



Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

Tribal Sponsorship through a Marketplace¹

August 13, 2016

This brief seeks to provide guidance to Tribes that might use federally-appropriated funding or third party revenues to purchase health insurance for Tribal members² enrolled through a Marketplace.

Indian Tribes, Tribal organizations, and urban Indian organizations (T/TO/Us) can pay for health insurance coverage on behalf of their Tribal members enrolled through a Marketplace (“Tribal sponsorship”).

- *Guidance documents issued by the federal Centers for Medicare and Medicaid Services (CMS) specifically authorize payment of premiums and cost-sharing by T/TO/Us on behalf of Marketplace enrollees.*^{3, 4}
- *Section 402 of the Indian Health Care Improvement Act (IHCA)*⁵ states that T/TO/Us can use funds made available through the Indian Self-Determination and Education Assistance Act (ISDEAA) or programs under the Social Security Act (namely, Medicare, Medicaid, and the Children’s Health Insurance Program) to purchase health insurance, such as coverage through a Marketplace, for Tribal members.⁶
- Tribal sponsorship programs are permitted—but not required—to apply eligibility criteria such as financial need.⁷

Qualified Health Plans (QHPs) offered through a Marketplace *must* accept payments from T/TO/Us made on behalf of Marketplace enrollees. Federal regulations (at 45 C.F.R. 156.1250)⁸ state that issuers offering individual market QHPs, including stand-alone dental plans, must accept premium and cost-sharing payments from T/TO/Us on behalf of Marketplace enrollees, regardless of whether the issuers offer the QHPs through the Federally-facilitated Marketplace (FFM) or a State-based Marketplace (SBM).⁹

To the extent that T/TO/Us facilitate the provision of health care services to Tribal members through Tribal sponsorship, ***T/TO/Us should include in contracts, compacts, or other funding agreements with IHS a general statement that notes the intention to use some ISDEAA or other funds available to the T/TO/U for Tribal sponsorship of premiums on behalf of Tribal members.***

¹ This brief is for informational purposes only and is not intended as legal advice. For questions on this brief, please contact Doneg McDonough, TSGAC Technical Advisor, at DonegMcD@Outlook.com.

² Tribal members are defined here as persons eligible for services from the Indian Health Service, Indian Tribes and Tribal organizations, or urban Indian organizations.

³ <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-final-issuer-letter-3-14-2014.pdf>

⁴ CMS confirmed and further clarified this in a February 7, 2014, guidance letter that specifically authorized payment of premiums by T/TO/Us on behalf of Marketplace enrollees. (<http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/third-party-payments-of-premiums-for-qualified-health-plans-in-the-marketplaces-2-7-14.pdf>)

⁵ IHCA Section 402 was modified by section 152 of the Indian Health Care Improvement Reauthorization and Extension Act, which was contained in the Patient Protection and Affordable Care Act (ACA).

⁶ In addition, ACA Section 9021 provides that “qualified Indian health care benefits” (which include premium sponsorship payments) made by a T/TO are not taxable to the recipient if the recipient is an enrolled Tribal member or ANCSA shareholder or the dependent or spouse of an enrolled Tribal member or ANCSA shareholder.

⁷ See IHCA Section 402(b) and the CMS guidance letter dated February 7, 2014.

⁸ http://www.ecfr.gov/cgi-bin/text-idx?SID=2f9a7c042e57c01d998e42617f02c615&node=se45.1.156_11250&rgn=div8

⁹ According to a separate federal regulation (45 C.F.R. 155.420(b)), the FFM or a SBM can permit T/TO/Us to pay aggregated QHP premiums on behalf of qualified individuals, but a Marketplace does not have to do so.