



THE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

APR 30 2021

Shalanda Delores Young
Acting Director of the Office of Management and Budget

Dear Ms. Young:

I am writing to follow up on the President's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, dated January 26, 2021. The Memorandum requires the Department of Health and Human Services (HHS) to submit a detailed plan for implementing Executive Order 13175, which charges all executive departments and agencies to engage in regular, meaningful, and robust consultation with Tribal officials in the development of federal policies that have Tribal implications.

The HHS takes its responsibility to consult with Tribal Governments seriously and first established the Department's Tribal Consultation Policy in 1997, with multiple revisions since its creation to facilitate better engagement with Indian Tribes. The current HHS Tribal Consultation Policy is available at: <https://www.hhs.gov/about/agencies/iea/tribal-affairs/consultation>. The HHS is committed to working in partnership with Indian Tribes and the Secretary's Tribal Advisory Committee (STAC) that advises the HHS on Department-wide processes and ensures Tribal input is incorporated into HHS priorities, policies, and the budget.

The HHS Tribal Consultation Policy has four key components:

- Each HHS Operating and Staff Division has an accountable consultation process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications. Several HHS Divisions currently have their own Tribal Consultation Policy based on the main Departmental policy. All other Divisions follow the Department-wide Policy.
- No Division shall promulgate any regulation that has Tribal implications and imposes costs on Indian Tribes, or that is not required by statute, unless the federal government is paying the costs or formal consultation has taken place with Tribes, to the extent practicable and permitted by law
- No Division shall promulgate any regulation that has Tribal implications and that preempts Tribal law unless the Division consulted with Tribes, included a Tribal summary impact statement in the Federal Register, and provides the Secretary with all written communications from Tribes on the issue.
- Each Division should explore and use consensual mechanisms for developing regulations, including negotiated rulemaking.

There are primarily five ways in which HHS consults with Tribes:

- **Budget and Policy Consultation** – The HHS Tribal Consultation Policy states that an annual, Department-wide Tribal Budget and Policy Consultation session, which includes each Operating and Staff Division that has involvement in tribal activities, will be conducted to give Indian Tribes and Tribal Organizations the opportunity to present their health and human services budget priorities and recommendations to the Department. In order for Divisions to receive and consider Tribal recommendations in the development of the budget request, the 23rd Annual Tribal Budget and Policy Consultation Session was held April 6 and 7, 2021.
- **Regional Consultation** – The HHS Regional Tribal Consultation Sessions are designed to solicit Tribes’ priorities and needs on health and human services and programs. The Sessions provide an opportunity for Indian Tribes to articulate their comments and concerns on budgets, regulations, legislation, and HHS health and human services policy matters. This year marks the eighteenth year of these consultation sessions in the field, with ten virtual regional sessions scheduled across the country this summer.
- **Tribal Delegation Meetings** – The Secretary, Deputy Secretary, and the Director of the Office of Intergovernmental and External Affairs (IEA) have created an open door policy in the Immediate Office of the Secretary for Tribal delegations wishing to discuss issues. IEA Tribal Affairs convenes and staffs these meetings to assure Divisions follow up with Tribes on issues addressed during the meetings.
- **Individual Agency Consultations and Consultation Policies** – Many HHS agencies, such as the Indian Health Service, the Substance Abuse and Mental Health Services Administration, the Centers for Disease Control and Prevention, Centers for Medicare & Medicaid Services, and the Administration for Children and Families, host their own consultations with Tribes throughout the year and have established consultation policies specific to their agency. These policies and consultation sessions focus on issues unique to those agencies.
- **Tribal Affairs Report** – The HHS Consultation Policy calls for an annual HHS Tribal Consultation Report, compiled by IEA. Once compiled, the report is distributed to every Tribe in the country, as well as national and regional Tribal Organizations. This report measures and reports results and outcomes of Tribal Consultation and engagement activities across the Department held in accordance with the nation-to-nation relationship with Tribes.

Our consultation policies have also benefited from the establishment of Tribal Advisory Committees, which serve many of our agencies and advise HHS leadership on how best to work with Indian Country. In 2010, HHS established the STAC, ensuring a coordinated, department-wide strategy to incorporate Tribal input on HHS priorities, policies and budget, and improving the nation-to-nation relationship between HHS and Indian Tribes. In addition, Tribal Advisory Committees have been established for the Centers for Medicare & Medicaid Services, the Centers for Disease Control and Prevention, the Substance Abuse and Mental Health Services Administration, National Institutes of Health, Administration for Children and Families, Health

Resources and Services Administration, and there are numerous Tribal Advisory Committees at the Indian Health Service.

These steps highlight HHS's determination to be a leader and to set an example in the Administration with its Tribal Consultation policies and practices, and I believe our Department is in full compliance with Executive Order 13175. However, we can and must continually work to improve our services, outreach, and consultation efforts to Indian Country.

On March 2nd, the Department initiated Tribal Consultation on President Biden's Presidential Memorandum. The HHS sought recommendations and feedback on how the Department can improve its policies and practices to better engage with Indian Country through meaningful consultation. Tribes were given the opportunity to provide their recommendations and feedback in two ways: through attending one of six virtual regional Tribal Consultation sessions; and/or by providing written feedback to the Department by March 26, 2021.

To assist in garnering feedback and recommendations, the Department invited Tribal Leaders to answer four questions during the Tribal Consultation sessions. We received 38 written comments from Tribes and Tribal Organizations in response to our consultation sessions. On April 5th, we sent out a report from our six virtual regional sessions, summarizing the themes and general comments we received. HHS will continue to review the recommendations and feedback received during the six Tribal Consultation sessions as well as the written testimony received. HHS plans to utilize a Tribal/federal workgroup of the HHS STAC to review the written comments and collaboratively develop a plan of action to strengthen our HHS Tribal Consultation Policy and Tribal engagement based on the feedback received. We also plan to receive more Tribal recommendations during our Regional Tribal Consultations this summer. Once the work of our Tribal/federal workgroup of the STAC is completed, we will share the outcome with Tribal Leaders for further Tribal Consultation this fall.

Sincerely,



Xavier Becerra