I. Purpose and Goal Statements

Chapter 43.376 RCW is the policy that defines government-to-government relationships between state agencies and Indian tribes.

The purpose of this procedure is to comply with Chapter 43.376 RCW and the Washington State Centennial Accord of 1989. These procedures establish a “documented plan of accountability and detailed implementation procedures”\(^1\) between the Washington State Department of Health (DOH) and the Federally-Recognized Indian Tribal Governments. In doing so, they implement Washington State policy of government-to-government relationship with the tribes by ensuring that DOH will “collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affect Indian tribes and develop a consultation process that is used by the agency for issues involving or specific to tribes.”\(^2\)

Implementing the government-to-government policy requires that the DOH consult with tribal governments in a manner that is different than consultation with stakeholders, municipalities or counties, or local health jurisdictions. Unlike these entities, tribal governments are sovereign nations and are not subject to the authority of Washington State. This government-to-government relationship is the underlying basis for the consultation requirements prescribed in Chapter 43.376 RCW and the Washington Centennial Accord of 1989.

The goals of the procedures are to (1) enable a sustainable government-to-government relationship with tribes; (2) collaborate with tribes in a manner that promotes public health partnership opportunities; and (3) ensure effective public health services for Indian people.

II. Parties to Consultation

The following entities are the parties to a specific consultation:

A. The DOH Secretary of Health, a Deputy Secretary, or an Assistant Secretary.
B. Federally-Recognized Indian Tribes represented by the Tribal President, Tribal Chair, or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s).
C. American Indian Health Commission (AIHC) Board Chair or authorized representative, Northwest Portland Area Indian Health Board (NPAIHB).
D. Urban Indian Organizations (UIO) or other parties to consultation as listed in Appendix C.

The Secretary of Health or his/her designee who has decision-making authority is necessary for consultation to occur.

Contact information for the parties to consultation shall be maintained on the DOH web site at http://www.doh.wa.gov/AboutUs/PublicHealthSystem/TribalPublicHealth.aspx. Updates to contact information shall be the responsibility of the DOH Tribal Liaison.

III. The Collaboration Process

To promote functional public health partnership opportunities between state and tribal entities and to ensure effective public health services for Indian people, ongoing collaboration is desired by all

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\(^1\) Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington; Section IV, Implementation Process and Responsibilities; http://www.goia.wa.gov/government_to_government/data/centennialaccord.htm.

\(^2\) RCW 43.376.020
parties. This collaboration may occur through participation on workgroups, task forces, listening/sounding board sessions, tribal council, or other meetings. These forums for collaboration may be limited to DOH employees and tribes or may include other stakeholders and partners.

Tribal-specific forums have been created between DOH and the tribes for ongoing collaboration. These forums may be used to make recommendations as to which DOH policies or actions have tribal implications and therefore require consultation as outlined in Section IV below. The collaboration process will also be used to satisfy legal requirements for DOH to collaborate prior to consultation.

A. Consultation at the Leaders Health Summit
B. Participation at AIHC meetings
C. Quarterly DOH and AIHC leadership calls
D. Fireside Chat associated with the annual Tribal Emergency Preparedness Conference
E. Listening sessions

These forums may be held in person, via conference call or webinar, or other means agreed to by the parties. Necessary tribal and agency subject matter experts and decision-makers should be present to explain issues, discuss concerns, and help identify recommendations. Meetings will include DOH representatives, including the DOH Tribal Liaison, tribal leaders, AIHC, and other identified parties as appropriate.

Notice regarding the meetings will be emailed to all parties to consultation and posted on both the DOH and AIHC websites fifteen (15) days prior to discussions. Exceptions to the timeline can be made for time sensitive and other issues, as agreed to by parties.

These collaboration and pre-consultation meetings can be a component of the consultation process, but are not a substitute for the requirement to conduct consultation as outlined in “Consultation Forum” section of this document.

IV. The Consultation Process

A. When Consultation Must Occur

As noted in Section 1, DOH will collaborate with Indian tribes and other parties listed in Section II, prior to the development of policies, agreements, and program implementation that directly affect Indian tribes and Urban Indian Organizations.

B. Determination of Whether a Policy, Agreement, or Program Implementation Affects the Other Party

The DOH Secretary of Health will engage tribal leadership in consistent, meaningful consultation regarding all aspects of public health programs, services, functions, and activities impacting or targeting tribal communities, people, and families, and/or resources on which they depend.

The Secretary will seek the concerns and advice of tribal leaders on how programs, services, functions, and other DOH activities should be carried out in tribal communities to ensure benefit to tribal people in a manner that enhances the tribes’ ability to decide, plan, and care for themselves and their families.

In addition, any entity listed in the “Parties to Consultation” Appendix C can request a pre-consultation meeting using mechanisms in Section III or a consultation meeting using the form in Appendix A. To the extent permitted by law, DOH shall not proceed on any policy or action that has tribal implications or is not required by law, unless and until DOH, prior to proceeding on the policy or action, has adhered to the consultation process.

The Secretary of Health will determine what issues will be taken to consultation based on input and recommendations received from the tribal specific forums referenced in Section III above.
Examples of issues requiring consultation include, but are not limited to:

1. Changes to the state or local governmental public health system
2. Grant applications or special projects involving tribal communities
3. Proposed legislation
4. Development of health education materials directed at tribal populations
5. Program and fiscal monitoring issues related to tribal contracting

C. Disagreement Regarding Need for Consultation, Decisions, or Outcomes

To minimize disagreements about the need for consultation, decisions, or outcomes (prior to DOH action) and to assure effective cooperation and collaboration, requests for consultation will be circulated to identified tribal liaisons at tribes and the department. This action will provide a record of cooperation and collaboration that can be supported by tribal and state government and prevent expensive and unnecessary delays needing to be corrected.

D. Consultation Forums

Consultation forums may be in person meeting(s) at specified locations, webinars, or teleconferences, unless otherwise mutually agreed upon between the parties, as issues are identified.

1. In person meetings is the preferred forum.
2. Parties invited to the consultation may choose an alternative forum for consultation or alternate date, but must request the alternative forum and/or date within ten (10) days of receipt of the letter (Appendix A).
3. Written notification is sent to parties to consultation and must include where and how the consultation is to occur.

In addition to or in lieu of a meeting, parties may also submit written comments to the Department of Health for consideration.

A consultation meeting between agency and tribal leadership shall occur during (or in conjunction with) the AIHC Tribal Leaders Health Summit. The summit provides an opportunity for leadership to discuss public health issues of importance to tribes and the agency.

E. DOH Consultation Requests

If DOH requests consultation, a written request must be sent to the consultation parties at a minimum of at least fifteen (15) days prior—thirty (30) days when practical—to the scheduled consultation by the Secretary of Health or designee.

The written request must identify the proposed policy or action and provide an estimate of its impact on AI/AN people, their providers, and/or the tribes.

All DOH requests for consultation will be sent through email and regular mail to the tribal official and the AIHC. Requests will also be posted on the DOH website at [http://www.doh.wa.gov/AboutUs/PublicHealthSystem/TribalPublicHealth.aspx](http://www.doh.wa.gov/AboutUs/PublicHealthSystem/TribalPublicHealth.aspx).

F. Tribal Consultation Requests

If an entity listed in Section II, “Parties to Consultation,” requests consultation, a written request shall be sent to the DOH Secretary of Health. The written request shall identify the DOH proposed policy or action that requires consultation.

DOH will have fifteen (15) days to acknowledge receipt of request for consultation. Consultation will be scheduled within 45 days, unless otherwise requested by tribes.
G. Consultation Meeting

In order for consultation to be meaningful, as noted in Requirements of Consultation, the following actions shall occur at all tribal consultations:

1. Meeting will be held in a mutually agreeable public forum;
2. Parties identified in Section II, “Parties to Consultation,” shall be present;
3. Identification and full explanation of the issue, proposed action, or policy that is basis of the consultation request shall be provided;
4. Opportunity for all parties to further collaborate, ask questions, provide feedback, criticisms, etc., shall be afforded;
5. Proposal of DOH action in specific response to other party's questions, feedback, criticisms etc., shall be provided;
6. DOH will maintain records, to include minutes from consultation meetings; AND
7. Records shall be made available to all parties listed in Section II, “Parties to Consultation,” upon request.

H. Action Required after Policy Decision

The Department of Health will communicate to all parties listed in “Parties to Consultation” section within three (3) days of the time a decision is made to implement a proposed policy or action. Such communication shall be made via the DOH website, electronic mail, and alternative delivery services (fax, regular mail, etc.). DOH will maintain records of its tribal consultation activities including minutes from consultation meetings. Such records shall be made available to all parties in Appendix C.

After consultation, DOH will provide tribes a summary of consultation discussions which includes tribal feedback provided. The Secretary will ask for tribal concurrence regarding information provided in the summary. The summary will include the rationale for decision(s) made.

V. Appointment of Tribal Liaison

DOH will designate an agency Tribal Liaison to facilitate and monitor continued exchange of information and resolution of issues, serve as the principal point of contact for the consultation parties and DOH, attend and present agency updates at tribal meetings, and facilitate communication.

The DOH Tribal Liaison will ensure DOH leadership and other appropriate program staff are informed of major tribal concerns or issues; facilitate training related to Centennial Accord requirements, government-to-government relations, and policies; coordinate development of Centennial Accord Plans; and prepare the agency for annual Centennial Accord meetings.

The DOH Tribal Liaison will work with the Governor’s Office of Indian Affairs, tribes, and other interested parties to facilitate implementation and modification of this policy as needed.

The DOH Tribal Liaison will not be a substitute for the required agency representative listed in “Parties to Consultation.”

The DOH Tribal Liaison will report to the DOH Secretary of Health, who may delegate the day-to-day supervision of this person to another member of the Secretary’s Executive Team.

There will be tribal representation on the recruitment and selection process of the DOH Tribal Liaison.

VI. Sovereignty and Disclaimer

DOH respects the sovereignty of each tribe located in Washington State, and each tribe respects the sovereignty of the state of Washington. In executing this procedure, no party waives any rights, including treaty rights, or immunities, including sovereign immunities or jurisdiction.
This procedure does not diminish any rights or protections afforded other Indian persons or entities under state or federal law, including the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, to the Governor of Washington State or Region X Administrator of the US Department of Health and Human Services.

VII. Review, Approval, and Effective Date

The DOH Secretary of Health will be responsible for coordinating any updates or rescinding of this procedure or its associated procedure(s). The DOH Secretary of Health has full authority to review and approve this policy and associated procedure. The Secretary of Health also has the authority to delegate this responsibility.

This policy will be effective on August 13, 2015, and will be reviewed at the request of any of the parties referenced in “Parties to Consultation” section.

APPROVED BY: ___________________________________________________________________
John Wiesman, Secretary of Health
Washington State Department of Health