

# Policy No. 5 / OIC Tribal Consultation and Collaborative Process

---

**Effective date**            October 9, 2013

**Revised date**            May 31, 2018 \_\_\_\_\_

**Approving Authority**       
Mike Kreidler, Insurance Commissioner

**Reference**                **RCW 43.376.020(1)**

## I. Purpose

---

This policy establishes a consultation and collaboration process between the Office of the Insurance Commissioner (OIC) and federally-recognized Indian Tribal Governments in the development and implementation of any OIC policies or actions that directly affect one or more of the 29 federally recognized Indian Tribes of Washington (Indian tribes). It is adopted in compliance with the State of Washington Centennial Accord of 1989 and Washington Senate Bill 6175 as codified at Chapter 43.376 RCW. The purpose of the consultation and collaboration process is to:

- A. Ensure that notice is furnished to the parties identified in Section V.C. of this policy of any policy or action proposed by the OIC that directly affects Indian tribes;
- B. Provide an opportunity for the parties to collaborate and consult with the OIC prior to implementation of a policy or action that directly affects Indian tribes;
- C. Satisfy the requirement for the OIC to collaborate and consult with Indian tribes;
- D. Provide an opportunity to confer with Urban Indian Health Programs (UIHPs) and collaborate with the American Indian Health Commission for Washington (AIHC); and
- E. Recognize the unique status of Indian tribes as distinct from the status of, for example, stakeholders, municipalities, or counties.

## II. Sovereignty and Disclaimer

The OIC respects the sovereignty of each Indian tribe. In execution of this policy, no party waives: any rights, including treaty rights; immunities, including sovereign immunities; or jurisdiction. This policy does not diminish any rights or protections afforded 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.

## III. General Requirements of Tribal Consultation and Collaboration

---

- A. **Consultation.** Pursuant to the Washington Centennial Accord and Washington Senate Bill 6175 as codified at Chapter 43.376 RCW, tribal consultation shall:
1. Reflect the government-to-government relationship between the State of Washington and each individual government of Indian tribes;
  2. Be meaningful;
  3. Be a process that includes regular and ongoing exchange of information and opinions;
  4. Consist of informed decision-making; and
  5. Result in mutual understanding between Indian tribes as sovereign nations and the State of Washington on all policies and actions that directly affect Indian tribes.
- B. **Collaboration.** RCW 43.376.020(1) requires the OIC to make reasonable efforts to 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 OIC for issues involving specific Indian tribes. In the context of this policy, that means to engage in regular and meaningful collaboration with Indian tribes on all agency policies and actions that directly affect them. Collaboration is a working relationship between and among all parties to identify issues, solve problems, create solutions, and propose recommendations for consideration at consultations. The following are guidelines for OIC staff members to consider when collaborating with Indian tribes.
1. Acknowledge Indian tribes as political governing bodies and respect their sovereignty and the unique cultural and legal status they hold.
  2. Recognize that Indian tribes are traditionally, culturally, and administratively different not only from state government but also from each other.
  3. Seek a format for discussions that works best for the issue or issues that are involved. For example, some issues involve complex technical, legal, or policy issues. In those instances, consider establishing work groups or task forces to vet the issues and then formulate recommendations for consideration by the parties.
  4. Work in cooperation and coordination with the Governor's Office of Indian Affairs.

5. Work with Indian tribes in assessing and addressing unmet needs, service gaps, and other outstanding issues within the scope of the OIC's authority.
6. Ensure the OIC's thorough consideration of all suggestions and recommendations.

## IV. Tribal Collaboration Procedure

Tribal collaboration will be facilitated by the Tribal Advisory Workgroup (TAW).

- A. The purpose of the TAW is to:
  1. Satisfy the requirement for the OIC to collaborate with Indian tribes, UIHPs, and the AIHC under RCW 43.376.020; and
  2. Assist in the identification of any policy or action proposed by the OIC that directly affects Indian tribes or has an impact or potential impact on Indian tribes.
- B. The TAW shall be facilitated by the OIC and AIHC and shall consist of representatives from the OIC (including the OIC Tribal Liaison), tribal leaders, and AIHC Executive and Policy Committee members. The TAW shall also include representatives from Indian Health Services operated programs, 638 tribal contracted and compacted programs, and UIHPs (together referred to as "I/T/U Providers"). These representatives will participate in quarterly meetings. Notice regarding these meetings will be emailed to all parties listed in Section IV.C. and will be posted on both the OIC and AIHC and/or Northwest Portland Area Indian Health Board (NPAIHB) websites.
- C. TAW meetings may include the participation of experts and decision-makers who will explain issues and listen to the concerns of tribal leaders, I/T/U Providers, and representatives of the AIHC. I/T/U Providers, tribal leaders, and the AIHC will provide advice and recommendations on whether OIC policies or actions directly affect Indian tribes.
- D. TAW meetings, recommendations, and other forms of collaboration contribute to the consultation process but are not a substitute for the requirement for the OIC to conduct consultation as required under this policy.

## V. Tribal Consultation Procedure

- A. **When Tribal Consultation Must Occur.** Consultation and collaboration with Indian tribes and tribal officials must occur prior to implementation of all OIC policies and actions that directly affect Indian tribes except for emergency rulemaking. For the purposes of this policy, the phrase "policies and actions that directly affect Indian tribes" means the development of policies, agreements, and program implementation by the OIC that have substantial direct effects on Indian tribes or the relationship between the OIC and Indian tribes. This may include rulemaking as well as interpretive and policy statements described in RCW 34.05.230.

1. **Issues Directly Affecting Indian Tribes:** Such policies or actions include, but are not limited to, the following:
    - a. OIC rules regarding consumer access to health care providers including essential community provider provisions; and
    - b. OIC rules or actions regarding health insurance issuer contract requirements with I/T/U Providers.
  2. **Emergency Rule Exception.** When the OIC proposes an emergency rule that directly affects Indian tribes, consultation must occur as soon as practicable after the rulemaking is initiated.
- B. **Determination of Issues for Consultation.** The determination of whether a policy or action will directly affect Indian tribes will be made jointly by the Insurance Commissioner, the TAW, and as requested, the parties referenced in subsection C. of this section.
- C. **Required Parties.** Each party shall be represented by individuals with decision-making authority. Contact information for each of the parties to consultation shall be maintained by the parties. Updates to contact information shall be directed to the OIC Tribal Liaison referenced in Section VI. Consultation parties are:
1. **The Insurance Commissioner.** In the absence of the Insurance Commissioner, the Chief Deputy Insurance Commissioner or Deputy Insurance Commissioner with the appropriate decision-making authority.
  2. **Indian tribe or tribe** means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as defined by 25 U.S.C. § 1603(14). All Indian tribes that are parties to consultation under this policy are listed in Appendix "C."
  3. **Urban Indian Health Programs** means an Urban Indian Organization, as defined by 25 U.S.C. § 1603(29). In Washington State, there are two UIHPs: the Seattle Indian Health Board and the NATIVE Project of Spokane, as referenced in Appendix "C." Note: *An UIHP does not represent any Indian tribe nor does it substitute for an Indian tribe in any consultation held under this policy.*
  4. **AIHC** Board Chair or authorized representative who has authority to make decisions on behalf of the AIHC. *The AIHC is a not-for-profit entity that works on behalf of the Indian tribes and two urban Indian health organizations in Washington State on health policy and priority American Indian/Alaska Native (AI/AN) health issues that improve the Washington State tribal health delivery system and the health of individual AI/AN residents. Note: The AIHC does not represent any Indian tribe nor does it substitute for an Indian tribe in any consultation held under this policy.*
  5. **Tribal organizations** organized under the Indian Self-Determination and Education Assistance Act (P.L. 93-638; 25 U.S.C. § 450b(1)) such as the NPAIHB. Note: *A tribal*

*organization does not represent any Indian tribe nor does it substitute for an Indian tribe in any consultation held under this policy.*

**D. Notification and Meeting Requirements.** The OIC, Indian tribes, UIHPs, or the AIHC may initiate consultation at any time. To the extent permitted by law, the OIC shall not implement any policy or action that directly affects Indian tribes unless and until the OIC has followed the process described below.

**1. Step 1: Written Notification of Consultation and Selection of the Consultation Venue.**

- a. The OIC, Indian tribes, UIHPs, or the AIHC may request a consultation. Note: *UIHPs and the AIHC do not represent any Indian tribe nor do they substitute for an Indian tribe in any consultation held under this policy.*
- b. If the OIC is requesting the consultation, the OIC will propose a date and location for the consultation in a written request (see Appendix "A") at least 60 days prior to the proposed date except the OIC may issue the written request less than 60 days prior to the proposed date in special circumstances or when the matter or matters subject to the consultation are time-sensitive but in no event less than 21 days. All OIC requests for consultation will be posted on the OIC website and emailed to the Indian tribes, UIHPs, and the AIHC identified in this section.
- c. If an Indian tribe, UIHP, or AIHC is requesting a consultation, a written request must be sent to the Insurance Commissioner with a copy to the OIC Tribal Liaison.
- d. Upon receiving a consultation request from an Indian tribe, UIHP, or AIHC, the OIC will propose a date and location for the consultation and provide notice as described in Step 1.b.
- e. Requests for changes to the OIC's proposed date and/or location for consultation must be made within 7 days of the OIC's notice and must propose a specific alternative (see Appendices "A" and "B").
- f. Written requests must identify the specific policy or action that requires consultation and provide an estimate of its impact on AI/AN people, their healthcare providers, and/or Indian tribes.
- g. Face-to-face consultations are preferred but consultations may include participation via webinars, teleconferences, or both. Alternative consultation types may occur upon mutual agreement. Parties may submit written comments to the OIC in lieu of attendance at the consultation.

**2. Step 2: Consultation Meeting.**

In order for consultation to be meaningful as required in Section III.A. of this policy, the following actions shall occur at all tribal consultations:

- a. The meeting must be held at a venue convenient to the parties.
- b. The parties identified in subsection C. of this section shall be present as contemplated by subsection D.1.g.

- c. It is not required that parties be represented or in attendance for a valid consultation meeting to occur. Any consultation is valid when the notice procedures contained in this subsection are observed even if not all parties attend.
- d. Each issue and proposed action or policy that is a basis of the consultation request will be identified and fully explained.
- e. An opportunity will be afforded for all parties to further collaborate, ask questions, provide feedback, offer criticisms, etc.
- f. When specifically responding to other parties' questions, feedback, criticisms, etc., the OIC, when appropriate and feasible, will communicate its proposed action or actions.
- g. A record of the meeting will be made by the OIC for the purpose of subsequently preparing minutes.

### **3. Step 3: Action Required after Consultation.**

- a. The OIC will communicate to all parties listed in this section within a reasonable time of its decision regarding the subject of the consultation.
- b. Such communication shall be made via the OIC website, United States Postal Service, email, or as otherwise mutually agreed upon by the parties participating in the consultation.
- c. The OIC will maintain records of its tribal consultation activities including any meeting minutes and communications to parties about outcomes and decisions after consultation meetings consistent with applicable law. These records will also be made available to the public on the OIC website.

## **VI. OIC Tribal Liaison**

- A. The OIC Tribal Liaison shall arrange meetings, receive the contact information of all parties listed in Section V.C. of this policy, conduct workgroups, and distribute materials and other documents related to proceedings under this policy.
- B. The OIC Tribal Liaison is not a substitute for the required representatives of the OIC listed in Section V.C. of this policy except when authorized to act on behalf of the Insurance Commissioner and in possession of the appropriate decision-making authority.

## **VII. Scope and Application**

- A. This policy applies to all OIC divisions, programs, services, projects, activities, and employees when issues directly affecting Indian tribes are involved. OIC deputies and managers, who implement policy, oversee programs, services, and contracts, are responsible for implementing this policy within the scope of the OIC's authority. The Deputy Insurance

Commissioner for Consumer Protection is primarily responsible for implementing the provisions of this policy in cooperation with the OIC Tribal Liaison. This includes ensuring that OIC employees receive adequate training to help them understand their roles in implementing this policy and, when appropriate, in participating in the TAW established by Section IV.

- B. This policy does not govern matters within the insurance regulatory authority of the Insurance Commissioner such as conducting investigations, reviewing rate requests or forms submitted by insurers or issuers to the OIC, performing financial examinations, taking market conduct actions under Chapter 48.37 RCW, or enforcing compliance with the provisions of Title 48 RCW through administrative or judicial proceedings.
- C. This policy is intended only to improve the internal management of the OIC and does not create any right, benefit, or responsibility, substantive or procedural, enforceable at law by any party against the OIC or any person.

## **VIII. Effective Date**

This policy will be effective on the date indicated above and will be reviewed and evaluated periodically or at the request of any of the parties identified in Section V.C.

**APPENDIX A: CONSULTATION LETTER**

---

**Date**

Party to Consultation

<<Address 1>>

<<Address 2>>

**Re: [Insert name of Issue for Consultation]**

Dear <<PARTY TO CONSULTATION>>:

The Washington State Office of Insurance Commissioner (“OIC”) is proposing to adopt or implement the following policy or take the following action:\_\_\_\_\_

\_\_\_\_\_. **[Note: Enclose relevant documentation with this letter].** The OIC desires to initiate government-to-government consultation with \_\_\_\_\_ [insert party name] for this proposed policy or action.

The above policy or action, if adopted or implemented, will impact tribes and urban indian organizations by \_\_\_\_\_

The above policy or action will/will not have a financial impact upon tribes and urban Indian organizations in the State of Washington. This financial impact is estimated to be \_\_\_\_\_.

The Tribal Consultation is tentatively scheduled for \_\_\_\_\_, 20\_\_, at \_\_\_\_ a.m./p.m. at \_\_\_\_\_ [insert location]. **[Note: The OIC is to specify a date at least 60 days from date of this letter except under special circumstances].** If you prefer an alternate date or location, please submit this request on the attached tribal response form by \_\_\_\_\_ **[Note: Tribe, UIHP, or AIHC to specify a date at least 7 days from receipt of this letter].** In lieu of or in addition to participating in this meeting, the OIC is inviting your comments on this proposal.

Your response to this letter is greatly appreciated. In your response, please update your contact information to ensure prompt receipt of communications related to this proposal. The OIC is also inviting comments regarding any other tribal concerns that the proposal may raise. Please provide a response by **[Note: Tribe, UIHP, or AIHC to submit a response at least 7 days from receipt of this letter]** so that the described proposal and any of those identified areas of concern may be included on the meeting agenda for discussion. Should you have any questions about this proposal, you may contact **[Insert the name, phone number, and address of the OIC Tribal Liaison or designated OIC staff contact here].**

Sincerely,

Insurance Commissioner

cc: American Indian Health Commission for Washington State, Northwest Portland Area Indian Health Board

**APPENDIX B: CONSULTATION PARTY RESPONSE FORM**

---

**Consultation Party Response Form for [Name of Tribe/AIHC/Urban Indian Health Program]**

Name of Action or Policy: \_\_\_\_\_

Response to this request for consultation:

- Thank you for the information and initiation of consultation letter; however, we do not need to consult any further on this issue.
- We do not have a comment or concern at this time, although we request continued notification regarding this issue.
- We wish to consult on this issue at the time and location referenced in the attached letter.
- We wish to consult on this issue at an alternate time and location referenced in the attached letter. Please contact us at the number listed below to schedule this time.

\_\_\_\_\_  
Signature of individual completing form

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Name of Tribe/AIHC/Urban Indian Health Program

---

Has there been a change to your authorized representative? If so, whom should we contact about this issue if you are interested in discussing it further or receiving additional information?

Name (please print): \_\_\_\_\_

Phone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Fax number: \_\_\_\_\_

## **APPENDIX C: LIST OF INDIAN TRIBES, URBAN INDIAN HEALTH PROGRAMS, AND TRIBAL ORGANIZATIONS FOR CONSULTATION**

---

### **INDIAN TRIBES**

Colville Confederated Tribes  
Confederated Tribes of the Chehalis Reservation  
Cowlitz Indian Tribe  
Hoh Tribe  
Jamestown S'Klallam Indian Tribe  
Kalispel Tribe  
Lower Elwha Klallam Tribe  
Lummi Nation  
Makah Tribe  
Muckleshoot Tribe  
Nisqually Tribe  
Nooksack Tribe  
Port Gamble S'Klallam Tribe  
Puyallup Tribe  
Quileute Tribe  
Quinault Indian Nation  
Samish Indian Nation  
Sauk-Suiattle Tribe  
Shoalwater Bay Tribe  
Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribes  
Upper Skagit Tribe  
Yakama Nation

### **URBAN INDIAN ORGANIZATIONS**

Seattle Indian Health Board  
NATIVE Project of Spokane

### **TRIBAL ORGANIZATIONS**

American Indian Health Commission for Washington State  
Northwest Portland Area Indian Health Board