services Administration (HRSA), an agency of the U.S. Department of Health and Human Services, is the primary federal agency for improving access to health care by strengthening the health care workforce, building healthy communities and achieving health equity. HRSA's programs provide health care to people who are geographically isolated, economically or medically vulnerable.

As part of HRSA's ongoing commitment to Indian Country's health care needs, this letter serves as official notice of HRSA's intent to consult with Tribes to review HRSA's Tribal Consultation Policy. According to the stated policy, "*HRSA will review and if necessary, revise its Tribal Consultation Policy no less than every 2-years.*" It has been 2 years since the previous update took place on March 28, 2012.

For your review, please see HRSA's current Tribal Consultation Policy (attached). Please provide your feedback in track changes/comment box format to the attached Word version of the policy, and submit your comments to us via email to aianhealth@hrsa.gov, no later than **June 27, 2014**. HRSA's next Tribal Consultation is planned for September 8, 2014, in conjunction with the National Indian Health Board meeting. HRSA intends to review your suggested revisions and feedback in order to prepare a draft revised policy for review and further discussion during the September 8 Tribal Consultation meeting. This will allow us to have an interactive exchange of ideas and information. Additional details for the upcoming Tribal Consultation are forthcoming and will be posted on HRSA's website under the AI/AN Health link: (<http://www.hrsa.gov/publichealth/community/indianhealth/index.html>).

We look forward to working with you as this effort helps us to effectively align programs that improve HRSA's efforts in addressing health care issues that impact Indian Country.

Sincerely,

A handwritten signature in cursive script that reads "Mary K. Wakefield".

Mary K. Wakefield, Ph.D., R.N.
Administrator

Attachment

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1. INTRODUCTION

On November 5, 2009, President Obama signed an Executive Memorandum reaffirming the government-to-government relationship between federally-recognized Indian Tribes (hereinafter referred to as Indian Tribes) and the Federal Government, and directing each executive department and agency to consult with Indian Tribes regarding actions or policies that have Tribal implications. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004, and 2009, and Executive Order 13175 in 2000. The U.S. Department of Health and Human Services (HHS) and Indian Tribes share the goal of eliminating health disparities within American Indian and Alaska Native (AI/AN) populations and ensuring that access to critical health and human services is maximized.

2. PURPOSE

The Health Resources and Services Administration (HRSA), an operating division (OPDIV) within the U.S. Department of Health and Human Services (HHS), and Indian Tribes share the goal of establishing clear policies to further the government-to-government relationship between the Federal Government and Indian Tribes. True and effective consultation shall result in information exchange, mutual understanding, and informed decision-making between Tribal governments involved and the Federal Government.

The goal of this policy includes, but is not limited to, eliminating health disparities of American Indians (AI) and Alaska Natives (AN) by increasing health care access points, increasing the supply of caring and culturally competent primary health care providers in Indian Country and Alaska, engaging in an inter-Agency continuous and meaningful consultation, and advancing the social, physical, and economic status of federally-recognized Indian Tribes.

This policy shall serve as a guide for Tribes for participation in HRSA policy development to the greatest extent practicable and permitted by law.

3. BACKGROUND

Since the formation of the Union, the United States (U.S.) has recognized Indian Tribes as sovereign nations. A unique government-to-government relationship exists between Indian Tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders that establish and define a trust relationship with Indian Tribes. This relationship is derived from the political and legal relationship that Indian Tribes have with the Federal Government and is not based upon race.

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An integral element of this government-to-government relationship is that consultation occurs with Indian Tribes. The Executive Memorandum titled "Tribal Consultation" reaffirmed this government-to-government relationship with Indian Tribes on November 5, 2009. The implementation of this policy is in recognition of this special relationship. This special relationship is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

- o Older Americans Act, P.L. 89-73, as amended;
- o Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended;
- o Native American Programs Act, P.L. 93-644, as amended;
- o Indian Health Care Improvement Act, P.L. 94-437, as amended;
- o Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193;
- o Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994;
- o Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000;
- o Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004;
- o Presidential Memorandum, Tribal Consultation, November 5, 2009;
- o American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (February 17, 2009);
- o Children's Health Insurance Program Reauthorization Act of 2009, P.L. 111-3, 123 Stat. 8 (February 4, 2009); and
- o Patient Protection and Affordable Care Act of 2010, P.L. 111-148, 124 Stat. 119 (March 23, 2010).

This HRSA Tribal Consultation Policy document was developed based upon the aforementioned documents and the following:

- HHS Tribal Consultation Policy (established in 2005, and amended in 2010);
- HRSA Tribal Consultation Policy (2007);
- Input from a HRSA AI/AN Workgroup convened to develop the HRSA Draft Consultation Policy;
- Input from Indian Tribes to ensure a consultation policy that reflects the goals of all Tribes involved and the respective Federal bureaus and offices involved; and
- Input from all of the programs and regions within HRSA, many of which already consult with Indian Tribes.

4. TRIBAL SOVEREIGNTY

This policy does not waive any Tribal Governmental rights and authority, including treaty rights, sovereign immunities or jurisdiction. Additionally, this policy does not diminish any

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rights or protections afforded other American Indians or Alaskan Natives (AI/AN) or entities under Federal law.

The special government-to-government relationship between the Federal Government and Indian Tribes, established in 1787, is based on the Constitution, and has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders, and reaffirms the right of Indian Tribes to self-government and self-determination. Indian Tribes exercise inherent sovereign powers over their citizens and territory. The U.S. shall continue to work with Indian Tribes on a government-to-government basis to address issues concerning Tribal self-government, Tribal trust resources, Tribal treaties and other rights.

Tribal self-government has been demonstrated to improve and perpetuate the government-to-government relationship and strengthen Tribal control over Federal funding that it receives, and its internal program management. Indian Tribes' participation in the development of public health and human services policy ensures locally relevant and culturally appropriate approaches to public issues.

5. HRSA BACKGROUND

HRSA's mission is to improve health and achieve health equity through access to quality services, a skilled health workforce and innovative programs. HRSA provides leadership and financial support to eligible health care providers in every state and U.S. territory. HRSA grantees provide health care to uninsured people, people living with HIV/AIDS, pregnant women, and mothers and children, including AI/ANs. HRSA supports training health professionals and improving systems of care in rural communities.

HRSA oversees organ, bone marrow and cord blood donation and supports programs that prepare communities against bioterrorism, compensates individuals harmed by vaccination, and maintains databases that assist in protecting against health care malpractice and health care waste, fraud and abuse.

The following bureaus and offices are located in HRSA:

- Bureau of Clinician Recruitment and Service (BCRS)
- Bureau of Health Professions (BHPr)
- Bureau of Primary Health Care (BPHC)
- Healthcare Systems Bureau (HSB)
- HIV/AIDS Bureau (HAB)
- Maternal and Child Health Bureau (MCHB)
- Office of Federal Assistance Management (OFAM)
- Office of Planning, Analysis and Evaluation (OPAE)
- Office of Regional Operations (ORO)

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- Office of Rural Health Policy (ORHP)
- Office of Special Health Affairs (OSHA)
- Office of Women's Health (OWH)

As part of the Office of the Administrator, the Office of Special Health Affairs (OSHA) is tasked with the role of facilitating communication regarding HRSA programs and initiatives as they relate to Indian Tribes. The Agency Administrator (or her/his designee) serves as HRSA's Tribal Liaison and represents HRSA at annual and regional Tribal meetings. HRSA has also established the HRSA AI/AN Workgroup. This workgroup functions as an across-agency workgroup to support the HRSA Administrator, the Deputy Administrator, and all offices and bureaus that provide services to AI/ANs. The workgroup is responsible for facilitating the revision of the HRSA Tribal Consultation Policy. The Deputy Administrator is the Chair of the AI/AN Workgroup and OSHA is the lead office to coordinate Tribal activities. The members of the workgroup represent HRSA programs that work with AI/AN communities.

6. TRIBAL CONSULTATION PRINCIPLES

HRSA has developed consultation principles based on HHS's most recent Tribal Consultation Policy. Consultation is 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 that leads to mutual understanding. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making, with the ultimate goal of reaching consensus on issues and concerns.

HRSA's policy promotes consultation with Tribes wherein elected officials and other authorized representatives of the Tribal Governments have an opportunity to provide meaningful and timely input prior to development of a legislative proposal, new/changed rule adoption, or other policy change that HRSA determines may significantly affect Indian Tribes, or where one or more Tribes has communicated that such action will significantly affect one or more Indian Tribes. An action is considered to significantly affect Tribes if it has substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or the distribution of authority and responsibilities between the Federal Government and Indian Tribes.

To the extent practicable and permitted by law, HRSA shall not promulgate any regulation that has Tribal implications, or that imposes substantial direct compliance costs on Indian Tribes, or that is not required by statute, unless:

- Funds necessary to pay the direct costs incurred by the Indian Tribe in complying with the regulation are provided by the Federal Government; or
- HRSA, prior to the formal promulgation of the regulation:

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- Consults with Indian Tribes throughout all stages of the process of developing the proposed regulation;
- Provides a Tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the *Federal Register Notice* (FRN), which consists of a description of the extent of HRSA's prior consultation with Indian Tribes, a summary of the nature of their concerns and HRSA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met; and
- Makes available to the Secretary and to the Director of OMB any written communications submitted to HRSA by Tribal officials.

7. TRIBAL CONSULTATION PARTICIPANTS

Consultation participants include:

- HRSA Administrator, HRSA Deputy Administrator, or their designee(s), and
- Tribal officials or their authorized representatives.

Each participant will identify her/his authorizing Tribe that has delegated authorities to participate on behalf of the Tribe.

8. TRIBAL CONSULTATION PROCESS

Effective consultation between HRSA and Indian Tribes requires trust among all parties that is an indispensable element in establishing a good consultative relationship. The degree and extent of consultation will depend on the identified critical event. A critical event may be identified by HRSA and/or an Indian Tribe(s). Upon identification of an event significantly affecting one or more Indian Tribe(s), HRSA will initiate consultation regarding the event.

In order to initiate and conduct consultation, the following serves as a guideline to be utilized by HRSA and Indian Tribes:

- Identify the critical event; complexity, implications, time constraints, and issue(s) (including policy, funding/budget development, programs, services, functions and activities);
- Identify affected/potentially affected Indian Tribe(s); and
- Determine consultation mechanism- The most useful and appropriate consultation mechanisms can be determined by HRSA and/or Indian Tribe(s) after considering the critical event and Indian Tribe(s) affected/potentially affected. Consultation mechanisms include, but are not limited to, one or more of the following:
 - a. Mailings
 - b. Teleconferences
 - c. Face-to-face meetings at the local, regional and national levels between HRSA and Indian Tribes

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- d. Roundtables
- e. Annual HHS Tribal budget and policy consultation sessions
- f. Other regular or special HRSA or program level consultation sessions.

Communication Methods

The determination of the critical event and the level of consultation mechanism to be used shall be communicated to affected/potentially affected Indian Tribe(s) using all appropriate methods and with as much advanced notice as practicable. These methods include, but are not limited to, the following:

- *Correspondence:* Written communications shall be issued within 30 calendar days of an identified critical event. The communication should clearly provide affected/potentially affected Indian Tribe(s) with detail of the critical event, and the manner and timeframe in which to provide comment. The HRSA Administrator frequently uses a "Dear Tribal Leader Letter" (DTLL) format to notify individual Indian Tribes of consultation activities. HRSA will work closely with the Principal Advisor for Tribal Affairs, Office of Intergovernmental and External Affairs (IEA), if technical assistance is required, for proper format and protocols, current mailing lists, and content.
- *Official Notification:* Within 30 calendar days, and upon the determination of the consultation mechanism, proper notice of the critical event and the consultation mechanism utilized shall be communicated to affected/potentially affected Indian Tribe(s) using all appropriate methods including mailing, broadcast e-mail, FRN, and other outlets. The FRN is the most formal form of notice used for consultation.
- *Meeting(s):* HRSA shall convene a meeting, within 60 calendar days of official notification, with affected/potentially affected Indian Tribe(s) to discuss all pertinent issues in a national, regional, and/or local forum, or as appropriate, to the extent practicable and permitted by law, when the critical event is determined to have substantial impact.
- *Receipt of Tribal Comment(s):* HRSA shall develop and use all appropriate methods to communicate clear and explicit instructions on the means and time frames for Indian Tribe(s) to submit comments on the critical event, whether in person, by teleconference, and/or in writing and shall solicit the advice and assistance of the Principal Advisor for Tribal Affairs, IEA.
- *Reporting of Outcome:* HRSA shall report on the outcomes of the consultation within ninety (90) calendar days of final consultation. For ongoing issues identified during the consultation, HRSA shall provide status reports throughout the year to IEA and Indian Tribe(s).

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Consultations

HRSA recognizes its Federal responsibilities under applicable statutes and policies and will consult and cooperate with Indian Tribes (as defined by the Indian Health Care Improvement Act). Consultation will occur directly between HRSA, Indian Tribes, and Tribal organizations. While other interested organizations may also receive information and be asked for input, the primary mechanism for consultation will be direct communication with Indian Tribes and Tribal organizations. HRSA will fulfill these consultation responsibilities in the following ways:

- HRSA will participate in the annual regional Tribal consultations and annual Budget Consultation. HRSA will work with Indian Tribes and Tribal organizations to coordinate HRSA consultations on topics and in regions, to maximize the time and resources of both Tribes and HRSA program offices.
- HRSA will hold, at a minimum, an agency-wide Tribal consultation session with Indian Tribes every year to discuss HRSA programs and policies impacting Indian Tribes and AI/AN populations.
- HRSA will ensure that its leadership and appropriate program representatives and senior officials participate in the HRSA Tribal consultation session.
- HRSA will coordinate with the program offices to prepare and disseminate a written report within forty-five (45) calendar days of the HRSA Tribal consultation. All reports will be available in a word processing format (e.g., Microsoft Word).
- Tribes will have forty-five (45) days to respond to the proposed final consultation outcome, to ensure accuracy of reporting, accurate transmission of Tribal contributions, and acknowledgement of final product.
- HRSA will ensure that all Tribal documents are accessible directly on HRSA's website.
- The HRSA Tribal consultation session will not supplant any Tribal consultation sessions that are required by law to be conducted by HRSA program offices.

Supplemental Program Consultation Requirements

As requested, HRSA will conduct Tribal consultation sessions that are required by law, including those in conjunction with the annual HHS Tribal consultation session.

Individual Program Consultation Responsibilities

- Each individual program office will meet with Indian Tribe grantees regarding programmatic concerns at the request of the Tribal grantees or AI/AN grantee.
- An official staff contact will be designated as responsible for the initial coordination and facilitation of the program office interaction with Tribes and

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Native American organizations and to serve as the program single point of contact for interaction with offices and workgroups within HHS on AI/AN Issues.

- HRSA's Executive Leadership will acknowledge requests for consultation within fourteen (14) calendar days of receipt of the request in writing.
- HRSA program offices will acknowledge and report on unresolved issues with Indian Tribe(s) in a timely manner. HRSA program offices will acknowledge issues within fourteen (14) calendar days of the consultation.
- Feedback via a written report, which summarizes the discussions, recommendations, and responses, will be provided by HRSA program offices to Indian Tribes on the resolution of issues for which consultation has been requested within forty-five (45) calendar days of the consultation.
- As requested, HRSA program offices will ensure intra-agency coordination with regional offices to facilitate communication and outreach on consultations held in a region. Regional offices will facilitate state participation as appropriate.
- As requested, HRSA program offices will provide assistance to states in their efforts to develop policies, plans, and programs to ensure consultation with Tribes.

HHS Tribal Consultations

HRSA will participate in the annual budget consultation session and annual regional Tribal consultation sessions.

Performance and Accountability

HRSA will measure and report results and outcomes of their Tribal consultation performance to fulfill the government-to-government relationship with Indian Tribes.

Parts of the HRSA mission and performance objectives are designed to address the health and well-being of AI/ANs by providing for effective health services and by fostering strong, sustained advances in the sciences underlying medicine, public health and social services.

HRSA shall utilize the Tribal Consultation Policy to address HHS's mission and performance objectives with respect to AI/ANs. HRSA will follow the goals and objectives of the seated Secretary and Administration.

HRSA and Indian Tribes will also promote a collaborative atmosphere to gather, share, and collect data and other information to demonstrate the effective use of Federal resources in a manner that is consistent with OMB performance measures and requirements. HRSA shall consult, to the greatest extent practicable and permitted by

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law, with Indian Tribes before taking actions that substantially affect Indian Tribes, including regulatory practices on Federal matters and unfunded mandates.

HRSA will work collaboratively to facilitate Tribal-state relations as they affect Indian Tribes and AI/ANs in the delivery of HHS programs and services.

States: In some instances the authority and program funding for HRSA programs is administered by the states on behalf of Indian Tribes. HRSA will consult with the Office of the General Counsel to determine whether these arrangements are based on statutes, regulations, or policy decisions. If there is no clear regulatory or statutory basis mandating that states administer the program on behalf of the Tribe(s), HRSA will consult with the affected Indian Tribe(s) as soon as practicable to review alternate options.

If there is a statutory basis mandating that the state administer the program and associated funding on behalf of the Indian Tribe(s), HRSA will examine the permissibility of encouraging or mandating a term requiring Tribal consultation as a condition of the state's receipt of program funds. If such a term may be mandated regarding state administered programs affecting Indian Tribes, it should be incorporated. If it is not permissible, HRSA shall facilitate consultation between the state and affected Tribe(s).

In addition, whenever practicable and permitted by law, HRSA shall notify Indian Tribes of funds administered by the state that HRSA believes should be allocated to Indian Tribes.

HRSA shall also encourage the state to recognize that Indian Tribal members are entitled to benefits provided to all state citizens and should be provided the same access to state administered or funded services since Tribal members are citizens of the state(s). To the extent possible, data shall be collected and reported about the number of Tribal members served by the state with Federal resources.

Waivers and Elevation of Issue(s)

HRSA will, to the extent practicable and permitted by law, utilize flexible approaches to enable Indian Tribes to achieve established HRSA program objectives, including consideration of waivers of statutory and regulatory requirements and other alternatives that preserve the prerogatives and authority of Indian Tribes. In cases where an Indian Tribe(s) is not satisfied with the resolution of an issue or issues after consultation with the program office, an Indian Tribe(s), consistent with the government-to-government relationship, may elevate an issue of importance to the Administrator of HRSA. If the Indian Tribe is still not satisfied with the resolution of an issue after consultation with the Administrator of HRSA, an Indian Tribe(s), consistent with the government-to-

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government relationship, may elevate an issue of importance to the Department, through IEA, for decision. HRSA will review and streamline the processes under which an Indian Tribe may apply for waivers of statutory, regulatory, policy, or procedural requirements. HRSA will, to the extent practicable and permitted by law, consider any application by an Indian Tribe for a waiver with a general view toward increasing opportunities for utilizing flexible approaches at the Indian Tribal level, when the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate. HRSA will, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 calendar days of receipt, or as otherwise provided by law or regulation. If the application for a waiver is not granted, HRSA will provide the applicant with timely written notice of the decision and the reasons. Waiver requests for statutory or regulatory requirements apply only to statutory or regulatory requirements that are discretionary and subject to a waiver by HRSA.

HRSA will ensure that any state submitting a waiver for services or programs first consults with any Tribe located in that state. A report of Tribal meaningful consultation must be included in any requests by states for waivers (see above for requirements).

9. HRSA PERFORMANCE AND ACCOUNTABILITY

HRSA has identified the following requirements to implement a performance and accountability plan.

- HRSA's senior leadership shall be actively engaged in the implementation of this Tribal policy.

HRSA, in collaboration with the Tribes, will design and implement specific indicators to ensure accountability among program managers, central office and regional office staff, and various partners in carrying out the HHS and HRSA Tribal consultation policies.

- HRSA will ensure that all personnel working with Indian Tribes receive appropriate training on consultation, HRSA and HHS consultation policies, and working with Indian Tribes.
- As part of the HRSA annual measurement of the level of satisfaction of Indian Tribes with the consultation process and the activities conducted under this policy, HRSA is responsible for appropriately reporting on and evaluating consultation activities and outcomes. HRSA will report on major consultation activities and communicate the nature of these sessions and outcomes to HHS, Indian Tribes, and Indian organizations.
- HRSA is responsible for preparing and submitting an annual report describing Tribal consultation activity, including outcomes, to the Department of HHS. The HRSA report is subsequently included in the "HHS Annual Tribal Consultation Report."

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- In order to evaluate the effectiveness of Tribal consultation and the success of HRSA in incorporating Tribal recommendations made as a result of consultation, the HRSA annual report will address:
 - a) A discussion of the past years' consultation processes and activities and whether they resulted in meaningful outcomes for both HRSA and Indian Tribes;
 - b) A description of the level of support for the past years' consultation activities from the perspective of Indian Tribes and HRSA management; and
 - c) A discussion of the effectiveness of collaboration with Indian organizations and other Federal agencies that complemented the Tribal and HRSA consultation process.
- HRSA will be responsible for preparing and submitting an annual report to Indian Tribes and Indian Organizations describing past years' consultation activities. The report should include an assessment of HRSA's implementation of this policy and a description of outcomes related to issues that were the subject of major consultation activity. Upon completion of a major consultation activity (e.g., policy development), the report should address follow-up action items resulting from consultation and the plan for implementation. All major consultation meetings of national importance shall be recorded with a summary made available to Indian Tribes and Indian Organizations. At a minimum, the report should include:
 - a) A description of the issue(s) that were the subject of consultation;
 - b) A description of the process that was used;
 - c) A discussion of the recommendations that resulted from the consultation meeting(s);
 - d) A list of any follow-up action items and a time line for addressing these items; and
 - e) A discussion of the level of HRSA and Tribal satisfaction with the consultation process that was used.

In an effort to effectively communicate agreed-upon decisions arrived at the Tribal consultation, HRSA will provide a copy of all documents developed to the Secretary's Tribal Advisory Committee, and HRSA's AI/AN Workgroup. HRSA will also make the documents available on HRSA's website (under the homepage Tribal link), and on the National Indian Health Board's website.

10. HRSA TRIBAL CONFLICT RESOLUTION

The intent of this policy is to promote partnership with Indian Tribes that enhance HRSA's ability to address issues, needs and problem resolution. HRSA shall consult with Indian Tribes to establish a clearly defined conflict resolution process under which Indian Tribes bring forward concerns which have a substantial direct effect. However, Indian Tribes and HRSA may not always agree and inherent in the government-to-government relationship,

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Indian Tribes may elevate an issue of importance to a higher or separate decision-making authority.

Nothing in the Policy creates a right of action against HRSA for failure to comply with this Policy.

Should an impasse arise between HRSA and a Tribe(s) concerning HRSA compliance with the consultation policy, process of the consultation, or outcome of the consultation process, a Tribe may invoke the conflict resolution process by filing a written notice of conflict resolution to the HHS Secretary. Using a forty-five (45)-day timeline to work out a resolution, the Secretary will initiate the conflict resolution process. As determined by the Secretary, authorized Tribal representatives will meet with the Secretary, HRSA Administrator and Deputy Administrator to address the issue(s) of the conflict.

The goal of this process is to accomplish the following:

- Clarify all aspects of the issue(s) at an impasse;
- Explore the alternative position(s) available to resolve the impasse;
- Establish consistent language related to the issue(s) that HRSA and the Tribe(s) can agree upon;
- Create acceptance of recommended actions; and
- Facilitate coordination of resolution(s).

The Secretary will appoint an independent contractor to record and document all actions and outcomes of the conflict resolution process.

11. WORKGROUPS AND ADVISORY COMMITTEES

The need to develop or revise a policy may be identified from within HRSA or by an Indian Tribe(s). When new or revised national policy, regulations, or legislation affects an Indian Tribe(s), an Indian Tribe(s) or HRSA may recommend the establishment of a workgroup and/or task force. The workgroup and/or task force will work in accordance with the HHS policy on Tribal workgroups and will follow procedures to ensure compliance with the Federal Advisory Committee Act (FACA). Groups with membership composed of Federal employees, state employees, or officials of an Indian Tribe are exempt from FACA.

12. CONSULTATION WITH OTHER GROUPS

Although the unique Federal relationship with Indian Tribes is based in part on the fundamental concept of government-to-government relations, other statutes and policies exist that allow for Federal consultation with Indian organizations that, by nature of their business, serve Indian people and might be affected if excluded from the consultation process. Even

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though such Indian organizations may not represent Indian Tribes, HRSA is able to consult with these Indian organizations individually or collectively.

13. DEFINITIONS

For the purpose of this policy document, below is a list of definitions:

Communication: The exchange of ideas, messages, or information, by speech, signals, writing, or other means.

Consultation: 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 with the ultimate goal of reaching consensus on issues.

Executive Order: An order issued by the Government on the basis of authority specifically granted to the Executive Branch (as by the U.S. Constitution or a Congressional Act).

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

Indian Tribe: An Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a."

Policies with Tribal Implications: Refers to regulations, statutes, legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Self-Government: Government in which the people who are most directly affected by the decisions make the decisions.

Sovereignty: The ultimate source of political power from which all specific political powers are derived.

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

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

Tribal Government: An American Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally-recognized Indian Tribe List Act of 1994, (25 U.S.C. 479a).

Tribal Officials: Elected or duly appointed officials of Indian Tribes or authorized inter-Tribal organizations.

Tribal Organization: The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

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

Tribal Self-Governance: The governmental actions of Tribes exercising self-government and self-determination.

14. ACRONYMS

AI/AN	American Indian/Alaska Native
BIA	Bureau of Indian Affairs Division Staff Division and/or Operating Division
EO	Executive Order
FACA	Federal Advisory Committee Act
FRN	Federal Register Notice
HRSA	Health Resources and Services Administration
HHS	U.S. Department of Health and Human Services
IEA	Office of Intergovernmental and External Affairs
OPDIV	Operating Divisions of HHS
SPOC	Single Point of Contact
U.S.	United States
U.S.C.	United States Code

Department of Health and Human Services
Health Resources and Services Administration
Tribal Consultation Policy

15. POLICY REVIEW

HRSA will review, and if necessary revise, its Tribal consultation policy no less than every two (2) years. Should HRSA determine that the policy requires revision, the HRSA AI/AN Workgroup will be convened and consult with Indian Tribes on revisions.

RETENTION OF EXECUTIVE BRANCH AUTHORITIES

Nothing in this policy waives the Government's deliberative process privilege, including when the Department is specifically requested by Members of Congress to respond to or report on proposed legislation. The development of such responses and related policy documents is part of the deliberative process of the Executive Branch and should remain confidential.

Nothing in the policy creates a right of action against the Department for failure to comply with this policy. Nothing in this policy creates any right, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any individual.

16. EFFECTIVE DATE

This policy is effective on the date of signature by the Administrator, Health Resources and Services Administration.

MAR 29 2012

Date


W. Jeffrey
Administrator, Ph.D., R.N.