

National Indian Health Board



Submitted via Email to TRIBAL.CONSULT@treasury.gov

April 2, 2015

Ms. Elaine Buckberg
Deputy Assistant Secretary
Office of Economic Policy
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Comments Regarding Department of Treasury Interim Tribal Consultation Policy

Dear Deputy Assistant Secretary Buckberg:

On behalf of the National Indian Health Board (NIHB)¹, I write to submit comments on the Department of Treasury's Interim Tribal Consultation Policy. 79 Fed. Reg. 71816 (Dec. 3, 2014). We appreciate the opportunity to submit comments on the Interim Tribal Consultation Policy before it is finalized.

As you know, the Patient Protection and Affordable Care Act (ACA) tasked the Department of Treasury and the Internal Revenue Service (IRS) with implementing important aspects of the ACA. For example, the ACA provides subsidies for the purchase of health care coverage on the new Health Insurance Exchanges in the form of premium tax credits. These subsidies are made available to individuals between 100 percent and 400 percent of the Federal Poverty Level, and are of critical importance to American Indians and Alaska Natives, many of whom will qualify. Equally important is implementation of Section 139D of the Internal Revenue Code, which clarified that the provision of qualified health care benefits to American Indians and Alaska Natives by a Tribe is not considered taxable income. The ACA also tasks the IRS with implementing the reporting requirements and penalties associated with the employer mandate, 26 U.S.C. 4980H, as well as the penalties associated with the individual mandate, 26 U.S.C. 5000A(e)(3), for which American Indians and Alaska Natives are exempt.

Consultation with Indian tribes is critical to ensure that these provisions and others are implemented in a manner that respects the federal trust responsibility to provide health care

¹ Established in 1972, the NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/ANs). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

services to American Indians and Alaska Natives. We support the comments provided to the Department by the National Congress of American Indians on the Interim Tribal Consultation Policy overall, but write to request that the Department ensure that the policy is implemented in a manner that ensures that all Treasury Department and IRS personnel responsible for implementing these aspects of the ACA will be covered by the policy. We also believe it is critical that the policy require that the Department and the IRS to consult with Tribes as they work with their sister agencies like the Center for Consumer Information and Insurance Oversight (CCIIO) within the Center for Medicare and Medicaid Services in implementing the ACA.

To their credit, the Department and the IRS have recently taken actions that will be of great benefit to Indian country as the result of consulting with groups like the NIHB and its Medicare, Medicaid and Health Reform Policy Committee. For example, as a result of tribal consultation with both the Department of Health and Human Services and the Department and IRS, the individual mandate exemption may now be claimed on IRS Form 8965 for both tribal members and individuals eligible for IHS services. This decision is a prime example of how tribal consultation can lead to positive results in Indian country.

But there are many other issues that remain to be addressed. Chief among these is the Employer Mandate, and how it has been interpreted to apply to Tribal governments, even with regard to tribal member employees who are otherwise exempt from the penalties associated with the individual mandate. Under the current IRS interpretation of the ACA, a tribal employer would be required to either incur the costs of purchasing coverage for their tribal member employees, or incur a penalty for not offering them coverage. In either case, tribal employers would be required to pay for health care coverage for many tribal members simply because they are employed by the Tribe. This interpretation is inconsistent with congressional intent and the federal trust responsibility. It is also inconsistent with policies implemented by CCIIO, which have encouraged Tribes to enroll their members in the health insurance exchanges without regard to the fact that an offer of coverage by a tribal employer will disqualify a tribal member employee from qualifying for subsidies on the Exchange.

We believe that it is critical that the Department and the IRS actively consult with tribes as they interface with other federal agencies responsible for implementing the ACA, and request that the Interim Tribal Consultation Policy be revised to ensure that occurs.

Sincerely,



Lester Secatero
Chair, NIHB