

# COLT

## COALITION OF LARGE TRIBES

Mandan, Hidatsa and Arikara Nations / Oglala Sioux Tribe / Navajo Nation / Sisseton Wahpeton Sioux Tribe / Blackfeet Tribe of Montana / Rosebud Sioux Tribe / Spokane Tribe / Cheyenne River Sioux Tribe / Ute Indian Tribe / Shoshone-Bannock Eastern Shoshone / Fort Belknap

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**Title: THE COALITION OF LARGE TRIBES. HEREBY SUPPORTS TRIBES STANCE ON TREATY OBLIGATIONS OF THE UNITED STATES GOVERNMENT IN CONTINUING IT'S GOVERNEMENT TO GOVERNEMENT RELATIONSHIP AND DIRECTING HEALTH 7 HUMAN SERVICE TO WAIVE MANDATORY COMMUNITY ENGAGEMENT AND WORK REQUIREMENTS.**

Resolution: **ABQ - 11 - 04/28/2018**

**WHEREAS**, the Coalition of Large Tribes (COLT) was formally established in April, 2011, and is comprised of Tribes with large land base, including the Mandan, Hidatsa and Arikara Nation (MHA Nation), the Oglala Sioux Tribe, the Crow Tribe, the Navajo Nation, the Sisseton Wahpeton Sioux Tribe, the Blackfeet Tribe of Montana, the Rosebud Sioux Tribe, the Ute Indian Tribe, the Shoshone-Bannock Tribes, the Colville Confederated Tribes, the Fort Belknap Indian Community, and the Cheyenne River Sioux Tribe. COLT is chaired by President Russell Begaye, Navajo Nation; and

**WHEREAS**, COLT was organized to provide a unified advocacy base for tribes that govern large trust land bases and that strive to ensure the most beneficial use of those lands for tribes and individual Indian landowners; and

**WHEREAS**, on January 17, 2018, CMS Director Brian Neale provided Tribes with a Dear Tribal Leader's Letter that stated that CMS could not approve exempting IHS beneficiaries from Section 1115 Demonstration Waivers that impose mandatory Medicaid work and community engagement requirements. In his letter, Director Neale recognized that Tribes have requested exemptions from such requirements but stated that CMS could not approve them because CMS is "constrained by statute" and because CMS is "concerned that requiring states to exempt AI/ANs could raise civil rights concerns."; and

**WHEREAS**, On an All Tribes' Call held on February 1, 2018, CMS took the position that it may only make such an accommodation for IHS beneficiaries when Congress has enacted a statute authorizing it.; and

**WHEREAS**, federal law is clear that tribes and tribal members in the United States are legally categorized as a citizenship, not a race, when dealing with the Federal government. *Morton v. Mancari*, 417 U.S. 535 (1974). Tribal Nations have a special legal relationship with the federal government that "furthers the federal policy of Indian self-determination, the United States' trust responsibility, and the promotion of economic self-sufficiency among Native American communities." *AFGE v. United States*, 195 F. Supp. 2d 4, 18 (D.D.C. 2002), *aff'd*, 330 F.3d 513 (D.C. Cir. 2003). Numerous treaties, statutes (including the entire Chapter 25 of the United States Code), court decisions, and the U.S. Constitution affirm this government-to-government relationship, not as a race-based relationship, but as a political relationship.; and

**WHEREAS**, for example, on July 7th, 2017 the Supreme Court denied a petition for a writ of certiorari in *Rothe Development, Inc., v. Department of Defense, et al.*, which cited, *American Feder. of Government Employees v. United States*, 195 F. Supp. 2d 4 (D.C. 2002), because the Court has recognized that "[i]f these laws [singling out Native Americans], derived from historical relationships and explicitly designed to help only [Native] Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized." *Simmons v. Eagle Seelatsee*, 244 F. Supp. 808, 814 n. 13 (E.D.Wash. 1965), quoted in *Mancari*, 417 U.S. at 553, 94 S. Ct. 2474; and

**WHEREAS**, COLT is primarily comprised of treaty signatories, and one of the most foundational promises by the federal government in our treaties, was that in return for our land and natural resources, the federal government would provide our health care in perpetuity. If the federal government would like to renegotiate the treaties to now insert a work requirement, we welcome the opportunity to renegotiate the manner of use of our lands.; and

**WHEREAS**, at least four States (Arizona, Utah, Arkansas and Indiana) have recognized that mandatory community engagement and work requirements would create a unique barrier to access to Medicaid enrollment for Indian Medicaid enrollees, and are contrary to treaty obligations to health care in perpetuity As a result, they have proposed exempting AI/AN from such requirements in pending State Demonstration Waivers (Arizona, Utah and Arkansas), or have deemed tribal programs to meet such requirements (Indiana).; and

**WHEREAS**, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires HHS to find to "consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate."; and

**WHEREAS**, the Coalition of Large Tribes (COLT) Executive Director Legislative Affairs, will deliver said resolution to the COLT Congressional Delegations and proper Committees and work with them on said resolution; and

**NOW THEREFORE BE IT RESOLVED**, that the Coalition of Large Tribes requests their Congressional Delegations work with Tribes and notify HHS that the waiver is valid in accordance with our treaties and the United States Constitution as well as Federal law.

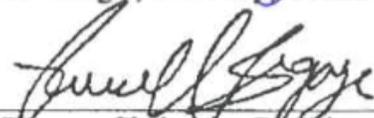
### **CERTIFICATION**

This resolution was enacted at a duly called meeting of the Coalition of Large Tribes held in Albuquerque, New Mexico on April 26th, 2018, at which a quorum was present, with the resolution approved unanimously.

Dated this 26<sup>th</sup> day of April 2018.

Attest:

  
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David Browneagle, Secretary, Coalition of Large Tribes

  
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Russell Begaye, Chairman, Coalition of Large Tribes