



# Best Practices in State-Tribal Consultations

FINDINGS FROM MINNESOTA



## **Best Practices in State-Tribal Consultations: Findings from Minnesota**

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Submitted to:

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## Introduction

The Centers for Medicare & Medicaid Services (CMS) conducted a series of descriptive case studies examining how certain states engage in consultation with tribes and obtain the advice and input from programs operated by the Indian Health Service, tribes or tribal organizations under the Indian Self-Determination and Education Assistance Act (Pub.L. 93-638), or urban Indian health organizations under Title V of the Indian Health Care Improvement Act. Specifically, these case studies examined the tribal consultation State Plan Amendments (SPAs) established by each state as required by Section 5006 of the American Recovery and Reinvestment Act of 2009 (ARRA). The project seeks to highlight best practices and lessons learned, as perceived by both state and tribal participants, stemming from both successful and unsuccessful consultation efforts on Medicaid and Children's Health Insurance Program (CHIP) policies and mandates. Such strategies may provide the foundation for similar, successful consultation plans in other states.

Guided discussions were held with seven state and tribal representatives from the state of Minnesota, including representatives from the Minnesota Department of Human Services (DHS) and the directors and commissioners of the health and human services divisions of two tribes located within the state and centered on consultation policy as required by ARRA. They did not focus on issues or consultation policies regarding 1115 Medicaid waiver regulations or state-based insurance marketplaces.

Analysis of data from these discussions revealed a continually developing consultation process that benefits from the continued use of face-to-face consultations. Quality consultation was also supported by a positive and established relationship between the state and tribes, one that emphasizes collaboration and partnership. Barriers, however, continue to exist. Like other states, the DHS and tribes struggle with consultation overload that can trivialize significant issues. Consultation participants with the ability to make decisions for tribes or the state are often missing from the process. Still, by improving the efficiency of consultation events, and by increasing information access and transparency, Minnesota demonstrates the possibility and potential of successful state-tribal consultations.

## Consultation in the State of Minnesota

While the most recent state-tribal consultation plan has been in place in Minnesota since late 2010, Minnesota has had a formal tribal consultation policy in place since 1999. To comply with federal requirements under ARRA, the state Medicaid agency meets quarterly with tribal health directors, Indian Health Service (IHS) representatives, and urban Indian health care providers on matters related to Medicaid and CHIP. These meetings provide a forum from which the state can obtain tribal government and tribal health provider input on relevant matters.

The DHS-designated Medicaid office liaison maintains communication with IHS, tribally operated, and urban programs (I/T/Us) throughout the consultation process. The liaison mails written notification of proposed state plan amendments, waiver requests, renewals, or amendments to tribal chairpersons at least 60 days (or the longest practicable amount of time

possible) before submission. Tribal health directors, tribal social services directors, the IHS Area Office director, and the directors of the Minneapolis Indian Health Board Clinic (now known as the Indian Health Board of Minneapolis, which provides medical and dental care and counseling services to urban Indians) receive the same notification via email. This notice describes the proposed action, its potential impact on tribal health care providers or tribal communities, and how comments can be made on the proposed item.

I/T/U input can be received during the quarterly consultation meetings. Alternatively, the state Medicaid liaison can arrange separate meetings or conference calls between tribal health care providers and, if necessary, appropriate state agency policy staff. The liaison forwards all received comments to the appropriate state agency staff for response; tribal health care providers then receive a report on the state's response to their comments, including any proposed changes. The liaison's report must describe what tribal health care provider input has been accepted and provide an explanation for any omissions. The liaison also informs tribal health care providers of CMS approval or disapproval of the state's submission and the reasoning behind CMS's decision.

The state also seeks advice from the Minnesota Medicaid Citizen's Advisory Committee. Tribal representatives have been appointed by the state Medicaid director to serve on the committee and thus this presents an additional opportunity for tribal input.

## Findings from Guided Discussions

### Perceptions of the Minnesota Consultation Process

While participants described the state-tribe relationship in Minnesota positively, perceptions of the effectiveness of state-tribal consultations were mixed. A few tribal health program and DHS participants acknowledged that the consultation process may need more time to mature before an accurate assessment of effectiveness can be made, as consultation in some health areas currently seems more effective than in others:

*I think [consultations on health care are] very effective. In other areas that are new to the tribal consultation, I think it's going to take some time. – Tribal health participant*

That said, participants did not, or could not, comment on the impact of consultation outcomes. DHS respondents noted that tribal populations throughout Minnesota demonstrate significantly poorer health outcomes than the general population:

*[The health impact of these consultations are] pretty hard to measure, and frankly we have horrible, horrible health statistics, especially for American Indians. For the entire non-white population, but in particular for Native Americans, it's abysmal. – DHS participant*

Tribal health program participants, too, noted the persistent poor health standings of tribal communities. These respondents, however, stated that more time and more consultation would be needed to see long-term health improvements. Additionally, efforts to accurately measure and evaluate health outcomes still need to be made.

## Strengths of the Minnesota Consultation Process

### An established stakeholder relationship

Both state and tribal participants noted that state engagement with tribes began well before federal orders mandated such activity:

[The state has] been pretty open and that whole culture has really helped, has really been seen in tribal consultation. I think before tribal consultation became tribal consultation, I think Minnesota started to engage tribes as they started to see some of the health disparities and some other issues pop up. – *Tribal health participant*

Even where respondents see specific consultation processes fail or falter, the strength of the state-tribe relationship provides the necessary foundation to encourage open discussion and implement change. Respondents repeatedly referred to the quality of this relationship, and the trust and sense of collaboration it generates.

### Collaboration and partnership

Multiple participants described both the current and ideal consultation process in terms of collaborative interaction. Successful consultation includes working in partnership to define and work toward shared goals and outcomes. This approach avoids wasted attempts at communication and outreach, encourages active stakeholder participation during formal consultations as well as other informal discussions, and leads to the development of solutions and outcomes designed to meet the unique needs of individual tribes. Such cooperation and partnership, when present, benefits both state and tribal entities, and fosters a positive relationship between the state and tribes.

I think [that] a concern that tribes have...with consultation is if tribes are engaged in consultation, then is their advice or their needs, are they truly taken into account when the programs are put together by the state or by the feds. – *Tribal health participant*

### Uncategorized strengths

Additional strengths of the consultation process discussed by participants included:

- *Continued development of the consultation process.* State participants described the need to continually adapt the consultation process. One goal is to design a practice that will successfully address the particular, individual needs and issues of the 11 tribes located within the state:

I really believe that until we do consultation on a government-to-government basis, we're not going to make the headway that we need to make. [Consultation needs to be] very individually tailored, which takes time. – *DHS participant*

- *Continued use of in-person consultation events.* In some cases, technology enables more immediate communication and can encourage increased participation. Many participants in Minnesota, however, emphasized the value of continued in-person gatherings to conduct consultation with the state:

I think most of the face-to-face consultation is the most effective way to go. All these emails and letters are not so effective...A face-to-face could be followed with a letter or an email, but there needs to be more of that. – *Tribal health participant*

In this situation, face-to-face meetings continue to increase the sense of stakeholder ownership and contribute to more open sharing of information in ways that correspondence or virtual meetings do not.

## Barriers to Effective Consultation

### Lack of decision-maker participation

Tribal health program and DHS respondents both described an environment where state and tribal leaders support the consultation process. However, those who attend consultation events may not have the authority to make decisions on behalf of the tribe or state. Several tribal health program individuals commented that when participants with decision-making authority were not included in or did not attend these gatherings, consultative effectiveness suffered:

I wouldn't see it as consultation, because those people are not in a position to make decisions on behalf of the tribe. They are there to advise the state on how decisions, [impact tribes] from the program standpoint, are impacting tribes, what they're able to do with the funding, or [if] it's not enough funding or their needs aren't being identified...[But] unless the tribe's elected leaders are at the table making the decisions, being consulted, then it's not true consultation. – *Tribal health participant*

States could address this issue by identifying and reaching out to appropriate tribal authorities. Tribes could address this issue by increasing the attendance of tribal leaders or by authorizing consultation delegates with more executive authority.

### Trivialization of significant issues

Tribal respondents commented frequently about the burdens created by too-frequent requests for consultation. Such frequency taxes the already limited time and resources of tribal officials. In addition, this kind of bureaucracy risks trivializing significant health issues by addressing them with the same level of importance and urgency as discussions of unimportant issues:

What happens is you end up denigrating the serious issues by disguising them in a forest of nonissues...It has a potential of trivializing everything by over-importanizing everything. – *Tribal health participant*

Effectively addressing this issue would require both state and tribal stakeholder input to further develop consultation policies within the region. An honest evaluation of current policy could create an opportunity to address areas of inefficiency that prevent successful consultation from taking place.

### State vs. tribal perceptions

State and tribal officials differed in what each group identified as barriers to consultation. For example, state representatives felt that current consultation procedures provided tribes with

ample time and support to participate in these consultations, and did not perceive an interest from tribes in submitting additional comments:

[P]eople say what they want to say at the meetings and then either that's what they've said or they're busy and don't get around to [submitting formal comments] for whatever reason. But it's very rare that we get comments beyond that. – *DHS participant*

In contrast, tribal participants described a system that presented some level of difficulty when attempting to provide comments on state proposals. Where state respondents highlighted the importance of tribal feedback in their comments, tribes reported a lack of response from the state, and a feeling that feedback was not valued:

[Y]ou know, sometimes the email would come through and we'll have a week's time. Yet my commissioner's unaware of it, because the letter never came through, or if my commissioner takes it to the elected officials, they are unaware of it. And [there's] not enough time for us to get together to respond to it, and even if we do respond/comment we don't get a response to that. [We don't get] that, "Okay, your comment was valuable," or "Your input is important." You know, acknowledging [it]. – *Tribal health participant*

## Lessons Learned: Strategies for Building the Consultation Process

### **Strategy 1: Take steps to ensure more efficient, effective consultation events.**

- Allow consultation participants adequate time to review and discuss consultation agenda topics in preparation for the formal event.
- Provide necessary information and resources so participants can attend consultation event with an appropriate amount of education and comprehension of agenda topics.

When describing formal consultation events, several tribal participants commented on the difficulty of preparing for these gatherings. Most attributed this to a lack of time between presentation of the agenda or meeting content and the actual event itself. A few tribal respondents particularly noted that this inability to prepare before the meeting then required more time spent on education and background discussion at the meeting. This left less time for substantive participant exchange and solution design. Providing tribes with consultation agendas and necessary background information for each topic in a timely manner could result in more efficient use of the time and opportunities available at each consultation event.

### **Strategy 2: Strive to generate consultation outcomes.**

Effective consultation requires more than discussion; it requires follow-through. Tribal respondents, in particular, emphasized a need for consultation that lead to actions and results:

It's nice to hear everybody's opinion, but if you can't arrive at a conclusion to a problem that is in front of you, why are you talking? – *Tribal health participant*

One way to achieve effective consultation outcomes is through a SMART module:

- **S:** Specific: Clearly define goals expectations, the reasons for their importance, involved participants, and timelines.
- **M:** Measureable: Determine how progress toward outcomes will be measured (quantity, cost, cycle time, percentage increase, etc.).
- **A:** Achievable: Outcomes should be reasonable, feasible, and attainable given available support, resources, and timeframes.
- **R:** Relevant: Outcomes should link to goals and interests and address the matters at hand.
- **T:** Time-based: Identify a target date for outcome completion or for achieving certain milestones working toward said outcome.

Thus, effective consultation should identify actions to be taken and delegate responsibility and accountability for those actions to specific individuals or organizations. More succinctly: Consultation participants should know who will be responsible for which actions. Measureable outcomes also provide a baseline from which state and tribal consultation participants can evaluate the success or failure of implementing these outcomes. If participants plan to evaluate consultations to assess consultative effectiveness, these baselines may provide a way to link activities and outputs in relation to measureable longer-term health outcomes.

### **Strategy 3: Increase information access and transparency.**

- Provide access to consultation schedules and content (e.g., calendars, agendas, or an inventory of consultation event minutes posted on a department website).
- Communicate with consultation participants regularly, providing accurate, timely information.
- Provide feedback to participants who comment or respond to consultation requests.

State respondents often cited strengths of the consultation process, highlighting an established, positive relationship between the state and tribes. Tribal representatives, in contrast, focused on the availability of and access to pertinent information about both state and tribal activities and consultation input. Several individuals felt this information should be accessible through such avenues as state-hosted websites:

*[A] strength that all of the other [state government] departments should have is some type of website that documents those tribal consultations and catalogs [them]. – Tribal health participant*

This contrast emphasizes the need to continue development of the consultation process in order to maintain the state-tribe relationship. Tribal participants did not question the strength or value of this relationship during guided discussions; instead they stressed a desire to develop a more open partnership moving forward—one marked by transparency, honest communication, and the open sharing of information between the state and tribes.

### Additional recommended strategies

- States must make an effort to work in partnership with tribal consultation participants to develop shared goals and outcomes.
- While technology has its uses, continue to use face-to-face consultation when possible.
- Attempt to limit formal consultation requests to relevant, significant matters, rather than requesting consultation for every issue.
- Identify and include state and tribal leaders for participation in the consultation event.