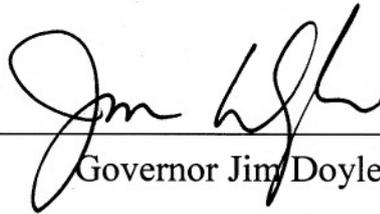




STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

POLICY REGARDING
CONSULTATION
WITH
WISCONSIN INDIAN TRIBES



Governor Jim Doyle



Secretary Karen E. Timberlake

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Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page</u>
I.	Introduction	1
II.	Objectives	2
III.	Guiding Principles	2
IV.	Purpose and Methods.....	3
V.	Resolution of Issues.....	4
VI.	Representation of Tribes on Committees and Workgroups.....	5
Appendix A	Glossary	7

I. Introduction

The various states have a unique legal relationship with each sovereign Indian government, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws and court decisions. Wisconsin Executive Order # 39, issued in February 2004, affirms the government-to-government relationship between the State of Wisconsin and each Indian government located within the State of Wisconsin.

Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken. The goal is to implement programs in a collaborative manner. The Wisconsin Department of Health Services (the Department) is committed to such government-to-government relations with the federally recognized Indian governments of Wisconsin (Tribes). The Department will employ its best efforts to achieve positive outcomes from its consultation and collaboration. The intent of this policy is to improve the planning, delivery of, and access to programs and services by Indian governments, communities, and people in Wisconsin. It is for this purpose that this policy has been developed.

The Department of Health Services is a comprehensive state agency, headed by a cabinet-level Secretary. The Department has responsibility for establishing policies and providing services in a wide variety of program areas, including public health services; Medicaid, BadgerCare, FoodShare; long term support options for elderly and people with disabilities, operation of institutions for persons with development disabilities; development of programs that prevent, postpone or lessen dependence on mental health/substance abuse services, and other health and human services programming.

Many of these services are provided directly through the State's legal and contractual relationship with county departments of human services or social services, county 51.42 and 51.437 boards, and local public health departments. These services are also often provided by tribal agencies through a contractual relationship between the Department and the individual Tribes or the federal government and individual Tribes.

Each of the federally recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique status and its right to existence, self-government, and self-determination. The Department of Health Services respects the fundamental principles that establish and maintain the relationship between Tribes and the Department. The Department affords Indian governments the same respect afforded to other governments.

The Department and Indian governments in Wisconsin have a history of cooperation and collaboration in the provision of services to tribal members. The Department also has a long-standing contractual relationship with Tribes for the provision of health and human services. This policy is intended to continue and further develop cooperation and collaboration between the Department and Tribes to improve the health, safety and well being of Indian people.

Both the Department and the Tribes have a responsibility for the provision of health and human services to tribal members. As residents of the State of Wisconsin, tribal members are equally

entitled to services afforded to all residents of the State. As members of a sovereign tribal nation, tribal members are also entitled to those services afforded to all members of their Tribe. Whether the services are provided through tribal agencies or directly through the Department's partner agencies, it is critical that the Department of Health Services' administration and leadership of the Tribes, and their respective representatives, consult with one another to assure the availability and successful delivery of needed services and other assistance.

II. Objectives

The objectives of this policy are:

- A. To create a collaborative relationship to improve the health, safety, and well being of tribal community members.
- B. To formalize the process and expectations for the Department to implement a government-to-government relationship and to foster consultation with and encourage participation of representatives of Tribes in policy development and program activities.
- C. To promote and develop methods of consulting with Tribes and to involve their representatives in the Department's decision-making process in order to assure that the needs of tribal people are met.

III. Guiding Principles

The Department is committed to improving and maintaining effective government-to-government relations with the Tribes. The development of mutual understanding, with cultural awareness, sensitivity, and responsiveness is necessary for effective consultation on policies and collaboration on program operations. Toward achieving this goal, the Department will utilize the following principles in consulting on policies and on program issues with Tribes. Integration of these principles into the Department's planning and management activities will help produce positive and desired outcomes in health and human services for tribal community members.

- A. It is important to recognize the uniqueness of each Indian community's culture, governmental structure and processes, demographics and geography (i.e., where tribal members are located), and other factors.
- B. Consultation involves respectful and timely communication between sovereign governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken.
- C. Working directly with Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process,
- D. Consultation with the Tribes when developing and implementing budgets, policies and programs, legislative initiatives, regulations, and other activities that are anticipated to directly affect Tribes or their members is necessary and respectful. This includes topics

presented by the Tribes on which they would like consultation.

- E. Promotion of cooperation among affected parties is the best way to implement initiatives and resolve issues of mutual concern.

IV. Purpose and Methods

The State of Wisconsin, represented for purposes of this policy by its Department of Health Services, with the concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to tribal community members, and other high-level matters of mutual concern.

The Wisconsin Department of Health Services, in consultation with the federally-recognized Indian governments located within the state, establishes this policy requiring Department staff to consult with the Tribes on Department policies and activities. This policy formalizes the collaborative relationship the Department and Tribes have established in creating, contracting for, and accessing health and human services for tribal communities in Wisconsin.

A. Annual Meetings

The Secretary of the Department of Health Services, in consultation with leadership of the Tribes, shall assume the responsibility for scheduling at least one annual consultation session at which the Secretary will be present. The consultation must include invitations to, at a minimum, the following individuals or their designee:

- Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- Chairperson, Forest County Potawatomi Community
- President, Ho-Clunk Nation
- Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chairperson, Menominee Indian Tribe of Wisconsin
- Chairperson, Oneida Tribe of Indians of Wisconsin
- Chairperson, Red Cliff Band of Lake Superior Chippewas
- Chairperson, Sokaogon Chippewa Community
- Chairperson, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Community
- Tribal Administrators and program staff as determined by the tribal Leadership
- The Secretary of the Wisconsin Department of Health Services
- Department administrators and other staff as determined by the Secretary

The agenda, date, and location of the consultation session shall be determined jointly by the Secretary and tribal leaders. The schedule will take into account the desirability of allowing adequate time during even numbered years for development of the Department's biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting during each calendar year to review and evaluate the accomplishments and effectiveness of the previous year's Implementation Plan (see section IV.B.) and to establish mutual goals for the current year's Implementation Plan. The agenda shall also include:

- A list of priority issues for resolution in conjunction with the Tribes.
- A list of programs and services available to Tribes, including a description of Department programs and an organizational chart.
- A description of new Department initiatives, programs, and policies affecting Tribes.

B. Annual Implementation Plan

The Department shall establish an Implementation Plan as part of the annual consultation meeting in conjunction with leadership of the Tribes. The Implementation Plan shall include the issues to be resolved and actions identified and mutually agreed upon at the consultation meetings.

C. Other Meetings

The Secretary of the Department of Health Services, in consultation with tribal leadership, shall assume the responsibility for scheduling additional consultation sessions at his or her discretion. In addition, any Chairperson or President of a Tribe may request meetings or other consultation with the Secretary or other Department representatives.

D. Training

It shall be part of the Department's policy to establish one or more annual training sessions for appropriate Department employees and other partners. The purpose of this training is to educate Department employees and others regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives, consensus building, tribal sovereignty, tribal governments, and tribal services systems. The Department shall make every effort to involve tribal leaders or their designees in the development of the curriculum and provision of the training.

V. Resolution of Issues

In any given year, specific issues affecting one or more Tribes and the Department of Health Services may arise. These issues may be raised by either a Tribe or the Department and may occur at various levels within either party. The following process is to be used when such issues arise.

A. Initial Discussion

When an issue arises and an employee of either a Tribe or the Department contacts an employee of the other entity, they will discuss the issue and attempt to resolve it. If higher level involvement is required, the process described in Subsection V.B. will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Subsection V.C.

B. Issues Requiring Higher Level Involvement

If higher level involvement is needed, the issue will be raised to the appropriate level in a Division or the Department for resolution. Within a Division or other subunit of the Department, the appropriate manager will assume responsibility for contacting the Tribe and attempting to resolve the issue. Resolution shall be sought through the Division hierarchy prior to being referred to the Department level. At the Department level, the Tribal Affairs staff, with the support and assistance of the Secretary's Office, will facilitate contact between the appropriate Department staff or managers and the Tribe. Communication between those parties shall occur as soon as is reasonably possible, subject to Subsection V.D, to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be established for resolving the issue.

C. Issues Affecting More Than One Tribe

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the Department program representative who is involved with the issue will, after consulting with the Department Tribal Affairs staff, make contact with the Tribe to inform them the issue will affect other Tribes. A designee of the Department Secretary and the Tribal Affairs staff shall notify all affected Tribes and initiate the resolution process. Communication involving all of the potentially affected parties will occur in a timely manner and will be facilitated by the Department Tribal Affairs staff and the designee of the Department Secretary.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher level authorities as described in Subsection V.B.

D. Timeliness of Response

Within ten (10) business days after receiving contact from a tribal representative, the Department representative shall respond to the tribal representative with a resolution of the issue or a projected timeframe for resolution of the issue. The parties may negotiate the timeframe for resolution.

VI. Representation of Tribes on Committees and Workgroups

During the normal course of business, it is often necessary for the Department to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the Department. The Department shall inform the Chairpersons and Presidents of the Tribes in writing of the creation of such committees, councils, workgroups, or similar bodies that deal with policies or programs affecting Tribes or tribal members. The Division Administrator shall

communicate in writing with all Tribes regarding any proposed policies or programs under consideration in order to solicit input.

A. Long Term and Ongoing Bodies

If the Department or Division establishes any ongoing or long-term advisory committee, commission, or similar body, the Secretary or appropriate Division Administrator shall notify the Chairperson or President of each Tribe, in writing, of the nature and purpose of the body, the anticipated outcome(s), the qualifications of the representative desired, what expenses will be reimbursed, and the time commitment required for serving on the body. The Department will defer to each Tribe's determination of whether or not to designate a person to serve on the body. When the Department is advised by a committee or council created by state statute, executive order, or other mechanism with appointments made by the Governor or other appointing authorities outside of the Department, the Department will give similar notice to each Chairperson or President of a Tribe allowing the opportunity for him or her to identify interest in appointment consideration, unless some other appointing process or authority is mandated.

If the body requires tribal representation, but the size of the body, as determined by the Department, precludes a representative from each Tribe, then the Department will request representation from Tribes on a rotating basis so that, over time, all interested Tribes will be represented on various bodies. The Department Tribal Affairs Office will maintain an ongoing list of representatives and their tribal affiliation. When more than one Tribe indicates interest in being represented, the Department shall allow representatives of at least two Tribes to participate.

B. Short-Term and Ad Hoc Bodies

If the Department, a Division, or a subunit of a Division establishes any external ad hoc committee or workgroup which affects Tribes or tribal members, the appropriate individual in the Department, Division, or Division subunit shall contact the Tribes' program directors in the program that is affected by the work of the committee or workgroup. The contact shall initially be in writing and shall include a description of the nature and purpose of the body, the anticipated outcome, the qualifications of the representative desired, what expenses will be reimbursed, and the time commitment required for serving on the body. The tribal program directors, after any necessary consultation, will determine whether or not to appoint a person to serve on the committee or workgroup. If the body requires tribal representation, but the size of the body, as determined by the Department, precludes a representative from each of the Tribes, then the Department will request representation from Tribes on a rotating basis so that, over time, all Tribes will be represented on various bodies. The Department Tribal Affairs Office will maintain an ongoing list of tribal representatives and their tribal affiliation. When more than one Tribe indicates interest in being represented, the Department shall allow representatives of at least two Tribes to participate.

Appendix A GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply.

"Consultation" means a process used to facilitate communication, interaction, and the exchange of views and perspectives between the Department of Health Services and each of the federally-recognized Indian Tribes in Wisconsin.

"County department of human services" means an agency that is part of a county governmental structure with the powers and duties described in sec. 46.23, WIS. Stats.

"County department of social services" means an agency that is part of a county governmental structure with the powers and duties described in sec. 46.215 or 46.22, WIS. Stats..

"County 51.42 board" means a Community Program Board within a county, which delineates the county's responsibilities for the provision of a range of services to citizens with disabilities, either mental health, substance abuse or developmental disabilities.

"County 51.437 board" means a Community Program Board within a county, which delineates the county's responsibilities for the provision of a range of services for citizens with developmental disabilities.

"Cultural awareness and sensitivity" means having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions and all other achievements and manifestations of human work and thought as expressed in a particular community.

"Department" means the Wisconsin Department of Health Services.

"Division" means a subunit of the Department responsible for the management, administration, and provision of programs and services in specific program areas.

"Government-to-Government" means communication and dealings between sovereign governments, their agencies and other official entities.

"Indian government" or *"Tribe"* means a sovereign government of an Indian people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States and subject to the Constitution, laws and treaties of the United States, which also may be known as a "federally recognized Indian Tribe".

"Public health department" means a local health department of a governmental entity that 1) has a local board of health, 2) has a full-time local health officer who meets the necessary qualifications; 3) provides at least surveillance, investigation, control and prevention of communicable diseases, other disease prevention, health promotion and human health hazard

control; and 4) regularly and systematically collects, assembles, analyzes and makes available information on the health of the community, including statistics on health status, community health needs and epidemiologic and other studies of health problems; develops public health policies and procedures for the community, involves key policymakers and the general public in determining a set of high priority public health services and assures access to these services to every member of the community; submits data, as requested, to the local public health data system established by the department; and acts as an agent of the department, if designated by the Secretary.

“Sovereign” means independent of the control of another government or governments.