



STATE OF WASHINGTON

Governor's Indian Health Advisory Council
October 5, 2023
1:00 PM – 3:00 PM
DCYF Headquarters
1500 Jefferson Street, Conference Room 2208
Olympia, WA 98501

Join Meeting Virtually: <https://us02web.zoom.us/j/84799391619>

Agenda

**Times are approximate*

1:00 PM Call to Order and Roll Call

Steve Kutz, Chair, American Indian Health Commission (AIHC)

Vicki Lowe, Executive Director, American Indian Health Commission (AIHC)

1:15 PM Administrative Business

Vicki Lowe, Executive Director, AIHC

- 1) Approve minutes from October 24, 2022
- 2) Approve agenda
- 3) Approval of 2023-25 Biennial Indian Health Improvement Plan

1:30 PM Uniform Consultation Policy

Review of Consultation Policy checklist including input from Tribal and State Leaders in preparation for drafting template to be presented at the GIHAC Dec. 5th meeting.

Vicki Lowe, Executive Director, AIHC;

Heather Erb, Legal and Policy Consultant AIHC

2:00 PM Legislative Updates

Tribal Behavioral Health Legislation for 2024 State Legislative Session:

Update on timeline for introducing and passing bill during 2024 Legislative Session

Vicki Lowe, Kathryn Akeah, AIHC

2:30 PM Exchanging Data with Tribal Jurisdictions –

Discussion on draft charter for Washington State Tribal Data Sovereignty Workgroup

Vicki Lowe, AIHC; Christine Winn, HCA; Candice Wilson, DOH

NOON- Adjourn- *Steve Kutz, Chair AIHC*



UNIFORM TRIBAL CONSULTATION POLICY CHECKLIST

Purpose: This document provides recommended items for Washington State agencies to include in their Tribal consultation policies and procedures. These recommendation items are based on the following sources of information:

- Feedback and input from Tribal representatives and urban Indian health organizations
- AIHC Tribal and Health Leaders’ Summit, September 2022
- [Washington Centennial Accord](#)
- [RCW 43.376](#)
- [Executive Order 13175](#)
- [Uniform Standards for Tribal Consultation, 87 Fed. Reg. 232, 74479 \(Dec. 5, 2022\)](#)
- [NCAI Resolution #MOH-17-001](#)

Basic Tribal Consultation Policy Components

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1. GENERAL REQUIREMENTS

<input type="checkbox"/>	1. Is the consultation policy well-organized, concise, and easy to read, or does it include repetitive, unenforceable, and superfluous language? <i>From AIHC Tribal and Health Leaders' Summit, September 2022</i>
<input type="checkbox"/>	2. Is the policy uniform/consistent with other policies?
<input type="checkbox"/>	3. Is the consultation document a policy or a procedure? It should be a policy. <i>From AIHC Tribal and Health Leaders' Summit, September 2022</i>

2. PURPOSE AND APPLICABLE LAW

<input type="checkbox"/>	1. Clear Purpose and Goals. <i>From AIHC Tribal and Health Leaders' Summit, September 2022</i>
<input type="checkbox"/>	2. Legal References <ul style="list-style-type: none">a. <input type="checkbox"/> Centennial Accordb. <input type="checkbox"/> RCW 43.376 (with quotes)c. <input type="checkbox"/> Executive Order #13175d. <input type="checkbox"/> Uniform Standards for Tribal Consultation
<input type="checkbox"/>	3. Definition of Consultation. Tribal consultation is a two-way, Nation-to-State exchange of information and dialogue between official representatives of the State and of Tribal Nations regarding state policies that have Tribal implications. See Section 2, Uniform Standards for Tribal Consultation . "Consultation requires that information obtained from Tribes be given meaningful consideration." See Uniform Standards for Tribal Consultation
<input type="checkbox"/>	4. Sovereignty and Self-Governance. Statement that state agency recognizes the right of Tribes to self-govern and supports Tribal sovereignty and self-determination. See Uniform Standards for Tribal Consultation .
<input type="checkbox"/>	5. Trust Responsibility. Statement that state agency recognizes the Tribes' unique relationship with the United States and the responsibility to strengthen the government-to-government relationship. See Uniform Standards for Tribal Consultation
<input type="checkbox"/>	6. Regular, Meaningful, and Robust Consultation. Statement that state agency is required to engage in "regular, meaningful, and robust consultation" with Tribes in

	the development of state policies that have Tribal implications. See Uniform Standards for Tribal Consultation
<input type="checkbox"/>	7. Consensus. Statement that “agencies should strive for consensus with Tribes for a mutually desired outcome.” See Uniform Standards for Tribal Consultation
<input type="checkbox"/>	8. Governments vs. Stakeholders. Statement of Tribes as governments and not stakeholders

3. REQUIRED PARTIES

<input type="checkbox"/>	1. Decision Making-Authority. Decision-making authority language such as “Each party shall be represented by individuals with decision-making authority.”
<input type="checkbox"/>	2. Highest Level of State Agency Representation. Agency representation at the highest level
<input type="checkbox"/>	3. Federally-Recognized Tribes
<input type="checkbox"/>	4. Non-Governments as Consultation Parties [TRIBAL LEADERS TO CHOOSE OPTION A OR OPTION B FOR THE FINAL CHECKLIST] <ul style="list-style-type: none"> a. <input type="checkbox"/> <u>Non-governments are NOT consultation parties.</u> Urban Indian Health Organizations receive notice and have a separate Confer policy. Tribal organizations receive notice only. Urban Indian Organizations and Tribal organizations, while not parties, can be present at the consultation. [TPAC 9/27/23-Tribal representatives requested that Tribal orgs. be removed as consultation parties]; OR b. <input type="checkbox"/> <u>Non-governments ARE consultation parties equal to Tribes</u> and can consult on a “government-to-government basis.” [Some WA State Tribal consultation policies have Tribal orgs. as parties, and some do not. HHS rejected language re Tribal orgs as consultation parties from being included in their most recent consultation policy.]
<input type="checkbox"/>	5. Consultation Party List Appendix

4. WHEN CONSULTATION MUST OCCUR

<input type="checkbox"/>	1. Tribal Consultation Must Occur When Requested By [TRIBAL LEADERS TO SELECT WHICH ENTITIES CAN REQUEST CONSULTATION] <ul style="list-style-type: none"> <input type="checkbox"/> Tribes <input type="checkbox"/> State Agency
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Commented [A1]: IHS Proposed Language re Tribal Orgs Consulting as Gov-to-Gov. IHS is currently considering this issue in their draft consultation policy: "Intertribal Consortium and Intertribal Organization: Intertribal Consortia and Intertribal Organizations may participate in consultations convened under this policy when authorized by those member Indian Tribes. The IHS will acknowledge these entities consist of Indian Tribes for consultation purposes, including consultation on a government to government basis. Participation by any Intertribal Consortium or Intertribal Organization does not abridge any member Indian Tribe's ability to also participate in consultation."

IHS BUDGET FORMULATION. On an annual basis, the IHS shall consult with, and solicit the participation of, Indian Tribes and Tribal organizations, regarding the development of the budget and annual performance plan for the IHS.

See Draft IHS policy: https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2023_Letters/Enclosure2_D TLL_072723.pdf

	<input type="checkbox"/> Tribal Advisory Workgroup <input type="checkbox"/> Tribal Organization
<input type="checkbox"/>	2. Consultation Must Occur Prior to Agency Action. Statement that consultation must occur “prior to the development of policies, agreements, and program implementation that directly affect Indian Tribes.” See Washington State Department of Health Consultation and Collaboration Procedure.
<input type="checkbox"/>	3. Definition of Tribal Implications. “Policies and actions that directly affect Indian Tribes” language and supporting explanation and/or examples.
<input type="checkbox"/>	4. How Tribal implications are identified. Tribal implications can be identified by a Tribe, a state agency, or a Tribal advisory workgroup.

5. PRE-CONSULTATION MEETINGS AND NOTIFICATION

<input type="checkbox"/>	1. Roundtables. When roundtables are required or recommended to be used
<input type="checkbox"/>	2. Consultation Notification Requirements <ol style="list-style-type: none"> a. <input type="checkbox"/> provide a full explanation and identification of the issue, “in an accessible language and format, and context for the consultation topic, to facilitate meaningful consultation.” See Uniform Standards for Tribal Consultation b. <input type="checkbox"/> provide “appropriate, available information on the subject of consultation including, where consistent with applicable law, a proposed agenda, framing paper, and other relevant documents to assist in the consultation process.” Uniform Standards for Tribal Consultation c. <input type="checkbox"/> provide at least notice of 30 days to the Tribe to allow sufficient time for the Tribe to review the proposed agency action, with specific exceptions. See Uniform Standards for Tribal Consultation d. <input type="checkbox"/> include the date, time, and location of the consultation e. <input type="checkbox"/> deadlines for any written comments on the topic f. <input type="checkbox"/> names and contact information for agency staff who can provide more information g. <input type="checkbox"/> request for Tribal input h. <input type="checkbox"/> provide notification to applicable Tribal staff as requested/designated by the Tribe [9/27 TPAC meeting] i. <input type="checkbox"/> provide notification to applicable Urban Indian Organizations and Tribal organizations
<input type="checkbox"/>	3. Appendix with Template Agency Request for Consultation. The request should include a briefing of the consultation issue and proposed agency action with relevant citations to state and federal statute and/or regulations.
<input type="checkbox"/>	4. Appendix with Template Tribal Request for Consultation

6. CONSULTATION MEETING REQUIREMENTS

<input type="checkbox"/>	1. Consultation Venue/Forum
<input type="checkbox"/>	2. Presence of required agency leadership at the highest level
<input type="checkbox"/>	3. Requirement that state leadership is prepared and knowledgeable about Tribal implications/input.
<input type="checkbox"/>	4. Tribal leadership have the right to bring their subject matter experts to consultation
<input type="checkbox"/>	5. Full explanation and identification of the issues
<input type="checkbox"/>	6. Opportunity for all parties to ask questions, provide feedback, offer criticisms, etc.
<input type="checkbox"/>	7. Opportunity for Tribes to request additional consultation if consensus is not achieved. <i>From 8/17 GIHAC Meeting Recommendations</i>
<input type="checkbox"/>	8. Record taking/minutes
<input type="checkbox"/>	9. Urban Indian Organizations and Tribal organizations, while not parties, can be present at the consultation.

7. POST CONSULTATION MEETING REQUIREMENTS

<input type="checkbox"/>	1. Post Consultation Letter to Tribes within 14 days after consultation that documents: <ul style="list-style-type: none">a. <input type="checkbox"/> Meeting attendees;b. <input type="checkbox"/> Tribal requests;c. <input type="checkbox"/> Tribal input;d. <input type="checkbox"/> What agency is doing in response to Tribal requests and input;e. <input type="checkbox"/> Agency plan of action; andf. <input type="checkbox"/> Whether consensus was achieved or whether additional consultation is necessary to achieve consensus <i>From 8/17 GIHAC Meeting Recommendations</i>
<input type="checkbox"/>	2. This Consultation Policy does not preclude the Tribal government from exercising their sovereign authority to engage on the agency action at a higher level of government, particularly when consensus has not been achieved through agency consultation (i.e. Governor, federal agency level). <i>From 8/17 GIHAC Meeting Recommendations.</i>

8. COLLABORATION PROCESS

<input type="checkbox"/>	1. Collaboration vs. Consultation. Separate and distinct process from consultation
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<input type="checkbox"/>	<p>2. Tribal Advisory Workgroup.</p> <p>a. Function(s). Assist with identifying issues that have Tribal implications.</p> <p>b. Membership.</p> <ul style="list-style-type: none"> ▪ <input type="checkbox"/> Tribes ▪ <input type="checkbox"/> State Agency Representatives/Staff ▪ <input type="checkbox"/> Tribal Organizations. The Tribal Advisory Workgroup does not represent Tribes nor are a substitution for Tribal government-to-government consultation. Tribal organizations' role on the Tribal advisory workgroup shall be limited to providing technical assistance only.
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9. INTRA-AGENCY COORDINATION

<input type="checkbox"/>	<p>1. Requirements for Agency to consolidate consultation topics and/or coordinate with other agencies for joint consultations. <i>From AIHC Tribal and Health Leaders' Summit, September 2022</i></p>
<input type="checkbox"/>	<p>2. Requirement to forward consultation notice and information to Governor's Office of Indian Affairs (GOIA).</p>

10. MISCELLANEOUS

<input type="checkbox"/>	<p>1. Appendix - Consultation Requirements Specific to Tribe. <i>From AIHC Tribal and Health Leaders' Summit, September 2022</i></p>
<input type="checkbox"/>	<p>2. Tribal Liaison</p> <ul style="list-style-type: none"> a. <input type="checkbox"/> Role and Function b. <input type="checkbox"/> Requirement to be located at highest level of organizational structure c. <input type="checkbox"/> Interview panel requirements
<input type="checkbox"/>	<p>3. Training Requirements</p> <ul style="list-style-type: none"> a. <input type="checkbox"/> Frequency. b. <input type="checkbox"/> Content. Training of staff and executive leadership on how to recognize Tribal implications, RCW 43.376, and the Uniform Standards for Tribal Consultation. c. <input type="checkbox"/> Who conducts. d. <input type="checkbox"/> Who attends. Leadership and Staff.
<input type="checkbox"/>	<p>4. Requirement for Tribal Assessment (e.g. Tribal survey) of Agency's compliance with their consultation policy and RCW 43.376.</p>

<input type="checkbox"/>	5. Appendix of “Tribal Consultation Best Practices” such as how an agency formally opens up the consultation meeting. <i>From AIHC Tribal and Health Leaders’ Summit, September 2022</i>
<input type="checkbox"/>	6. Sovereignty and Disclaimer
<input type="checkbox"/>	7. Review, Approval, and Effective Date

**TRIBAL DATA SOVEREIGNTY SUBCOMMITTEE OF THE GOVERNOR'S INDIAN HEALTH ADVISORY
COUNCIL
CHARTER**

1.1. Purpose

The Tribal Data Sovereignty Subcommittee (TDSS) provides a venue to address Tribal data sovereignty issues including:

- 1.1.1 Protecting Tribes' data including how their data is used or shared outside their Tribes;
- 1.1.2 Ensuring all Tribal jurisdictions in Washington State have equitable access to public health data to protect the health and safety of their citizens.

The TDSS shall not serve as a substitute for the state agency requirement to conduct Tribal consultation pursuant to RCW 43.376. The TDSS will make recommendations to the Governor's Indian Health Advisory Council.

1.2. Definitions

- 1.2.1. **Tribal Data** means public or private data or information on or about a Tribe or its people subject to Tribal rights of ownership and control. This includes, but is not limited to, Tribe of membership, Tribe of affiliation, events and conditions within the Tribe's jurisdiction and lands, information about Tribal members and any persons living within the Tribe's jurisdiction, Tribal census tract, Tribal land, and identification of Tribal facilities, entities, and enterprises.
- 1.2.2. **Tribal Data Sovereignty** means the legal authority of a Tribe to govern the collection, ownership, application, and interpretation of its own data or information even if it is collected by federal, state, or local governments.

1.3. Membership

The TDSS is comprised of the following members:

- 1.3.1 **Tribes:** One individual from each of the twenty-nine (29) Tribes in Washington State, designated by the Tribal legislative body, who is either the Tribe's American Indian Health Commission for Washington State (Commission) delegate or an individual specifically designated by the Tribe for this role, or their designee. If a Tribe does not specifically designate an individual to the TDSS, the Tribe's AIHC delegate will be the Tribe's TDSS member by default.
- 1.3.2 **Native Project:** The chief executive officer of the Native Project or their designee
- 1.3.3 **Seattle Indian Health Board:** The chief executive officer of the Native Project or their designee
- 1.3.4 **Representatives from Each of the State Agencies Who Are A Party to the Governor's Indian Health Advisory Council:** One member of the executive leadership team or their designee from the Department of Health, Department of Children, Youth and Families, Health Care Authority, Department of Social and Health Services, Office of the Insurance Commissioner, Department of Corrections, and the Washington Health Benefits Exchange.

1.4. **Collaboration**

Where feasible, the subcommittee may invite and consult/collaborate with:

- 1.4.1 Staff of Tribal organizations with specific expertise including, but not limited to, Tribal sovereignty, jurisdiction, cultural practices, and data.
- 1.4.2 Staff of State Agencies having expertise in the topics of data policy and access to data within state agency systems.

1.5. **TDSS Functions**

The primary functions of the TDSS will be to make recommendations to the Governor's Indian Health Council and provide technical assistance regarding the following:

- 1.5.1 protecting Tribal data sovereignty including, but not limited to, the State's use of AI/AN population data/information or Tribal data/information;
- 1.5.2 ensuring equitable access to public health data/information needed to exercise jurisdictional public health authority;
- 1.5.3 developing state agency policies and systems for coordinating the sharing and usage of public health and health data/information between State Agencies and Tribes and Tribal Epidemiology Centers;
- 1.5.4 developing a framework for publishing data/information on AI/AN in Washington State;
- 1.5.5 providing to any individual Tribe or Tribes, upon their request, technical assistance on proposals to use data/information that is specific to their individual Tribe or Tribes;
- 1.5.6 providing subject matter expertise on collection, management, reporting, sharing and interpreting Tribal and AI/AN data/information;
- 1.5.7 identifying data that should not be collected and/or included in datasets of state agencies party to GIHAC; and
- 1.5.8 providing suggested edits and recommendations regarding protection of Tribal and AI/AN data/information for template data sharing agreements between the DOH and local health jurisdictions and between DOH and Tribal jurisdictions.

1.6. **TDSS Operations**

- 1.6.1 The TDSS will be facilitated by the American Indian Health Commission for Washington State.
- 1.6.2 The TDSS will determine whether meetings will occur on a regular schedule or ad hoc, depending on the volume of work.
- 1.6.3 State agencies party to GIHAC will be invited to participate in TDSS meetings; however, the TDSS may schedule meetings to include only Tribes and other assignees, as needed.

1.7. **Amendment**

This charter may be amended through Tribal consultation.