

Side-by-Side Comparison of TTAG/Tribal Consultation Policy with CMS Proposed Drafts

Prepared on: October 31, 2008

<p style="text-align: center;">TTAG Proposal sent out for Tribal Consultation (Dec. 2005)</p> <p style="text-align: center;">TTAG language deleted by CMS in March 2008 Proposal</p>	<p style="text-align: center;">CMS Proposal, March 2008</p> <p style="text-align: center;"><u>New language added by CMS 3/2008 draft</u></p>	<p style="text-align: center;">CMS Proposal, September 2008</p> <p style="text-align: center;">New language added by CMS in 9.08 Draft</p> <p style="text-align: center;">CMS language added in 3.08 Draft & now Deleted</p> <p style="text-align: center;"><u>Previous CMS Language added/carried over from CMS 3.08 draft or now deleted.</u></p>	<p style="text-align: center;">New Carol Barbero Comments (highlighted)</p> <p style="text-align: center;"><i>Italicized text are comments from previous CMS changes (Dec. 2005 to March 2008 draft)</i></p>
<p>1. Introduction</p> <p>The Centers for Medicare & Medicaid Services (CMS) and Indian Tribes share the goals of eliminating health disparities of American Indians and Alaska Natives (AI/AN) and ensuring that access to Medicare, Medicaid, and State Children's Health Insurance programs (SCHIP) is maximized. To achieve these goals, and to the extent practicable and not prohibited by law, it is essential that federally recognized Indian Tribes and CMS engage in open, continuous, and meaningful consultation. Effective consultation leads to information exchange, mutual understanding, and informed decision-making.</p> <p>The commitment of the United States government to consultation with Indian Tribes has been affirmed in Presidential Memoranda in 1994 and 2004, in Executive Orders issued by the President in 1998 and 2000, directives from the White House Domestic Policy Council Working Group on Indian Affairs, and in recommendations from the Department of Health and Human Services (HHS) Working Group on Consultations with American Indians and Alaska Natives.</p> <p>The Department of Health and Human Services (HHS) adopted a Tribal Consultation Policy on January 14, 2005. Under the HHS Consultation Policy every operating unit of HHS shares in the Department-wide responsibility to coordinate, communicate and consult with Indian Tribes on issues that affect these governments and their citizens. All operating Divisions, including CMS, are responsible for conducting tribal consultation on policies, including the promulgation of regulations, that have impact on Indian Tribes.</p>	<p>1. Introduction</p> <p>The Centers for Medicare & Medicaid Services (CMS) and Indian Tribes share the goals of eliminating health disparities of American Indians and Alaska Natives (AI/AN) and ensuring that access to Medicare, Medicaid, and State Children's Health Insurance programs (SCHIP) is maximized. To achieve these goals, and to the extent practicable and <u>permitted by law</u>, it is essential that federally recognized Indian Tribes <u>(hereafter referred to as "Tribes" or "Indian Tribes")</u> and CMS engage in open, continuous, and meaningful consultation. Effective consultation leads to information exchange, mutual understanding, and informed decision-making.</p> <p>The commitment of the United States government to consultation with Indian Tribes has been affirmed in Presidential Memoranda in 1994 and 2004, in an Executive Order issued by the President in 2000, directives from the White House Domestic Policy Council Working Group on Indian Affairs, and in recommendations from the Department of Health and Human Services (HHS) Working Group on Consultations with American Indians and Alaska Natives.</p> <p>The Department of Health and Human Services (HHS) <u>published a Revised</u> Tribal Consultation Policy on <u>February 1, 2008</u>. Under the HHS Consultation Policy every operating unit of HHS shares in the Department-wide responsibility to coordinate, communicate, and consult with Indian Tribes on issues that affect these governments. All operating Divisions, including CMS, are responsible for conducting Tribal consultation on policies <u>that have substantial direct effects on Indian Tribes, on the relationship between the Federal government and Indian tribes, or that</u></p>	<p>1. Introduction</p> <p>The Centers for Medicare & Medicaid Services (CMS) and Indian Tribes share the goals of eliminating health disparities of American Indians and Alaska Natives (AI/AN) and ensuring that access to Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) is maximized. To achieve these goals, and to the extent practicable and <u>permitted by law</u>, it is essential that federally recognized Indian Tribes (hereafter referred to as "Tribes" or "Indian Tribes") and CMS engage in open, continuous, and meaningful consultation. Effective consultation leads to information exchange, mutual understanding, and informed decision-making.</p> <p>The commitment of the United States government to <u>importance of</u> consultation with Indian Tribes has been <u>was</u> affirmed in Presidential Memoranda in 1994 and 2004, in an Executive Order issued by the President in 2000, in directives from the White House Domestic Policy Council Working Group on Indian Affairs, and in recommendations from the Department of Health and Human Services (HHS) Working Group on Consultations with American Indians and Alaska Natives.</p> <p>HHS adopted a published a Revised Tribal Consultation Policy on <u>January 14, 2005</u>. February 1, 2008 Under the HHS Tribal Consultation Policy every operating unit of HHS shares in the Department-wide responsibility to coordinate, communicate, and consult with Indian Tribes on issues that affect these governments. All operating Divisions, including CMS, are responsible for conducting Tribal consultation on policies <u>that have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or that otherwise have Tribal implications. This CMS policy on</u></p>	<p><i>The TTAG proposal uses the term "to the extent practicable and not prohibited by law" throughout. CMS has adopted the HHS language "to the extent practicable and permitted by law."</i></p> <p>I prefer the "commitment" phrasing in TTAG and CMS 3/08 version. Don't understand why CMS would want to drop that phrasing.</p> <p>Only syntax change. OK</p> <p>This "blue" change was made in 3/08 version.</p> <p><i>The TTAG proposal uses the terminology "impact" on tribes" while the CMS policy employs "substantial direct effects" or "substantial and direct effects." This language is discussed more fully below under Policy (section 4).</i></p>

<p>TTAG Proposal sent out for Tribal Consultation (Dec. 2005)</p> <p>TTAG language deleted by CMS in March 2008 Proposal</p>	<p>CMS Proposal, March 2008</p> <p><u>New language added by CMS 3/2008 draft</u></p>	<p>CMS Proposal, September 2008</p> <p>New language added by CMS in 9.08 Draft</p> <p>CMS language added in 3.08 Draft & now Deleted</p> <p><u>Previous CMS Language added/carried over from CMS 3.08 draft or now deleted.</u></p>	<p>New Carol Barbero Comments (highlighted)</p> <p><i>Italicized text are comments from previous CMS changes (Dec. 2005 to March 2008 draft)</i></p>
<p>This CMS policy on consultation complies with the Presidential Domestic Policy Council and HHS policies regarding consultation with tribal governments</p>	<p><u>otherwise have Tribal implications. This CMS policy on consultation complies with the HHS policy.</u></p>	<p><u>consultation complies with the HHS Tribal Consultation Policy.</u></p>	
<p>2. Background</p> <p>Since the formation of the Union, the United States 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 numerous treaties, statutes, and executive orders as well as political, legal, moral, and ethical principles. This relationship is not based upon race, but rather, is derived from the government-to-government relationship. The Federal Government has enacted numerous regulations that establish and define a trust relationship with Indian Tribes.</p> <p>This special relationship is affirmed in statutes and various Presidential Executive Orders including, but not limited to:</p> <ul style="list-style-type: none"> • The Snyder Act, P.L. 67-85; • Older Americans Act of 1965, P.L. 89-73, as amended; • Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended; • Native Americans Programs Act of 1974, P.L. 93-644, as amended; • Indian Health Care Improvement Act, P.L. 94-437, as amended; • Social Security Act, Titles IXX, XX, XXI; • Unfunded Mandates Reform Act of 1995, P.L. 104-4; • Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P. L. 104-193; • Presidential Executive Memorandum to the Heads 	<p>2. Background</p> <p>Since the formation of the Union, the United States 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 numerous treaties, statutes, and executive orders as well as political, legal, moral, and ethical principles. This relationship is not based upon race, but rather, it is derived from the government-to-government relationship. The Federal government has enacted numerous regulations that establish and define a trust relationship with Indian Tribes.</p> <p>This special relationship is affirmed in statutes and various Presidential Executive Orders <u>and Memoranda</u> including, but not limited to the <u>following</u>:</p> <ul style="list-style-type: none"> • The Snyder Act, P.L. 67-85 • Older Americans Act of 1965, P.L. 89-73, as amended • Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended • Native Americans Programs Act of 1974, P.L. 93-644, as amended • Indian Health Care Improvement Act, P.L. 94-437, as amended • Social Security Act, Titles IXX, XX, XXI • Unfunded Mandates Reform Act of 1995, P.L. 104-4 • Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P. L. 104-193 • Presidential Executive Memorandum to the 	<p>2. Background</p> <p>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 numerous treaties, statutes, and executive orders as well as political, legal, moral, and ethical principles. This relationship is not based upon race, but rather, it is derived from the government-to-government relationship. The Federal Government has enacted numerous regulations that establish and define a trust relationship with Indian Tribes.</p> <p>This special relationship is affirmed in statutes and various Presidential Executive Orders <u>and Memoranda</u> including, but not limited, to the <u>following</u>:</p> <ul style="list-style-type: none"> • The Snyder Act, P.L. 67-85 • Older Americans Act of 1965, P.L. 89-73, as amended • Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended • Native Americans Programs Act of 1974, P.L. 93-644, as amended • Indian Health Care Improvement Act, P.L. 94-437, as amended • Social Security Act, Titles IXX, XX, XXI • Unfunded Mandates Reform Act of 1995, P.L. 104-4 • Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P. L. 104-193 • Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994 	<p>CMS probably dropped Snyder Act because it isn't referenced in HHS Policy. We should ask that it be restored, as it includes an express reference to health.</p> <p>Restore with correct Roman numerals: SSA Titles XVIII, XIX, XXI UMRA probably also dropped because not referenced in HHS Policy. We should ask for restoration because this law was applied for composition of TTAG.</p>

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<p>of Executive Departments dated April 29, 1994;</p> <ul style="list-style-type: none"> • Presidential Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998; • Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000; and • Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004. 	<p>Heads of Executive Departments dated April 29, 1994</p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 	<p><i>Exec. Order 13084 is removed. As a statement of principle is not supportive of Tribal consultation.</i></p>
<p>3. Tribal Sovereignty</p> <p>This policy does not impair any rights of Indian Tribes, including treaty rights, sovereign immunities or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded to American Indian/Alaska Native (AI/AN) persons or other AI/AN entities under federal law.</p> <p>The United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian Tribes to self-government and self-determination. Indian Tribes exercise inherent sovereign powers over their members and territory. The United States 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. The constitutional relationship among sovereign governments is inherent in the very structure of the Constitution, and is formalized in and protected by Article I, Section 8.</p> <p>Increasingly, this special relationship has emphasized self-determination and meaningful involvement for Indian Tribes in federal decision-making (consultation) where such decisions have impact on Indian Tribes. The involvement of Indian Tribes in the development of public health and human services policy allows for locally relevant and culturally appropriate approaches to public issues.</p>	<p>3. Tribal Sovereignty</p> <p>This policy does not <u>waive</u> any rights of Indian Tribes, including treaty rights, sovereign immunities, or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded to American Indian/Alaska Native (AI/AN) persons or other AI/AN entities under Federal law.</p> <p>The United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian Tribes to self-government and self-determination. Indian Tribes exercise inherent sovereign powers over their members and territory. The United States 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. The constitutional relationship among sovereign governments is inherent in the very structure of the Constitution, and is formalized in, and protected by, Article I, Section 8</p> <p>Increasingly, this special relationship has emphasized self-determination and meaningful <u>consultation</u> for Indian Tribes <u>with the Federal Government on policies that have a substantial and direct affect</u> on Indian Tribes. Consultation with Indian Tribes in the development of public health and human services policy allows for <u>meaningful dialogue</u> on locally relevant and culturally appropriate approaches to public health</p>	<p>3. Tribal Sovereignty</p> <p>This policy does not <u>waive</u> any rights of Indian Tribes, including treaty rights, sovereign immunities, or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded to AI/persons or other AI/entities under Federal law.</p> <p>The U.S., in accordance with treaties, statutes, Executive Orders (EO), and judicial decisions, has recognized the right of Indian Tribes to self-government and self-determination. Indian Tribes exercise inherent sovereign powers over their members and territory. 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. The constitutional relationship among sovereign governments is inherent in the very structure of the Constitution, and is formalized in, and protected by, Article I, Section 8.</p> <p>Increasingly, this special relationship has emphasized self-determination and meaningful <u>involvement</u> consultation for Indian Tribes <u>in Federal decision-making (consultation) when these decisions affect Indian Tribes. The involvement of</u> with the Federal Government on policies that have a substantial and direct affect Indian Tribes in the development of public health and human services policy allows for <u>meaningful dialogue</u> locally relevant and culturally</p>	<p>This green language generally restores TTAG phrasing.</p>

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	issues.	appropriate approaches to public issues.	
<p>4. Policy</p> <p>The guiding principle of this policy is to ensure that, pursuant to the special relationship between the United States and Indian Tribes, and to the greatest extent practicable and not prohibited by law, broad based input is sought by CMS prior to taking actions that have impact on Indian Tribes.</p> <p>Such actions refer to policies, including the promulgation of regulations that have impact on Indian Tribes and 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.</p> <p>Nothing in this policy waives the Federal Government's deliberative process privilege.</p> <p>For example, in instances where the CMS is specifically requested by Members of Congress to respond to or report on proposed legislation, the development of such responses and of related policy is a part of the Executive Branch's deliberative process privilege and should remain confidential.</p> <p>In specified instances where Congress requires CMS to work with Tribes on the development of recommendations that may require legislation, such reports, recommendations or other products are developed independent of CMS position, the development of which is governed by Office of Management and Budget (OMB)-Circular A-19</p>	<p>4. Policy</p> <p>The guiding principle of this policy is to ensure that, pursuant to the special relationship between the United States and Indian Tribes, and to the greatest extent practicable and permitted by law, <u>CMS will consult with tribes on policies that have a substantial and direct [effect] on tribes. As appropriate, CMS will fully consider all comments received</u> during the consultation process.</p> <p><u>Consultation will occur regarding policies that have Tribal implications and that will have substantial direct effects on one or more Indian Tribes,</u> 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. <u>CMS will fully consider all tribal comments received.</u></p> <p>Nothing in this policy waives the Federal government's deliberative process privilege.</p> <p>For example, in instances when CMS is specifically requested by members of Congress to respond to, or report on, proposed legislation, the development of <u>these</u> responses and related policy is a part of the Executive Branch's deliberative process privilege and should remain confidential.</p> <p>In specified instances, when Congress requires CMS to work with Indian Tribes on the development of recommendations that may require legislation, <u>these</u> reports, recommendations, or other products are developed independent of the CMS position; the development of which is governed by the Office of Management and</p>	<p>4. Policy</p> <p>The guiding principle of this policy is to ensure that, to the greatest extent practicable and permitted by law, <u>broad based input is sought by CMS from Indian Tribes through a consultation process before CMS adopts policies that will significantly and directly affect Indian Tribes.</u> CMS will consult with tribes on policies that have a substantial and direct [effect] on tribes. As appropriate, CMS will fully consider all comments received during the consultation process.</p> <p><u>CMS will initiate a consultation process when considering the adoption of policies that have Tribal implications and that will have substantial direct effects on one or more Indian Tribes,</u> Consultation will occur regarding policies that have Tribal implications and that will 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. CMS will fully consider all tribal comments received.</p> <p>Nothing in this policy waives the Federal Government's deliberative process privilege.</p> <p>For example, in instances when CMS is specifically requested by Members of Congress to respond to or report on proposed legislation, the development of <u>these</u> responses and related policy is a part of the Executive Branch's deliberative process privilege and should remain confidential.</p> <p>In specified instances, when Congress requires CMS to work with Indian Tribes on the development of recommendations that may require legislation, <u>these</u> reports, recommendations, or other products are developed independent of the CMS position, the development of which is governed by the Office of Management and Budget (OMB) Circular A-19.</p>	<p>These green edits are objectionable. TTAG wording of "to the greatest extent practicable" is replaced with "broad based input" – which is a lesser standard. Also "significantly and directly affect Indian tribes" is a different (higher?) standard than "substantial and direct effect", the standard in the HHS Policy. Q for CMS: Why was the final sentence of this paragraph dropped?</p> <p>This green language is a change from CMS 3/08 phrasing. Appears only to change from passive to active voice. OK.</p> <p>Why was last sentence dropped?</p>

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	Budget (OMB) Circular A-19.		
<p>4.1. CMS's consultation process will ensure meaningful and timely input by tribal officials in the development of policies that have impact on Indian tribes.</p>	<p>4.1. CMS's consultation process will ensure that <u>Tribal officials have an opportunity to provide</u> meaningful and timely input in the development of policies that have Tribal implications. <u>As appropriate, CMS will fully consider all comments received during the consultation process.</u></p>	<p>4.1. CMS' consultation process will ensure that <u>Tribal officials have an opportunity to provide</u> meaningful and timely input in the development of policies that have Tribal implications. As appropriate, CMS will fully consider all comments received during the consultation process.</p>	<p><i>CMS makes a distinction between tribes always being consulted and consulted only during an "opportunity" period and that comments may be considered, rather than acting upon.</i></p> <p>Again, it's not apparently why last sentence was dropped. It's not harmful to CMS.</p>
<p>4.2. CMS shall not promulgate any regulation that has impact on Indian Tribes or that imposes substantial direct compliance costs on Indian tribe(s), unless</p>	<p>4.2. <u>To the extent practicable and permitted by law,</u> CMS will not promulgate any regulation that has <u>Tribal implications,</u> that imposes substantial direct compliance costs on an Indian Tribe(s), <u>or that is not required by statute,</u> unless:</p>	<p>4.2. <u>To the extent practicable and permitted by law,</u> CMS will not promulgate any regulation that has <u>Tribal implications,</u> that imposes substantial direct compliance costs on an Indian Tribe(s), <u>or that is not required by statute,</u> unless:</p>	<p><i>This is a substance change. Insertion of "To the extent practicable and permitted by law" is a significant change from TTAG proposal. Other changes weaken Tribal position, however TTAG might consider accepting with following recommendation: RECOMMENDATION: Strike CMS language "To the extent practicable and permitted by law".</i></p>
<p>4.2.1. It is required by statute;</p>	<p>4.2.1. <u>Funds necessary to pay the direct costs incurred by the Indian Tribe(s) in complying with the regulation are provided by the Federal government; or</u></p>	<p>4.2.1. <u>Funds necessary to pay the direct costs incurred by the Indian Tribe(s) in complying with the regulation are provided by the Federal Government; or</u></p>	<p><i>TTAG might consider accepting this change.</i></p>
<p>4.2.2. Funds necessary to pay the direct costs incurred by the Indian Tribe in complying with the regulation are provided by the Federal Government; or</p>			
<p>4.2.3 CMS, prior to the formal promulgation of the regulation, consulted with tribal officials early and throughout the process of developing the proposed regulation as guided by these policies; and a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register (FR), provides a tribal summary impact statement, which consists of a description of the extent of the prior consultation with tribal officials, a summary of the nature of their concerns and the agency'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 Administrator any written communications regarding the proposed regulations submitted to CMS by tribal officials.</p>	<p>4.2.2. CMS, prior to the formal promulgation of the regulation, consulted with Tribal officials early and throughout the process of developing the proposed regulation as guided by these policies; and a separately identified portion of the preamble to the regulation as it is to be issued in the <i>Federal Register</i> provides a Tribal summary impact statement, which consists of a description of the extent of the prior consultation with Tribal officials, a summary of the nature of their concerns and the agency'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 Administrator, <u>or his or her designee,</u> any written communications regarding the proposed regulation submitted to CMS by</p>	<p>4.2.3 CMS, prior to the formal promulgation of the regulation, consulted with tribal officials early and throughout the process of developing the proposed regulation as guided by these policies; and a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register (FR), provides a tribal summary impact statement, which consists of a description of the extent of the prior consultation with tribal officials, a summary of the nature of their concerns and the agency'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 Administrator, or his or her designee, any written communications regarding the proposed regulations submitted to CMS by tribal officials.</p>	<p>This deletes wording CMS added in its 3/08 version. OK.</p>

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	Tribal officials.		
<p>4.3. CMS shall not promulgate any regulation that has impact on Indian Tribes or that preempts tribal law unless, CMS, prior to the formal promulgation of the regulation, has</p>	<p>4.3. <u>To the extent practicable and permitted by law</u>, CMS shall not promulgate any regulation that has <u>Tribal implications</u> or that preempts Tribal law unless, CMS, prior to the formal promulgation of the regulation, has</p>	<p>4.3. To <u>the extent practicable and permitted by law</u>, CMS shall not promulgate any regulation that has <u>Tribal implications</u> or that preempts Tribal law unless CMS, prior to the formal promulgation of the regulation has:</p>	<p><i>This is a substance change. Insertion of “To the extent practicable and permitted by law” is a significant change from TTAG proposal. Other change weakens Tribal position, however TTAG might consider accepting with following recommendation: RECOMMENDATION: Strike CMS language “To the extent practicable and permitted by law”.</i></p>
<p>4.3.1. consulted with tribal officials early and throughout the process of developing the proposed regulation;</p>	<p>4.3.1. consulted with Tribal officials early and throughout the process of developing the proposed regulation;</p>	<p>4.3.1. Consulted with Tribal officials early and throughout the process of developing the proposed regulation;</p>	
<p>4.3.2. in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provided a tribal summary impact statement, which consists of a description of the extent of the prior consultation with tribal officials, a summary of the nature of their concerns and the CMS 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</p>	<p>4.3.2. in a separately identified portion of the preamble to the regulation as it is to be issued in the <i>Federal Register</i>, provided a Tribal summary impact statement, which consists of a description of the extent of the prior consultation with Tribal officials, a summary of the nature of their concerns and the CMS position supporting the need to the extent to which the concerns of Tribal officials have been met; and</p>	<p>4.3.2. In a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provided a Tribal summary impact statement which consists of a description of the extent of the prior consultation with Tribal officials, a summary of the nature of their concerns and the CMS position supporting the need to <u>issue the regulation, and a statement of</u> the extent to which the concerns of Tribal officials have been met; and</p>	<p>Green words added for better syntax. OK.</p>
<p>4.3.3. made available to the Administrator any written communications submitted to the agency by tribal officials.</p>	<p>4.3.3. made available to the Administrator, <u>or his or her designee</u>, any written Communications submitted to the agency by Tribal officials.</p>	<p>4.3.3. Made available to the Administrator <u>or his/her designee</u>, any written communications submitted to the Agency by Tribal officials.</p>	
<p>4.4. On issues relating to tribal self-governance, tribal self-determination, tribal trust resources, or tribal treaty and other rights, CMS should explore, and where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.</p>	<p>4.4. On issues relating to Tribal self-governance, Tribal self-determination, Tribal trust resources, or Tribal treaty and other rights, CMS should explore, and as appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.</p>	<p>4.4. On issues relating to Tribal self-governance, Tribal self-determination, Tribal trust resources, or Tribal treaty and other rights, CMS should explore and as appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.</p>	
<p>4.5. The special “Tribal-Federal” relationship is based on the government-to-government relationship. Other statutes and policies exist that allow communication with urban Indian organizations. Even though urban Indian organizations are not Indian Tribes, CMS is able to</p>	<p>4.5. The special “Tribal-Federal” relationship is based on the government-to-government relationship. Other statutes and policies exist that allow communication with urban Indian organizations. Even though urban Indian organizations are not Indian Tribes, CMS is able to</p>	<p>4.5. The special “Tribal-Federal” relationship is based on the government-to-government relationship. Other statutes and policies exist that allow communication with urban Indian organizations. Even though urban Indian organizations are not Indian Tribes, CMS is able to communicate with these organizations</p>	<p><i>CMS states they will only follow FACA guidelines “as applicable” instead of always. Not a significant change.</i></p>

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<p>communicate with these organizations individually. If CMS wants to include organizations that do not represent a specific federally recognized tribal government on advisory committees or workgroups then Federal Advisory Committee Act (FACA) requirements must be followed.</p>	<p>communicate with these organizations individually. If CMS wants to include organizations that do not represent a specific Federally recognized Tribal government on advisory committees or workgroups then the Federal Advisory Committee Act (FACA) requirements <u>will be followed as applicable.</u></p>	<p>individually. If CMS wants to include organizations that do not represent a specific federally recognized Tribal government on advisory committees or workgroups, the Federal Advisory Committee Act (FACA) requirements <u>will be followed</u> will be followed as applicable.</p>	
<p>5. CMS Core Values</p> <p>The Centers for Medicare & Medicaid Services are guided by a set of core values: Public Service, Integrity, Accountability, Excellence and Respect. These core values embody CMS' commitment to its programs and pledge to quality services and responsiveness to beneficiaries, health care professionals, and partners. The federal delivery of health services and funding of programs to maintain and improve the health of AI/ANs are consonant with and required by the Federal Government's historical and unique legal relationship between Indian tribes and the United States. This relationship has resulted in a government-to-government relationship that is embodied in tribal consultation.</p> <p>The attainment of CMS's core values cannot be achieved without effective tribal consultation. A desired outcome of such consultation is acceptance of the tribal position on issues that have impact on Indian Tribes to the extent not prohibited by law.</p>	<p>5. CMS Core Values</p> <p><u>CMS is committed to working on a government to government basis with tribes as sovereign nations and to working in partnership with American Indians and Alaska Natives to advance its mission of ensuring effective, up-to-date health care coverage and to promote quality care for beneficiaries. CMS is further committed to facilitating and participating in all HHS Department wide consultation activities and programs.</u></p>	<p>5. CMS Core Values</p> <p><u>CMS is committed to working on a government-to-government basis with Tribes as sovereign nations and to working in partnership with American Indians and Alaska Natives to advance its mission of ensuring effective, up-to-date health care coverage and to promote quality care for beneficiaries. CMS is further committed to facilitating and participating in HHS Department-wide consultation activities and programs.</u></p> <p><u>Indian Tribes have an inalienable and inherent right to self-governance. Self-governance means government in which decisions are made by the people who are most directly affected by the decisions.</u></p>	<p><u>TTAG was unhappy with the substitution of this blue paragraph when it appeared in 3/08 version instead of TTAG language which, among other things, referenced "maintain and improve the health of AI/ANs" as consonant with Fed Gov unique relationship with tribes. The Q is whether we want to insist that improvement of health be an express goal of this CMS Policy.</u></p> <p><u>With all due respect, this green statement is gratuitous.</u></p> <p><u>TTAG's version of Sec. 5 remains far preferable to CMS's.</u></p>
<p>6. Objectives</p> <p>In order to fully effectuate this Consultation Policy, CMS will:</p>	<p>6. Objectives</p> <p>In order to fully effectuate this consultation policy, CMS will:</p>	<p>6. Objectives</p> <p>In order to fully effectuate this consultation policy, CMS will:</p>	
<p>6.1. Establish improved communication channels with tribal officials and other AI/AN organizations, as necessary, to increase knowledge and understanding of CMS's programs: Medicare, Medicaid, and State Children's Health Insurance Program;</p>	<p>6.1. Establish improved communication channels with Tribal officials and other AI/AN organizations, <u>as appropriate</u>, to increase knowledge and understanding of CMS's programs <u>including but not limited to</u> the Medicare, Medicaid, and the State Children's Health Insurance Program;</p>	<p>6.1. Establish improved communication channels with Tribal officials and other AI/AN organizations as appropriate to increase knowledge and understanding of CMS' programs; including but not limited to the Medicare, Medicaid, and the State Children's Health Insurance Program;</p>	<p><u>Strike-outs here are not objectionable.</u></p>

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<p>6.2. Create opportunities for Indian Tribes to raise issues with CMS and for CMS to seek consultation with Indian Tribes and communication with Indian organizations when new issues arise;</p>	<p>6.2. Create opportunities for Indian Tribes to raise issues with CMS and for CMS to seek consultation with Indian Tribes and communication with Indian organizations when new issues arise;</p>	<p>6.2. Create opportunities for Indian Tribes to raise issues with CMS and for CMS to seek consultation with Indian Tribes and communication with Indian organizations when new issues arise;</p>	
<p>6.3. Establish a minimum set of requirements and expectations with respect to consultation and participation for the levels of CMS management;</p>	<p>6.3. Establish a minimum set of requirements and expectations with respect to consultation and participation for the levels of CMS management;</p>	<p>6.3. Establish a minimum set of requirements and expectations with respect to consultation and participation for the levels of CMS management;</p>	
<p>6.4. Conduct tribal consultation when CMS's policies have impact on Indian Tribes;</p>	<p>6.4. Conduct Tribal consultation when CMS's policies have <u>a substantial and direct effect on Tribes;</u></p>	<p>6.4. Conduct Tribal consultation when CMS' policies have <u>Tribal implications;</u> a substantial and direct effect on Tribes;</p>	<p>This change is OK, as definition of the term "Policies that have Tribal implications" incorporates "substantial and direct effect on Tribes".</p>
<p>6.5. To the extent not prohibited by law, require States to consult with Indian Tribes in the development of waivers and other changes in programs funded in whole or in part by CMS;</p>	<p>6.5. <u>Encourage States</u> to consult with Indian Tribes in the development of changes in programs funded in whole or in part by CMS;</p>	<p>6.5. <u>Encourage States</u> to consult with Indian Tribes in the development of changes in programs funded in whole or in part by CMS;</p>	<p><i>Soft, CMS is careful to require anything from states. CMS may not be willing to direct states to do anything and TTAG might consider accepting proposed change.</i></p>
<p>6.6. Coordinate with IHS on issues of mutual concern;</p>	<p>6.6. Coordinate with IHS on issues of mutual concern;</p>	<p>6.6. Coordinate with the Indian Health Service (IHS) on issues of mutual concern;</p>	
<p>6.7. Coordinate among CMS Regional Offices and Central Office to assure consistent policy interpretations, interaction of all levels of CMS with Indian Tribes, and direction to State Agencies regarding issues that have impact on Indian Tribes; and</p>	<p>6.7. Coordinate among CMS Regional Offices and Central Office to assure consistent policy interpretations, interaction of all levels of CMS with Indian Tribes, and direction to State Agencies regarding issues that have <u>Tribal implications;</u> and</p>	<p>6.7. Coordinate among CMS Regional Offices and Central Office to ensure consistent policy interpretations, interaction of all levels of CMS with Indian Tribes, and direction to State Agencies regarding issues that have <u>Tribal implications;</u> and</p>	
<p>6.8. Enhance partnerships with Indian Tribes that will include technical assistance and access to CMS programs and resources.</p>	<p>6.8. Enhance partnerships with Indian Tribes that will include technical assistance and <u>facilitate</u> access to CMS programs and resources.</p>	<p>6.8. Enhance partnerships with Indian Tribes that will include technical assistance and facilitate access to CMS programs and resources.</p>	<p>This strike through is good, as it restores TTAG's wording.</p>
<p>7. Roles</p> <p>Achievement of the goals and objectives of this Consultation Policy requires clear definition of the</p>	<p>7. Roles</p> <p>Achievement of the goals and objectives of this Consultation Policy requires clear definition of the</p>	<p>7. Roles</p> <p>Achievement of the goals and objectives of this Tribal Consultation Policy requires clear definition of the</p>	

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roles of the entities involved.	roles of the entities involved.	roles of the entities involved.	
7.1. American Indian/Alaska Native	7.1. American Indian/Alaska Native	7.1. AI/AN	
<p>7.1.1. Indian Tribe(s): The government-to-government relationship between the United States and Indian Tribes dictates that the principal focus of CMS consultation is with individual Indian Tribes.</p>	<p>7.1.1. Indian Tribe(s). The government-to-government relationship between the United States and Indian Tribes dictates that the <u>primary</u> focus of CMS consultation is with individual Indian Tribes.</p>	<p>7.1.1. Indian Tribes. The government-to-government relationship between the U.S. and Indian Tribes dictates that the <u>principal</u> primary focus of CMS consultation is with individual Indian Tribes.</p>	<p>This change restores TTAG wording.</p>
<p>7.1.2. Tribal Organizations. Pursuant to the Indian Self-Determination and Education Assistance Act, Pub.L. 93-638, as amended, Indian Tribes have the authority to delegate their right to carry out programs of the Indian Health Service to a “tribal organization.” To the extent this has occurred, CMS will provide such tribal organizations an opportunity to fully participate in tribal consultation under this policy. Such participation will not substitute for direct consultation with Indian Tribes, but shall occur in addition to consultation with Indian Tribes.</p>	<p>7.1.2. Tribal Organizations. Pursuant to the Indian Self-Determination and Education Assistance Act, Pub.L. 93-638, as amended, Indian Tribes have the authority to delegate their right to carry out programs of the Indian Health Service (IHS) to a “Tribal organization.” To the extent this has occurred, CMS will provide such Tribal Organizations and opportunity to fully participate in Tribal consultation under this policy. Such participation will not substitute for direct consultation with Indian Tribes, but shall occur in addition to consultation with Indian Tribes.</p>	<p>7.1.2. Tribal Organizations. <u>Organizations that are not Indian Tribes may contract under the Indian Self-Determination and Education Assistance Act, P. L. 93-638, as amended.</u> Pursuant to the Indian Self-Determination and Education Assistance Act, Pub.L. 93-638, as amended, Indian Tribes have the authority to delegate their right to carry out programs of the Indian Health Service (IHS) to a “Tribal organization.” To the extent this has occurred, CMS will provide such Tribal Organizations an opportunity to fully participate in Tribal consultation under this policy. Such participation will not substitute for direct consultation with Indian Tribes, but shall occur in addition to consultation with Indian Tribes.</p>	<p>The 1st sentence of 7.1.2 should be restored to TTAG and CMS 3/08 text, as it is more accurate description of ISDEAA authority for tribal organizations.</p>
<p>7.1.3. Other Indian Organization(s). It is frequently necessary that the CMS communicate with Indian Organization(s) and/or committees to solicit consensual tribal advice and recommendations. Although, the special “Tribal-Federal” relationship is based on the government-to-government relationship with Indian Tribe(s), other statutes and policies exist that allow for consultation with Indian Organization(s). These organizations by the nature of their business serve and represent Indian Tribe(s) issues and concerns that might be affected if these organizations were excluded from the consultation process. Even though some of the organizations/committees do not represent federally recognized Indian Tribe(s), CMS is able to communicate with these groups.</p>	<p>7.1.3. Other Indian Organization(s). It is frequently necessary that the CMS Communicate with Indian Organization(s) and/or committees to solicit consensual Tribal advice and recommendations. Although, the special “Tribal-Federal” relationship is based on the government-to-government relationship with Indian Tribe(s), other statutes and policies exist that allow for consultation with Indian Organization(s). These organizations by the nature of their business serve and represent Indian Tribe(s) Issues and concerns that might be affected if these organizations were excluded from the consultation process. Even though some of the organizations/committees do not represent federally recognized Indian Tribe(s), CMS is able to communicate with these groups <u>and Federal</u></p>	<p>7.1.3. Other Indian Organizations. It is frequently necessary that CMS communicate with Indian Organization(s) and/or committees to solicit consensual Tribal advice and recommendations. Although, the special “Tribal-Federal” relationship is based on the government-to-government relationship with Indian Tribe(s), other statutes and policies exist that allow for consultation with Indian Organization(s). These organizations by the nature of their business serve and represent Indian Tribe(s) issues and concerns that might be affected if these organizations were excluded from the consultation process. Even though some of the organizations/committees do not represent federally recognized Indian Tribe(s), CMS is able to communicate with these groups and Federal Advisor Committee (FACA) requirements</p>	<p>This strike removes language CMS added in 3/08 version.</p>

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	<p><u>Advisor Committee (FACA) requirements will be followed as applicable.</u></p>	<p>will be followed as applicable.</p>	
	<p><u>7.1.4. IHS. IHS has a unique historical understanding and role that requires close coordination with CMS. CMS is committed to working closely with IHS on Tribal issues in the administration of the Medicare, Medicaid and SCHIP programs. This is achieved through HHS processes as well as direct communication between the Agencies. While this communication with IHS is critical, it does not substitute for Tribal consultation.</u></p>	<p><u>7.1.4. IHS. IHS has a unique historical understanding and role that requires close coordination with CMS. CMS is committed to working closely with IHS on Tribal issues in the administration of the Medicare, Medicaid and SCHIP programs. This is achieved through HHS processes as well as direct communication between the Agencies. While this communication with IHS is critical, it does not substitute for Tribal consultation.</u></p>	<p><i>CMS states communication with IHS does not substitute for consultation and is an improvement in TTAG proposal.</i></p>
<p>7.2. CMS</p>	<p>7.2. CMS</p>	<p>7.2. CMS</p>	
<p>7.2.1. Central Office. The CMS Central Office has oversight responsibility for the Regional Office consultations, and will as necessary identify issues on which the Regional Offices will consult and otherwise help Regional Offices to carry out their consultative responsibilities. The Central Office will also address issues arising out of the consultation process that require a new policy or clarification of a policy or the establishment of a new policy as a result of statutory changes. The Central Office will seek advice from the Tribal Technical Advisory Group (TTAG) on the consultative approach to be used and will use the TTAG in-policy deliberations to the extent practicable and not prohibited by law.</p>	<p>7.2.1. Central Office. The CMS Central Office has oversight responsibility for the Regional Office consultations, and will as necessary identify issues on which the Regional Offices will consult and otherwise help Regional Offices to carry out their Consultative responsibilities. The Central Office will also address issues arising out of The consultation process. The Central Office will seek advice from the Tribal Technical Advisory Group (TTAG) on the consultative Approach to be used and will use the TTAG <u>as appropriate in policy</u></p>	<p>7.2.1. Central Office. The CMS Central Office has oversight responsibility for the Regional Office consultations, and will as necessary identify issues on which the Regional Offices will consult and otherwise help Regional Offices to carry out their consultative responsibilities. The Central Office will also address issues arising out of the consultation process <u>that require a new policy or clarification of a policy or the establishment of a new policy as a result of statutory changes.</u> The Central Office will seek advice from the Tribal Technical Advisory Group (TTAG) on the consultative approach to be used. and will use the TTAG as appropriate in policy</p>	<p><u>This green language restores TTAG phrasing.</u></p> <p><u>Strike-through cures syntax error created in CMS 3/08 version.</u></p>
<p>7.2.2. Regional Offices. The Regional Offices will have primary responsibility for carrying out tribal consultations on an ongoing basis at least once a year. The CMS Regional Administrator will ensure that CMS' consultation process is carried out in accordance with this Tribal Consultation Policy with the Indian Tribe(s) in that region. To this end, the Regional Offices will engage in and facilitate open and meaningful consultation with Indian Tribe(s) to the extent practicable and not prohibited by law.</p>	<p>7.2.2. Regional Offices. The Regional Offices and <u>Regional Consortia</u> will have primary responsibility for carrying out Tribal consultations on an ongoing basis at least once a year. The CMS Regional Administrator <u>and Consortium Administrators</u> will ensure that CMS' consultation process is carried out in accordance with this Tribal Consultation Policy with the Indian Tribe(s) in that region. To this end, the Regional Offices <u>and Consortia</u> will engage in and facilitate open and meaningful</p>	<p>7.2.2. Regional Offices. The Regional Offices and <u>Regional Consortia</u> will have primary responsibility for carrying out Tribal consultations on an ongoing basis at least once a year. The CMS Regional Administrator <u>and Consortium Administrators</u> will ensure that CMS' consultation process is carried out in accordance with this Tribal Consultation Policy with the Indian Tribe(s) in that region. To this end, the Regional Offices <u>and Consortia</u> will engage in and facilitate open and meaningful consultation with</p>	

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<p>These consultations will lead to information exchange, mutual understanding, and informed decision-making.</p>	<p>consultation with Indian Tribe(s) <u>as appropriate</u> for information exchange, mutual understanding, and informed decision-making.</p>	<p>Indian Tribe(s) as appropriate for information exchange, mutual understanding, and informed decision-making.</p>	<p>This strikes unnecessary words added in CMS 3/08 version.</p>
<p>7.2.3. Tribal Technical Advisory Group. The CMS Tribal Technical Advisory Group (TTAG) is comprised of representatives of Tribal Governments and Washington, D.C. based national Indian organizations that have been authorized by tribal leaders. The TTAG will serve as an advisory body to CMS, providing expertise on policies, guidelines, and programmatic issues affecting the delivery of health care for AI/ANs served through programs funded in whole or part by CMS. Interaction by CMS with the TTAG does not substitute for tribal consultation, but assists CMS to make consultation effective. The TTAG operates according to a Charter, which was initially adopted in 2003 and that has been and may further be amended, that broadly defines the scope of issues about which the TTAG advises CMS and the TTAG's participation in policy development, implementation and consultation. TTAG activities include:</p>	<p>7.2.3. Tribal Technical Advisory Group. The CMS Tribal Technical Advisory Group (TTAG) is comprised of representatives of Tribal Governments and Washington, D.C. based national Indian organizations that have been authorized by Tribal leaders. The TTAG will serve as a <u>technical advisory group</u> to CMS, providing expertise on policies, guidelines, and programmatic issues affecting the delivery of health care for AI/ANs served through programs funded in whole or part by CMS. Interaction by CMS with the TTAG does not substitute for Tribal consultation, but assists CMS to make consultation effective. The TTAG operates according to a Charter, which was initially adopted in 2003 and that has been and may further be amended, that broadly defines the scope of issues about which the TTAG advises CMS and the TTAG's participation in policy development, implementation and consultation. TTAG activities include:</p>	<p>7.2.3. Tribal Technical Advisory Group. The CMS TTAG is comprised of representatives of Tribal Governments and Washington, D.C. based national Indian organizations that have been authorized by Tribal leaders. The TTAG will serve as an <u>advisory body</u> technical advisory group to CMS, providing expertise on policies, guidelines, and programmatic issues affecting the delivery of health care for AI/ANs served through programs funded in whole or in part by CMS. Interaction by CMS with the TTAG does not substitute for Tribal Consultation, but assists CMS to make consultation effective. The TTAG operates according to a Charter, which was initially adopted in 2003 and that has been and may further be amended, that broadly defines the scope of issues about which the TTAG advises CMS and the TTAG's participation in policy development, implementation and consultation. TTAG activities include:</p>	<p>Use the term "advisory body" is OK.</p>
<p>7.2.3.1. Proposing clarifications and other recommendations and solutions to address issues raised at tribal, regional and national levels;</p>	<p>7.2.3.1. Proposing clarifications and other recommendations and solutions to address issues raised at Tribal, regional and national levels;</p>	<p>7.2.3.1. Proposing clarifications and other recommendations and solutions to address issues raised at Tribal, regional and/or national levels;</p>	
<p>7.2.3.2. Identifying priorities and providing advice on appropriate strategies for tribal consultation on issues at the tribal, regional and/or national levels; and</p>	<p>7.2.3.2. Identifying priorities and providing advice on appropriate strategies for Tribal consultation on issues at the Tribal, regional and/or national levels; and</p>	<p>7.2.3.2. Identifying priorities and providing advice on appropriate strategies for Tribal consultation on issues at the Tribal, regional and/or national levels; and</p>	
<p>7.2.3.3. Coordinating with CMS Regional Offices' tribal consultation initiatives.</p>	<p>7.2.3.3. <u>Participating in and assisting with the coordination</u> of CMS Regional Offices' Tribal consultation initiatives.</p>	<p>7.2.3.3. <u>Participating in and assisting with the coordination</u> of CMS Regional Offices' Tribal consultation initiatives.</p>	
<p>8. Tribal Consultation Principles</p> <p>8.1. Trust among CMS, IHS and Indian Tribe(s) is</p>	<p>8. Tribal Consultation Principles</p> <p>8.1. Trust between CMS and <u>the Tribes</u> is an</p>	<p>8. Tribal Consultation Principles</p> <p>8.1. Trust between CMS and the Tribes is an</p>	<p><i>This is a substantive change in the proposed policy. CMS is</i></p>

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<p>an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. Both CMS and Tribe(s), directly and through the TTAG, must be able to raise issues that need to address. The degree and extent of consultation will vary depending on the identified event and will be guided by advice from the TTAG. All levels of CMS management, in collaboration with the TTAG, shall follow these steps to determine the nature and extent of consultation that should occur to ensure that the requirements of this Policy are satisfied.</p>	<p>indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. Both CMS and Tribes, directly and through the TTAG, must be able to raise issues that need to be addressed. The degree and extent of consultation will vary depending on the identified event. <u>CMS will consider advice from the TTAG in its determination of the nature and extent of consultation for particular issues. Criteria to be considered in this determination include:</u></p>	<p>indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. Both CMS and Tribe(s), directly and through the TTAG, must be able to raise issues that need to be addressed.</p> <p>The degree and extent of consultation will vary depending on the identified event. <u>CMS will fully consider advice from TTAG in its determination of the nature and extent of consultation for particular events. Criteria to be considered in this determination include:</u></p>	<p><i>indicates instead of being “guided” by TTAG they “will consider advice” from TTAG for “particular issues.” This proposed changed is a significant departure and weakens the Tribal position.</i></p> <p><i>RECOMMENDATION: Restore TTAG proposed language.</i></p> <p>Final sentence should be restored, as it is the lead-in for the criteria which follow in subsequent sections.</p>
<p>8.1.1. Identify the issue that triggers the need for consultation, including the complexity, implications on funding, time constraints, policy and programs that have impact on Indian Tribes;</p> <p>8.1.2. Identify affected/potentially affected Indian Tribe(s) or Indian organizations;</p>	<p>8.1.1. Identification of the <u>Tribal issues</u> that may trigger the need for consultation, including the complexity, implications on funding, time constraints, policy and programs; and</p> <p>8.1.2. Identification of affected/potentially affected Indian Tribe(s) or Indian Organizations.</p>	<p>8.1.1. Identification of the Tribal issue that triggers the need for consultation, including the complexity, implications on funding, time constraints, policy and programs; and</p> <p>8.1.2. Identification of affected/potentially affected Indian Tribe(s) or Indian Organizations.</p>	<p>Strike here is ok, as it reflects initial TTAG wording.</p>
<p>8.1.3. Identify impacted/potentially impacted Indian Tribe(s).</p>			
<p>8.2. Identify the consultation process after considering the issue and Indian Tribe(s) impacted/potentially impacted.</p>	<p>8.2. Identify the consultation process after considering the issue and Indian Tribe(s) <u>affected/potentially affected.</u></p>	<p>8.2. Identify the consultation process after considering the issue and Indian Tribe(s) affected/potentially affected.</p>	<p>This strikes redundant concept already set out in 8.1.2, but it leaves us without an 8.2. Thus 8.3 should be re-numbered as 8.2.</p>
<p>8.3. Consultation occurs whenever the CMS Administrator and tribal official(s), and/or their designees, meet or exchange written correspondence to discuss any issue(s) concerning either party. Consultation with a single Indian Tribe will not substitute for consultation with all Indian Tribes on issues that may affect more than one Indian Tribe. All CMS staff that has a role in the development or implementation of policy affecting AI/ANs or Indian Tribes shall participate in training on this CMS Tribal Consultation Policy, its</p>	<p>8.3. Consultation occurs whenever the CMS Administrator, <u>and his/her designees</u>, and Tribal official(s), and/or their designees, meet or exchange written correspondence to discuss any issue(s) concerning either party. Consultation with a single Indian Tribe will not substitute for consultation <u>with additional</u> Indian Tribes on issues that may affect more than one Indian Tribe. <u>CMS will provide training on this Tribal Consultation Policy to staff who has consultative responsibilities as set forth in this policy.</u></p>	<p>8.3. Consultation occurs whenever the CMS Administrator, <u>and his/her designees</u>, and Tribal official(s), and/or their designees, meet or exchange written correspondence to discuss any issue(s) concerning either party. Consultation with a single Indian Tribe will not substitute for consultation <u>with additional</u> Indian Tribes on issues that may affect more than one Indian Tribe. <u>CMS will provide training on this Tribal Consultation Policy to staff who have consultative responsibilities as set forth in this policy.</u></p>	<p><i>CMS also removes TTAG language for all CMS staff to be trained in consultation policy and adds “to staff who has consultative responsibilities.” Could be an issue, limits the training when Indian Country deals with all of CMS and they all should be culturally competent individuals.</i></p>

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<p>expectations, and its outcomes. The TTAG shall participate in the development and review of the curricula and materials for such training.</p>			
<p>9. Consultation Process</p> <p>CMS engages in consultation with Tribes about policy issues at a variety of levels through a variety of methods to facilitate tribal consultation on policies that have impact on Indian Tribes.</p>	<p>9. Consultation Process</p> <p>CMS <u>may engage</u> in consultation with Tribes about policy issues at a variety of levels through a variety of methods to facilitate Tribal consultation on policies that have a substantial and direct effect on Indian Tribes. CMS is fully committed to participation in the Tribal consultation process <u>described in Sections 8 and 9 of the HHS Tribal Consultation Policy. CMS views these annual consultations at the regional level as its principal and systematic vehicle for ongoing Tribal consultation and reaching a timely understanding of Tribal concerns.</u></p>	<p>9. Consultation Process</p> <p>CMS may engage in consultation with Tribes about policy issues at a variety of levels through a variety of methods to facilitate Tribal consultation on policies that have a substantial and direct effect on Indian Tribes. CMS is fully committed to participation in the Tribal consultation process <u>is fully committed to participation in the Tribal consultation process described in Sections 8 and 9 of the HHS Tribal Consultation Policy. CMS views these annual consultations at the regional level as its principal and systematic vehicle for ongoing Tribal consultation and reaching a timely understanding of Tribal concerns.</u></p>	<p>CMS is only willing to commit itself to the level of consultation required in HHS Policy.</p>
<p>9.1. Direct Consultation by CMS</p>	<p>9.1. Direct Consultation by CMS</p>	<p>9.1. Direct Consultation by CMS</p>	
<p>9.1.1. New or Changing Policy or Program Implementation</p>	<p>9.1.1. New or Changing Policy or Program Implementation</p>	<p>9.1.1. New or Changing Policy or Program Implementation</p>	
<p>9.1.1.1. When new policy, budgetary, or implementation issues are identified on which tribal views have not been previously obtained, CMS will conduct national tribal consultation to solicit official tribal comments and recommendations. Such consultations will be initiated by a written communication directed to tribal leaders and Indian health programs explaining the background, describing the proposed action or request for guidance, and requesting a response.</p>	<p>9.1.1.1. When new policy, budgetary, or implementation issues <u>which have a substantial direct effect on Indian Tribes</u> are identified and on which Tribal views have not been previously sought, CMS <u>will inform Tribes of the opportunity to review the policy issue and to submit</u> comments and recommendations. Such consultations will be initiated by a written or electronic communication directed to Tribal leaders and Indian health programs explaining the background, describing the proposed action or request for guidance, and requesting a response. <u>CMS will utilize all currently available information dissemination methods to ensure that Tribes are notified of the opportunity, process and timeframes of the consultation activity.</u></p>	<p>9.1.1.1. When new policy, budgetary, or implementation issues which have <u>having a substantial direct effect on Indian Tribes</u> are identified and on which Tribal views have not been previously sought, CMS <u>will inform Tribes of the opportunity to review the policy issue and to submit</u> comments and recommendations. Such consultations will be initiated by a written or electronic communication directed to Tribal leaders and Indian health programs explaining the background, describing the proposed action or request for guidance, <u>subject for consultation,</u> and requesting a response. <u>CMS will utilize all currently available information dissemination methods to ensure that Tribes are notified of the opportunity, process and timeframes of the consultation activity.</u></p>	<p>I guess this is only an editing change, but don't understand why it is made.</p>
<p>9.1.1.2. Face-to-face consultation sessions are</p>	<p>9.1.1.2. Face-to-face consultation sessions are</p>	<p>9.1.1.2. Face-to-face consultation sessions are</p>	<p><i>CMS changes the language to say they will only consult on the</i></p>

<p>TTAG Proposal sent out for Tribal Consultation (Dec. 2005)</p> <p>TTAG language deleted by CMS in March 2008 Proposal</p>	<p>CMS Proposal, March 2008</p> <p><u>New language added by CMS 3/2008 draft</u></p>	<p>CMS Proposal, September 2008</p> <p><u>New language added by CMS in 9.08 Draft</u></p> <p>CMS language added in 3.08 Draft & now Deleted</p> <p><u>Previous CMS Language added/carried over from CMS 3.08 draft or new deleted.</u></p>	<p>New Carol Barbero Comments (highlighted)</p> <p><i>Italicized text are comments from previous CMS changes (Dec. 2005 to March 2008 draft)</i></p>
<p>encouraged. These may be scheduled as a single national meeting, through a series of specially convened regional meetings, or in conjunction with other national and regional meetings. Whenever possible, Indian Tribes will be consulted at the earliest appropriate stage in the development of a new or changing policy or program implementation.</p>	<p><u>preferable when practicable and resources are available.</u> These may be scheduled as a single national meeting, through a series of specially convened regional meetings, or in conjunction with other national and regional meetings, <u>and will routinely be conducted through the Regularly scheduled HHS Consultation sessions.</u> <u>When face-to-face consultations are not workable, consultation may be conducted through written communication or Electronic media including computer and telephone arrangements.</u> <u>Opportunity for full Tribal participation by written comment will be available in all consultation Formats.</u></p>	<p><u>preferable when practicable and resources are available.</u> These may be scheduled as a single national meeting, through a series of specially convened regional meetings, or in conjunction with other national and regional meetings, <u>and will routinely be conducted through the regularly scheduled HHS Consultation sessions.</u> <u>When face-to-face consultations are not workable, consultation may be conducted through written communication or electronic media including computer and telephone arrangements.</u> <u>Opportunity for full Tribal participation by written comment will be available in all consultation formats.</u></p>	<p><i>HHS schedule (not whenever policies that affect tribes arise) and state if they cannot do face-to-face they will do consultation electronically. Electronic consultation is generally not supported by Tribes.</i></p> <p><i>This change weakens the Tribal position and should not be accepted.</i></p> <p><i>RECOMMENDATION: Restore TTAG language.</i></p>
<p>9.1.2. Ongoing Consultation.</p>	<p>9.1.2. Ongoing Consultation.</p>	<p>9.1.2. Ongoing Consultation.</p>	
<p>9.1.2.1. Annually, through national and regional consultation processes, CMS will provide opportunities for Indian Tribes to identify budgetary, policy and implementation issues that the Tribes believe need to be addressed. CMS will participate in all HHS regional and national consultations, and, as requested in consultation meetings sponsored by other HHS agencies or Indian Tribes.</p>	<p>9.1.2.1. Annually, through national and regional consultation processes, CMS will provide opportunities for Indian Tribes to identify budgetary, policy and Implementation issues that the Tribes believe need to be addressed. CMS will participate in all HHS regional and national consultations, and, as requested in Consultation meetings sponsored by other HHS agencies or Indian Tribes. <u>CMS will also work closely with the HHS Inter-Agency Tribal workgroup to utilize their resources and opportunities for consultation.</u></p>	<p>9.1.2.1. Annually, through national and regional consultation processes, CMS will provide opportunities for Indian Tribes to identify budgetary, policy and implementation issues that the Tribes believe need to be addressed. CMS will participate in HHS regional and national consultations, and as requested in consultation meetings sponsored by other HHS agencies or Indian Tribes. CMS will also work closely with the HHS Inter-Agency Tribal workgroup to utilize their resources and opportunities for consultation.</p>	
<p>9.1.2.2. CMS will provide an opportunity for submission of written comments during any period of ongoing consultation.</p>	<p>9.1.2.2. CMS will <u>identify the process and timelines</u> for submission of written comments during any period of ongoing consultation.</p>	<p>9.1.2.2. CMS will <u>identify the process and timelines</u> for submission of written comments during any period of ongoing consultation.</p>	<p><i>CMS is saying they will identify the timeline for comments, but probably will not accept comments outside of the timeline. The changes weaken the previous Tribal position.</i></p>
<p>9.1.2.3. Through its regional offices, CMS also meets regularly with Indian Tribes. To the extent issues of general application are discussed in such meetings, reports will be provided to CMS Central Office and the TTAG for follow-up, as appropriate.</p>	<p>9.1.2.3. Through its regional offices, CMS also meets regularly with Indian Tribes. To the extent issues of general application are discussed in such meetings, reports will be provided to CMS Central Office and the TTAG for follow-up, as appropriate.</p>	<p>9.1.2.3. Through its Regional Offices, CMS also meets regularly with Indian Tribes. To the extent issues of general application are discussed in such meetings, reports will be provided to CMS Central Office and the TTAG for follow-up.</p>	
<p>9.1.3. Consultation with One or More Individual</p>	<p>9.1.3. Consultation with One or More Individual</p>	<p>9.1.3. Consultation with One or More Individual Indian</p>	

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<p>Indian Tribes. An Indian Tribe may meet one-on-one or correspond with CMS to address, or provide consultation to CMS regarding, issues specific to that Indian Tribe. Such communications constitute consultation under this policy, but may not substitute for broader consultation as provided in this policy when the issue may impact other Indian Tribes.</p>	<p>Indian Tribes. An Indian Tribe may Meet one-on-one or correspond with CMS to address, or provide consultation to CMS regarding issues specific to that Indian Tribe. Such communications constitute consultation under this policy, but may not substitute for broader consultation as provided in this policy when the issue is <u>reasonably expected to affect</u> other Indian Tribes.</p>	<p>Tribes. An Indian Tribe may meet one-on-one or correspond with CMS to address or to provide consultation to CMS regarding issues specific to that Indian Tribe. Such communications constitute consultation under this policy, but may not substitute for broader consultation as provided in this policy when the issue reasonably <u>affects other Indian Tribes.</u></p>	
<p>9.1.4. Follow-up to Consultation.</p>	<p>9.1.4. Follow-up to Consultation.</p>	<p>9.1.4. Follow-up to Consultation.</p>	
<p>9.1.4.1. CMS, upon completion of a consultation session, will document and follow up on any unresolved issues that would benefit from ongoing involvement of Indian Tribes in implementation and evaluation.</p>	<p>9.1.4.1. CMS <u>will create and maintain a written record of consultation sessions. Such record will include participants, issues discussed, decisions and/or actions to be taken, and proposed follow up on unresolved issues.</u></p>	<p>9.1.4.1. CMS <u>will create and maintain a written record of consultation sessions. Such record will include participants, issues discussed, decisions and/or actions to be taken, and proposed follow up on unresolved issues.</u></p>	<p><i>CMS's version removes accountability. Simply states they will record consultation sessions, but removed getting continued tribal input on unresolved issues and evaluation mechanisms.</i></p> <p><i>RECOMMENDATION: Strike proposed change.</i></p>
<p>9.1.4.2. CMS will post all materials developed in follow-up to consultation on the CMS AI/AN website homepage and make these and other materials produced under this Consultation Policy available to the National Indian Health Board (NIHB), which may also post the material and distribute it more widely.</p>	<p>9.1.4.2. CMS will post all materials <u>with the exception of confidential and proprietary materials developed in follow-up</u> to consultation on the CMS AI/AN web site homepage and make these and other materials produced under this Consultation Policy available to the National Indian Health Board (NIHB) <u>and other Organizations</u>, which may also post the material and distribute it more widely.</p>	<p>9.1.4.2. CMS will post all materials <u>with the exception of confidential and proprietary materials developed in follow-up</u> to consultation on the CMS AI/AN web site homepage and make these and other materials produced under this Tribal Consultation Policy available to <u>National and Regional Tribal Organizations</u> National Indian Health Board (NIHB) and other Organizations, which may also post the material and distribute it more widely.</p>	<p>Striking express mention of NIHB here is petty. It makes sense to distribute materials to at least one identified organization to assure consistency in distribution.</p>
<p>9.2. States. Certain programs of CMS, such as Medicaid and SCHIP, are carried out in partnership with States based on statute, regulation, or CMS policy. However, CMS retains a responsibility to strongly encourage consultation with Indian Tribes occurs and, to the extent not prohibited by law, that program changes that will affect AI/ANs and Indian Tribes do not occur without consultation having occurred.</p>	<p>9.2. States. Certain programs of CMS, such as Medicaid and SCHIP, are carried out in partnership with States based on <u>Federal</u> statute, regulation, or CMS policy. <u>CMS will encourage</u> States to include meaningful consultation with Indian Tribes <u>within their borders in the development of changes in programs funded in whole or in part by CMS that significantly affect Indian Tribes and AI/ANs.</u></p>	<p>9.2. States. Certain programs of CMS, such as Medicaid and SCHIP, are carried out in partnership with States based on statute, regulation, or CMS policy. <u>CMS will encourage facilitate</u> States' efforts to include meaningful consultation with Indian Tribes <u>within their borders in the development of changes in programs funded in whole or in part by CMS that significantly affect Indian Tribes and AI/ANs.</u> CMS is fully committed to providing the full range of assistance to States outlined in Section 9 of the HHS Tribal Consultation policy to facilitate consultation between States and Tribes and in the development of State consultation policies.</p>	<p>Read revised 9.2 and 9.2.1 together. Outcome is that CMS with "encourage" and "facilitate" and "assist" states re tribal consultation procedures.</p>

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<p>9.2.1. CMS will assist States to develop models for meaningful consultation with Indian Tribes consistent with the CMS Tribal Consultation Policy.</p>	<p><u>9.2.1. Consistent with CMS policy and practice including manual guidance, letters and Regulations, CMS will discuss with States their mechanisms for consultation with Indian Tribes before taking any actions that have substantial direct effects on Indian Tribes including Medicaid waiver proposals, State Plan Amendments, SCHIP program changes, and other actions with significant operational and financial implications for Tribes.</u></p>	<p><u>9.2.1. Consistent with CMS policy and practice including manual guidance, letters and regulations, CMS will encourage States to consult with Tribes and facilitate collaboration between States and Tribes by assisting States in the development of their mechanisms for consultation with Indian Tribes before taking any actions that have substantial direct effects on Indian Tribes including Medicaid waiver proposals, State Plan Amendments, SCHIP program changes, and other actions with significant operational and financial implications for Tribes.</u></p>	<p>See comment in 9.2 above.</p> <p>I would like to add new sentence at the end: "CMS will require a State to describe the tribal consultation procedure used when submitting a proposal for CMS consideration or approval."</p>
<p>9.2.2. CMS will recommend that States include meaningful tribal consultation in their State Medicaid Plans. CMS will provide States with technical assistance in developing these plans.</p>	<p><u>9.2.2. Through its Regional Offices CMS will assist States and Indian Tribes with Establishing and/or maintaining regular communication regarding State policy development and implementation and operational issues, including eligibility, scope of covered services and providers, billing and reimbursement, adequacy of resources, effect of the program on improving health status, and other issues.</u></p>	<p><u>9.2.2. Through its Regional Offices, CMS will assist States and Indian Tribes with establishing and/or maintaining regular communication regarding State policy development, implementation and operational issues including eligibility, scope of covered services and providers, billing and reimbursement, adequacy of resources, effect of the program on improving health status, and other issues.</u></p>	<p><i>Once again removing accountability. Inserted CMS "will assist" states instead of requiring.</i></p> <p>RECOMMENDATION: Strike proposed change.</p>
<p>9.2.3. Through its Regional Offices CMS will assist States and Indian Tribes with establishing and/or maintaining regular communication regarding State policy development and implementation and operational issues, including eligibility, scope of covered services and providers, billing and reimbursement, adequacy of resources, effect of the program on improving health status, and other issues.</p>	<p><u>9.2.3. As appropriate, CMS will communicate the information it acquires through Tribal consultations to States. CMS will work through State/Tribal committees, CMS Regional Offices, and other vehicles to facilitate State/Tribal collaboration in responding to the input received through consultation.</u></p>	<p><u>9.2.3. CMS will communicate the information it acquires through Tribal consultations to States. CMS will work through State/Tribal committees, CMS Regional Offices, and other vehicles to facilitate State/Tribal collaboration in responding to the input received through consultation.</u></p>	<p><i>See comments to 6.5 above on limitations to CMS authority in directing State activity.</i></p> <p><i>"Softer" language.</i></p> <p>RECOMMENDATION: Strike proposed change.</p>
<p>9.2.4. As appropriate, CMS will communicate the information it acquires through CMS/tribal direct tribal consultations to States. CMS will work through State/Tribal committees, CMS Regional Offices, and other vehicles to facilitate State/Tribal collaboration in responding to the input received</p>	<p><u>9.2.4. CMS will facilitate joint consultation with a State or States, and affected Tribes at the request of either the States or Tribes to the extent appropriate.</u></p>	<p><u>9.2.4. CMS will facilitate joint consultation with a State or States, and affected Tribes at the request of either the States or Tribes to the extent appropriate.</u></p>	<p><i>CMS changes language to "facilitating" state and tribal consultation instead of communicating information themselves to the states. Removing accountability.</i></p> <p>RECOMMENDATION: Strike proposed change.</p>

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<p>9.2.5. CMS will invite, and include, State governmental and health and human services experts in the Annual Regional tribal consultation sessions whenever Indian Tribes indicate that State/Tribal dialogue would enhance or strengthen CMS programs.</p>	<p><u>9.2.5. CMS will coordinate activities with the Intergovernmental Affairs Office (IGA) of HHS in evaluating State efforts to consult with Tribes on programs in whole or in part funded by CMS and in addressing any identified deficiencies. When CMS Central Office or a Regional Office foresees the possibility of a conflict between Tribal and State laws and Federally protected interests within its area of regulatory responsibility, CMS shall consult as appropriate with Indian Tribes and/or States in an effort to resolve the conflict.</u></p>	<p><u>9.2.5. CMS will coordinate activities with the Intergovernmental Affairs Office (IGA) of HHS in evaluating State efforts to consult with Tribes on programs funded in whole or in part by CMS and in addressing any identified deficiencies. When CMS Central Office or a Regional Office foresees the possibility of a conflict between Tribal and State laws and Federally protected interests within its area of regulatory responsibility, CMS shall consult with Indian Tribes and/or States in an effort to resolve the conflict.</u></p>	<p><i>CMS new language states they will only coordinate with IGA when state and tribal concerns deal with CMS funds (instead of consulting over any state issue).</i></p> <p><i>RECOMMENDATION: Strike proposed change.</i></p>
<p>9.2.6. CMS will, to the extent practicable and not prohibited by law, assure that Indian Tribes are given notice of any State Plan amendment or waiver request that will have impact on Indian Tribes.</p>	<p><u>9.2.6. CMS and its regional offices will encourage consideration of best examples of State-Tribal consultation and collaboration when working with states and tribes.</u></p>	<p><u>9.2.6. CMS and its Regional Offices will encourage share examples of best practices best examples of State-Tribal consultation and collaboration when working with States and Tribes.</u></p>	<p>Green changes here are merely edits to CMS 3/08 re-write of 9.2.6. CMS version has totally different focus than TTAG's 9.2.6 – which was to assure Tribes receive notice of State Plan amendment or waiver requests. CMS has rejected providing such notice to Tribes. Most regrettable.</p>
<p>9.2.7. CMS will address State plans in situations where the evaluation has identified deficiencies in the consultation process as set forth in this Policy, and work closely with States to strengthen consultation necessary for CMS programs. When CMS Central Office or a Regional Office foresees the possibility of a conflict between Tribal and State laws and Federally protected interests within its area of regulatory responsibility, CMS shall consult, to the extent practicable and not prohibited by law, with appropriate Indian Tribes and/or States in an effort to resolve the conflict.</p> <p>9.2.8. Regional Administrators and Regional Offices will measure and report on their interaction with States to facilitate and provide tribal consultation technical assistance to States and Indian Tribes. CMS will describe its efforts in the HHS IGA Annual Tribal Consultation Report.</p>			<p><i>CMS does not respond to State consultation sections 9.2.7, 9.2.8 and 9.2.9 in the TTAG proposal?</i></p> <p><i>RECOMMENDATION: Strike proposed change.</i></p>
<p>9.2.9. CMS and its regional offices will encourage consideration of best examples of state-tribal consultation and collaboration when working with states and tribes.</p>			

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<p>9.3. Regional Tribal Consultation</p>	<p>9.3. Regional Tribal Consultation</p>	<p>9.3. Regional Tribal Consultation. <u>CMS will participate in HHS Regional Tribal consultations.</u></p>	<p>New sentence here is OK.</p>
<p>9.3.1. The HHS Regional Tribal Consultation Sessions are designed to solicit Indian Tribes' priorities and needs on health and human services and programs. The Sessions will provide an opportunity for Indian Tribes to articulate their comments and concerns on budgets, regulations, legislation and HHS health and human services policy matters.</p>	<p>9.3.1. The HHS Regional Tribal Consultation Sessions are designed to solicit Indian Tribes' priorities and needs on health and human services and programs. The Sessions will provide an opportunity for Indian Tribes to articulate their comments and concerns On budgets, regulations, legislation and HHS health and human services policy matters.</p>	<p>9.3.1. The HHS Regional Tribal Consultation Sessions are designed to solicit Indian Tribes' priorities and needs on health and human services and programs. The Sessions will provide an opportunity for Indian Tribes to articulate their comments and concerns on budgets, regulations, legislation and HHS health and human services policy matters.</p>	
<p>9.3.2. Regional Offices/Directors and Divisions will work collaboratively with the Indian Tribes in their respective Regions on the development of consultation meetings, roundtables and annual sessions.</p>	<p>9.3.2. Regional Offices/Directors and Divisions will work collaboratively with the Indian Tribes in their respective Regions on the development of consultation meetings, roundtables and annual sessions.</p>	<p>9.3.2. Regional Offices/Directors and Divisions will work collaboratively with the Indian Tribes in their respective Regions on the development of consultation meetings, roundtables and annual sessions.</p>	
<p>9.3.3. Regional Offices/Directors and Divisions will work with the Indian Tribes to identify regional tribal and Indian organizations that assist in representing the Indian Tribes in planning tribal consultation sessions.</p>	<p>9.3.3. Regional Offices/Directors and Divisions will work with the Indian Tribes to identify regional tribal and Indian organizations that assist in representing the Indian Tribes in planning tribal consultation sessions.</p>	<p>9.3.3. Regional Offices/Directors and Divisions will work with the Indian Tribes to identify regional Tribal and Indian Organizations that assist in representing the Indian Tribes in planning Tribal consultation sessions.</p>	
<p>9.3.4. Regional Offices/Directors and Divisions will work collaboratively with the Indian Health Service Area Directors in communicating and coordinating on issues and concerns of Indian Tribes in those respective regions or areas.</p>	<p>9.3.4. Regional Offices/Directors and Divisions will work collaboratively with the Indian Health Service Area Directors in communicating and coordinating on issues and concerns of Indian Tribes in those respective regions or areas.</p>	<p>9.3.4. Regional Offices/Directors and Divisions will work collaboratively with the IHS Area Directors in communicating and coordinating on issues and concerns of Indian Tribes in those respective regions or areas.</p>	
<p>9.3.5. Regional Offices/Directors and Divisions will work collaboratively to facilitate Tribal-State relations as they impact Indian Tribes and AI/ANs.</p>	<p>9.3.5. Regional Offices/Directors and Divisions will work collaboratively to facilitate Tribal-State relations as they <u>affect</u> Indian Tribes and AI/ANs.</p>	<p>9.3.5. Regional Offices/Directors and Divisions will work collaboratively to facilitate Tribal-State relations as they <u>affect</u> Indian Tribes and AI/ANs.</p>	
<p>10. Joint Tribal/Federal Workgroups and Task Forces</p> <p>10.1. Joint Tribal/Federal Workgroups and Task Forces. After discussion, or in collaboration, with the</p>	<p>10. Joint Tribal/Federal Workgroups and Task Forces</p> <p><u>10.1. CMS may establish or participate in workgroups, task forces or other groups or</u></p>	<p>10. Joint Tribal/Federal Workgroups and Task Forces</p> <p><u>10.1. CMS may establish or participate in workgroups, task forces or other groups or</u></p>	<p><i>Small change, but important! CMS removes accountability by saying they "may" establish or participate in work groups and task</i></p>

<p>TTAG Proposal sent out for Tribal Consultation (Dec. 2005)</p> <p>TTAG language deleted by CMS in March 2008 Proposal</p>	<p>CMS Proposal, March 2008</p> <p><u>New language added by CMS 3/2008 draft</u></p>	<p>CMS Proposal, September 2008</p> <p><u>New language added by CMS in 9.08 Draft</u></p> <p>CMS language added in 3.08 Draft & now Deleted</p> <p><u>Previous CMS Language added/carried over from CMS 3.08 draft or now deleted.</u></p>	<p>New Carol Barbero Comments (highlighted)</p> <p><i>Italicized text are comments from previous CMS changes (Dec. 2005 to March 2008 draft)</i></p>
<p>TTAG, CMS may establish or participate in workgroups, task forces or other groups or committees with Indian Tribes and others to address issues affecting AI/ANs and Indian Tribes. CMS will abide by the HHS Consultation Policy with regard to the establishment and conduct of such workgroups and task forces. Reports on the work of such bodies will be made available.</p>	<p><u>committees with Indian Tribes and others to address issues affecting AI/ANs and Indian Tribes. CMS may seek input from the TTAG on the establishment and membership of these groups. CMS will abide by the HHS Consultation Policy with regard to the establishment and conduct of such workgroups and task forces.</u></p>	<p><u>committees with Indian Tribes and others to address issues affecting AI/ANs and Indian Tribes. CMS may seek input from the TTAG on the establishment and membership of these groups. CMS will abide by the HHS Tribal Consultation Policy with regard to the establishment and conduct of such workgroups and task forces.</u></p>	<p><i>forces. More importantly, they change to saying “may” seek input from TTAG.</i></p>
<p>10.2. Limitations. Neither interaction with the TTAG, nor with other workgroups, task forces or committees, takes the place of tribal consultation. Instead, they enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issue or concern to work collaboratively and offer recommendations for consideration by CMS. Consultation as provided for in this Policy will occur regarding the work products, recommendations, or other outcomes of TTAG or other workgroup activity.</p>	<p>10.2. Limitations. Neither interaction with the TTAG, nor with other workgroups, task forces or committees, takes the place of Tribal consultation. <u>These activities</u> enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issue or concern to work collaboratively and offer recommendations for consideration by CMS.</p>	<p>10.2. Limitations. Neither interaction with the TTAG nor with other workgroups, task forces or committees, take the place of Tribal consultation. <u>These activities</u> enhance the consultation process by gathering individuals with extensive knowledge of the particular policy, practice, issue or concern to work collaboratively and offer recommendations for consideration by CMS.</p>	<p><i>Removes requirement for CMS to consult in development of work products, recommendations, or other outcomes.</i></p>
<p>11. CMS Budget Formulation</p> <p>11.1. Annual Budget Consultation. HHS conducts an annual, Department-wide tribal budget consultation session to give Indian Tribes the opportunity to present their budget recommendations to the Department to ensure tribal priorities are addressed. CMS will comply with section 11 of the HHS Tribal Consultation Policy regarding Budget Formulation. CMS</p>	<p>11. CMS Budget Formulation</p> <p>HHS conducts an annual, Department-wide Tribal budget consultation session to give Indian Tribes the opportunity to present their budget recommendations to the Department to ensure Tribal priorities are addressed. CMS <u>will participate fully in this process.</u></p>	<p>11. CMS Budget Formulation</p> <p>HHS conducts an annual Department-wide Tribal budget consultation session to give Indian Tribes the opportunity to present their budget recommendations to the Department to ensure Tribal priorities are addressed. <u>CMS will participate fully in this process.</u> will comply with Section 11 of the HHS Tribal Consultation Policy regarding Budget Formulation.</p>	<p>Green change here restores TTAG language.</p>
<p>11.1.1. Regional Offices to identify tribal budget priorities at the local level and communicate these to Central Office;</p>			<p><i>CMS does not respond to TTAG proposal sections 11.1.1 through 11.2.4?</i></p> <p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>
<p>11.1.2. The TTAG to identify national program budget priority recommendations.</p>			<p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>
<p>11.1.3. CMS Centers to pursue funding of priorities as identified by Tribes and the TTAG.</p>			<p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>

<p>TTAG Proposal sent out for Tribal Consultation (Dec. 2005)</p> <p>TTAG language deleted by CMS in March 2008 Proposal</p>	<p>CMS Proposal, March 2008</p> <p><u>New language added by CMS 3/2008 draft</u></p>	<p>CMS Proposal, September 2008</p> <p><u>New language added by CMS in 9.08 Draft</u></p> <p>CMS language added in 3.08 Draft & now Deleted</p> <p><u>Previous CMS Language added/carried over from CMS 3.08 draft or now deleted.</u></p>	<p>New Carol Barbero Comments (highlighted)</p> <p><i>Italicized text are comments from previous CMS changes (Dec. 2005 to March 2008 draft)</i></p>
<p>11.2. Timeframe. In order to ensure Indian Tribes are able to provide meaningful input for the CMS budget request, CMS will utilize the following time frame to coincide with the Department schedule</p>			<p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>
<p>11.2.1. January— CMS Office of Operations Management (OOM) will notify Regions and Centers to submit budget requests for tribal activities.</p>			<p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>
<p>11.2.2. February— CMS will compile budget requests.</p>			<p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>
<p>11.2.3. April— CMS will present budget request summary to TTAG for review, comment and prioritization. TTAG will have the opportunity to add additional requests based on their Strategic Plan priorities. The TTAG will submit final budget recommendations to CMS as to budget priorities.</p>			<p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>
<p>11.2.4. Annually— The TTAG may present national priorities and recommendations to the national HHS tribal performance budget formulation and consultation session. CMS will provide Tribes and TTAG the budget related information on an annual basis.</p>			<p><i>RECOMMENDATION: this section should be restored to be consistent with the HHS Tribal Consultation Policy.</i></p>
<p>12. CMS Tribal Consultation Performance Evaluation</p>	<p>12. CMS Tribal Consultation Performance Evaluation</p>	<p>12. CMS Tribal Consultation Performance Evaluation</p>	
<p>12.1. Evaluation of Implementation and Outcome</p>	<p>12.1. Evaluation and Outcome</p>	<p>12.1. Evaluation and Outcome</p>	<p><i>CMS removes “implementation”.</i></p>
<p>12.1.1. Evaluation. CMS is responsible for evaluating its performance under this Tribal Consultation Policy. To effectively evaluate the results of the consultation process and the ability of CMS to incorporate tribal recommendations, CMS will assess the following on an annual basis:</p>	<p>12.1.1. Evaluation. CMS is responsible for evaluating its performance under this Tribal Consultation Policy. To effectively evaluate the results of the consultation process and the ability of CMS to incorporate Tribal recommendations, CMS will assess the following on an annual basis:</p>	<p>12.1.1. Evaluation. CMS is responsible for evaluating its performance under this Tribal Consultation Policy. To effectively evaluate the results of the consultation process and the ability of CMS to incorporate Tribal recommendations, CMS will assess the following on an annual basis:</p>	

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<p>12.1.1.1. The consultation process and associated activities resulting in a meaningful outcome for the IHS and affected Tribe(s);</p>	<p>12.1.1.1. The consultation process and associated activities resulting in a meaningful outcome for the affected Tribe(s);</p>	<p>12.1.1.1. The consultation process and associated activities resulting in a meaningful outcome for the affected Tribe(s);</p>	
<p>12.1.1.2. The extent of participation by Tribes and tribal representatives;</p>	<p>12.1.1.2. The extent of participation by Tribes and tribal representatives;</p>	<p>12.1.1.2. The extent of participation by Tribes and Tribal representatives;</p>	
<p>12.1.1.3. The extent of participation in consultation sessions by all levels of CMS management;</p>	<p>12.1.1.3. The extent of participation in consultation sessions by all levels of CMS management;</p>	<p>12.1.1.3. The extent of participation in consultation sessions by all levels of CMS management;</p>	
<p>12.1.1.4. The qualitative effectiveness of CMS's internal measures related to the tribal consultation process;</p>	<p>12.1.1.4. The qualitative effectiveness of CMS's internal measures related to the tribal consultation process;</p>	<p>12.1.1.4. The qualitative effectiveness of CMS' internal measures related to the Tribal consultation process;</p>	
<p>12.1.1.5. The effectiveness of collaboration with Indian Organization(s), other Federal agencies, States, and other entities who complement the consultation process;</p>	<p>12.1.1.5. The effectiveness of collaboration with Indian Organization(s), other Federal agencies, States, and other entities who complement the consultation process;</p>	<p>12.1.1.5. The effectiveness of collaboration with Indian Organizations, other Federal agencies, States, and other entities that complement the consultation process;</p>	
<p>12.1.1.6. The extent to which CMS policy was influenced by comments received by Tribes through the TTAG and during tribal consultations; and</p>	<p>12.1.1.6. The extent to which CMS policy was influenced by comments received by Tribes through the TTAG and during Tribal consultations; and</p>	<p>12.1.1.6. The extent to which CMS policy was influenced by comments received from Tribes through the TTAG and during Tribal consultations; and</p>	
<p>12.1.1.7. The level of CMS and tribal satisfaction with the consultation process.</p>	<p>12.1.1.7. The level of CMS and Tribal satisfaction with the consultation process.</p>	<p>12.1.1.7. The level of CMS and Tribal satisfaction with the consultation process.</p>	
<p>12.1.2. Evaluation of Outcomes. The truest measure of the success of tribal consultation is that it results in improvements in access to and quality of care provided to AI/ANs and ultimately in improvements in health status of AI/ANs. To the extent feasible, CMS, in consultation with the TTAG, will:</p>	<p>12.1.2. Evaluation of Outcomes. <u>The goal of Tribal consultation is to provide Meaningful access to the CMS policy development process on issues with Tribal implications. CMS, with TTAG input, will:</u></p>	<p>12.1.2. Evaluation of Outcomes. <u>The goal of Tribal consultation is to provide meaningful access to the CMS policy development process on issues with Tribal implications. CMS, with TTAG input, will:</u></p>	<p>As we pointed out before, CMS has eliminated a critical measure of the effectiveness of consultation – improvement in access to and quality of care provided to AI/ANs.</p> <p>CMS objective for consultation is process-oriented, only; agency apparently doesn't want to measure success in terms of care.</p>
<p>12.1.2.1. Develop reliable measures of outcome;</p>	<p>12.1.2.1. Develop reliable measures of outcome;</p>	<p>12.1.2.1. Develop reliable measures of outcome; and</p>	

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<p>12.1.2.2. Work with IHS and other agencies of HHS to improve the availability of reliable data to measure outcomes; and</p>	<p>12.1.2.2. Work with IHS and other agencies of HHS to improve the availability of Reliable data to measure outcomes.</p>	<p>12.1.2.2. Work with IHS and other agencies of HHS to improve the availability of reliable data to measure outcomes.</p>	
<p>12.2. CMS Report to HHS. CMS will report on its evaluation of implementation and outcomes of tribal consultation based on the criteria established by HHS as follows:</p>	<p>12.2. CMS Report to HHS. CMS will report on its evaluation of implementation and outcomes of Tribal consultation based on the criteria established by HHS as follows:</p>	<p>12.2. CMS Report to HHS. CMS will report on its evaluation of implementation and outcomes of Tribal consultation based on the criteria established by HHS as follows:</p>	
<p>12.2.1. Tribal budget consultation activities. Describe tribal budget consultation activities conducted by CMS in accordance with HHS policy.</p>	<p>12.2.1. Tribal budget consultation activities. Describe Tribal budget consultation activities conducted by CMS in accordance with HHS policy.</p>	<p>12.2.1. Tribal budget consultation activities. Describe Tribal budget consultation activities conducted by CMS in accordance with HHS policy.</p>	
<p>12.2.2. Other tribal consultation activities. Describe other tribal consultation activities conducted, including a description of where the consultation event took place, the purpose of the consultation and who was in attendance (tribal, federal and other participants) and their roles (i.e. Crow tribal elected officials were in attendance).</p>	<p>12.2.2. Other Tribal consultation activities. Describe other Tribal consultation activities Conducted, including a description of where the consultation event took place, the purpose of the consultation and who was in attendance (<u>elected Tribal officials, federal And other participants</u>) and their roles.</p>	<p>12.2.2. Other Tribal consultation activities. Describe other Tribal consultation activities conducted, including a description of where the consultation event took place, the purpose of the consultation, and who was in attendance (<u>elected Tribal officials, Federal and other participants</u>) and their roles.</p>	
<p>12.2.2.1. Describe the outcomes or accomplishments that resulted from these sessions. Focus the response on how CMS responded to the requests and priorities raised by Indian Tribes at these consultation sessions.</p>	<p>12.2.2.1. Describe the outcomes or accomplishments that resulted from these Sessions. Focus the response on how CMS responded to the requests and priorities raised by Indian Tribes at these consultation sessions.</p>	<p>12.2.2.1. Describe the outcomes or accomplishments that resulted from these sessions. Focus the response on how CMS responded to the requests and priorities raised by Indian Tribes at these consultation sessions.</p>	
<p>12.2.2.2. Identify specific Indian Tribes and Indian Organizations impacted by the activities and include brief description of each activity, names of the Indian Tribe(s) and/or Indian organizations, and any CMS resources made available.</p>	<p>12.2.2.2. Identify specific Indian Tribes and Indian Organizations <u>affected</u> by the activities and include brief description of each activity, names of the Indian Tribe(s) And/or Indian organizations, and any CMS resources made available.</p>	<p>12.2.2.2. Identify specific Indian Tribes and Indian Organizations <u>affected</u> by the activities and include a brief description of each activity, names of the Indian Tribes and/or Indian Organizations, and any CMS resources made available.</p>	
<p>12.2.3. Compliance with the HHS consultation policy. Describe assistance to states in the development and implementation of mechanisms for consultation with Indian Tribes and Indian Organizations before taking actions that affect these governments and/or the Indian people residing in</p>	<p>2.2.3. Compliance with the HHS consultation policy. Describe assistance to states in the development and implementation of mechanisms for consultation with Indian Tribes and Indian Organizations before taking actions that affect these governments and/or the Indian people</p>	<p>12.2.3. Compliance with the HHS Tribal Consultation Policy. Describe assistance to States in the development and implementation of mechanisms for consultation with Indian Tribes and Indian Organizations before taking actions that affect these governments and/or the Indian people residing in</p>	

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<p>their state. If none, state so.</p>	<p>residing in their state. If none, state so.</p>	<p>their state. If none, state so.</p>	
<p>12.2.4. Budget summary. Identify CMS' expenditures for Indian Tribes, Tribal Organizations and Indian health activities, including funds expended indirectly for the benefit of Indian health.</p>	<p>12.2.4. Budget summary. Identify CMS' expenditures for Indian Tribes, Tribal Organizations and Indian health activities, including funds expended indirectly for the benefit of Indian health.</p>	<p>12.2.4. Budget summary. Identify CMS' expenditures for Indian Tribes, Tribal Organizations, and Indian health activities including funds expended indirectly for the benefit of Indian health.</p>	
<p>13. Meeting Records and Additional Reporting</p> <p>13.1. Meeting Records. CMS is responsible for making and keeping records of its tribal consultation activity. All such records shall be made readily available to Tribes. Reports to Tribes. In addition to the reports required in follow up to consultation under Section 9.1.4 and those made to HHS under Section 12.2, CMS will annually prepare and submit a report to Indian Tribe(s) and Tribal Organization(s) outlining the consultation process implemented and subsequent outcome related to a particular issue upon completion of the process. The report will address each of the items identified in Section 12.2.</p>	<p>13. Meeting Records and Additional Reporting</p> <p>CMS will make and keep records of its Tribal consultation activity. All such records shall be readily available <u>and shared during the Annual consultation sessions.</u></p>	<p>13. Meeting Records and Additional Reporting</p> <p>CMS will make and keep records of its Tribal consultation activity. All such records shall be readily available and shared during the Annual consultation sessions <u>and through the Department's Annual Tribal Consultation Report.</u> and shared during the Annual consultation sessions.</p>	<p>Here CMS limits its consultation reporting responsibilities only to the annual HHS consultation report. TTAG had sought broader reporting responsibility.</p>
<p>13C. CMS Website. All documents developed to communicate decisions arrived at through tribal consultation and the report to Indian Tribes will be posted on the CMS and/or NIH website.</p>			<p><i>CMS does not respond to having documents and records available online.</i></p>
<p>14. Conflict Resolution</p> <p>The intent of this policy is to provide increased ability to solve problems. However, inherent in the government-to-government relationship is the right of Indian Tribe(s) to elevate an issue of importance to a higher decision-making authority. CMS will establish a clearly defined conflict resolution process in collaboration with Indian Tribe(s), under which Indian Tribes: (a) bring forward concerns which have a substantially direct effect; and (b) apply for waivers of statutory and regulatory requirements that are subject to waiver by CMS.</p>	<p>14. Conflict Resolution</p> <p>The intent of this policy is to provide increased ability to solve problems. However, inherent in the government-to-government relationship, Indian Tribes may elevate an issue of importance to a higher decision-making authority</p> <p><u>Nothing in this Policy creates a right of action against CMS or HHS for failure to comply with this Policy.</u></p>	<p>14. Conflict Resolution</p> <p>The intent of this policy is to provide increased ability to solve problems. However, inherent in the government-to-government relationship, Indian Tribes may elevate an issue of importance to a higher decision-making authority</p> <p><u>Nothing in this Policy shall be construed to preclude Indian Tribes from raising issues to responsible officials outside of the consultation process. creates a right of action against CMS or HHS for failure to</u></p>	<p><i>CMS does not agree to TTAG's proposal to develop a "clearly defined" conflict resolution process. CMS does say tribes can elevate an issue to a higher authority, but do not define.</i></p> <p>This green revision embraces concept in TTAG's language. OK.</p>

<p>TTAG Proposal sent out for Tribal Consultation (Dec. 2005)</p> <p>TTAG language deleted by CMS in March 2008 Proposal</p>	<p>CMS Proposal, March 2008</p> <p><u>New language added by CMS 3/2008 draft</u></p>	<p>CMS Proposal, September 2008</p> <p><u>New language added by CMS in 9.08 Draft</u></p> <p>CMS language added in 3.08 Draft & now Deleted</p> <p><u>Previous CMS Language added/carried over from CMS 3.08 draft or new deleted.</u></p>	<p>New Carol Barbero Comments (highlighted)</p> <p><i>Italicized text are comments from previous CMS changes (Dec. 2005 to March 2008 draft)</i></p>
		<p>comply with this Policy.</p>	
<p>15. Effective Date</p> <p>This Policy is effective on the date of signature by the CMS Administrator.</p>	<p>15. Effective Date</p> <p>This Policy is effective on the date of signature by the CMS Administrator.</p>	<p>15. Effective Date</p> <p>This Policy is effective on the date of signature by the CMS Administrator.</p>	
<p>16. Summary</p> <p>CMS views tribal consultation as an evolving process. The joint effort between the Central Office and Regional Offices will provide for implementation of this Tribal Consultation Policy. Together they will ensure implementation of the Policy, make recommendations for revisions to the Policy based upon periodic assessments in collaboration with the TTAG, and assure that issues surfaced by the Indian Tribes are addressed promptly.</p>	<p>16. Summary</p> <p>CMS views Tribal consultation as an evolving process. The joint effort between the Central Office and Regional Offices will provide for implementation of this Tribal Consultation Policy. Together they will ensure implementation of the Policy, make recommendations for revisions to the Policy based upon periodic assessments in collaboration with the TTAG, and assure that issues surfaced by the Indian Tribes are addressed promptly.</p>	<p>16. Summary</p> <p>CMS views tribal consultation as an evolving process. The joint effort between the Central Office and Regional Offices will provide for implementation of this Tribal Consultation Policy. Together they will ensure implementation of the Policy, make recommendations for revisions to the Policy based upon periodic assessments in collaboration with the TTAG, and assure that issues surfaced by the Indian Tribes are addressed promptly.</p>	
<p>17. Definitions</p> <p>Agency – Any authority of the United States that is an “agency” under 44 USC 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 USC 3502 (5).</p>	<p>17. Definitions</p> <p>Agency – Any authority of the United States that is an “agency” under 44 USC 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 USC 3502 (5).</p>	<p>17. Definitions</p> <p>Agency – Any authority of the U.S. that is an “agency” under 44 USC 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 USC 3502 (5).</p>	
<p>Communication – The exchange of ideas, messages, or information, by speech, signals, writing, or other means.</p>	<p>Communication – The exchange of ideas, messages, or information, by speech, signals, writing, or other means.</p>	<p>Communication – The exchange of ideas, messages, or information, by speech, signals, writing, or other means.</p>	
<p>Consultation – Between CMS and Indian Tribes, “consultation” means government-to-government communication between agencies of the United States and Indian Tribes (and their designees). It emphasizes trust, respect and shared responsibility and requires open and free exchange of information and opinion among parties. 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.</p>	<p>Consultation – Between CMS and Indian Tribes, “consultation” means government-to-government communication between agencies of the United States and Indian Tribes (and their designees). It emphasizes trust, respect and shared responsibility and requires open and free exchange of information and opinion among parties. 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.</p>	<p>Consultation – Between CMS and Indian Tribes, “consultation” means government-to-government communication between agencies of the U.S. and Indian Tribes (and their designees). It emphasizes trust, respect and shared responsibility and requires open and free exchange of information and opinion among parties. 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.</p>	

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<p>Coordination and/or Collaboration – Working and communicating together in a meaningful government-to-government effort to create a positive outcome.</p>	<p>Coordination and/or Collaboration – Working and communicating together in a meaningful government-to-government effort to create a positive outcome.</p>	<p>Coordination and/or Collaboration – Working and communicating together in a meaningful government-to-government effort to create a positive outcome.</p>	
<p>Deliberative Process Privilege – Is a privilege exempting the government from disclosure of government agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency. Executive Order – An order issued by the Government’s executive on the basis of authority specifically granted to the executive branch (as by the United States Constitution or a Congressional Act).</p>	<p>Deliberative Process Privilege – Is a privilege exempting the government from disclosure of government agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency. Executive Order – An order issued by the Government’s executive on the basis of authority specifically granted to the executive branch (as by the United States Constitution or a Congressional Act).</p>	<p>Deliberative Process Privilege – Is a privilege exempting the government from disclosure of government agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency. Executive Order – An order issued by the Government’s executive on the basis of authority specifically granted to the executive branch (as by the U.S. Constitution or a Congressional Act).</p>	
<p>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.</p>	<p>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</p>	<p>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.</p>	
<p>Impact on Indian Tribes means direct or indirect effect on the operation of health programs operated by the Indian Health Service, Indian Tribes or Tribal Organizations (including reimbursement, payment methodology, administration, outreach and enrollment, and all other aspects of participation in Medicare, Medicaid and SCHIP) and access to programs of CMS by AI/ANs.</p>	<p>Policies that have Tribal Implications – <u>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.</u></p>	<p>Policies that have Tribal Implications – <u>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.</u></p>	
<p>Indian Organization – Any group, association, partnership, corporation, or legal entity owned or controlled by Indians, or a majority of whose</p>	<p>Indian Organization – Any group, association, partnership, corporation, or legal entity owned or controlled by Indians or a majority whose members</p>	<p>Indian Organization – Any group, association, partnership, corporation, or legal entity owned or controlled by Indians, or a majority of whose</p>	

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members are Indians.	are Indians.	members are Indians.	
Indian Tribe – 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)).	Indian Tribe – 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)).	Indian Tribe – 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)).	
Indian – Indian means a person who is a member of an Indian Tribe. (25 U.S.C. 450b (d)). Throughout this policy, Indian is synonymous with American Indian/Alaska Native.	Indian – Indian means a person who is a member of an Indian Tribe. (25 U.S.C. 450b (d)). Throughout this policy, Indian is synonymous with American Indian/Alaska Native.	Indian – Indian means a person who is a member of an Indian Tribe. (25 U.S.C. 450b(d)). Throughout this policy, Indian is synonymous with American Indian/Alaska Native.	
Self-Government – Government in which the people who are most directly affected by the decisions make decisions, including Indian Tribes exercising self-determination and self-governance pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.	Self-Government – Government in which the people who are most directly affected by the decisions make decisions, including Indian Tribes exercising self-determination and self-governance pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.	Self-Government – Government in which the people who are most directly affected by the decisions make decisions, including Indian Tribes exercising self-determination and self-governance pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.	
Sovereignty – The ultimate source of political power from which all specific political powers are derived.	Sovereignty – The ultimate source of political power from which all specific political powers are derived.	Sovereignty – The ultimate source of political power from which all specific political powers are derived.	
Substantial Direct Compliance Costs – Those costs incurred directly from implementation of changes necessary to meet the requirements of a federal regulation. Because of the large variation among Indian Tribes, “substantial costs” is also variable by Indian Tribe. Each Indian Tribe and the Secretary shall mutually determine the level of costs that represent “substantial costs” in the context of the Indian Tribe’s resource base.	Substantial Direct Compliance Costs – Those costs incurred directly from implementation of changes necessary to meet the requirements of a federal regulation. Because of the large variation among Indian Tribes, “substantial costs” is also variable by Indian Tribe. Each Indian Tribe and the Secretary shall mutually determine the level of costs that represent “substantial costs” in the context of the Indian Tribe’s resource base.	Substantial Direct Compliance Costs – Those costs incurred directly from implementation of changes necessary to meet the requirements of a federal regulation. Because of the large variation among Indian Tribes, “substantial costs” is also variable by Indian Tribe. Each Indian Tribe and the Secretary shall mutually determine the level of costs that represent “substantial costs” in the context of the Indian Tribe’s resource base.	

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<p>To the Extent Practicable and Not Prohibited by Law – Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, etc.</p>	<p>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.</p>	<p>To the Extent Practicable and Not Prohibited by Law – Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, etc.</p>	
<p>Treaty – A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.</p>	<p>Treaty – A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.</p>	<p>Treaty – A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.</p>	
<p>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 USC 479a.</p>	<p>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 USC 479a.</p>	<p>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 USC 479a.</p>	
<p>Tribal Officials – Elected or duly appointed officials of Indian Tribes or authorized inter-tribal organizations.</p>	<p>Tribal Officials – Elected or duly appointed officials of Indian Tribes or authorized inter-Tribal organizations.</p>	<p>Tribal Officials – Elected or duly appointed officials of Indian Tribes or authorized inter-tribal organizations.</p>	
<p>Tribal Organization – The recognized governing body of any Indian Tribe; any legally established organization of American Indians and Alaska Natives which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the community to be served by such organization and which includes the maximum participation of Indian Tribe members in all phases of its activities (25 U.S.C. 450b (l)).</p>	<p>Tribal Organization – The recognized governing body of any Indian Tribe; any legally established organization of American Indians and Alaska Natives which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the community to be served by such organization and which includes the maximum participation of Indian Tribe members in all phases of its activities (25 U.S.C. 450b (l)).</p>	<p>Tribal Organization – The recognized governing body of any Indian Tribe; any legally established organization of American Indians and Alaska Natives which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the community to be served by such organization and which includes the maximum participation of Indian Tribe members in all phases of its activities (25 U.S.C. 450b (l)).</p>	
<p>Tribal Resolution – A formal expression of the opinion or will of an official tribal governing body which is which is adopted by vote of the tribal governing body.</p>	<p>Tribal Resolution – A formal expression of the opinion or will of an official Tribal governing body which is which is adopted by vote of the Tribal governing body.</p>	<p>Tribal Resolution – A formal expression of the opinion or will of an official tribal governing body which is which is adopted by vote of the tribal governing body.</p>	
<p>Tribal Self-Governance – The governmental actions</p>	<p>Tribal Self-Governance – The governmental</p>	<p>Tribal Self-Governance – The governmental actions</p>	

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<p>of Tribes exercising self-government and self-determination.</p>	<p>actions of Tribes exercising self-government and self-determination.</p>	<p>of Tribes exercising self-government and self-determination.</p>	
<p>Tribal Technical Advisory Group – A group composed of individuals who are elected tribal officials and/or tribal employees acting on their behalf, appointed by federally recognized tribal governments to serve as an advisory body to CMS providing expertise on policies, guidelines, and programmatic issues affecting the delivery of health care for AI/ANs served by Titles XVIII, XIX, and XXI of the Social Security Act or any other health care program funded (in whole or in part) by CMS.</p>	<p>Tribal Technical Advisory Group – A group composed of individuals who are elected Tribal officials and/or Tribal employees acting on their behalf, appointed by federally recognized Tribal governments to serve as an advisory body to CMS providing expertise on policies, guidelines, and programmatic issues affecting the delivery of health care for AI/ANs served by Titles XVIII, XIX, and XXI of the Social Security Act or any other health care program funded (in whole or in part) by CMS.</p>	<p>Tribal Technical Advisory Group – A group composed of individuals who are elected tribal officials and/or tribal employees acting on their behalf, appointed by federally recognized tribal governments to serve as an advisory body to CMS providing expertise on policies, guidelines, and programmatic issues affecting the delivery of health care for AI/ANs served by Titles XVIII, XIX, and XXI of the Social Security Act or any other health care program funded (in whole or in part) by CMS.</p>	
<p>Urban Indian Organization – A program that is funded by the Indian Health Service under Title V (Section 502 or 513) of the Indian Health Care Improvement Act.</p>	<p>Urban Indian Organization – A program that is funded by the Indian Health Service under Title V (Section 502 or 513) of the Indian Health Care Improvement Act.</p>	<p>Urban Indian Organization – A program that is funded by the Indian Health Service under Title V (Section 502 or 513) of the Indian Health Care Improvement Act.</p>	