



# 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 -  
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# HHS ECP List Protections

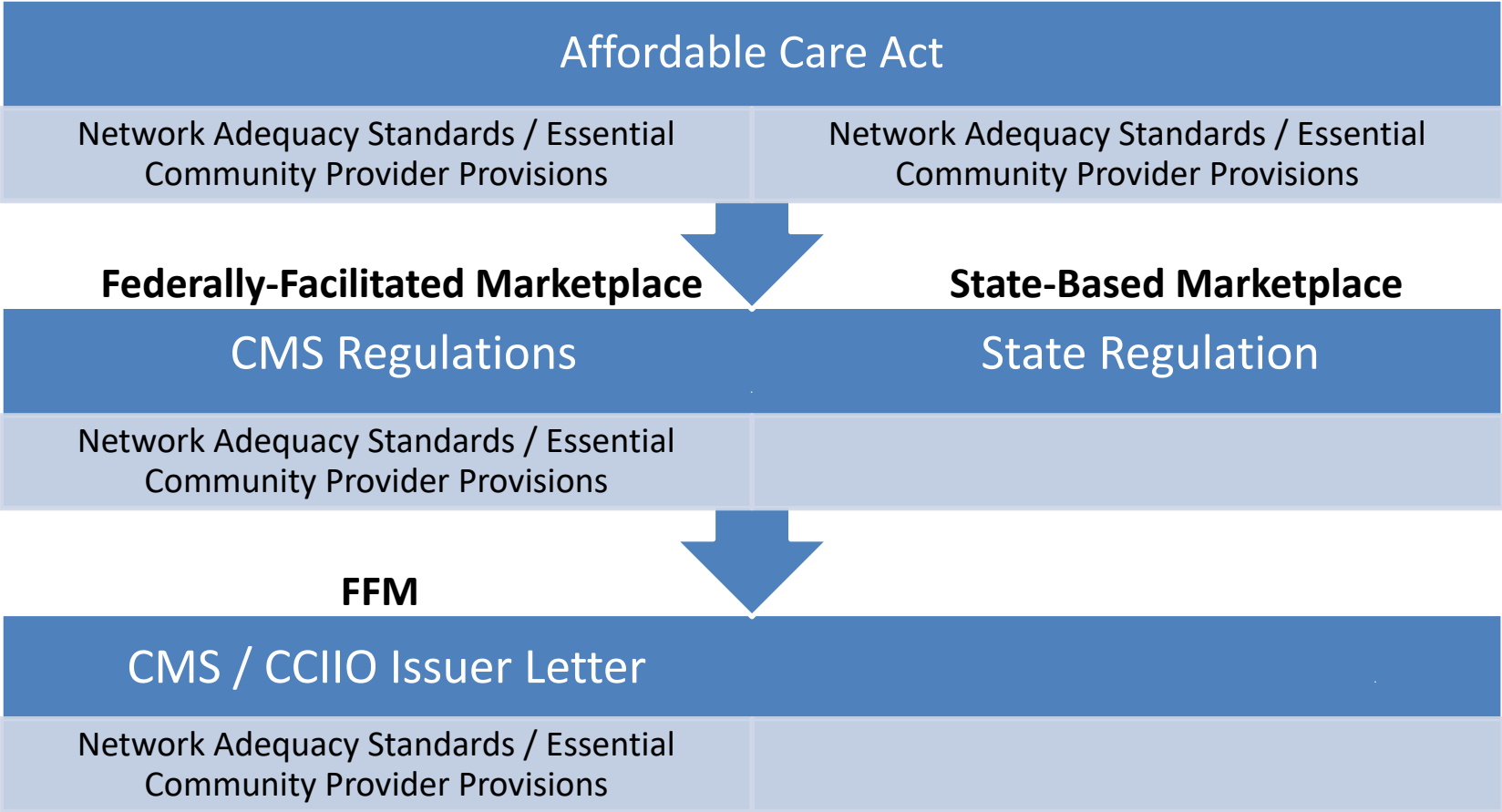
## Importance of Appearing on HHS ECP List

- Inclusion on the HHS ECP List serves as the way to maintain the right of IHCPs (in FFM states) to receive a contract offer from every QHP issuer that offers plans through the Marketplace, as required under federal regulations, with the exception of “alternate standard” plans
  - Insurers and CMS look to HHS ECP List to identify ECPs, and insurers get credit for contracting with the ECPs
- Abbreviations:
  - ECP: Essential community provider
  - IHCPs: Indian health care providers, also referred to as I/T/Us
  - FFM: Federally-facilitated Marketplace
  - QHP: Qualified health plan
  - CMS: Centers for Medicare and Medicaid Services



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

## All Marketplaces



# Marketplace Types

- **Federally-Facilitated Marketplace (FFM):** CMS performs all Marketplace functions, and individuals enroll in health insurance coverage through HealthCare.gov (note: some states with an FFM have received approval to conduct plan management)
- **State Partnership Marketplace (SPM):** The state conducts plan management (under FFM rules) and might administer in-person consumer assistance, while CMS performs remaining Marketplace functions; individuals enroll in health insurance coverage through HealthCare.gov
- **State-Based Marketplace (SBM):** The state performs all Marketplace functions, and individuals enroll in health insurance coverage through a Web site established and maintained by the state
- **State-Based Marketplace on the Federal Platform (SBM-FP):** The state performs all Marketplace functions but relies on the FFM IT platform; individuals enroll in health insurance coverage through HealthCare.gov
- Federal ECP requirements apply in all FFM and SPM states

A list of state Marketplace types is available at <https://www.kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/>



# HHS ECP List Protections

## General Enforcement Standard: Applicability by State (1 of 2)

Applicability of Federal ECP Standards in the Marketplace, by State; 2019		
State	Marketplace Type	Federal ECP Standards
Alabama	FFM	Yes
Alaska	FFM	Yes
Arizona	FFM	Yes
Arkansas	SBM-FP	No
California	SBM	No
Colorado	SBM	No
Connecticut	SBM	No
Delaware	SBM-FP	No
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 (state conducts plan management)	Yes
Kentucky	SBM-FP	No
Louisiana	FFM	Yes
Maine	FFM (state conducts plan management)	Yes
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 (2 of 2)

Applicability of Federal ECP Standards in the Marketplace, by State; 2019 (cont.)		
State	Marketplace Type	Federal ECP Standards
Montana	FFM (state conducts plan management)	Yes
Nebraska	FFM (state conducts plan management)	Yes
Nevada	SBM-FP	No
New Hampshire	State Partnership Marketplace	Yes
New Jersey	FFM	Yes
New Mexico	SBM-FP	No
New York	SBM	No
North Carolina	FFM	Yes
North Dakota	FFM	Yes
Ohio	FFM (state conducts plan management)	Yes
Oklahoma	FFM	Yes
Oregon	SBM-FP	No
Pennsylvania	FFM	Yes
Rhode Island	SBM	No
South Carolina	FFM	Yes
South Dakota	FFM (state conducts plan management)	Yes
Tennessee	FFM	Yes
Texas	FFM	Yes
Utah	FFM	Yes
Vermont	SBM	No
Virginia	FFM (state conducts plan management)	Yes
Washington	SBM	No
West Virginia	State Partnership Marketplace	Yes
Wisconsin	FFM	Yes
Wyoming	FFM	Yes



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

(required for FFM/SPM states; optional for SBM states)

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

- 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 in good faith to all available Indian health care providers in the plan's service area, applying the special terms and conditions required by Federal law and regulations as referenced in the recommended model QHP addendum for IHCPs developed by HHS<sup>2</sup>*
  - 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

## For a QHP in a 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> State Partnership Marketplaces (SPMs) are a form of FFM and apply FFM rules

<sup>2</sup> "Alternate Standard Issuers" are not subject to this ECP requirement



# Federal Regulations on Network Adequacy and ECPs

- Federal regulations require QHP issuers to operate provider networks that:
  - 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
  - Include a “sufficient number and geographic distribution” of ECPs, including IHCPs, where available





# HHS ECP List Protections

## General Enforcement Standard

- 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
  - Requirements apply to states with FFMs and SPMs
  - States with SBMs and SBM-FPs in many cases have flexibility to follow a different approach on ECP standards



# HHS ECP List Protections

## General Enforcement Standard: General ECP Requirement

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 to IHCPs

2. **In FFM/SPM states, QHP issuers must make good faith contract offers to all available IHCPs (on HHS ECP List) 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”
  - “Model QHP Addendum” is a document CMS issued (after working with Tribal representatives) that identifies each of the IHCP-specific provisions that apply

The Model QHP Addendum is available at

[https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Model\\_QHP\\_Addendum\\_Indian\\_Health\\_Care\\_Providers\\_PY2017.pdf](https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Model_QHP_Addendum_Indian_Health_Care_Providers_PY2017.pdf)



# HHS ECP List Protections

## General Enforcement Standard: Good Faith Contract Offers to ECPs

3. 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 Issuer” (aka, Exception)

- 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
  - According to CMS, as of PY 2018 and PY 2019, only one health plan (Kaiser) is an “Alternate ECP Standard Issuer”
  - 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



# Other Indian Health Care Provider-Related Provisions

- **Payment of Federally qualified health centers**
  - “If an item or service covered by a QHP is provided by a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act) to an enrollee of a QHP, the QHP issuer must pay the Federally qualified health center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of the Act for such item or service”
    - Includes an outpatient health program or facility operated by a tribe or tribal organization under the ISDA (Public Law 93-638) or by an urban Indian organization receiving funds under title V of the IHCA for the provision of primary health services
- **Section 206 reimbursement (in all Marketplaces):**
  - “Section 206 of the [IHCA] (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/ihsca/>” [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=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)
  - ECP Standards (§156.235)  
[https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=dde6d59fe86a76620800279451e91893&mc=true&n=pt45.1.156&r=PART&ty=HTML#se45.1.156\\_1235](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=dde6d59fe86a76620800279451e91893&mc=true&n=pt45.1.156&r=PART&ty=HTML#se45.1.156_1235)
- Guidance document: CCIIO 2020 Issuer Letter
  - <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2020-Letter-to-Issuers-in-the-Federally-facilitated-Exchanges.pdf>

