



Washington State Department of Health Consultation and Collaboration Procedure

August 13, 2015

I. Purpose and Goal Statements

Chapter 43.376 RCW is the policy that defines government-to-government relationships between state agencies and Indian tribes.

The purpose of this procedure is to comply with Chapter 43.376 RCW and the Washington State Centennial Accord of 1989. These procedures establish a “documented plan of accountability and detailed implementation procedures”¹ between the Washington State Department of Health (DOH) and the Federally-Recognized Indian Tribal Governments. In doing so, they implement Washington State policy of government-to-government relationship with the tribes by ensuring that DOH will “collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affect Indian tribes and develop a consultation process that is used by the agency for issues involving or specific to tribes.”²

Implementing the government-to-government policy requires that the DOH consult with tribal governments in a manner that is different than consultation with stakeholders, municipalities or counties, or local health jurisdictions. Unlike these entities, tribal governments are sovereign nations and are not subject to the authority of Washington State. This government-to-government relationship is the underlying basis for the consultation requirements prescribed in Chapter 43.376 RCW and the Washington Centennial Accord of 1989.

The goals of the procedures are to (1) enable a sustainable government-to-government relationship with tribes; (2) collaborate with tribes in a manner that promotes public health partnership opportunities; and (3) ensure effective public health services for Indian people.

II. Parties to Consultation

The following entities are the parties to a specific consultation:

- A. The DOH Secretary of Health, a Deputy Secretary, or an Assistant Secretary.
- B. Federally-Recognized Indian Tribes represented by the Tribal President, Tribal Chair, or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s).
- C. American Indian Health Commission (AIHC) Board Chair or authorized representative, Northwest Portland Area Indian Health Board (NPAIHB).
- D. Urban Indian Organizations (UIO) or other parties to consultation as listed in Appendix C.

The Secretary of Health or his/her designee who has decision-making authority is necessary for consultation to occur.

Contact information for the parties to consultation shall be maintained on the DOH web site at <http://www.doh.wa.gov/AboutUs/PublicHealthSystem/TribalPublicHealth.aspx>. Updates to contact information shall be the responsibility of the DOH Tribal Liaison.

III. The Collaboration Process

To promote functional public health partnership opportunities between state and tribal entities and to ensure effective public health services for Indian people, ongoing collaboration is desired by all

¹ Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington; Section IV, Implementation Process and Responsibilities; [http://www.goia.wa.gov/government to government/data/centennialaccord.htm](http://www.goia.wa.gov/government%20to%20government/data/centennialaccord.htm).

² RCW 43.376.020

parties. This collaboration may occur through participation on workgroups, task forces, listening/sounding board sessions, tribal council, or other meetings. These forums for collaboration may be limited to DOH employees and tribes or may include other stakeholders and partners.

Tribal-specific forums have been created between DOH and the tribes for ongoing collaboration. These forums may be used to make recommendations as to which DOH policies or actions have tribal implications and therefore require consultation as outlined in Section IV below. The collaboration process will also be used to satisfy legal requirements for DOH to collaborate prior to consultation.

- A. Consultation at the Leaders Health Summit
- B. Participation at AIHC meetings
- C. Quarterly DOH and AIHC leadership calls
- D. Fireside Chat associated with the annual Tribal Emergency Preparedness Conference
- E. Listening sessions

These forums may be held in person, via conference call or webinar, or other means agreed to by the parties. Necessary tribal and agency subject matter experts and decision-makers should be present to explain issues, discuss concerns, and help identify recommendations. Meetings will include DOH representatives, including the DOH Tribal Liaison, tribal leaders, AIHC, and other identified parties as appropriate.

Notice regarding the meetings will be emailed to all parties to consultation and posted on both the DOH and AIHC websites fifteen (15) days prior to discussions. Exceptions to the timeline can be made for time sensitive and other issues, as agreed to by parties.

These collaboration and pre-consultation meetings can be a component of the consultation process, but are not a substitute for the requirement to conduct consultation as outlined in “Consultation Forum” section of this document.

IV. The Consultation Process

A. When Consultation Must Occur

As noted in Section 1, DOH will collaborate with Indian tribes and other parties listed in Section II, prior to the development of policies, agreements, and program implementation that directly affect Indian tribes and Urban Indian Organizations.

B. Determination of Whether a Policy, Agreement, or Program Implementation Affects the Other Party

The DOH Secretary of Health will engage tribal leadership in consistent, meaningful consultation regarding all aspects of public health programs, services, functions, and activities impacting or targeting tribal communities, people, and families, and/or resources on which they depend.

The Secretary will seek the concerns and advice of tribal leaders on how programs, services, functions, and other DOH activities should be carried out in tribal communities to ensure benefit to tribal people in a manner that enhances the tribes’ ability to decide, plan, and care for themselves and their families.

In addition, any entity listed in the “Parties to Consultation” Appendix C can request a pre-consultation meeting using mechanisms in Section III or a consultation meeting using the form in Appendix A. To the extent permitted by law, DOH shall not proceed on any policy or action that has tribal implications or is not required by law, unless and until DOH, prior to proceeding on the policy or action, has adhered to the consultation process.

The Secretary of Health will determine what issues will be taken to consultation based on input and recommendations received from the tribal specific forums referenced in Section III above.

Examples of issues requiring consultation include, but are not limited to:

1. Changes to the state or local governmental public health system
2. Grant applications or special projects involving tribal communities
3. Proposed legislation
4. Development of health education materials directed at tribal populations
5. Program and fiscal monitoring issues related to tribal contracting

C. Disagreement Regarding Need for Consultation, Decisions, or Outcomes

To minimize disagreements about the need for consultation, decisions, or outcomes (prior to DOH action) and to assure effective cooperation and collaboration, requests for consultation will be circulated to identified tribal liaisons at tribes and the department. This action will provide a record of cooperation and collaboration that can be supported by tribal and state government and prevent expensive and unnecessary delays needing to be corrected.

D. Consultation Forums

Consultation forums may be in person meeting(s) at specified locations, webinars, or teleconferences, unless otherwise mutually agreed upon between the parties, as issues are identified.

1. In person meetings is the preferred forum.
2. Parties invited to the consultation may choose an alternative forum for consultation or alternate date, but must request the alternative forum and/or date within ten (10) days of receipt of the letter (Appendix A).
3. Written notification is sent to parties to consultation and must include where and how the consultation is to occur.

In addition to or in lieu of a meeting, parties may also submit written comments to the Department of Health for consideration.

A consultation meeting between agency and tribal leadership shall occur during (or in conjunction with) the AIHC Tribal Leaders Health Summit. The summit provides an opportunity for leadership to discuss public health issues of importance to tribes and the agency.

E. DOH Consultation Requests

If DOH requests consultation, a written request must be sent to the consultation parties at a minimum of at least fifteen (15) days prior—thirty (30) days when practical—to the scheduled consultation by the Secretary of Health or designee.

The written request must identify the proposed policy or action and provide an estimate of its impact on AI/AN people, their providers, and/or the tribes.

All DOH requests for consultation will be sent through email and regular mail to the tribal official and the AIHC. Requests will also be posted on the DOH website at <http://www.doh.wa.gov/AboutUs/PublicHealthSystem/TribalPublicHealth.aspx>.

F. Tribal Consultation Requests

If an entity listed in Section II, "Parties to Consultation," requests consultation, a written request shall be sent to the DOH Secretary of Health. The written request shall identify the DOH proposed policy or action that requires consultation.

DOH will have fifteen (15) days to acknowledge receipt of request for consultation. Consultation will be scheduled within 45 days, unless otherwise requested by tribes.

G. Consultation Meeting

In order for consultation to be meaningful, as noted in Requirements of Consultation, the following actions shall occur at all tribal consultations:

1. Meeting will be held in a mutually agreeable public forum;
2. Parties identified in Section II, "Parties to Consultation," shall be present;
3. Identification and full explanation of the issue, proposed action, or policy that is basis of the consultation request shall be provided;
4. Opportunity for all parties to further collaborate, ask questions, provide feedback, criticisms, etc., shall be afforded;
5. Proposal of DOH action in specific response to other party's questions, feedback, criticisms etc., shall be provided;
6. DOH will maintain records, to include minutes from consultation meetings; **AND**
7. Records shall be made available to all parties listed in Section II, "Parties to Consultation," upon request.

H. Action Required after Policy Decision

The Department of Health will communicate to all parties listed in "Parties to Consultation" section within three (3) days of the time a decision is made to implement a proposed policy or action. Such communication shall be made via the DOH website, electronic mail, and alternative delivery services (fax, regular mail, etc.). DOH will maintain records of its tribal consultation activities including minutes from consultation meetings. Such records shall be made available to all parties in Appendix C.

After consultation, DOH will provide tribes a summary of consultation discussions which includes tribal feedback provided. The Secretary will ask for tribal concurrence regarding information provided in the summary. The summary will include the rationale for decision(s) made.

V. Appointment of Tribal Liaison

DOH will designate an agency Tribal Liaison to facilitate and monitor continued exchange of information and resolution of issues, serve as the principal point of contact for the consultation parties and DOH, attend and present agency updates at tribal meetings, and facilitate communication.

The DOH Tribal Liaison will ensure DOH leadership and other appropriate program staff are informed of major tribal concerns or issues; facilitate training related to Centennial Accord requirements, government-to-government relations, and policies; coordinate development of Centennial Accord Plans; and prepare the agency for annual Centennial Accord meetings.

The DOH Tribal Liaison will work with the Governor's Office of Indian Affairs, tribes, and other interested parties to facilitate implementation and modification of this policy as needed.

The DOH Tribal Liaison will not be a substitute for the required agency representative listed in "Parties to Consultation."

The DOH Tribal Liaison will report to the DOH Secretary of Health, who may delegate the day-to-day supervision of this person to another member of the Secretary's Executive Team.

There will be tribal representation on the recruitment and selection process of the DOH Tribal Liaison.

VI. Sovereignty and Disclaimer

DOH respects the sovereignty of each tribe located in Washington State, and each tribe respects the sovereignty of the state of Washington. In executing this procedure, no party waives any rights, including treaty rights, or immunities, including sovereign immunities or jurisdiction.

This procedure does not diminish any rights or protections afforded other Indian persons or entities under state or federal law, including the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, to the Governor of Washington State or Region X Administrator of the US Department of Health and Human Services.

VII. Review, Approval, and Effective Date

The DOH Secretary of Health will be responsible for coordinating any updates or rescinding of this procedure or its associated procedure(s). The DOH Secretary of Health has full authority to review and approve this policy and associated procedure. The Secretary of Health also has the authority to delegate this responsibility.

This policy will be effective on August 13, 2015, and will be reviewed at the request of any of the parties referenced in "Parties to Consultation" section.

APPROVED BY:

John Wiesman, Secretary of Health
Washington State Department of Health



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APPENDIX A: CONSULTATION LETTER

Date

Party to Consultation
Address 1
Address 2

Re: [Insert consultation issue]

Dear PARTY TO CONSULTATION:

The Washington State Department of Health is proposing the following policy or action: _____

[Include appropriate proposed policy or action documentation with this letter]

The Department of Health would like to initiate government-to-government consultation with **[insert party name]** for this proposed policy or action.

The above policy or action will impact tribal and urban Indian organizations by: _____

The above policy or action **will/will not** have a financial impact upon tribes and urban Indian organizations in Washington State. This financial impact is estimated to be _____.

Tribal Consultation is scheduled for **[date]** at **[time]** a.m./p.m. at **[location]**. **[NOTE: provide a date at least 15 days (30 days when practical) from date of this letter]** If you would prefer an alternate date or location, please make this request on the attached tribal response form by **[date at least 10 days from receipt of this letter]**.

In lieu of or in addition to this meeting, we invite your comments on this proposed policy or action.

Your response to this letter and update to your contact information is greatly appreciated. We also invite comments regarding any other tribal concern the proposed policy or action may raise. Please provide a response by **[date at least 10 days from receipt of this letter]** so we may discuss the proposed policy or action and any of those identified areas of interest. Should you have any questions about this proposed policy or action, you may contact **[include name, phone number, and address of tribal coordinator here]**.

Sincerely,

John Wiesman, DrPH, MPH
Secretary of Health (or leadership designee and title)

cc: American Indian Health Commission



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APPENDIX B: CONSULTATION PARTY RESPONSE FORM

Consultation Party Response Form for [Name of Tribe/AIHC/Urban Indian Organization]

Date

Name of Action or Policy: _____

Response to this request for consultation:

_____ Thank you for the information and initiation letter; however, we do not need to consult any further on this issue.

_____ We do not have a comment or concern at this time, although we request continued notification regarding this issue.

_____ We wish to consult on this issue at the time and location referenced in the enclosed letter.

_____ We wish to consult on this issue at an alternate time and location referenced in the attached letter. Please contact us at the number listed below to schedule this time.

Signature of individual completing form

Date

Name and Title (Print)

Name of Tribe/AIHC/Urban Indian Organization

Has there been a change to your authorized representative? If so, whom should we contact about this issue if you are interested in further discussing this issue or receiving additional information?

Name (please print): _____

Phone number: _____

Fax number: _____



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APPENDIX C: PARTIES TO CONSULTATION

TRIBES

- Colville Confederated Tribes
- Confederated Tribes of the Chehalis Reservation
- Confederated Tribes of the Yakama Indian Reservation
- Cowlitz Tribe
- Hoh Tribe
- Jamestown S'Klallam Indian Tribe
- Kalispel Tribe
- Lower Elwha Klallam Tribe
- Lummi Nation
- Makah Tribe
- Muckleshoot Tribe
- Nisqually Tribe
- Nooksack Tribe
- Port Gamble S'Klallam Tribe
- Puyallup Tribe
- Quileute Tribe
- Quinault Nation
- Samish Nation
- Sauk-Suiattle Tribe
- Shoalwater Bay Tribe
- Skokomish Tribe
- Snoqualmie Tribe
- Spokane Tribe
- Squaxin Island Tribe
- Stillaguamish Tribe
- Suquamish Tribe
- Swinomish Tribe
- Tulalip Tribe
- Upper Skagit Tribe

URBAN INDIAN ORGANIZATIONS

- Seattle Indian Health Board
- NATIVE Project of Spokane

RECOGNIZED AMERICAN INDIAN ORGANIZATIONS (RAIO) – State & Regional

- American Indian Health Commission (AIHC)
- Northwest Portland Area Indian Health Board (NPAIHB)
- Northwest Tribal Emergency Management Council (NWTEMC)
- South Puget Intertribal Planning Agency (SPIPA)
- Northwest Washington Indian Health Board (NWIHB)
- Small Tribes of Western Washington (STOWW)
- Affiliated Tribes of Northwest Indians (ATNI)
- Spokane Tribes of Indians
- Chief Seattle Club
- United Indians of All Tribes Foundation

TRIBAL ORGANIZATIONS – National

- National Indian Health Board
- National Congress of American Indians
- National Tribal Emergency Management Council



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APPENDIX D: DEFINITIONS

Consultation:

Conducted when a specific policy, document, or program is being developed that may impact or affect tribes. Consultation **must** occur before a final draft is approved.

- Consultation means respectful, constructive communication in a cooperative process that works toward a consensus before a decision is made or an action is taken.
- Consultation is a process, not a guarantee of agreement on outcomes.
- Consultation may appropriately be held between the Washington State Department of Health and tribal officials or their designees.
- Consultation occurs whenever officials and/or their designees meet or exchange written correspondence to discuss any issue(s) concerning either party.

Collaboration:

A working relationship between parties to identify issues, solve problems, and create solutions.

- Collaboration with tribes may begin with or result in listening sessions and evolve into needing to seek formal tribal consultation.

Listening Sessions:

Gather information or gain understanding about complex tribal issues.

- The process is focused on seeking input.
- State agency staff will have an opportunity to develop a deeper appreciation for the unique needs and concerns of each tribal nation in attendance. Common themes may emerge but there will also be unique perspectives.

Learning sessions provide a great learning opportunity and may result in higher levels of collaboration and partnerships.

Tribal Implication:

Refer to legislation, regulations, or other policy statements or actions that have a substantial direct effect on one or more Indian tribes. Examples include, but are not limited to:

- Changes to the public health system
- Grant applications or special projects involving tribal communities
- Proposed legislation
- Development of health education materials directed at tribal populations
- Program and fiscal monitoring issues related to tribal contracting



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APPENDIX E: FRAMEWORK AND ROLES

This consultation policy applies to all Department of Health divisions, programs, and employees:

The **DOH Secretary of Health** is responsible for assuring goals and objectives established in annual Centennial Accord plans are met.

- The Secretary will provide leadership in meaningful tribal engagement and appropriate consultation on issues and actions that impact tribes or AI/AN.
- The Secretary or their designee shall routinely meet with tribally-designated leadership to discuss and resolve high-level policy issues not able to be resolved at the administrative level.
- The Secretary or designee shall be available to attend AIHC (or other tribal affiliated) meetings when necessary or as requested to maintain familiarity with tribal issues or respond to request for information.
- The Secretary assures staff access to appropriate government-to-government training identified through input provided by the American Indian Health Commission (AIHC), Governor's Office of Indian Affairs (GOIA) or other tribal affiliated organizations.
- The Secretary assures an agency Tribal Liaison position is established and staff clearly understands the need to collaborate and communication with the Liaison when necessary.
- The Secretary will meet with the DOH Tribal Liaison on a regular basis and as needed to discuss policy and other changes that may impact tribes.

The **DOH Tribal Liaison** will ensure implementation of this policy, and facilitate and monitor continued exchange of information and resolution of issues between tribes and the department.

- The Liaison will serve as the principal point of contact between DOH, tribes, and tribally-affiliated organizations.
- The Liaison regularly attends and presents agency updates at AIHC or other tribal meetings and facilitates communication.
- The Liaison will ensure DOH executive team, leadership team, and management and other appropriate program staff are informed of major tribal concerns or issues and distribution of information.
- The Liaison facilitates training related to Centennial Accord requirements and government-to-government relations and policies, as needed.
- The Liaison coordinates development of Centennial Accord Plans and prepares the agency for annual Centennial Accord meetings.
- The Liaison will work with the Governor's Office of Indian Affairs, tribes, tribal entities and organizations to facilitate implementation and modify this policy as needed.
- The Liaison will not be a substitute for the required agency representative listed in Section II, "Parties to Consultation."

DOH directors and managers, who implement policy, oversee programs, services, and contracts, are responsible for implementing this policy.

- DOH divisions and offices must have processes in place to assure meaningful and timely input by tribal officials in the development of policies that have tribal implications.
- DOH division and office leaders must ensure tribal officials are consulted early and throughout the process when developing proposed regulations or other activities that may impact tribal health programs.

DOH program staff addressing tribal issues related to operations, process clarification, contract implementation, and other types of technical assistance must:

- Commit to informal consultation by engaging in ongoing communications with tribes, tribal programs, and/or recognized tribal organizations to maintain program integrity and provide technical assistance.
- Assure open, transparent dialogue and free exchange of information and opinions that lead to mutual understanding.

All DOH staff must use respectful, constructive communication when working with tribes, comply with training requirements, and established communication and collaboration procedures.