9/02/09 Arizona Department of Health Services Tribal Consultation Policy Meeting Final Report

Will Humble, Director

April 2010

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Background

This meeting was jointly planned with the Arizona Health Care Cost Containment System (AHCCCS) to maximize tribal involvement while minimizing time commitment and travel costs. AHCCCS held their Tribal Consultation Policy Meeting in the morning and Arizona Department of Health Services (ADHS) held its Tribal Consultation Policy Meeting in the afternoon at our respective office buildings. Invitation letters jointly signed by Will Humble, ADHS Director and Anthony D. Rodgers AHCCCS Director, were mailed out to Tribal Leaders on 8/04/09 notifying and inviting them or a member of their staff to the Tribal Consultation Meetings. The September 2nd meetings were preceded by three Working Group meetings with the Working Group comprised of ADHS, AHCCCS, Tribal, Indian Health Service and Inter Tribal Council of Arizona, Inc. (ITCA) personnel. The Working Group charge was to develop recommended changes to the ADHS and AHCCCS Tribal Consultation Policies to then be presented at the 9/02/09 meetings.

Meeting Report

The ADHS meeting was held at the ADHS 1740 West Adams building in Conference Room 005. The meeting started at 1pm and ended at 3pm. Twenty-four individuals attended the meeting comprised of representatives from the Navajo Nation, San Carlos Apache Tribe, White Mountain Apache Tribe, Tohono O'odham Nation, Pascua Yaqui Tribe, Salt River Pima-Maricopa Indian Community, Inter Tribal Council of Arizona, Governor's Office, Advisory Council on Indian Health Care, ADHS, and AHCCCS. See Attachment One for a copy of the meeting agenda and Attachment Two for an individual listing of the participants.

The meeting started with a welcome and individual introductions. This was followed by opening remarks provided by Dr. Laura Nelson, Acting Deputy Director, Division of Behavioral Health Services, ADHS. Dr. Nelson was representing Will Humble, Director ADHS. Director Humble was in Mexico at a Border Governor's conference and thus was not available for this meeting. In her remarks Dr. Nelson encouraged open and supportive working relationships between ADHS and the Indian tribes and nations of Arizona. Following Dr. Nelson, Katosha Nakai, Policy Advisor for Tribal Affairs, Governor's Office provided brief remarks stating that Governor Brewer expects meaningful consultation between state agencies and the Indian tribes and nations of Arizona. Next Michael Allison, Native American Liaison, ADHS provided an overview of the Governor Office Executive Order 2006-14 and the existing ADHS Tribal Consultation Policy.

Following Mr. Allison's presentation Alida Montiel, Health Policy Advisor, ITCA provided a presentation on suggested language additions and deletions to the

existing ADHS Tribal Consultation Policy as recommended by the Working Group. Open discussion took placed during Ms. Montiel's presentation. See Attachment Three for a copy of the working group's proposed language changes. Underline wording denotes additions and strike through denotes deletions. The following summarizes the group discussion on these recommended language changes.

Section 1 (Introduction) and Section 2 (Background) – There were no comments or questions.

Section 3 (Policy) - Concerning appropriate implementation of state laws, Reuben Howard, Health and Human Services Director, Pascua Yaqui Tribe, explained the example of the state JK Settlement being imposed through Tribal Regional Behavioral Health Authority contracts on Indian tribes when tribes were not part of the lawsuit or settlement.

Section 4 (Philosophy) – Kathy Kitcheyan, Health and Human Services Director, San Carlos Apache Tribe noted the collaborative working relationship exhibited between the state, counties and tribes for the H1N1 pandemic flu mitigation efforts.

Section 5 (Objectives) - Concerning the "substantial tribal implication" language, Kathy Kitcheyan questioned who makes this determination, Dr. Nelson replied that a future meeting would be required to address that question as well as others. Concerning the inclusion of tribal representation in state plans Teresa Ehnert, Bureau Chief, Bureau of Public Health Emergency Preparedness, ADHS commented on the inclusion of tribes in public health emergency preparedness including H1N1 mitigation through Inter Governmental Agreement contracts between ADHS and Arizona Indian tribes and nations. Roz Begay, Program Manager, Navajo Division of Health commented that Anslem Roanhorse, Executive Director, Navajo Division of Health consistently advocates on behalf of the Navajo Nation and all Indian tribes for full inclusion of tribes in state and federal activities that impact Indian tribes and nations. Gary Quinn, Health and Human Services Director, Tohono O'odham Nation, commented on the need for common priorities among tribes, Indian Health Service, state, and counties as done for the H1N1 response.

Section 6 (Principles) – Kathy Kitcheyan recommended to delete the words "and American Indians" after the word "Tribes" in the second paragraph of this section. Violet Mitchell-Enos, Health and Human Services Director, Salt River Pima-Maricopa Indian Community recommended adding the word "practice" after the word "protocol in number 5 of the third paragraph.

Section 7 (Consultation Process) – There was consensus that the recommended "no less than 45 days" language in A (2) needed to be modified to provide more clarity and workability. Suggested modified language was "shall make every effort to provide no less than 45 days notice prior to implementation." Dr. Nelson commented that appropriate communications include email communications.

Carol Chicharello, AHCCCS Tribal Relations Liaison, commented that AHCCCS had developed language that could be used for this purpose and that she would provide this language to ADHS. Violet Mitchell-Enos commented that the tribes, in spite of best efforts by agency Tribal Liaisons, still do not have working knowledge of state agency programs and services. She recommended that efforts be made to address this situation. Due to meeting time expiration and Dr. Nelson having to leave the meeting to attend another appointment, the discussion on the working group's recommended language changes ceased without having a discussion on the remaining recommended language changes.

The meeting ended with closing remarks and comments for next steps. Dr. Nelson commented that there was an internal need to ensure that all ADHS staff become knowledgeable about the ADHS Tribal Consultation Policy. She further commented that the annual agency Tribal Consultation Report required by Executive Order 2006-14 should include information on ADHS program and services. Gary Quinn commented that state government front line employees need tribal cultural competency training especially in understanding government-to-government relationship and that he would be willing to participate in these training by being a presenter. Rueben Howard commented that the working group would like feedback from ADHS on their recommendations. Alida Montiel commented that the working group needed more time to finish their work on the recommended language changes. Roz Begay commented on the tribal consultation agreement process used by the state of New Mexico which required signature of elected state and tribal leaders.

Follow Up

Immediately following the closing of the meeting, a majority of the tribal and ITCA representatives including Carol Chicharello met with Michael Allison to discuss next steps. The following was agreed to: 1) The working group would continue its work to finalize recommendations, 2) A meeting summary/report would be developed for today's meeting and sent out to the Chief Elected Officer of each tribe with a cc to the tribal Health Directors, 3) The working group's final recommendations would be presented to ADHS leadership, 4) ADHS leadership would provide feedback to the working group, 5) ADHS leadership and the working group would meet to reach common agreement on the recommended revised language, 6) ADHS would distribute the revised ADHS Tribal Consultation Policy to the Chief Elected Officer of each tribe for comment and feedback prior to finalization.

Attachment One

AGENDA

ADHS Tribal Consultation Policy Meeting
Arizona Department of Health Services
1740 West Adams Street
Conference Room 005
9/02/09
1-3pm

1:00pm	**Welcome and Recognition of Tribal Leaders and Health Directors**	**Michael Allison Native American Liaison, ADHS**
1:15pm	**Opening Remarks**	**Dr. Laura Nelson Acting Deputy Director, Division of Behavioral Health Services, ADHS**
1:25pm	**Review of Governor Office Executive Order 2006-14 and ADHS Tribal Consultation Policy**	**Michael Allison**
1:40pm	**Presentation of Tribal Consultation Policy Working Group Recommendations**	**Alida Montiel Health Policy Analyst, ITCA Reuben Howard Executive Director Health Services Division, Pascua Yaqui Tribe**
2:10pm	**Comments from the Audience**	**Michael Allison**
2:50pm	**Next Steps**	**Dr. Laura Nelson**
3:00pm	**Adjournment**	

Attachment Two

Name	Title	Company	Email Address
Roselyn Begay	Program Manager	Navajo Nation	roz.begay@nndoh.org
Kathy Kitcheyan	DHHS Director	San Carlos Apache Tribe	kathykitcheyan@scatcom.net
Donna Vigil	Executive Director, Health Authority	White Mountain Apache Tribe	dvigil@wmat.us
Gary Quinn	Director, DHHS	Tohono O'odham Nation	Gary.quinn@tohononation_nsn
Reuben T. Howard	Executive Director, DHHS	Pascua Yaqui Tribe	reuben.howard@pascuayaqui-nsn.gov
Violet Mitchell-Enos	Director, DHHS	Salt River Pima-Maricopa Indian Community	violet.mitchell-eno@srpmic-nsn.gov
Alida Montiel	Health Systems Analyst	ITCA	alida.montiel@itcaonline.com
Kim Russell	Human Services Coordinator	ITCA	kim.russell@itcaonline.com
Julia Kitcheyan	Intern/CM Supervisor	ITCA/Gila River	julia.kitcheyan@gric.nsn.us
Fred Hubbard	Executive Director	ACOIHC	fred.hubbard@ahcccs.gov
Katosha Nakai	Tribal Policy Advisor	Governor's Office	knakai@az.gov
Laura Nelson	Deputy Director	ADHS	nelsonla@azdhs.gov
Janet Mullen	Deputy Director	ADHS	mullenj@azdhs.gov
Mary Wiley	Assistant Director	ADHS/DLS	wileym@azdhs.gov
Michael Allison	Native American Liaison	ADHS	allisom@azdhs.gov
Bryan Mitchell	Program Spt. Manager	ADHS Bureau of Nutrition	mitcheb@azdhs.gov
Joan Agostinelli	Chief, OCSHCN	ADHS	agostij@azdhs.gov
Laura Oxley	Public Inform. Officer	ADHS	oxleyl@azdhs.gov

Name	Title	Company	Email Address
Teresa Ehnert	Bureau Chief, BPHEP	ADHS	ehrnertt@azdhs.gov
Ann M. Froio	Assistant Director	ADHS	froioan@azdhs.gov
Margaret Russell	Bureau Chief of Policy	ADHS/DBHS	margaret.russell@azdhs.gov
Verna Johnson	Program Manager	ADHS/BTCD	johnsov@azdhs.gov
Taryn Watson-Kaye	NA Comm. Develop. Manager	ADHS/HSD	watsonka@azdhs.gov
Carol Chicharello	Tribal Relations Liaison	AHCCCS	carol.chicharello@azahcccs.gov

Attachment Three

Proposed Revisions to the Arizona Department of Health Services (ADHS) Tribal Consultation Policy

1. Introduction

The mission of the Arizona Department of Health Services (ADHS) is to ensure the delivery of comprehensive public health services to the general population of Arizona including behavioral health services for the Medicaid eligible and seriously mentally ill populations. ADHS and Indian Tribes in the State of Arizona share the common goal of decreasing health disparities and maximizing access to critical health services. In order to achieve this goal, it is essential that ADHS and Indian Tribes engage in open, continuous, and meaningful consultation on a government to government basis. True consultation consists of ongoing information exchange and mutual understanding which leads to informed decision-making.

2. Background

A unique government-to-government relationship exists between Indian Tribes and Federal and State Governments. Since the formation of the Union, the United States has recognized Indian tribes as sovereign nations. Treaties and laws, together with court decisions, have defined a relationship between Indian Tribes and the Federal Government that is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous laws and regulations and policies that establish and define a trust relationship with Indian Tribes (see ~~Appendix~~ Attachment A). As a state agency responsible for administering federal programs, these regulations and policies play a significant role in the ADHS Tribal Consultation Policy.

The foundation of this policy is Arizona State Governor Executive Order 2006-14 issued on September 14, 2006 which mandated the development of tribal consultation policies by all Executive Branch agencies. This ADHS Tribal Consultation Policy follows the instructions given in that Executive Order (see Attachment B).

3. Policy

The guiding principle of this Policy is to ensure that, pursuant to the special relationship between the Indian Tribes and Federal and State Governments, reasonable notice and opportunity for consultation with Indian Tribes is provided by the ADHS Administration ~~regarding~~ prior to implementing any high-level policy changes that significantly impact Indian

Tribes in the State of Arizona. High–level policy changes that significantly impact Indian Tribes refer to actions that have substantial Tribal implications with direct effects on one or more Indian Tribes, on the relationship between the State of Arizona and Indian Tribes, or on the distribution of power and responsibilities between the State of Arizona and Indian Tribes. The State recognizes that state laws and regulations will be implemented appropriately as they apply to Indian Tribes receiving payment for services provided under the ADHS program.

4. Philosophy

The involvement of Indian Tribes in the development of ADHS policy allows for locally relevant and culturally appropriate approaches to important issues. Therefore, ADHS is committed to working with Indian Tribes to improve the quality, availability, and accessibility to public health services and behavioral health care by eliminating barriers to care for American Indians in Arizona.

5. Objectives

In order to fully effectuate this Policy, the ADHS Administration will:

(1) Establish communication channels with the elected leader of each tribe and the appointed leadership of the Health Department for each Tribe in Arizona. The ADHS Administration recognizes a standing goal of working with Tribes is to increase their knowledge and understanding of ADHS programs and policies.
(2) Seek timely consultation with Indian Tribes to discuss potential changes to high level policy that would have a significant impact on Indian Tribes.
(3) Allow for consultation with Indian Tribes in the development of new policy with substantial Tribal implications.
(4) Provide relevant background information on the consultation topics so that Tribal officials may fully consider the information when providing recommendations to the agency.
(5) Coordinate within the Agency to ensure consistent application of the Tribal Consultation Policy.
(6) Include Tribal Representation in State Plans negotiations between the State and federal agencies such as CDC.

6. Principles

Trust among ADHS and Indian Tribes is an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. The ADHS Administration, guided by the Native American Liaison, shall use the

guidelines in Section 7 to determine the nature and extent of consultation that should occur to ensure that the intent of this Policy is satisfied. Consultation occurs whenever the ADHS Director and Tribal Official(s), and/or their designees, engage in oral or written correspondence to discuss an issue. Consultation with a single Indian Tribe will not substitute for consultation with other Tribes on issues that may affect more than one Tribe.

ADHS staff persons who have a role in the development or implementation of policy substantially affecting Indian Tribes and American Indians in the State of Arizona shall understand the purpose of the ADHS Tribal Consultation Policy, its expectations, applicability and its anticipated outcomes.

ADHS shall engage in the consultation process with tribal governments on substantive policy matters which include, but may not be limited to the following:

(1) Proposed amendments to the agency's tribal consultation policy.
(2) Proposed or existing tribal/state/federal intergovernmental agreements or contractual language revisions.
(3) Proposed resources distribution methodologies with full disclosure of pertinent background information.
(4) Proposed State Plan development, amendments and implementation or limitation of identified services.
(5) Proposed policy, protocol or rule changes that would impact the delivery of state funded services provided in American Indian communities.

7. Consultation Process

ADHS engages in consultation with Indian Tribes about policy issues at a variety of levels through a variety of methods to facilitate Tribal consultation on policies that directly affect Indian Tribes and American Indians in Arizona.

A. New or Changing Policy or Program Implementation

(1) When it appears that a new or changed ADHS policy may be needed, the ADHS Administration shall consider whether the policy change is likely to have a significant impact on Indian Tribes in the State of Arizona.
(2) If an issue is identified that is likely to have a significant impact on Indian Tribes in the State of Arizona, the ADHS Administration shall

provide ~~timely~~ no less than 45 days written notice to Arizona Indian Tribes soliciting feedback and recommendations regarding the issue. Such solicitations shall be directed to Tribal leaders explaining the background, describing the proposed action, and requesting a response within a given timeframe. (Specific language delineating timeframes and forms of communication under development)

(3) If a Tribal elected or appointed official requests additional information or provides feedback regarding an issue, the ADHS Administration shall communicate, verbally or through written correspondence, with the official to provide a timely and substantive response.

(4) Face-to-face consultation sessions may be scheduled. Such sessions may be scheduled as a single statewide meeting, or in conjunction with other statewide meetings.

(5) The ADHS Administration may also provide written notice and a solicitation for feedback to non-Tribal organizations such as the Advisory Council on Indian Health Care, ~~the Inter Tribal Council of Arizona,~~ the Indian Health Service Area Offices in Arizona and Urban Indian Health Programs. An official resolution and or action approved by a quorum of the member tribes of the Inter Tribal Council of Arizona or of another tribal government organization shall constitute a joint position identified by the member tribes of that organization. It should be noted that such ~~Such~~ communications from tribal or non-tribal organizations do not substitute for direct communication of recommended actions by individual ~~with the~~ Indian Tribes in Arizona.

(6) If Tribes and ADHS cannot reach an agreement on a new high-level policy change, both parties agree to develop and include dispute language in their Intergovernmental Agreements or other funding agreements between the state and tribes.

(7) (language is under development for timeframe with flow chart

B. Ongoing Consultation

(1) The ADHS Administration will participate in HHS regional consultations, and, as requested, in consultation meetings sponsored by HHS agencies, the Indian Health Service or Indian Tribes.

(2) The ADHS Administration will provide an opportunity for submission of written comments during any period of ongoing consultation.

(3) Tribal consultation request (the wording for this section is under development)

(4) The ADHS Administration will continue to meet regularly with Indian Tribes in the State of Arizona. To the extent issues of general application are discussed in such meetings, the Native American

Liaison or other designated ADHS staff will provide follow-up, as appropriate.

8. Dispute Resolution (this is a new recommended section with suggested wording under development)

9. Joint Tribal/State/Federal Workgroups

   A. Joint Tribal/State/Federal Workgroups and Task Forces

      ADHS may establish or participate in workgroups, task forces or other groups or committees with Indian Tribes and others to address issues affecting Indian Tribes and American Indians in Arizona.

   B. Limitations

      Interaction with joint tribal/state/federal workgroups will not take the place of Tribal consultation. Instead, this interaction is intended to enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issues, or concerns to work collaboratively and offer recommendations for consideration by the ADHS Administration.

10. Annual Meetings

    On an annual basis, but not limited to, ADHS will meet with Tribes to review and negotiate proposed Tribal changes to ADHS policies and regulations affecting current or future Tribal funding agreements and/or services to Indians

11. Effective Date

    This Policy is effective on the date of signature by the ADHS Director.

12. Summary

    The ADHS Administration views Tribal consultation as a dynamic process. Joint effort between the Indian Tribes, the ADHS Director, the Native American Liaison, and ADHS divisions, bureaus, and offices will promote the objectives of the Tribal Consultation Policy. Together they will further consistent implementation of the Policy and work to ensure that the Policy plays a meaningful role in addressing issues affecting Indian Tribes and American Indians in the State of Arizona.

~~Appendix~~ Attachment A:

The special relationship between the Federal Government and Indian Tribes is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

- The Snyder Act, P.L. 67-85
- Older Americans Act of 1965, P.L. 89-73 as amended
- Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended
- Native American Programs Act of 1974, P.L. 93-638, as amended
- Indian Health Care Improvement Act, P.L. 93-644, as amended
- Social Security Act, Titles IXX, XX, XXI
- Unfunded Mandates Reform Act of 1995, P.L. 104-4
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193
- Presidential Executive Memorandum to the Heads of Executive Departments dates April 29, 1994
- Presidential Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004
- The Children's Health Insurance Program Reauthorization Act of 2009
- The American Recovery and Reinvestment Act of 2009

Attachment B

Executive Order 2006-14
Consultation and Cooperation with Arizona Tribes

WHEREAS, Arizona is home to 22 federally-recognized American Indian Tribes ("Tribes") who have existed since time immemorial, long before the formation of the United States and the entry of the State of Arizona into the union; and

WHEREAS, the land of these 22 Tribes comprises approximately 28% of Arizona's land base; and

WHEREAS, these tribal members are citizens of our great State, possess all the rights and privileges afforded by Arizona to its citizens, and, along with other American Indians, comprise approximately five percent of Arizona's population; and

WHEREAS, the State of Arizona recognizes and supports the right of these 22 tribal governments to exercise sovereign authority, as defined by federal law, over their members and their territory; and

WHEREAS, it benefits the State of Arizona to partner with tribal governments on issues affecting all of Arizona as well as to ensure that state services and resources are available to all eligible state citizens residing in Arizona tribal communities to the same extent that such services are available to all other eligible state citizens; and

WHEREAS, a spirit of cooperation should guide the continuing government-to-government relationships between the State of Arizona and the Tribes that call Arizona home; and

WHEREAS, meaningful and timely consultation with Arizona's Tribal leaders will facilitate better understanding and informed decision making.

NOW, THEREFORE, I, Janet Napolitano, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and the laws of this State, hereby order and direct as follows:

1. All Executive Branch agencies shall develop and implement tribal consultation policies to guide their work and interaction with federally-recognized Tribes in Arizona. Consultation requires that to the extent practicable and permitted by law, state agencies and offices shall seek input from appropriate elected or appointed tribal officials before undertaking any action or policy that will, or is reasonably believed to, have the potential to affect a tribal community or its members. Further, state agencies and offices shall, to the fullest extent possible and to the best of their ability, integrate the input generated from tribal consultation into their decision-making processes to achieve mutually acceptable solutions.

2. All Executive Branch agencies shall designate a member of their staff to assume responsibility for the agency's implementation of the tribal consultation policy and to act as the principle point of contact for tribal issues.

3. All Executive Branch agencies shall review their tribal consultation policies each year and submit an electronic report to the Governor and the Legislature to describe all action undertaken as a result of the implementation of these policies. Electronic copies of these annual reports shall be provided to the Arizona Commission of Indian Affairs, which will make them available to Arizona's tribal leaders.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

GOVERNOR

DONE at the Capitol in Phoenix on this 14th day of September in the Year Two Thousand and Six and of the Independence of the United States of America the Two Hundred and Thirty-First.

ATTEST:

Janice K. Brewer
SECRETARY OF STATE