



## **OKLAHOMA HEALTH CARE AUTHORITY**

### **TRIBAL CONSULTATION POLICY**

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#### **INTRODUCTION**

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The Medicaid program and the State Child Health Insurance Program (SCHIP) were created under federal law as jointly financed federal and state partnerships, administered by the state, to provide certain medical benefits to qualified individuals. The Oklahoma Health Care Authority (OHCA) is the single state agency with the responsibility of directing the administration of the Medicaid and SCHIP program in Oklahoma, known as SoonerCare through various agency activities, including but not limited to<sup>1</sup>:

- Purchasing health care benefits for SoonerCare members as specifically authorized by federal and state law
- Contracting for the delivery of state-purchased health care and establishing standards and criteria which must be met by entities to be

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<sup>1</sup> 63 O.S. 1999, § 5004

eligible to contract with the Authority for the delivery of state-purchased health care;

- Developing a standard basic health care benefits package or packages to be offered by health services providers, for SoonerCare members;
- Studying all matters connected with the provision of state-purchased and state-subsidized health care coverage;
- Developing and submitting plans, reports and proposals, providing information and analyzing areas of public and private health care interaction pursuant to the provisions of the Oklahoma Health Care Authority Act

In order to carry out agency activities, the OHCA must develop and maintain ongoing communications with tribal members/citizens, health providers, health facilities, governmental agencies, governmental officials, and other stakeholders. In Oklahoma, sovereign tribal governments are key stakeholders that represent every facet identified in the preceding sentence. Given the number of tribal governments and the substantial tribal population in Oklahoma, it is critical that OHCA seek the input of tribal governments during the OHCA decision making and priority setting process.

Both the OHCA and the tribal governments share the goal of improving the health status of all Oklahomans. As residents of the State of Oklahoma, tribal members/citizens are equally entitled to programs and services available to all residents. Additionally, by virtue of members/citizens in a tribal government, tribal members/citizens are eligible to access additional services.

Given the mutual interests of the OHCA and tribal governments, it is critical that the OHCA and Tribes work together in a collaborative manner to the extent practicable and permitted by law. Such collaboration can be achieved through the implementation of open, continuous, and meaningful consultation, which leads to information exchange, mutual understanding, and informed decision-making.

## BACKGROUND

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The presence of tribal governments predates both the formation of the United States and the State of Oklahoma. As sovereign nations, tribal governments exercise inherent sovereign powers over their members/citizens, territory and lands. Tribal governments have an inalienable and inherent right to self-governance, meaning governance in which decisions are made by the people who are most directly affected by the decisions.

The United States (U.S.) recognizes tribal governments as sovereign nations and enjoys a unique government-to-government relationship with tribal governments. This relationship is grounded in numerous treaties, statutes, court decisions, and executive orders. Because of this government-to-government relationship, American Indians have a unique legal and political status which is based on tribal membership/citizenship rather than a racial category.

In recognition of this government-to-government relationship, the U.S. Department of Health and Human Services (HHS) utilizes a Tribal Consultation Policy in order to maintain active communication and coordination in health related matters. The OHCA strives to achieve similar communication and coordination through the implementation of this policy.

The State of Oklahoma has long recognized a government-to-government relationship with the tribal governments located in the state. Additionally, the State of Oklahoma recognizes the unique status of tribal governments and is charged with the duty to work in a spirit of cooperation with all sovereign tribal governments located in Oklahoma in furtherance of federal policy for the benefit of both the State of Oklahoma and tribal governments<sup>2</sup>.

The OHCA strives to work with sovereign tribal governments on a government-to-government basis to address pertinent issues and the OHCA shall provide an opportunity for tribal governments to participate in policy development to the greatest extent practicable and permitted by law.

This policy does not waive any sovereign tribal governmental rights, including treaty rights, sovereign immunities or jurisdiction. Additionally, this policy does not diminish any rights or powers of the State of Oklahoma.

## POLICY

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Before any action is taken that will significantly affect sovereign tribal governments, it is OHCA policy that consultation with sovereign tribal governments will occur, to the extent practicable and permitted by law. Such actions refer to issues that have tribal implications and that have substantial direct effects on one or more tribal governments, or on the relationship between the OHCA and tribal governments.

## OBJECTIVES

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1. To implement the requirements of OHCA to seek consultation and promote the participation of sovereign tribal governments in policy development, strategic planning, and program activities to ensure that health priorities and goals are achieved in a culturally respectful manner that recognizes the government-to-government relationship.
2. To establish a minimum set of requirements and expectations with respect to consultation and participation throughout the various OHCA divisions, programs, services, and units.
3. To identify issues that have tribal implications in which tribal consultation and participation will be required for the various OHCA divisions, programs, services, and units.

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<sup>2</sup> 74 O.S. 2001, § 1221 (B)

4. To identify instances where the OHCA would seek the participation of additional state agencies, the Indian Health Service, Centers for Medicare and Medicaid Services, the Indian Health Care Resource Center of Tulsa and Oklahoma City Indian Clinic, the Oklahoma City Area Inter-Tribal Health Board, and other entities to complement and enhance consultation with sovereign tribal governments. Such instances could include tribal representation on OHCA established committees, workgroups, or similar bodies.
5. To develop communication mechanisms to ensure sovereign tribal governments are adequately informed of OHCA activities and can access pertinent information on a timely basis.
6. To develop communication mechanisms to identify and share information to improve the data capabilities of the OHCA, tribal governments, the Indian Health Service, and the Oklahoma City Area Inter-Tribal Health Board.
7. To maintain an Office of Tribal Relations within the OHCA to ensure the implementation of this policy and to coordinate all activities associated with Tribal consultation. The contact information for the Office of Tribal Affairs is as follows:

Oklahoma Health Care Authority  
Office of Tribal Relations  
2401 NW 23<sup>rd</sup>  
Suite 1-A  
Oklahoma City, Oklahoma 73107  
(405) 522-7300

## ROLES

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1. OHCA Chief Executive Officer: The Chief Executive Officer is responsible for the day-to-day operations of the Oklahoma Health Care Authority. In this capacity, the Chief Executive Officer is charged with the duty to ensure that this policy is carried out through the various OHCA divisions, programs, services, and units.
2. Sovereign Tribal governments: The government-to-government relationship between the State of Oklahoma and sovereign Tribal governments directs that the principal focus for OHCA consultation is with individual tribal governments through tribal officials or designated individuals. Additionally, many tribal governments and tribal consortia provide direct health care to tribal members/citizens as authorized by Title I and/or V of the Indian Self Determination and Education Assistance Act (P.L. 93-638).
3. Oklahoma City Area Indian Health Service: The Indian Health Service (IHS) is the primary federal agency for providing health services to Tribal Members/Citizens. The Oklahoma City Area Office of the Indian Health Service oversees the provision of health care through IHS operated health facilities located in Oklahoma, and provides administrative and technical functions for tribally operated health systems and the Indian Health Care Resource Center of

Tulsa and Oklahoma City Indian Clinic. Given its important role, the Oklahoma City Area Office of the Indian Health Service should be involved in the communication process to the extent practicable and permitted by law.

4. Indian Health Care Resource Center of Tulsa and Oklahoma City Indian Clinic: Although the government-to-government relationship between the State of Oklahoma and tribal governments is the basis for this consultation policy, the Indian Health Care Resource Center of Tulsa and the Oklahoma City Indian Clinic deliver health services to tribal members/citizens and therefore should be involved in the communication process to the extent practicable and permitted by law.
5. Oklahoma City Area Inter-Tribal Health Board (OCAITHB): The OCAITHB is a non-profit organization located in Oklahoma City and comprised of Board members representing tribal governments within the Oklahoma City Area Indian Health Service (IHS) service units. The OCAITHB provides valued services to tribal governments within the borders of Oklahoma in the areas of information dissemination, policy development, budget formulation, and inter-governmental collaboration. Although the government-to-government relationship is the basis for this consultation policy, as a tribal organization the OCAITHB is uniquely situated to enhance the consultation process as an information clearinghouse and resource to tribal governments and will serve a vital role in the support and furtherance of this policy.
6. Centers for Medicare and Medicare Services Central Office: The Centers for Medicare and Medicaid Services (CMS), an operating division within the United States Department of Health and Human Services headquartered in Baltimore, Maryland, is the agency responsible for carrying out the federal aspects of Medicaid and SCHIP. Although states administer Medicaid and SCHIP programs, CMS establishes broad national guidelines authorized by federal statutes, regulations, and policies. As an HHS operating division, CMS is required to comply with the HHS Tribal Consultation Policy, including the development of an agency specific policy. According to the HHS and CMS Tribal Consultation Policies, CMS has the duty to ensure, to the extent permitted by law, which Tribal consultation occurs when issues with tribal implications arise.

Additionally, CMS issues correspondence to State Medicaid agencies through “State Medicaid Director” letters to provide states with guidance and clarification on current information pertaining to Medicaid and SCHIP policy and data issues. CMS has issued guidance (please refer to [www.CMS.gov](http://www.CMS.gov)), emphasizing the need to communicate and consult with tribal governments in the decision making process when considering changes to Medicaid and SCHIP programs.

7. Centers for Medicare and Medicare Services, Region VI: In addition to activities at CMS the Central Office, CMS utilizes ten regional offices throughout the

United States to serve as a communication link between CMS and states, Tribal governments, local governments, health providers, beneficiaries, etc. on matters relating to CMS programs and services. The Region VI office, located in Dallas, Texas, serves the state of Oklahoma. The CMS Region VI office plays a vital role in the furtherance of this consultation policy by encouraging active and ongoing dialogue between the CMS Central Office, OHCA, and tribal governments.

## TRIBAL CONSULTATION PROCESS

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Mutual respect and trust are indispensable elements in establishing a meaningful consultative relationship. The need for and extent of consultation will depend on the potential impact, complexity, and gravity of the issue(s) being considered.

1. Identification of the issue(s) and recognizing the potential impact, complexity, implications, time constraints, etc. Such issues include planned or unplanned events that have or may have a substantial impact on tribal governments or tribal members/citizens, e.g., statutes, regulations, policies.
2. Determine affected/potentially affected tribal governments, populations, health providers, etc.
3. Determine extent of consultation necessary to properly examine the issue(s), which could include:
  - a. Correspondence: Written communications should clearly provide the affected/potentially affected tribal governments, populations, health providers, etc. information about the particular issue and the manner in which to provide feedback.
  - b. Meeting(s): When an issue(s) is determined to have substantial impact on Tribal governments, populations, health providers, etc., the OHCA shall convene meetings with affected/potentially affected tribal governments, health providers, and tribal organizations to discuss such issue(s). OHCA will also convene bi-monthly policy tribal consultation meetings face to face and via other electronic means of communication to occur on the first Tuesday of every odd month. These scheduled meetings allow for input on all policy to provide an opportunity to seek information from the OHCA on all proposed policy and implementation.
4. Notice: Upon the determination of the extent of consultation necessary, proper notice of the issue and consultation process shall be communicated to affected/potentially affected tribal governments using appropriate methods including mailing, broadcast e-mail, the Oklahoma Register, and other outlets.
5. Receipt of Comment: The OHCA shall develop clear and explicit instructions for the submission of comments.
6. Reporting of Outcome: Reporting of outcomes will be determined based on the issue and extent of consultation utilized. The OHCA will maintain a record of the consultation, evaluate whether the intended results were achieved, and report back to the affected tribal government(s) on the status or outcome when merited.

## ANNUAL MEETING

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The OHCA Chief Executive Officer shall convene, in coordination with tribal officials and appropriate tribal organizations, an annual Tribal consultation session which will include, at a minimum, the following participants:

1. Sovereign Tribal government officials
2. Designees as determined by tribal officials
3. Tulsa and Oklahoma City Urban Indian Health Clinic administrators
4. Oklahoma City Area Director of the Indian Health Service
5. Tribal Organizations
6. OHCA staff as determined by the Chief Executive Officer

In addition, OHCA will invite and encourage the participation of state government cabinet level officials, elected officials, and pertinent agency directors. The meeting date, location, and agenda will be determined in a collaborative manner to ensure the purposes of this policy are achieved. The meeting will be scheduled to allow adequate time for the preparation of any tribal priorities, recommendations, initiatives, etc. from the meeting for consideration during the annual OHCA Strategic Plan and agency budget request.

## INFORMATION DISSEMINATION, MEETING DOCUMENTATION, AND EVALUATION

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The OHCA will develop pertinent information to be disseminated in conjunction with the annual Tribal consultation session. The information will be determined as mutually agreed upon between the OHCA, tribal officials, and tribal organizations, but could include:

1. Information regarding any issues requiring tribal consultation, including the consultation process utilized, meeting summaries, and outcomes with a focus on Medicaid
2. An update on the implementation of the OHCA Tribal Consultation Policy
3. State-wide data and other pertinent information related to American Indian health, such as number of American Indians/Alaska Natives participating in OHCA programs, number of Indian Health Service/Tribally operated facilities/Urban Indian Health Clinics (I/T/U) facilities participating in OHCA programs, payments to I/T/U facilities, etc.
4. Information on services, programs, training, etc. available to tribal governments, tribal members/citizens, tribal Consortia, and tribal Organizations
5. Information on OHCA policy and program development, including pertinent federal and state legislation, the OHCA strategic plan and performance report, and the most recent OHCA annual report
6. OHCA Organizational chart and agency contact information
7. Other information as identified

All consultation meetings, including the annual Tribal consultation session, shall be summarized and made available to sovereign tribal governments, Urban Indian Clinics, etc. Once the consultation process is complete and any policy decision is finalized, all recommended follow-up actions adopted shall be implemented and tracked by the OHCA and reported to tribal governments in the Annual OHCA Tribal Consultation Report for evaluation purposes and located on the OHCA website at the Tribal Relations page. Each consultation meeting will include an opportunity for all participants to evaluate the efficacy of the meeting to assist in the planning of future meetings and to measure the level of satisfaction of the tribal governments. Additionally, as part of the evaluation process, this policy should be reviewed jointly by the OHCA and tribal governments on a biennial basis to determine if changes need to be made to improve the policy.

## DEFINITIONS

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1. **American Indian** – A person who is a member/citizen of an Indian tribe. 25 U.S.C. §450b (d).
2. **Bi-monthly**- Occurring every other month
3. **Communication** – The exchange of ideas, messages, or information, by speech, signals, writing, or other means.
4. **Consultation** – An enhanced form of communication, which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to joint decision-making, mutual understanding and comprehension. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues.
5. **Culturally Respectful**-the recognition and respect of the cultural uniqueness of each sovereign tribal/nation.
6. **Federally Recognized Tribal governments** – Tribal governments 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 Tribal governments.
7. **Issues that have Tribal implications** – Refers to regulations, legislation, and other policy statements or actions that have substantial direct effects on one or more tribal governments, on the relationship between the OHCA and tribal governments, or on the distribution of power and responsibilities between the OHCA and tribal governments . Both the OHCA and tribal governments share in the responsibility of identifying and determining issues that have tribal implications.
8. **Self Government** – Government in which the people who are most directly affected by the decisions make decisions.
9. **Sovereign 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, codified at 25 U.S.C. §479(a).

10. **Sovereignty** – The ultimate source of political power from which all specific political powers are derived.
11. **Stakeholders**- Those who make key decisions regarding health care and delivery systems for Indian Health Services.
12. **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.
13. **Treaty** – A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.
14. **Tribal Consortia** – A legally established organization of tribal governments which is controlled, sanctioned, or chartered by such tribal governments.
15. **Tribal Member/Citizen** – A person who is a member/citizen of an Indian tribe. 25 U.S.C. §450b (d).
16. **Tribal officials** – Elected or duly appointed officials of tribal governments.
17. **Tribal organization** – A legally established organization created to serve and represent American Indian issues and concerns.
18. **Tribal Self-Governance** – The governmental actions of Tribes exercising self government and self-determination.