



Authorities for Tribal Sponsorship Through a Marketplace¹

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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 (IHCIA)*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 CFR 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 a 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 the 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 IHS, Indian Tribes and Tribal organizations, or urban Indian organizations.

³ See <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 (see <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 IHCIA 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. “Dependent” is defined as a child who will not turn 19 (or a student who will not turn 24) during the taxable year.

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

⁸ See 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)), an FFM or 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.