

# Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

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*Submitted via FFEcomments@cms.hhs.gov*

March 15, 2013

Center for Consumer Information and Insurance Oversight  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

## **RE: Comments on Draft CCIIO Letter to Issuers, dated March 1, 2013**

I write on behalf of the Tribal Technical Advisory Group (TTAG) of the Centers of Medicare & Medicaid Services (CMS) to comment on the draft CMS Center for Consumer Information and Insurance Oversight (CCIIO) Letter to Issuers, dated March 1, 2013 (Letter). While we are disappointed that CCIIO has not taken a stronger position in support of American Indians and Alaska Natives (AI/AN), we appreciate the opportunity to provide comments on this letter before it is issued.

The TTAG advises CMS on Indian health policy issues involving Medicare, Medicaid, the Children's Health Insurance Program, and any other health care program funded (in whole or part) by CMS. In particular, the TTAG focuses on providing policy advice to CMS regarding improving the availability of health care services to AI/ANs under these Federal health care programs, including through providers operating under the health programs of the Indian Health Service, Indian Tribes, tribal organizations and urban Indian organizations (referred to as Indian Health Care Providers or I/T/Us).

Recommendation 1. The TTAG recommends the addition of the following language to the Safe Harbor paragraph on page 7 of the Letter. (Recommended additions are shown in underline.)

**"Safe Harbor Standard:** An issuer application that demonstrates compliance with the standards outlined in this paragraph will be determined to meet the regulatory standard established by 45 C.F.R. § 156.235(a) without further documentation. First, the issuer application demonstrates that at least 20 percent of available ECPs in the plan's service area participate in the issuer's provider network(s). In addition to achieving 20 percent participation of available ECPs, the issuer offers contracts during the coverage year to:

- All available Indian providers in the service area, using the model QHP Addendum for Indian providers developed by CMS, as long as any such mutually agreed upon rates are at least equal to the generally applicable payment rates of the issuer for network providers; and
- At least one ECP in each ECP category (see Table 2.1) in each county in the service area, where an ECP in that category is available.

This recommendation is made in order to ensure that an offer to contract, as required under the Safe Harbor provision, is an offer that provides at least a minimum level of reimbursement for the Indian health care

providers. The recommended language is drawn from the minimum payment protection provided to federally-qualified health centers under 45 CFR § 156.235.

Recommendation 2: As shown below in underline, the TTAG recommends inclusion of the Indian Provider contracting provision in the “Minimum Expectation” option as well. In doing so the Minimum Expectation option would read:

**“Minimum Expectation:** An issuer application that demonstrates that at least 10 percent of available ECPs in the plan’s service area participate in the issuer’s provider network(s) will be determined to meet the regulatory standard, provided that:

- The issuer offers contracts during the coverage year to all available Indian providers in the service area, using the model QHP Addendum for Indian providers developed by CMS, as long as any such mutually agreed upon rates are at least equal to the generally applicable payment rates of the issuer for network providers; and
- The issuer includes as part of its application a narrative justification describing how the issuer’s provider network(s), as currently designed and after taking into account new 2014 enrollment, provides an adequate level of service for low-income and medically underserved enrollees.”

Recommendation 3: In addition, the TTAG proposes that the wording underlined below be inserted in the second paragraph on the cover page. As such, the paragraph would read, in part:

“...For purposes of this Letter, references to State Plan Management Partnership Exchanges also apply to states performing plan management functions in an FFE. CCIIO is indicating here that -- in addition to the FFE, State-based Exchanges, and Partnership Exchanges -- states that notify CMS that they will perform some plan oversight functions for QHPs can take on this responsibility without declaring themselves in a “Partnership. States performing these functions must consult with Tribes in accordance with the letter from the HHS Secretary on August 14, 2011...”

Thank you again for the opportunity to comment. Please contact Jennifer Cooper, [jcooper@nihb.org](mailto:jcooper@nihb.org) if you would like to discuss the issues addressed in this comment.

Sincerely,



Valerie Davidson  
Chair, TTAG

Cc: Marilyn Tavenner, Acting Administrator, CMS  
Gary Cohen, Director, Center for Consumer Information and Insurance Oversight  
Kitty Marx, Director of Tribal Affairs, CMS  
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