

# ESSENTIAL COMMUNITY PROVIDER (ECP) PETITION PROCESS



ECP Webinar  
September 26, 2018

# Background

- In accordance with section 1311(c)(1)(C) of the Affordable Care Act (ACA), Qualified Health Plan (QHP) issuers, including Stand-alone Dental Plan (SADP) issuers, are required to include within their network essential community providers (ECPs), where available, that serve predominantly low-income, medically-underserved individuals.
- To satisfy this ECP requirement, QHP and SADP issuers must submit an ECP template as part of their QHP application, in which they must list the ECPs with whom they have contracted to provide health care services to low-income, medically underserved individuals in their service areas.
- HHS has compiled a non-exhaustive list of available ECPs, based on data it and other Federal partners maintain, which has been used as an initial source of ECP information.
- HHS updates this ECP list annually to assist issuers with identifying providers that qualify for inclusion in an issuer's plan network toward satisfaction of the ECP standard under 45 CFR 156.235.

# ECP Types

Under 45 CFR 156.235, ECPs are defined as health care providers who serve predominantly low-income, medically underserved individuals. Such providers include the following provider types:

- Federally Qualified Health Centers (FQHCs) and FQHC look-alikes
- Health centers providing dental services
- Hospitals: Critical Access Hospitals, Rural Referral Ctrs, Disproportionate Share (DSH), DSH-eligible Hospitals, Children's Hospitals, Sole Community Hospitals, Freestanding Cancer Centers
- Indian health care providers, which include providers participating in programs operated by 1) the Indian Health Service; 2) a Tribe or Tribal organization under the authority of the Indian Self-Determination and Education Assistance Act; and 3) an urban Indian organization under the authority of Title V of the Indian Health Care Improvement Act
- Ryan White Program providers
- Family planning providers receiving Federal funding under Title X of the PHS Act and not-for-profit or governmental family planning service sites that do not receive Federal funding under Title X of the PHS Act or other 340B-qualifying funding
- Other providers that serve predominantly low-income, medically underserved individuals, including Black Lung Clinics, Community Mental Health Centers, Hemophilia Treatment Centers, Rural Health Clinics, Sexually Transmitted Disease Clinics, Tuberculosis Clinics

# Purpose of Online ECP Petition

HHS continues to solicit qualified ECPs to complete and submit the online ECP provider petition in order to achieve the following outcomes:

- Ensure that the HHS ECP list more accurately reflects the universe of qualified available ECPs in a given service area, so that all issuers are held to a more uniform ECP standard.
- Update provider data appearing on the HHS ECP list (e.g., facility site locations, the types of medical services provided at each medical facility, points of contact, etc.).
- Support HHS's policy for counting an issuer's ECP write-ins toward satisfaction of the ECP standard.

# Timeline of ECP Petition Updates

- Providers included on the Final HHS ECP list for plan year 2019 reflect those that submitted an online ECP petition to update their provider data between December 9, 2015, and December 22, 2017, and were approved by CMS for inclusion on the ECP list through the ECP petition review process.
- The Final ECP list for plan year 2019 (released February 5, 2018) is available at <https://www.ghpcertification.cms.gov/s/ECP%20and%20Network%20Adequacy>.
- The ECP list currently displayed on the petition site is the “Plan Year 2019 Final ECP list plus updates” based on petitions submitted through July 11, 2018.

# Timeline of ECP Petition Updates (continued)

- The ECP petition submission window for the plan year 2020 Final ECP List closed on August 22, 2018. Petitions submitted through August 22, 2018, will be reflected on the petition site in mid-October 2018.
- Providers that qualify as ECPs after August 22, 2018, and do not appear on the HHS ECP List for the plan year 2020 can approach a qualified health plan (QHP) issuer directly and request to contract with the issuer and appear as a contracting ECP for plan year 2020.
- CMS allows issuers to identify ECPs that do not yet appear on the HHS ECP List through a “write-in” process, provided that issuers arrange for these providers to submit an ECP petition to HHS by no later than the deadline for issuer submission of changes to their QHP application for the respective plan year (typically, August of each year).

# Submitting an ECP Petition

Providers seeking to be added to the HHS ECP List or update information in a current entry must submit an online ECP petition, following the steps provided below:

1. Access the online ECP petition at [https://data.healthcare.gov/cciio/ecp\\_petition](https://data.healthcare.gov/cciio/ecp_petition).
2. Begin answering the questions, filling in all required data fields and scrolling over the “i” buttons for additional instructions.
3. For assistance with completing your petition, email us at [EssentialCommunityProviders@cms.hhs.gov](mailto:EssentialCommunityProviders@cms.hhs.gov).

# Submitting an ECP Petition (continued)

Live Demonstration of ECP Petition Site -  
[https://data.healthcare.gov/ccio/ecp\\_petition](https://data.healthcare.gov/ccio/ecp_petition)



# Questions



For questions pertaining to the ECP petition process for plan year 2020, you may email:

***[EssentialCommunityProviders@cms.hhs.gov](mailto:EssentialCommunityProviders@cms.hhs.gov)***



# Health Care Reform in Indian Country

Self-Governance Communication & Education

*Self-Governance Tribes Striving Towards Excellence in Health Care*

AFFORDABLE CARE ACT (ACA) / INDIAN HEALTH CARE  
IMPROVEMENT ACT (IHCA)

Webinar Series

*- HHS Essential Community Provider (ECP) List Protections -*

September 26, 2018

1:00 - 2:30 pm ET

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# HHS ECP List Protections

## Importance of Appearing on HHS ECP List

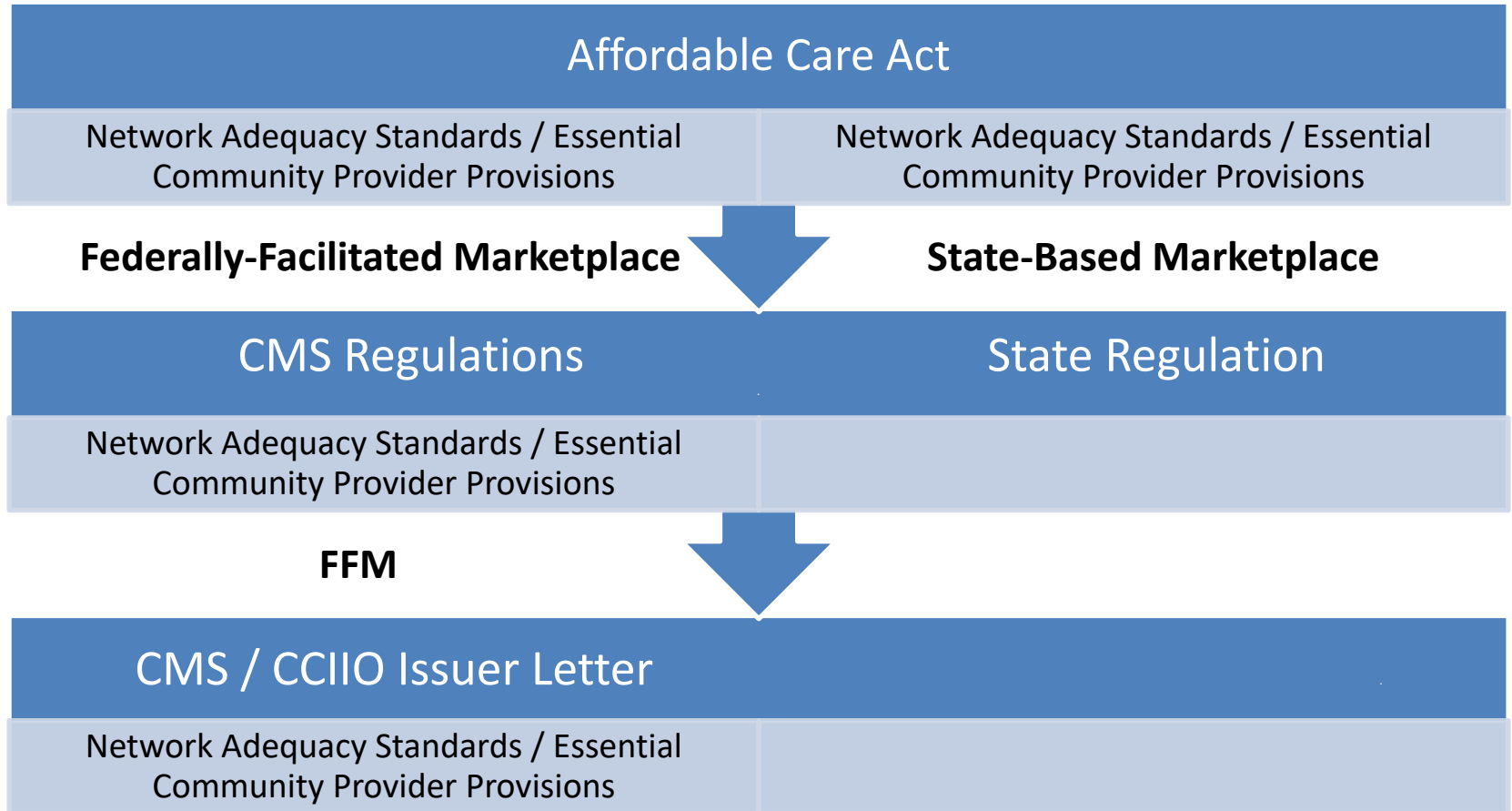
--Inclusion on the HHS ECP List serves as the way to maintain the right of Indian health care providers (IHCPs) (in FFM states) to receive a contract offer from every QHP issuer that offers plans through the Marketplace, as required under federal regulations

--Tribal organizations have asked CMS to extend this requirement to non-FFM states



# ACA Network Adequacy and Essential Community Provider (ECP) Provisions

## All Marketplaces



# HHS ECP List Protections

## Federal Regulations on Network Adequacy and ECPs

--Federal regulations require QHP issuers in all states to operate provider networks that:

--1) Include “sufficient numbers and types of providers, including providers that specialize in mental health and substance use disorder services, to assure that all services will be accessible without unreasonable delay”; and

--2) Include a “sufficient number and geographic distribution” of ECPs, including IHCPs, where available

--The specific HHS/CCIIO standards for compliance with these requirements apply in states with FFMs in which CMS conducts plan management functions (“**FFM/PM states**”)

--Other states can use a similar approach but do not have to apply these standards



# HHS ECP List Protections

## General Enforcement Standard

- In FFM/PM states, CMS considers QHP issuers to have satisfied federal regulations regarding ECPs if they meet certain requirements (general enforcement standard)
- Issuers not meeting the general enforcement standard must submit a narrative justification
- Currently, federal requirements regarding ECPs apply in 35 states



# HHS ECP List Protections

## General Enforcement Standard: Applicability by State

Applicability of Federal ECP Standards in the Marketplace, by State; 2018		
State	Marketplace Type	Federal ECP Standards Apply
Alabama	FFM	Yes
Alaska	FFM	Yes
Arizona	FFM	Yes
Arkansas	SBM-FP	Yes
California	SBM	Yes
Colorado	SBM	Yes
Connecticut	SBM	Yes
Delaware	SBM-FP	Yes
District of Columbia	SBM	No
Florida	FFM	Yes
Georgia	FFM	Yes
Hawaii	FFM	Yes
Idaho	SBM	No
Illinois	State Partnership Marketplace	Yes
Indiana	FFM	Yes
Iowa	State Partnership Marketplace	Yes
Kansas	FFM	No
Kentucky	SBM-FP	Yes
Louisiana	FFM	Yes
Maine	FFM	No
Maryland	SBM	No
Massachusetts	SBM	No
Michigan	State Partnership Marketplace	Yes
Minnesota	SBM	No
Mississippi	FFM	Yes
Missouri	FFM	Yes



# HHS ECP List Protections

## General Enforcement Standard: Applicability by State (cont.)

Applicability of Federal ECP Standards in the Marketplace, by State; 2018 (cont.)		
State	Marketplace Type	Federal ECP Standards Apply
Montana	FFM	No
Nebraska	FFM	No
Nevada	SBM-FP	Yes
New Hampshire	State Partnership Marketplace	Yes
New Jersey	FFM	Yes
New Mexico	SBM-FP	Yes
New York	SBM	No
North Carolina	FFM	Yes
North Dakota	FFM	Yes
Ohio	FFM	No
Oklahoma	FFM	Yes
Oregon	SBM-FP	Yes
Pennsylvania	FFM	Yes
Rhode Island	SBM	No
South Carolina	FFM	Yes
South Dakota	FFM	No
Tennessee	FFM	Yes
Texas	FFM	Yes
Utah	FFM	Yes
Vermont	SBM	No
Virginia	FFM	No
Washington	SBM	No
West Virginia	State Partnership Marketplace	Yes
Wisconsin	FFM	Yes
Wyoming	FFM	Yes





# HHS ECP List Protections

## General Enforcement Standard: Network Adequacy

1. QHP issuers must contract with at least 20% of available ECPs in the service area of their plan(s).

--Requirement reduced from 30% to 20% in 2018



# HHS ECP List Protections

## General Enforcement Standard: Good Faith Contract Offers

2. In FFM/PM states, QHP issuers must make good faith contract offers to all available IHCPs in the service area of their plan(s), applying the special terms and conditions necessitated by federal law and regulations as referenced in the recommended model QHP Addendum

--IHCPs include IHS, Tribal and Tribal organization, and urban Indian organization providers

--“Good faith” contract offer requirement means issuers must “offer contract terms comparable to terms that it offers to a similarly-situated non-ECP provider”



# HHS ECP List Protections

## General Enforcement Standard: Good Faith Contract Offers

3. In FFM/PM states, QHP issuers must offer contracts in good faith to at least one ECP in each ECP category in each county in the service area of their plan(s), where an ECP in that category is available and provides medical or dental services covered by the issuer plan type.

--IHCPs constitute one of the ECP categories



# HHS ECP List Protections

## Alternate Standard

4. In FFM/PM states, CMS allows QHP issuers offering plans that provide a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group to use an alternate ECP standard, under which they do not have to offer contracts to all available IHCPs in their service area

--Many of these plans are considered “closed network” plans

--Tribal organizations have asked CMS to clarify that “closed network” plans not operating integrated delivery systems (*i.e.*, do not have a truly integrated system of primary, preventive, and acute care services and providers) cannot use the alternate ECP standard



# Summary of Requirements on QHP Issuers Regarding Indian Health Care Providers

(required for FFM/PM states; optional for “state plan management” and SBM states)

## For a QHP to be certified for a Federally-Facilitated Marketplace (FFM/PM), QHP issuer must:<sup>1</sup>

- Network Adequacy (§156.230)
  - Maintain a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay
- Essential Community Providers (ECPs) (§156.235)
  - Contract with at least 20 percent of available ECPs in each plan’s service area to participate in the plan’s provider network
  - *Offer contracts to all available Indian health care providers in the service area, applying the special terms and conditions required by Federal law and regulations as referenced in the recommended model QHP addendum for Indian health care providers developed by HHS*
  - Make offers that are in “good faith”, meaning offer must contain terms – including payment rates – that a willing, similarly-situated, non-ECP provider would accept or has accepted.

## For a QHP in a “state plan management” or State-Based Marketplace (SBM):

- CMS stated, “We urge State Exchanges to employ the same standard when examining adequacy of ECPs as outlined in §156.235, including the requirement that issuers offer contracts to all Indian health providers in the plan’s service area.”

<sup>1</sup> Closed panel / HMO QHPs are not subject to the ECP requirements.



# Other Indian Health Care Provider-related Provisions

- **Section 206 reimbursement** (in all Marketplaces):
  - “Section 206 of the Indian Health Care Improvement Act (IHCIA) (25 USC § 1621e) provides for a right of recovery from an insurance company and other third party entities, including QHP issuers, for reasonable charges billed by an Indian health care provider when providing services, or, if higher, the highest amount the third party would pay for services furnished by other providers. This right of recovery applies whether the Indian health care provider is in a plan network or not. Further details can be found at <http://www.ihs.gov/ihcia/>.” [CCIIO 2016 Issuer Letter]



# Accessing ACA and Federal Regulations and Guidance

- Affordable Care Act (ACA)  
<http://housedocs.house.gov/energycommerce/ppacacon.pdf>
  - Network adequacy and ECP standards
    - ACA §1311(c)(1)(B) and (C)
- Code of Federal Regulations (CFR)  
<http://www.ecfr.gov/cgi-bin/ECFR?SID=7f8540b42be198e365873efe5f15dcb8&page=browse>
  - Network Adequacy (§156.230)  
<http://www.ecfr.gov/cgi-bin/text-idx?SID=a7b95e21f7fa10433fd5851016387747&mc=true&node=20150227y1.92>
  - ECP Standards (§156.230)  
[http://www.ecfr.gov/cgi-bin/text-idx?SID=e66a23f97d3d022a412790df2c7a1633&mc=true&node=se45.1.156\\_1230&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=e66a23f97d3d022a412790df2c7a1633&mc=true&node=se45.1.156_1230&rgn=div8)
- Guidance document: CCIIO 2019 Issuer Letter
  - <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2019-Letter-to-Issuers.pdf>

