

DEPARTMENT OF
HEALTH AND HUMAN SERVICES

TRIBAL
CONSULTATION
POLICY

2005

BACKGROUND

- **1994 Executive Memorandum**
- **1998 Executive Order**
- **2000 Executive Order**
- **2004 Executive Memorandum**

BACKGROUND

- **1997 HHS Consultation Policy**
- **Other HHS Division Policies and Plans**
- **Other Department Policies**

POLICY REVISION PROCESS

- **Regional Consultation Sessions
2003 & 2004**
- **HHS Budget Consultation Sessions
2003 & 2004**
- **IGA solicits nominations for
workgroup (Dec 2003)**
- **IGA/IHS appoint joint workgroup
(June 2004)**

POLICY REVISION PROCESS

- **Workgroup convenes to draft policy (June 2004 to Sept 2004)**
- **Tribal Comment Period (Oct 2004 to Nov 2004)**
- **OS internal comment period (Oct 2004 to Nov 2004)**
- **<http://www.nihb.org>**

POLICY REVISION PROCESS

- **Workgroup convened several times to review comments and finalize recommended policy (December 2004 thru January 2005)**
- **OS Policy signed January 14, 2005**

SECRETARY MIKE LEAVITT



UPDATES TO THE 1997 POLICY

- **Consistent and compliant with existing Executive Memorandum dated 9/23/04 and Executive Order 13175.**
- **Includes sections on *Performance, Evaluation, and Results*. Consistent with the President's Management Agenda and HHS Objectives.**
- **Incorporates reactivation of ICNAA, annual regional tribal consultation sessions, enhanced budget process consultation..**

1. INTRODUCTION

HHS and Tribes share the goal of

- Eliminating health and human service disparities of American Indians and Alaska Natives, and
- Ensuring that access to critical health and human services is maximized.

To achieve this goal,

HHS worked closely with Tribes to develop a policy for [□] open, continuous, meaningful consultation.

2. BACKGROUND

A unique government-to-government relationship exists between AI/AN Indian Tribes and the Federal Government, which is

- Affirmed in **statutes** and various **Presidential Executive Orders**;
- Grounded in **political, legal, moral** and **ethical principles**;
- **Not based upon race.**

3. TRIBAL SOVEREIGNTY

- Indian Tribes have an inherent right to **sovereignty over their lands, self-government and self-determination.**
- Consultation leads to **locally relevant and culturally appropriate** approaches to health and human services issues.
- Self-governance and self-determination **strengthen Tribal control** over Federal funding and **improve internal program management.**

4. POLICY

Consultation with Indian Tribes will occur to the extent practicable and permitted by law before any action is taken that will significantly affect Indian Tribes.

Each HHS Operating and Staff Division shall have an accountable process to ensure meaningful and timely input from Indian Tribes.

4. POLICY

No Division shall promulgate any regulation that has Tribal implications, imposes substantial direct compliance costs on Tribes, or is not required by statute unless:

- Funds necessary to comply are provided by the Federal Government OR
- A Tribal Summary impact statement is created AND
- Tribal written communications to the Division are provided to the Secretary.

4. POLICY

HHS will consult with:

- Federally-recognized Indian Tribes, and
 - Urban Indian Organizations
 - Non-Federally-recognized Tribal groups
 - Governing bodies of Indian Tribes on Federal and State Reservations
 - State Recognized Tribes
 - Other Indian Organizations
 - Native Hawaiians
 - Native Pacific Islanders (including American Samoan Natives)
 - Other Native American Groups that serve American Indians, Alaska Natives or Native Americans that could be negatively affected if consultation does not occur.

5. PHILOSOPHY

HHS is committed to work in partnership with Indian Tribes.

Each HHS Division is responsible to address Tribal issues in the context of their mission.

IGA monitors compliance with consultation policy.

ICNAA will provide advice on all HHS policies that relate to Indian Tribes.

Regional consultation sessions will enable HHS to consult with Tribes on a regular basis.

6. OBJECTIVES

- **Formalize** consultation process
- **Establish** requirements and expectations
- **Identify** opportunities for consultation
- **Uphold** the responsibility of HHS to consult
- **Hold** Division Heads accountable
- **Respond** to Indian Tribes' requests for consultation and technical assistance
- **Enhance** partnerships between Divisions and Indian Tribes
- **Provide** a single HHS point of contact

7. ROLES

- Indian Tribes
- Tribal Organizations
- Native Organizations

- Office of Intergovernmental Affairs (IGA)
- Assistant Secretary for Budget, Technology and Finance (ASBTF)
- Intradepartmental Council on Native American Affairs (ICNAA)
- Regional Offices
- HHS Divisions

8. TRIBAL CONSULTATION

- **Meeting or written correspondence**
- **Tribal Resolution**
- **HHS Secretary, Deputy Secretary, Division Head, Regional Director or their designee**
- **Tribal President/Chair/Governor and/or elected/appointed Tribal Leader or their designee.**

8. TRIBAL CONSULTATION

- **Identify critical event**
- **Identify affected/potentially affected Indian Tribes**
- **Determine level of consultation**
(correspondence, meetings, notice, receipt of comment, reporting of outcome)
- **Establish and adhere to a schedule for consultation**

9. CONSULTATION PROCESS

- **Tribal**
- **Consultation with Other Groups**
(if no conflict of interest or FACA restrictions)
- **States**
(IGA collaborates with Divisions to assist States in developing consultation mechanisms)
- **Regional Tribal Consultation**
(Regional Offices/Directors will work collaboratively with Tribes, IHS and others)

10. ESTABLISHMENT OF JOINT TRIBAL/FEDERAL WORKGROUPS AND/OR TASK FORCES

Purpose

- To develop recommendations on various technical, legal or policy issues.
- To enhance, but not replace, tribal consultation

Tasks

- Must identify purpose, preliminary charge, time frame and specific tasks
- Must widely distribute final products for additional consultation
- Must submit recommendations to the Secretary

11. HHS BUDGET FORMULATION

- Performance Budget Formulation (HHS)
- Operating Division Consultation Plan (OPDIVs)
- National Divisional Tribal Budget Formulation and Consultation Session (OPDIVs, STAFFDIVs)
- National HHS Budget Formulation and Consultation Session (HHS)
- Intradepartmental Council on Native American Affairs (HHS)
- Budget Information Disclosure (HHS)

12. MEASURING HHS TRIBAL CONSULTATION PERFORMANCE AND COLLABORATION

Reporting Mechanisms

- IGA Annual Tribal Consultation Report
- Divisions' Status Report on outcomes of Tribal budget recommendations
- Annual Regional Tribal Consultation Sessions Report
- GPRA
- PART

Goals

- Assess impact of Division activities
- Remove governmental procedural impediments
- Reduce regulatory burdens
- Collaborate

13. EVALUATION, RECORDING OF MEETINGS, AND REPORTING

Annual Tribal Budget Consultation Session Annual Regional Tribal Consultation

- Consultation and recommendations shall be formally recorded and made available
- Follow up actions shall be implemented and tracked by the appropriate Division
- IGA Annual Tribal Consultation Report shall report recommendations and actions to Tribes

14. CONFLICT RESOLUTION

Agencies shall consult with Indian Tribes to establish a clearly defined conflict resolution process to

- 1. Bring forward concerns with a substantial direct effect.**
- 2. Apply for waivers of statutory and regulatory requirements.**

15. SUPERSEDURE

16. EFFECTIVE DATE

This policy is effective January 14, 2005.

Each HHS Division shall complete necessary revisions to its existing policy or plan to conform to the revised Department Tribal Consultation Policy.

17. SUMMARY

- This policy was developed while acknowledging the considerable diversity of HHS Divisions and the people HHS serves.
- Consultation plans developed by Divisions should remain dynamic, changing as circumstances and Indian Tribes' input indicate.
- Intra-governmental coordination and inter-governmental consultation will benefit HHS as well as Tribes.

FINAL WORKGROUP REPORT

- **Introduction and Purpose**
- **Background**
- **Summary**
- **TCPRW Views and Recommendations**
- **Supplemental Information**

CONSULTATION WORKS!

Budget Consultation Process (FY 2006)

- **HHS requested funds that matched Tribal Priorities**
- **HHS and Indian Tribes are speaking with one voice**