New Mexico Human Services Department
State-Tribal Consultation, Collaboration and Communication Policy

Section I. Background

A. In 2003, the Governor of the State of New Mexico and 21 out of 22 Indian Tribes of New Mexico adopted the *2003 Statement of Policy and Process* (Statement), to "establish and promote a relationship of cooperation, coordination, open communication and good will, and [to] work in good faith to amicably and fairly resolve issues and differences." The Statement directs State agencies to interact with the Tribal governments and provides that such interaction "shall be based on a government-to-government relationship" aimed at furthering the purposes of meaningful government-to-government consultation.

B. In 2005, Governor Bill Richardson issued Executive Order 2005-004 mandating that the Executive State agencies adopt pilot tribal consultation plans with the input of the 22 New Mexico Tribes.

C. The New Mexico Health and Human Services Tribal Consultation meeting was held on November 17-18, 2005 to carry out Governor Richardson's Executive Order 2005-004 calling for a statewide adoption of pilot tribal consultation plans to be implemented with the 22 Tribes within the State of New Mexico. This meeting was a joint endeavor of the five executive state agencies comprised of the Aging and Long-Term Services Department, the Children, Youth and Families Department, the Department of Health, the Human Services Department and the Indian Affairs Department. A State-Tribal Work Plan was developed and sent out to the Tribes on June 7, 2006 for review pursuant to the Tribal Consultation meeting.

D. On March 19, 2009, Governor Bill Richardson signed SB 196, the State Tribal Collaboration Act (hereinafter "STCA") into law. The STCA reflects a statutory commitment of the state to work with Tribes on a government-to-government basis. The STCA establishes in state statute the intergovernmental relationship through several interdependent components and provides a consistent approach through which the State and Tribes can work to better collaborate and communicate on issues of mutual concern.

E. In Fall 2009, the Healthy New Mexico Group, comprised of the Aging and Long Term Services Department, the Children, Youth and Families Department, the Department of Health, the Department of Veterans' Services, the Human Services Department, the Indian Affairs Department, and the Office of African American Affairs, met with representatives from the Tribes to develop an overarching Policy that, pursuant to the STCA:

1. Promotes effective collaboration and communication between the Agency and Tribes;

2. Promotes positive government-to-government relations between the State and Tribes;

3. Promotes cultural competence in providing effective services to American Indians/Alaska Natives; and

4. Establishes a method for notifying employees of the Agency of the provisions of the STCA and the Policy that the Agency adopts.

F. The Policy meets the intent of the STCA and defines the Agency's commitment to collaborate and communicate with Tribes.

Section II. Purpose

Through this Policy, the Agency will seek to improve and/or maintain partnerships with Tribes. The purpose of the Policy is to use or build-upon previously agreed-upon processes when the Agency initiates programmatic actions that have tribal implications.

Section III. Principles

A. Recognize and Respect Sovereignty – The State and Tribes are sovereign governments. The recognition and respect of sovereignty is the basis for government-to-government relations and this Policy. Sovereignty must be respected and recognized in government-to-government consultation, communication and collaboration between the Agency and Tribes. The Agency recognizes and acknowledges the trust responsibility of the Federal Government to federally-recognized Tribes.

B. Government-to-Government Relations – The Agency recognizes the importance of collaboration, communication and cooperation with Tribes. The Agency further recognizes that Agency programmatic actions may have tribal implications or otherwise affect American Indians/Alaska Natives. Accordingly, the Agency recognizes the value of dialogue between Tribes and the Agency with specific regard to those programmatic actions.

C. Efficiently Addressing Tribal Issues and Concerns – The Agency recognizes the value of Tribes' input regarding Agency programmatic actions. Thus, it is important that Tribes' interests are reviewed and considered by the Agency in its programmatic action development process.

D. Collaboration and Mutual Resolution – The Agency recognizes that good faith, mutual respect, and trust are fundamental to meaningful collaboration and communication policies. As they arise, the Agency shall strive to address and mutually resolve concerns with impacted Tribes.

E. Communication and Positive Relations – The Agency shall strive to promote positive government-to-government relations with Tribes by: (1) interacting with Tribes in a spirit of mutual respect; (2) seeking to understand the varying Tribes' perspectives; (3) engaging in communication, understanding and appropriate dispute resolution with Tribes; and (4) working through the government-to-government process to attempt to achieve a mutually-satisfactory outcome.

F. Informal Communication – The Agency recognizes that formal consultation may not be required in all situations or interactions. The Agency may seek to communicate with and/or respond to Tribes outside the consultation process. These communications do not negate the authority of the Agency and Tribes to pursue formal consultation.

G. Health Care Delivery and Access – Providing access to health care is an essential public health responsibility and is crucial for improving the health status of all New Mexicans, including American Indians/Alaska Natives in rural and urban areas. American Indians/Alaska Natives often lack access to programs dedicated to their specific health needs. This is due to several factors prevalent among American Indians/Alaska Natives, including but not limited to, lack of resources, geographic isolation, and health disparities. The Agency's objective is to work collaboratively with Tribes to ensure adequate and quality health service delivery in all tribal communities, as well as with individual American Indians/Alaska Natives in urban areas or otherwise outside tribal communities.

H. Distinctive Needs of American Indians/Alaska Natives – Compared with other Americans, American Indians/Alaska Natives experience an overall lower health status and rank at, or near, the bottom of other social, educational and economic indicators. American Indians/Alaska Natives have a life expectancy that is four years less than the overall U.S. population and they have higher mortality rates involving diabetes, alcoholism, cervical cancer, suicide, heart disease, and tuberculosis. They also experience higher rates of behavioral health issues, including substance abuse. The Agency will strive to ensure with Tribes the accountability of resources, including a fair and equitable allocation of resources to address these health disparities. The Agency recognizes that a community-based and culturally appropriate approach to health and human services is essential to maintain and preserve American Indian/Alaska Native cultures.

I. Establishing Partnerships – In order to maximize the use of limited resources, and in areas of mutual interests and/or concerns, the Agency seeks partnerships with Tribes and other interested entities, including academic institutions and Indian organizations. The Agency encourages Tribes to aid in advocating for state and federal funding for tribal programs and services to benefit all of the State's American Indians/Alaska Natives.

J. Intergovernmental Coordination and Collaboration-

1. Interacting with federal agencies. The Agency recognizes that the State and Tribes may have issues of mutual concern where it would be beneficial to coordinate with and involve federal agencies that provide services and funding to the Agency and Tribes.

2. Administration of similar programs. The Agency recognizes that under Federal tribal self-governance and self-determination laws, Tribes are authorized to administer their own programs and services which were previously administered by the Agency. Although the Agency's or Tribe's program may have its own federally approved plan and mandates, the Agency shall strive to work in cooperation and have open communication with Tribes through a two-way dialogue concerning these program areas.

K. Cultural and Linguistic Competency – The Agency shall strive for its programmatic actions to be culturally relevant and developed and implemented with cultural and linguistic competence.

Section IV. Definitions

A. The following definitions shall apply to this Policy:

1. American Indian/Alaska Native – Pursuant the STCA, this means:

   a) Individuals who are members of any federally recognized Indian tribe, nation or pueblo;
   b) Individuals who would meet the definition of "Indian" pursuant to 18 USC 1153; or
   c) Individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States public health service, the bureau of Indian affairs or other federal programs.

2. Collaboration – Collaboration is a recursive process in which two or more parties work together to achieve a common set of goals. Collaboration may occur between the Agency and Tribes, their respective agencies or departments, and may involve Indian organizations, if needed. Collaboration is the timely communication and joint effort that lays the groundwork for mutually beneficial relations, including identifying issues and problems, generating improvements and solutions, and providing follow-up as needed.

3. Communication – Verbal, electronic or written exchange of information between the Agency and Tribes.

4. Consensus – Consensus is reached when a decision or outcome is mutually-satisfactory to the Agency and the Tribes affected and adequately addresses the concerns of those affected. Within this process it is understood that consensus, while a goal, may not always be achieved.

5. Consultation – Consultation operates as an enhanced form of communication that emphasizes trust and respect. It is a decision making method for reaching agreement through a participatory process that: (a) involves the Agency and Tribes through their official representatives; (b) actively solicits input and participation by the Agency and Tribes; and (c) encourages cooperation in reaching agreement on the best possible decision for those affected. It is a shared responsibility that allows an open, timely and free exchange of information and opinion among parties that, in turn, may lead to mutual understanding and comprehension. Consultation with Tribes is uniquely a government-to-government process with two main goals: (a) to reach consensus in decision-making; and (b) whether or not consensus is reached, to have considered each other's perspectives and honored each other's sovereignty.

6. Cultural Competence – Refers to an ability to interact effectively with people of different cultures. Cultural competence comprises four components: (a) awareness of one's own cultural worldview, (b) appreciation of cultural differences, (c) knowledge of different cultural practices and worldviews, and (d) honing cross-cultural skills. Developing cultural competence improves one's ability to understand, communicate with, provide services and resources to, and effectively interact with people across cultures.

7. Culturally Relevant – Describes a condition where programs or services are provided according to the clients' cultural backgrounds.

8. Government-to-Government – Describes the intergovernmental relationship between the State, Tribes and the Federal government as sovereigns.

9. Indian Organizations –Organizations, predominantly operated by American Indians/Alaska Natives, that represent or provide services to American Indians and/or Alaska Natives living on and/or off tribal lands and/or in urban areas.

10. Internal Agency Operation Exemption – Refers to certain internal agency operations and processes not subject to this Policy. The Agency has the authority and discretion to determine what internal operations and processes are exempt from this Policy.

11. Internal Tribal Government Operations Exemption – Refers to certain internal tribal government operations not subject to this Policy. Each Tribe has the authority and discretion to determine what internal operations and processes are exempt from this Policy.

12. Linguistic Competence – Refers to one's capacity to communicate effectively and convey information in a manner that is understood by culturally diverse audiences.

13. Participation – Describes an ongoing activity that allows interested parties to engage one another through negotiation, compromise and problem solving to reach a desired outcome.

14. Programmatic Action – Actions related to the development, implementation, maintenance or modification of policies, rules, programs, services, legislation or regulations by the Agency, other than exempt internal agency operations, that are within the scope of this Policy.

15. Tribal Advisory Body – A duly appointed group of individuals established and organized to provide advice and recommendations on matters relative to Agency programmatic action.

16. Tribal Implications – Refers to when a programmatic action by the Agency will have substantial direct effect(s) on American Indians/Alaska Natives, one or more Tribes, or on the relationship between the State and Tribes.

17. Tribal Liaison – Refers to an individual designated by the Agency, who reports directly to the Office of the Agency Head, to:

    a) assist with developing and ensuring the implementation of this Policy;
    b) serve as a contact person responsible for maintaining ongoing communication between the Agency and affected Tribes; and
    c) ensure that training is provided to staff of the Agency as set forth in Subsection B of Section 4 of the STCA.

18. Tribal Officials – Elected or duly appointed officials of Tribes or authorized intertribal organizations.

19. Tribes– Means any federally recognized Indian nation, tribe or pueblo located wholly or partially within the boundaries of the State of New Mexico. It is understood that "Tribes" in the plural form means that or those tribe(s) upon which programmatic actions have tribal implications.

20. Work Groups –Formal bodies and task forces established for a specific purpose through joint effort by the Agency and Tribes. Work Groups can be established to address or develop more technical aspects of programmatic action separate or in conjunction with the formal consultation process. Work groups shall, to the extent possible, consist of members from the Agency and participating Tribes.

Section V. General Provisions

A. Collaboration and Communication

To promote effective collaboration and communication between the Agency and Tribes relating to this Policy, and to promote cultural competence, the Agency shall utilize, as appropriate: Tribal Liaisons, Tribal Advisory Bodies, Work Groups and Informal Communication.

1. The Role of Tribal Liaisons. To promote State-Tribe interactions, enhance communication and resolve potential issues concerning the delivery of Agency services to Americans Indians/Alaska Natives, Tribal Liaisons shall work with Tribal Officials and Agency staff and their programs to develop policies or implement program changes. Tribal Liaisons communicate with Tribal Officials through both formal and informal methods of communication to assess:

    a) issues or areas of tribal interest relating to the Agency's programmatic actions;

    b) Tribal interest in pursuing collaborative or cooperative opportunities with the Agency; and

    c) the Agency's promotion of cultural competence in its programmatic actions.

2. The Role of Tribal Advisory Bodies. The Agency may solicit advice and recommendations from Tribal Advisory Bodies to collaborate with Tribes in matters of policy development prior to engaging in consultation, as contained in this Policy. The Agency may convene Tribal Advisory Bodies to provide advice and recommendations on departmental programmatic actions that have tribal implications. Input derived from such activities is not defined as this Policy's consultation process.

3. The Role of Work Groups. The Agency Head may collaborate with Tribal Officials to appoint an agency-tribal work group to develop recommendations and provide input on Agency programmatic actions as they might impact Tribes or American Indians/Alaska Natives. The Agency or the Work Group may develop procedures for the organization and implementation of work group functions. (See, e.g., the sample procedures at Attachment A.)

4. Informal Communication.

    a) Informal Communication with Tribes. The Agency recognizes that consultation meetings may not be required in all situations or interactions involving State-Tribal relations. The Agency recognizes

that Tribal Officials may communicate with appropriate Agency employees outside the consultation process, including with Tribal Liaisons and Program Managers, in order to ensure programs and services are delivered to their constituents. While less formal mechanisms of communication may be more effective at times, this does not negate the Agency's or the Tribe's ability to pursue formal consultation on a particular issue or policy.

b) Informal Communication with Indian Organizations. The State-Tribal relationship is based on a government-to-government relationship. However, in certain instances, communicating with Indian Organizations can benefit and assist the Agency, as well. Through this Policy, the Agency recognizes that it may solicit recommendations, or otherwise collaborate and communicate with these organizations.

B. Consultation

Consultation shall be between the Agency Head and Tribal Officials or their delegated representatives who possess authority to negotiate on their behalf.

1. Applicability – Tribal consultation is most effective and meaningful when conducted before taking action that impacts Tribes and American Indians/Alaska Natives. The Agency acknowledges that a best case scenario may not always exist, and that the Agency and Tribes may not have sufficient time or resources to fully consult on a relevant issue. If a process appropriate for consultation has not already begun, through this Policy, the Agency seeks to initiate consultation as soon as possible thereafter.

2. Focus – The principle focus for government-to-government consultation is with Tribes through their Tribal Officials. Nothing herein shall restrict or prohibit the ability or willingness of Tribal Officials and the Agency Head to meet directly on matters that require direct consultation. The Agency recognizes that the principle of intergovernmental collaboration, communication and cooperation is a first step in government-to-government consultation, and is in accordance with the STCA.

3. Areas of Consultation – The Agency, through reviewing proposed programmatic actions, shall strive to assess whether such actions may have Tribal Implications, as well as whether consultation should be implemented prior to making its decision or implementing its action. In such instances where Tribal Implications are identified, the Agency shall strive to pursue government-to-government consultation with relevant Tribal Officials. Tribal Officials also have the discretion to decide whether to pursue and/or engage in the consultation process regarding any proposed programmatic action not subject to the Internal Agency Operation Exemption.

4. Initiation – Written notification requesting consultation by an Agency or Tribe shall serve to initiate the consultation process. Written notification, at the very least, should:

   a) Identify the proposed programmatic action to be consulted upon.

   b) Identify personnel who are authorized to consult on behalf of the Agency or Tribe.

5. Process – The Agency, in order to engage in consultation, may utilize duly-appointed work groups, as set forth in the previous section, or otherwise the Agency Head or a duly-appointed representative may meet directly with Tribal Officials, or set forth other means of consulting with impacted Tribes as the situation warrants.

   a) Consultation shall be between the Agency Head and Tribal Officials or their delegated representatives with authority to negotiate on their behalf.

   b) The Agency will make a good faith effort to invite for consultation all perceived impacted Tribes.

6. Limitations on Consultation –

   a) This Policy shall not diminish any administrative or legal remedies otherwise available by law to the Agency or Tribe.

   b) The Policy does not prevent the Agency and Tribes from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices allowed or mandated by Federal, State or Tribal laws or regulations.

   c) Final Decision Making Authority: The Agency retains the final decision-making authority with respect to actions undertaken by the Agency and within Agency jurisdiction. In no way should this Policy impede the Agency's ability to manage its operations.

Section VI. Dissemination of Policy

Upon adoption of this Policy, the Agency will determine and utilize an appropriate method to distribute the Policy to all its employees.

Section VII. Amendments and Review of Policy

The Agency shall strive to meet periodically with Tribes to evaluate the effectiveness of this policy, including the Agency's promotion of cultural competency. This Policy is a working document and may be revised as needed.

Section VIII. Effective Date

This Policy became effective on December 18, 2009 and has been updated by the Agency Head.

Section IX. Sovereign Immunity

The Policy shall not be construed to waive the sovereign immunity of the State of New Mexico or any Tribe, or to create a right of action by or against the State of New Mexico or a Tribe, or any State or Tribal official, for failing to comply with this Policy. The Agency shall have the authority and discretion to designate internal operations and processes that are excluded from the Policy, and recognizes that Tribes are afforded the same right.

Section XI. Closing Statement / Signatures

The New Mexico Human Services Department hereby adopts the State-Tribal Consultation, Collaboration and Communication Policy.

Sidonie Squier 7/29/11

Sidonie Squier, Cabinet Secretary — Date
Human Services Department