

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Indian Health Service

Refer to: OAD

CALIFORNIA AREA INDIAN HEALTH SERVICE CIRCULAR NO. 02-02

TRIBAL CONSULTATION

Sec.

1. Purpose
2. Background
3. Philosophy
4. Definitions
5. Objectives
6. Schedule of Consultation
7. Supersession

1. PURPOSE. To describe the tribal consultation practices of the California Area Indian Health Service (CAIHS), pursuant to IHS Circular NO. 2001-07, Tribal Consultation and Participation Policy, which sets forth policy requiring the IHS to conduct tribal consultation and provide for participation in IHS decision-making processes.
2. BACKGROUND. A unique government-to-government relationship exists between American Indian and Alaska Native (AI/AN) tribal governments and the Federal government. Since no treaties were ever ratified by Congress, laws, and executive orders, 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 American citizens. The implementation of this tribal consultation policy is in recognition of this special relationship.
3. PHILOSOPHY. This policy is based on the following two foundations.
 1. Political/Legal Foundations.

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

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 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 the 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:

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) Memorandum to the Heads of Executive Departments and Agencies from President William J. Clinton, April 29, 1994, states:

“Each executive department and agency shall consult, to the greatest extent permitted by law, with tribal governments prior 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.”

2. Ethical Foundation. 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 ancestral lands by tribal governments in return for the provision of services by the United States. The AI/AN people have an inalienable right to self-governance. Self-governance means that decisions are

made by and with the people who are most directly affected by the decisions. The United States has a moral obligation and a trust responsibility to promote consultation and participation with AI/AN tribal governments.

4. DEFINITIONS.

1. 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.
2. Participation. Participation is effective, mutually satisfactory, joint decision-making. In true participation, an individual is not required to endorse or accept unilateral decisions made by either party.

5. OBJECTIVES.

1. To formalize the requirement for consultation and participation by representatives of California tribal governments in CAIHS policy development and program activities.
2. To identify critical events at which tribal consultation and participation will be required for the CAIHS.
3. To promote innovative methods of obtaining consultation in California on issues from tribal representatives and involving representatives in Agency decision-making processes.
4. To utilize the California Area Tribal Advisory Committee as the primary source of tribal advice and recommendations.
5. To ensure the principal focus for consultation and participation is with individual tribal governments and tribal organizations composed of multiple tribal governments through the Annual Tribal Leader Consultation meeting and regional listening sessions.

6. SCHEDULE FOR CONSULTATION. This circular establishes a general schedule of meetings to consult with tribal governments and representatives concerning the planning, conduct, and administration of CAIHS activities. Trust between the CAIHS and tribal governments/organizations is an indispensable element in establishing a good consultative relationship. The CAIHS Director will involve tribal representatives in meetings at every practical opportunity. The tentative schedule, subject to changes, is as follows:

4 Quarterly Tribal Advisory Committee Meetings
1 Annual Tribal Leaders' Consultation Conference

All deliberations are captured in an Executive Summary within two weeks of a convened Tribal Advisory Committee meeting. The Executive Summary is telefaxed to all California tribal governments and tribal health programs. In addition, all Executive Summaries are posted on the CAIHS internet website at:

www.ihs.gov -> Area Offices and Facilities -> California Area -> Tribal Consultation -> Agenda

7. SUPERSESSON. None. This policy is effective on the date of signature.
8. EFFECTIVE DATE. This policy is effective on the date of signature.

Margo D. Kerrigan, M.P.H.
Director
California Area Office