

**Arizona Department of Health Services Tribal Consultation Policy**  
(Revised 5/25/10)

1. Introduction

The mission of the Arizona Department of Health Services (ADHS) is to ensure the delivery of comprehensive public health services to the general population of Arizona including public health emergency preparedness and behavioral health services for the Medicaid eligible and seriously mentally ill populations. ADHS and Indian Tribes in the State of Arizona share the common goal of decreasing health disparities and maximizing access to critical health services. In order to achieve this goal, it is essential that ADHS and Indian Tribes engage in open, continuous, and meaningful consultation on a government-to-government basis. True consultation consists of ongoing information exchange and mutual understanding which leads to informed decision-making.

2. Background

A unique government-to-government relationship exists between Indian Tribes and Federal and State Governments. Since the formation of the Union, the United States has recognized Indian tribes as sovereign nations. Treaties and laws, together with court decisions, have defined a relationship between Indian Tribes and the Federal Government that is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous laws, regulations and policies that establish and define a trust relationship with Indian Tribes (see Attachment A). As a state agency responsible for administering federal programs, these regulations and policies play a significant role in the ADHS Tribal Consultation Policy.

The foundation of this policy is Arizona State Governor Executive Order 2006-14 issued on September 14, 2006 which mandated the development of tribal consultation policies by all Executive Branch agencies. This ADHS Tribal Consultation Policy follows the instructions given in that Executive Order (see Attachment B).

3. Policy

The guiding principle of this Policy is to ensure that, pursuant to the special relationship between the Indian Tribes and Federal and State Governments, reasonable notice and opportunity for consultation with Indian Tribes is provided by the ADHS Administration before implementing any high-level policy changes that significantly impact Indian Tribes in the State of Arizona. High-level policy changes that significantly impact Indian Tribes refer to actions that have substantial Tribal implications with direct effects on one or more Indian Tribes, on the relationship between the State of Arizona and Indian Tribes, or on the distribution of power and responsibilities between the State of Arizona and Indian Tribes. The State recognizes that state laws and regulations will be implemented as they apply to Indian Tribes that receive payment for services provided under an ADHS program.

**Arizona Department of Health Services Tribal Consultation Policy**  
(Revised 5/25/10)

4. Philosophy

The involvement of Indian Tribes in the development of ADHS policy allows for locally relevant and culturally appropriate approaches to important issues. Therefore, ADHS is committed to working with Indian Tribes to improve the quality, availability, and accessibility to public health services and behavioral health care by eliminating barriers to care for American Indians in Arizona.

5. Objectives

In order to fully effectuate this Policy, the ADHS Administration will:

- (1) Establish communication channels with the elected leader of each tribe and the appointed leadership of the Health Department for each Tribe in Arizona. The ADHS Administration recognizes a standing goal of working with Tribes is to increase their knowledge and understanding of ADHS programs and policies.
- (2) Seek timely consultation with Indian Tribes to discuss potential changes to high level policy that would have a significant impact on Indian Tribes.
- (3) Allow for consultation with Indian Tribes in the development of new policy with substantial Tribal implications.
- (4) Provide relevant background information on the consultation topics so that Tribal officials may fully consider the information when providing recommendations to the agency.
- (5) Coordinate within the Agency to ensure consistent application of the Tribal Consultation Policy.
- (6) Include Tribal Representation in State Plans negotiations, as they relate to the Tribes, between the State and Federal agencies such as CDC.

6. Principles

Trust among ADHS and Indian Tribes is an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. The ADHS Administration, in consultation with the Native American Liaison, shall use the guidelines in Section 7 to determine the nature and extent of consultation that should occur to ensure that the intent of this Policy is satisfied. Consultation occurs whenever the ADHS Director and Tribal Official(s), and/or their designees, engage in oral or written correspondence to discuss an issue. Consultation with a single Indian Tribe will not substitute for consultation with other Tribes on issues that may affect more than one Tribe.

ADHS staff persons who have a role in the development or implementation of policy substantially affecting Indian Tribes in the State of Arizona shall understand the purpose of the ADHS Tribal Consultation Policy, its expectations, applicability and anticipated outcomes.

**Arizona Department of Health Services Tribal Consultation Policy**  
(Revised 5/25/10)

ADHS shall engage in the consultation process with tribal governments on substantive policy matters which include, but may not be limited to the following:

- (1) Proposed amendments to the agency's tribal consultation policy.
- (2) Proposed or existing tribal/state/federal intergovernmental agreements or contractual language revisions as it relates to Indian Tribes.
- (3) Proposed resources distribution methodologies with full disclosure of pertinent background information, as it relates to the Tribes.
- (4) Proposed State Plan development as it relates to Indian Tribes, including amendments, implementation and any limitation of identified services.
- (5) Proposed policy, protocol, practice or rule changes that would impact the delivery of state-funded services provided in Tribal communities.

7. Consultation Process

ADHS engages in consultation with Indian Tribes about policy issues at a variety of levels through a variety of methods to facilitate Tribal consultation on policies that directly affect Indian Tribes and American Indians in Arizona.

A. New or Changing Policy or Program Implementation

- (1) When it appears that a new or changed ADHS policy may be needed, the ADHS Administration shall consider whether the policy change is likely to have a significant impact on Indian Tribes in the State of Arizona.
- (2) If an issue is identified that is likely to have a significant impact on Indian Tribes in the State of Arizona, the ADHS Administration shall make every effort to provide no less than 45 days notice prior to implementation to Arizona Indian Tribes soliciting feedback and recommendations regarding the issue. Such solicitations shall be directed to Tribal leaders explaining the background, describing the proposed action, and requesting a response within a given timeframe.
- (3) If a Tribal elected or appointed official requests additional information or provides feedback regarding an issue, the ADHS Administration shall communicate, verbally or through written correspondence, with the official to provide a timely and substantive response.
- (4) Face-to-face consultation sessions may be scheduled. Such sessions may be scheduled as a single statewide meeting or in conjunction with other statewide meetings.
- (5) The ADHS Administration may also provide written notice and a solicitation for feedback to non-Tribal organizations such as the Advisory Council on Indian Health Care, the Indian Health Service Area Offices in Arizona and Urban Indian Health Programs. An official resolution and or action approved by a quorum of the member tribes of the Inter Tribal Council of Arizona or of another tribal government organization shall constitute a joint position identified by the member tribes of that organization. It should be noted that such communications from tribal or

**Arizona Department of Health Services Tribal Consultation Policy**  
(Revised 5/25/10)

non-tribal organizations do not substitute for direct communication of recommended actions by individual Indian Tribes in Arizona.

- (6) If Tribes and ADHS cannot reach an agreement on a new high-level policy change, both parties agree to develop and include dispute language in their Intergovernmental Agreements or other funding agreements between the state and tribes.

**B. Ongoing Consultation**

- (1) The ADHS Administration will participate in Health and Human Services (HHS) regional consultations, and, as requested, in consultation meetings sponsored by HHS agencies, the Indian Health Service or Indian Tribes.
- (2) The ADHS Administration will provide an opportunity for submission of written comments during any period of ongoing consultation.
- (3) A Tribal Official and/or their designee may formally request tribal consultation on a topic.
- (4) The ADHS Administration will continue to meet regularly with Indian Tribes in the State of Arizona. Such meetings may occur in person, telephonically or using web-based technology. To the extent issues of general application are discussed in such meetings, the Native American Liaison or other designated ADHS staff will provide follow-up, as appropriate.

**8. Joint Tribal/State/Federal Workgroups**

**A. Joint Tribal/State/Federal Workgroups and Task Forces**

ADHS may establish or participate in workgroups, task forces or other groups or committees with Indian Tribes and others to address issues affecting Indian Tribes and American Indians in Arizona.

**B. Limitations**

Interaction with joint tribal/state/federal workgroups will not take the place of Tribal consultation. Instead, this interaction is intended to enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issues, or concerns to work collaboratively and offer recommendations for consideration by the ADHS Administration.

**9. Annual Meetings**

At least annually ADHS will meet with Tribes to review and negotiate existing and proposed changes to ADHS policies and regulations affecting current or future Tribal funding agreements or services to Indians

**10. Effective Date**

This Policy is effective on the date of signature by the ADHS Director.

Arizona Department of Health Services Tribal Consultation Policy  
(Revised 5/25/10)

11. Summary

The ADHS Administration views Tribal consultation as a dynamic process. Joint effort between the Indian Tribes, the ADHS Director, the Native American Liaison, and ADHS divisions, bureaus, and offices will promote the objectives of the Tribal Consultation Policy. Together they will further consistent implementation of the Policy and work to ensure that the Policy plays a meaningful role in addressing issues affecting Indian Tribes and American Indians in the State of Arizona.

Approved:

  
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Will Humble  
Director

  
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Date

**Arizona Department of Health Services Tribal Consultation Policy**  
(Revised 5/25/10)

Attachment A:

The special relationship between the Federal Government and Indian Tribes is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

- The Snyder Act, P.L. 67-85
- Older Americans Act of 1965, P.L. 89-73 as amended
- Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended
- Native American Programs Act of 1974, P.L. 93-638, as amended
- Indian Health Care Improvement Act, P.L. 93-644, as amended
- Social Security Act, Titles IXX, XX, XXI
- Unfunded Mandates Reform Act of 1995, P.L. 104-4
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193
- Presidential Executive Memorandum to the Heads of Executive Departments, April 29, 1994
- Presidential Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004
- The Children's Health Insurance Program Reauthorization Act of 2009
- The American Recovery and Reinvestment Act of 2009
- The Patient Protection and Affordable Care Act (PL 111-148)
- The Indian Health Care Improvement Reauthorization and Extension Act of 2009

**Arizona Department of Health Services Tribal Consultation Policy**  
**(Revised 5/25/10)**

**Attachment B**

**Executive Order 2006-14**  
**Consultation and Cooperation with Arizona Tribes**

**WHEREAS**, Arizona is home to 22 federally-recognized American Indian Tribes ("Tribes") who have existed since time immemorial, long before the formation of the United States and the entry of the State of Arizona into the union; and

**WHEREAS**, the land of these 22 Tribes comprises approximately 28% of Arizona's land base; and

**WHEREAS**, these tribal members are citizens of our great State, possess all the rights and privileges afforded by Arizona to its citizens, and, along with other American Indians, comprise approximately five percent of Arizona's population; and

**WHEREAS**, the State of Arizona recognizes and supports the right of these 22 tribal governments to exercise sovereign authority, as defined by federal law, over their members and their territory; and

**WHEREAS**, it benefits the State of Arizona to partner with tribal governments on issues affecting all of Arizona as well as to ensure that state services and resources are available to all eligible state citizens residing in Arizona tribal communities to the same extent that such services are available to all other eligible state citizens; and

**WHEREAS**, a spirit of cooperation should guide the continuing government-to-government relationships between the State of Arizona and the Tribes that call Arizona home; and

**WHEREAS**, meaningful and timely consultation with Arizona's Tribal leaders will facilitate better understanding and informed decision making.

**NOW, THEREFORE**, I, Janet Napolitano, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and the laws of this State, hereby order and direct as follows:

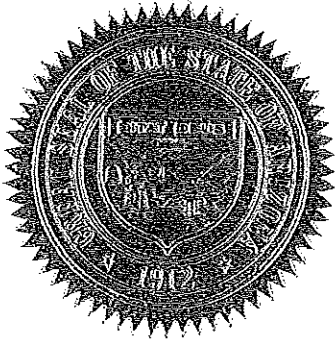
1. All Executive Branch agencies shall develop and implement tribal consultation policies to guide their work and interaction with federally-recognized Tribes in Arizona. Consultation requires that to the extent practicable and permitted by law, state agencies and offices shall seek input from appropriate elected or appointed tribal officials before undertaking any action or policy that will, or is reasonably believed to, have the potential to affect a tribal community or its members. Further, state agencies and offices shall, to the fullest extent possible and to the best of their ability, integrate the input generated from tribal consultation into their decision-making processes to achieve mutually acceptable solutions.
2. All Executive Branch agencies shall designate a member of their staff to assume responsibility for the agency's implementation of the tribal consultation policy and to act as the principle point of contact for tribal issues.

**Arizona Department of Health Services Tribal Consultation Policy**  
(Revised 5/25/10)

Executive Order 2006-14  
Page 2

3. All Executive Branch agencies shall review their tribal consultation policies each year and submit an electronic report to the Governor and the Legislature to describe all action undertaken as a result of the implementation of these policies. Electronic copies of these annual reports shall be provided to the Arizona Commission of Indian Affairs, which will make them available to Arizona's tribal leaders.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



*Janet Napolitano*  
GOVERNOR

DONE at the Capitol in Phoenix on this 14th day of September in the Year Two Thousand and Six and of the Independence of the United States of America the Two Hundred and Thirty-First.

ATTEST:

*Janice K. Brewer*  
SECRETARY OF STATE