



FEB 17 2012

Dear Tribal Leaders:

As part of the Health Resources and Services Administration's (HRSA) ongoing commitment to Indian Country's healthcare needs, HRSA is updating the current HRSA Tribal Consultation Policy (TCP). In 2011, HRSA hosted two 2011 Tribal Kick-off sessions and received input from Tribal Leaders on the TCP at the National Indian Health Board (NIHB) conference in Anchorage, Alaska, and at the National Congress of American Indians (NCAI) meeting in Portland, Oregon. HRSA has taken these comments, along with comments from HRSA Bureaus and Offices, and has drafted an updated TCP.

HRSA is disseminating the draft TCP through the NIHB and NCAI LISTSERVs for your review and comment. Additionally, the TCP will be shared with Tribal Leaders at the 14th Annual Department of Health and Human Services Tribal Budget Consultation in Washington, DC, being held at the Hubert H. Humphrey building, on March 7-9, 2012. Please review the attached draft TCP and send us your comments or concerns by March 16, 2012, to [AIANhealth@hrsa.gov](mailto:AIANhealth@hrsa.gov). HRSA will review Tribal comments and update the TCP accordingly.

HRSA is committed to working with Tribes at the highest levels and we look forward to receiving your input as we work to improve the health of American Indians and Alaska Natives.

Sincerely,

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

Mary K. Wakefield, Ph.D., R.N.  
Administrator, Health Resources and Services  
Administration

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

---

**Table of Contents**

<b>Section</b>	<b>Topic Area</b>
1	Introduction
2	Purpose
3	Background
4	Tribal Sovereignty
5	Background on HRSA
6	Tribal Consultation Principles
7	Tribal Consultation Participants
8	Tribal Consultation Process
9	HRSA Performance and Accountability
10	HRSA Tribal Conflict Resolution
11	Workgroups and Advisory Committees
12	Consultation with Other Groups
13	Definitions
14	Acronyms
15	Policy Review
16	Retention of Executive Branch Authorities
17	Effective Date

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

---

## **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, the supply of caring and culturally competent primary health care providers in Indian Country and Alaska, and engage in an inter-Agency continuous and meaningful consultation. Therefore, the purpose of this policy is to ensure that access to critical health and human services is maximized to advance 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 1787 a unique government-to-government relationship has existed between Indian Tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, court decisions, statutes, and executive orders. This relationship is derived from the political relationship that Indian Tribes have with the Federal Government, which acknowledges the right of Indian Tribes to self-governance and self-determination. The Federal Government has enacted numerous regulations that establish and define its relationship with Indian Tribes.

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

---

An integral element of this government-to-government relationship is that consultations occur with Indian Tribes. This policy applies to all offices and bureaus within HRSA. As appropriate, offices and bureaus shall provide an opportunity for meaningful consultation, as appropriate, between Indian Tribes and HRSA in policy development, as set forth in this policy. The President's Executive Memorandum of November 5, 2009, entitled "Tribal Consultation" reaffirmed this government-to-government relationship with Indian Tribes. The implementation of this policy recognizes this special relationship and is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

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

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

---

- 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 Indian Tribe's or Tribal Organization's rights or authorities, such as but not limited to treaty rights, sovereign immunities or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded AI/AN persons or entities under Federal law.

Our Nation, under the law of the U.S. and in accordance with treaties, statutes, executive orders, and judicial decisions recognizes the right of Indian Tribes to self-governance and self-determination. Indian Tribes exercise inherent sovereign powers over their citizens and territories. The U.S. continues 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.

This special government-to-government relationship between the U.S. and Indian Tribes is formalized in and protected by Article I, Section 8 of the United States Constitution. Self-determination and meaningful involvement for Indian Tribes in Federal decision-making through consultation in matters that affect Indian Tribes have been shown to result in improved program performance and positive outcomes for Tribal communities. The involvement of Indian Tribes in the development of public health services policy(s) allows for locally relevant and culturally appropriate approaches to public issues.

Tribal self-governance has been demonstrated to improve and sustain the government-to-government relationship and strengthen Tribal control over both Federal funding that it receives and manages.

#### **5. HRSA BACKGROUND**

HRSA's mission is to improve the health of the Nation by assuring quality health care to underserved, vulnerable, and special needs populations and by promoting appropriate health professions workforce capacity and practice, particularly in primary care and public health. HRSA provides leadership and financial support to eligible primary and allied 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 improves 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,

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

---

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)
- 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 timely communication and meaningful 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

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

---

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:
  - 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* (FR), 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
  - Make available to the Secretary any written communications submitted to HRSA by Tribal officials.

On issues relating to Tribal self-government, Tribal trust resources, or Tribal treaty and other rights, HRSA will explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

## 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

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

---

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. Teleconference
  - c. Face-to-face meetings at the local, regional and national levels between HRSA and Indian Tribes
  - 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, HHS Office of Intergovernmental Affairs (IGA), 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, FR, and other outlets. The FR is the most formal form of notice used for consultation.

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

---

- **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 IGA and Indian Tribe(s).

### 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 conduct an Agency-wide Tribal consultation every year, in addition to 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.

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

---

- HRSA will post this report on its and the National Indian Health Board's website. 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.

**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**

- HRSA senior leadership will designate official points of contacts responsible for the initial coordination and facilitation of the program office interaction with Indian Tribe(s). These contacts will serve as the program single points of contact for government-to-government interaction with offices and workgroups within HRSA on Tribal issues.
- Each individual program office will meet with Indian Tribe grantees regarding programmatic concerns at the request of the Tribal grantees.
- 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.

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

---

**Meaningful Outcomes**

The consultation process and activities conducted within the scope of the HRSA policy should result in meaningful outcomes for both HRSA and Indian Tribes. Before any final policy decisions are adopted, the proposed outcome of a consultation shall be widely publicized and circulated for review and comment to affected Indian Tribes, inter-Tribal organizations, and within HRSA.

Good faith implementation of HRSA programs and a cooperative working relationship with Indian Tribes in support of HRSA programs is the primary meaningful outcome. HRSA will work with states to emphasize the importance of providing program services and funding on an equitable basis to AI/ANs. Where states do not comply with this requirement, HRSA will take appropriate remedial action.

HRSA will request that any state, with federally recognized Tribes, receiving HRSA funding will provide meaningful consultation with Tribes. A written report will be required from the states to HRSA. The report will contain the following topics:

Scope of service provision (amount and need)
Strategies for service provision
Utilization of services
Time frame for state implementation of proposed project
Involvement of “Dashboard” development (key performance indicators)
Suicide prevention
Technical assistance needs
Involvement of individuals and families
Use of technology
Collaboration

(\* Please note this is not an all-inclusive list as more components could be required.)

Required topics of discussion may include:

Name of Tribe(s)
Date of consultation
Duration of consultation (e.g. hours, days)
List of Tribal representatives
Topic(s) of consultation

HRSA shall facilitate meaningful consultations and outcomes among Indian Tribe(s) and one or more states administering HRSA programs, measure state performance in serving AI/ANs, report the outcome of its efforts to affected Indian Tribes, and make a good faith effort to ensure all parties fully comply with HRSA program requirements.

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

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**Waivers and Elevation of Issue(s)**

The intent of this policy is to provide increased ability to address issues impacting Indian Tribes. 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-government relationship, may elevate an issue of importance to the Department, through IGA, for decision. HRSA will review and streamline the processes under which 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 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 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.

- Implementation of this policy shall be made part of the annual performance plan for HRSA senior management as a critical performance element, in those offices where there are specific Tribal activities.

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

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- HRSA, in collaboration with the Tribes, will design and implement specific indicators to ensure accountability among program managers, central office and regional offices 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.”
- In order to effectively 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 process 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 activity. 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

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

---

- 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**

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.

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

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## 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 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. Formats of communication may be in person, telecommunication (e.g. Webinar), written formats including e-mail, and other forms that are accessible to all Tribes.

***Consortia of federally-recognized Tribes:*** Two or more federally-recognized Indian Tribes.

***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.

***Coordination and Collaboration:*** Working and communicating together in a meaningful government-to-government effort to establish a positive outcome.

***Cultural Knowledge:*** Cultural awareness, sensitivity and competency are all essential dimensions of knowledge and understanding that increase the skill and ability of state and Federal agencies to work effectively with Tribes. Effective consultation includes an understanding and knowledge of Tribal governmental structures and processes, Tribal laws, rules and regulations, and (as reasonable and appropriate) Tribal customs, traditions and beliefs.

***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 Indian Tribes (Indian Tribes):*** An American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village or Community that the Secretary of the Interior

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

---

acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, codified at 25 U.S.C. §479(a).

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

**Meaningful Consultation:** An enhanced two-way form of communication that emphasizes trust and respect. It is a shared responsibility. Central to this form of consultation is the contribution of expertise, information, and collaboration by all parties. 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 critical component of meaningful consultation is dialogue/communication, before actions and decisions are made.

**Policies that have Tribal Implications:** Refers to regulations, 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.

**Public Participation:** When the public is notified of a proposed or actual action, and is provided meaningful opportunities to participate in the policy development process.

**Reservation:** "Reservation" means any federally recognized Indian Tribe's reservation, Pueblo or colony, including former reservations in Oklahoma, Alaska Native Regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), and Indian allotments.

**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.

**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.

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

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**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.

**Tribal Organization:** "Tribal organization" shall have the same meaning as provided in the Indian Self Determination and Education Assistance Act.

**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
FR	Federal Register
HRSA	Health Resources and Services Administration
HHS	U.S. Department of Health and Human Services
OPDIV	Operating Divisions of HHS
SPOC	Single Point of Contact
U.S.	United States
U.S.C.	United States Code

#### 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.

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

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**16. 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.

**17. EFFECTIVE DATE**

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