



# Health Care Reform in Indian Country

Self-Governance Communication & Education

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

## Health Insurance Marketplace Coverage for Tribal Citizens and Other Indian Health Service (IHS)-Eligible Individuals:

Tribal Sponsorship, American Rescue Plan Act, and  
New Employer Option

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# Agenda

- Review enrollment levels of American Indians and Alaska Natives (AI/ANs) in Marketplace coverage
  - Includes both Tribal citizens and other IHS-eligible individuals
- Discuss changes to, and benefits of, Marketplace enrollment under American Rescue Plan
  - Review provisions in American Rescue Plan that might be made permanent
- Review new option for use of individual-coverage Marketplace for employer-sponsored coverage

**Disclaimer:** *This analysis is for informational purposes only and is not intended as tax or legal advice*



# Highlights

## ENROLLMENT IN MARKETPLACE COVERAGE

- Enrollment of Tribal citizens in health insurance coverage through a Marketplace continues to increase
  - Significant premium subsidies through a Marketplace are available to eligible individuals
  - **All** Tribal citizens who enroll in Marketplace coverage continue to be eligible for one of the two comprehensive Indian-specific cost-sharing protections
- Tribes (in their role as a Tribal government) continue to be authorized to purchase Marketplace coverage for IHS-eligible individuals under Tribal Sponsorship programs
- Tribes (in their role as a Tribal employer) can now access individual market Marketplace coverage for employees through newly authorized employer options
  - Comprehensive Indian-specific cost-sharing protections through a Marketplace are available to Tribal member employees through a newly defined type of employer-sponsored coverage
  - In addition to cutting employee out-of-pocket costs, premium costs for employers and employees might be reduced when using Marketplace coverage as compared with self-insured coverage or a group health plan



# Highlights (cont.)

## EXPANDED HEALTH INSURANCE PREMIUM SUBSIDIES

- Under the American Rescue Plan, for 2021 and 2022, premium subsidies for Marketplace coverage were increased and the cap on household income for PTC eligibility was eliminated
  - Efforts are underway to make these increased premium subsidies permanent
- A number of other Marketplace-related provisions were included in the ARP
  - Some provisions will expire in 2021, particularly regarding unemployment compensation, unless extended by Congress

## MAXIMIZING OTHER BENEFITS UNDER MARKETPLACE COVERAGE

- Tribal clinics are entitled to (1) be offered a contract and (2) if billing as a Tribal FQHC under Medicaid, receive OMB encounter rates from Marketplace plans
- Without regard to payment methodology, Tribal providers receive full payment, without deduction for enrollee deductibles and co-payments, when serving Tribal citizens under Marketplace coverage

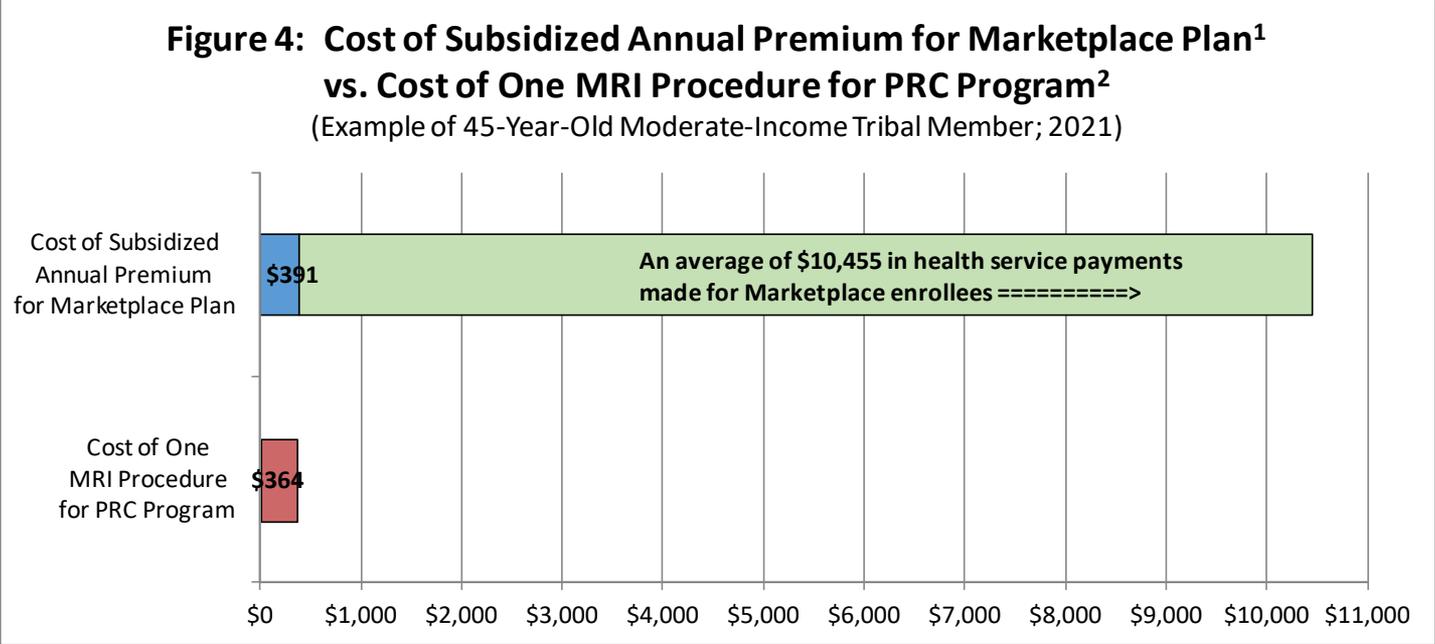


# Tribal Sponsorship Basics

- **Tribal Sponsorship is the purchase of health insurance coverage by a Tribe or THO on behalf of Tribal citizens or other IHS-eligible persons**
  - For today's Webinar, focus is on payment of premiums for health insurance coverage secured through a Health Insurance Marketplace
  - Tribal Sponsorship can involve other insurance, such as Medicare Parts B and D
- **Goals of Tribal Sponsorship**
  - Generate additional resources to meet the health care needs of IHS-eligible individuals
  - Make health services more accessible to IHS-eligible individuals
- **Mechanism for generating additional resources through Tribal Sponsorship**
  - Through Tribal Sponsorship, Tribe pays a portion of costs (*e.g.*, part of insurance premium), and federal government typically contributes a greater amount toward cost of care of enrollees (*e.g.*, paying federal subsidies for insurance premiums and cost-sharing amounts)
  - **Typical return to Sponsoring Tribes of \$4 - \$5 in health resources generated for each \$1 invested in program**



# Comparison of Annual Premium for Subsidized Marketplace Coverage vs. One PRC Payment



**Notes:**

<sup>1</sup> "Cost of subsidized annual premium for Marketplace plan" figure is the net premium for a 45-year-old non-smoker who has an annual income of 350% FPL and enrolls in the lowest-cost bronze plan available in Rapid City, SD (Pennington County), in 2021.

<sup>2</sup> "Cost of One MRI procedure for PRC program" figure is the Medicare price for a mid-cost procedure performed in South Dakota and assumes the provider performs both the technical and professional components of the procedure.



# Benefits of Marketplace Enrollment/Tribal Sponsorship: Advancing Sovereignty

## Overall:

- Greater resources are available for health services for Tribal citizens and other IHS beneficiaries, as new federal resources are accessed

## Three primary benefits:

- Increased third-party revenues to IHS and Tribal health facilities, as I/T providers are paid for services to previously uninsured individuals
- Savings to PRC program, as previously PRC-funded health services for uninsured IHS beneficiaries are funded by health plan
- Expanded access to health services for IHS beneficiaries
  - Enrollees access health services without constraints of PRC “priority” restrictions

## Additional benefits:

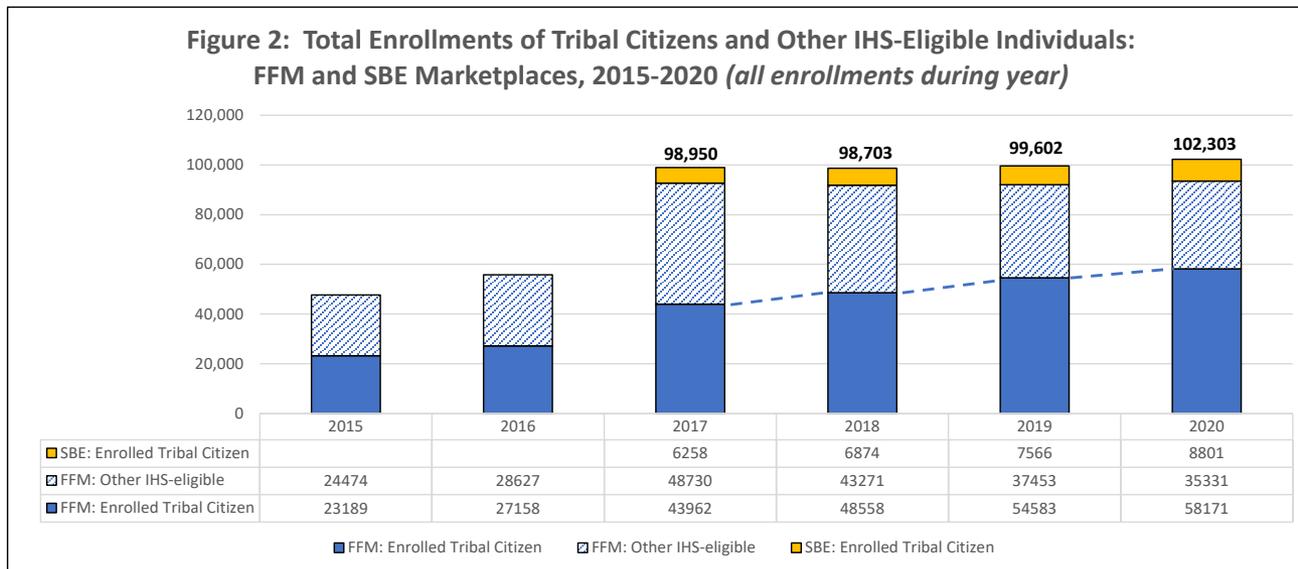
- Tribal citizens experience reduced costs
  - Enrollees not required to pay for non-PRC funded services at non-I/T providers
- Liability for health care costs shifted from IHS/Tribe to health plan
  - Create “mini-entitlements” for services



# Marketplace Enrollment of AI/ANs

## All Enrollments Over Year: FFM and SBM\*

- Through Tribal Sponsorship and individual initiative of Tribal members, there has been growing enrollment of Tribal citizens and “other IHS-eligible” individuals in Marketplace coverage
- Total Marketplace enrollment of enrolled Tribal citizens and other IHS-eligible individuals *increased* by 2.7% in 2020 (as compared with 2019), according to CMS-reported data
  - This enrollment measure is for enrollments occurring any time during the year
  - In contrast, total FFM enrollment across all U.S. populations *decreased* by 0.3% from 2019 to 2020
- 2020 was the first year total Marketplace enrollment of IHS-eligible individuals surpassed 100,000



\* FFM = Federally-facilitated Marketplace; SBM = State-based Marketplace



# Range of Avenues for Accessing Federal Resources for Health Care Services

- **Long-standing federal revenue streams for health services**
  - Congressional appropriation to / through Indian Health Service
  - Medicaid enrollment
  - Medicare enrollment
- **Affordable Care Act’s “Marketplaces” provide additional avenue to access federal resources for health care services**
- **Tribes are authorized to use congressional IHS appropriation, 3<sup>rd</sup> party revenues, or other Tribal funds to “sponsor” IHS beneficiaries**
- **Under **Marketplace coverage**, substantial federal resources are available for:**
  - Premium subsidies (premium tax credits/PTCs)
  - Out-of-pocket cost protections (cost-sharing reductions/CSRs)
    - For enrolled Tribal citizens, no deductibles or co-payments when receiving health services



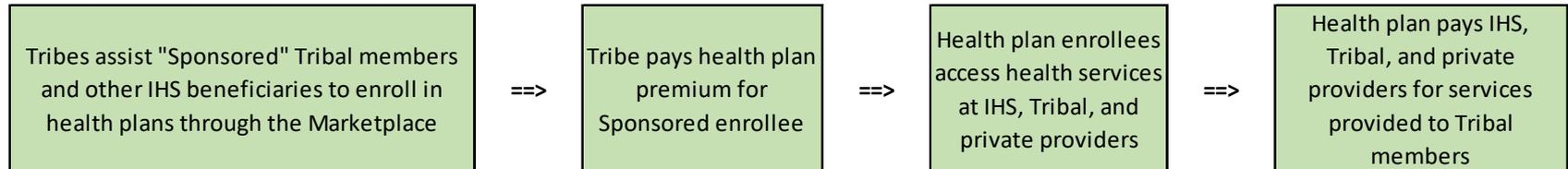
# Mechanics of Accessing Federal Resources: Medicaid and Marketplace Coverage

- Tribal Sponsorship through a Marketplace follows a similar process as Medicaid enrollment, with primary additional step being payment of a portion of health plan premium

## Medicaid Enrollment



## Tribal Sponsorship through Marketplace



- There are a series of operational issues that make Tribal Sponsorship more complex than Medicaid enrollment
- Tribes and THOs are able to establish their own eligibility criteria for a Tribal Sponsorship program, within parameters of funding sources

# Eligibility Criteria for Marketplace Coverage

## General Eligibility for Marketplace Enrollment

- Reside in area served by Marketplace (*e.g.*, State of Virginia)
- Reside in the United States legally
- Not incarcerated



# Eligibility Criteria for Premium Tax Credits

## Eligibility for Premium Tax Credits (ARP provisions shown in red)

In addition to general Marketplace eligibility requirements:

- Have household income ~~between 100% and 400%~~ **at least 100%** of the federal poverty level (FPL) **for 2021 and 2022 (income cap removed)**
- Not eligible for Medicare, Medicaid, or “affordable” employer-sponsored insurance (through individual’s employer or employer of a family member)
  - Affordability is defined as the lowest-cost premium available to employee for single coverage being less than 9.78% (in 2020) of the employee’s **household** income
  - If an individual is offered coverage through the employer of a family member, the individual is considered to have an offer of affordable coverage if the **employee’s** coverage is considered affordable (referred to as “family glitch”)
- Veterans can be eligible for, but cannot enroll in, the Veterans Health Care Program (VHCP)
- There is no Indian-specific eligibility criteria for premium tax credits
- A Tribe / Tribal health organization might wish to Sponsor an IHS-eligible individual even if the individual is not eligible for premium tax credits



# American Rescue Plan Act and PTC Eligibility

- **Sec. 9961 (effective for 2021 and 2022 coverage years—with possible extension into future years under House proposal and approved Senate budget resolution):**
  - Makes additional persons eligible for PTCs: Extends PTC eligibility to Marketplace enrollees with household income higher than 400% FPL
  - Provides more generous PTC subsidies for currently-eligible individuals: Reduces amount of required household contribution to Marketplace plan premiums for PTC-eligible enrollees

Table 1: Percent of Income Paid for Marketplace Benchmark Silver Premium, by Income		
Income (% of poverty)	Affordable Care Act (before legislative change)	COVID-19 Relief (current law 2021-2022)
Under 100%	Not eligible for subsidies*	Not eligible for subsidies**
100% – 138%	2.07%	0.0%
138% – 150%	3.10% – 4.14%	0.0%
150% – 200%	4.14% – 6.52%	0.0% – 2.0%
200% – 250%	6.52% – 8.33%	2.0% – 4.0%
250% – 300%	8.33% – 9.83%	4.0% – 6.0%
300% – 400%	9.83%	6.0% – 8.5%
Over 400%	Not eligible for subsidies	8.5%

- **Sec. 9962 (effective for 2020 tax year):** For individuals who underestimated their household income when enrolling in Marketplace plans—and received excess advanced PTCs in 2020 as a result—eliminates requirement to repay all or a portion of these excess PTCs when filing their federal income tax return for tax year 2020



# Federal Poverty Level (FPL), by Household Size

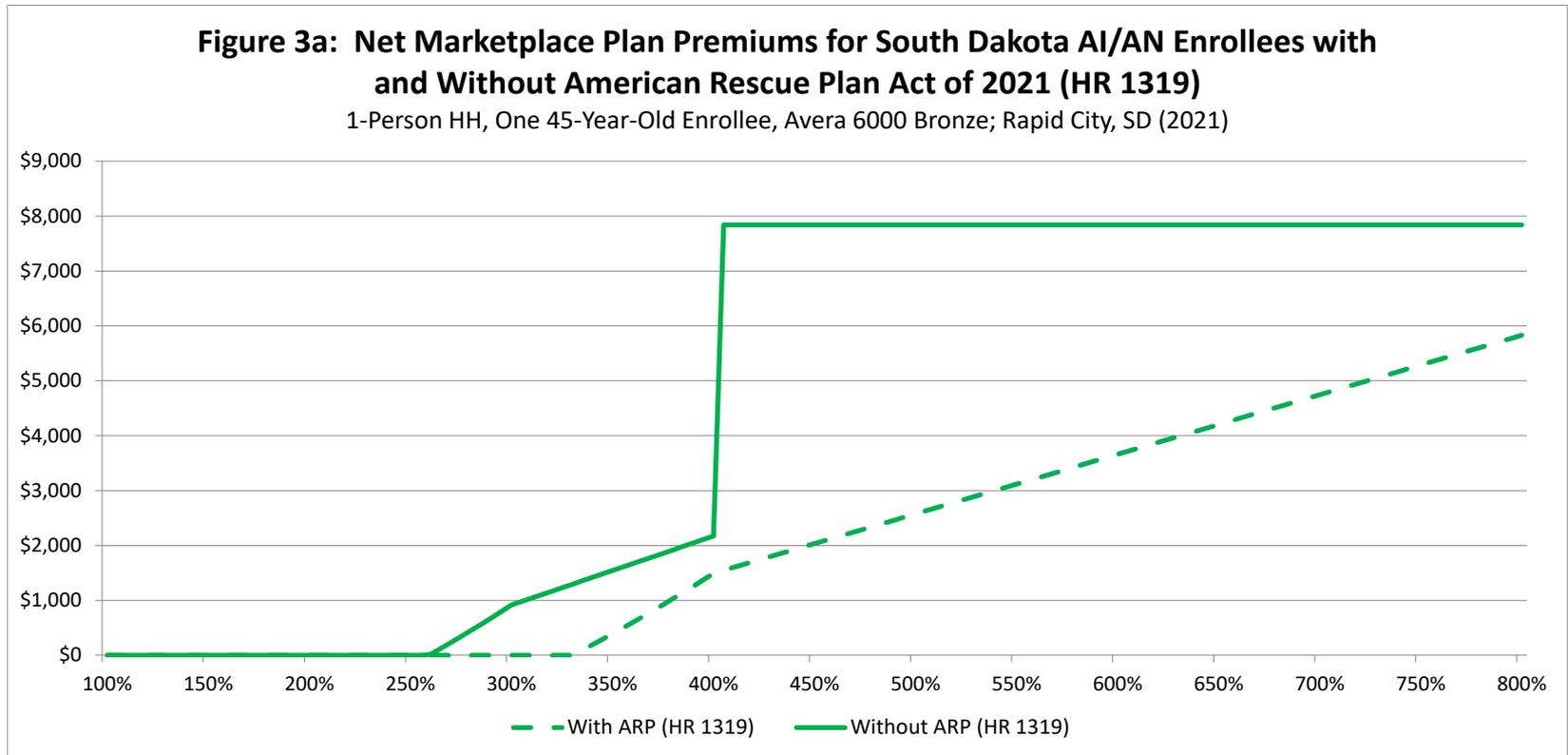
## 2020 FPL for Use with Marketplace (PTC/CSR) Eligibility Determinations for All of 2021

48 Contiguous States and the District of Columbia					
2020 FPL Level (Effective for All of the 2021 Coverage Year)					
Persons in Household	100%	138%	250%	300%	400%
1	\$12,760	\$17,609	\$31,900	\$38,280	\$51,040
2	\$17,240	\$23,791	\$43,100	\$51,720	\$68,960
3	\$21,720	\$29,974	\$54,300	\$65,160	\$86,880
4	\$26,200	\$36,156	\$65,500	\$78,600	\$104,800
5	\$30,680	\$42,338	\$76,700	\$92,040	\$122,720
6	\$35,160	\$48,521	\$87,900	\$105,480	\$140,640
7	\$39,640	\$54,703	\$99,100	\$118,920	\$158,560
8	\$44,120	\$60,886	\$110,300	\$132,360	\$176,480

- Federal poverty levels are twenty-five percent (25%) higher in Alaska



# Significant Savings Under ARP: Net Premium Costs of Marketplace Coverage (Example of single individual)

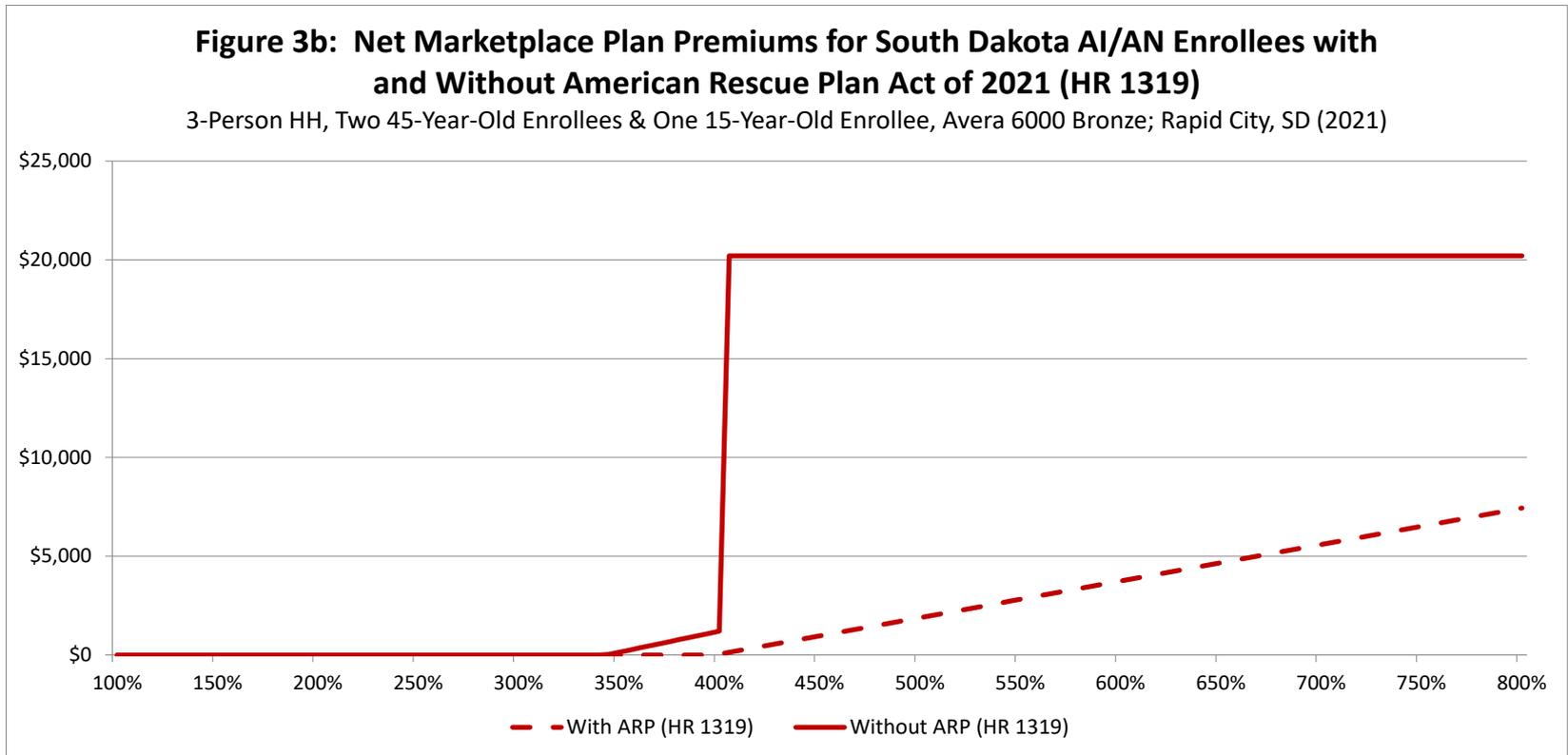


- Tribal Sponsorship programs that have not already adjusted eligibility criteria may wish to do so given the change in PTC eligibility



# Significant Savings Under ARP: Net Premium Costs of Marketplace Coverage

(Example of family of three)



# Net Premium Costs of Marketplace Coverage (with ARP-expanded federal subsidies)

Net Annual Household Marketplace Premium Contribution for Lowest-Cost Bronze Plan: Example of Winnebago, NE, and Surrounding Region; 2021 (Under American Rescue Plan Act)						
Household (HH) size:		1-person HH	2-person HH	2-person HH	3-person HH	4-person HH
Number enrolled:		1 enrollee	2 enrollees	1 enrollee	3 enrollees	4 enrollees
FPL		Total Net Household Annual Premiums, with Premium Tax Credits				
Medicaid	0%-138%	\$0	\$0	\$0	\$0	\$0
	139%	\$0	\$0	\$0	\$0	\$0
	150%	\$0	\$0	\$0	\$0	\$0
	175%	\$0	\$0	\$0	\$0	\$0
	200%	\$0	\$0	\$0	\$0	\$0
	225%	\$0	\$0	\$0	\$0	\$0
	250%	\$0	\$0	\$0	\$0	\$0
	300%	\$0	\$0	\$0	\$0	\$0
	350%	\$0	\$0	\$896	\$0	\$0
	400%	\$860	\$0	\$2,383	\$0	\$0
	500%	\$1,945	\$370	\$3,849	\$268	\$165
	600%	\$3,029	\$1,836	\$5,314	\$2,114	\$2,392
	700%	\$4,114	\$3,301	\$6,541	\$3,960	\$4,619
	800%	\$5,198	\$4,767	\$6,541	\$5,806	\$6,846
900%	\$6,283	\$6,232	\$6,541	\$7,653	\$9,073	
1000%	\$6,541	\$7,697	\$6,541	\$9,499	\$11,300	
No PTCs	Non-PTC eligible	\$6,541	\$13,083	\$6,541	\$16,856	\$20,630

<sup>1</sup> Medica Insure Bronze Copay (Medica) is the lowest-cost bronze plan. Premiums in 1- and 2-person HH are for 45-year-old enrollees. Premiums in 3-person HH are for two 45-year-old enrollees and one 15-year-old enrollee. Premiums in 4-person HH are for two 45-year-old enrollees and two 15-year-old enrollees.



# ARP and PTC Eligibility (cont.): Individuals Eligible for Unemployment Compensation

- **Sec. 9963 (effective for 2021 coverage year):**

For **individuals who receive unemployment compensation** (UC) for at least one week in 2021:

- **Disregards household income in excess of 133% FPL** for purposes of determining Marketplace and PTC eligibility
  - Effectively provides maximum available PTCs for these individuals when enrolling in Marketplace plans (zero premium for silver reference plan)
- **Extends PTC eligibility** to Marketplace enrollees who **have household income less than 100% FPL** (other eligibility requirements still apply)
  - Married individuals generally must file joint federal income tax returns to qualify for PTCs
  - Individuals who have an offer of health insurance from an employer or qualify for Medicaid or CHIP generally do not qualify for PTCs
  - Extended PTC eligibility for individuals who receive unemployment compensation applies to other household members (if they are otherwise eligible for PTCs)
    - Extended PTC eligibility **does not apply** to other household members **if only a dependent received unemployment compensation**

CMS briefing on UC and Marketplace: <https://marketplace.cms.gov/assister-webinars/uc-aptc-arp-webinar.pdf>

# Potential Continuation of American Rescue Plan Marketplace-Related Provisions

Senate and House passed \$3.5 trillion budget resolutions with several Marketplace-related ARP provisions. House Ways and Means Committee recently advanced legislation addressing these provisions, as follows:

- **ARP Sec 9961:** For 2021 and 2022, expanded PTC eligibility and premium subsidies
  - Bill would make these provisions permanent
- **ARP Sec 9962:** For 2020, waived repayment of excess PTCs paid for enrollees
  - Bill would not extend this provision but would reduce repayment amount for individuals with household income less than 200% FPL through at least 2024
- **ARP Sec. 9963:** For 2021, for individuals who receive unemployment compensation (and their family members), provides expanded premium subsidies despite income level, if otherwise eligible for PTCs
  - Bill would extend this provision through 2025

# Other Coverage Provisions in Senate and House Budget Resolutions

- Addressing the “Medicaid coverage gap” in states that have not implemented the Medicaid expansion
- Expanding “Medicare to include dental, vision, hearing benefits and lowering the eligibility age”

# Additional Coverage Provisions in House Ways and Means Committee Legislation

House Ways and Means Committee recently advanced legislation addressing the budget resolution coverage provisions, as follows:

- **With regard to addressing the “Medicaid coverage gap” in states that have not implemented the Medicaid expansion**, beginning in 2022, until the later of (1) January 1, 2025, and (2) the date on which HHS implemented a new federal Medicaid program in non-expansion states, the bill would—
  - Extend the expansion of PTC eligibility to Marketplace enrollees with household income less than 100% FPL
  - For employees with household income less than 138% FPL, allow PTC eligibility regardless of an offer of affordable employer-sponsored coverage
  - Remove the requirement for filing a federal income tax return for individuals who have a household income less than 138% FPL and would not otherwise have to file a tax return if not for having to reconcile payment of advanced PTCs
  - Eliminate the requirement that employers make a shared responsibility payment for full-time employees who receive PTCs if the employees have a household income less than 138% FPL

# Additional Coverage Provisions in House Ways and Means Committee Legislation (cont.)

- With regard to addressing the “Medicaid coverage gap,” the House Ways and Means committee bill also would—
  - Extend ACA general cost-sharing protections to individuals who enroll in silver-level Marketplace plans and have a household income less than 100% FPL for plan years 2023 and 2024
  - For individuals who enroll in silver-level Marketplace plans and have a household income less than 138% FPL in plan years 2023 and 2024, require health insurance issuers to increase the actuarial value of these plans to 99%
  - For plan years 2022-2024, establish a new special enrollment period for individuals with a household income less than 138% FPL
  - For plan year 2024, require health insurance issuers to provide certain non-essential health benefits, including non-emergency medical transportation and family planning services, without imposition of cost-sharing or restriction on provider choice, for individuals who enroll in silver-level Marketplace plans and have a household income less than 138% FPL

# Additional Coverage Provisions in House Ways and Means Committee Legislation (cont.)

## MEDICARE

- **With regard to expanding “Medicare to include dental, vision, hearing benefits and lowering the eligibility age”:** The House Ways and Means Committee bill—
  - Would add dental, vision, and hearing benefits to Medicare
  - Would not lower the Medicare eligibility age

## MARKETPLACE

- **With regard to fixing the “family glitch”:** The House Ways and Means Committee bill would not address this issue
  - Family glitch is the use of total household income when calculating whether an offer of employer-provided coverage for an individual employee is considered “affordable”



# Eligibility Criteria for Indian-Specific Cost-Sharing Protections

## Eligibility for **Zero Cost-Sharing** Variation

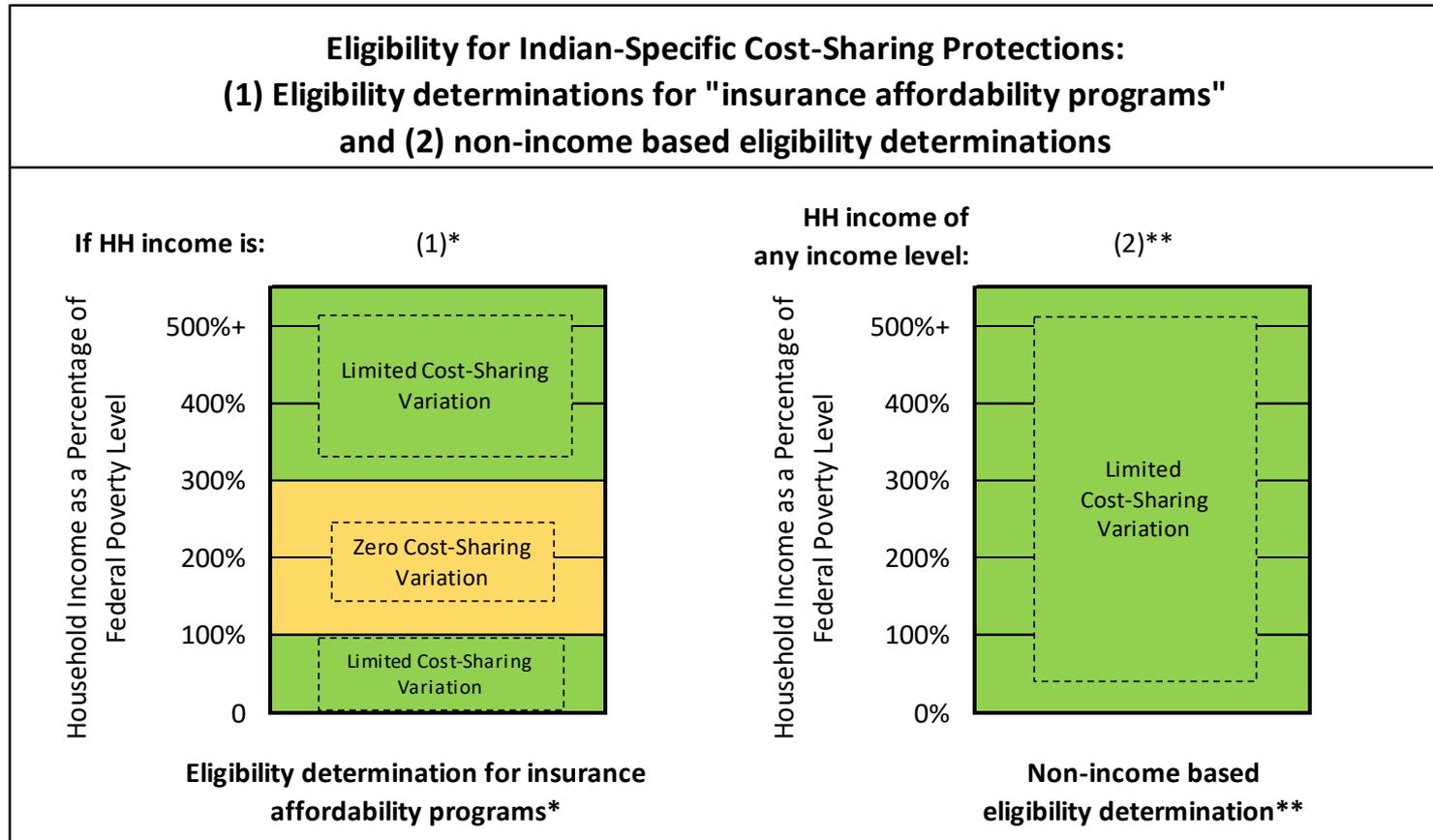
- Enrolled in health insurance coverage through a Marketplace
- Enrolled Tribal member (requires uploading documentation of enrollment status)
- Eligibility for premium tax credits
- Household income between 100% and 300% of federal poverty level

## Eligibility for **Limited Cost-Sharing** Variation

- Enrolled in health insurance coverage through a Marketplace
- Enrolled Tribal member (requires uploading documentation of enrollment status)
- Any household income level
- No requirement for eligibility for PTCs
- A “Referral for Cost-Sharing” is needed to secure CSPs outside Tribal/IHS system



# Eligibility Criteria for Indian-Specific Cost-Sharing Protections: Enrolled Tribal Citizens



45 CFR § 155.350(a) Special eligibility standards and process for Indians.

\* 45 CFR § 155.350(a) Eligibility for cost-sharing reductions.

\*\* 45 CFR § 155.350(b) Special cost-sharing rule for Indians regardless of income.

# Indian-Specific Cost-Sharing Protections: Caution When Enrolling in Marketplace Coverage

**NOTE: Important for enrolled Tribal members not to enroll in a health plan with non-Tribal members, otherwise receive least comprehensive cost-sharing protections eligible to a family member**

- CMS/CCIIO recently updated HealthCare.gov to help educate AI/AN Marketplace applicants and their household members about this issue
- A help text pop-up now appears in the Marketplace application when applicants click on link to “Learn more about the benefits that American Indians and Alaska Natives can get through the Marketplace”

**Learn more about the benefits that American Indians and Alaska Natives can get through the Marketplace** Close

If a person is American Indian or an Alaska Native, they may have health coverage benefits and protections through the Marketplace.

**Extra savings may be available**

American Indians and Alaska Natives may get extra savings. For example, if they're a member of a federally recognized tribe and enroll in a Marketplace plan, they may not have to pay cost sharing and may get monthly Special Enrollment Periods.

**Health services will still be available**

American Indians and Alaska Natives who enroll in Medicaid, the Children's Health Insurance Program (CHIP), or the Marketplace can still get services from the Indian Health Services, tribal health programs, or urban Indian health programs. The results of this application won't change that.

**Households with both tribal members & non-tribal members**

Households with both American Indians/Alaska Natives and non-American Indians/Alaska Natives should enroll in separate plans to take advantage of all potential savings. While households with both American Indians/Alaska Natives can enroll in the same Marketplace plan, they'll lose the special cost-sharing savings for American Indians/Alaska Natives. Learn more later in the application process when choosing plans.



# Summary of Benefits and Coverage (SBC) (Zero Cost-Sharing Variation)

- Summary of Benefits and Coverage (SBCs) documents explain things like what a health plan covers, what it does not cover, and what your share of costs will be
- SBCs are approximately 9 pages and include 2-3 sample medical events (such as having a baby, managing diabetes, and treating a broken leg)

Summary of Benefits and Coverage: What this Plan Covers & What it Costs

Coverage for: Individual + Family | Plan Type: PPO

Common Medical Event	Services You May Need	Your Cost If You Use an In-network Provider	Your Cost If You Use an Out-of-network Provider	Limitations & Exceptions
<b>If you need drugs to treat your illness or condition</b>  More information about <b>prescription drug coverage</b> is available at <a href="http://www.modahealth.com">www.modahealth.com</a>	Value drugs	\$0 copay	\$0 copay	Covers up to a 90-day supply retail and mail order drugs. Copay per 30 day supply. Covers up to a 30-day supply specialty drugs. Prior authorization may be required.
	Select tier drugs	\$0 copay	\$0 copay	
	Preferred brand drugs	0% coinsurance	0% coinsurance	
	Non-preferred brand drugs	0% coinsurance	0% coinsurance	
	Specialty drugs	0% coinsurance	0% coinsurance	
<b>If you have outpatient surgery</b>	Facility fee (e.g., ambulatory surgery center)	0% coinsurance	0% coinsurance	Prior authorization required to avoid a penalty of 50% up to a maximum deduction of \$2,500.
	Physician/surgeon fees	0% coinsurance	0% coinsurance	
	Emergency room services	0% coinsurance	0% coinsurance	

<http://www.bcbsmt.com/PDF/sbc/30751MT0570008-01.pdf>



# Required SBC Language for Referrals for Cost-Sharing (Limited Cost-Sharing Variation)

- As of 2021, in response to concerns from Tribes about errors in some SBCs, CMS/CCIIO began requiring health insurance issuers to conform with sample SBCs for Indian-specific zero and limited cost-sharing variation plans
- Sample SBCs use the following phrase to explain the “limited cost-sharing variation” protections: **“Cost sharing waived at non-IHCP with IHCP referral”**

Common Medical Event	Services You May Need	What You Will Pay			Limitations, Exceptions, & Other Important Information
		Network provider (You will pay the least)	Indian Health Care Provider (IHCP)	Out-of-network provider (You will pay the most)	
If you visit a health care provider's office or clinic	Primary care visit to treat an injury or illness	\$60 copay / visit	No charge	Not covered	Cost sharing waived at non-IHCP with IHCP referral. If an out-of-network provider charges more than the allowed amount, you may have to pay the difference (balance billing).
	Chiropractic care	\$60 copay / visit	No charge	Not covered	<p><b>Cost sharing waived at non-IHCP with IHCP referral. If an out-of-network provider charges more than the allowed amount, you may have to pay the difference (balance billing).</b></p>
	Specialist visit	50% coinsurance after deductible	No charge	Not covered	
	Preventive care/screening/immunization	No charge	No charge	Not covered	<p>Some services you may have to pay the difference (balance billing).</p> <p>You may have to pay for services that aren't part of the preventive health guidelines. Ask your provider if these services you need are preventive. Then check what your plan will pay for. Cost sharing waived at non-IHCP with IHCP referral. If an out-of-network provider charges more than the allowed amount, you may have to pay the difference (balance billing).</p>

[https://www.sanfordhealthplan.com/-/media/plan-documents/2020/HP\\_2961\\_i\\_sd\\_true\\_6000\\_lcs](https://www.sanfordhealthplan.com/-/media/plan-documents/2020/HP_2961_i_sd_true_6000_lcs)

# ACA Established Requirements on Employers

- All employers, including Tribal governments, with 50 or more full-time equivalent employees have coverage and reporting requirements under the ACA
  - Coverage requirements started January 1, 2015
  - TSGAC Webinar on July 11, 2018, on Employer Requirements and Coverage Options
- Employers are required to:
  - (1) PLAY:** Offer and pay for a portion of coverage—
    - (a) For full-time employees (persons who work 30 or more hours per week), offer and pay for a portion of coverage if employee enrolls in employer-provided insurance
    - (b) For dependents of full-time employees, offer coverage but no requirement to pay for coverage
    - (c) For spouses of full-time workers, no requirement (to offer or pay)
  - OR --
  - (2) PAY:** Pay \$2,700 (2021) to federal government for each FT employee (-30)
    - Calculated monthly at 1/12<sup>th</sup> of \$2,700 (or \$225 per month)

# Options for Tribes, as Employers and Tribal Governments

## Tribal Employer: ACA Requirements / Options

### For Full-Time *Employees*:

#### Option 1: “PLAY”

- Offer and pay for health insurance for full-time (FT) employees
- Offer health insurance for dependents
  - No requirement to contribute
- No requirements for spouses

#### Option 2: “PAY”

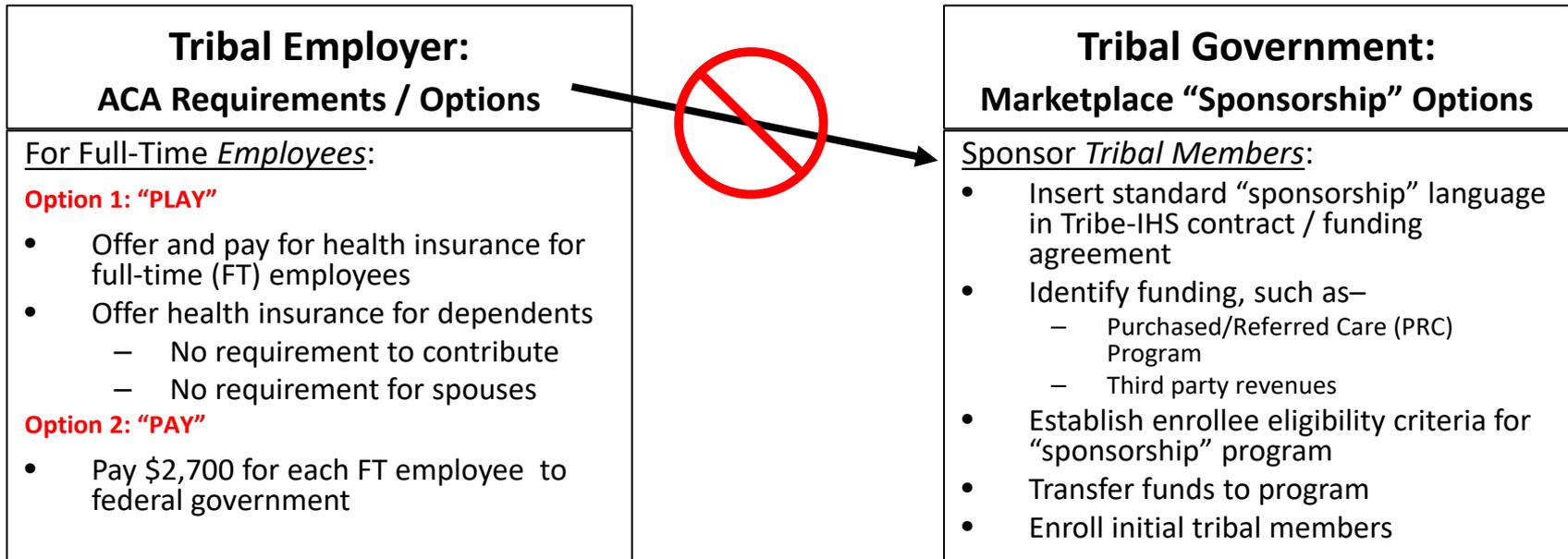
- Pay \$2,700 (2021) for each FT employee to federal government

## Tribal Government: Marketplace “Sponsorship” Option

### For Tribal Members:

- Compact or contract to conduct sponsorship
- Identify funding, such as—
  - Purchased/Referred Care (PRC) Program
  - Third party revenues
- Establish enrollee eligibility criteria for “sponsorship” program
- Transfer funds to program
- Enroll eligible Tribal members in Sponsorship program (which can include Tribal members who are employees)

# Modification to Prohibition on Employers Paying for Employee Coverage in (Individual) Marketplace



- Prior to new federal regulation implemented in late 2019, there was a clear demarcation between employer-sponsored coverage and the (individual market) Marketplace
- **Except under new HRA rules**, Tribal employers and other employers are not permitted to meet their requirements as employers by paying for premiums of employees—as employees—enrolled in coverage through a Marketplace (potential section 4980D violation)
  - Potential fine of \$100 per day per employee if employer sponsoring Marketplace enrollees



# Use of HRA to Provide (Tribal) Employer-sponsored Coverage via Marketplace

- New federal rules allow integration of health reimbursement arrangements (HRAs) and individual health insurance coverage (e.g., Marketplace coverage)—see May 19, 2020, TSGAC memo at <https://www.tribalsef.gov/wp-content/uploads/2020/05/TSGAC-Brief-Health-Reimbursement-Arrangements-2020-05-19c.pdf>
- Characteristics of an HRA:
  - Type of account-based group health plan funded solely by employer contributions
  - Provides reimbursement for medical care expenses incurred by employees (or their spouse or dependents); “medical care expenses” includes health insurance premiums
  - Reimbursements excluded from employee income and wages for federal income tax and employment tax purposes
- Under the rule, Tribes, **as employers**, can make deposits into individual coverage HRAs in order to offer Marketplace coverage to employees (and, at employer option, their families)
- Tribal citizen employees (and their Tribal citizen family members) who participate in an individual coverage HRA and enroll in Marketplace coverage:
  - **Qualify** for Indian-specific limited cost-sharing variation plans
- Individuals who participate in an individual coverage HRA and enroll in Marketplace coverage **do not qualify** for federal premium subsidies



# Potential Advantages of Offering an Individual Coverage HRA

- Average health insurance premiums for the Marketplace coverage could be substantially lower than the average premium costs the employer (and employee) currently pay—particularly given that enrolled Tribal members can enroll in the lower-cost bronze plans and not have out-of-pocket costs (as they are eligible for comprehensive cost-sharing protections)
  - For example, the annual premium for single coverage under the nationwide Blue Cross Blue Shield Basic plan offered through the Federal Employees Health Benefits Program (FEHBP) was \$7,898 in the 2020 plan year open enrollment period
  - In contrast, the annual premium for the lowest-cost Marketplace bronze plan (Premier Bronze Saver 3500, offered by Tufts Health Plan) for a 40-year-old individual living in Dukes County, Massachusetts, was \$5,133 in the 2020 plan year
- Out-of-pocket (OOP) costs (deductibles and co-payments) are eliminated for Tribal citizens (i.e., enrolled Tribal members)
  - And health care providers—including Tribal and IHS health care providers—receive full payment of covered charges without deduction for patient OOP costs



# Potential Advantages of Offering an Individual Coverage HRA (cont.)

- Federal regulations require QHP issuers to offer contracts in good faith to all available IHCPs located in a plan service area
- And, a **Tribal clinic** that has chosen to bill Medicaid as a Tribal federally-qualified health center (Tribal FQHC), under an alternative payment methodology established by a state that provides for payment of the OMB encounter rate for clinic services, **would receive no less than the OMB encounter rate**
  - See TSGAC issue brief “Requirements for Payment and Other Protections to Indian Health Care Providers under Marketplace Health Plans” at <https://www.tribalsef.gov.org/health-reform/2021-current-issues/2021-health-actions/>



# Some Mechanics of Offering an Individual Coverage HRA

- Different business units of Tribe can take different approaches to meeting ACA requirements and employee health care needs
  - Tribal employers could offer an individual coverage HRA to employees in one business unit (*e.g.*, Tribal government employees) and group health coverage to employees in other business units (*e.g.*, Tribal clinic and resort employees)
  - See TSGAC issue brief “Tribal Employers under the ACA’s Employer Shared Responsibility Payment Rules: ALE Member Pay-or-Play Guide” (September 30, 2016) for a discussion on options for different ALE members
- Under the new federal rule, within a business unit, Tribal employers can offer different health insurance coverage options to different “classes of employees” (*e.g.*, full-time, seasonal, etc.)
- Employers can offer higher HRA contributions based on employee age (capped at three times as much as the contribution to the youngest HRA participant) or family size
  - All HRA participants in the same class of employees must receive the same increase based on age or family size
- In assessing whether using an “individual coverage HRA” is a good fit for a Tribal employer, it is important to evaluate provider networks, covered benefits, and payment rates for the available plans, as well as the number / percentage of employees who are Tribal citizens (and therefor eligible for Indian-specific CSRs)

# Creating a Hybrid Approach: Employer Option Matched with Sponsorship Option

## HYBRID APPROACH:

- **As Employer—**
  - Select preferred employer option: By Tribal employer for employees (and possibly family members) of Tribe / Tribal entities
- **As Tribal Government—**
  - Design and implement Sponsorship program: By Tribal government for Tribal citizens and other IHS-eligible individuals

## GOALS:

- Minimize costs to Tribal employers and Tribal citizens
- Maximize health service resources available to Tribal health system and to Tribal citizens and other IHS-eligible individuals



# OMB Encounter Rate Available to Tribal FQHCs for Services Provided Under Marketplace Coverage

- Federal rules require Marketplace plans to pay federally qualified health centers (FQHCs) for covered services at least the same rate they would receive under Medicaid
  - Tribal clinics have the option to participate in Medicaid as a Tribal FQHC
  - FQHCs typically receive Medicaid payments based on a rate determined by a state using a prospective payment system (PPS) methodology
  - However, federal rules allow states and FQHCs to agree to use an alternative payment methodology (APM) in determining the Medicaid FQHC payment rate, meaning that states can use the OMB encounter rate to set payments for Tribal FQHCs (rather than the PPS rate)

For background on a Tribal clinic billing as an FQHC, see the TSGAC issue brief “CMS Restrictions on Billing Medicaid for Services Outside Four Walls” at <https://www.tribalseg.gov/health-reform/2021-current-issues/2021-health-actions/>

# OMB Encounter Rate Available to Tribal FQHCs for Services Provided Under Marketplace Coverage (cont.)

- Under federal rules, Marketplace plans, when contracting with Tribal FQHCs paid at the encounter rate under Medicaid, generally must pay these facilities at the encounter rate for covered services
  - These rules apply to services provided under Marketplace coverage obtained through a Tribal Sponsorship program or under an individual coverage HRA
  - A Medicaid FQHC and Marketplace plan can agree to payment rates other than those FQHC would have received under Medicaid, as long as the alternative rate at least equals the generally applicable payment rate of the plan

For background on payment protections for IHCPs, see the TSGAC issue brief “Requirements for Payment and Other Protections to Indian Health Care Providers under Marketplace Health Plans” at <https://www.tribalsegov.org/health-reform/2021-current-issues/2021-health-actions/>

# Update on Marketplace SEP in Response to COVID-19

- Under the authority of a presidential executive order, CMS made a new Marketplace **special enrollment period (SEP)** available on February 15, 2021
  - SEP ended on August 15 for September 1 plan effective date
  - SEP made available to all Marketplace-eligible individuals who submitted a new application or updated an existing application in states with Marketplaces that use the HealthCare.gov platform
  - Under this SEP, recipients had 30 days to select a Marketplace plan, with coverage beginning on the first of the month after plan selection
  - As of June 30, 2021, 7,237 AI/ANs had enrolled in Marketplace coverage through this SEP
- SEP for Marketplace-eligible individuals who meet the ACA definition of “Indian” remains in place
  - Allows Tribal citizens to enroll in Marketplace coverage at any time of the year and change plans as often as once per month
  - Allows Tribal citizens to change plan metal levels
  - Applies to immediate family members, provided that they enroll on the same application and at the same time as the enrolled Tribal member

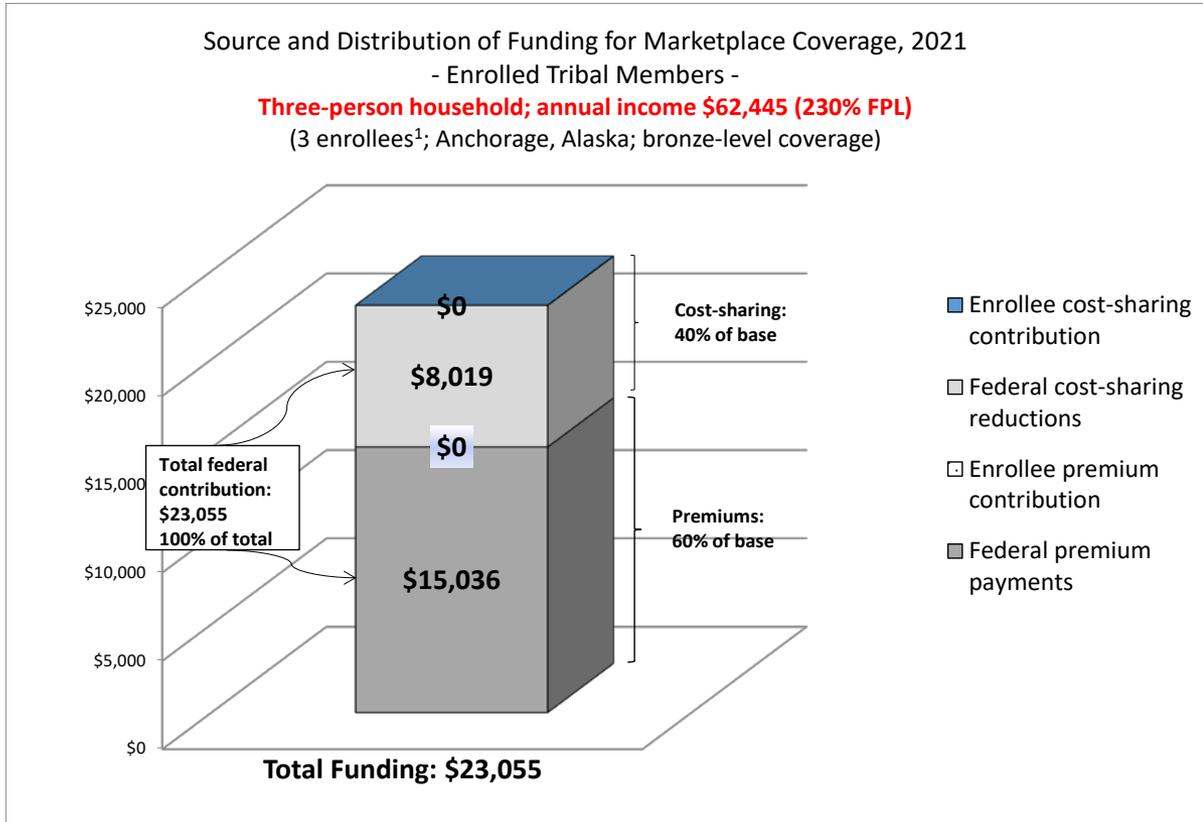
# Acronyms

- AI/ANs: American Indians and Alaska Natives, comprised of enrolled Tribal members and other IHS-eligible individuals
- IHS: Indian Health Service
- HHS: (Federal) Department of Health and Human Services
- CMS: Centers for Medicare and Medicaid Services, HHS
- CCIIO: Center for Consumer Information and Insurance Oversight, CMS/HHS
- IHCP: Indian health care provider, sometimes referred to as I/T/U
- I/T/U: IHS, Tribe or Tribal health organization, and urban Indian organization
- THO: Tribal health organization
- ACA: Patient Protection and Affordable Care Act
- ARP: American Rescue Plan Act
- PTCs: Premium tax credits
- APTCs: Advanced payment of premium tax credits
- CSRs: Cost-sharing reductions
- L-CSV: Limited cost-sharing variation
- Z-CSV: Zero cost-sharing variation
- QHP: Qualified health plan
- FFM: Federally-Facilitated Marketplace
- ECP: Essential community providers
- PRC: Purchased/Referred Care Program

**Disclaimer:** *This analysis is for informational purposes only and is not intended as tax or legal advice*

# New Resources Made Available Through the ACA

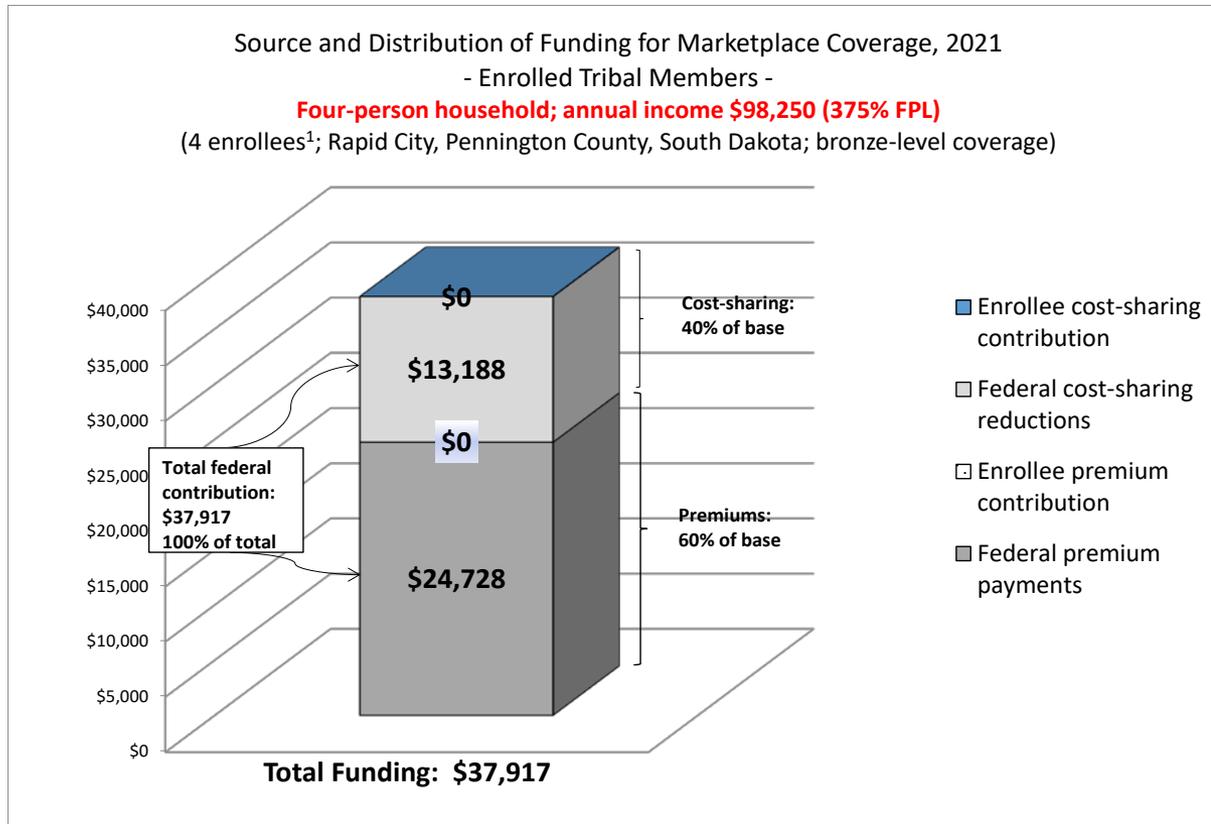
(Example of family of three; \$62,445 in household income in Alaska)



- Example of 2 full-time workers each earning \$15 per hour
- AI/ANs are encouraged to enroll in bronze-level plans
  - Premiums are lowest
  - Federal contribution for CSRs is greatest
- Families with AI/AN and non-AI/AN members enroll in separate plans to maximize cost-sharing protections

# New Resources Made Available Through the ACA

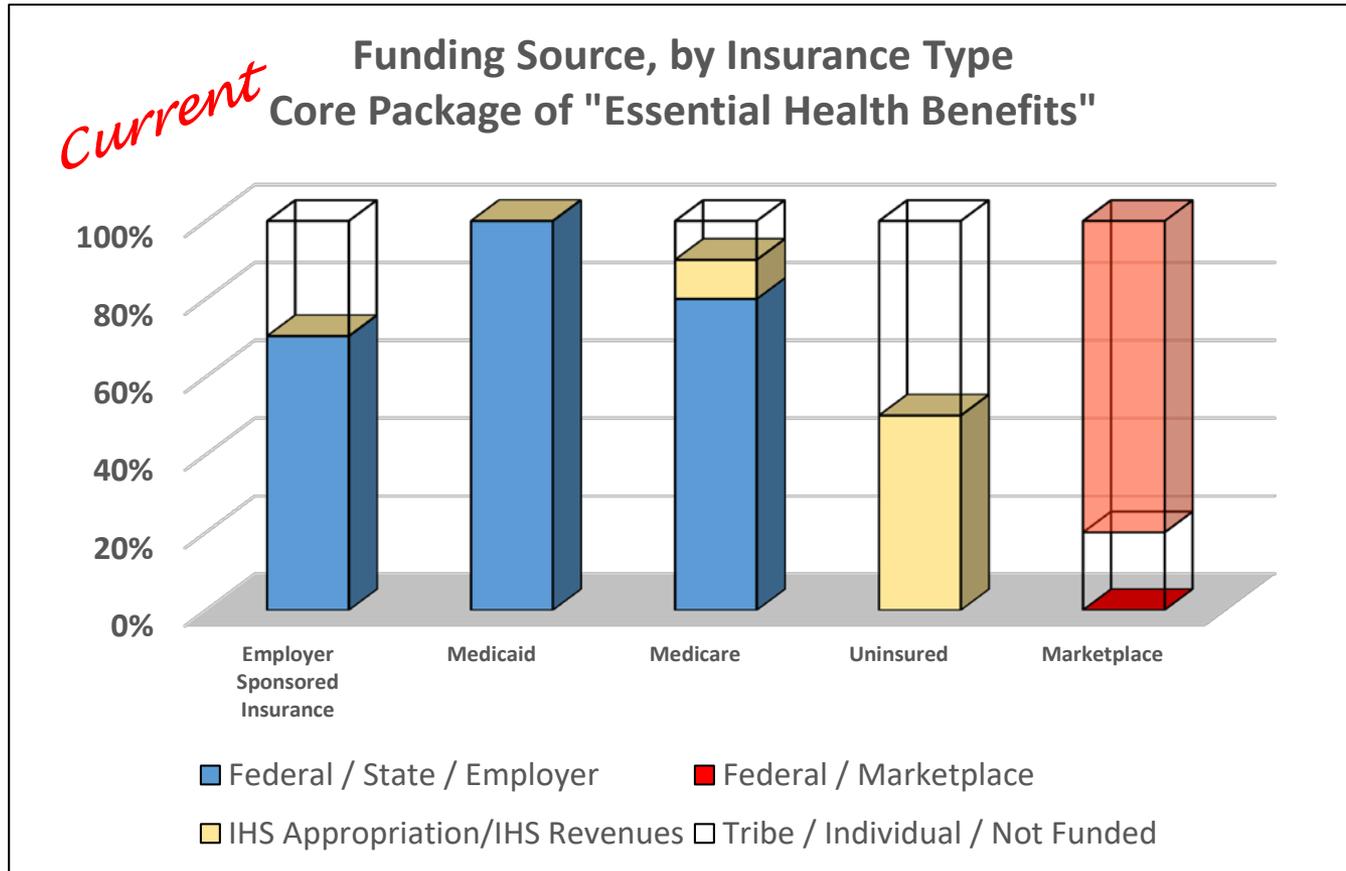
(Example of family of four; \$94,125 in household income in South Dakota)



In this example of four enrollees in a four-person household with household income at 375% FPL:

- Federal government covers 100% of the total funding for Marketplace coverage (\$37,917)
  - \$24,728 in premium tax credits
  - \$13,188 in cost-sharing reductions (no cost-sharing for AI/ANs)
- Enrollee/Tribal sponsor contributes \$0

# Illustration of Coverage of IHS Beneficiaries: Funding Source, by Insurance Type



# Illustration of Potential Impact of Sponsorship through Marketplace: Insurance Coverage and Funding Sources

