

Administrative Policy No. 07.01

Subject: American Indian Policy

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Authorizing Sources: [Chapter 43.376 RCW, Government-to-Government Relationship with Indian Tribes](#)
[Washington State 1989 Centennial Accord](#)
[Presidential Executive Order #13175 \(2000\)](#)
Presidential Memoranda: [Tribal Consultation \(2009\)](#)
Office of the Secretary

Effective Date: November 1, 1987

Revised: April 21, 2020

Approved By: **Original signed by Lori Melchiori**
Senior Director, Office of Policy and Rules

Background

The Department of Social and Health Services (DSHS) follows a government-to-government approach to seek consultation and participation by representatives of tribal governments in policy development and service program activities. This is in compliance with [chapter 43.376 RCW](#), the Washington State [1989 Centennial Accord](#) and current federal Indian policy as outlined by [Executive Order #13175](#), and the [Presidential Memorandum on Tribal Consultation](#) signed by President Obama in November 2009, which promotes government-to-government relationships with American Indian tribes.

Purpose

This policy defines the department's commitment to consultation with federally recognized tribes of Washington state, and to work in collaboration with recognized American Indian organizations (RAIOs) and individual American Indians and Alaska Natives in the planning of DSHS service programs, to ensure quality and comprehensive service delivery to all American Indians and Alaska Natives in Washington state.

Scope

This policy applies to all DSHS programs and employees. DSHS administrators and regional program managers who oversee contracted services are also responsible for implementing this policy in the planning and delivery of contracted services by incorporating the appropriate language into the contracts.

Definitions

American Indian: Individuals the federal government recognizes in accordance with [25 USC Section 2902](#).

Alaska Native: Individuals the federal government recognizes in accordance with [43 USC Chapter 33 section 1602](#).

Consultation: Consultation requires an enhanced form of communication that emphasizes trust and respect. It requires a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. [See Attachment 3](#).

Contracted Services: DSHS contracts with a large number of entities to provide client services, personal services, and purchased services. These contractors include individual providers, public agencies, and private (profit or non-profit) organizations, including but not limited to Area Agencies on Aging. Other contracted agencies also provide licensing services, group care services, and other social and health services.

Culturally Relevant: Describes a condition where services provided to clients are appropriate according to the clients' cultural backgrounds.

Executive Leadership Team: Representatives to the secretary's executive team that include the assistant secretaries and some key directors. The OIP director is a member of this team.

Federally Recognized Tribes (Tribes): Self-governing American Indian and Alaska Native governments recognized under applicable federal and common law. Because of their unique sovereign status, federally recognized tribes have the inherent power to make and enforce laws on their lands, and to create governmental entities.

Government-to-Government: Describes the relationships and protocols among and between federally recognized tribes and the federal, state and other governments.

Indian Policy Advisory Committee (IPAC): DSHS advisory committee comprised of representatives from federally recognized tribes of Washington State and the recognized American Indian organizations. It guides the implementation of the Centennial Accord and the DSHS American Indian policy. The OIP, along with the department tribal liaisons, provides technical support to IPAC in its ongoing communications through meeting, planning, and consultation activities. According to Article XI of the IPAC by-laws, IPAC does not have the

authority or power to infringe upon or jeopardize the sovereignty of any federally recognized tribe or non-member tribe.

Identified Key positions: DSHS managers and employees in positions that have decision-making authority or policy-changing authority, in regional or headquarters offices, whose emphasis of responsibility is working in conjunction or association with the American Indian and Alaska Native tribes and recognized American Indian organizations.

Office of Indian Policy (OIP): Reports to the secretary of DSHS and is responsible for coordinating efforts with federally recognized tribes of Washington state and the recognized American Indian organizations in order to address the collective service needs of individual American Indians and Alaska Natives in Washington state.

Plan and Progress Report: The matrix submitted annually to the assistant secretaries to record the work of the regions.

Recognized American Indian Organizations (RAIO): Organizations, as recognized in accordance to IPAC by-laws, including the American Indian Community Center (AICC), N.A.T.I.V.E. Project, Seattle Indian Health Board (SIHB), Small Tribes of Western Washington (STOWW), United Indians of All Tribes Foundation (UIATF), Chief Seattle Club, and South Puget Intertribal Planning Agency (SPIPA), a tribal consortium. These organizations exercise their rights as American Indians, citizens of the United States, and residents of the state of Washington.

Tribal Sovereignty: Federal law recognizes federally recognized tribes as possessing sovereignty over their members and their territory. The Code of Federal Regulations (CFR) for the Bureau of Indian Affairs identifies territory as the service area and the CFR for the Indian Health Services defines territory as the contract health services delivery area. Sovereignty means that tribes have the legislative, executive, and judicial power to make and enforce laws, and to establish courts and other forums for resolution of disputes.

Policy

A. General Guidelines

1. DSHS must provide necessary and appropriate social and health services to people of federally recognized tribes of Washington state (tribes) and RAIOs and American Indian and Alaska Native individuals.
2. DSHS recognizes, honors, and supports consultation with tribes on a government-to-government basis, and for planning purposes, collaboration with RAIOs.
3. In making policy on Indian issues, DSHS must:
 - a. Recognize American Indian and Alaska Native tribes as federally recognized political governing bodies and respect their sovereignty and

- the unique social and legal status they hold. The department must acknowledge and consider findings under the Supremacy Clause and Indian Commerce Clause of the United States Constitution, federal treaties, executive orders, Indian Citizenship Act of 1924, Indian Child Welfare Act of 1978, the Centennial Accord, other relevant statutes, and tribal, federal, and state court decisions.
- b. Acknowledge and consider federal law providing for American Indian self-determination and self-governance for federally funded and federally assisted programs without diminishing the sovereign status of federally recognized tribes.
 - c. Work in cooperation and coordination with the Governor's Office of Indian Affairs.
 - d. Acknowledge and consider the opportunity for federally recognized tribes' involvement and consultation in, but not limited to, the department plans, budgets, policies, program services (including those provided by contractors and grantees), operational procedures, federal waivers, or exemptions to state plans that affect American Indian people.
4. DSHS must ensure that programs and services to tribes, recognized American Indian organizations and individual American Indians and Alaska Natives are culturally relevant and in compliance with this policy.
 5. DSHS must conduct periodic evaluations of the responsibilities listed above to identify progress and outstanding issues.
 6. DSHS must explore the opportunity to develop a data collection process, in consultation with tribes and recognized American Indian organizations, to show statewide and tribal specific patterns of service use and access.
 7. This policy does not waive, alter, or diminish the sovereignty of federally recognized tribal governments, nor does it affect federal or tribal protected rights for individual American Indians or Alaska Natives, or any other rights under the Centennial Accord, treaty, executive order, self-determination, self-governance, or other applicable federal, tribal, or state laws.
 8. DSHS must recognize the rights of federally recognized tribes to bring their issues and needs to the direct attention of the governor under the Centennial Accord at any time.
 9. This policy defines specific duties and responsibilities for DSHS employees who work with tribes and recognized American Indian organizations. This policy also provides opportunities for tribes and RAIOS to participate "in part" or "in total" at their discretion. This policy is in full force and effect regardless of the degree of participation of any tribe or Indian organization. DSHS employees must extend

the full benefit of this policy even if a tribe or Indian organization decides not to participate.

10. Each regional administrator, field services administrator, district manager, or division director must develop and submit an annual Policy 07.01 plan and progress report to his or her assistant secretary by April 2 of each year. Each assistant secretary must submit the consolidated plan and update for his or her administration to the OIP by April 30 of each year. The OIP director must provide to the executive leadership team an overview of each administration's implementation plan by June 30 of the same year.
11. Development of the Policy 07.01 plan and progress report is in consultation and collaboration with the tribes and recognized American Indian organizations. A uniform matrix format will be used for performance measurements. See [Attachment 1: Policy 07.01 Implementation Plan Reporting Guidelines](#).
12. DSHS managers with appointing authority must include representatives from tribes and RAIOS on employee interview panels for identified key positions.
13. Employees in identified key positions are required to attend the American Indian Administrative Policy 07.01 training.

B. Communications

All communications with the tribes and RAIOS will be in accordance with the communication protocol. [See Attachment 2](#)

1. OIP staff and regional managers must maintain the information distribution list within their regions and provide information to the tribes, RAIOS and designated DSHS tribal liaisons on a regular basis.
2. OIP must hold quarterly meetings with each assistant secretary to timely identify issues between DSHS and the tribes and discuss strategies for addressing the issues.
3. Assistant secretaries must update the executive leadership team on tribal relations and the status of their Policy 07.01 plan and progress report specific to each administration.
4. OIP staff must hold quarterly meetings with all liaisons and program managers identified by each administration, to discuss collaboration and integration within DSHS with respect to tribal services.

5. OIP must schedule two assistant secretaries to attend each IPAC meeting and discuss the planning for specific areas of partnership with the tribes and recognized American Indian organizations¹.

C. Consultation Process

Consultation with the tribes and RAIOS must comply with the consultation protocols. [See Attachment 2.](#)

1. Administrations of DSHS may initiate a consultation process with tribes and seek advice from IPAC at the same time. See Attachment 3: DSHS Administrative Policy 07.01 consultation flowchart provides detailed information of this process.
2. Representatives from DSHS, tribal governments and RAIOS must identify the participants in the two-way consultation process and establish participation at the appropriate level.
3. Participants must provide a clear description of the nature of the issues. The department must provide all participants in advance with related documents or statements describing the purpose and issues.
4. Participants must have sufficient time to review documents and respond to requests for consultation. The amount of time can vary depending on the nature and complexity of the issues. If decisions require quick actions due to imposed deadlines, the department must make every effort to provide advance written notice to allow for meaningful input and response.
5. Participants must establish and adhere to a schedule for consultation. DSHS, tribal participants, and RAIOS must jointly determine the protocols, timing, and number of meetings needed for consultation.
6. Participants must recognize that each tribe is unique, culturally and administratively. It is important to acknowledge tribal customary laws, protocols, or religious rules.
7. Participants must consider use of roundtables or workgroups to develop recommendations for actions on various technical, legal, or policy issues.
8. Participants must report the outcomes of the consultation to the tribes, RAIOS, DSHS secretary, and appropriate administrations. The goal is to reach consensus as the outcome of the consultation, so DSHS and tribal participants must actively participate in the consultation to ensure that all views are considered. Once the consultation is complete and a policy decision is final, all recommendations for follow-up actions must be communicated, implemented, and monitored. For

documentation purposes, the issue and the solution must be incorporated into the Policy 07.01 plan and progress report, including all related attachments.

9. For planning purposes, DSHS will collaborate with the RAIIO.

D. Dispute Resolution Process

In recognition of the sovereign government status of tribes, when consultation alone has not succeeded in the resolution of issues at the regional level, tribes have the authority to raise the issues to the assistant secretary, secretary, or the governor.

E. Duties and Responsibilities

1. The secretary of DSHS must:
 - a. Communicate with each tribe, RAIIO, and IPAC, review their recommendations, and where appropriate, implement the recommendations within the realm of his or her authority, and provide periodic updates to the governor's cabinet.
 - b. Consider seeking legislative support for tribal and RAIIO programs and services when submitting budget requests to the Office of Financial Management (OFM) and submitting legislative proposals related to social and health services.
 - c. Support the federal model of "self-determination" and "self-governance" for tribal management of state funded programs while discussing relevant issues with OFM and the governor's office.
 - d. Work with tribes, RAIIOs and IPAC in assessing and addressing unmet needs, service gaps, and other outstanding issues, within the realm of his or her authority.
 - e. Consult with tribes, recognized American Indian organizations, and IPAC before making substantive changes to OIP or the American Indian policy.
 - f. Present the DSHS Policy 07.01 plan and progress report each year to the:
 - 1) IPAC members, tribes, and recognized American Indian organizations; and
 - 2) Governor's cabinet; and
 - 3) DSHS executive leadership team.
2. The OIP must:
 - a. Coordinate, monitor, and assess the department's relationships with tribes and recognized American Indian organizations.
 - b. Facilitate DSHS communications and consultations on an ongoing basis with tribes and RAIIOs to ensure the department's thorough consideration of all suggestions and recommendations.

- c. Advocate for the delivery of quality, culturally sensitive DSHS services, and ensure that American Indian and Alaska Native children, families, and individuals can access DSHS services in a timely manner.
 - d. Communicate with DSHS management, regional representatives, and contractors to help them understand and implement this policy.
 - e. Monitor issues on services to American Indians and Alaska Natives, bring issues to the appropriate administrator for resolution and recommend specific actions to resolve issues in compliance with this policy. OIP staff are authorized to participate at any level of DSHS and to access any information necessary for the performance of their duties.
 - f. Provide staff support to IPAC for its ongoing communications through meeting, planning and consultation activities.
 - g. Provide department and tribal staff with ongoing training and information on this policy.
 - h. Work with administrators and concerned tribes to resolve issues based on OIP director's reviews of Policy 07.01 plans and progress reports with the assistant secretaries.
3. The assistant secretaries must:
- a. Include consideration of resources (including state funds, contracts or grants) to support Policy 07.01 planning activities, functions and goals when submitting budget requests to the secretary for DSHS budget submittal to OFM.
 - b. Identify federal waivers and exemptions in consultation with tribes, recognized American Indian organizations and IPAC, and include those waivers or exemptions to their state plans when they are resubmitted, updated, or modified to promote and enhance tribal self-determination and self-governance.
 - c. Review and use regional Policy 07.01 plan and progress reports to develop administration specific statewide plans. These plans must capture common issues and potential problems, and provide ways to bring attention to concerns specific to tribes and RAIOS.
 - d. Inform and seek input from OIP when developing policies and procedures that will have a unique effect on tribes or RAIOS.
 - e. Each assistant secretary will periodically provide feedback to the regions on implementations and changes resulting from their Policy 07.01 plan and progress report.
4. Division directors must:
- a. Identify, measure, and evaluate performance indicators related to the implementation of this policy.

- b. Inform and seek input from OIP when developing policies and procedures that will have a unique effect on tribes or recognized American Indian organizations.
5. Regional administrators, field services administrators, district managers, and division directors must:
 - a. Seek tribal consultation in the development of annual Policy 07.01 plan and progress report (see [Attachment 1: Policy 07.01 Plan and Reporting Guidelines](#)).
 - b. Inform and seek input from OIP when developing policies and procedures that will have a unique effect on tribes or recognized American Indian organizations.
 - c. Appoint tribal liaisons; provide opportunities for tribal specific training, participation in meetings and conferences as funding permits. Designated tribal liaisons will attend IPAC meetings, and provide technical support and information to IPAC participants.
 - d. Identify, measure, and evaluate performance indicators related to the implementation of this policy.
 - e. Ensure that employees in identified key positions attend tribal training as described in [RCW 43.376.040](#) and DSHS Administrative Policy 07.01 training.

Attachment 1

American Indian Policy 07.01 Implementation Plan Reporting Guidelines

Develop Administrative Policy 07.01 (AP 07.01) Plans and Progress Reports in consultation and collaboration with each tribe and Recognized American Indian Organization (RAIO).

A. Reporting Schedule:

Each regional administrator, field services administrator or district manager must:

1. Develop and submit the annual AP 07.01 plan and progress report to his or her assistant Secretary by April 2 of each year.
2. Incorporate any amendments to the AP 07.01 plan as they are negotiated during the year, and immediately send the amendments to the assistant secretary.

Each assistant secretary must:

1. Submit the consolidated annual plan for his or her administration to OIP by April 30 of each year.
2. Upon receiving any amendments to the AP 07.01 plan from the regional administrator, field services administrator or district manager, review and finalize the amendments and submit to OIP within 30 days of approval.

B. Planning Checklist

Assigned employees in identified key positions should use this checklist to help develop the AP 07.01 plan and progress report

1. Have you scheduled regular meetings with the tribes to discuss the AP 07.01 plan and progress report? When and how often do you meet?
2. Have your administration, region, division, program, contractors, or grantees met with the tribes and RAIOs in your area and identified issues that need to be addressed? What were the topics of the issues? What were the agreeable solutions?
3. Have you included tribal and RAIOs contacts in your information sharing, problem-solving and planning activities? Who are your contacts at the tribe or RAIO?
4. Have you notified tribes and RAIOs of funding opportunities, RFPs, available grants, or training opportunities from DSHS? What were they?
5. Do you have any special or pilot projects that include tribal participation, or need to have tribal and RAIO participation? What are they?
6. Are your employees trained to address culturally sensitive issues or have access to culturally relevant resources?
7. Is your program or division able to respond to current needs of the tribes and RAIOs? How do you achieve this?
8. Did your program or division provide training to the tribes and RAIOs? Which tribes and RAIOs participated? What kind of training did you provide?
9. Did you provide technical assistance to the tribes and RAIOs? If yes, in what capacity?

- 10. Do you have local area agreements or current working agreements with the tribes? What are they? Are they current?
- 11. Do you contract directly with the tribes? What are these contracts?
- 12. Do you have a plan for recruiting Native American providers, contractors or employees?
- 13. Did you inform and seek input from OIP when developing policies and procedures that will have a unique effect on tribes or RAIOS?
- 14. Have you discussed any issues or concerns with OIP?

C. Format

Use the matrix below for the AP 07.01 plan and progress report.

Policy 07.01 Plan and Progress Report				
Timeframe: July 1 ____ to June 30 ____ Updated:				
Administration/Division:		Region/Office:		Tribe(s)/RAIO(s):
Annual Due Date: April 2 (Submit Regional Plan to the Assistant Secretary) and April 30 (submit Assistant Secretary's Plan to OIP).				
Implementation Plan				Progress Report
(1) Goals/Objectives	(2) Activities	(3) Expected Outcome	(4) Lead Staff and Target Date	(5) Status Update for the Fiscal Year Starting Last July 1
			State: Tribe:	
			State: Tribe:	
			State: Tribe:	
Completed Items (and date):				

Attachment 2 Communication Protocol

Between Department of Social and Health Services, Tribal Governments,
Recognized American Indian Organizations

Purpose:

To assist Department of Social and Health Services (DSHS) staff when communicating with Tribal Governments and Recognized American Indian Organizations (RAIO).

Administrations will transmit the following types of formal correspondence with cover letters:

- Submission of contracts and contract amendments
- Consultation requests and announcements
- Announcement of scheduled monitor or site visits
- Monitoring/site visit reports
- Announcement of Administrative Policy 07.01 meetings
- When seeking formal input

Formal correspondence will be addressed in the following manner:

- Honorable Chairman, Chairperson, President, with a salutation of Dear Tribal Chairman, Chairperson, President
- Dear RAIO Director

With copies to:

- Respective administration staff according to internal protocol
- The administration's tribal liaison
- OIP
 - IPAC delegate; OIP will forward by email appropriate correspondence to IPAC delegates¹
- Tribal program administration, IPAC delegate
- For contract materials, central contract services

OIP will maintain a current distribution list of tribal chairs, recognized American Indian organization (RAIO) directors, and IPAC delegates¹.

Regional administrators will follow these communications guidelines:

- Ongoing department to tribal peer-to-peer communications at the local level
- Administrative Policy 07.01 meetings as agreed by the tribes, RAIO, and administration
 - Include notification of meeting to OIP regional manager
 - Include timely notification for cancellation of meetings to the tribes, RAIO, and OIP regional manager¹
- Letters are required for:
 - Contracts
 - A copy to central contract services and OIP – Olympia¹
 - Visits

- Compliance matters

Consultation Protocol

Between Department of Social and Health Services, Tribal Governments,
Recognized American Indian Organizations

Purpose:

In accordance with the Centennial Accord and AP 07.01, the department maintains a commitment to consultation. Consultation is a formal Government-to-Government meeting, called to provide an opportunity for an exchange of information and opinion prior to a decision.

Consultation may be for the following matters:

- Statewide implications
- Proposed change to policy that has an impact to the tribes or RAIO
- Fund distribution
- At the request of a tribe
- At the request of IPAC

Consultation will be called at the highest level of the department:

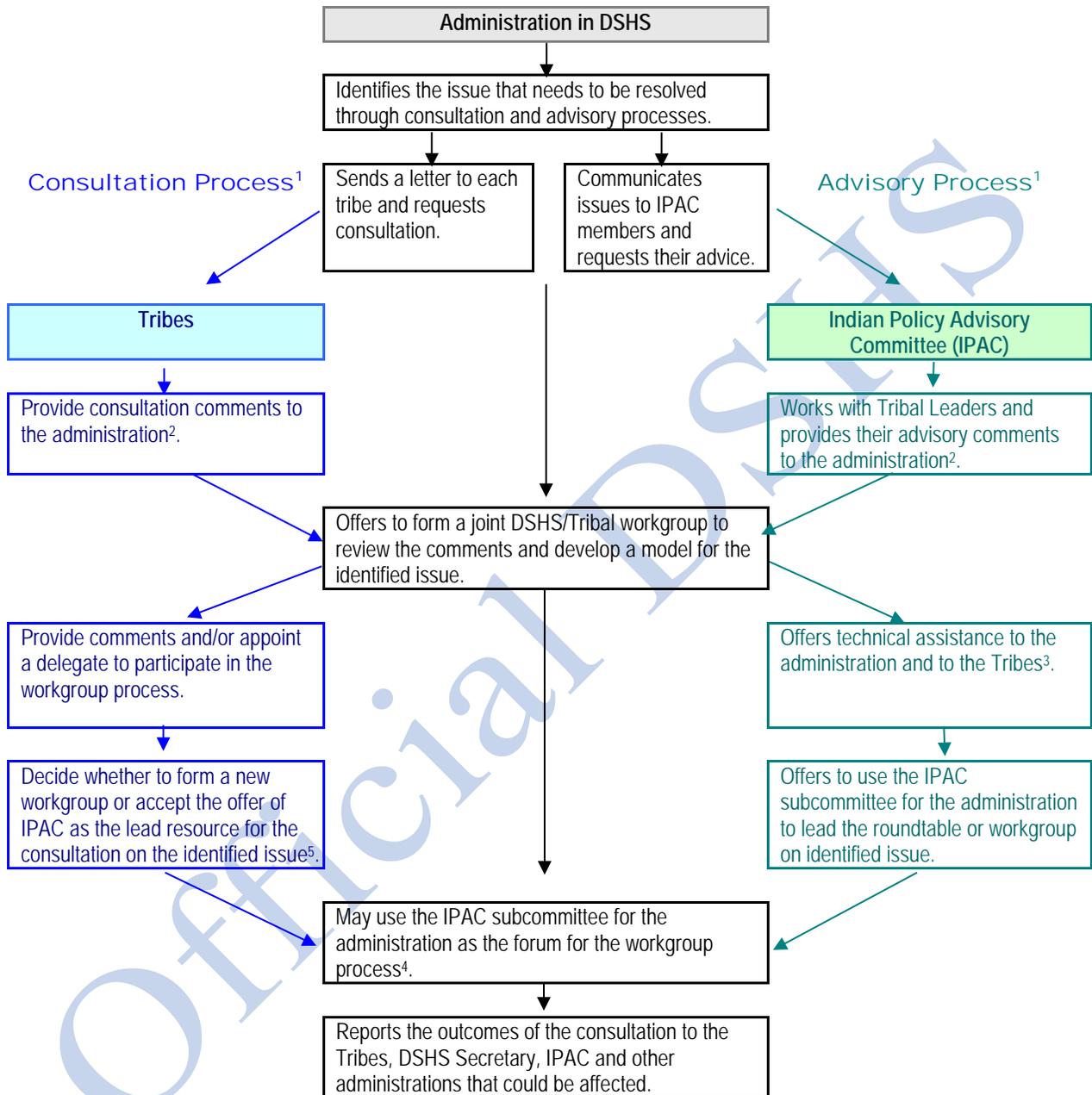
- Secretary, chief of staff or assistant secretary
- DSHS will send a minimum of two written notifications
 - The first one within 45 – 60 days prior to the consultation
 - The second one within 15 – 30 days prior to the consultation
- DSHS will email IPAC delegates:
 - Participation notification
 - Follow-up notification
 - Minute distribution

Round tables and work groups should be used for discussions, problem resolution, and preparation for consultation. When matters are resolved by using the roundtable and work group process, notification of any final outcomes to these meetings will be distributed to the affected administration, OIP, tribes, and RAIO in accordance to these written directions¹.

- Roundtable meeting between tribes, RAIO, and state administrations.
 - These meetings are designed to be with the administrations of the groups in advance to determine the scope of the situation and establish a work plan.
- Workgroup meeting between tribes, RAIO, and state technical team
 - Will provide the opportunity for technical teams from the state and tribes to address any technical challenges or barriers.
 - Work collaboratively on development of technical solutions.

Attachment 3

DSHS American Indian Administrative Policy 07.01 Consultation Flowchart



Footnotes:

1. The "consultation" with tribes and recognized American Indian organizations can occur at the same time that IPAC performs their "advisory" work.
2. Sometimes the same employee provides the consultation comments on behalf of the tribe and prepares the advisory comments as an IPAC delegate.
3. The IPAC letter would also include a list of the current IPAC delegates and subcommittee members. This would make it easier for tribal leaders to identify people who are already working on the issues through IPAC.
4. Many tribes and recognized American Indian organizations have already designated delegates to IPAC, and the existing subcommittee could be the lead resource for tribes and recognized American Indian organizations to work on the joint DSHS/tribal model development.
5. Some tribes and recognized American Indian organizations may prefer to use their existing IPAC delegates and work through the IPAC subcommittee rather than having duplicate meetings on the same issue.