

TITLE 11 HEALTH AND HUMAN SERVICES

**CHAPTER 11-1 COLVILLE TRIBAL HEALTH AUTHORITY AND
GENERAL WELFARE ASSISTANCE PROGRAM**

TRIBAL HEALTH AUTHORITY GENERAL PROVISIONS

11-1-1 **Establishment**

The Colville Business Council hereby creates the Colville Tribal Health Authority as a separate, single purpose instrumentality of the Tribes, to continue in perpetuity until its existence is terminated through legislative action of the Business Council. By Resolution 2004-146, the Colville Business Council approved the Articles and By-Laws of the Colville Nation Community Health Center Board (CNCHC), and directs that the CNCHC Board operate the Colville Tribal Health Authority consistent with the approved Articles, By-Laws and this Chapter.

POWERS AND DUTIES

11-1-2 **Duties**

The Colville Tribal Health Authority shall be authorized to exist, operate and exercise the following enumerated powers for a perpetual period from the date of enactment of this Chapter:

- (a) Operate the Inchelem and Keller Clinics, including performance of any contracts and grants associated with those facilities (including any contracts pursuant to the Indian Self-Determination and Education Assistance Act).
- (b) Apply for, receive and carry out other grants and contracts to provide services at the Keller and Inchelem Clinics.
- (c) Apply for, negotiate and carry out contracts pursuant to the Indian Self-Determination and Education Assistance Act.
- (d) Provide services to non-eligible beneficiaries of the Indian Health Services, provided that such services will not adversely impact services to be provided to eligible beneficiaries.
- (e) Bill Medicaid, Medicare and private insurers for services provided by the Authority.
- (f) Develop such personnel, procurement, finance, property and other such systems as may be necessary to carry out the provisions and purposes of this chapter.

11-1-3 **Waiver of Sovereign Immunity**

(a) The Colville Tribal Health Authority or CNCHC Board has the authority to waive its right to exercise sovereign immunity in those contracts, agreements or undertakings which the Colville Tribal Health Authority is a party. Such a proposed waiver may include provisions:

- (1) Stating what law will govern disputes;
- (2) Agreeing on the right to sue and be sued;
- (3) Designating the jurisdiction in which existing or future disputes may be resolved, provided that the parties first exhaust all remedies in the Colville Tribal Court; and
- (4) Agreeing to resolve existing and future disputes by arbitration.

(b) No proposed waiver of sovereign immunity by Colville Tribal Health Authority shall allow or authorize:

(1) Any person to enter on or into any land, structure, or facility not under the direct control and oversight of the Colville Tribal Health Authority; or

(2) Any judgment or arbitration award to be enforceable against any assets of the Tribes, fund, or entity of the Tribe, except against those assets described in subsection (c), below.

(c) The enforcement of any judgment, order or arbitration award against the Colville Tribal Health Authority in accordance with a waiver of sovereign immunity may be made only against the following:

(1) The assets of the Colville Tribal Health Authority, not including real property and fixtures; and

(2) The revenues related to, or arising from, the operation of the Colville Tribal Health Authority.

(d) The Colville Tribal Health Authority may not waive the sovereign immunity of the Confederated Tribes of the Colville Reservation, nor any other instrumentality of the Confederated Tribes of the Colville Reservation.

11-1-4 Annual Report to the Business Council

The Colville Nation Community Health Center Board shall report at least annually to the Business Council. The Board may, however, be called to report to the Business Council as deemed desirable by the Business Council.

11-1-5 Reports

The Colville Nation Community Health Center Board shall file quarterly reports with the Business Council. The report shall include:

(a) Unaudited financial statements, prepared in accordance with generally accepted accounting principles, which reflect all business conducted at the Colville Tribal Health Authority during the preceding fiscal quarter and year to date, as well as a budgeted amount for the balance of the current fiscal year;

(b) Information on material changes and developments since the last report of the business conducted at the Colville Tribal Health Authority, including a description of competitive conditions, research and development activities, new lines of business conducted by the Colville Tribal Health Authority, the approximate amount of total sales, revenue, income or loss, attributable to each specific type of health care and for each line of business which accounted for more than ten percent of total sales and revenues of the Colville Tribal Health Authority;

(c) Any material pending legal proceeding to which Colville Tribal Health Authority is or was a party;

(d) Total hires, promotions and terminations by job classification during the preceding fiscal quarter of the Colville Tribal Health Authority employees and work force forecast for each position classification for the current fiscal year; and

(e) Such other or different matters as the Business Council may request. The Colville Tribal Health Authority shall file with the Business Council such additional reports as required from time to time by the Business Council as well as meet all federal and state compliance regulations.

11-1-6 Additional duties

The Colville Nation Community Health Center Board shall, by not less than, a majority of the Board membership:

(a) Annually prepare and submit for approval to the Business Council an annual operating budget to include short-range and long-range goals and objectives of the Colville Tribal Health Authority and the

strategies used by the Colville Tribal Health Authority to accomplish these goals and objectives;

(b) Approve budgets for the Colville Tribal Health Authority, including its annual operating budgets and annual business plans;

(c) Approve the establishment of accounts at financial institutions as required;

(d) Authorize the expenditure of funds in the accounts of the Colville Tribal Health Authority as necessary for the operation and maintenance of the business and properties of the Colville Tribal Health Authority and the timely payment of financial liabilities and obligations of the Colville Tribal Health Authority;

(e) Enter into agreements, contracts, or understandings with any government agency, person, partnership, corporation or Indian Tribe;

(f) Lease property from the Tribes and others for such periods as are lawfully authorized to hold and manage or sublease such properties;

(g) Borrow money and issue temporary or long term evidence of indebtedness and timely repay such debts;

(h) Pledge the assets and receipts of the Colville Tribal Health Authority as security for debts and acquire, sell, lease, exchange, transfer and/or assign the non-realty property or interest of the Colville Tribal Health Authority;

(i) Undertake and carry out feasibility and other studies and analysis of health operations and markets, prepare health plans, and execute such plans to the extent permitted by the Tribes, and this Chapter, and amendments hereto;

(j) Prepare and adopt operation and management plans concerning health operations as required or otherwise necessary for the proper conduct of health care endeavors as authorized by the Business Council pursuant to this Chapter and amendments hereto;

(k) Cooperate with all other Indian Health Service care providers and entities of the Tribes or Tribal designees to carry out services of the Colville Tribal Health Authority;

(l) Tribal Health Board of Advisors shall exercise approval authority with respect to:

(1) Internal management policies, including a written manual sufficiently setting forth policy and procedures regarding (A) hiring, disciplinary and discharge from employment of the Colville Tribal Health Authority employees including policy and rights of appeal governing the provision of the Indian preference employment rights; and (B) a written manual setting forth procurement policies.

(2) Vendor contracts, contracts concerning facility maintenance and repairs and contracts and subcontracts regarding ancillary commercial activities of the Colville Tribal Health Authority.

(3) Advertisement and promotional sales and activities.

(4) Construction plans and specifications, interior and exterior design and furnishings.

(5) Annual operating, capital and working capital budgets.

(m) Collaboratively develop with key Tribal and Health Management staff and approve a plan annually for appropriately distributing medical needs according to available funds;

(n) Develop, implement, and approve policies and procedures for the successful operation of the Colville Tribal Health Authority.

(Enacted 6/29/ 06, Resolution 2006-323)

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION GENERAL WELFARE ORDINANCE

11-1-50 Authority

This Ordinance is enacted by the Colville Business Council pursuant to the powers vested to it under Article V, Section 1 of the Constitution of the Confederated Tribes of the Colville Reservation, as approved by the Commissioner of Indian Affairs on April 19, 1938, as amended and as may be amended from time to time (“Constitution”).

(Amended 8/10/2020, Resolution 2020-415)

11-1-51 Purpose

The purpose of this Ordinance is to implement the *Tribal General Welfare Exclusion Act of 2014* (Pub. L. 113-168) and establish a means of providing grant or other assistance to Tribal Members that promotes the general welfare of the Colville Tribes and is excludable from the gross income of the Recipients of such assistance. The Internal Revenue Service (“IRS”) in IRS Revenue Procedure 2014-35 provides for Safe Harbor Programs under which, if approved and in writing, would presume need and thus exclude these benefits. Accordingly, this Ordinance sets forth a framework to establish programs consistent with Internal Revenue Code Section 139E and IRS Revenue Procedure 2014-35 to ensure compliance with that allows for the exclusion of these types of Benefits from the gross income of its Recipients. The Benefits authorized by this Ordinance are intended to qualify for favorable tax treatment under the Internal Revenue Code Section 139E to the fullest extent permitted by law. To the extent that differences exist or arise in the administration by the Colville Tribes of any action authorized by this Ordinance between the *Tribal General Welfare Exclusion Act of 2014* and IRS Revenue Procedure 2014-35, the more favorable and administratively expedient provision shall control.

Accordingly, all assistance provided under this Ordinance:

- (a) Shall be available to any Recipients who qualify in accordance with Approved Program policies, subject to budgetary restraints;
- (b) Shall be provided in a way that does not discriminate in favor of members of the Colville Business Council;
- (c) Shall not be provided as compensation for goods and/or services;
- (d) Shall not be Lavish or Extravagant under the facts and circumstances;
- (e) Shall be an unfunded arrangement for tax purposes and shall be limited to funds appropriated, at the discretion of the Colville Business Council. All amounts budgeted by the Colville Tribes for assistance purposes shall remain general assets of the Tribes until such payments are disbursed;
- (f) Shall not be subject to information reporting by the Tribes to the Internal Revenue Service; and
- (g) Without limitation, the following assistance provided under this Ordinance shall be treated as nontaxable:
 - (1) Assistance that, when provided, satisfies the requirements for the exemption under Internal Revenue Code Section 139E;
 - (2) Assistance that is provided under an IRS Safe Harbor Program;
 - (3) Assistance that, when provided, qualifies for exclusion under the IRS General Test of General Welfare Exclusion; or

(4) Assistance that, when provided, meets another express exemption under the Internal Revenue Code, such as the exemption provided for Tribal medical expenses under Internal Revenue Code Section 139D, or that meets other recognized exemptions.

(Amended 8/10/2020, Resolution 2020-415)

11-1-52

Definitions

The following definitions only apply to this section of this Chapter 11-1.

(a) “Approved Program” means any program or action to provide general welfare assistance that is intended to qualify for treatment under the General Welfare Exclusion, whether one-time or on a recurring basis, that is approved by the Colville Business Council.

(b) “Benefits” means any assistance provided through an Approved Program, including payments, which is provided pursuant to this Ordinance.

(c) “General Test” means any assistance that is:

(1) Paid by or on behalf of the Colville Tribes in accordance with an Approved Program;

(2) Based on either needs of the Indian community itself or upon individual needs of the Recipient (which need not be financial in nature);

(3) Not compensation for services; and

(4) Not per capita payments.

(d) “General Welfare Exclusion” means any benefit shall be treated as nontaxable under federal law so long as it satisfies the requirements for exclusion under Internal Revenue Code Section 139E, it is provided under a Safe Harbor Program, or it meets the General Test.

(e) “Lavish” or “Extravagant” shall have the meaning determined by the Colville Business Council in its sole discretion based on all facts and circumstances, taking into account, needs unique to the Tribe as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under Internal Revenue Code Section 139E following consultation between the Tribe and the Internal Revenue Service.

(f) “Recipient” means any Tribal Member entitled to receive assistance in accordance with specific Approved Program requirements.

(g) “Safe Harbor Program” means an Approved Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended.

(h) “Tribal Member” means any person who is a duly enrolled member of the Confederated Tribes of the Colville Reservation.

(i) “Tribes” or “Colville Tribes” means the Confederated Tribes of the Colville Reservation.

(Amended 8/10/2020, Resolution 2020-415)

11-1-53

Rights and Liabilities

(a) All the rights and liabilities associated with the enactment of the ordinance codified in this Ordinance, or the Benefits made hereunder, shall be construed and enforced according to the laws of the Confederated Tribes of the Colville Reservation and applicable federal law.

(b) Nothing in this Ordinance or the related policies or procedures adopted for its implementation, if any, shall be construed to make applicable to the Colville Tribes any laws or regulations that are otherwise inapplicable to the Tribes.

(c) The Colville Tribe reserves the right to provide Benefits in circumstances where federal funding is insufficient to operate federal programs designed to benefit Recipients and when federal funding is insufficient to adequately fulfill federal trust obligations.

(d) The Tribes' adoption of its Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Colville Tribes' right to seek funding shortfalls or to enforce the trust rights of the Tribes and its members.

(Amended 8/10/2020, Resolution 2020-415)

11-1-54 Program Approval

(a) The Colville Business Council shall approve programs consistent with the purposes set forth in this Ordinance. Each Approved Program shall be consistent with the General Welfare Doctrine as to purpose, eligibility, and funding. In the absence of specific requirements to the contrary, all Approved Programs shall be deemed to incorporate eligibility criteria that comply with Internal Revenue Code Section 139E.

(b) At a minimum, program policies submitted for review and approval shall:

- (1) Not discriminate in favor of the members of the Colville Business Council;
- (2) Ensure Benefits are available to any Tribal Member who meets such policy requirements;
- (3) Provide that the Benefits provided are for the promotion of the general welfare;
- (4) Determine that the Benefits are not Lavish or Extravagant; and
- (5) Confirm that the provision of Benefits is not compensation for goods and/or services.

(Amended 8/10/2020, Resolution 2020-415)

11-1-55 Program Eligibility

(a) Eligibility for Benefits shall be limited to Tribal Members. Approved Programs may limit Benefits to an identified group of Tribal Members. Eligibility shall be determined through an application process, as approved by the Colville Business Council.

(b) Approved Programs comprising descriptions, including eligibility rules and limitations, and application forms and procedures may be presented to the Colville Business Council for approval in accordance with this Ordinance.

(c) Only those Approved Programs that are adopted by the Colville Business Council shall be considered to be in force and effect.

(Amended 8/10/2020, Resolution 2020-415)

11-1-56 Means Testing not Required

Consistent with Internal Revenue Code Section 139E and the IRS Revenue Procedure 2014-35, Approved Programs may be based on nonfinancial need under the General Test that are not individually means tested. Nonetheless, programs providing Benefits where eligibility is financial need based may also be approved.

(Amended 8/10/2020, Resolution 2020-415)

11-1-57 Ceremonial and Culturally-Related Gifts and Honorariums

For Safe Harbor Programs, and subject to amendments to IRS Revenue Procedure 2014-35 hereafter, the Colville Tribes will presume that individual need is met for religious or spiritual leaders (including but not limited to traditional healers) receiving the following benefits, and that the benefits do not represent compensation for services:

(a) Benefits provided under an Indian Tribal governmental program that are items of cultural significance that are not Lavish or Extravagant under the facts and circumstances, as determined by the Colville Business Council; or

(b) Nominal cash honoraria provided to religious or spiritual officials or leaders to recognize their participation in cultural, religious, and social events (including, but not limited to, salmon ceremonies, funerals, wakes, burials, other bereavement events, or honoring events).

(Amended 8/10/2020, Resolution 2020-415)

11-1-58

Safe Harbor Programs

(a) Approved Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as nontaxable Benefits under the General Welfare Exclusion without the Recipient having to demonstrate individual need:

(1) The Benefit is provided under a specific Approved Program of the Tribe;

(2) The Approved Program has written policies specifying how individuals may qualify for the Benefit;

(3) The Benefit is available to any Tribal Member or identified group of Tribal Members who satisfy the Approved Program policies, subject to budgetary restraints;

(4) The distribution of Benefits from the Approved Program does not discriminate in favor of the governing body of the Tribe;

(5) The Benefit is not compensation for goods and/or services; and

(6) The Benefit is not Lavish or Extravagant under the facts and circumstances, as determined by the Colville Business Council.

(b) The following Benefits may be provided under a Safe Harbor Program. The Benefits listed in the parenthetical language herein are illustrative only, rather than an exhaustive list. Thus, a Benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the Benefit is not expressly described in the parenthetical language herein; provided, that it meets all other requirements of the Internal Revenue Service Code, and IRS Revenue Procedure 2014-35 (as may be amended):

(1) **Housing Programs.** Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes, that:

(A) Pay mortgage payments, down payments, or rent payments (including, but not limited to, security deposits) for principal residences;

(B) Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation), or heating or cooling issues;

(C) Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement); or

(D) Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable).

(2) **Educational Programs.** Programs to:

(A) Provide students (including, but not limited to, post-secondary students) transportation to and from school, tutors, and supplies (including, but not limited to,

clothing, backpacks, laptop computers, Internet connectivity, musical instruments, and sports equipment) for use in school activities and extracurricular activities;

(B) Provide tuition payments for students (including, but not limited to, allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education

(C) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and

(D) Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job interview or training (including, but not limited to, an interview suit or a uniform required during a period of training).

(3) **Elder and Disabled Programs.** Programs for individuals who have reached age 55 or are mentally or physically disabled (as defined under applicable law, including, but not limited to, Tribal laws) that provide;

(A) Meals through home-delivered meal programs or at a community center or similar facility;

(B) Home care such as assistance with preparing meals or doing chores, or day care outside the home;

(C) Local transportation assistance; and

(D) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(4) **Cultural and Religious Programs.** Programs to:

(A) Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to attend or participate in an Indian Tribe's cultural, social, religious, or community activities such as ceremonies and traditional dances;

(B) Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribes, including, but not limited to, those on other Indian reservations;

(C) Pay the costs of receiving instruction about an Indian Tribe's culture, history, and traditions (including, but not limited to, traditional language, music, and dances);

(D) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and

(E) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Colville Tribes or another Indian Tribe.

(5) **Other Qualifying Benefit Programs.** Programs to:

(A) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);

(B) Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member while the individual is receiving medical care away from home;

(C) Provide assistance to individuals in exigent circumstances (including, but not limited to, victims of abuse), including, but not limited to, the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;

(D) Pay costs for temporary relocation and shelter for individuals displaced from their homes (including, but not limited to, situations in which a home is destroyed by a fire or natural disaster);

(E) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and

(F) Pay the cost of nonprescription drugs (including but not limited to traditional medicines).

(Amended 8/10/2020, Resolution 2020-415)

11-1-59 Non-Safe Harbor Programs

Nothing in this Ordinance or IRS Revenue Procedure 2014-35 shall limit the Colville Tribes' right to provide benefits outside of the safe harbor rules. Any changes to the Safe Harbor Programs as a result of the Indian General Welfare Exclusion Act of 2014 shall be immediately incorporated, by reference, into this Ordinance.

(Amended 8/10/2020, Resolution 2020-415)

11-1-60 Non-Resource Designation

The Colville Tribes does not guarantee Benefits under this Ordinance. The Tribes reserves the right to cancel, adjust, modify, or revoke any benefit treated as a resource of the Recipient. Approved Programs shall be administered to avoid triggering of the doctrines of "constructive receipt" and/or "economic benefit" to the extent such doctrines are inconsistent with the purposes of this Ordinance.

(Amended 8/10/2020, Resolution 2020-415)

11-1-61 Transferability

A Recipient's eligibility for a Benefit is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors of the Recipient.

(Amended 8/10/2020, Resolution 2020-415)

11-1-62 Severability

If any provision of this Ordinance, or the application thereof to any person or circumstance, shall be held unconstitutional or invalid by the Colville Tribal Court or any other court of competent jurisdiction, only the invalid provision shall be severed and the remaining provision and language of this Ordinance shall remain in full force and effect.

(Amended 8/10/2020, Resolution 2020-415)

11-1-63 Sovereign Immunity Preserved

Nothing in this Ordinance shall be interpreted as a waiver of the sovereign immunity of the Colville Tribes from any unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribes, and such sovereign immunity is expressly preserved.