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Yakama Nation

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MEMORANDUM

DATE: February 6, 2012
TO: Tribal Leaders, Health Directors and Board Delegates
FROM: Jim Roberts, Policy Analyst 
SUBJECT: Idaho Insurance Exchange Sample Tribal Consultation Policy

Please find attached a sample Tribal Consultation Policy for Idaho's health insurance exchange, which is currently being developed. This draft is intended as a "discussion draft" only and has not been approved by Idaho Tribes.

The Federal government is requiring that each State that has one or more federally recognized Tribes to develop a process for consultation with Tribal governments regarding the start-up and ongoing operation of the Exchanges. This process will require that each State with federally-recognized Tribes must have a Tribal consultation policy in place as a condition of approval for their health insurance exchange. This draft policy is intended to begin those discussions among Idaho Tribes and with the Idaho State insurance exchange.

Please feel free to review and provide any recommendations on how to improve this draft policy. You may submit your recommendations to Jim Roberts, Policy Analyst, by email at jroberts@npaihb.org. Or you may call me at (503) 228-4185.

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Health Insurance Exchange Tribal Consultation Policy

SAMPLE IDAHO POLICY – Discussion Draft

I. Introduction

The Idaho Health Insurance Exchange has been established under the requirements of the Patient Protection and Affordable Care Act, signed into law on March 23, 2010, which requires states to operate a health insurance exchange by January 1, 2014. The Idaho Health Insurance Exchange will help to improve access to coverage by providing a central marketplace where individuals can apply for Medicaid, CHIP and shop for health insurance coverage and may receive help paying for insurance. Idaho residents will be able to easily compare plans, find out if they are eligible for tax credits and other financial assistance, and enroll for health coverage through the Exchange website.

Section 1311(d)(6) of the Affordable Care Act requires that each Exchange consult with a variety of key stakeholders in the planning, establishment and ongoing operation of Exchanges. This is essential so that Exchanges will take a multi-faceted approach to inform the public of their services and coverage options and to work closely with a variety of stakeholders including Federally-recognized Tribes that provide health care services to American Indian and Alaska Natives (AI/AN). The U.S. Department of Health and Human Services (HHS) is requiring that each State that has one or more federally recognized Tribes to develop a process for consultation with Tribal governments regarding the start-up and ongoing operation of the Exchanges.

The Idaho Health Insurance Exchange shares the HHS goal to establish clear policies to further the government-to-government relationship that exists between the State of Idaho and for the special protections for AI/ANs contained in the Affordable Care Act. This policy describes protocols for the Idaho Health Insurance Exchange to conduct Tribal Consultation in order to obtain advice on a regular, ongoing basis from designees of Oregon's nine federally recognized Tribes and urban Indian programs on matters regarding the establishment and ongoing operation of the Idaho Health Insurance Exchange.

II. Background

The Affordable Care Act at Subtitle K of Title II includes, Protections for American Indians and Alaska Natives, section 2901, which extends special benefits and protections to AI/AN including limits on cost sharing and clarifies payer of last resort requirements for health programs operated by the Indian Health Service (IHS), Indian tribes, tribal organizations, and urban Indian organizations. The Center for Consumer Insurance Information Oversight (CCIIO) proposed rule to implement the Affordable Care Act insurance exchanges also requires that each state that has one or more

Federally-recognized tribes, as defined in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a, located within the Exchange's geographic area must engage in regular and meaningful consultation and collaboration with such tribes and their tribal officials on all Exchange policies that have tribal implications. CCIIO encourages Exchanges to seek input from all tribal organizations and urban Indian organizations. While the Exchanges will be charged with the consultation, tribal consultation is a government-to-government process. CCIIO recognizes that States should have a role in this process and encourages States to develop a tribal consultation policy that is approved by the State, the Exchange, and tribes in order to collaborate and build a strong working relationship.

III. Consultation Policy Statement

A unique government-to-government relationship exists between Indian Tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders that establish and define a trust relationship with Indian Tribes. This relationship is derived from the political and legal relationship that Indian Tribes have with the Federal Government and is not based upon race. The Idaho Health Insurance Exchange acknowledges this unique relationship and recognizes the right of Indian Tribes to self-determination and self-government. This special relationship constitutes a government-to-government relationship between American Indian Tribes, Tribal programs, and federal and state governments. The relationships between governmental structures can only be built through trust and mutual respect. As sovereign governments, the Idaho Health Insurance Exchange and Federally Recognized Tribes located in Idaho must work together to develop mutual respect for the interest of all parties.

IV. Purpose

The purpose of this tribal consultation policy is to address Idaho Health Insurance Exchange policies and actions that have tribal implications so that the State and Tribes can exchange information that leads to mutual understanding and informed decision making. The outcome of this policy is intended to achieve culturally appropriate interaction between Idaho Health Insurance Exchange and Indian Tribes and greater access to services that will be provided by the Idaho Health Insurance Exchange to American Indians and Alaska Natives (AI/ANs). Open and continuous tribal consultation creates opportunities for the Idaho Health Insurance Exchange to build meaningful relationships with Indian Tribes. True and effective consultation results in information exchange, mutual understanding, and informed decision-making.

The intent of this policy is to work on achieving the following goals:

- a. Maximize participation by eligible American Indians and Alaska Natives (AI/AN) in Medicaid, Medicaid Expansion, State Child Health Insurance Programs (SCHIP),

Basic Health Plan (BHP), and Health Insurance Exchanges and to assure that they receive the benefits and protections provided under federal law;

- b. Assure that AI/AN can choose to receive their health care from the Indian Health Services, a tribally-operated program, or an urban Indian program (I/T/U) and the services provided by those programs will be reimbursed by Medicaid, Medicaid Expansion, SCHP, BHP and Qualified Health Plans (QHPs) offered by the State Health Insurance Exchange at rates that are consistent with federal laws and regulations;
- c. Comply with the letter from HHS Secretary Sebelius to the Governor dated September 14, 2011, stating that "States must consult with Tribes to ensure that programs that they administer with federal funding meet the needs of Tribes in that state." And further, "Tribes should be considered full partners by states during the design and implementation of programs that are administered by states with HHS funding" including Affordable Insurance Exchanges. In addition, "Consultations can identify strengths and barriers to Tribes accessing these services and ensure that Tribes have the opportunity for greater health care coverage for their members and employees."
- d. To comply with the CCIO rule regulating the "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans", CMS 9989-P, 45 CFR Parts 155 and 156.
- e. Provide a structure for tribal consultation that recognizes a government-to-government relationship between Tribes and the state, as well as a need for a workgroup comprised of technical advisors to resolve issues related to design, implementation, outreach and education, evaluation, and quality improvement of Exchanges.

V. Tribal Participation in Exchange Planning and Design through Technical Work Group

- a. Each Tribe in the state and each urban Indian clinic will appoint a representative to a Tribal Technical Work Group (TTWG). This TTWG will be chaired by a representative of the I/T/U (Chair).
- b. The state will designate a Tribal Coordinator (TC) to serve as the point person to work with Tribes to address issues and organize meetings.
 - (1) The TC will maintain an e-mail list of the people appointed by tribes to the TTWG, as well as a list of Elected Tribal Officials to be contacted for formal consultation.

- (2) The TC will arrange meetings on a regular basis, no less than one time per month from January 2012 through December 2014.
- c. Tribal Technical Work Group meetings
- (1) Meetings may be face to face, by teleconferences or both.
 - (2) The agenda will be set by the Chair and the TC.
 - (3) The state will explain the decision processes and timelines to the TTWG.
 - (4) The state will provide the experts and decision makers to explain issues to the TTWG and to listen to I/T/U concerns and ideas for resolution.
 - (5) TTWG members will have time to review documents and issues before providing a response. Recognizing that Exchange planning is on a fast track, the expectation is that Tribes will have at least 14 days to respond to each proposal from the Exchange.
 - (6) The TTWG will review products at the conceptual stage before they are finalized, at each proposal as the decision process progresses, and at the final stages of policy development.
 - (7) All TTWG meetings are open to all Tribal Leaders and their technical advisors.
- d. Topics for TTWG consideration
- At minimum, the state will bring the following issues to the TTWG for their consideration:
- (1) Network adequacy for QHPs;
 - (2) Selection of a benchmark plan for Essential Health Benefits and modifications to those benefits.
 - (3) Implementation of AI/AN benefits and protections including proposed methods and processes to assure the waiver of co-pays and deductibles, special enrollment periods, and no penalties for non-insurance;
 - (4) Navigators and other enrollment assistance, including use of Medicaid Administrative Match (MAM);
 - (5) Call center training and procedures to address AI needs;
 - (6) Basic Health Plan planning, design, and implementation;
 - (7) Payment processes and rates for I/T/U for Medicaid Expansion, BHP, and QHPs;

- (8) Communication interface with consumers via website and other materials so that TTWG may assure that there is review by AI for clarity and ease of use;
- (9) Monitoring performance and outcomes of Exchange policies after the Exchange is implemented to assure that AI/AN are being served appropriately and there is coordination of care between the I/T/U and other providers;
- (10) Design of Exchange oversight and quality reporting requirements;
- (11) The TTWG, Tribes or the state may add other issues to this list.

VI. Protocols for Formal Tribal Consultation

- a. If one or more Tribal Leaders request a special meeting to discuss issues that cannot be resolved by the TTWG, the state will schedule such meeting, and
 1. Notify all Tribal Leaders at least 5 days before the meeting;
 2. Hold the meeting before a decision on the topic is made;
 3. The person who is responsible for making the final decision on behalf of the Exchange will participate in the meeting;
 4. Tribal Leaders and their technical advisors will be able to participate in person and by telephone;
 5. A decision will be communicated in writing to Tribal Leaders within 3 days of the time the decision is made and will be sent by e-mail, as well as postal service.
 6. One or more Tribal Leaders may appeal the decision to the Centers for Medicare and Medicaid Services (CMS) or the Secretary of Health and Human Services (HHS).
- b. Communications, Procedures and Timeframes
[THIS SECTION SHOULD BE DEVELOPED AND CONSIDER MODELING ON THE MEDICAID TRIBAL CONSULTATION POLICY]
- c. Include a Critical Event Section for ongoing issue once Exchange is established?
See the HHS Policy

VII. Other

- a. 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.

- b. Tribal organizations and representatives of the I/T/U may work as subcontractors for consultants hired by the Exchange.
- c. 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 Section

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.

Critical Event: Planned or an unplanned event that has or may have a substantial impact or compliance cost on Indian Tribes or affect access to services by members of federally-recognized Tribes (e.g., issues, policies, or budgets).

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

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

IX. Disclaimer

Each of the parties respects the sovereignty of the other parties. In executing this policy, no party waives any rights, including treaty rights; immunities, including sovereign immunities; or jurisdiction. 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, that party's executive office.

X. Effective Date