

Title: OBD Tribal Relationship & Cooperation Policy

Effective Date: February 25, 2022

Purpose:

The State of Oregon and the Oregon Board of Dentistry (OBD) share the goal to establish clear policies establishing the tribal consultation and requirements to further the government-to-government relationship between the OBD and the nine federally recognized Tribes of Oregon (Oregon Tribes) with the passage of HB 2528 (2021) and on any other matters that are important to the Tribes. This policy shall fulfill the requirements of ORS 182.164 & ORS 182.166.

Nine Federally Recognized Tribes of Oregon (“Oregon Tribes”):

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of Grande Ronde
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs
- Coquille Indian Tribe
- Cow Creek Band of Umpqua Tribe of Indians
- Klamath Tribes

Other Organizations

Urban Indian Health Programs (UIHP)

Northwest Portland Area Indian Health Board (NPAIHB)

This Policy:

- Identifies individuals within the OBD who are responsible for developing and implementing programs, rules, policies and draft legislation that affect Tribes.
- Establishes a process to identify the OBD programs, rules, policies and draft legislation that impact Tribes.
- Promotes communication between the OBD and the Tribes.
- Promotes positive government-to-government relations between the OBD and Tribes.
- Promotes positive relationships with any entity that serves tribal members including the Northwest Portland Area Indian Health Board and Urban Indian Health Programs
- Establishes a method for ensuring that OBD employees comply with ORS 182.162 to 182.168 and this policy.
- Streamlined for ease to understand and apply: the OBD is a small agency with 8 employees.
- This Policy is to meet compliance with ORS 182.164, but also should be utilized in working with any tribal group, entity or organization that supports tribal members and is impacted by the OBD’s work.

Meaningful consultation between tribal leadership and agency leadership shall result in information exchange, transparency, mutual understanding, and informed decision-making on

behalf of the Oregon Tribes and the State. One key goal of this policy is to prevent avoidable surprises between the OBD and Oregon Tribes.

Other key goals of this policy include, but are not limited to: helping to eliminate health and human service disparities of Indians; ensuring that access to critical health and human services is maximized; advancing and enhancing the social, physical, behavioral and oral health of Indians; making accommodations in State programs when possible to account for the unique nature of Indian health programs; collaborating on the development and improvement of programs, rules, policies and draft legislation; and ensuring that the Oregon Tribes are consulted to ensure meaningful and timely tribal input as required under Federal and State law when health and human service policies have an impact on Indians and the Oregon Tribes. To achieve this goal, and to the extent practicable and permitted by law, it is essential that the Oregon Tribes and the OBD engage in open, continuous and meaningful consultation and collaboration.

This policy applies to the OBD (Board Members and staff) and shall serve as a guide for the Oregon Tribes to participate in OBD legislative, rule and policy development to the greatest extent allowable under law. The relationship between the OBD and the Oregon Tribes is important and should be on a foundation of trust and mutual respect. It is important for the OBD to work closely with Oregon Tribes on issues related to Dental Therapy and any other matter that is important to the Oregon Tribes.

Policy #834-413-019 OBD Tribal Relationship & Cooperation
Policy Effective Date: February 25, 2022

Applicability: All Board Members, full and part time employees, temporary employees and volunteers

References:

(1) Purpose

This tribal relations policy is adopted pursuant to ORS 182.162 – 182.168, which requires state agencies to develop and implement tribal relations policies.

(2) General Policies and Principles

It is OBD's policy to promote the principle stated in Executive Order No.96-30 that "[a]s sovereigns the tribes and the State of Oregon must work together to develop mutual respect for the sovereign interests of both parties." OBD interacts with tribes in differing roles: in its role as legal advisor to and representative of other state agencies; and in its role as independent administrator of certain OBD programs. In all of its roles, it is OBD's policy to promote positive government to government relations with the federally recognized tribes in Oregon ("tribes") by

(a) Facilitating communication and understanding and appropriate dispute resolution among OBD, other state agencies and those tribes;

(b) Striving to prevent unnecessary conflict with tribes;

(c) Interacting with tribes in a spirit of mutual respect;

(d) Involving tribal representatives in the development and implementation of programs, rules, policies and draft legislation that affect them; and

(e) Seeking to understand the varying tribal perspectives.

(3) The OBD's Native American Affairs Coordinator is the OBD's Executive Director

(a) The state is best served through a coordinated approach to tribal issues. The OBD's Executive Director has been designated as the OBD's Native American Affairs Coordinator, who serves as the OBD's key contact with tribal representatives.

(b) Individuals at the OBD who are working on a significant matter involving or affecting a tribe

shall notify the Native American Affairs Coordinator.

(4) Dissemination of Tribal Relations Policy

(a) Upon adoption, this policy shall be disseminated to members of the OBD, and shall be incorporated into the OBD Policy Manual. In addition, this policy and information regarding ORS 182.162 – 168 shall be included in new Board Member and employee orientation.

(b) The Executive Director will be responsible for submitting the OBD's annual report in December to the Governor and the Commission on Indian Service per ORS 182.166 detailing its work with the Tribes for the prior year and this Policy.

(5) Training

(a) Appropriate OBD representatives will attend annual training provided by the Department of Administrative Services pursuant to ORS 182.166(1).

(b) The OBD's assigned attorney who may come into contact with tribes will be encouraged to consider taking advantage of outside CLE opportunities on Indian law and culture.

(7) Identification of OBD Programs Affecting Tribes

The Executive Director will compile a list of OBD programs, rules, policies and draft legislation that affect tribes, as well as the OBD individuals responsible for implementing them with feedback from the affected Tribes or tribal members.

(8) Guidelines for OBD Programs

The OBD will invite tribal participation on Dental Therapy issues and other areas of interest that the Tribes bring forth to the OBD.

OBD Commitment to Tribal Consultation

The OBD was established by the Oregon State Legislature in 1887 and is accountable to the people of Oregon, acknowledges this unique relationship, the statutory and regulatory framework for states to consult with Tribes, and recognizes the right of Indian tribes to self-determination and self-governance. The special government-to-government relationship between the Tribes and federal and state governments will be respected in all dealings with the Tribes and OBD. Relationship of State Agencies with Indian Tribes, ORS 182.162 to 182.168.

In order to fully effectuate this policy, OBD will:

- Ensure inclusion of the Tribes prior to the development of policies and program activities that impact Tribes, utilizing the OBD's formal notice that provides descriptive content and a timeline of all public meetings;
- Create opportunities for Tribes to raise issues with the OBD and for the OBD to seek consultation with Tribes;
- Establish communication channels with Tribes to increase knowledge and understanding of OBD programs;
- Support tribal self-determination;
- Include on every regular Board Meeting Agenda an opportunity for the Tribes to directly communicate with the OBD.

Tribal Consultation Principles:

Consultation is an enhanced form of communication that emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation includes collaboration and often results in an iterative process between parties. Meaningful consultation is integral to a

deliberative process that results in effective collaboration and informed decision-making, with the ultimate goal of reaching consensus on issues and better outcomes.

To establish and maintain a positive government-to-government relationship, meaningful communication and consultation must occur on a regular and as needed basis so that Tribes have an opportunity to provide meaningful, and timely input on issues that may have an impact on Tribes. This government-to-government relationship applies between the Tribes and the State.

Consultation with the Tribes is important in the context of health programs because the Tribes serve many roles in their communities:

- Tribes and tribal governments are sovereign nations with inherent authority over their internal affairs; have a government-to-government relationship with the federal government, state governments, and other sovereigns; and have the responsibility to ensure the health and well-being of their tribal citizens, among various other governmental responsibilities.
- Tribal governments operate businesses, are employers, and are health care providers, through administration of clinics and other health programs, which includes public health

Policy Action

It is the intent of OBD to meaningfully consult with Tribes on any rule changes, policy, programs, rules and draft legislation that will impact the Tribes before any action is taken.

Such rule changes or policies include those that:

- Have Indian or Tribal implications; or
- Have implications on the Indian Health Service, tribal health programs or urban Indian health program, or
- Have a direct effect on one or more Tribes, or
- Have a direct effect on the relationship between the state and Tribes, or
- Have a direct effect on the distribution of power and responsibilities between the state and Tribes; or
- Are a federally or statutorily mandated proposal or change in which OBD has flexibility in implementation.

Tribal Consultation Process:

An effective consultation between the OBD and the Tribes requires trust between all parties which is an indispensable element in establishing a good consultative relationship.

Any Issue includes, but is not limited to:

- Policy, programs, rules and draft legislation development impacting the Tribes;
- Program activities that impacting Tribes;
- Data collection and reporting activities impacting Tribes;
- Rulemaking impacting Tribes; or
- Any other OBD action impacting Tribes or that has implications on the NPAIHB, tribal health programs or IHS.

Upon identification of any Issue meeting any of the above criteria the OBD will initiate consultation regarding the issue.

To initiate and conduct consultation, the following serves as a guideline to be utilized by the OBD and the Tribes:

- Identify the Issue: complexity, implications, time constraints, deadlines and issue(s).
- Identify how the Issue impacts the Tribes.
- Identify affected/potentially affected Tribes.

Determining Consultation Mechanism: The most useful and appropriate consultation mechanisms can be determined by OBD and Tribes after considering the Issue and Tribes affected/potentially affected. Consultation mechanisms include but are not limited to one or more of the following:

- Email
- Teleconferences
- Virtual Meetings
- Face-to-Face Meetings at regular Board or Committee Meetings
- Other regular or special consultation sessions needed.

Communication Methods: The determination of the Issue and the level of consultation mechanism to be used by OBD shall be communicated to affected/potentially affected Tribes using all appropriate methods and with as much advance notice as practicable or as required under this policy.

These methods include but are not limited to the following:

- **Official Notification:** Upon the determination of the consultation mechanism, proper notice of the Issue and the consultation mechanism utilized shall be communicated to affected/potentially affected Tribes using all appropriate methods including mailing and broadcast e-mail. Such notice shall be provided to:
 - Tribal Chair or Chief and their designated representative(s)
 - Any other entity that the Tribes identify that should be included
- The OBD will regularly update its mailing/email list to ensure notice is being provided to designated leadership. Each Tribe is responsible for providing this information to OBD's Executive Director to regularly update the list.

Rulemaking: The OBD will include the Tribes in all legislative, rulemaking and policy making processes that have tribal implications. The Tribes will have a regular and open invitation to attend any OBD Committee meeting or public rulemaking hearing to provide additional input on rule concepts and language.

Creation of Committees/Work Group(s): Round tables and work groups may be used for discussions, problem resolution, and preparation for communication and consultation related to an Issue but do not replace formal tribal consultation. Round tables and work groups will provide the opportunity for technical assistance from the OBD to Indian health programs and the Tribes to address challenges or barriers and work collaboratively on development of solutions to bring to the meetings.

Implementation Process and Responsibilities: The process should be reviewed and evaluated for effectiveness as requested.

Tribal Consultation Evaluation: The OBD is responsible for evaluating its performance under this Tribal Consultation Policy. To effectively evaluate the results of the consultation process and the ability of the OBD to incorporate tribal recommendations, the OBD may assess its performance on an annual basis in the Executive Director's performance review or as needed.

Meeting Records and Additional Reporting: The OBD is responsible for making and keeping records of all public meetings and its tribal consultation activity. All such records shall be made readily available to the Tribes.

Definitions:

Indian or American Indian/Alaska Native (AI/AN) Indian and/or American Indian/Alaska Native (AI/AN) means any individual defined at 25 USC 1603(13), 1603(28), or 1679(a), or who has been determined eligible as an Indian, under 42 CFR 136.12. This means the individual:

Is a member of a Federally recognized Indian Tribe;

Resides in an urban center and meets one or more of the four criteria:

Is a member of a Tribe, band, or other organized group of Indians, including those Tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

Is an Eskimo or Aleut or other Alaska Native;

Is considered by the Secretary of the Interior to be an Indian for any purpose; or

Is determined to be an Indian under regulations issued by the Secretary;

Is considered by the Secretary of the Interior to be an Indian for any purpose; or

Is considered by the Secretary of Health and Human Services to be an Indian for purposes of eligibility for Indian health care services, including as a California Indian, Eskimo, Aleut, or other Alaska Native.

Tribe. Tribe means any Federally recognized Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Oregon's nine Federally Recognized Tribes include:

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of Grande Ronde
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs
- Coquille Indian Tribe
- Cow Creek Band of Umpqua Tribe of Indians
- Klamath Tribes

Disclaimer:

OBD respects the sovereignty of each of Oregon's Tribes. In executing this policy, no party waives any rights, including treaty rights; immunities, including sovereign immunities; or jurisdictions. This policy does not diminish any rights or protections afforded other Indian persons or entities under state or federal law. Through this policy, the parties strengthen their collective ability to successfully resolve issues of mutual concern. While the relationship described by this policy provides increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in their relationship is the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, the Governor's Office.