



Drafting Tribal Public Health Laws and Policies

to Reduce and Prevent Chronic Disease



Laws and policies can support the efforts of Tribal Nations to reduce and prevent chronic disease within their communities. American Indian Tribes are sovereign nations with unique political and legal status, which makes them distinct from other cultural and racial groups in the U.S. They have their own legal systems, which vary across Tribal Nations. Depending on the Tribe, a Tribe's laws and policies might be found in written documents such as a Constitution, Tribal code, and Tribal court case law. A Tribe's laws might also be found in unwritten forms, such as customary laws and traditions. Some Tribes include both written and unwritten laws in their legal systems.

What is policy?

At the most basic level, a policy is a plan or course of action designed to influence and determine decisions. Policies can be written or unwritten. They often take the form of laws, regulations, resolutions, executive orders, and other types of legal policies. They can also be organizational policies, such as wellness or dress code policies.

The Western/Anglo legal system favors written laws and policies. Tribal nations might or might not perceive written laws and policies to be as useful or relevant in the same way as Western nations do (*see sidebar*). Nonetheless, many Tribes have chosen to implement a system of written laws and policies, to varying degrees. Regardless of what form Tribal laws or policies take, laws and policies that are clearly understood and supported by community members are more likely to be self-enforcing, requiring fewer resources to monitor and reducing the chances for negative community relations about the law or policy.

This publication is designed to assist Tribal leaders, health departments, public health advocates, and community members in thinking about how to draft *written* public health laws or policies for their Tribes, if that is their goal. It provides checklists and tools to

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help readers understand the policy drafting process, and how to draft well-written policies that will help them achieve their public health goals.

Community Engagement is Essential

Community members should be involved from the outset and throughout the entire policy development process. Community engagement includes the process of collecting local input and information to establish the need for the law or policy and help design it. It also includes the process of educating community members and stakeholders about why a law or policy is needed, and how it will address the problem or issue it targets.

An effective community engagement process helps ensure that the policy developed will address actual priorities coming from within a community. It also helps to identify the key stakeholders — expected and unexpected — connected with those priorities. Engaging community members and stakeholders in the policy making process not only leads to better understanding of what the real needs are, but also about what approaches are more likely to work or not work on a practical level. The community engagement process promotes buy-in and support from community members, and can help proponents anticipate or minimize opposition or concerns. It also can identify community leaders who might not hold elected positions or formal titles, but whose viewpoints are influential because of their role within a community, their relationships, and reputations.

Why written laws and policies?

From a Western/Anglo legal perspective, written policies are viewed as advantageous over unwritten policies because:

- Written policies are more likely to weather leadership or management changes.
- Written policies can facilitate consistent implementation and enforcement.
- They can facilitate good understanding about what is expected of everyone — including who is responsible for implementing the policy, how it will be enforced, and the rights and responsibilities created by the policy.
- Written policies can help promote a sense of fairness by aiding understanding of how the policy will be applied across a community, organization or department.



Engaging these natural community leaders as coalition leaders or policy champions will also assist with carrying the initiative forward. **Community engagement is one of the most important parts of policy development.** The Cherokee Nation has developed a Healthy Tribal Nations Toolkit which includes a section specifically about coalition building, and discusses the role of coalitions throughout the toolkit. This toolkit can be found at HealthyTribalNations.com.

The Planning and Drafting Process

Once you have laid the groundwork for the law or policy through community education and engagement, you are ready to move on to the work of writing the law. The Cherokee Nation's Healthy Tribal Nations Toolkit uses a simple four-step framework for the basic policy drafting process.¹ We include it here with a few additions:

Research: Research your Tribe's law-making process, and examples of laws from your Tribe, including customary law if applicable. You could also research similar laws from other Tribes or other jurisdictions that you think may provide helpful examples of the kind of law you hope your Tribe will adopt.

Engage: Engage a local policy champion, or coalition subcommittee or similar group to draft the policy.

Invite: Invite feedback through talking circles, open meetings, community meetings, one-on-one conversations, and through other means of outreach appropriate for your Tribal community.

Revise: Incorporate community and stakeholder input and feedback into the draft as much as possible, recognizing the importance of compromise, while at the same time trying to sustain the effectiveness of the proposed law — this is much easier to say than to do! An organization that provides legal technical assistance can review your law and help, but your coalition is a crucial part of this process.

Elements of Effective Policy

This checklist contains the elements of an effective policy. The scope of each section will depend on the nature of the policy.

TABLE 1: Policy Elements	
Findings	<p>Findings are brief statements of fact and/or statistics relevant to issue being addressed and that support the need for the policy. Think about:</p> <ul style="list-style-type: none"> ■ Are the findings evidence-based? ■ Do the findings support the purpose of the policy? ■ Do the findings anticipate challenges? ■ Do the findings address values and purposes important to the Tribe?
Purpose	The purpose is a statement that explains the goal(s) of the policy.
Definitions	<p>The definitions are detailed explanations of the key terms in the policy. Think about:</p> <ul style="list-style-type: none"> ■ Are all the key terms defined? ■ Are any unnecessary terms defined? ■ Are the definitions written broadly enough to encompass new or emerging concepts or products without being overly broad?
Main policy provisions	<p>The main policy provisions state the prohibitions and/or requirements of the policy and identify the parties to whom the provisions apply. Think about:</p> <ul style="list-style-type: none"> ■ Are all the requirements and prohibitions reasonable? ■ Do the provisions address the purpose? ■ Are the provisions consistent with other policies and laws? ■ Are the provisions clearly stated? ■ Is it clear to whom the policy applies?
Exceptions or exemptions	<p>This section contains any exemptions or exceptions to the prohibitions or requirements that are necessary to achieve the purpose of the policy. Think about:</p> <ul style="list-style-type: none"> ■ Are the exceptions or exemptions truly necessary? ■ If so, are they limited and written as narrowly as possible?
Enforcement	The enforcement section identifies the parties responsible for enforcement, outlines the enforcement procedures, any penalties or fines that may be imposed, and any appeal process.
Implementation	The implementation section states the effective date for the policy and the steps to disseminate and publicize the policy.
Evaluation	The evaluation section outlines the timeline and process to assess the effectiveness of the policy, including how it meets the goals, as well as providing a framework for policy revision.

Policy Review

The following principles should be kept in mind throughout the policy development process to ensure that the policy is both comprehensive and understandable.

✓ Be clear and specific

- Use definitions appropriately.
- Include all the necessary policy elements.
- Avoid assumptions — make your meaning and intentions clear.

✓ Be concise

- Choose words with care and precision.
- Make every word count — eliminate unnecessary words.
- Keep language as simple as possible.

✓ Be consistent

- Use language that is consistent with the policy’s objectives.
- Check for internal and external consistency, including consistency with other parts of the policy, and consistency with other policies or laws.
- Avoid unnecessary exemptions. Exemptions can undermine a law’s effectiveness, make enforcement harder, and encourage lawsuits if people think the exemptions make the law unfair.

✓ Be practical

- Consider the ability to achieve the policy’s purpose (cost, effective dates, ability to follow the policy).

✓ Do your homework

- Identify all stakeholders, and involve them in the process.
- Review sample policies.
- Seek legal technical assistance, both about process (how laws are created for your Tribe and standard or “boilerplate” language that is typically included in your Tribe’s laws) and about substance (what your law should include to effectively address the public health issue of concern).

✓ Identify deal breakers early on

- Hold frank discussions about what compromises could be acceptable to the coalition if needed to get a law passed, and at what point it may be better for the coalition to pause, and come back another day.

✓ Tailor policy language to your community

- Carefully review example policies — don’t draft by cut and paste because someone else’s law will reflect compromises that might not be necessary or even helpful.
- Anticipate challenges (political, bureaucratic, practical and legal).
- If exemptions are proposed, consider whether they are truly needed, and if so, make them as narrow as possible.

✓ Draft and exchange ideas with others

- You are not alone — you have stakeholders, legal technical assistance providers, and other colleagues who are working on the same issues.
- Your policy will exist within a framework of other laws and policies, and may reflect local, national, or international trends. Draw on information from these other sources to inform the development of your policy.

Drafting effective laws and policies is a process; it requires clear purpose and willingness to continuously learn about the problems and solutions facing one’s community and to engage with stakeholders. This tool is meant to be used as a guide; it is not a substitute for legal technical assistance in policy drafting efforts. For more information on how the Public Health Law Center could support your efforts, please contact Julie Ralston Aoki (julie.ralstonaoki@wmitchell.edu).

Additional Resources

Listed below is a sampling of free resources available to support Tribal policy development in two key chronic disease prevention areas — promoting healthy eating and commercial tobacco control.

PROMOTING HEALTHY EATING	
Resources for Tribal healthy food policy development	General healthy food policy resources
<ul style="list-style-type: none"> ■ American Indian Cancer Foundation Healthy Native Foods for American Indian Communities Toolkit: http://www.americanindiancancer.org/wp-content/uploads/2014/01/Toolkit_NEW_03_2014-2.pdf ■ Cherokee Nation’s Healthy Tribal Nations Toolkit: http://www.healthytribalnations.com ■ First Nations Development Institute, Knowledge Center: http://www.firstnations.org/knowledge-center ■ American Indian Healthy Eating Project: http://americanindianhealthyeating.unc.edu/tools-for-healthy-tribes/ ■ Seeds of Native Health: http://seedsofnativehealth.org 	<ul style="list-style-type: none"> ■ Public Health Law Center, Healthy Eating: http://www.publichealthlawcenter.org/topics/healthy-eating ■ American Heart Association, Healthy Community Food and Beverage Toolkit: http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/HealthyEating/Healthy-Community-Food-and-Beverage-Toolkit_UCM_471733_Article.jsp ■ Bay Area Nutrition and Physical Activity Collaborative, Healthy Beverage Toolkit and Sample Wellness Policies: http://www.banpac.org/banpac_resources_toolkit_beverage.htm ■ Center for Science in the Public Interest, Healthier Food Choices for Public Places: http://cspinet.org/nutritionpolicy/foodstandards.html ■ Centers for Disease Control and Prevention, Health and Sustainability Guidelines for Federal Concessions and Vending Operations: http://www.cdc.gov/chronicdisease/pdf/guidelines_for_federal_concessions_and_vending_operations.pdf
COMMERCIAL TOBACCO CONTROL	
Resources for Tribal commercial tobacco control policy development	General commercial tobacco control policy resources
<ul style="list-style-type: none"> ■ National Native Network: www.keepitsacred.org ■ Northern Plains Tribal Tobacco Control Technical Assistance Center, Tribal Tobacco Control Policy Toolkits: http://www.sacred-life.org/tobacco-prevention-control?showall=&start=1 ■ Northwest Portland Area Indian Health Board, Tribal Tobacco Policy Workbook: http://www.npaihb.org/images/projects_docs/WTPP/Final%20Policy%20Workbook.pdf ■ U.S. National Library of Medicine, Health Topics — Smoking and Commercial Tobacco Use: http://americanindianhealth.nlm.nih.gov/commercialtobacco.html 	<ul style="list-style-type: none"> ■ Public Health Law Center, Tobacco Control Legal Consortium: http://www.publichealthlawcenter.org/topics/tobacco-control ■ American Lung Association’s State Legislated Actions on Tobacco Issues website: http://www.lungusa2.org/slati/states.php ■ Americans for Nonsmokers Rights, Native Communities webpage: http://www.no-smoke.org/learnmore.php?id=738 ■ Campaign for Tobacco-Free Kids: http://www.tobaccofreekids.org ■ U.S. Surgeon General’s reports on tobacco: http://www.surgeongeneral.gov/priorities/tobacco

RESOURCES RELATED TO TRIBAL PUBLIC HEALTH LAWS OR TRIBAL LAWS IN GENERAL

- National Congress of American Indians Policy Research Center, Tribal Public Health Law database: <http://www.ncai.org/policy-research-center/initiatives/projects/tribal-public-health-law>
- Individual Tribe websites
- Montana Indian Law Portal: <http://indianlaw.mt.gov/about.mcpX>
- National Indian Law Library: <http://www.narf.org/nill>
- Tribal Law Exchange: <http://www.tlex.org>
- Tribal Law and Policy Institute, Tribal Laws/Codes web page: <http://www.tribal-institute.org/lists/codes.htm>
- Tribal Law Journal: <http://lawschool.unm.edu/tlj>
- William Mitchell College of Law, Tribal Code Writing Clinic: <http://web.wmitchell.edu/students/course-description/?course=8011>

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The Public Health Law Center provides information and technical assistance on issues related to public health. The Public Health Law Center does not provide legal representation or advice. This document should not be considered legal advice. For specific legal questions, consult with an attorney.

Endnotes

- ¹ CHEROKEE NATION, HEALTHY TRIBAL NATIONS TOOLKIT, sections 3.4, 4.4, and 5.4 (2012, v. 2.07), available at www.healthytribalnations.com.