

**State of Alaska**  
**Department of Health and Social Services**  
**TRIBAL CONSULTATION POLICY**

**1. Statement of Sovereign Interest**

A. The State of Alaska, Department of Health and Social Services (DHSS), recognizes the inherent sovereignty of Alaska Tribes and is committed to maintaining a partnership with Tribes on a government-to-government basis. Alaska Native peoples have maintained organized societies, distinct traditional cultures, and sovereign governments for millennia across the land now known as Alaska. Alaska Tribes' inherent sovereignty has been recognized by all three branches of federal government and the Alaska Supreme Court. There are 229 sovereign tribes within Alaska. By recognizing this government-to-government relationship, the State acknowledges their inherent power of self-governance and authority.

In addition, some Alaska Tribes have created or empowered Tribal Organizations to advance their interests by delegating, designating, or assigning responsibility to the Tribal Organization.

B. As sovereign governments, both the Alaska Tribes and the State of Alaska, share a goal of ensuring maximized access to rights, protections, and services, including critical health and social services, while shared resources are effectively and efficiently utilized.

C. DHSS further recognizes that what is good for Alaska Native and American Indian people (AN/AI) is good for all Alaskans. Through communication and consultation with Tribes and Tribal Organizations, DHSS is better prepared and informed, and therefore better able to enrich and enhance the lives of all Alaskans.

**2. Definitions**

**"Alaska Native and American Indian" or "Alaska Natives and American Indians" or "AN/AI"** means people that reside in Alaska and fall within the definition of "Indian" in 20 U.S.C. 7491(3).

**"Commissioner"** means the Commissioner of the Alaska Department of Health and Social Services.

**"DHSS"** means the Alaska Department of Health and Social Services and its divisions, offices, officials, and employees.

**"Open and meaningful"** means

- a. consideration of the needs and challenges of rural villages and urban areas for both substance and participation.
- b. consideration of regional differences among Tribes for both substance and participation.

**"Tribe"** has the meaning given the term "Indian Tribe" in 25 U.S.C. § 1903(8), and any entity that falls within the definition of "Indian Tribe" in 25 U.S.C. § 5304(e). The Tribes decide who they will designate as participants and/or representatives on their behalf to consult with DHSS under this policy. "Tribe" does not include corporations formed pursuant to the Alaska Native Claims Settlement Act.

**"Tribal Consultation Advisory Committee" or "TCAC"** means an advisory committee comprising representatives from DHSS, Tribes, and Tribal Organizations as defined in this policy. The committee guides the implementation of this policy.

**“Tribal Organization”** means an entity in Alaska that falls within the definitions of “tribal organization,” “consortium,” or “inter-tribal consortium” in federal law, including 25 U.S.C. §§ 5304(l), 5362(b)(2), and 5381; § 325(a) of Public Law 105-83; and 25 C.F.R. § 1000.2. Any other Tribal Organizations not defined in federal law may also participate in the consultation/ Tribal communication and consultations convened under this policy if they have received the delegated, designated, or assigned authority to do so on behalf of one or more authorizing Tribe(s). Participation by any Tribal Organization does not abridge any Tribe’s ability to also participate.

### **3. Purpose, Types, and Scope**

**A. Purpose:** This policy is designed to assist and to inform DHSS in in the development of policy and initiatives, but excludes formal consultation required by the federal Government under the Medicaid program; development of DHSS’s budget; and development of legislative proposals.

This policy is a living document designed to be strengthened through the consultative process. This process is designed to have Tribes and Tribal Organizations assist DHSS in considering and evaluating ways to eliminate health and human services disparities of AN/AI by ensuring access to critical services that will lead to enhanced social, physical, and economic status of AN/AI. Consultation:

1. is timely, on-going, and facilitated through respectful and engaged communications between participants, which supports an open and meaningful exchange of information and opinions, without fear of reprisals, in order to grow mutual understanding with the goal of developing and adopting better state policy;
2. requires a shared level of responsibility, and that co-equal authority levels from each entity or their designee participate under this policy; and
3. ensures the engagement, respect, and decorum necessary in government-to-government relations to make informed decisions and to promote cooperation, collaboration, and respectful governmental interactions and relationships.

**B. Types:**

1. **Annual:** An annual Tribal Consultation meeting shall be scheduled at a mutually convenient time and place to discuss long term, strategic goals for improved laws, policies, and services; to identify challenges to achieving those goals; and to evaluate past Tribal communication and consultation outcomes, including outlining tasks to overcome challenges associated with implementing this policy.
2. **On-Going:** As needed/requested meetings or communications by which DHSS and Tribes or Tribal Organizations will communicate to discuss specific programs and initiatives that were identified in the annual meeting or any point during the course of the calendar year.

**C. Scope:** This policy can be implemented by one or more of the following means: direct or electronic mail, teleconference, face-to-face meetings, teleconferences including video, roundtables, or other means depending on the program or initiative being discussed, its complexity, and any related time constraints.

#### **4. Participants and Level of Authority**

A. Participants: DHSS shall support maximum participation of DHSS employees under this policy.

B. Level of Authority: Representative Qualifications include:

1. DHSS will ensure that its representatives who participate under this policy will be legally informed, culturally sensitive, exhibit cultural humility, and respectful of Alaska Native cultural values and protocols, and will be knowledgeable about Alaska Tribes, values, remote village ways of life and challenges, and governance differences.
2. DHSS employees participating shall demonstrate experience, education, and willingness to collaborate with participants.
3. DHSS will ensure that individuals who participate on its behalf under this policy shall have sufficient authority or delegated authority to engage in consultation.

#### **5. Goals**

A. Furthering the government-to-government relationship and increasing trust through the utilization of meaningful communication;

B. Eliminating health, welfare, and well-being disparities experienced by AN/AI, by considering cultural, social, physical, and economic status of AN/AI;

C. Ensuring that access is maximized to financial resources and critical health and social services so that services are provided in an efficient and coordinated manner to maximize the resources available for promoting the health and well-being of AN/AI; and

D. Ensuring that all who wish to participate shall be allowed to so that all views are considered.

#### **6. Process**

A. Request for a Consultation Session: DHSS, Tribes, and Tribal Organizations may request consultation. A request for consultation should be made to the DHSS Tribal Liaison and should, to the greatest extent possible:

1. Identify the subject(s) and issue(s) for attention;
2. Identify any applicable program(s), policy(ies), rule(s), regulation(s), or statute(s);
3. Identify the impact(s) or potential impact(s) on the participants or those they serve;
4. If applicable, identify other participants that could be impacted;
5. Indicate whether an in-person consultation is required or preferred, along with suggested dates, times and location for the in person meeting; and
6. Indicate whether there is a need for an expedited process.

B. Notice:

1. Within five (5) working days after a request for consultation is received the DHSS Tribal Liaison shall notify the TCAC of the request.
2. Within ten (10) working days of the request for consultation from the DHSS Tribal Liaison the TCAC shall meet and schedule the consultation.

3. Once the consultation is scheduled, the TCAC shall provide notification to the persons identified on the interested parties list maintained by the DHSS Tribal Liaison and on the State of Alaska On Line public notice system of the date, time and location of the meeting, including how to participate remotely.

C. Expedited Request: upon request and agreement that an expedited consultation is necessary, the notice provision in 6(B) are waived and the TCAC shall be responsible for scheduling the expedited consultation.

D. Documentation and Follow-Up: During the consultation process, DHSS will accurately record a narrative summary of the ideas exchanged including any actual or possible outcomes and will provide a written summary of written comments and of any in person meetings to all participants within fifteen (15) days of conclusion of the meeting.

E. Once DHSS has had the benefit of the consultation process, DHSS shall communicate the outcome or decision to participants no later than thirty (30) days after summary of the proceedings as provided in paragraph D above.

F. DHSS shall review, evaluate and generate a report outlining the consultation process and outcomes from the preceding year. This report may include recommendations to the Governor, Tribes, Tribal Organizations, and the TCAC. Reports generated under this section shall be distributed to participants and made available on the DHSS website.

## **7. Tribal Consultation Advisory Committee**

A. This policy creates a Tribal Consultation Advisory Committee (TCAC) to support and steward the consultation process.

B. The initial participants of the TCAC shall establish a charter for review at the annual consultation.

C. TCAC shall be responsible for scheduling both ongoing and annual meetings under this policy, including developing meetings in rural Alaska, and for establishing culturally appropriate protocols for consultations under this policy.

D. DHSS shall summarize TCAC meetings within fifteen (15) days. Once the summary is approved by the TCAC, they will be immediately posted on the DHSS website so that the information is accessible to all Tribes, Tribal Organizations, and affected individuals.

E. Recommended follow-up requiring DHSS action and/or attention will be implemented and tracked within DHSS and reported to the TCAC in a timely manner.

F. TCAC shall develop and implement means of electronic notification for all notifications and information under this policy to support and encourage maximum participation.

## **8. Limitations**

A. This policy does not diminish any rights or protections afforded to Alaska Tribes and Tribal organizations.

B. Nothing in this policy waives the State and DHSS's internal deliberative process or federal consultative requirements.

**9. Avoiding Disputes and Alternative Resolution**

A. Participants may, consistent with the protocols established by the TCAC, seek the assistance of other organizations in facilitating a consultation or communication or to avoid disputes.

B. When communication and consultation alone have not succeeded in the resolution of issues, Tribes, Tribal Organizations, and the State maintain their authority to seek other venues and forums to advance their priorities.

**10. Succession**

In order to ensure effective implementation of this policy, participants shall ensure that any changes in representatives in the process will be adequately prepared to engage and participate in consultation.

**11. Amendments**

This policy is a living document and may be amended based upon the input of the participants during consultation on this policy and/or through the TCAC in stewarding the consultation process. The Commissioner retains authority to amend this policy.

**12. Effective Date**

This policy is effective upon approval by the Commissioner.



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Jay Butler, M.D.  
Commissioner

October 26, 2018

