Health Care Authority
Tribal Consultation & Communication Policy

PURPOSE

To establish a deliberative and constructive tribal consultation & communication policy as a collaborative process between the Washington State Health Care Authority (HCA), federally recognized Indian Tribal Governments, Urban Indian Health Programs (UIHP) and the American Indian Health Commission for WA State to address HCA issues that impact Indian Health Service, Tribal, and Urban Indian Health Programs (I/T/U). This policy is distinct from requirements for Tribal consultation for Medicaid State Plan Amendments (SPAs), waiver proposals, and demonstration project proposals. The Exchange Benefit Board will have a separate consultation policy developed with the AIHC.

BACKGROUND

A unique government-to-government relationship exists between federally recognized Indian Tribes and the federal government. This relationship is grounded in the Constitution and has been given form and substance through numerous treaties, statutes, Supreme Court decisions and Executive Orders.

Washington State has established its own commitment to a government-to-government relationship through a governor's executive order that created the Centennial Accord process. Each state agency director is accountable to the Governor for a procedure with his/her agency by which the government-to-government relationship is implemented, including how the agency will consult with Tribes on decisions and policies that impact them.

The Health Care Authority seeks to make affordable, quality health care more accessible and decrease health disparities of American Indians and Alaska Natives (AI/AN) through state-tribal partnerships. HCA increasingly makes agency programs and systems accessible to Tribal governments through its own Centennial Accord Plan and past Consultation Policies.

At the request of the Governor, the 2011 Legislature consolidated the HCA and the Medicaid Purchasing Administration by passage of 2E2SHB 1738. The bill designates that HCA as the "single state agency" in charge of operating the Medicaid programs and transfers medical services programs in Department of Social and Health Services (DSHS) to the HCA.

As a result, revised Tribal consultation policies must be implemented to reflect the newly consolidated state agency. These revised policies and processes for consultation, communication and collaboration will take effect upon signature and will rescind both the prior HCA Consultation Policy and the DSHS 7.01 Tribal Consultation policy previously used for all Medicaid services.

ROLES AND SCOPE OF AUTHORITY

This consultation and communications policy applies to all HCA divisions, programs, services, projects, activities, and employees reflected in the attached organization chart (See Attachment 1). HCA directors and managers, who implement policy, oversee programs, services, and contracts are responsible for implementing this policy within the scope of HCA's authority. Each division with HCA must have a process in place to assure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications. HCA division leaders must ensure Tribal officials are consulted early and through the process of developing proposed regulations, or other activities that may impact Tribal health programs.

The HCA Director is responsible for assuring goals and objective established in the annual Centennial Accord plans are met. S/he provides leadership in meaningful Tribal engagement and appropriate consultation on issues and actions that impact Tribes or AI/AN. The Director shall routinely meet with Tribally-designated leadership to discuss and resolve high-level policy issues that are not able to be resolved at the administrative level and make him/herself available to attend American Indian Health Commission (AIHC) meetings when possible to stay attuned to issues that impact Tribal health programs.

The Director also assures staff access to appropriate government-to-government training that has been deemed appropriate through an input process with AIHC delegates. AIHC delegates will review and provide guidance for the HCA tribal training curriculum.

The Director assures a Tribal Liaison position is established and divisions clearly understand the need to collaborate and communication with the Liaison as necessary. Meetings with the Tribal Liaison are scheduled as necessary to discuss policy changes that may impact Tribes.

The HCA Tribal Liaison makes her/himself available to Tribes and UIHPs as one point of contact between HCA administration and Tribes. S/he regularly attends and presents agency updates at the AIHC and IPAC meetings and facilitates communication, when needed, between HCA administration, Tribes, UIHPs and the AIHC. The Liaison ensures HCA executive team, management and appropriate HCA program staff are informed of major Tribal concerns or issues, facilitates distribution of information, and provides staff training on Centennial Accord requirements and government-to-government policies as appropriate. The Tribal Liaison coordinates the development of Centennial Accord Plans and prepares the agency for annual Centennial Accord meetings.

OBJECTIVES

- To formalize the requirements and the appropriate level of communication and consultation with Tribal governments, non-Federally-recognized Tribes, UIHPs and other Indian organizations.

- To collaboratively identify and prioritize issues that have an effect on Tribes, UIHPs, and AI/ANs in which Tribal consultation, participation, and advisement will be required with the administration.
- To implement communication mechanisms to ensure Tribes, UIHPs and other Indian health organizations are collaboratively participating in HCA activities and can access pertinent information and provide meaningful input as early in the policy/regulator process as possible.
- To identify instances where the HCA should seek the participation of additional state agencies, the Indian Health Services (IHS), Centers for Medicare and Medicaid Services (CMS), AIHC, Northwest Portland Area Indian Health Board (NPAIHB), and other entities, to complement and enhance communication and collaboration with Tribes and UIHPs.

TRIBAL COMMUNICATIONS PROCESS

Communications & collaboration is an on-going process of Tribes, UIHPs, Tribally-designated Indian Health Organizations and HCA working together on Indian health issues applicable to the HCA's role in state government and health care. Collaboration between HCA, Tribes, UIHPs, and Tribal organizations creates more sustainable and pervasive relationships, builds cross-knowledge of Tribal and HCA systems, structures, governance, services and needs, and improves the problem-solving capacity on an on-going basis. Those issues that cannot be mutually agreed upon through communication and collaboration, then, move to the more formal Tribal Consultation process described in the next section. The purpose of the Tribal Communications Process is to establish a mechanism that creates open, transparent dialogue in order to facilitate resolution of issues proactively, resulting in improved access to services and decreased on-going Indian health disparities.

1. Process for Communications with an Individual Tribe

   The HCA Tribal Liaison would be the first point of contact for individual Tribes, and s/he could facilitate information, referral and assistance to other divisions within the HCA as needed to assist in resolving issues and answering inquiries.

   Tribes have the right to contact HCA leaders or other HCA staff as they deem appropriate. As sovereign nations, each federally-recognized Tribe has the ability to communicate with the Health Care Authority at all levels on issues impacting their individual Tribe. Individual Tribal communication will not substitute, however, for communication with all Tribes on issues that impact more than one Tribe.

2. Communications with Multiple Tribes on Shared Issues/Concerns

   a. HCA and AIHC Workgroup - HCA and the AIHC will establish an on-going workgroup sanctioned by both HCA and WA State Tribes that meets monthly to: i) analyze policies and plans introduced by HCA to determine impacts on AI/AN or Tribal Health Programs; ii) assure shared understanding of issues and concerns and facilitate on-going communication to proactively address such

issues; iii) collaborate on projects/innovations to address Indian health disparities; and iv) facilitate identification of issues for state-wide Tribal consultation.

Tribal representatives of the Workgroup report potential changes and issues back to Tribes and UIHPs for input through bi-monthly AIHC meetings, Tribal e-mail distribution lists, and AIHC website. Health Care Authority workgroup members serve as a resource in this process. Health Care Authority representatives of the Workgroup keep the Policy Director and Director of the Health Care Authority updated and informed about the issues being addressed. Tribes and UIHPs prioritize those issues to be targeted, and request the workgroup focus on those targeted priorities. An on-going feedback loop between HCA-Tribal workgroup members, Tribes and Urban Indian Health Programs can assure a collective Tribal voice is addressing the highest priority issues that have the potential to impact all or most Tribes and UIHPs. If it is determined that an issue should trigger the need for consultation, the issue then moves to the Tribal Consultation Process identified in this policy.

b. Quarterly Leadership Meetings - The HCA Director will schedule a quarterly meeting, in person or by phone with the AIHC Executive Committee and AIHC policy staff. The Tribal Liaison works with the Executive Director of the AIHC to draft an agenda prior to the meeting to identify issues that are of mutual interest and follows up as appropriate, or if mutually agreed, the meeting may be cancelled. The Director assures that decisions made on issues are communicated with Health Care Authority management staff, dependent upon the issue, and are carried out to the fullest extent possible. The AIHC Chairperson works with the AIHC Executive Director to assure decisions or subsequent issues for input are communicated back to Tribes and Urban Indian Health Programs.

c. HCA Attendance at Tribal meetings

1. The Tribal Liaison regularly attends the AIHC and IPAC meetings, at the request of AIHC or IPAC, to provide agency updates and presentations, engage in dialogue with Tribes and understand Tribally-identified issues that need to be addressed and to serve as one communication link back to the agency. Information is communicated back to the HCA Director and appropriate staff.
2. The Tribal Liaison attends the Northwest Portland Area Indian Health Board meetings and other Tribal/UIHPs meetings as resources allow. Goal of attendance is to provide information on Tribally-identified issues, agency updates /presentations, to gain a better understanding of Tribal health programs and systems, and the issues important to Tribes/UIHPs.

Information is communicated back to the HCA Director and appropriate staff.

d. Formal Communication Process

Formal written communication to Tribal Chairs is required by the HCA under the following circumstances:

- When requesting or announcing a government-to-government consultation to seek formal input on policy development, strategic planning, and other program activities that have a direct effect on Tribes and UIHPs and are under the authority and scope of HCA.
- When a Medicaid State Plan Amendment (SPA), waiver proposal, demonstration project proposal, or state Medicaid regulations will likely have a compliance cost or direct impact on Tribal/UIHPs or AI/ANs.
- When communicating the results of a monitoring, site visit, or audit findings.
- When issues are incorporated into the HCA Centennial Accord Plan as identified through the AIHC/HCA workgroup and the prioritization of those issues.

Formal correspondence is coordinated through the Tribal Liaison to ensure appropriate format, delivery and language. Copies of formal correspondence will be distributed to Tribal staff, HCA program staff and delegates of the AIHC as appropriate.

An up-to-date master list of Tribal Chairs, UIHP Directors, AIHC and its delegates, Tribal Health Directors, Tribal Program Managers and other Indian Health Organizations will be maintained by the Tribal Liaison. HCA commits to informal consultation by engaging in ongoing communication with Tribal programs to ensure maintenance of program integrity and provide technical assistance. Direct program contacts will be used to address issues related to operations, process clarification, contract implementation and other types of technical assistance. HCA commits to maintain a webpage for Tribal updates and communication as resources allow.

Additionally, HCA is designated as the “single state agency” responsible for Medicaid and must comply with Section 5006(e) of the Recovery Act and CMS policy for Medicaid and CHIP. The Medicaid state agency is required to utilize a process for the state to seek advice on a regular, ongoing basis from designees of the Indian health programs and urban Indian organizations concerning Medicaid and CHIP matters having a direct effect on Indians, Indian health programs or urban Indian organizations as follows:

- **Research & Demonstration Projects - Section 1115**: This section provides the Secretary of Health and Human Services broad authority to approve projects that test policy innovations likely to further the objectives of the Medicaid program. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.
- **Waiver- Section 1915(b) Managed Care/Freedom of Choice:** This section provides the Secretary authority to grant waivers that allow states to implement managed care delivery systems, or otherwise limit individuals' choice of provider under Medicaid.
- **Waiver -Section 1915(c) Home and Community-Based Services**: This section provides the Secretary authority to waive Medicaid provisions in order to allow long-term care services to be delivered in community settings. This program is the Medicaid alternative to providing comprehensive long-term services in institutional settings.
- The administrative process for state compliance for submission of **State Plan Amendments, Demonstration Projects, and Waivers** is provided in the SPA process document – see attached 2.

HCA also transmits communications for program policy changes and clarifications through use of:

- **Washington Administrative Code-** drafts are shared with all asking to be on the Rules and Publications statewide distribution list.
- **Memoranda, Provider Notices, Medicaid Provider Guides and Sponsor letters -** are vehicles that are used to clarify existing coverage and service policy. These are sent electronically to the ProviderOne Tribal List-serve, AIHC, and tribal clinic directors and program managers.

TRIBAL CONSULTATION PROCESS

In accordance with the HCA Communication and Consultation Policy, HCA maintains a commitment to consultation as an enhanced form of communication that means respectful, constructive communication in a cooperative process that works toward a consensus before a decision is made or an action taken. Consultation is a process, not a guarantee of agreement on outcomes. It requires a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding.

Trust among HCA, Tribes, and Urban Indian Health Programs is an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. Both HCA and Tribes, directly and through the AIHC, must be able to raise issues that need to be addressed. The degree and extent of the consultation will vary depending on the identified event.

HCA engages with Tribes about policy issues at a variety of levels through methods that facilitate Tribal Consultation on policies that impact Tribes.

Consultation will occur whenever HCA and Tribal officials and/or their designees, meet or exchange written correspondence to discuss any issue(s) concerning either party.

A. Direct Consultation

When new policy, budgetary or implementation issues are identified on which Tribal views have not been previously obtained, HCA will conduct statewide 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.

Face-to-face consultation sessions are encouraged. These may be scheduled as a single state-wide meeting, through a series of regional meetings or in conjunction with other state or 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.

B. On-Going Consultation

The HCA Director will participate at an annual tribal consultation meeting with Tribal/UIHP leaders to identify budgetary, policy, and implementation issues that Tribes believe need to be addressed. This meeting may be held with a regularly scheduled AIHC meeting or AIHC/HCA workgroup meeting. On alternating years, the HCA director and identified staff will participate with the AIHC Health Summit. HCA will also provide opportunity for submission of written comments during any period of consultation. The meeting will be coordinated through the AIHC to determine the date, location, and agenda. HCA tribal liaison (TL) will work with the Executive Director of the AIHC to prepare for the annual meeting. Documentation of the meeting will be distributed through the master list of Tribal Chairs, UIHP Directors, AIHC and its delegates, Tribal Health Directors, Tribal Program Managers, and other Indian Health Organizations maintained by the TL.

C. Consultation with One or More Individual Tribes

An Indian Tribe may meet one-on-one or correspond with HCA to address, or provide consultation to HCA regarding issues specific to that Tribe. Such communications constitute consultation under this policy but may not substitute for broad consultation as provided in this policy when the issue may impact other Tribes.

The involvement of Tribes is critical to maintaining an ongoing partnership to address health policy, program issues, and reform. Formal consultation may be called for at the request of:

- A Tribe chair
- The American Indian Health Commission (AIHC) on behalf of Tribes or UIHPs
- HCA director

Official notice of consultation held with the HCA Director shall be made by written and electronic communication in coordination with tribal representatives and the AIHC. Such notice will be coordinated with the Tribal Liaison and sent directly to:

- Tribal Chairs
- UIHP Directors
- AIHC Chair, Executive Director, and Delegates

As part of an official consultation, a facilitated briefing, for the purpose of sharing background information and setting the context of the issue, may precede the meeting as requested by the HCA Administration or Tribes.

Upon completion of a consultation session, HCA will document and follow-up on any unresolved issues that would benefit from ongoing involvement of Tribes in implementation and evaluation. Documentation of the consultation will be distributed through the master list of Tribal Chairs, Urban Indian Health Program Directors, American Indian Health Commission and its delegates, Tribal Health Directors, Tribal Program Managers, and other Indian Health Organizations maintained by the TL.

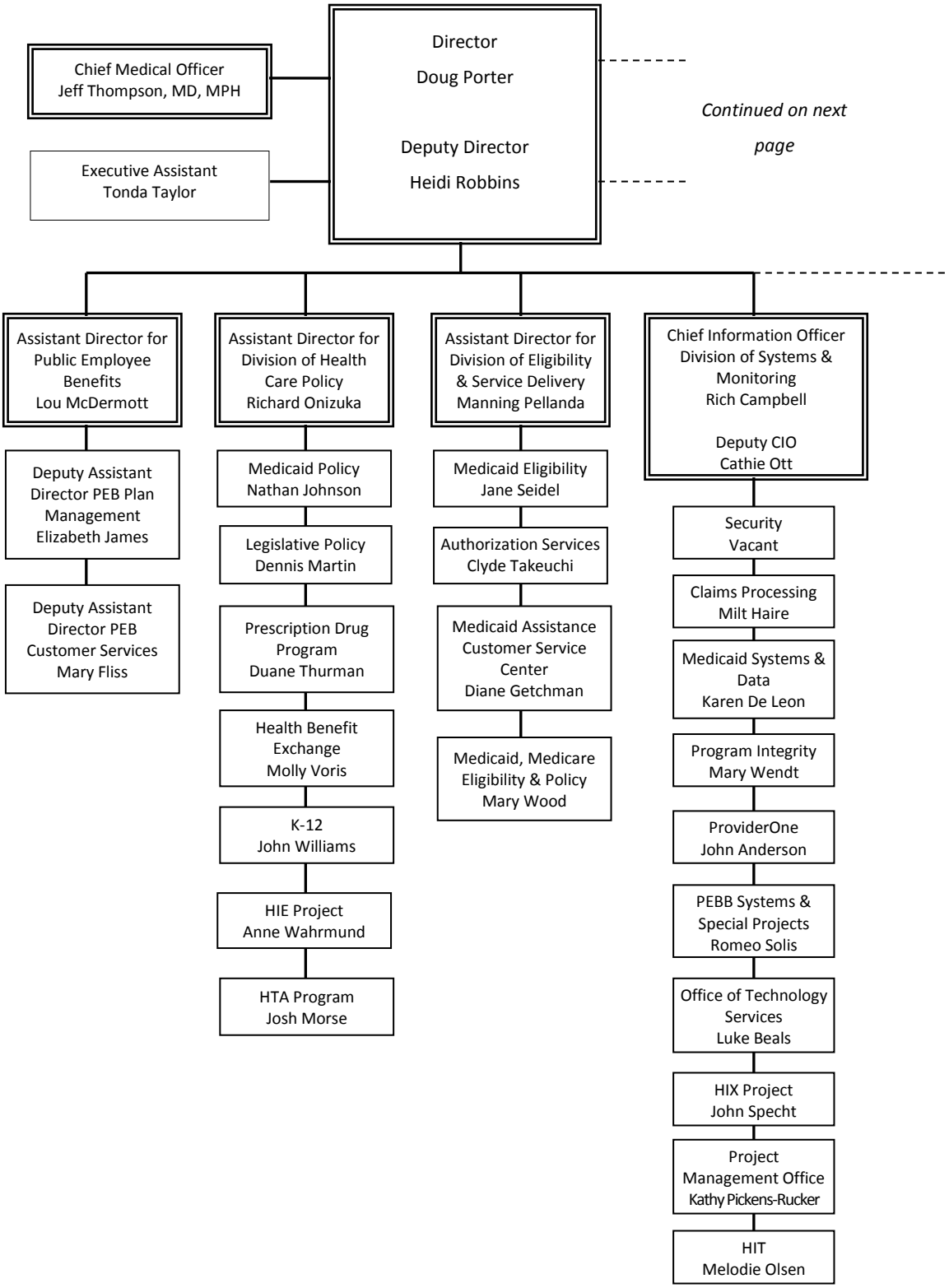
FEDERAL CONSULTATION REQUIREMENTS

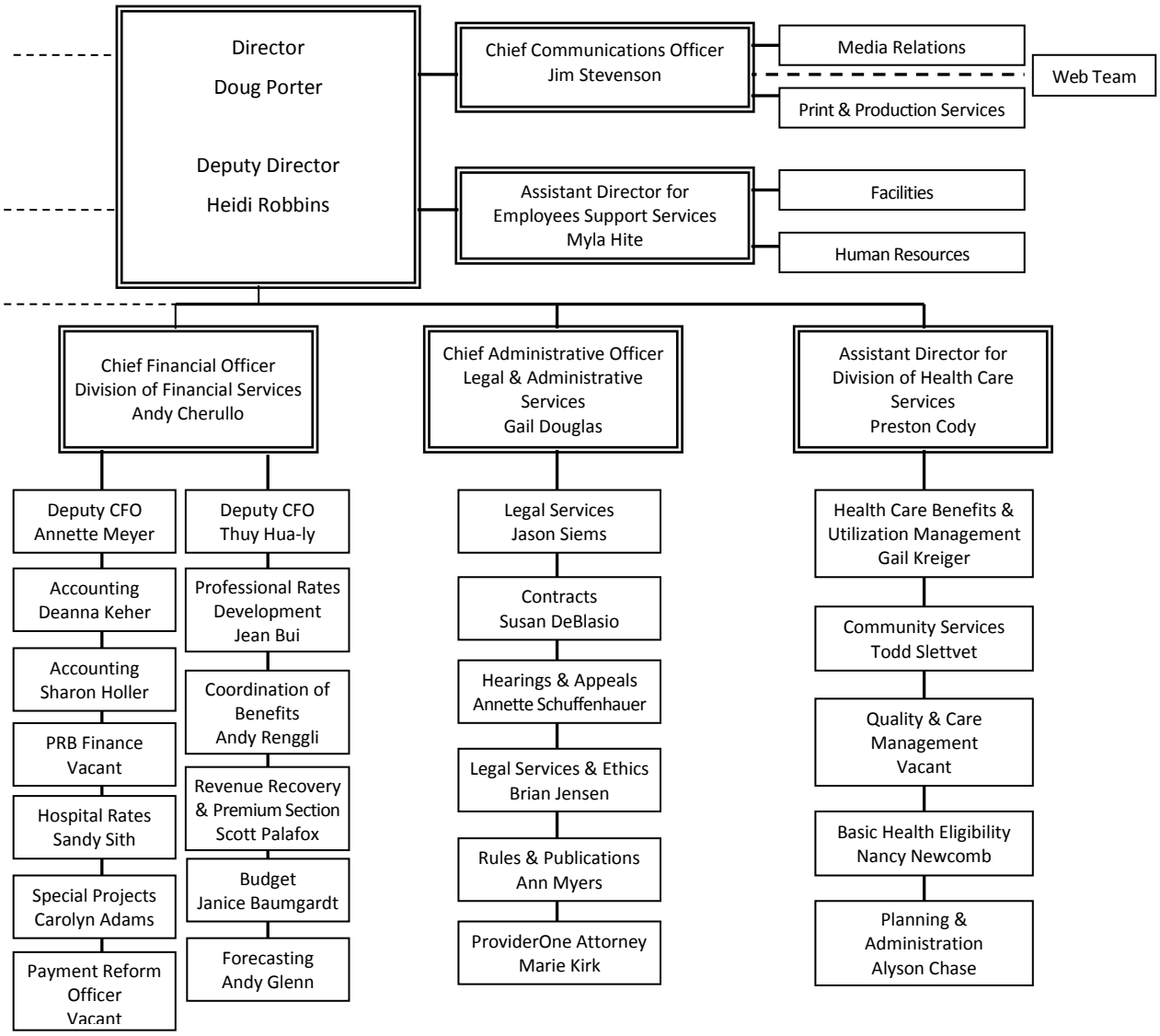
Section 5006(e) of the Recovery Act codifies in statute the requirements of WA state when Medicaid State plan amendments, Waiver proposals, demonstration and pilot projects are being developed for submission to CMS or when State Medicaid regulations that will likely have a compliance cost or direct impact to tribes, Urban Indian Heath Programs or AI/ AN's. The request for comment, advisement or the offer of consultation is extended to tribes. The administrative process for state compliance is provided in the Waiver process document – see attachment 3.

https://www.cms.gov/smdl/downloads/SMD10001.PDF

http://www.cms.hhs.gov/smdl/downloads/smd071701.pdf

Attachment 1
Washington State Health care Authority




Director
Doug Porter
Deputy Director
Heidi Robbins
Chief Communications Officer
Jim Stevenson
Media Relations
Web Team
Print & Production Services
Assistant Director for
Employees Support Services
Myla Hite
Facilities
Human Resources
Chief Financial Officer
Division of Financial Services
Andy Cherullo
Chief Administrative Officer
Legal & Administrative
Services
Gail Douglas
Assistant Director for
Division of Health Care
Services
Preston Cody
Deputy CFO
Annette Meyer
Accounting
Deanna Keher
Accounting
Sharon Holler
PRB Finance
Vacant
Hospital Rates
Sandy Sith
Special Projects
Carolyn Adams
Payment Reform
Officer
Vacant
Deputy CFO
Thuy Hua-ly
Professional Rates
Development
Jean Bui
Coordination of
Benefits
Andy Renggli
Revenue Recovery
& Premium Section
Scott Palafox
Budget
Janice Baumgardt
Forecasting
Andy Glenn
Legal Services
Jason Siems
Contracts
Susan DeBlasio
Hearings & Appeals
Annette Schuffenhauer
Legal Services & Ethics
Brian Jensen
Rules & Publications
Ann Myers
ProviderOne Attorney
Marie Kirk
Health Care Benefits &
Utilization Management
Gail Kreiger
Community Services
Todd Slettvet
Quality & Care
Management
Vacant
Basic Health Eligibility
Nancy Newcomb
Planning &
Administration
Alyson Chase

Attachment 2
Washington State Health care Authority

Administrative Policy No. 1-15

Chapter 1: Administration

Contact:	State Plan Coordinator	Effective:	July 1, 2011
Reference:	42 CFR Sec. 431 Section 5006(e) ARRA HCA-DSHS Cooperative Agreement	Supersedes:	MPA Program Process 11.05
Forms Used:	N/A	Applies to:	HCA Staff
		Approved by:	/s/_____ Doug Porter, Director

State Plan Amendments

PURPOSE

To establish the policy and procedures for amending Washington's Title XIX Medicaid State Plan and Title XXI Children's Health Insurance (CHIP) State Plans. The State Plans are amended by a State Plan Amendment (SPA).

DEFINITIONS

Centers for Medicare and Medicaid Services (CMS)	The branch of the United States Department of Health and Human Services (DHHS) responsible for the federal requirements of the Medicaid and SCHIP programs.

Medicaid Single State Agency	The state agency responsible for administering the Medicaid State Plan as required under 42 CFR 431.10. HCA is the single state agency for Washington.
Originator	The staff person who is responsible for a program listed in the State Plan. The originator contacts the Coordinator to initiate a SPA when he or she determines that program information in the State Plan needs to be changed.
State Plan	An official document describing the nature and scope of a program that uses federal funds and requires a State Plan. Without a State Plan, Washington would not be eligible for federal funding for providing services under those programs. Essentially, a State Plan is Washington's agreement that it will conform to federal requirements and the official issuances of the United States Department of Health and Human Services (DHHS).
State Plan Amendment (SPA)	How the state makes changes to (amends) the State Plan.
State Plan Coordinator (Coordinator)	The state employee responsible to coordinate the activities required to amend the State Plan and to submit State Plan Amendments to CMS. (CMS RO also has a staff person designated as the Coordinator.)

POLICY

1. **The Health Care Authority (HCA) as the Medicaid single state agency maintains Washington's Title XIX Medicaid State Plan and the Title XXI State Children's Health Insurance Program (CHIP) State Plan and the processes for amending them**.

2. **The HCA Director reviews and approves or rejects the submission of all SPAs.**

    a. The HCA Director is the state's Medicaid Director.

3. **Washington's State Plan Coordinator resides in HCA.**

    a. The State Plan Coordinator submits all State Plan Amendments (SPAs) to the federal Centers for Medicare and Medicaid Services (CMS) and coordinates all ensuing activities.

    b. The State Plan Coordinator maintains the official SPA files and the online and hard copies of the Medicaid State Plan.

4. **Employees recognizing a need for a SPA must contact the State Plan Coordinator to initiate a SPA.**

   a. The state employee who is the originator of a SPA will coordinate all SPA-related activities with the Coordinator.

   b. All SPA-related actions follow the processes described in HCA Procedure 1-15-01, including notification of Washington's tribes.

Attachment 3
Washington State Health care Authority

Health Care Authority

Administrative Policy No. Draft

Chapter 1: Administration

Contact:	*Each program is responsible for its own waivers, etc. My part is very small*	Effective:	
Reference:	42 CFR Sec. 431 Section 1902(a)(73)(A) of the Social Security Act *this is the codified rule for ARRA* HCA-DSHS Cooperative Agreement schedule A5	Supersedes:	
Forms Used:	N/A	Applies to:	HCA Staff
		Approved by:	Gail Douglas, Chief Administrative Officer

Waiver Proposals, Demonstration and Pilot Projects

PURPOSE

To establish the policy and procedures for waiver proposals and amendments, demonstration and pilot projects .

DEFINITIONS

Centers for Medicare and The branch of the United States Department of Health and Human

Medicaid Services (CMS)	Services (HHS) responsible for the federal requirements for waivers, demonstration and pilot projects. .
Demonstration and Pilot Projects – Section 1115 Waivers	HHS-approved projects that test policy innovations likely to further the objectives of the Medicaid program. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the federal government more than it would cost without the waiver.
Home and Community-Based Services – Section 1915(c) Waivers	HHS-approved waivers to Medicaid provisions in order to allow long-term care services to be delivered in community settings. This program is the Medicaid alternative to providing comprehensive long-term services in institutional settings.
Managed Care/Freedom of Choice – Section 1915(b) Waivers	HHS-approved waivers to Medicaid provisions that allow states to implement managed care delivery systems or otherwise limit individuals' choice of provider under Medicaid.
Medicaid Single State Agency	The state agency responsible for administering the Medicaid State Plan as required under 42 CFR 431.10. HCA is the single state agency for Washington.
Originator	The staff person who is responsible for a program for which a waiver, demonstration or pilot project is desired. The originator is responsible for completing the waiver process.
Waiver	An HHS-approved plan that waives or sets aside certain Medicaid requirements.

POLICY

1. **The Health Care Authority (HCA) as the Medicaid single state agency is responsible for administering the Medicaid program. HCA approves all waiver applications, renewals, and amendments prior to their submission to CMS.** *Individual HCA staff and the appropriate DSHS staff do all paperwork, submission, and follow-up. HCA obtains signature approval on letters to CMS and maintains copies. Schedule A5 of the DSHS-HCA Cooperative Agreement addresses this.*

2. **The HCA Director reviews and approves or rejects the submission of all , waivers, demonstration and pilot projects.**

    a. The HCA Director is the state's Medicaid Director.

3. **Employees recognizing a need for or assigned to implement a waivers, demonstration and/or pilot project are responsible for completion of the required paperwork, submission to CMS, and follow-up activities.**

    a. The state employee who is the originator of a **waiver, demonstration and/or pilot projects** will send the official waiver submission letter to the State Plan Coordinator.

    b. The State Plan Coordinator forwards the letter(s) to the HCA Director for signature. The Coordinator returns the letter or a copy to the originator after it is signed.

    c. All **Waivers, demonstration and pilot projects** related actions follow the tribal notification process described in HCA Procedure 1-15-01.