

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Commissioner's Office
11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011
Tel: (207) 287-3707; Fax: (207) 287-3005
TTY: Dial 711 (Maine Relay)

REPORT TO THE LEGISLATURE

TO: Joint Standing Committee on Health and Human Services
FROM: Maine Department of Health and Human Services
DATE: January 10, 2023
RE: Report Pursuant to 5 M.R.S. §11055(2), Tribal-State Collaboration

This report is submitted pursuant to 5 M.R.S. §11055(2), which requires the Department of Health and Human Services (DHHS) to file biennial reports with this Committee and the Maine Indian Tribal State Commission describing our implementation of the Tribal-State Collaboration Act.

Background:

In 2022, representatives of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation, and the Governor's Office negotiated the terms of legislation intended to expand economic opportunities for, and improve the welfare of, the Wabanaki Nations and their citizens, and to make structural changes in certain state agency decision-making to promote government-to-government dialogue with the Wabanaki Nations. That legislation, enacted as Public Law 2021, Ch. 681, contains three parts. First, it amends Maine's tax laws both to provide financial benefits to Tribal citizens residing on Tribal lands, and to encourage economic development on Tribal lands. Second, it provides each of the four Wabanaki Nations located in Maine the exclusive opportunity to conduct mobile sports wagering operations within the state. Third, it establishes in law a Tribal-State collaboration process designed to promote meaningful communication on issues of particular significance to the Tribes and their citizens.

The Tribal-State Collaboration Act:

The Tribal-State Collaboration Act, 5 M.R.S. §11051 *et seq.*, requires 15 agencies identified in the statute to engage in a Tribal collaboration process regarding contemplated programs, rules, or services that substantially and uniquely affect Maine's four federally recognized Tribes or their citizens. It is intended to be a user-friendly process free from unnecessary bureaucracy that will be implemented within existing resources.

DHHS Collaboration Policy, Tribal Liaison Contact Information, and Training Received

Title 5 M.R.S. §11053(1) requires each agency covered by the statute to adopt a collaboration policy. On December 20, 2022, the DHHS adopted its collaboration policy, which is appended to this report and can also be found on the DHHS website under "Accessibility and Policy" (<https://www.maine.gov/dhhs/>). The Department's Tribal liaison, as required by 5 M.R.S. §11053(3), will be its Director of Diversity, Equity, and Inclusion once that position is filled.

Until that time Sara Gagné-Holmes, who can be reached at Sara.Gagne-Holmes@Maine.gov or 207-592-2533, will serve as the interim Tribal liaison. Given the size of the Department of Health and Human Services and the breadth of services provided by its eight offices and two psychiatric centers, the interim Tribal liaison has requested representatives from each DHHS Office to engage directly in collaboration with the Tribes, thereby ensuring more meaningful engagement. The interim Tribal liaison has scheduled trainings with designated Office representatives on the DHHS Tribal Collaboration Policy.

On December 6, 2022, the Governor's Office provided training on how to implement the statute in a manner that promotes effective communication and positive government-to-government relations with the Tribes. The Governor's Office has also requested that the Maine Indian Tribal State Commission (MITSC) help to facilitate training of state agency Tribal liaisons on issues of cultural competency, and MITSC has agreed to do so. We look forward to that training as soon as it can be arranged in 2023.

Contemplated Collaboration Anticipated During the Upcoming Biennium

Pursuant to our Tribal Collaboration Policy, DHHS intends to collaborate on programs, grants, rules, and services that are generally applicable as well as those that substantially and uniquely impact Indian Tribes and tribal citizens. Contemplated collaboration and coordination during the next biennium include but are not limited to rulemakings, potential grant opportunities, block grant planning, program implementation, trainings, inclusion on and regular convenings of various advisory councils and stakeholder workgroups across the Department. For illustrative purposes only, below please find some examples of anticipated collaboration:

- Office of Aging and Disability Services (OADS): Beginning in the spring of 2023 OADS will initiate the planning process for the 2024-2028 State Plan on Aging and will invite Title VI Tribal coordinators to be part of the State Plan on Aging Advisory Council that will guide the content of the 2024-2028 State Plan on Aging.
- Office for Child and Family Services (OCFS): In 2023, OCFS plans to notify the Tribes regarding the Social Services Block Grant that it administers to elicit review and comment on its FY24 Social Services Block grant Intended Use Plan and Pre-expenditure report.
- Office for Family Independence (OFI): The Higher Opportunity for Pathways to Employment (HOPE) plans to expand existing collaboration with Indian Tribe Directors of Education and Career Services to identify any traditional Native American careers or education pathways where HOPE can be a resource.

Summary of Notification and Engagement during the Preceding Biennium

Prior to the Tribal-State Collaboration Act becoming law on August 8, 2022 and DHHS adopting its Tribal Collaboration policy, Offices within DHHS regularly conducted outreach and noticing regarding new policies, rules, programs, services, and grants in the spirit of collaboration with Maine's federally recognized Tribes. Below is a summary of those activities:

- Office of Aging and Disability Services:
 - Adult Protective Services: Coordinated with Tribal governments regarding investigations of allegations of abuse, neglect, or exploitation of clients who are Tribal citizens.
 - Aging Services – Older Americans Act: Participated in two tribal meetings (Passamaquoddy Tribe – Pleasant Point and Mi’kmaq Nation) with Title VI coordinators (Title VI funds of the Older Americans Act are awarded directly to tribal organizations and require coordination with State units on aging, which is OADS in Maine) and regularly invited Title VI coordinators to participate in stakeholder groups and advisory councils related to Older Americans Act services and programs.

- Office of Behavioral Health (OBH):
 - Awarded funding under two RFAs (Capital Funds for Residential Substance Use Disorder (SUD) Treatment Facilities and Catalyst Funds for Adult Residential SUD Treatment) to Wabanaki Public Health and Wellness to support capital expenditures to increase the supply of residential treatment for SUD; and
 - Funded Community Health and Outreach Workers (CHOWs) with Wabanaki Public Health and Wellness.

- Office of Child and Family Services:
 - Child Care and Development Fund (CCDF): Sent invitations and notices to all five Maine CCDF Tribal Administrators regarding rule making, initiatives, grants, and other opportunities for engagement and/or feedback to create a coordinated early care and education system statewide; and collaborated to ensure access to free and on-demand health and safety training.
 - Community Mental Health Block Grant (MHBG): In partnership with OBH, sought feedback from Wabanaki Public Health and Wellness on how state services can better serve Native populations, and how service provisions can be best integrated across communities.
 - Families First Prevention Services Act (FFPSA): Invited Tribal leaders to participate in Stakeholder Workgroups that were developed to inform OCFS’ development of the State Prevention Plan and its implementation; and presented on FFPSA at a regularly scheduled OCFS/Tribal ICWA meeting.
 - Child Welfare: Collaborated on tribal welfare cases; ensured new OCFS caseworkers receive an ICWA training within six months of hire; collaborated with Tribal partners to train and approve the people that serve in the role of Qualified Expert Witness as well as in reviewing and updating the ICWA Policy; and conducted outreach regarding training opportunities related to OCFS related initiatives.

- Division of Licensing and Certification (DLC): Partnered with the Maine CDC Rural Health and Primary Care and the Passamaquoddy Tribe to ensure that the Pleasant Point Health Center maintained its Centers for Medicare and Medicaid Services' certification as a Rural Health Center.
- Office for Family Independence:
 - Temporary Assistance for Needy Families (TANF): Collaborated with Tribal leaders to amend a rule regarding relationship requirements for TANF eligibility, thereby enabling Legal Guardians and "Indian Custodians" who were not otherwise related and/or eligible to be potentially eligible for TANF.
 - Higher Opportunity for Pathways to Employment (HOPE): Collaborated with the Penobscot Nation's Department of Education and Career Services and case workers at Wabanaki Public Health & Wellness to ensure the maximization of supports available to Native American students participating in HOPE or interested in participation.
 - Supplemental Nutrition Assistance Program (SNAP) Employment and Training and SNAP-Education: Met regularly with Wabanaki Public Health and Wellness on issues of interest and engaged with Tribal representation at monthly SNAP Statewide Nutrition Action Council meetings.
- Office of Health Insurance Marketplace (OHIM):
 - Briefed Tribal Health Directors on the Marketplace transition and solicited feedback and questions.
 - Held a series of one-on-one and small group meetings with Wabanaki Public Health and other Tribal representatives where OHIM solicited feedback on Tribal citizens' experience with HealthCare.gov and recommendations for CoverMe.gov.
 - Invited Tribal representation to annual pre-Open Enrollment presentations where OHIM provided updates about the platform and policies for the coming year and answered questions.
- Office of MaineCare Services:
 - Met monthly with Tribal Health Directors to advise them of and answer questions related to anticipated State Plan Amendments, waivers, upcoming policy and rule adoptions or amendments to effectuate legislative changes and share plans regarding upcoming grant applications and to align initiatives when possible.
 - Tribal Health Directors served (and continue to serve) on the MaineCare Advisory Committee.
 - Provided a total of 59 written notices regarding State Plan Amendments, waivers, and anticipated policy and rule changes to Tribal leaders as well as Tribal health care directors. Notices included a range of topics including but not limited to telehealth, nursing facility services, accountable communities, comprehensive rate system evaluation, behavioral health services, opioid health homes, electronic

visit verification system, community care teams, cost of living adjustments, dental, sexual and reproductive care services, and non-emergency transportation services.

- Met regularly with Wabanaki Public Health and Wellness to discuss how OMS could meaningfully engage with Tribal leaders regarding policy, programs, services, and grants.
- Maine Center for Disease Control and Prevention (Maine CDC): Engaged with Tribal representatives as part of a series of Public Health District site visits; disseminated health alerts/advisories to Tribal Health Centers using the Health Alert Network (MaineHAN) messaging platform; and conducted Tribal health calls during the height of COVID-19.
 - Asthma Prevention and Control Program: The Penobscot Nation Health Department and the Maliseet Health and Wellness Center are part of the Program's Asthma Coalition, which meets bimonthly.
 - Child Lead Poisoning Prevention Unit: Supported the Penobscot Nation Health Department's application to perform in-office blood lead testing.
 - Data Research and Vital Statistics (DRVS): Entered into a data sharing agreement with Maine Health / Maine Medical Center Research Institute for the Passamaquoddy Clean Water Project.
 - Drinking Water Program:
 - Entered into a Memorandum of Understanding with Environmental Protection Agency (EPA), Region 1, U.S./ Department of the Interior Bureau of Indian Affairs, and the Passamaquoddy Tribe at Pleasant Point for provision of safe drinking water at the new Sipayik Elementary School.
 - Entered into a training contract between EPA, Region 1, and the Passamaquoddy Water District (PWD). The contract provides system-specific on-site training to operators of the recently upgraded PWD water treatment plant, which was partially funded through the Program's Drinking Water State Revolving Fund.
 - Maine Immunization Program: Allocated \$1M in grant funding to support Tribal Health Departments and \$50K to support Tribal Health Centers.
 - Public Health Emergency Preparedness (PHEP):
 - Entered into a Memorandum of Understanding with Tribal Health Centers to serve as a Point of Dispensing to administer medical countermeasures to Tribal citizens during a public health emergency.
 - Invited the Tribal District Liaison, a position made possible through a partnership between the Office of Population Health Equity and the Houlton Band of Maliseet Indians, to participate in a Jurisdictional Risk Assessment facilitated by PHEP every three years.
 - Office of Public Health Equity: Coordinated funding opportunities across Maine CDC related to COVID-19 disparities and immunizations, resulting in each Tribal community determining the best way to allocate available Maine CDC resources

between 2022-2024. The total reserved for each community is \$710,000 or \$3.5 million across all five Tribal communities.

- Women Infant and Children (WIC): Entered into a Memorandum of Understanding with the WIC Nutrition Program at the Passamaquoddy Health Center to exchange information to prevent dual participation of WIC participants through use of a Management Information System (MIS). The Maine CDC WIC program also supports the use of the MIS system with training, supplies and troubleshooting when needed.

Recommendations for Changes to the Act

None at this time.



Office of the Commissioner

Department of Health and Human Services Tribal Collaboration
Policy

Policy #: DHHS-02-22

Issue Date: 12/20/22

I. SUBJECT

Department of Health and Human Services' (the Department) Tribal Collaboration Policy.

II. POLICY STATEMENT

The Tribal-State Collaboration Act of 2022 requires the Department to engage in a tribal collaboration process regarding contemplated programs, rules or services that substantially and uniquely affect Maine's four federally-recognized Indian Tribes or their members. The Act is codified at 5 M.R.S. §§ 11051 *et seq.* Its purpose is to promote respectful dialogue and improve communication between state government and the four Tribes: the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation.

In addition to this state requirement, federal programs and funding require the Department to collaborate (also referred to as "consult") with Indian Tribes generally. The Department's Collaboration Policy provides a process for collaboration and, therefore, should be used whenever collaboration is required.

Attached hereto and incorporated herein are the Department's Collaboration Policy (**Appendix A**) and Guidance for implementing the Department's Tribal Collaboration Policy (**Appendix B**).

III. DEFINITIONS

Indian Tribe. "Indian Tribe" means a federally recognized Indian tribe within the State of Maine.

Collaboration. "Collaboration" means establishing a process for collaboration between the Department and the Indian tribes regarding the agency's programs, rules and services that is in addition to any process available to members of the general public. Collaboration must include providing an Indian Tribe reasonable written notice of a contemplated program, rule, or service; allowing the Indian

Tribe a reasonable opportunity to provide information, advice and opinions on the contemplated program, rule or service; requiring the Department to consider the information, advice and opinions it receives from the Indian tribes; and requiring

the agency to make reasonable efforts to complete the collaboration process before taking final action on the contemplated program or service or, in the case of a rule, before publication of the proposed rule.

IV. DISTRIBUTION

All workforce via posting on the Department’s website and via email.

12-20-22
Date


Jeanne M. Lambrew, Ph.D.
Commissioner

DEPARTMENT OF HEALTH AND HUMAN SERVICES
TRIBAL COLLABORATION POLICY

This policy governs the Department of Health and Human Services' implementation of the *Tribal-State Collaboration Act*, 5 M.R.S. §§ 11051 *et seq.* The purpose of the Act is to promote respectful, government-to-government dialogue, and improve communication between state agencies and the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation. Staff should interpret and apply the provisions of the law consistent with this purpose. The Act is intended to be implemented within existing resources, and therefore should be administered in a way that is practical, user-friendly, and efficient. The goal is to ensure the Tribes are afforded a reasonable opportunity to be heard – in addition to the public process – during the development of programs, rules and services that substantially and uniquely affect them or their citizens, while minimizing administrative burdens for both state and tribal staff. This policy incorporates *Tribal-State Collaboration Agency Guidance* of November 29, 2022, which is attached and incorporated herein.

I. Collaboration Required

Staff shall engage in tribal collaboration regarding a contemplated program, rule or service that substantially and uniquely affects an Indian Tribe or its members. In determining whether a contemplated action triggers the need for collaboration, staff should consider whether it will have a meaningful and significant impact on an Indian Tribe or its members that is distinct from the general population. This will always be a subjective determination, and should be informed by the Act's purpose of improving communication between the State and the Tribes. When in doubt, staff should consider whether some initial, informal communication with potentially affected Tribes would assist in making this determination. If the standard for collaboration is not met, but some communication with one or more Tribes would nonetheless be beneficial, staff should ensure that occurs. Decisions about whether and how to engage in collaboration should not be formalistic, but should be driven by common sense and good judgement. The overarching goal is to increase and improve communication with the Tribes, rather than technical compliance with the Act for its own sake.

A. The Process of Collaboration

The Act requires the agency to provide the Tribes with written notice of the contemplated action, allow the Tribes a reasonable opportunity to provide information, advice and opinions on the contemplated action, and consider the comments it receives.

1. **Notice (sub-§ 11053(1)(D)(1)).** Once the determination has been made that collaboration is appropriate, the tribal liaison or project manager should email

Appendix A: Department of Health and Human Services' Tribal Collaboration Policy

2. the point of contact that each of the four Tribes has provided for the purpose of collaboration. This email should explain that the agency is initiating the collaboration process, provide a description of the proposed action, identify the date within which comments are requested, and offer to answer any questions.
3. **Opportunity to Comment (sub-§ 11053(1)(D)(2)).** There is no statutorily required comment period for tribal collaboration. The schedule should take into account the nature of the proposed action, its relative complexity, the magnitude of its impact, the relative urgency to act, and other factors. The schedule may be extended or truncated as appropriate, depending on the level of interest the Tribes may express. Comments may be submitted in writing, or provided orally in a meeting or via teleconference. The comment period and the manner in which information is exchanged should be flexible to accommodate the needs of tribal and state agency staff, and to promote efficiency and good communication. The agency must use reasonable efforts to complete the process before taking final action.
4. **Consideration of Comments (sub-§ 11053(1)(D)(3)).** The agency must consider in good faith the information, advice, and opinions it receives from the Tribes in the course of collaboration. The agency is not required to provide a written response to submissions it receives from the Tribes, but it may choose to provide feedback, including informally, in the interests of respectful dialogue. The agency should include any written materials received or generated in the collaboration process in the record of its decision-making. To the extent the Tribes provide comments orally, the agency should prepare a memorandum summarizing those comments for its record.
5. **Collaboration in Rulemaking (sub-§§ 11053(1)(D) & (D)(4)).** In the context of rulemaking, agencies must engage in collaboration consistent with applicable provisions of the Administrative Procedures Act, 5 M.R.S. §§ 8051 *et seq.* (APA), as well as the Tribal-State Collaboration Act, 5 M.R.S. §§ 11051 *et seq.* The Act directs the agency to use reasonable efforts to complete collaboration before formal publication of a proposed rule pursuant to 5 M.R.S. § 8053(5). Completing collaboration before publication of a proposed rule will also avoid procedural confusion that could arise from collaboration occurring at the same time as the public notice and comment process under the APA. If it is necessary to engage in collaboration following publication of the proposed rule, the agency should work closely with the Attorney General's Office to ensure compliance with both statutes.

In the context of emergency rulemaking pursuant to 5 M.R.S. § 8054, the agency must provide notice and engage in collaboration to the extent practicable

Appendix A: Department of Health and Human Services' Tribal Collaboration Policy

Informing Agency Staff (sub-§ 11053(1)(E)). The tribal liaison shall promote awareness of the Tribal-State Collaboration Act and this policy within the agency by conspicuously posting this policy on the agency's website and ensuring appropriate references are made to the policy in agency employment manuals and training materials.



Office of the Commissioner

DEPARTMENT OF HEALTH AND HUMAN SERVICES'
TRIBAL COLLABORATION GUIDANCE
November 29, 2022

Overview and Purpose: The Tribal-State Collaboration Act of 2022 requires certain state agencies to engage in a tribal collaboration process regarding contemplated programs, rules or services that substantially and uniquely affect Maine's four federally-recognized Indian Tribes or their members. The Act is codified at 5 M.R.S. §§ 11051 *et seq.* Its purpose is to promote respectful dialogue and improve communication between state government and the four Tribes: the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation. The Act is intended to be implemented within existing resources, and designed not to create a cumbersome new bureaucracy. Instead, it is intended to allow each agency discretion to administer the law in a manner that is efficient and user-friendly, and that accommodates the unique circumstances of the agency's work. Although there are no penalties for non-compliance with the Act, each agency should strive to ensure that tribal collaboration, when it occurs, is both a meaningful process and one that does not result in unnecessary administrative burdens for tribal or state governments.

Agencies subject to the collaboration requirement (sub-§§ 11052(1)(A)-(P)): Only those agencies identified in the Act are subject to its requirements: DACF, DOC, DECD, DOE, DEP, DHHS, DIFW, DOL, DPS, DAFS, DPFR, DDVEM, DMR, DOT, PUC, and the Office of the Public Advocate. Administrative divisions of these agencies are not required to comply with the Act's requirements separately. So, for example, DPFR need only designate a single tribal liaison for the entire agency, and each professional licensing board within the agency is not required to do so independently. The same is true for filing bi-annual reports – only a single report is required on behalf of the entire agency.

Some agencies will have occasion to engage in tribal collaboration more frequently than others, and some may do so only rarely. The fact that a given agency was included in the Act should not be interpreted to mean that it is expected to engage in tribal collaboration regularly – only that it is possible that it could at some point have occasion to do so. Each agency should thus be vigilant in ensuring that it engages in the collaboration process when appropriate.

Actions triggering collaboration (sub-§ 11053(D)): The scope of the Act applies only to “programs, rules and services that substantially and uniquely affect the Indian Tribes or tribal members.” Note that it does not apply to any specific licensing and permitting decisions. Because the statute applies only to agency decision-making that both “substantially and uniquely” affects Tribes or tribal members, it will not cover most programs, rules and services of

Appendix B: Department of Health and Human Services Tribal Collaboration Guidance

general applicability. The narrow focus of the Act is to ensure that the time and energy that goes into the collaboration process will be spent on the issues that matter most to tribal communities. Agencies should not be legalistic in assessing which decisions trigger collaboration, and should instead use common sense and good judgment to make that determination consistent with the Act's purpose of improving tribal-state communication. When in doubt, it may make sense for agencies to have some initial, informal communication with potentially affected Tribes to inform the determination of whether a contemplated action may substantially and uniquely affect the Tribe or its members.

Agency obligations: The Act calls upon agencies to designate a tribal liaison, ensure the liaison and other appropriate staff receive appropriate training, adopt a collaboration policy, and file a report every two years describing its activity under the collaboration law.

- **Designate a tribal liaison (sub-§ 11053(3)).** Agencies must designate a tribal liaison who reports directly to the head of the agency and who is responsible for facilitating effective communication between the agency and the Tribes. The agency's existing legislative liaison would be an appropriate choice for this role. The liaison will serve as the agency's point of contact on tribal issues and oversee implementation of the collaboration Act's requirements within the agency.
- **Adopt a collaboration policy (sub-§ 11053(1)).** The core requirement of the Act is that the agency adopt a policy that sets forth the process it will follow to engage in tribal collaboration. The policy must include provisions which provide for reasonable written notice of the contemplated action, allow the Tribes a reasonable opportunity to comment, require agency consideration of the comments received, and require that the agency make reasonable efforts to complete collaboration before making a final decision. The policy must also ensure agency staff are informed of the requirements of the Act. The agency must seek and consider comments on its draft collaboration policy from the Tribes and the Maine Indian State Tribal Commission.
- **Training (§ 11054):** Tribal liaisons and other agency staff "whose work substantially and uniquely affects Indian tribes or tribal members" must receive training under the Act. The Governor's office will offer training on effective communication and collaboration under the Act, and will request the Tribes to provide training on cultural competency.
- **Filing of reports (sub-§ 11055(2)).** Beginning on January 10, 2023, the law requires agencies to file reports every two years with their legislative committee of jurisdiction and with the Maine Indian Tribal State Commission. The reports must include a copy of the agency's collaboration policy, the name and contact information of the agency's tribal liaison, a description of training received, a description of any actions contemplated during the upcoming biennium – to the extent known – that would trigger collaboration, a summary of any collaboration the agency engaged in during the preceding biennium, and any recommendations for changes to the Act.