



California Health Benefit Exchange

Board Members

Diana S. Dooley, Chair
Kimberly Belshé Paul Fearer
Susan Kennedy Robert Ross, MD

Executive Director

Peter V. Lee

CALIFORNIA HEALTH BENEFIT EXCHANGE

DRAFT TRIBAL CONSULTATION POLICY

DRAFT 10/24/2012

I. Introduction

In 2010, Congress passed, and President Obama signed into law, landmark health reform legislation known as the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act). The federal law requires the establishment of health benefit exchanges to facilitate the purchase of qualified health plans by individuals, and also creates the Small Business Health Options Program to assist qualified employers in facilitating the enrollment of their employees in qualified health plans. The state enacted the California Patient Protection and Affordable Care Act in 2010, creating the California Health Benefit Exchange (the Exchange) as an independent state entity.

Beginning in 2014, the Exchange will help to improve access to coverage by providing a central marketplace where California residents will be able to easily compare plans, find out if they are eligible for tax credits and other financial assistance, and enroll in health coverage through an online web portal.

The Affordable Care Act extends special benefits and protections to American Indians and Alaska Natives (AI/AN) including limits on cost sharing and special monthly enrollment periods in the Exchange, and an exemption from the individual mandate. Additionally, the Affordable Care Act includes the permanent reauthorization of the Indian Health Care Improvement Act (IHCA), which extends current law and authorizes new programs and services within the Indian Health Service.

II. Tribal Consultation under the Affordable Care Act

Section 1311(d)(6) of the Affordable Care Act requires state health insurance exchanges to consult with a variety of key stakeholders in the planning, establishment, and ongoing operation of exchanges.

Stakeholder engagement serves several distinct goals for the California Health Benefit Exchange, including (1) gathering general and topic-specific input on policy issues, (2) building and sustaining partnerships, (3) fostering better understanding of the Exchange, and (4) understanding how Exchange policies impact stakeholder partners. The U.S. Department of Health and Human Services (HHS) further requires that each State that has one or more federally-recognized Indian Tribes, located within the Exchange's geographic area, engage in regular and meaningful consultation with Tribes on Exchange policies that have Tribal implications. HHS encourages Exchanges to seek input from Tribal and urban Indian organizations and develop a process for consultation with Tribal governments, regarding the start-up and ongoing operation of the exchanges. The Exchange shares the HHS goal of

establishing a clear policy and process to solidify its government-to-government relationship with Tribes.

III. Consultation Policy Statement

The United States recognizes Indian Tribes as sovereign nations. As such, a unique government-to-government relationship exists between Indian Tribes and the federal government which 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.

California is home to federally-recognized Indian Tribes, non-federally recognized Tribes, urban Indians, unaffiliated Indians, Tribes non-indigenous to California, and California Judgment rolls, with whom the State has an important relationship as set forth and affirmed in state and federal law. In a measure to strengthen communication and collaboration between the California State government and all of California's Indian Tribes, Governor Edmund G. Brown Jr. issued Executive Order B-10-11, establishing the position of Governor's Tribal Advisor in the Office of the Governor. The State of California is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus. The Exchange recognizes and reaffirms this commitment and the inherent right of these Tribes to exercise sovereign authority over their members and territory.

The Exchange is committed to strengthening and sustaining an effective government-to-government relationship between the Exchange and the Tribes by cultivating reciprocal trust and respect through a meaningful consultation process.

Consultation is integral to a deliberative process that results in informed decision-making and adoption of mutually-beneficial policies whenever possible. To establish and maintain a positive relationship, communication and consultation must occur on an ongoing basis so that Tribes have an opportunity to provide timely input on issues that may have a substantial direct effect on Tribes and Indian health organizations. A clear Tribal Consultation Policy will establish the foundation of the relationship between the Exchange and California's Indian Tribes, and ensure Tribes have access to Exchange leadership.

This document describes protocols for the Exchange to conduct Tribal Consultation in order to obtain advice and guidance reflecting the needs and concerns of the American Indian population on a regular, ongoing basis from California's Tribes, urban Indian programs, and Tribal health programs on matters regarding the establishment and ongoing operation of the Exchange. Tribal consultation will help develop the Exchange in a manner that ensures American Indians and Alaska Natives are optimally insured and covered in the Exchange and receive the full benefits of the Affordable Care Act.

IV. Purpose

The purpose of this Tribal Consultation Policy is to help structure and build meaningful relationships with California's Indian Tribes and to establish a clear, concise and mutually-acceptable process through which consultation can take place between the Exchange and Tribes. The Exchange will strive to engage in consultation prior to finalizing policies impacting Tribes. The intent of this policy is to achieve the following:

- The development of a partnership between Tribes and the Exchange in implementing the Affordable Care Act.
- The incorporation of the special benefits and protections extended to Tribes under the Affordable Care Act into Exchange policies, business processes and systems.
- The opening of communication channels for Tribes to raise issues with the Exchange.
- The maximization of participation of eligible American Indians in the Exchange.

Additionally, to ensure that consultation is accurately reflected, the Exchange will provide staff to record meeting minutes

V. Roles

Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility, and occurs between the Exchange and Indian Tribes, as represented by the Tribal Chair or an authorized Tribal Leader designee. Each party will identify his/her authorized representatives with delegated authorities to negotiate on his/her behalf. Although it will not suffice for direct consultation with Indian Tribes, the following entities may also be included in consultation:

- Tribal Advisory Workgroup
- Tribal Health Programs
- Urban Indian Health Programs

California Health Benefit Exchange Executive Staff

It is important that California's Tribes have access to Exchange executive staff through both the formal consultation process and the Tribal Advisory Workgroup. Therefore, the Exchange's Executive Director or executive staff designee will attend each formal consultation meeting. The Executive Director may also attend Tribal Advisory Workgroup meetings or, alternatively, designate appropriate Exchange executive staff to attend on his/her behalf.

VI. Consultation and Workgroup Structure

The Exchange will consult with Tribal leadership representatives and confer with Tribal and urban health organizations at the earliest feasible opportunity, and endeavor to give both Tribes and Workgroup members adequate time to consider and respond to any proposals. Consultation will occur through formal annual meetings with Tribes, as well as through meetings specially-requested by Tribal leaders. In addition to consultation, a Tribal Advisory Workgroup will help guide the Exchange in development of policies impacting Tribes, Tribal health programs, and urban Indian health programs.

A. Annual Tribal Consultation

The Exchange will host an annual Tribal Consultation with all Tribal leaders, and also include Tribal health programs, urban Indian health programs, and other interested Indian health organizations. When feasible, the Consultation will be coordinated with existing Tribal meetings in order to maximize participation.

B. Tribal Advisory Workgroup

The Tribal Advisory Workgroup plays a consultative role in the development of Exchange policies that benefit Tribal members. The Workgroup allows for the Exchange to make appropriate programmatic decisions that take into account the benefits provided to Tribal communities under the Affordable Care Act. The purpose of the Workgroup is to provide California's Tribes the opportunity to offer advice and recommendations to Exchange staff regarding the policy development and ongoing operations of the Exchange.

Tribes nominated and appointed regionally diverse Tribal leadership and Tribal health program representatives to the Advisory Workgroup, through a process facilitated by the Exchange. Workgroup members represent the following regions of California:

- North
- South
- Central-East
- Central-West

Additional members of the Tribal Advisory Workgroup include urban Indian health organizations, non-federally recognized Tribes, and Tribes non-indigenous to the state of California.

Election of a Tribal Advisory Workgroup Chair

The Workgroup may choose to elect a Chair to coordinate with the Exchange's Tribal liaison in the creation of the Tribal Advisory Workgroup meeting agenda, and act as a general point of contact between the Exchange and the Advisory Workgroup.

C. Specially-Requested Meetings

If one or more Tribal leaders requests a follow-up meeting to discuss issues that cannot be resolved during the Tribal Advisory Workgroup, the Exchange shall work with the Tribal leader or their designee to schedule a meeting with Exchange executive staff.

VII. Communication Methods, Procedures, and Timeframes

A. Annual Formal Tribal Consultation

Each calendar year, at least one formal Tribal consultation meeting shall take place to discuss topics of interest to the Exchange and the Tribes as reflected in a jointly-developed meeting agenda. During that meeting, the current consultation policy will be reviewed and recommendations for policy improvements may be suggested to Exchange staff. In addition, the Tribal Advisory Workgroup membership and progress will be reviewed and modified if deemed necessary. Annual Tribal consultations will be held face-to-face, and will also have a call-in line available. Additionally:

- The Exchange will notify all Tribal leaders of the annual consultation at least 30 calendar days prior to the meeting.
- Notification of the consultation will be provided both electronically and via postal service

B. Tribal Advisory Workgroup

The Tribal Advisory Workgroup will meet at least quarterly, through December 2014. The Exchange and the Tribal Advisory Workgroup Chair, if one is elected, will collaboratively arrange a regular calendar of meetings throughout the year.

Face-to-face meetings with webinar and phone options will be the preferred methods of communication.

- All Tribal Advisory Workgroup meetings will be open to Tribal leaders, Tribal health program representatives, and urban Indian health program representatives in a listening capacity. Time will be allotted on each agenda for public comment.
- The Workgroup agenda will be created collaboratively by the Chair (or Co-Chairs) and the Exchange.
- The Exchange will provide internal experts and decision makers to explain issues to the Tribal Advisory Workgroup and listen to concerns and ideas for resolution.
- The Exchange will strive to provide Workgroup members with time to review documents and issues in advance of meetings, with a goal of providing documents at least five business days prior to the meeting.
- The Tribal Advisory Workgroup will seek to reach consensus on the advice it provides to the Exchange for consideration in its policy development. If consensus is not reached, a simple majority of Workgroup members participating will suffice to convey the strength of the Workgroup's views on any given issue.
- The Exchange and the Tribal Advisory Workgroup will evaluate whether to extend the workgroup and the terms of this charter beyond December 2014.

C. Specially-Requested Meetings

Tribal leaders and their technical advisors will be able to request meetings with Exchange executive staff in person, by webinar, or by telephone. The Exchange will notify the Tribal leaders requesting the meeting at a minimum of 10 business days prior to the scheduled meeting. In the case that an immediate consultation is required prior to the 10 business days, the Exchange may request, contingent upon Tribal approval, that the process be expedited.

VIII. Travel Expenses Reimbursement

Funding to defray the cost of travel will be made available to Tribal Advisory Workgroup members, meeting quarterly to attend face-to-face Workgroup meetings. Additionally, the Exchange will provide reimbursement for travel to individuals specifically invited to present at the annual Tribal consultation.

IX. Meaningful Consultation Requirement

Under the requirements of this policy, the Exchange must provide California's federally-recognized Indian Tribes meaningful consultation, which refers to an effective process that encourages California's Tribal governments to provide significant and timely input on the development of regulatory policies on matters that directly affect their communities.

X. Definitions

The definitions in this section are for purposes of consultation only, and should not be interpreted to confer eligibility for subsidies or benefits in Exchange qualified health plans.

Indian: An individual who is a member of an Indian tribe, including California Judgment Rolls, , federally-recognized Tribes, non-federally recognized Tribes, Tribes non-indigenous to California, urban Indians, and unaffiliated Tribal members.

Indian Tribe: Indian entities (tribes, bands, nations, or other organized groups or communities) that are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribal Leaders: Elected and appointed officials of Indian Tribes and their designees.

Urban Indian Health Organization: An Urban Indian organization that operates a health program with funds in whole or part provided by IHS under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act (IHCIA), P.L. 94-437, as amended.

Tribal Health Program: A tribal organization that operates a health program under a contract or compact to carry out programs of the IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 USC §450 et seq.

California Tribe:

- Any member of a federally recognized Indian tribe
- Any descendant of an Indian who was residing in California on June 1, 1852, if such descendant—
 - (A) is a member of the Indian community served by a local program of the Service; and
 - (B) is regarded as an Indian by the community in which such descendant lives.
- Any Indian who holds trust interests in public domain, national forest, or reservation allotments in California.
- Any Indian of California who is listed on the plans for distribution of the assets of rancherias and reservations located within the State of California under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

Unaffiliated Indians: California is home to other tribes and groups referred to as "Indians of California" who are not members of a federally-recognized tribe, but are eligible for IHS services. Currently, there are more than 35 tribes, in California, seeking federal recognition.

Non-indigenous Tribal Member: An American Indian who resides in California, but is a member of an Indian Tribe located in a different state.

California Judgment Roll: Awaiting definition from Tribal Advisory Workgroup

XI. Disclaimer

Each of the parties impacted by this consultation policy respects the sovereignty of the other parties. In executing this policy, no party waives any rights, including treaty rights, 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. This policy is intended to reflect the process with which the Exchange engages in consultation with Tribes, Tribal organizations, and Urban Indian Health Organizations, and should not be construed to confer qualified health plan benefits or Exchange-subsidy determinations.

XII. Effective Date

This policy will be effective on November 14, 2012, and may be reviewed at the request of any Tribal leader or the Exchange.