



March 8, 2013

Tribal Leader/Urban Indian Health Program Director

Re: Government-to-Government Consultation

Dear Tribal Leader/Urban Indian Health Program Director:

I am pleased to announce that the Washington Health Benefit Exchange (WHBE) has established a Final Tribal Consultation Policy (Final Policy), which is enclosed with this letter and will be available on our website in the near future.

During the drafting process, the WHBE has collaborated with and sought advice from Tribal Leaders, Urban Indian Health Programs, the American Indian Health Commission (AIHC) and other tribal health care organizations, and partner agencies. On January 11, 2012 the WHBE hosted a meeting with Tribal Leaders to discuss our collaboration process. We are grateful to all those who made time to attend that very productive meeting. You will notice the feedback from that meeting has been incorporated into our Final Policy.

The Final Policy also establishes a Tribal Advisory Workgroup (TAW) that will consist of Tribal Leaders, Tribal Programs, Urban Indian Clinics, AIHC Executive and Policy Committee members, and representatives from the WHBE. This TAW will contribute to the collaborative process by providing advice and recommendations on the development of WHBE policies or actions that have tribal implications. In April, the WHBE will provide additional information about the TAW and how to join.

WHBE is committed to honoring the government-to-government relationship between the State and tribal governments and would like to thank Tribal Leaders and AIHC for their active participation in establishing the Final Policy.

Sincerely,

  
Richard K. Onizuka, Ph.D.  
Chief Executive Officer

Enclosure

cc: Marilyn Scott, AIHC Chair  
D. Brent Simcosky, Interim AIHC Executive Director  
Jim Roberts, NPAIHB

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## Final WHBE Tribal Consultation Policy

### Purpose

To comply with the Affordable Care Act P.L. 111-148, Section 1311(d)(6), 45 CFR § 155.130(f), the Washington Centennial Accord, Washington Senate Bill 6175, Washington Senate Bill 5445, and R.C.W. 43.71.020 by establishing a clear and concise consultation and collaboration process between the Washington Health Benefit Exchange (WHBE), federally-recognized Indian Tribal Governments, Urban Indian Organizations (UIOs), and the American Indian Health Commission (AIHC) in the development of any WHBE policies or actions that have tribal implications.

### I. Goal

To ensure that WHBE implements all specific protections, exceptions, and benefits extended to American Indian and Alaska Native (AI/AN) communities under the Affordable Care Act, P.L. 111-148, or any State law or policy, in a manner that complies with the federal law and results in increased access to quality health care by AI/AN patients.

### II. General Requirements of Tribal Consultation and Collaboration under Federal and State Law

**Consultation.** Pursuant to Section 1311(d)(6) of the Affordable Care Act, P.L. 111-148, 45 CFR § 155.130(f), the U.S. Department of Health and Human Services (HHS) directives, Washington Senate Bill 6175, Substitute Senate Bill 5445, and the state of Washington Centennial Accord of 1989, tribal consultation shall (1) reflect the government-to-government relationship between the state of Washington and with each individual government of federally-recognized tribes; (2) be meaningful; (3) include the regular and ongoing exchange of information and opinions; (4) consist of informed decision-making; and (5) result in mutual understanding between Indian Tribes as sovereign nations and the state of Washington on all policies and actions that have tribal implications.

**Centennial Accord.** The Centennial Accord demonstrates the commitment by the state of Washington and Tribes to implement a government-to-government relationship. WHBE shall participate in the Annual Washington Centennial Accord meeting.

**Collaboration.** HHS further requires WHBE to engage in regular and meaningful collaboration with Indian Tribes on all Exchange policies that have tribal implications. Collaboration is a working relationship between the parties to identify issues, solve problems, and create solutions.

### III. Parties to Consultation & Contact Information

#### A. Required Parties.

Each party shall be represented by individuals with decision-making authority. Consultation parties are:

1. WHBE Chief Executive Officer (CEO), acting under the delegated authority of the WHBE Board. The WHBE constitutes a public-private partnership separate and distinct from the state, exercising functions delineated in chapter 317, Laws of 2011;
  2. Federally-Recognized Indian Tribes represented by the Tribal President, Tribal Chair, or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s). All tribes who are parties to this policy are listed in Appendix C;
  3. UIOs referenced in Appendix C, and tribal organizations organized under the Indian Self-Determination and Education Assistance Act (P.L. 93-638; 25 U.S.C. § 450b(1)) (e.g. Northwest Portland Area Indian Health Board). **Note:** While consultation with these parties is required, it will not serve as a substitute for the requirement under 45 CFR 155.130(f) of WHBE to consult with the individual tribal governments directly; and
  4. AIHC Board Chair or authorized representative who has authority to make decisions on behalf of the AIHC. The AIHC is a not-for-profit entity that works on behalf of the 29 federally-recognized Tribes and two urban Indian health organizations in Washington State on health policy and priority AI/AN Indian health issues that improve the Washington State Tribal health delivery system and the health of individual American Indians/Alaska Native residents. **Note:** While consultation is required with the AIHC under R.C.W. 43.71.020 (9), it will not serve as a substitute for the requirement under 45 CFR 155.130(f) of WHBE to consult with the individual tribal governments directly.
- B. **Contact Information.** Contact information for each of the parties to consultation shall be maintained on the WHBE website (<http://wahbexchange.org/>) and the AIHC website ([www.aihc-wa.com](http://www.aihc-wa.com)). Updates to contact information shall be made with the WHBE referenced in Section V.

#### IV. When Tribal Consultation Must Occur

As directed by HHS, consultation and collaboration with tribes and tribal officials must occur prior to implementation of all Exchange policies and actions that have “tribal implications.” Tribal implications refer to policies or actions that have a substantial direct effect on one or more of the 29 Federally Recognized Tribes of Washington or the relationship between the WHBE and Tribes. The determination of whether a policy or action has tribal implications will be made jointly by the WHBE CEO and any other party referenced in Section III. Such policies or actions include, but are not limited to, the following:

- A. the AI/AN definition for persons to be eligible for special Indian provisions set forth in federal or state law;
- B. AI/AN verification requirements and procedures;
- C. 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;
- D. network adequacy for Qualified Health Plans (QHP), including essential community provider provisions;

- E. rules, policies or QHP contract or payment requirements with Indian Health Services (IHS) operated programs, 638 tribal contracted and compacted programs and urban Indian organizations (hereinafter referred to as I/T/U providers);
- F. Navigators, Tribal Assistants, in-person assistants, and other assistance, including Exchange enrollment and outreach coordination with Medicaid and all other Washington State programs;
- G. call center training and procedures to address AI/AN enrollment;
- H. WHBE on-line enrollment system and HBE/Medicaid application documents dealing with AI/AN enrollment;
- I. WHBE's premium sponsorship program set forth in state law, which allows city and county governments, Indian tribes, tribal organizations, urban Indian organizations, private foundations, and other entities to pay premiums on an individual's behalf; and
- J. monitoring performance and outcomes of Exchange policies after the Exchange is implemented to assure that AI/AN are being serviced appropriately, and there is coordination of care between the I/T/U and other QHP providers; and
- K. quality reporting requirements, including the Consumer Rating System and measures of QHP performance as it relates to Tribes, Tribal Clinics and Urban Indian Organizations.

**V. Appointment of a Tribal Liaison**

The WHBE will designate a Tribal Liaison to arrange meetings; maintain the contact information of all parties list in Section IV of this policy; conduct workgroups; and distribute minutes and other records of the WHBE.

The Tribal Liaison will not be a substitute for the required representatives of the WHBE listed in Section III of this policy.

**VI. Tribal Advisory Workgroup**

- A. Purpose of the Tribal Advisory Workgroup (TAW)
  - 1. To assist in the identification of any proposed policy or action that have tribal implications; and
  - 2. To satisfy the requirement for WHBE to collaborate with the tribes, UIOs, and the AIHC. Collaboration is a working relationship between the parties to identify issues and propose recommendations for consideration at formal consultation.
- B. The TAW shall be facilitated by the WHBE and AIHC and shall consist of representatives from the WHBE (including the Tribal Liaison), tribal leaders, I/T/Us, and AIHC Executive and Policy Committee members. These representatives will participate in at least bimonthly meetings each year in 2013 and 2014 and quarterly thereafter. Notice regarding these meetings will be emailed to all parties listed in Section III and will be posted on both the WHBE and AIHC and/or

NPAIHB websites.

- C. TAW meetings will consist of experts and decision makers who will explain issues and listen to the concerns of tribal leaders, I/T/Us, and the AIHC. I/T/Us, tribal leaders, and the AIHC will provide advice and recommendations on the development of WHBE policies or actions that have tribal implications.
- D. TAW meetings, recommendations, and other forms of collaboration contribute to the consultation process but are not a substitute for the requirement for WHBE to conduct formal consultation as required by this policy.

## VII. Consultation Process

The WHBE, Tribes, UIOs or the AIHC may initiate consultation at any time. To the extent permitted by law, WHBE shall not proceed on any policy or action that has tribal implications or that imposes direct substantial compliance costs upon Indian tribes or I/T/U providers, or is not required by law, unless and until WHBE, prior to proceeding on the policy or action, has adhered to the process described below.

### A. **Step 1: Written Notification of Formal Consultation and Selection of Formal Consultation Forum.**

- 1. If the WHBE is requesting formal consultation, a written request must be sent to both the tribal official and the AIHC at least 21 days prior to the scheduled consultation. See Appendix A. The written request must identify the proposed policy or action and provide an estimate of its impact on AI/AN people, their providers, and/or the Tribes. All WHBE requests for consultation will also be posted on the WHBE website and emailed to the tribal official and the AIHC.
- 2. If a tribe, AIHC, or UIO requests formal consultation, a written request shall be sent to the WHBE CEO. The written request must identify WHBE's proposed policy or action that requires formal consultation and provide an estimate of its impact on AI/AN people, their providers, and/or the Tribes.
- 3. Consultation forums will be either face-to-face meetings at specified locations, webinars, or teleconferences unless otherwise mutually agreed upon between the parties. Face-to-face meetings are the preferred method of communication. The written notification for consultation must include where and how the consultation is to occur. Parties invited to the consultation may request an alternative forum for consultation or alternate date but must request the alternative forum and/or date within seven days of receipt of the letter. See Appendix A & B. In addition to or in lieu of a meeting, parties may also submit written comments to the WHBE for consideration.

### C. **Step 2: Consultation Meeting.** In order for consultation to be meaningful as required in Section II of this policy, the following actions shall occur at all tribal consultations:

- 1. meeting held in a mutually agreeable public forum;
- 2. parties identified in Section III of this policy shall be present (It is not required that all

Tribes be represented for a formal consultation to occur.);

3. identification and full explanation of the issue, proposed action or policy that is basis of the consultation request;
4. opportunity for all parties to further collaborate, ask questions, provide feedback, criticisms, etc.;
5. proposal of WHBE action in specific response to other party's questions, feedback, criticisms, etc.; AND
6. recording of meeting in the form of taking minutes.

**D. Step 3: Action Required after Consultation.**

1. WHBE will communicate to all parties listed in Section III within three business days of the time the decision is made to implement a proposed policy or action , or an agreed upon time frame. Such communication shall be made via the WHBE website, post office mail, and electronic mail.
2. WHBE will maintain records of its tribal consultation activities including minutes and reports on outcomes and decisions from Consultation meetings. Such records shall be made available to all parties in Section III on the WHBE website.

**VIII. Other**

Representatives from federally-recognized tribes, UIOs, and the AIHC may do any of the following:

- A. apply to serve on the various governance, advisory and technical advisory committees (TAC), and planning structures within the WHBE;
- B. work as subcontractors for consultants hired by the WHBE (subcontractors and consultants must disclose their status); and/or
- C. receive grants, contracts or other funding directly from the WHBE to assist in the planning and administration of the WHBE.

**IX. Sovereignty and Disclaimer**

WHBE respects the sovereignty of each tribe located in the state of Washington. 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 including the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, to the Governor of the state of Washington or Region X Administrator of HHS.

**X. Effective Date**

This policy will be effective on March 8, 2013, and will be reviewed and evaluated annually at the request of any of the parties referenced in Section III.

APPROVED BY:



Richard Onizuka, Ph.D.  
Chief Executive Officer, Washington Health Benefit Exchange

APPENDIX A: CONSULTATION LETTER

**Date**

Party to Consultation

<<Address 1>>

<<Address 2>>

**Re: [Insert name of Consultation Issue]**

Dear <<PARTY TO CONSULTATION>>:

The Washington Health Benefit Exchange is proposing the following policy or action:

\_\_\_\_\_ [insert policy or action] .

**[Note: Enclose appropriate proposed policy or action documentation with this letter].** WHBE would like to initiate government-to-government consultation with \_\_\_\_\_ [insert party name] for this proposed policy or action.

The above policy or action will impact tribes and urban indian organizations by

\_\_\_\_\_ [insert impact].

The above policy or action will/will not have a financial impact upon tribes and urban indian organizations in the state of Washington. This financial impact is estimated to be \_\_\_\_ [insert financial impact, if any].

Tribal Consultation is scheduled for \_\_\_\_\_ [insert month and day], 20\_\_ [insert year], at \_\_\_\_\_ [insert time] a.m./p.m. at \_\_\_\_\_ [insert location and address]. **[Note: WHBE to provide a date at least 21 days from date of this letter].** If you would prefer an alternative date or location, please make this request on the attached tribal response form by \_\_\_\_\_ [insert month, day, year]. **[Note: Tribe, UIO, or AIHC to provide a date at least seven days from receipt of this letter].** In lieu or in addition to this meeting, we are inviting your comments on this proposed policy or action.

Your response to this letter and updating your contact information, is greatly appreciated. We are also inviting comments regarding any other tribal concerns the proposed policy or action may raise. Please provide a response by \_\_\_\_\_ [insert month, day year]. **[Note: Tribe, UIO, or AIHC to provide a date at least seven days from receipt of this letter]** so that we may discuss the proposed policy or action and any of those identified areas of interest. Should you have any questions about this proposed policy or action, you may contact **[Put the name, phone number, and address of the Tribal Liaison here].**

Sincerely,

WHBE Chief Executive Officer

cc: American Indian Health Commission  
Northwest Portland Area Indian Health Board



**APPENDIX B: CONSULTATION PARTY RESPONSE FORM**

**Consultation Party Response Form for [Name of Tribe/AIHC/Urban Indian Organization]**

Name of Action or Policy: \_\_\_\_\_

Response to this request for consultation:

- Thank you for the information and initiation letter; however, we do not need to consult any further on this issue.
- We do not have a comment or concern at this time, although we request continued notification regarding this issue.
- We wish to consult on this issue at the time and location referenced in the attached letter.
- We wish to consult on this issue at an alternative time and location referenced in the attached letter. Please contact us at the number listed below to schedule this time.

\_\_\_\_\_  
Signature of individual completing form

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name & Title (Print)

\_\_\_\_\_  
Name of Tribe/AIHC/Urban Indian Organization

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Has there been a change to your authorized representative? If so, whom should we contact about this issue if you are interested in further discussing this issue or receiving additional information?

Name (please print): \_\_\_\_\_

Phone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Fax number: \_\_\_\_\_

## **APPENDIX C: LIST OF TRIBES, URBAN INDIAN ORGANIZATIONS, AND TRIBAL ORGANIZATIONS FOR CONSULTATION**

### **TRIBES**

Colville Confederated Tribes  
Confederated Tribes of the Chehalis Reservation  
Confederated Tribes of the Yakama Indian Reservation  
Cowlitz Tribe  
Hoh Tribe  
Jamestown S'Klallam Indian Tribe  
Kalispel Tribe  
Lower Elwha Klallam Tribe  
Lummi Nation  
Makah Tribe  
Muckleshoot Tribe  
Nisqually Tribe  
Nooksack Tribe  
Port Gamble S'Klallam Tribe  
Puyallup Tribe  
Quileute Tribe  
Quinault Nation  
Samish Nation  
Sauk-Suiattle Tribe  
Shoalwater Bay Tribe  
Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribe  
Upper Skagit Tribe

### **URBAN INDIAN ORGANIZATIONS**

Seattle Indian Health Board  
NATIVE Project of Spokane

### **TRIBAL ORGANIZATIONS**

American Indian Health Commission  
Northwest Portland Area Indian Health Board