

From: Oh Rachel [<mailto:rachel.oh@orhix.org>]

Sent: Tuesday, January 10, 2012 3:00 PM

Subject: Oregon Health Insurance Exchange:Tribal Consultation 1/13/12 Meeting Materials

Dear Tribal Chairs, Health Directors & NPAIHB Delegates,

The Oregon Health Insurance Exchange (ORHIX) is looking forward to meeting many of you this **Friday January 13th** at the **Many Nations Longhouse (1630 Columbia Street, Eugene OR)** located on the University of Oregon campus. The meeting is scheduled to run from **9am to noon**.

I am attaching an agenda along with a draft consultation policy for our discussion purposes. In order to meet expedited federal timelines, we wanted to start our discussion with this proposed language, but also want to stress that this is a draft document, for which this meeting offers each of us the opportunity to make changes or edits to the document. ORHIX has been working with Jim Roberts, from the NPAIHB to develop this draft policy for our discussion, but we know each of you will have additional comments and suggestions to further share during the meeting.

If you have any questions or would still like to RSVP, please call or e-mail Rachel Oh at 503-407-9627 or rachel.oh@orhix.org.

Best regards and we look forward to meeting you on Friday!

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Oregon Health Insurance Exchange Corporation
Tribal Consultation Meeting

Friday January 13, 2012
9a.m. – 12p.m.

Meeting Location:

Many Nations Longhouse
University of Oregon

9:00am – 9:30am: **Welcome and introductions**

9:30am – 9:50am: **Oregon Exchange background**

9:50am – 10:05am: **ACA specific provisions**

10:05am – 10:15am: **Break**

10:15am – 11:15am: **Draft Tribal Consultation Policy Discussion**

11:15am – 11:50am: **Proposed establishment of the Tribal Technical Work Group**

11:50 – 12pm: **Re-cap and next steps**

1 **OREGON HEALTH INSURANCE EXCHANGE CORPORATION**

2 **TRIBAL CONSULTATION POLICY**

3 **DRAFT VERSION: JANUARY 13, 2012**

4 **I. Introduction**

5 A health insurance exchange is an entity that is intended to create an organized
6 and competitive market for health insurance by offering a choice of plans that
7 establish common rules relating to the offering and pricing of insurance to
8 consumers. In 2009, Oregon’s Legislative Assembly enacted House Bill 2009,
9 which created the Oregon Health Policy Board (OHPB), and among other things,
10 the OHPB was directed to develop a plan to create an Exchange recommendation
11 for Oregon. In 2010, Congress passed and the President signed the Patient
12 Protection and Affordable Care Act and the Health Care and Education
13 Reconciliation Act, together referred to as the “ACA.” As part of the ACA, states
14 must have an Exchange in place by Jan. 1, 2014. In June 2011, the Oregon
15 Legislature passed Senate Bill 99, establishing Oregon’s Exchange as a public
16 corporation.

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18 The Oregon Health Insurance Exchange Corporation (ORHIX), will improve
19 access to coverage by providing a central marketplace where individuals, families
20 and small businesses can buy health insurance, and if applicable, apply for
21 Medicaid and CHIP programs or qualify for tax subsidies to help pay for health
22 insurance premiums. The Exchange will also provide informational and quality
23 services to help customers understand what plan best fits their needs and allow for
24 comparison-shopping. The ACA includes a number of provisions related to
25 health reforms that are specific to American Indians and Alaska Natives,
26 including special benefits and protections for American Indian and Alaska
27 Natives (AI/AN).

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29 The ACA requires that each Exchange consult with a variety of key stakeholders
30 in the planning, establishment and ongoing operation of Exchanges. This is
31 essential so that Exchanges will take a multi-faceted approach to inform the
32 public of their services and coverage options and to work closely with a variety of
33 stakeholders including Federally-recognized Tribes that provide health care
34 services to AI/AN communities. The U.S. Department of Health and Human
35 Services (HHS) is requiring that each State that has one or more federally
36 recognized Tribes to develop a process for consultation with Tribal governments
37 and input from urban Indian health programs regarding the start-up and ongoing
38 operation of the Exchanges.

39 ORHIX shares the HHS goal to establish a clear Consultation policy, as the
40 foundation of their relationship with Oregon's tribes. This policy describes
41 protocols for ORHIX to conduct Tribal Consultation in order to obtain advice on
42 a regular, ongoing basis from designees of Oregon's nine federally recognized
43 Tribes and urban Indian programs on matters having tribal implications regarding
44 the establishment and ongoing operation of the Exchange.

45 **II. ACA Background**

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47 The ACA offers special benefits and protections for AI/AN members, including
48 limits on cost sharing and payer of last resort requirements for health programs
49 operated by the Indian Health Service (IHS), Indian tribes, tribal organizations,
50 and urban Indian organizations. The Center for Consumer Insurance Information
51 Oversight (CCIIO) proposed rules to implement the Affordable Care Act
52 insurance exchanges also requires that each state that has one or more Federally-
53 recognized tribes, as defined in the Federally Recognized Indian Tribe List Act of
54 1994, located within the Exchange's geographic area must engage in regular and
55 meaningful consultation and collaboration with such tribes and their tribal
56 officials on all Exchange policies that have tribal implications. CCIIO encourages
57 Exchanges to seek input from all tribal organizations and urban Indian
58 organizations.

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60 **III. Consultation Policy Statement**

61 The United States Government has a unique legal relationship with American
62 Indian tribal governments as set forth in the Constitution of the United States,
63 treaties, statutes and court decisions. ORHIX, as established by the Oregon State
64 Legislature as a public corporation governed by a Board of Directors and
65 accountable to the people of Oregon, acknowledges this unique relationship and
66 recognizes the right of Indian tribes to self-determination and self-government.
67 The special government-to-government relationship between American Indian
68 tribes and federal and state governments will be respected in all dealings with
69 Indian tribes and ORHIX. The relationship between ORHIX and Oregon's Indian
70 tribes can only be built through trust and mutual respect. ORHIX and Oregon's
71 Indian Tribes both recognize that it is essential to work together to develop
72 mutual respect for the interest serving Tribal members. Consultation with Tribal
73 Governments is especially important in the context of CMS programs because
74 Indian Tribes serve many roles in their tribal communities:

- 75 • Tribal members are beneficiaries of services provided by the Indian Health
76 Services (IHS), by tribal health programs operating under the Indian Self-
77 Determination and Education Assistance Act, Pub. L. 93-638, as amended,
78 and by urban Indian health programs operating under Title V of the Indian
79 Health Care Improvement Act.
- 80 • Tribal members are also eligible to enroll in Medicare, Medicaid, the
81 Children's Health Insurance Program (CHIP), and Exchanges.
- 82 • Tribal governments operate businesses, are employers, and are health care
83 providers, through administration of hospitals, clinics, and other health
84 programs.

85 ORHIX is committed to ensuring that the special benefits and protections
86 extended to AI/AN communities under the ACA will be incorporated in Oregon's
87 Exchange structure, as required by federal law. It is the intent of ORHIX to
88 meaningfully consult on a regular on-going basis with the nine (9) Oregon Indian

89 Tribes on matters relating to Exchange eligibility, operations and services which
90 are likely to have a direct effect on Native Americans and Indian Health
91 Programs. This process ensures that Oregon’s Federally-recognized Tribal
92 governments and urban Indian Programs have an opportunity to comment and
93 advise ORHIX staff when developments or changes impact Tribal members and
94 their health programs. This process also preserves the right of the Exchange to
95 make appropriate decisions based upon the needs of all Exchange users and
96 beneficiaries, so long as any decision does not limit the protections and benefits
97 afforded to AI/AN communities under the ACA.

98 **IV. Determination of Direct Effect**

99 ORHIX will engage Tribal representatives in meaningful Consultation and will
100 confer with urban Indian program representatives prior to decisions being made
101 on Exchange policy or services with a direct effect on Native Americans, Tribal
102 entities or Urban Indian programs. An issue will be considered to have a direct
103 effect on Tribal communities if it is a:

- 104 1) Federally or statutorily mandated proposal or change in which ORHIX has
105 flexibility in implementation; or
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107 2) Proposals or changes impacting services or access to services provided to or
108 contracted for, by Tribal entities or urban Indian programs including but not
109 limited to Exchange eligibility, enrollment periods, specific AI/AN benefits and
110 protections afforded by the ACA, group purchasing and sponsorship of Tribal
111 members, I/T/U¹ has providers in the Exchange and direct enrollment assistance.
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113 If the proposal or change directly affects Native Americans, Tribal programs or
114 urban Indian programs, but is federally or statutorily mandated with no state
115 flexibility in implementation, or if the effect is not substantive, no consultation
116 will be required; however, the proposal or change will be communicated through

¹ I/T/U refers to Indian Health Service, Tribally-operated programs, and urban Indian programs.

117 written updates from ORHIX to Tribal Chairs and Health Directors within 30
118 days.

119 **V. Consultation structure:**

120 ORHIX will consult with Tribal representatives and confer with urban Indian
121 program representatives at the earliest opportunity and to the extent possible
122 giving the appropriate Tribal and urban Indian program designees adequate time
123 to consider and respond to the proposals. Information will be provided including
124 purpose of the proposal/change and anticipated impact on Native Americans,
125 Tribal entities and urban Indian programs.

126 **A. Tribal participation in Exchange Planning and Design through Technical**
127 **Work Group**

128 Each Tribe in the state and each urban Indian clinic will appoint a representative
129 to a Tribal Technical Work Group (TTWG). Additional members of TTWG may
130 include, but are not limited to, ORHIX staff members, representatives from the
131 Oregon Health Authority (OHA), representatives from the Department of
132 Consumer and Business Services (DCBS) and representatives from the Northwest
133 Portland Area Indian Health Board (NPAIHB). This TTWG will be chaired by a
134 representative of the I/T/U (Chair).

135 Meetings will be held on a regular basis, no less than six (6) times per year
136 through December 2014.

137 TTWG meetings may be held face to face or by teleconferences or both. Agenda
138 items for each meeting will be set by the TTWG chair and a designated ORHIX
139 staff member. Topics for consideration include broad categories of analysis and
140 are subject to change based on developments both at the state and federal level.
141 Initially it is anticipated that topics for consideration will include:

- 142 1. Development of a Tribal impact analysis and coordination of Tribal
143 engagement in operational design
- 144 2. Application and enrollment process

- 145 3. Specific AI/AN benefits and protections afforded by the ACA
- 146 4. Group purchasing and sponsorship of tribal members
- 147 5. I/T/U as providers in Exchange plans
- 148 6. Enrollment assistance, outreach, accessibility and appeals/problem solving

149 The purpose of the TTWG is to allow Oregon's Tribes the opportunity to offer
150 advice and recommendations to ORHIX staff about the development and
151 operations of Oregon's Exchange. The TTWG plays an advisory role in a
152 collaborative effort to make the exchange benefit Tribal members. This Work
153 Group structure also allows for the Exchange to make appropriate decisions based
154 upon the needs of all Exchange users and beneficiaries, so long as any decision
155 does not limit the protections and benefits afforded to AI/AN communities under
156 the ACA.

157 All TTWG meetings are open to all Tribal Leaders and their technical advisors.

158 I/T/U and Tribal organizations, including the Northwest Portland Area Indian
159 Health Board may receive grants, contracts or other funding directly from ORHIX
160 to assist in the administration, research and travel expenses associated with
161 TTWG.

162 **B. Formal Tribal Consultation**

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164 If one or more Tribal Leader requests a special meeting to discuss issues that
165 cannot be resolved during the TTWG, ORHIX shall schedule a formal
166 consultation meeting with Tribal Chairs or their formal designees. ORHIX will
167 notify all tribal leaders at least 5 days before the meeting. ORHIX commits to
168 holding the consultation meeting prior to making a final decision on the topic.

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170 Tribal Leaders and their technical advisors will be able to participate in person
171 and by telephone.

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173 A decision will be communicated in writing to Tribal leaders within 5 business
174 days of the time the decision is made and will be sent by e-mail, as well as postal
175 service.

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177 Each calendar year, at least one Formal Tribal Consultation meeting shall take
178 place to review TTWG membership and the TTWG progress. During that
179 meeting, the current Consultation policy will be reviewed and changes made as
180 necessary.

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182 **VI. Communication Methods, Procedures and Timeframes:**

183 Face-to-face consultation and confers will be the preferred method of
184 communication. In the event a deadline is out of the control of ORHIX, the
185 communication may be handled by written letters and/ or e-mails distributed
186 through the Tribal Liaison to Tribal and urban Indian program designees. In
187 severely time limited situations conference calls may be utilized.

188 ORHIX and TTWG members will set up a regular calendar of meetings,
189 providing at least 14 days notice. Notice will be provided via e-mail to the
190 following designated entities:

- 191 a. Tribal Chairman or Chief or their designated representative(s)
- 192 b. Tribal Health Clinic Executive Directors of Oregon's 638/FQHC
193 providers
- 194 c. IHS Clinic(s) Executive Director
- 195 d. Tribal Organizations established to represent IHS and Tribal health
196 programs and such as the Northwest Portland Indian Health Board
- 197 e. Urban Indian program(s) Executive Director(s) or
198 designee(s)

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201 Working with the TTWG Chair, ORHIX staff will identify policy issues to
202 present and discuss at each TTWG meeting.

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Tribal and urban Indian program representatives may also identify a critical event, and in coordination with ORHIX staff, work towards putting the issue on the TTWG agenda or request formal consultation as needed.

ORHIX will review Tribal consultation and urban Indian program confer results and will make recommended changes to the extent practicable and not prohibited by law.

VII. Other

In addition to formal Tribal Consultation and the TTWG, representatives of the I/T/U may serve on various governance and planning structures within the Exchange.

Tribal Organizations and representatives of the I/T/U may work as subcontractors for consultants hired by the Exchange.

I/T/U and Tribal organizations may receive grants, contracts or other funding directly from the Exchange to assist in the planning process.

VIII. Definitions

American Indian: An individual who has been determined eligible, as an American Indian pursuant to 42 CFR 136.12 to receive health care services from Indian health care providers.

Indian Health Care Provider/Tribal Entity: A health care program, including contracted health services, operated by the IHS or by an Indian Tribe, Tribal Organization, or Urban Indian Organization as those terms are defined in Section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603) and Title V, Health Services for Urban Indians

232 **Tribal Consultation:** Tribal consultation is an open and continuous
233 exchange of information that leads to mutual understanding and informed
234 decision making between federal and state entities and Tribal governments
235 and through confers with other entities such as ORHIX and urban Indian
236 programs.

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238 **IX. Disclaimer**

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240 ORHIX respects the sovereignty of each of Oregon’s Tribes. In executing this
241 policy, no party waives any rights, including treaty rights; immunities,
242 including sovereign immunities; or jurisdictions. This policy does not
243 diminish any rights or protections afforded other Indian persons or entities
244 under state or federal law. Through this policy, the parties strengthen their
245 collective ability to successfully resolve issues of mutual concern. While the
246 relationship described by this policy provides increased ability to solve
247 problems, it likely will not result in a resolution of all issues. Therefore,
248 inherent in their relationship is the right of each of the parties to elevate an
249 issue of importanc to any decision-making authority of another party,
250 including, where appropriate, that party’s executive office.

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252 **X. Effective date**

253 This policy will be effective on XXXXXXXXXX, and may be reviewed at the
254 request of any Tribal or urban Indian program representative or ORHIX.