

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
INDIAN HEALTH SERVICE  
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TRIBAL CONSULTATION AND PARTICIPATION POLICY

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1. PURPOSE. The Indian Health Service (IHS), together with American Indian and Alaska Native (AI/AN) tribal governments and organizations, hereby establishes this policy requiring consultation and participation by and between these governments on IHS program policies and activities.
2. BACKGROUND. A unique government-to-government relationship exists between AI/AN tribes and the Federal government. Treaties and laws, together with court decisions, have defined a relationship between the AI/AN people and

the Federal Government that is unlike that between the Federal Government and any other group of Americans. This government-to-government relationship with Tribal governments was reaffirmed by President Clinton in his May 14, 1998 Executive Order 13084, "Consultation and Coordination With Indian Tribal Governments". The implementation of this policy is in recognition of this special relationship.

3. PHILOSOPHY. This policy is based on the following two foundations.

A. Political/LeaalFoundations.

- (1) The Indian Self-Determination and Education Assistance Ad, Public Law (P.L.) 93-638, as amended, states in part:

*Section 3(a): "Congress...recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of...Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities."*

*Section 3(b): "The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and Indian people through...effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."*

- (2) The Indian Health Care Improvement Act, P.L. 94-437, as amended, states in part:

*Section 2(b): "A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services."*

(3) Executive Order 13084 dated May 14, 1998, states in part:

"Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior (emphasis added) to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

B. Ethical Foundation.

Indian tribes have, through the cession of over 400 million acres of land to the United States in exchange for promises, among other things, of health care, often reflected in treaties, secured an entitlement to health care from the United States based on the moral, legal, and historic obligation of the United States to AI/AN people.

The ethical foundation of this policy is the special relationship between sovereign governments; the United States and AI/AN tribal governments. This relationship is based on the cession of lands and other rights by AI/AN tribes in return for the provision of services by the United States. The AI/AN people have an inalienable right to self-government. Self-government means government in which decisions are made by the people who are most directly affected by the decisions. The United States has a moral obligation to promote consultation and participation with AI/AN tribal governments.

4. DEFINITIONS.

A. Consultation. Consultation is an enhanced form of communication that emphasizes trust and respect. It is a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is integral to a process of mutually satisfying deliberations to result in collaboration and joint decision-making.

Consultation with AI/AN tribal governments is an endeavor, which is uniquely a government to government process. In this government to government consultation process the goal is to reach consensus during

decision making. The more typical result is to nearly achieve consensus through the participation of tribal leadership and agency management.

- B. Participation. Participation is an ongoing activity that allows all interested parties to enjoin one another through negotiation, compromise, and problem solving to reach a desired outcome.

## 5. OBJECTIVES.

- A. To formalize the requirement for the IHS to seek consultation and participation by representatives of tribal governments in policy development and program activities, to insure that tribal health priorities and goals are recognized.
- B. To establish a minimum set of requirements and expectations with respect to consultation and participation for the three levels of IHS management: Headquarters, Area Offices, and Service Units.
- C. To identify critical events at which tribal consultation and participation will be required for the three levels of IHS management: Headquarters, Area Offices, and Service Units.
- D. To promote the development of innovative methods of obtaining consultation on issues from tribal representatives and involving representatives in Agency decision making processes.
- E. To promote the concept that it is an inherent right of Tribal governments to have the ability to consult with the IHS on all proposed, new and existing health care policy.
- F. To charge and hold responsible the principal managers within the IHS (the Director, Deputy Director, Chief Medical Officer, Director of Headquarters Operations, Director of Tribal Programs, Director of Office of Tribal Self-Governance, Director of Field Operations, Senior Advisor to the Director, Area Directors, Headquarters Office Directors, and Service Unit Directors) for the implementation of this policy.

## 6. ESTABLISHMENT OF TRIBAL ADVISORY ORGANIZATIONS/COMMITTEES.

The principal focus for consultation and participation activities of the IHS is with individual tribal governments. However, it is frequently necessary that the IHS have organizations/committees in place from which to solicit consensual tribal advice and recommendations, and to involve tribes in decision-making and policy development prior to the more formal consultation with all tribal leaders.

In consultation with elected tribal governments, the IHS identifies and assists in

the support of tribal health advisory organizations/committees.

- A. Headquarters. Coordination with the following national organizations and advisory groups:

National Indian Health (NIHB). NIHB serves as one of the national advisory organizations on health-related issues and legislation. Support for NIHB is negotiated by the Director, IHS and Board of Directors of the NIHB.

Tribal Self-Governance Advisory Committee (TSGAC). Delegates to the TSGAC serve as an advisory committee to the Indian Health Service (IHS) Director and the Office of Tribal Self-Governance Director on policy issues regarding implementation of the Self-Governance initiative.

National Congress of American Indians (NCAI). As the oldest and largest national Indian organization, NCAI serves the needs of a broad membership of Indian and Native governments, organizations and people. The NCAI is organized as a representative congress of consensus on national priority issues. NCAI has led and participated in myriad coalitions with other national and regional Indian organizations to attain the goals of NCAI's broad-based membership. Resolutions related to many IHS funding and policy issues are frequently addressed and endorsed by the NCAI membership.

- B. Area Offices. Each Area Director, in consultation with tribal governments, must designate an organization/committee representative of all tribal governments served by the Area Office or if not all tribes are represented by the organization/committee, then the Area Director will develop a process to ensure full consultation of all tribes within the Area. The designated organization shall provide advice and consultation to the Area Director and Area office staff. Meetings between the designated tribal organization and Area Office management and staff shall occur at least twice each year.
- C. Service Units. The Health Advisory Board/Governing Body established at each IHS service unit is one organization utilized by the Service Unit Directors (SUD) and management/clinical staff for regular consultation and participation purposes. Additionally, each SUD and his/her staff shall meet with tribal government officials (e.g., chairperson, tribal council on a mutually agreed to schedule) on a regular basis.

7. SCHEDULE FOR CONSULTATION. Managers in the IHS must establish and adhere to a formal schedule of meetings to consult with tribal governments and representatives concerning the planning, conduct, and administration of IHS activities. Trust between the IHS and tribal governments and organizations is an indispensable element in establishing a good consultative relationship. Managers in the IHS must involve tribal representatives in meetings at every practicable opportunity.

The IHS managers are encouraged to establish additional forums for tribal consultation and participation, and for information sharing with tribal leadership.

8. POLICY DEVELOPMENT THROUGH TRIBAL CONSULTATION PROCESS. The need for policy may be identified from within the IHS or may be identified by tribal government or tribal organizations. The need for policy may result from external forces such as Executive, Judicial or Legislative branch directives. Once the need for a policy is recognized, the consultation policy must begin.

Commonly, IHS and tribes have used the workgroups to develop policy at the Headquarters, Area and Service unit levels. The use of workgroups generally makes it possible to achieve the goal of exploring all possible options. The process for consultation through the establishment of Joint Tribal/Federal workgroups is covered in the appendix to this policy. The process as outlined is the model that will be used at Headquarters and shall be applied at the Area and Service Unit levels with appropriate modifications.

9. IHS BUDGET FORMULATION.

- A Budget Formulation and Annual Performance Plan. The IHS will ensure the active participation of tribes and tribal organizations in the formulation of the Agency budget request and annual performance plan.

Area Budget Formulation Teams. An Area-wide budget formulation team shall be established to provide ongoing support to the budget formulation activities at the Area level. Each Area budget formulation team shall consist of tribal representatives (including elected officials, health program staff, administrative staff and other technical support staff), urban program representatives, and IHS staff.

One of the primary responsibilities of the area team is to solicit area-wide input in establishing the health and budget priorities for the Area for a given fiscal year. The Area formulation team is also responsible for identifying two of its work session participants to attend the national budget work session. The health priorities established at the area work sessions are used as the basis for developing the Agency's Annual

Performance Plan, which is submitted as a part of the Agency's budget request.

Headquarters Budget Formulation Work Team. The Headquarters Budget Formulation Work Team is established, 1) to provide staff support to the Director for budget formulation, 2) to develop the IHS budget request in accordance with Departmental and OMB guidelines, and 3) to provide information on the budget request and formulation process. In all activities the team will adhere to the priorities established at the national work session and to the guidance provided by the national tribal urban workgroup.

National Budget Formulation Work Session. The national budget formulation work session is conducted each year to consolidate the 12 Area I/T/U budget and health priority recommendations into a set of national health priorities and proposed budget request. At least two representatives from each area will participate.

National Tribal Urban Workgroup. The workgroup consists of a representative from each area as identified at the national work session. In addition, one representative from each leadership organization will participate in the workgroup. Meeting participants include the National Indian Health Board, the Tribal Self-Governance Advisory Committee, the National Council on Urban Indian Health. The workgroup continues to provide guidance and input to the Headquarters formulation team throughout the remainder of the budget formulation cycle for that fiscal year.

Budget Formulation Leadership Meeting. Elected tribal officials are involved throughout the budget formulation process, however, the formal opportunity for tribal leadership to provide consultation to the Agency on budget formulation occurs at the Budget Formulation Leadership Meeting. The leadership organizations provide a final endorsement of the proposed IHS budget request developed at the national work session.

- B. Budget Execution. It is IHS policy to involve tribal governments in decision-making concerning the allocation of new funding (i.e., funding that is not base funding to a tribe or congressionally earmarked for specific tribes) that is provided as a result of the appropriations process. This policy is described in IHS Circular No. 92-5, "Budget Execution Policy (Allocation of Resources)."

The appropriate consultative organizations for this purpose are described in Section D. of 92-5, or may be any other organizations or mechanisms as agreed to by the Area Director and tribal governments.

- C. Budget Information Disclosure. The IHS managers must initiate a process whereby the tribes and tribal organizations are provided the following IHS budget related information on an annual basis: appropriations, allocation, expenditures, and funding levels for programs, functions, services, and activities.
10. CRITICAL PERFORMANCE ELEMENT. A critical performance element requiring the implementation of this policy shall be made part of the annual performance standards of principal managers in the IHS.
  11. POLICY IMPLEMENTATION AND REPORTING. All consultation meetings and recommended actions shall be formally recorded and available to tribal governments. Once the consultation is complete and a policy decision is final, all recommended follow-up actions will be implemented and tracked within the IHS and reported out to tribes in a timely manner.
  12. TRIBAL SOVEREIGNTY. This policy does not waive any tribal governmental rights including treaty rights, immunities, including sovereign immunities or jurisdiction. Neither does this policy diminish any rights or protections afforded other Indian persons or entities under federal law.
  13. CONFLICT RESOLUTION. While the intent of this policy is to provide increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in the government-to-government relationship, the tribes may elevate an issue of importance to another decision-making authority.
  14. TRIBAL RESOLUTIONS. Resolutions submitted by tribal governments to the IHS shall be referred to the appropriate IHS program office. The receipt of tribal resolutions shall be formally acknowledged by the IHS to the tribal government organization. A substantive response, if required, must be forwarded to the tribal government within sixty days.
  15. EFFECTIVE DATE. This circular is effective on the date of signature by the Director, IHS.

Michael H. Trujillo, M.D., M.P.H., M.S.  
Assistant Surgeon General  
Director, Indian Health Service



APPENDIX  
PROCESS FOR CONSULTATION AND ESTABLISHMENT OF JOINT  
TRIBAL/FEDERAL WORKGROUPS AND/OR TASK FORCES

When the end result of consultation will be a new or revised national policy, the Director, IHS may establish a workgroup and/or task force to develop recommendations on various technical, legal or policy issues. In such cases, the following process shall be generally followed:

A. Membership and Meeting Notices:

1. Solicitation for tribal membership for workgroups shall be widely publicized with the intent to reach all tribes by requesting membership nominees from all tribes, NIHB, TSGAC, NCAI and from within IHS. The purpose, preliminary charge, time frame, and other specific tasks shall be clearly identified in the notice.
2. Tribal and IHS membership should be equal (same number from each; or if unequal, Tribal membership should be the majority).
3. Tribal membership should be selected based on the volunteer responses received as a result of the notice, and if possible, should represent a cross-section of affected parties.
4. All meetings should be open and widely publicized ideally through the Office of Tribal Self-Governance, the Office of Tribal Programs and the office sponsoring the policy.

B. Participation:

1. Attendance at Meetings. Workgroup Members must make a good faith effort to attend all meetings. The Workgroup Member may be accompanied by such other individuals as that Member believes is appropriate to represent his/her interest.
2. Appointment of Alternates. Each Workgroup Member may appoint an alternate by written notification. In cases where an elected tribal leader may appoint an alternate who is not an elected official, the alternate shall have the full rights as designated in the letter by that tribal official.

C. Workgroup Protocols: The Workgroup may establish protocols to govern the meetings. Such protocols will include, but are not limited to the following:

1. Selection of Workgroup Co-Chairs (Tribal Federal), if applicable
  2. Role of Workgroup members
  3. Process for decision-making (consensus based or otherwise)
  4. Process for determining drafting and availability of all final Workgroup products and documents
- D. Workgroup Charge: Prior to the workgroup formulation, the IHS may develop an initial workgroup charge in enough detail to define the policy concept. The Workgroup will develop the final workgroup charge with the IHS Director.
- E. Workgroup Final Products: Once a final draft has been created by the workgroup the following process will be used to facilitate complete consultation:
1. Upon completion, the draft policy documents will be distributed informally to NIHB, TSGAC, NCAI, and IHS for review and comment and to allow the maximum possible informal review.
  2. Comments will be returned to the Workgroup, who will meet in a timely manner to discuss the comments and determine the next course of action. If the policy is considered to be substantially complete as written, the workgroup will forward the proposed policy to the Director as final recommendations. The workgroup will also recognize any contrary comments in their final report. If it is determined that the policy should be rewritten, the workgroup will rewrite and begin informal consultation again at step 1 above.
- F. Recommendations and Policy Implementation: All final recommendations by the workgroup should be given serious consideration by the Director, IHS. Before any final policy decisions are adopted within the IHS, the proposed decision and policy shall be widely publicized and circulated for review and comment by tribal Leaders, NIHB, TSGAC, NCAI and within IHS as the Formal Consultation. Once the Consultation is complete and a policy decision is final, the final policy decision shall be broadly distributed to all tribal leaders using the appropriate IHS format.

IHS National Policy Development Model

