

IDAHO MEDICAID TRIBAL CONSULTATION POLICY & PROCEDURES

CONSULTATION POLICY STATEMENT

The United States government has a unique legal relationship with American Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. The Idaho Department of Health & Welfare acknowledges this unique relationship and recognizes the right of Indian tribes to self-determination and self-government. This special relationship constitutes a government-to-government relationship between American Indian tribes and federal and state governments. The relationships between governmental structures can only be built through trust and mutual respect. As sovereign governments, the state of Idaho and Federally Recognized Tribes located in Idaho (hereafter referred to as Tribes) must work together to develop mutual respect for the sovereign interests of both parties.

It is the intent of the Divisions of Medicaid and Welfare in the Idaho Department of Health and Welfare to consult on a regular, on-going basis with the six Tribes on matters relating to Medicaid eligibility and services, which are likely to have a direct effect on Native Americans and Indian Health Programs. This process ensures that Idaho's Federally Recognized Tribal governments are included in decision making when changes in the Medicaid program place a direct compliance cost or impact on their health programs. This process also preserves the right of the Divisions of Medicaid and Welfare to make appropriate decisions based upon the needs of all Medicaid and CHIP beneficiaries.

The Divisions of Medicaid and Welfare shall engage tribal consultation when a State Plan Amendment, waiver proposal, demonstration project proposal, or state Medicaid regulations will likely have a compliance cost or direct impact on Idaho Native Americans or Idaho Indian Health Programs (638 Clinics/IHS/FQHC). To the extent practical and permitted by law, the state shall consult with Tribal governments as early as possible in the consultation process.

This policy does not apply to federally mandated State Plan Amendments or waiver amendments.

BACKGROUND

On July 1, 2009, Congress passed the American Recovery and Reinvestment Act of 2009 (Recovery Act), which amended §1902(a) (73) of the Social Security Act to require that "in the case of any State in which one or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which they seek advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Health Organizations and that a) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and b) may include appointment of an advisory committee and of a designee advising the State on its State plan under this title".

The Idaho Divisions of Medicaid and Welfare in the Department of Health and Welfare seek consultation from and participation by representatives of tribal governments in implementation of policy, which promotes government-to-government relationships with American Indian Tribes.

DETERMINATION OF DIRECT EFFECT:

To determine direct effect on Native Americans or tribal programs the Divisions of Medicaid and Welfare will ask the following questions before submitting a State Plan Amendment; waiver proposal or amendment; or demonstration project proposal or amendment:

- Does the proposal or change directly effect Native Americans or tribal programs but is federally or statutorily mandated?
 - Yes – States have no flexibility in the mandate – Notice only – No Consultation Required.
 - Yes – State has flexibility in implementing mandate – Consultation required.
- Does the proposal or change impact services or access to services provided, or contracted for, by Tribes or Indian Health Services (IHS) including but not limited to:
 - a. Decrease/increase in services.
 - b. Change in provider qualifications/requirements.
 - c. Change service eligibility requirements (i.e. prior authorization).
 - d. Place compliance costs on IHS and Tribal health programs.
 - e. Change in reimbursement rate or methodology.
 - Yes – Consultation required.
- Does the proposal negatively impact or change the eligibility for, or access to, Tribal members' Medicaid?
 - Yes – Consultation required.

COMMUNICATION METHODS

The Division of Medicaid will use the following methods to provide notice and request input from Tribes on Medicaid issues.

WRITTEN CORRESPONDENCE (DEAR TRIBAL LEADER LETTER) - Notice of State Plan Amendments/waiver proposals/rule changes or amendments/demonstration projects/amendments to designated entities.

- Designated entities include but are not limited to:
 - a. Idaho State Tribal Governments (e.g. Tribal Executive Council, Tribal Business Council).
 - b. Tribal Chairman, Chief, or their designated representative(s).
 - c. Tribal Health Clinic Executive Director of Idaho's 638/FQHC providers.
 - d. IHS Clinic(s) Executive Director.

- e. Tribal organizations established to represent IHS and Tribal health programs such as the Northwest Portland Indian Health Board.
- Written notification includes but is not limited to all of the following:
 - a. Purpose of the proposal/change.
 - b. Anticipated impact on Native Americans or Tribal programs.
 - c. Method for providing comments/questions.
 - d. Timeframe for responses.
 - e. Opportunity for a face-to-face meeting with elected Tribal leaders, IHS and Tribal health program representatives, if requested.

MEETINGS/PRESENTATIONS

- Quarterly joint meetings with Tribes, the Divisions of Medicaid/Welfare/Health, and the Northwest Portland Area Indian Health Board.
Note: Travel for quarterly meetings/ or other meetings with Medicaid are reimbursable if the Tribe has a Medicaid Administrative Match (MAM) contract with Medicaid.

COMMITTEES

Medicaid Medical Care Advisory Committee – Each Tribe with a health clinic located in Idaho will be invited to the Medical Care Advisory Committee meetings. Travel for participation by the additional Idaho Tribal representatives on the committee is paid by the Division of Medicaid through the Tribe's MAM contract.

SHAREPOINT SITE (DNN)

- Idaho Medicaid/Welfare will maintain a public SharePoint site and post information on programs/eligibility/State Plan Amendments/waivers that will have an impact on Tribes.
- Tribes will use this site to post and update Tribal contact information.

WORK GROUPS

- Representation on special workgroups as needed and recommended by the Division of Medicaid and/or Tribal governments.

COMMUNICATION TIMEFRAMES

The Divisions of Medicaid/Welfare will request consultation at the earliest opportunity and to the extent possible give the appropriate tribal contact(s) an appropriate amount of time to consider and respond to the impact of the consultation request.

RESPONSIBILITIES

DIVISIONS OF MEDICAID/WELFARE

- Request consultation from Idaho Indian health programs as approved in this policy.
- Maintain Web SharePoint site for posting of Medicaid information for Tribes.
- Post information that meets the criteria in "Determination of Direct Impact" to SharePoint site – Medicaid will also post other information of interest/benefit to the Tribes.
- Provide information through all the methods above.
- Consider input from Tribes.
- Provide responses to Tribal comments/consultation.

TRIBES

- Provide representatives to the Medical Care Advisory Committee (representatives are responsible to relay information from the committee meeting to the appropriate Tribal entities).
- Provide representatives to the Tribal/Medicaid Quarterly Meetings (representatives are responsible to relay information from the meetings to the appropriate Tribal entities).
- Provide issue specific subject matter representatives to special work groups as requested.
- Keep SharePoint site updated with current contact information.
- Provide comments/input/advice when requested or respond that there is no comment.

PROCEDURES

1. The state will identify a critical event such as policy or rule changes, State Plan amendments, waiver proposals or amendments and, in consultation with Tribes, apply questions that determine whether the event will have a direct effect on Indians or on Indian health programs.
2. The six Federally Recognized Tribes of Idaho may also identify a critical event, and in coordination with the state, work toward resolution.
3. The state and Tribes should determine the level of consultation needed (written, meeting, both) to address items #1 and #2, and request consultation, as needed.
4. The state shall review tribal consultation results and shall make recommended changes to the extent practicable and not prohibited by law.
5. The state shall post a summary of the outcome of tribal consultation on the SharePoint site.

DISCLAIMER

Each of the parties respects the sovereignty of the other party. In executing this policy, no party waives any rights, including treaty rights; immunities, including sovereign immunities; or jurisdiction. This policy does not diminish any rights or protections afforded other Indian persons or entities under state or federal law. Through this policy, the parties strengthen their collective ability to successfully resolve issues of mutual concern. While the relationship described by this policy provides increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in their relationship is the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, that party's executive office.

EFFECTIVE DATE

This policy is effective on the date of the signature by the Administrators of the Divisions of Medicaid and Welfare and may be reviewed at the request of any Tribe or Tribes or the Department.

GLOSSARY

Indian: An individual who has been determined eligible, as an Indian pursuant to 42 CFR 136.12 or Title V of the Indian Health Care Improvement Act, to receive health care services from Indian health care providers (IHS, an Indian Tribe or Tribal Organization, or through referral under Contract Health Services).

Indian Health Care Provider: A health care program, including contract health services (CHS), operated by the IHS or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

State Plan Amendment (SPA): The process by which the state makes changes to the Idaho State Plan for Medicaid and CHIP services. All state plan amendments must be approved by the Centers for Medicare and Medicaid Services (CMS) by the end of the quarter in which the addition, change, or deletion to the State Plan is effective.

Tribal Consultation: Tribal consultation is an open and continuous exchange of information that leads to mutual understanding and informed decision making between federal and state agencies and tribal governments. Tribal consultation should occur at the earliest possible point in the policy formulation process, particularly whenever decisions would significantly impact Tribes, would have a substantial compliance cost, or would result in new or changed policies.

Waiver: Process by which CMS grants the State Medicaid Program a waiver of federal Medicaid requirements in the administration of the Medicaid State Plan.

- a. Home and Community Based Services (HCBS) waivers: Waives comparability and adds services to a sub-set of the Medicaid population that meets an institutional level of care – currently two waivers (Aged & Disabled and Developmental Disability).

- b. Research and Demonstration Waiver – Currently, Idaho Medicaid has only one demonstration waiver (Health Insurance Flexibility & Accountability (HIFA) waiver) which allows Idaho the ability to receive expenditure authority to provide premium assistance in lieu of direct benefits under Medicaid and CHIP.