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CONNECTICUT HEALTH INSURANCE EXCHANGE d/b/a Access Health CT

POLICY: TRIBAL CONSULTATION

This Tribal Consultation Policy includes:

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1. Preamble

This Tribal Consultation Policy is to ensure that, pursuant to the special relationship between the Indian Tribes and Federal and State Governments, both scheduled and ad-hoc consultation opportunities with the Mohegan and Mashantucket Pequot Tribes (hereinafter the “tribes”) are provided by the Exchange regarding policy development and changes that impact Federally-recognized Indian Tribes in the State of Connecticut.

In order to fully effectuate this Policy, the Exchange will:

- (a) Establish communication channels with the elected leader of each tribe and the appointed leadership of the Health Department or Department of Health and Human Services of each tribe. The Exchange recognizes a standing goal of working with the tribes is to increase the tribes’ knowledge and understanding of the Exchange and related policies and procedures.
- (b) Establish an agreed upon schedule of periodic meetings to consult with the tribes on potential changes to policies that would have an impact on Indian Tribes, allowing ample time for tribal input and preparation. Should issues arise which require review and consultation in advance of these established periodic meetings, the Exchange will pro- actively reach out to tribal representatives to coordinate additional discussions.
- (c) Allow for consultation with the tribes in the development of new policy with tribal implications.

- (d) Coordinate to ensure consistent application of the Consultation Policy

2. Background

Section 1311(d)(6) of the Patient Protections and Affordable Care Act (ACA) directs Health Insurance Exchanges to consult with stakeholders. 45 CFR 155.130 identifies the specific categories of stakeholders with whom the Connecticut Health Insurance Exchange (Exchange) must consult, including Federally-recognized Tribes (45 CFR 115.130(f)). Proposed rules issued July 15, 2011, state that Exchanges in States with Federally-recognized tribes “must engage in regular and meaningful consultation and collaboration with such tribes and their tribal officials on all Exchange policies that have tribal implications” (p. 41873 of Federal Register, Vol. 76, No. 136). The State of Connecticut maintains special government-to-government relations with the independent tribal nations of the Mohegan Tribe of Indians of Connecticut (Mohegan) and the Mashantucket Pequot Tribal Nation (Mashantucket Pequot), Connecticut’s two federally recognized tribes.

The Exchange must comply with a number of requirements pertaining to American Indians as specified in the ACA and the permanent reauthorization of the American Indian Health Improvement Act. These requirements include, but are not limited to, establishing a regular and meaningful consultation policy with representatives from the Federally-recognized Tribes.

In addition, the Exchange recognizes there may be members of other Federally-recognized tribes or other individuals who meet the definition of Indian as set forth in 42 CFR §447.50(b) who reside in Connecticut and who will need to be identified when purchasing insurance through the Exchange.

Definitions

There are two definitions of Indian that need to be accounted for: one regarding the determination of eligibility for Medicaid/CHIP and another for purposes of consultation and qualifications for benefits under the Exchange, including the individual responsibility exemption, special monthly enrollment periods, and cost-sharing reductions:

(a)

or Medicaid and CHIP purposes, Indian means any individual defined at 42 CFR §447.50.

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(b) For Exchange purposes, Indian means any individual defined at 25 USC 1603(13) or who has been determined eligible as an American Indian or Alaskan Native, pursuant to 42 CFR §136.12. In each instance, the definition of Indian refers to the members of a “Federally-recognized Tribe.”

3. Guiding Principles

The Exchange and the tribes share the goal of eliminating the health disparities experienced by

American Indians in Connecticut and ensuring their adequate access to critical health services. To achieve these goals, it is essential that the Exchange and the tribes engage in open, continuous, and meaningful consultation.

Consultation is a joint responsibility that leads to information exchange, respectful dialogue, mutual understanding, and informed decision making. It is the intention of the Exchange that such consultation will continue and be on-going throughout the overall design, implementation and management of the Exchange.

The Exchange will strive to reach mutually agreeable and fully informed decisions that acknowledge the broad interests of both Connecticut and the tribes. The Exchange will engage the tribes with a good faith intention to reach consensus wherever possible before a decision is made or action is taken that directly impacts the tribes.

The Exchange will strive for face-to-face meetings with the appropriate tribal leadership to increase understanding of any proposed actions and enhance the development of effective outcomes and solutions. While face-to-face meetings are generally desirable, telephone conference calls, written correspondence, and electronic correspondence will also be utilized.

Representatives from the Exchange and the tribes should make every effort to respond to and participate in the consultation process, to ensure that appropriate responses are provided for any request for consultation.

The Exchange recognizes that the tribes work directly with federal administrators on many issues of concern related to their members' health and health insurance-related concerns. Both tribes have continuing interests in many of the delegated programs, and tribal interests will be considered in the administration of the Exchange as its functions intersect with other programs, such as Medicaid and the Indian Health Service.

It is also important to recognize that the tribes are independently organized and governed and may have unique needs that must be considered when determining the Exchange policy and procedures. As such, specific accommodations to each tribe will need to be considered.

4. Assignment of a Tribal Liaison

The Exchange will assign a representative whose responsibilities will include that of Tribal Liaison. This individual will regularly engage, no less than quarterly, with representatives from each tribe, to deliver pertinent information that informs each tribe about policies and recommendations affecting the tribes and to receive information from each tribe to assure that the Exchange's policies reflect the requirements of the ACA and consideration of each tribe's needs.

As appropriate, the Tribal Liaison will also be responsible for communications on behalf of the state or the Exchange with other state and federal agencies, such as the Connecticut Insurance Department, the Indian Health Services within the US Department of Health and Human Services and the Bureau of Indian Affairs within the US Department of the Interior.

Given the depth of policy knowledge required to appropriately serve in the Tribal Liaison role and deliver insightful and actionable information, the liaison role will be filled by the Exchange's acting Senior Policy Analyst. Should the individual serving in this capacity leave the organization or assume an alternative role, the incoming Senior Policy Analyst will assume these duties.

5. Tribal Consultation Process

The ACA includes numerous provisions that greatly reform the delivery of health care and health insurance across the United States. Most of the reforms affect all of Connecticut's residents, including the members of the Federally-recognized Tribes (who are also citizens of the State and citizens of the United States). The degree and extent of consultation will depend on the identified policy area of concern. An area of concern may be identified by the Exchange and/or by the designated representatives of the tribes. Upon identification of a concern, the Exchange will initiate consultation regarding the concern.

The following serves as a guideline for both the Exchange and the tribes in order to initiate, conduct and conclude a successful consultation:

- (a) Identify the tribal concern, including its complexity, implications, time constraints, and any secondary issue(s) as it relates to policy, funding, services, functions and activities.

- (b)

identify affected/potentially affected tribe(s) and tribal members.

- (c) Determine Consultation Mechanism – The appropriate consultation mechanisms will be determined by the Exchange and/or by the concerned tribe after considering the concerns and those affected or potentially affected. Consultation mechanisms include but are not limited to one or more of the following:

- (i) Written Correspondence

- (ii) Teleconference

- (iii) In-person Meetings

- (iv) Roundtables

- (v) Other broader stakeholder consultation sessions, such as the Exchange Advisory Committee or Exchange Board of Director meetings.

6. Consultation Procedures and Responsibilities

(a) Consultation Occurs:

1. When the Chief Executive Officer of the Exchange, or designee, meets with and/or exchanges written correspondence with a representative of a tribe to discuss issues or concerns of either party.
2. When the Exchange's Tribal Liaison, or designee, meets with and/or exchanges written correspondence with a representative of a tribe to discuss issues or concerns of either party.

(b) Consultation Procedures

1. **Tribal:** Specific consultation mechanisms that will be used by the tribes to consult with the Exchange include but are not limited to written correspondence, in-person meetings, teleconferences and roundtables. Each tribe may independently initiate consultation with the Tribal Liaison or Exchange representatives or request a roundtable discussion to consult on specific issues.

Other types of meetings and/or conferences related to the ACA and the health insurance exchanges may occur at the federal and regional level. Although these may not be considered consultation sessions, these meetings may provide opportunities to share information, conduct workshops, and provide technical assistance to the tribes.

2. **Exchange:** Consultation mechanisms that will be used to consult with the tribes include but are not limited to written correspondence, in-person meetings, teleconferences and roundtables.

The Tribal Liaison is responsible to solicit tribal concerns, priorities and program needs as they relate to the implementation and operation of the Exchange and will serve to articulate tribal and Exchange recommendations on budgets, regulations, policies and legislation.

- (i) The Exchange's Tribal Liaison will initiate consultation to solicit official tribal comments and recommendations on policy matters affecting either or both tribes.
- (ii) Consultations shall be conducted in a manner that is feasible and convenient for both the Exchange and the tribes. These engagements will provide an opportunity for meaningful dialogue and effective participation by all.
- (iii) Upon completion of consultation, the Exchange will document and notify the consulting tribe(s) on the proceedings, noting positions and providing any required following-up on issues raised.

3. **State:** The Exchange, upon request of the tribe(s), will assist with facilitating consultation between the tribe(s) and other state agencies on any matters relating to coverage under the ACA, such as Medicaid enrollment, the certification of health plans, network adequacy standards, the designation of essential community providers or any modifications to the essential health benefits.

7. Response Timeframe Requirements:

The response timeframes for addressing concerns or issues presented by the Exchange or the tribes shall be handled utilizing the most effective and appropriate methods to address the matter and in conjunction with the following guidelines:

- **Written communications from the tribe(s) to the Exchange:** The documentation outlining an issue, concern or matter must include a detailed description of the

problem and any supporting documentation. The Exchange will respond to all received concerns, issues or matters and will send an initial acknowledgement of the concern, issue or matter within five business days of receipt. After initial acknowledgment, the Exchange will begin researching the issue, as appropriate, in order to provide swift resolution. The Exchange will provide a status update or provide resolution no later than 30 business days from the date of the initial acknowledgment. Should additional time be required for research and closure, the Exchange will follow up thereafter, providing an update on progress every 15 business days until resolution is achieved.

- **Written communications from the Exchange to the tribes:** Identical response timeframe requirements will be in place for issues concerns or matters sent by the Exchange to the tribes. The documentation must include a detailed description of the problem and any supporting documentation. As appropriate, the Exchange will work with other State of Connecticut agencies to resolve any concerns or issues.
- **In person meeting requests from the tribes to the Exchange or vice a versa.** Upon receipt of a meeting request by either party, efforts to convene an in-person meeting will commence immediately. The in-person session will be scheduled within 45 calendar days of receipt of the official notification or request. Attendance of the Exchange and the Tribe(s) is mandatory to discuss any pertinent issues. Depending on the nature and the extent of the concern or issue, other individuals from the State or federal government may be required to participate.
- **Reporting of Outcome:** The Exchange shall report all outcomes of the consultation within 60 calendar days of the final consultation to the Department of Health and Human Services and the Exchange Board of Directors, with a copy to the tribe(s). For ongoing issues identified during the consultation, the status reports will be supplied throughout the year as issues, concerns or matters are resolved.

8. Conflict Resolution

The intent of this policy is to promote partnership with the tribes. The ultimate goal is to enhance communications, address issues and provide problem resolution specific to the needs of our tribal partners. **See Appendix – 1 for the Conflict Resolution Policy.**

9. Record Retention

The Exchange will document and retain all correspondence, in hard copy or electronic, meeting minutes, agenda, and other pertinent materials related to the Tribal Consultation Policy for a period of 7 years.

APPENDIX – 1

Section 8- Conflict Resolution Policy

The Connecticut Health Insurance Exchange d.b.a. Access Health CT, the Mohegan Tribe of Indians of Connecticut, and the Mashantucket Pequot Tribal Nation (hereinafter “the Parties”) hereby establish the following Conflict Resolution Policy with respect to the April 9, 2013 Consultation Agreement between the Parties. The Parties shall attempt to resolve any dispute arising out of or relating to the Consultation Agreement through negotiations between the Parties to discuss, negotiate and/or settle any conflicts that may arise during the course of the relationship between the Parties. To initiate these negotiations one or more representatives of the Parties will send a written Notice of Conflict/Request for Negotiation to the other Parties.

If the matter is not resolved by negotiation between representatives of the effected Parties within 60 days of receipt of the written Notice of Conflict/Request for Negotiation to the other Parties, the Parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or through any existing medium as expressed elsewhere in this agreement where such venue would be appropriate for the conflicts to be resolved. If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure and all parties have not mutually agreed to extend the time for resolution, then the dispute may be referred to arbitration by any Party.

The Consultation Agreement shall be governed and controlled by the laws of the State of Connecticut or, only where an appropriate federal question is at issue, any federal law and procedures that may be applicable based on the subject matter of the dispute. Any controversy or claim arising out of or relating to the Consultation Agreement, its enforcement, arbitrability or interpretation shall be submitted to final and binding arbitration, to be held in Connecticut, under the rules of the American Arbitration Association. The arbitrator shall be selected by mutual agreement of the Parties. The arbitration shall be a confidential proceeding, closed to the general public. The arbitrator(s) shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator’s award is based. The Parties will share equally in payment of the arbitrator’s fees and arbitration expenses and any other costs unique to the arbitration hearing (recognizing that each party shall bear its own deposition, witness, expert and attorneys’ fees and other expenses to the same extent as if the matter were being heard in court).