

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

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Submitted via FFEcomments@cms.hhs.gov

January 12, 2015

Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Comments on Draft 2016 Letter to Issuers in the Federally-Facilitated Marketplace

On behalf of the Tribal Self-Governance Advisory Committee (TSGAC), I write to provide our comments regarding the Draft 2016 Letter to Issuers in the Federally-Facilitated Marketplace (2016 Issuer Letter) issued by the Center for Consumer Information and Insurance Oversight (CCIIO). Established in 1996, the TSGAC provides information, education advocacy and policy guidance for the implementation for Self-Governance within the Indian Health Service (IHS). We appreciate the opportunity to provide these comments.

We appreciate the opportunity to provide comments on the 2016 Issuer Letter. In addition, TSGAC would like to express its support for the efforts being made by CCIIO to improve the information on Indian-specific cost-sharing protections available to potential Marketplace enrollees and to encourage health plans to include IHCPs in the networks of Qualified Health Plans (QHPs).¹

TSGAC recently submitted detailed comments on the recent proposed rule titled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016" (CMS-9944-P; Proposed Rule) and published in the Federal Register on November 26, 2014. Many of the provisions in the Proposed Rule overlap with provisions in the 2016 Issuer Letter.

As requested, we will not repeat our detailed comments on each of these here, but we have attached a copy of the TSGAC recommendations on CMS-9944-P for your reference. The TSGAC comments on CMS-9944-P begin with a summary listing of the TSGAC recommendations. However, we would like to request that the recommendations on CMS-9944-P, if determined to be outside the scope of the Proposed Rule, be considered here as part of our recommendations pertaining to the 2016 Issuer Letter.

¹ IHCPs also referred to as Indian Health Service, Indian Tribes, Tribal organizations, and urban Indian organizations providers, or I/T/Us.

With regard to the 2016 Issuer Letter, we would like to make the following additional recommendations:

Application of Requirements Related to IHCPs to non-Federally-Facilitated Marketplace (FFM) States

As indicated in the introduction, the 2016 Issuer Letter applies solely to issuers when offering QHPs through the FFM. We believe that these requirements should be extended to issuers when offering QHPs in State-Based Marketplaces as well.

Requirement for Issuers to Offer Contracts to IHCPs

On page 20 of CCIIO's 2015 Issuer Letter, the following requirement on issuers was included:

Attestation that the issuer has satisfied the “good faith” contracting requirement with respect to offering contracts to all available Indian health providers ...”

This provision applies in instances where an issuer's application does not satisfy the “30 percent essential community provider (ECP) guideline.” If the 30 percent ECP guideline is not met, the issuer is required to prepare a narrative justification explaining how the QHP nonetheless “provides an adequate level of service for low-income and medically underserved enrollees and how the issuer plans to increase ECP participation in the issuer's provider network(s) in future years, as necessary.” The ability of issuers to avoid the 30 percent ECP standard, however, was not coupled with the ability of issuers to circumvent the requirement to offer good faith contracts to all available IHCPs. In fact, as noted above, in instances where the 30 percent ECP standard is not met, the issuer is required to proactively attest that good faith contract offers have been made to all available IHCPs.

In contrast, on page 26 of the draft 2016 Issuer Letter, the provision requiring issuers—in instances where the 30 percent ECP guideline is not met—to attest to having offered contracts to all IHCPs in a QHP's service area was not retained. The 2016 Issuer Letter reads: “If an issuer's application does not satisfy the 30 percent ECP standard as well as the requirement to offer contracts in good faith to all available Indian health providers in the service area ...,” the issuer is to provide a narrative justification. (Emphasis added.) As such, and in contrast to the 2015 Issuer Letter, the 2016 Issuer Letter permits issuers to (1) not meet the 30 percent ECP guideline and (2) not offer contracts in good faith to all IHCPs in the QHP's service area, yet still be able to offer the QHP on a Marketplace.

We understand that there might be instances whereby an issuer is not able to include at least 30 percent of ECPs in its network. For instance, IHCPs in the service area might determine that it is not in the interests of their patients to contract with a QHP. But we do not see why it is warranted to permit issuers to not offer contracts to all available IHCPs in the QHP's service area, as meeting this requirement is completely within the control of issuers. Issuers should not be permitted to disregard this requirement.

As a result, we oppose the inclusion of the phrase “as well as the requirement to offer contracts in good faith to all available Indian health providers in the service area” on page 26 of the 2016 Issuer Letter, as it has the effect of allowing an issuer to offer a QHP through the FFM without having made good faith contract offers to all available IHCPs.

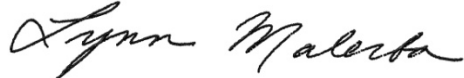
In instances where an issuer does not meet the 30 percent ECP requirement, the 2016 Issuer Letter does require that the narrative justification prepared by the issuer include:

“The names of the ECP hospitals, FQHCs, Indian health providers, Ryan White providers, family planning providers, and providers in the other ECP categories listed in Table 2.1 to which the issuer has offered contracts in good faith, but an agreement with the providers has not yet been reached ...”

We strongly support retaining this provision, as it will assist in efficiently monitoring and enforcing compliance with network adequacy and ECP requirements. At the same time, however, we do not support the lessening of the requirement that—as a condition of offering a QHP on a Marketplace—the issuer offer contracts in good faith to all IHCPs in the QHP’s service area.

Again, we appreciate the opportunity to comment on the 2016 Issuer Letter. We are available to discuss any of the recommendations contained here or in the attached TSGAC comment letter on CMS-9944-P. Please feel free to contact me if you are in need of additional information at (860) 862-6192; or via email: lmalerba@moheganmail.com. Thank you.

Sincerely,



Chief Lynn Malerba, Mohegan Tribe
Chairwoman, TSGAC

Enclosure: TSGAC comments on CMS-9944-P

cc: Dr. Yvette Roubideaux, Director, IHS
P. Benjamin Smith, Director, Office of Tribal Self-Governance, IHS
Kitty Marx, Director of Tribal Affairs, CMS
TSGAC Members and Technical Workgroup