



Medical Services
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Jack Dalrymple, Governor
Carol K. Olson, Executive Director

November 17, 2011

Ms. Dori Junker
IHS Resource Mgmt Business Offc
115 4th Ave SE Room 309
Aberdeen, SD 57401

Dear Ms. Junker:

This letter is regarding the Tribal Consultation between the North Dakota Department of Human Services (Department) and the North Dakota Indian Tribes and Indian Health Services (IHS). This consultation process was established to ensure Tribal governments are included in the decision making processes when changes in the Medicaid or Children's Health Insurance Program(s) will affect items such as cost sharing, IHS Encounter rates or service reductions and additions. The Department engages Tribal consultation when a State Plan Amendment, waiver proposal or amendment, or demonstration project proposal directly impacts the North Dakota Tribes and/or their Tribal members, or Indian Health Services.

This letter is regarding a REVISED version of the Tribal Consultation Policy (and Medicaid State Plan Amendment) that has previously been distributed. The REVISED version (enclosed) includes input received from the Centers for Medicare and Medicaid Services and input received during the Tribal/IHS/Great Plains Tribal Chairman's Health Board meeting with the Department on November 16, 2011.

If you have any comments, questions or concerns about the REVISED proposed State Plan Amendment, please contact me by **December 21, 2011** at manderson@nd.gov or by mailing a written response to 600 East Boulevard Avenue, Department 325, Bismarck, ND 58505 or by calling 701.328.1603.

The Department appreciates the continuing opportunity to work collaboratively with you to achieve the Department's mission, which is: "To provide quality, efficient, and effective human services, which improve the lives of people."

Sincerely,

Maggie D. Anderson, Director
Medical Services Division

MDA/mlt

Enclosures

State: North Dakota

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

Section 1.4 State Medical Care Advisory Committee (42 CFR 431.12(b))

There is an advisory committee to the Medicaid agency director on health and medical care services established in accordance with and meeting all the requirements of 42 CFR 431.12.

The Department of Human Services has invited each tribe to identify designees to attend the Medicaid Medical Advisory Committee. Individuals who have been designated are added to the distribution lists for information about the meetings.

If a Tribe has not identified a designee, the Department notifies the Tribal Chairperson and the Health Care Lead of the upcoming meeting(s).

Tribal Consultation Requirements:

Section 1902(a)(73) of the Social Security Act (the Act) requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular, ongoing basis from designees of Indian health programs, whether operated by the Indian Health Service (IHS), Tribes or Tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), or Urban Indian Organizations under the Indian Health Care Improvement Act (IHCIA). Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program (CHIP). Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian organizations.

Please describe the process the State uses to seek advice on a regular, ongoing basis from federally-recognized tribes, Indian Health Programs and Urban Indian Organizations on matters related to Medicaid and CHIP programs and for consultation on State Plan Amendments, waiver proposals, waiver extensions, waiver amendments, waiver renewals and proposals for demonstration projects prior to submission to CMS. Please include information about the frequency, inclusiveness and process for seeking such advice.

Background and purpose:

The American Recovery and Reinvestment Act (ARRA) of 2009 contains provisions for Medicaid that: "In the case of any State in which one or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for the process under

which they seek advice on a regular, ongoing basis from the designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Health Organization and that: a) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and b) may include appointment of an advisory committee and of a designee advising the State on its State plan under this title.”

The North Dakota Department of Human Services acknowledges that there are legal and stakeholder partnerships with the Indian Tribes in North Dakota. These partnerships have grown throughout the years and will continue to be an integral part of implementing the revisions set forth by the American Recovery & Reinvestment Act (ARRA) and the Patient Protection and Affordable Care Act (ACA).

It is the intent of the North Dakota Department of Human Services to consult on a regular basis with the Indian Tribes established in North Dakota on matters relating to Medicaid and Children’s Health Insurance Program (CHIP) eligibility and services, which are likely to have a direct impact on the Indian population. This consultation process will ensure that Tribal governments are included in the decision making process when changes in the Medicaid and CHIP programs will affect items such as cost or reductions and additions to the program. The North Dakota Department of Human Services shall engage Tribal consultation with a State Plan Amendment, waiver proposal or amendment, or demonstration project proposal when any of these items will likely have a direct impact on the North Dakota Tribes and/or their Tribal members.

Process Effect:
Direct Impact

~~To determine if the changes directly impact the Tribal system, questions may include: Does the proposal or change directly impact the Tribal Members or Tribal programs, but is federally or statutorily mandated? If yes, and states have no flexibility in the mandate, a notice will be given to the North Dakota Tribes. If there is some flexibility in implementing the mandate, communication will be initiated between the North Dakota Department of Human Services and the North Dakota Tribes.~~

~~Does the proposal or change impact services or constrict access to services provided by or contracted for IHS or the Indian Tribes (i.e. decrease/increase in services, change in provider or service requirements, cost changes to IHS/Tribal health or change in reimbursement rates?) **In these situations, communication will be initiated between the North Dakota Department of Human Services and the North Dakota Indian Tribes and Indian Health Services (IHS).**~~

Does the proposed modification negatively impact or change the eligibility for or access to Medicaid or CHIP for Tribal members? ~~In this situation, communication will be initiated between the North Dakota Department of Human Services, the North Dakota Indian Tribes and Indian Health Services.~~

Direct impact is defined as a proposed change that is expected to affect Indian Tribes, Indian Health Services (IHS) and/or Native Americans through: a decrease or increase in services; a change in provider qualifications; a change in service eligibility requirements; a change in the compliance cost for IHS or Tribal health programs; or a change in reimbursement rate or methodology.

Communication Consultation:

When it is determined that a proposal or change would have a direct impact on North Dakota Tribes, Indian Health Services or Tribal members, the North Dakota Department of Human Services will issue written correspondence to Tribal Chairs, Tribal Healthcare Directors, the Executive Director of the Indian Affairs Commission, Indian Health Services Representatives and the Executive Director of the Great Plains Tribal Chairmen's Health Board. In addition to the written correspondence, the Department may will use one or more of the following methods to provide notice or request input from the North Dakota Indian Tribes and IHS.

- a. Indian Affairs Commission Meetings
- b. Interim Tribal and State Relations Committee Meetings
- c. Medicaid Medical Advisory Committee Meetings
- d. Independent Tribal Council Meetings
- e. ~~Written Correspondence to Tribal Chairs, Tribal Healthcare Directors, the Executive Director of the North Dakota Indian Affairs Commission, and Indian Health Services Representatives.~~

Ongoing Correspondence:

- A web link will be located on the North Dakota Department of Human Services website specific to the North Dakota Tribes. Information contained on this link will include: notices described below, proposed and final State Plan amendments, frequently asked questions and other applicable documents.
- A specific contact at the North Dakota Department of Human Services Medical Services Division, in addition to the Medicaid Director, will be assigned for all ongoing Tribal needs. This contact information will be disseminated in the continuing correspondence with the North Dakota Tribes.

Notice of changes will be sent to:

- ~~North Dakota Tribal Governments Tribal Chairman/Chief of each Tribal entity~~
 - ~~Tribal Healthcare Directors~~
- ~~IHS and Tribal Health Clinic Executive Directors on each Tribal Reservation~~
- ~~North Dakota Indian Affairs Commission~~
- ~~Aberdeen Area Indian Health Services~~
- ~~Great Plains Tribal Chairmen's Health Board~~

Approved OMB#: 0938-1098

Attachment 1.4-A

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Content of the written correspondence notice will include:

- Purpose of the proposal/change
- Effective date of change
- Anticipated impact on Tribal population and programs
- Location, Date and Time of Face to Face Consultation OR If Consultation is by Written Correspondence, the Method for providing comments and a timeframe for responses. Responses to written correspondence are due to the Department 30 days after receipt of the written notice.

Meeting Requests:

In the event that written correspondence is used and a written response is not sufficient due to the extent of discussion needed by either party, The North Dakota Department of Human Services, the or North Dakota Tribes, or Indian Health Services can request a face to face meeting within 30 days of the written correspondence, by written notice, to the other parties.

Please describe the consultation process that occurred specifically for the development and submission of this State Plan Amendment, when it occurred and who was involved.

September 2009, the Medicaid Director attended the "Tribal-State Medicare and Medicaid meeting" sponsored by the Office for Elimination of Health Disparities (ND Department of Health). Input was received from those attending regarding the implementation of changes from the American Recovery and Reinvestment Act; including Tribal Consultation.

October 2009, The Department of Human Services hosted a Tribal Consultation/Collaboration meeting. Letters of Invitation were sent to all Tribal Chairpersons, Tribal Substance Abuse Administrators, Tribal Health Administrators, and the Executive Director of the Aberdeen Area Tribal Chairman's Health Board.

July 2010 – The Department of Human Services met with Tribal staff members for a Tribal Stakeholder meeting. The Draft Tribal Consultation Policy was discussed.

TN No. 11-019
Supersedes
TN No. NEW

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Effective Date: 01-01-2012

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August 2010 – The Department invited each Tribe, the Indian Affairs Commission, and Indian Health Services to the Medicaid Medical Advisory Committee meeting on October 21, 2010.

September 2010 – Tribal leaders were invited to a Collaboration meeting with staff from the Indian Affairs Commission, the Department of Human Services and County Social Services staff. The Draft Tribal Consultation policy was distributed and discussed and comments were requested.

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Attachment 1.4-A

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December 2010 – The Department mailed the Draft Tribal Consultation Policy to Tribal Chairpersons, Tribal Health Administrators, Indian Health Services Offices, and the Aberdeen Area IHS office and Tribal Chairman's Health Board. Comments were requested.

August 2011 - The Department invited each Tribe, the Indian Affairs Commission, and Indian Health Services to the Medicaid Medical Advisory Meeting on September 14, 2011.

September 2011 – The Medicaid Director provided testimony to the Interim Tribal and State Relations Committee. The testimony included a review of the revised Tribal Consultation Policy. The day after the committee meeting, the Tribal Consultation Policy was sent to the Executive Director of the Indian Affairs Commission, and he forwarded the policy to the Tribal Chairs.

As of the submission date of this amendment, through the above noted meetings and distributions, the Department has not received suggestions for changes to the Tribal Consultation Policy.

An expedited consultation will be used in situations that do not allow for advanced consultation. It is expected that an expedited consultation would be used when there are changes in either federal or state law that require immediate implementation or in cases where a natural disaster warrants immediate action. Under an expedited review, written notice will be provided to all individuals/entities identified in the "Consultation" section of this amendment; however, the response time may be truncated or implementation may need to occur prior to the issuance of the written notice.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1098. The time required to complete this information collection is estimated to average 1 hour per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

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