

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving the Tohono O'odham Nation's Position on the "Maintenance of Effort" Provision in the Affordable Care Act)

RESOLUTION NO. 11-438

1 **WHEREAS, the Legislative Council is vested with the authority to "consult with the Congress of the**
2 **United States and appropriate federal agencies regarding federal activities that affect**
3 **the Tohono O'odham Nation. . ." and "to promote, protect and provide for public**
4 **health, peace, morals, education and general welfare of the Tohono O'odham Nation**
5 **and its members. . ." (Constitution, Article VI, Section 1(j) and Section 1(c)(2)); and**

6 **WHEREAS, the Affordable Care Act, enacted on March 23, 2010, is a major piece of federal**
7 **legislation directed at comprehensive health insurance reforms with several**
8 **provisions affecting the Tohono O'odham Nation and its members, including the**
9 **permanent reauthorization of the Indian Health Care Improvement Act (Public Law**
10 **111-148); and**

11 **WHEREAS, one of the Affordable Care Act provisions requires states to establish competitive**
12 **Affordable Insurance Exchanges ("Exchanges") by January 2014 to offer competition**
13 **and choice to businesses and individuals when selecting health insurance plans**
14 **(Section 1311(b) and Section 1321(b) of ACA); and**

15 **WHEREAS, effective January 1, 2014, eligibility for Medicaid will be expanded to individuals**
16 **earning less than 133 percent of the federal poverty level, approximately \$14,000 for**
17 **an individual and \$29,000 for a family of four, and enrollment in Medicaid will be**
18 **available through the Exchanges (Section 2001 and Section 2201 of ACA); and**

19 **WHEREAS, in order to maintain eligibility requirements the same before the January 2014**
20 **implementation of Exchanges and expanded Medicaid eligibility, Section 2001(b)(1)**
21 **of the Affordable Care Act, otherwise known as the "maintenance of effort" provision,**
22 **requires that:**

23 **during the period that begins on the date of enactment of the Patient Protection**
24 **and Affordable Care Act and ends on the date on which the Secretary determines**
25 **that an Exchange established by the State. . . is fully operational. . . a State shall**
26 **not have in effect eligibility standards, methodologies, or procedures under the**
27 **State plan under this title or any waiver of such plan that is in effect during that**
28 **period, that are more restrictive than the eligibility standards, methodologies,**
29 **or procedures, respectively, under the plan or waiver that are in effect on the**
30 **date of enactment of the Patient Protection and Affordable Care Act; and**

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1 **WHEREAS, in a January 25, 2011 letter to the Secretary of the United States Department of Health**
2 **and Human Services, the State of Arizona's Governor Janice Brewer requested a waiver**
3 **from the "maintenance of effort" provision under the Affordable Care Act in order to**
4 **eliminate Medicaid eligibility for non-disabled, childless adults and to reduce**
5 **Medicaid coverage of families enrolled in the Temporary Assistance for Needy Families**
6 **("TANF") from 100 percent of the federal poverty level to 50 percent; and**

7 **WHEREAS, the Arizona Health Care Cost Containment System ("AHCCCS"), Arizona's Medicaid**
8 **agency, is a "demonstration project" under Section 1115 of the Social Security Act (42**
9 **U.S.C. §1315); and**

10 **WHEREAS, on March 31, 2011, Governor Brewer requested a new Section 1115 Research and**
11 **Demonstration Waiver ("Demonstration Waiver") for AHCCCS for the period from**
12 **October 1, 2011 to September 30, 2016; and**

13 **WHEREAS, Secretary Sebelius acknowledges in a February 15, 2011 letter to Governor Brewer that**
14 **"any reduction in eligibility associated with the expiration of [Arizona's]**
15 **demonstration for individuals whose eligibility derives from the demonstration would**
16 **not constitute an MOE violation"; and**

17 **WHEREAS, as stated in Legislative Council Resolution No. 11-278, the Tohono O'odham Nation**
18 **opposes any proposals that eliminate eligibility for childless adults, implement a six-**
19 **month redetermination for eligibility, or authorize charges for missed appointments,**
20 **which are all included in Arizona's March 31, 2011 Demonstration Waiver; and**

21 **WHEREAS, it is critical for the Nation to express its position on the "maintenance of effort"**
22 **provision and to voice its support of the Affordable Care Act's intent of providing**
23 **accessible and high quality health care to all of the Nation's members.**

24 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it urges the**
25 **Secretary of Health and Human Services to apply the "maintenance of effort" provision**
26 **in the Affordable Care Act to certain provisions of the State of Arizona's March 31, 2011**
27 **Section 1115 Research and Demonstration Waiver, specifically in accordance with the**
28 **Nation's position set forth in Resolution No. 11-278.**

29 **BE IT FURTHER RESOLVED that the Legislative Council urges the strict application of the**
30 **"maintenance of effort" provision to any possible subsequent amendments to the**
31 **Arizona's Section 1115 Demonstration Waiver, especially if subsequent amendments**
32 **further restrict the Nation's members' eligibility for AHCCCS.**

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1 BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that it authorizes the
2 Nation's Chairperson or official designee to advocate the Nation's position on the
3 "maintenance of effort" provision in the Affordable Care Act as it applies to Arizona's
4 Section 1115 Demonstration Waiver.


5 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 15TH Day
6 of SEPTEMBER, 2011 at a meeting at which a quorum was present with a vote of 2,780.60 FOR; -0-
7 AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by
8 Section 1 (j) and 1 (c)(2) of Article VI of the Constitution of the Tohono O'odham Nation, adopted
9 by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
10 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
11 18, 1934 (48 Stat. 984).

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13 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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15 
16 Timothy Joaquin, Legislative Chairman

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18 20 day of September, 2011

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21 ATTEST:

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24 Evonne Wilson, Legislative Secretary

25
26 16 day of September, 2011

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28 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham
29 Nation on the 20 day of September, 2011 at 10:54 o'clock, A.M.,
30 pursuant to the provisions of Section 4 of Article VII of the Constitution and will become effective
31 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
32 submittal.

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34 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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37 Timothy Joaquin, Legislative Chairman

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APPROVED

on the 20 day of September, 2011

DISAPPROVED

at 7:36 o'clock, p.M.

Ned Norris, Jr. / Vice Chairman
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 20 day of

September, 2011, at 2:51 o'clock, p.M.

Evonne Wilson
Evonne Wilson, Legislative Secretary

ACTION: APPROVING THE TOHONO O'ODHAM NATION'S POSITION ON THE "MAINTENANCE OF EFFORT" PROVISION IN THE AFFORDABLE CARE ACT

Moved: COUNCILWOMAN SANDRA ORTEGA

SECOND: COUNCILMAN ARTHUR WILSON

DATE: SEPTEMBER 15, 2011

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 342.0	1. FRANCES MIGUEL (Roberta Harvey)	171.0	X			X
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
CHUKUT KUK 302.2	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILI.MAN LOPEZ ()	151.10	X			
GU ACHI 244.9	1. TIMOTHY L. JOAQUIN (Rose Johnson Antone)	122.45	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45	X			
GU VO 226.7	1. GRACE MANUEL (Floyd Flores)	113.35	X			
	2. PAMELA ANGHILL (Angela Ortiz)	113.35	X			
HICKIWAN 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			
	2. SANDRA ORTEGA ()	93.15	X			
PISINEMO 200.7	1. CHESTER ANTONE <i>(Absent)</i> (Tony Murrietta) <i>(Present)</i>	100.35	X			
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
SAN LUCY 204.6	1. LORRAINE EILER ()	102.30	X			X
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
SAN XAVIER 215.8	1. HILARION CAMPUS ()	107.90	X			X
	2. OLIVIA VILLEGAS-LISTON <i>(Absent)</i> (Eugene Enis) <i>(Present)</i>	107.90	X			
SCHUK TOAK 169.8	1. FRANCES B. CONDE ()	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X			
SELLS 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85	X			
	2. EVELYN B. JUAN MANUEL ()	237.85	X			
SIF OIDAK 211.9	1. NICHOLAS JOSE ()	105.95	X			
	2. MARY LOPEZ ()	105.95	X			
TOTAL		2,780.60	2,780.60	-0-	-0-	[03]