



From: Connecticut Health Insurance Exchange Staff
Re: Tribal Consultation Policy
Date: December 10, 2012

This Tribal Consultation Policy includes:

1. Preamble
2. Background and Definitions
3. Guiding Principles
4. Assignment of a Tribal Liaison
5. Tribal Consultation Process
6. Consultation Procedures and Responsibilities
7. Response Timeframe Requirements
8. Conflict Resolution
9. Record Retention

1. Preamble

This Tribal Consultation Policy is to ensure that, pursuant to the special relationship between the Indian Tribes and Federal and State Governments, reasonable notice and opportunity for consultation with the Mohegan and Mashantucket Pequot Tribes is provided by the Exchange regarding high-level policy development and changes that have implications for the 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 for the Mohegan and Mashantucket Pequot Tribes. The Exchange recognizes a standing goal of working with Tribes is to increase the Tribe's knowledge and understanding of the Exchange and related policies and procedures.
- (b) Seek timely consultation with Mohegan and Mashantucket Pequot Tribes to discuss potential changes to policy that would have an impact on Indian Tribes.
- (c) Allow for consultation with Indian 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 155.130(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 Indian Tribe 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 in reference to the ACA:

- (a) For purposes of determining eligibility for Medicaid and CHIP, 42 CFR §447.50 applies.
- (b) For purposes of consultation and qualifications for benefits under the Exchange, including the individual responsibility exemption, special monthly enrollment periods, and cost-sharing reductions, three references apply: Internal Revenue Code of 1986, the Indian Health Care Improvement Act (25 USC 1603), and the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). In each instance, the definition of Indian refers to the members of a “Federally-recognized Tribe.”

3. Guiding Principles

The Exchange shares with Mohegan and Mashantucket Pequot Tribal government partners 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 tribal governments. The Exchange will engage 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 between 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 Mohegan and Mashantucket Pequot 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 Mohegan and Mashantucket Pequot tribal governments work directly with federal administrators on many issues of concern related to their members' health and health insurance-related concerns. Both 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 Mohegan and the Mashantucket Pequot tribes are independently organized and governed and may have unique needs that must be considered when determining the Exchange policy and procedures. For example, the Mashantucket Pequot tribe maintains comprehensive health insurance for all of its tribal members; the Mohegan tribe does not. As such, specific accommodations to the individual tribes 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 with representatives from the Mohegan and Mashantucket Pequot tribes, to deliver pertinent and timely information about the requirements of the ACA and any policies affecting the tribes and to receive information from the tribes to assure that the Exchange's policies reflect consideration of the tribes' needs.

As appropriate the Tribal Liaison will also be responsible for communications 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.

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 residents 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 critical concern. An area of critical concern may be identified by the Exchange and/or by the designated representative of the Mohegan and Mashantucket Pequot Tribe. 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 Mohegan and Mashantucket Pequot Tribe in order to initiate, conduct and conclude a successful consultation:

- (a) Identify the critical 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 Mohegan or Mashantucket Pequot tribe (s) after considering the critical 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 Tribal Chief and/or elected/appointed Indian Tribal Leader and/or designee to discuss issues concerning either party.
2. When the Exchange's Tribal Liaison, or designee, meets with and/or exchanges written correspondence with an Indian Tribal representative designated by an elected/appointed Tribal leader to discuss issues or concerns of either party.

(b) Consultation Procedures

1. **Tribal:** Specific consultation mechanisms that will be used by the Mohegan and Mashantucket Pequot Tribes to consult with the Exchange include but are not limited to written correspondence, in-person meetings, teleconference and roundtables. Either the Mohegan and/or the Mashantucket Pequot Tribe(s) has the ability to 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 Indian Tribes.

2. **Exchange:** Consultation mechanisms that will be used to consult with the Mohegan and/or the Mashantucket Pequot Tribe(s) 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 the Mohegan and/or the Mashantucket Pequot Tribe(s).
 - (ii) Consultations shall be conducted in a manner that is feasible and convenient for both the Exchange and the Mohegan and/or the Mashantucket Pequot 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 appropriate parties identified by the Mohegan and/or the Mashantucket Pequot Tribes on the proceedings, noting positions and providing any required follow-up on issues raised.
3. **State:** The Exchange will assist with facilitating consultation between the Mohegan and/or the Mashantucket Pequot Tribes 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 Mohegan and/or the Mashantucket Pequot 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 Mohegan and/or the Mashantucket Pequot Tribe 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 research 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 acknowledgement. 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 Mohegan and/or the Mashantucket Pequot Tribes:** Identical response timeframe requirements will be in place for issues concerns or matters sent by the Exchange to the Mohegan and/or the Mashantucket Pequot 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 Mohegan and/or the Mashantucket Pequot Tribe 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 or the Tribes 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 Tribes, the Department of Health and Human Services and the Exchange Board of Directors. 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 Tribal nations of the Mohegan and the Mashantucket Pequot tribes. The ultimate goal is to enhance communications, address issues and provide problem resolution specific to the needs of our tribal partners. The Exchange shall consult with the tribes to establish a defined conflict resolution process to ensure sufficient opportunity is allowed for outcomes to be vetted and resolved. In the event an agreement cannot be reached between parties on how to resolve a conflict, the matter may be elevated to a higher or separate decision-making authority.

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 Mohegan and/or the Mashantucket Pequot Tribes for a period of 7 years.