

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE**

Refer to: IAB

ALBUQUERQUE AREA INDIAN HEALTH SERVICE CIRCULAR NO. 96-04
REQUESTS FOR LEGAL OPINION

Sec.

1. Purpose
2. Authority
3. Policy
4. Responsibilities
5. Procedures
6. Supersession
7. Effective Date

1. **PURPOSE.** This circular establishes the Albuquerque Area Indian Health Service's (AAIHS) policies and procedures for requesting a legal opinion. Furthermore, the circular requires that a copy of the final written opinion from the Chief Counsel, Office of the General Counsel (OGC), Region VI, be forwarded to the Division of Legislation and Regulation (DLR). In addition, this notice serves to allow the DLR and Indian Health Service (IHS) to ascertain whether duplicate requests are causing disparate and contradictory responses to come from the OGC offices in the ten regions and that the issues/questions raised have not already been responded to by OGC headquarter's components.
2. **AUTHORITY.** The DLR, within the Office of Planning, Evaluation and Legislation, is the IHS component charged with coordinating IHS activities with the OGC. This responsibility includes formulating legal questions raised by IHS constituents, assembling the necessary documentation and presenting the legal question(s) in a manner that enables OGC to respond adequately and properly. The DLR is also charged with coordinating, tracking and compiling the OGC's responses to legal questions so that the response is available to all IHS personnel.
3. **POLICY.** The role of the Area Director, AAIHS is to provide overall management and supervision of the AAIHS in performing its varied responsibilities. The role of the OGC is to provide legal advice and support to the Area Director in accomplishing this goal. In so doing, the IHS and OGC will work together to assure that the administrative policy decisions of the Area Director are legally supportable.

Distribution: Indian Health Service Manual Holders

Date: April 23, 1996

It shall be the policy of AAIHS that all legal opinion requests be implemented in the following manner:

- a. All requests for legal opinions from OGC, originating within AAIHS, must be cleared by submitting the request to the Chief, Internal Audit Branch (IAB), Division of Financial Management, AAIHS. After reviewing each request, the Chief, IAB, will forward it to the Executive Officer (EO), AAIHS, who will determine whether the request should be addressed at the Area/Program/IHS Headquarters level. Any request which cannot be properly addressed at the IHS level will be submitted, by the IAB, to the OGC.
- b. The Area Director shall receive a monthly status report of all pending legal opinion requests from the Assistant Regional Counsel, (ARC) OGC, in charge of AAIHS matters. The due date of a request may be changed from time to time, consistent with priority interests of the Area Director and/or the needs of the ARC for more detailed legal analysis and consultation. Upon the completion of the opinion, the ARC will submit a copy of the legal opinion to the EO and the Chief, IAB. Distribution of the written opinion will be made by the EO on an as needed basis by considering such factors as the original party requesting the opinion, the program affected by the opinion, the DLR, etc.

Note: The workload and backlog of OGC and the ARC is such that only new issues needing a legal opinion, or issues presenting a unique variation of a previous opinion, should be forwarded for an opinion. Questions requiring a policy decision should be answered by the IHS.

4. **RESPONSIBILITIES.** All employees of the AAIHS are responsible for compliance with this circular.

5. **PROCEDURES.** The following procedures shall be utilized when a request for a legal opinion is required within the AAIHS:

A. **Submission of Request**

1. All requests shall be made in writing, consistent with the format described below. In order to allow for an accurate response in the most timely fashion, the request should contain a background of the issue, as well as: who initiated the request; what event or situation triggered the request; the reasons why legal input is needed; the effect of the issue on IHS policy or procedures; what could happen if the issue is not resolved; the desired resolution; and name and phone

number of staff contact person in the event further information is needed.

2. All requests for legal opinions shall be forwarded through the appropriate officials before submitting them to the Chief, IAB. For instance, programs at the service unit level should submit each request for legal opinion to the appropriate Program Supervisor/Director, who will in turn forward it to the Service Unit Director (SUD) and/or Administrative Officer (AO) for review and clearance. When the review process is completed at the service unit level, the request shall then be forwarded by the SUD/AO to the Chief, IAB, who shall make an initial assessment of priority.
3. In making the priority assessment, the Chief, IAB, shall resolve any concerns he/she may have with the appropriate SUD/AO, requestor, or pertinent AAIHS personnel. If any significant changes to the initial request are needed as a result of the resolution process, the Chief, IAB shall return the request to the appropriate SUD/AO, requestor, or other pertinent AAIHS personnel for revision and resubmission to the Chief, IAB.
4. All comments, recommendations, and/or concerns which the Chief, IAB receives from the SUD/AO, requestor, or pertinent AAIHS personnel during the above described process shall be shared with pertinent AAIHS personnel before the request is forwarded to the EO.
5. When the Chief, IAB has completed an initial assessment of priority and has resolved all concerns, he/she shall forward the request to the EO for a determination of whether the issue(s) should be addressed by AAIHS personnel or by the OGC.
6. The request for legal counsel opinion shall be made in writing and shall be forwarded to the OGC, within five (5) working days of receipt of the finalized request by the Chief, IAB. The request shall be addressed to:

Chief Counsel Region VI
Suite 1330
1200 Main Tower
Dallas, TX 75202

The Chief Counsel will forward the request to the ARC in charge of AAIHS matters.

7. The Chief, IAB, shall be responsible for maintaining a system to track all requests for legal counsel opinion. Copies of all final opinions received from the Office of the Chief Counsel, Region VI, must be sent to:

Richard Price, Chief Legal Liaison
Policy Review Branch, DLR/OPEL/IHS
Suite 450
12300 Twinbrook Pkwy.
Rockville, MD 20852

B. Emergency Issues

In the case of emergent issues, the Chief, IAB or the Office of the Area Director, AAIHS will immediately contact the ARC in charge of AAIHS matters. This contact should be concurrent with the transmission of a facsimile (fax) of the request to the attention of the Chief Counsel, OGC, Region VI. The following priority list shall be in effect for requesting a legal opinion with regard to immediate needs:

1. Subpoenas for testimony or the production of records.
2. Inquiries on the Right to Die Act (A patient's right to refuse treatment allegedly necessary to sustain life).
3. Request for opinion regarding dangerous patients or conditions.

C. Response Timing

The response time established for release of a legal opinion request is 45 days, depending on the complexity of the request and the pending workload of the ARC for AAIHS matters. However, the following types of requests have priority over a legal opinion:

1. Litigation cases, and situations concerning action required by judicial rules.
2. Emergencies as identified in section 5(G).

D. Informal Requests

In the case of informal requests, the Chief, IAB or the Office of the Area Director, AAIHS may directly contact the ARC serving as principal legal counsel for the AAIHS. Informal matters are characterized as those not requiring a formal written product and not requiring extensive time for resolution and/or advice.

E. On Site Visit by ARC

There is a limited exception to the procedures set out above in paragraphs A through I, which will allow direct access to the ARC. Specifically, to obtain legal consultation from the ARC during his monthly visits to the AAIHS, a request for consultation must be submitted to the EO, through the IAB, at least one week in advance of the ARC's visit, and must be accompanied by appropriate written documentation in support of the request. Following approval by the EO, an appointment should be scheduled with the secretary, Office of the Area Director.

Note: This exception shall not be used to circumvent the procedures for requesting a legal opinion as outlined above.

6. **SUPERSEDEURE** . AAIHS Circular No. 92-2, dated March 10, 1992 is cancelled in its entirety.
7. **EFFECTIVE DATE**. This circular is effective upon date of signature and shall remain in effect until cancelled or superseded.



Signed 4/23/96

Dorothy Dupree
Acting Area Director
Albuquerque Area Indian Health Service