
Chapter 26
CONFERRING WITH URBAN INDIAN ORGANIZATIONS

5-26.1 INTRODUCTION

- A. Purpose. Congress has specifically declared that it is the policy of the Nation “to ensure the highest possible health status for Indians and urban Indians.” 25 United States Code (U.S.C.) § 1602(1). The U. S. Department of Health and Human Services (HHS) is committed to working with Indian and urban Indian communities to meet this policy. This policy applies to the Indian Health Service (IHS).

This Policy establishes the IHS policy and procedures for conferring with urban Indian organizations (UIOs). The IHS will use this conferring Policy to ensure that the health care needs of the urban Indian population are considered at the local, Area, and national levels, when implementing and carrying out the Indian Health Care Improvement Act (IHCIA or Act).

- B. Background. Urban Indian organizations are a major provider of health care to urban American Indians and Alaska Natives (AI/ANs) across the country. When the IHCIA was enacted into law in 1976, it identified the authorities, responsibilities, and functions of the IHS, the primary Federal Agency charged with providing health care to American Indians and Alaska Natives. The IHCIA included the authority for the IHS to “establish programs in urban centers to make health services more accessible to urban Indians” [Indian Health Care Improvement Act, Title V, section 501, Public Law No. (Pub. L. No.) 94-437, 90 Statute (Stat.) 1400, 1410 (1976), codified at 25 U.S.C. § 1651]. The IHS carries out this authority through contracts with and grants to UIOs. In March 2010, as part of the Affordable Care Act, Congress reauthorized and amended the IHCIA. The reauthorization of the IHCIA included a requirement that the IHS “confer,” to the maximum extent practicable, with UIOs in carrying out the IHCIA.
- C. Policy. It is IHS policy to confer with UIOs, to the maximum extent practicable, whenever a critical event or issue, as defined in this Policy, arises in implementing or carrying out the IHCIA.
- D. Requirement. The IHCIA, as amended, includes four provisions that require the IHS to confer with UIOs.

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- (1) Indian Health Care Improvement Act, 25 U.S.C. § 1660d(b). “The Secretary shall ensure that the Service confers, to the maximum extent practicable, with urban Indian organizations in carrying out this [Act].”
- (2) Indian Health Care Improvement Act, 25 U.S.C. § 1602(5). “Congress declares . . . that all actions under this [Act] shall be carried out with . . . conference with urban Indian organizations, to implement this [Act]. . . .”
- (3) Indian Health Care Improvement Act, 25 U.S.C. § 1631(f). “The Secretary shall . . . confer with urban Indian organizations, in developing innovative approaches to address all or part of the total unmet need for construction of health facilities”
- (4) Indian Health Care Improvement Act, 25 U.S.C. § 1665k(a)(2)(A)(vii). “Funding provided pursuant to [25 U.S.C. § 1665k “fetal alcohol spectrum disorders programs”] shall be used . . . [t]o develop and implement . . . in conference with urban Indian organizations, culturally sensitive assessment and diagnostic tools including dysmorphology clinics and multidisciplinary fetal alcohol spectrum disorders clinics for use in Indian communities and urban centers.”

E. Authorities.

- (1) Indian Health Care Improvement Act, 25 U.S.C. §§ 1601-1683, as amended, including, §§ 1602(1), 1603(29), 1651, 1653(a), 1660d.

F. Definitions.

- (1) Confer. The term “confer” means to engage in an open and free exchange of information and opinions that:
 - a. leads to mutual understanding and comprehension, and
 - b. emphasizes trust, respect, and shared responsibility. 25 U.S.C. § 1660d(a).

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(5-26.1F – continued)

- (2) Conferring Activities. The term “conferring activities” means implementing confer mechanisms, such as face-to-face meetings, teleconferences, virtual platforms and hybrid connectivity options, and mailings, to solicit comments and discuss critical events or issues.¹
- (3) Critical Event or Issue. A “critical event or issue,” as used in this Policy, is an event or issue that significantly affects one or more UIOs. Critical events or issues are complex, have significant implications, and are time sensitive. Examples of critical events or issues include developing program regulations, formulating the budget, allocating new resources, and changing policy, as well as public health or environmental events.
- (4) IHS Confer with UIOs Report. The term “IHS Confer with UIOs Report” means an annual report to the Secretary, HHS, describing critical events or issues to UIOs arising in implementing or carrying out the IHCIA.
- (5) Urban Indian Organization. The term "urban Indian organization" means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in [25 U.S.C. § 1653(a)]. 25 U.S.C. § 1603(29).

5-26.2 OBJECTIVES

- A. To formalize the IHS approach to conferring with UIOs to ensure that urban Indian health priorities and goals are considered.
- B. To establish a minimum set of requirements and expectations with respect to conferring for the three levels of IHS management: Headquarters, Area Offices, and Service Units.
- C. To identify critical events or issues arising in implementing or carrying out the

¹ Recommendation: To amend definition to include two way video conferencing - virtual platforms and hybrid connectivity options.

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IHCIA for which conferring with UIOs will be required for the three levels of IHS management: Headquarters, Area Offices, and Service Units.

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- D. To identify critical events or issues arising in implementing or carrying out the IHCIA where partnerships and the inclusion of UIOs would complement consultation with Indian Tribes.
- E. To require conferring with UIOs on proposed, new, and existing health policies and programs that qualify as critical events or issues arising in implementing or carrying out the IHCIA.
- F. To promote and develop innovative methods of involving UIOs in IHS policy development and in the decision-making processes of the IHS.
- G. To charge and hold responsible all levels of management within the IHS, including Headquarters, Area Offices, and Service Units, for the implementation of this Policy.

5-26.3 ROLES²

- A. The IHS has the responsibility to engage in an open and free exchange of information and opinions with UIOs that leads to mutual understanding and comprehension; and emphasizes trust, respect, and shared responsibility whenever a critical event or issue, as defined in this Policy, arises in implementing or carrying out the IHCIA.
 - (1) Headquarters. The Director, IHS, is responsible for providing overall guidance and direction to the Office of Urban Indian Health Programs (OUIHP) and ensuring that the IHS confers at the local, Area, and national levels, to the maximum extent practicable, with UIOs in accordance with this Policy.

The Director, OUIHP, is responsible for monitoring compliance with this Policy, including submissions to the OUIHP conferring email address:

² Recommendation: To provide clear language and statements on distribution of power and statements with steps and guidelines.

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urbanconfer@ihs.gov.

The Director, OUIHP, will ensure that all levels of the IHS conduct official conferring sessions that are publicized through correspondence or, when necessary, Federal Register Notices (FRN) and receive conferring reports from Headquarters, Area Offices, and Service Units.

The Director, OUIHP, will receive and acknowledge receipt of written correspondence from UIOs identifying critical events or issues arising in implementing or carrying out the IHCIA for which conferring with UIOs will be recommended to the Director, IHS. Such correspondence should identify the critical events or issues, the affected UIOs, and the proposed conferring activity. After receiving such correspondence, or upon identification of a critical event or issue by IHS, all affected UIOs will be notified through a “Dear Urban Indian Organization Leader Letter” and broadcast emails, and, if necessary, through the Federal Register, when IHS will initiate the conferring activity. The notice will identify the issue, the method for conferring, and the timeline for the conferring activity. Within 30 calendar days after a conferring activity, the IHS will notify all affected UIOs through a “Dear Urban Indian Organization Leader Letter” and broadcast emails, and, if necessary, through the Federal Register, on the outcome of conferring activities and provide additional follow-up on issues or concerns as necessary. In rare instances, written notification may exceed 30 calendar days due to the complex nature of the critical events or issues.³

The Director, OUIHP, is responsible for preparing the annual IHS Confer with Urban Indian Organizations Report. The report will consist of conferring activities conducted at Headquarters, Area Offices, and Service Units.

Headquarters Office Directors will identify potential critical events or issues arising in implementing or carrying out the IHCIA for which conferring with UIOs will be recommended to the Director, IHS. Upon identification of a critical event or issue by an Office Director, all affected UIOs will be notified through a “Dear Urban Indian Organization Leader Letter” and broadcast emails, and, if necessary, through the Federal Register, when IHS will initiate the conferring activity. The notice will identify the issue, the method for conferring, and the

³ Recommendation: Each IHS Area must be held to the same standard with respect to urban confer with UIOs.
Recommendation: To provide clear language and statements on distribution of power and responsibilities with step and guidelines.

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timeline for the conferring activity. Within 30 calendar days after a conferring activity, the IHS will notify all affected UIOs through a “Dear Urban Indian Organization Leader Letter” and broadcast emails, and, if necessary, through the Federal Register, on the outcome of conferring activities and provide additional follow-up on issues or concerns as necessary. In rare instances, written notification may exceed 30 calendar days due to the complex nature of the critical events or issues.⁴ Office Directors will assist the OUIHP in completion of the annual IHS Confer with UIOs Report, when necessary.

- (2) Area Offices. The Area Directors will receive and acknowledge receipt of written correspondence from UIOs in their respective regions identifying critical events or issues arising in implementing or carrying out the IHCI. Such correspondence should identify the critical events or issues, the affected UIOs, and the proposed conferring activity. After receiving such correspondence, or upon identification of a critical event or issue by IHS Area Offices, all affected UIOs will be notified in writing when the IHS Areas will initiate the conferring activity. The notice will identify the issue, the method for conferring, and the timeline for the conferring activity. Within 30 calendar days after a conferring activity, Area Directors will notify all affected UIOs in writing on the outcome of conferring activities and provide additional follow-up on issues or concerns as necessary. In rare instances, written notification may exceed 30 calendar days due to the complex nature of the critical events or issues.⁵ Area Directors will assist the OUIHP in completion of the annual IHS Confer with UIOs Report, when necessary, to ensure inclusion of confers at the Area and Service Unit levels.
- (3) Service Units. The Service Unit Chief Executive Officer (CEO) is responsible for ensuring compliance with this Policy by conferring with UIOs that are located in the Service Unit’s service delivery area, if applicable, or with UIOs that are otherwise affected by the critical event. The CEO will notify in writing all affected UIOs and initiate the conferring activity. During the conferring activity, the CEO will confer with UIOs throughout the conferring session.⁶ Within 30

⁴ Recommendation: Each IHS Area must be held to the same standard with respect to urban confer with UIOs.
Recommendation: To provide clear language and statements on distribution of power and responsibilities with step and guidelines.

⁵ Recommendation: Each IHS Area must be held to the same standard with respect to urban confer with UIOs.
Recommendation: To provide clear language and statements on distribution of power and responsibilities with step and guidelines.

⁶ Recommendation: Add conferral steps from IHS with UIO Directors.

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calendar days after a conferring activity, the CEO will notify in writing all affected UIOs on the outcome of conferring activities and provide additional follow-up on issues or concerns as necessary. In rare instances, written notification may exceed 30 calendar days due to the complex nature of the critical events or issues.⁷ The CEO shall provide the Service Unit conferring activities and results or outcomes reports to the Area Director, who will report them to the OUIHP.

5-26.4 CONFER MANAGEMENT

- A. Identification of Conferring Activities. A potential critical event or issue arising in implementing or carrying out the IHCIAs may be identified by either the IHS and/or UIOs.
- (1) If a potential critical event or issue is identified by an UIO, written correspondence must be submitted to the Director, IHS, (with a copy to the appropriate Area Director) describing the event or issue, the affected UIO(s), and the proposed conferring activity. The IHS shall acknowledge receipt of the request within 30 calendar days.⁸
 - (2) Within 30 calendar days of acknowledging the request, the IHS shall provide an official response to all affected/potentially affected UIO(s), identifying the conferring activity that has been selected and the timeline for the activity.⁹
 - (3) In addition, if IHS itself determines that a critical event or issue has arisen in implementing or carrying out the IHCIAs, the IHS will issue notices to all affected or potentially affected UIOs through correspondence such as a “Dear Urban Indian Organization Letter” and broadcast emails, as well as through a FRN, if necessary. The communication will identify the critical events or issues to be discussed, as well as the mechanism for conferring. A comment period of 60 calendar days from which the “Dear Urban

⁷ Recommendation: Each IHS Area must be held to the same standard with respect to urban confer with UIOs. Recommendation: To provide clear language and statements on distribution of power and responsibilities with step and guidelines.

⁸ Recommendation: To strengthen policy and allow for more timely response 30-days should be considered as sufficient best practice. Recommendation 6: To shorten response time of all confer letters from 60 days to 30 days.

⁹ See footnote 8.

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Indian Organization Letter” is posted will allow UIOs to provide comments and recommendations on the critical event or issue. In rare instances, a comment period of less than 60 calendar days may be initiated for critical events or issues that require expeditious comments and recommendations.¹⁰

B. Conferring Activity. The IHS will conduct official conferring activities that shall be publicized, both through correspondence such as a “Dear Urban Indian Organization Letter” and broadcast emails, and, if necessary, through a FRN. The notices will include information such as the mechanism, dates, and locations of the conferring activity (if applicable), the agenda, and any critical events or issues that will be discussed.¹¹ In the event that a confer activity will be conducted, the degree and extent of the conferring and the mechanism for conferring shall depend upon several factors, including:

- (1) the nature of the critical event or issue,
- (2) the number of potentially affected UIOs, and
- (3) the most cost effective and efficient conferring mechanism, based on the nature of the critical event or issue and the number of potentially affected UIOs. This includes utilizing virtual platforms and hybrid connectivity options to enhance conferring activities and mechanisms to maximize UIO participation.¹²

After each confer activity is conducted, the IHS will administer an urban confer satisfaction survey. The information will be used to improve the conferring process and the results will be included in the annual IHS Confer with UIOs Report.¹³

C. Confer Mechanisms. The IHS will consider the following confer mechanisms as options that provide the opportunity for an open and free exchange of information and opinions that lead to mutual understanding and comprehension and emphasize

¹⁰ Recommendation: Standardize comment period of 60 days from posting of Dear Urban Indian Organization Leader Letter.

¹¹ Recommendation: Incorporating virtual platforms to enhance face to face urban confer experience, increase user attendance, and reduce already tight budget pressures on UIOs.

¹² Recommendation: Request continuation of distinguished meeting spaces.

¹³ Recommendation: Request evaluation of urban confers by UIOs.

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trust, respect, and shared responsibility:

- (1) Mailings
- (2) Teleconferences/Webinars
- (3) Regular or special program level conferring sessions
- (4) Conferences or meetings, such as the Urban Indian Health Leadership Conference
- (5) Opportunities for comment, including submissions to urbanconfer@ihs.gov
- (6) Face-to-face meetings, including meetings conducted at the Service Unit level, Area Office level, or at the national-level Indian health system meetings that include the IHS, Tribes, and UIO(s).
- (7) Federal Register notices with request for comment
- (8) Virtual platforms and hybrid connectivity options.¹⁴

D. Contract- and Grant-Specific Issues. A UIO may request to meet one-on-one with an IHS representative at the Headquarters or Area Office level to confer on issues specific to that UIO and its contract and grant awards from the IHS.

E. Unresolved Issues. Upon the completion of any of the conferring activities in this section, the IHS will document and follow-up on any unresolved issue(s) that would benefit from the ongoing involvement of the affected UIO(s). Documentation of the conferring process and outcomes will be maintained by the OUIHP and the Area Office(s) in which the affected UIO(s) are located.

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F. Annual IHS Confer with UIOs Report to HHS. The IHS shall prepare and submit

¹⁴ Recommendation: Incorporating virtual platforms to enhance face to face urban confer experience, increase user attendance, and reduce already tight budget pressures on UIOs.

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the annual IHS Confer with UIOs Report to the Secretary, HHS, describing critical events or issues arising in implementing or carrying out the IHCIA, related conferring activities, and the results and outcomes of conferring with UIOs. The IHS shall prepare a similar report to UIOs excluding contract- and grant-specific issues.¹⁵

The report shall include a description of each critical event or issue(s) that was the subject of conferring, a description of the process that was used, a discussion of the recommendations that resulted from the conferring activity, a list of any follow-up action items, a timeline for addressing these items, and a discussion of the level of satisfaction with the conferring process.

G. Conflict Resolution.

- (1) The intent of this Policy is to promote mutual understanding and comprehension, and to emphasize trust, respect, and shared responsibility between the IHS and UIOs.
- (2) However, the IHS and UIOs may not always agree. Where such disagreement occurs, nothing in this Policy creates a right of action against the IHS or the HHS for failure to comply with this Policy.

5-26.5 FEDERAL ADVISORY COMMITTEE ACT

The Federal Advisory Committee Act (FACA), 5 U.S.C. App. § 1-16, may apply to conferring activities. The FACA is implicated when an Agency establishes, manages, or controls a group that includes one or more participants who are not Federal employees for the purpose of obtaining the group's consensus advice or recommendations on Agency issues or policies. The FACA imposes several procedural requirements on Federal Agencies that convene advisory committees. Although FACA may not apply to groups consisting solely of Tribal Leaders serving on the group in their official capacities, UIOs do not meet the requirements of the "inter-governmental" exemption. Accordingly, any conferring activities that qualify as an advisory committee under the FACA that is convened for the purpose of developing consensus recommendations will be required to comply with the procedures set out in FACA. For questions regarding the applicability

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¹⁵ Recommendation: Written reports of all conferrals be made available to UIO Director.

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of FACA, please contact the Director, IHS Division of Regulatory and Policy Coordination (DRPC) , Office of Management Services.

5-26.6 SUMMARY

This policy considers a wide range of needs and unique characteristics in crafting these guidelines; therefore, it is important for the IHS urban confer policy to remain dynamic and be responsive to changing circumstances that affect UIOs. It is expected that the confer process may result in the need to update the policy from time to time.

5-26.7 DELIBERATIVE PROCESS PRIVILEGE

Nothing in this Policy waives the Government's deliberative process privilege. Examples of the government's deliberative process privilege are as follows:

- (1) When the Secretary, HHS, is specifically requested by a member or members of Congress to respond to or report on proposed legislation, the development of such responses and of related policy is a part of the Executive Branch's deliberative process privilege and should remain confidential.
- (2) In specified instances, when Congress requires the HHS to work with UIOs on the development of recommendations that may require legislation, such as reports, recommendations, or other products that are developed independent of a Department position, the development of which is governed by Office of Management and Budget Circular A-19.