

# Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

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*Submitted via Regulations.gov*

May 2, 2019

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Christopher Truffer, Deputy Group Director  
Attention: CMS-2407-PN  
Mail Stop C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

***RE: Basic Health Program; Federal Funding Methodology for Program Years 2019 and 2020***

Dear Mr. Truffer,

On behalf of the Tribal Technical Advisory Group (TTAG)<sup>1</sup> to the Centers for Medicare and Medicaid Services (CMS), we write to respond to the proposed methodology, CMS-2407-PN, issued by CMS to determine federal payment amounts to be made in program years 2019 and 2020 to states that elect to establish a Basic Health Program (BHP) under section 1331 of the Patient Protection and Affordable Care Act (ACA). Establishing a BHP would allow participating states to offer health benefits coverage to low-income individuals who are also eligible to purchase coverage through Affordable Insurance Exchanges.

Tribal representatives are providing comments on the proposed methodology to continue our efforts to ensure that American Indians and Alaska Natives (AI/ANs)<sup>2</sup> do not pay more under a BHP—for health insurance premiums and out-of-pocket costs—than they would have to pay through Marketplace coverage.

## *Background*

In comments filed on November 22, 2013, in response to CMS-2380-P,<sup>3</sup> the TTAG made several recommendations, a number of which CMS accepted and incorporated into the final rule. One

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<sup>1</sup> The TTAG advises CMS on Indian health policy issues involving Medicare, Medicaid, the Children's Health Insurance Program, and any other health care programs funded (in whole or part) by CMS. In particular, TTAG focuses on providing policy advice to CMS regarding improving the availability of health care services to American Indians and Alaska Natives (AI/ANs) under these federal health care programs, including through providers operating under the health programs of the Indian Health Service (IHS), Tribes, Tribal organizations, and Urban Indian organizations (I/T/Us or Indian health care providers).

<sup>2</sup> For purposes of this comment, "American Indians and Alaska Natives" are defined as individuals who are enrolled Tribal members or shareholders in Alaska Native village or regional corporations established pursuant to the Alaska Native Claims Settlement Act.

<sup>3</sup> CMS, Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health

such recommendation was to require that the Indian-specific cost-sharing protections be made available to eligible BHP enrollees. CMS, however, declined to adopt a TTAG recommendation asking the agency to include in the final rule a provision that would protect AI/ANs from paying more in health insurance premiums under a BHP than they otherwise would have paid if enrolling in coverage through a Health Insurance Exchange (Exchange). This provision would have required that BHP premiums for AI/AN enrollees not exceed the premium for bronze-level coverage. The TTAG made this recommendation to address ongoing concerns that, without this provision, AI/ANs could experience significant increases in their health insurance premiums.

### *Tribal Implications*

Under the proposed methodology, a BHP can collect monthly premiums to the extent that these premiums do not exceed the amount of the monthly premium enrollees would have paid if enrolling in the second-lowest-cost silver plan through an Exchange, reflecting that most enrollees would have selected a silver plan to access the partial cost-sharing protections available to the general population. AI/ANs, however, can secure the Indian-specific cost-sharing protections by enrolling in *bronze* plans, which often have substantially lower premiums than the second lowest-cost silver plan.

In the final rule, CMS noted that it did not adopt the provision requiring that BHP premiums for AI/AN enrollees not exceed the premium for the lowest-cost bronze plan because of constraints in the Patient Protection and Affordable Care Act. In the absence of this provision, the TTAG asks that CMS provide states with sufficient funding (by providing the full amount of the would-have-been-made federal expenditures for the premium tax credits and the Indian-specific cost-sharing protections) to enable states to ensure that AI/ANs do not pay higher premiums under a BHP than they would have paid if enrolling in coverage through the Exchange.

### *Recommendations*

Previously, the TTAG offered two recommendations with the aim of ensuring that BHPs receive adequate federal resources to ensure states can provide equivalent premium protections for AI/ANs (even though CMS does not require these protections). A discussion of these recommendations appears below.

#### **1. Reference Premium for CSR Calculation**

In prior comments on CMS-2380-PN, the TTAG in January, 2014,<sup>4</sup> recommended that CMS modify the proposed methodology for determining federal payments to states for the BHP to account for the likelihood that AI/ANs enrolling in a qualified health plan (QHP) through the Exchange would select a bronze-level plan that consumed the entire premium tax credit (PTC) available to them or their family. This meant that AI/ANs would enroll in a bronze plan but one

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Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity, 78 Fed. Reg. 59121 (Sept. 25, 2013).

<sup>4</sup> IHS Tribal Self-Governance Advisory Committee, Comments on CMS-2380-PN; Basic Health Program Proposed Federal Funding Methodology for 2015 (Jan. 22, 2014), [https://www.tribalselfgov.org/wp-content/uploads/2015/05/1.22.14Final-TSGAC-Comments-on-CMS-2380-PN-Basic-Health-Program-Proposed-Federal-Funding-Methodology-for-2015-date-01\\_22\\_14.pdf](https://www.tribalselfgov.org/wp-content/uploads/2015/05/1.22.14Final-TSGAC-Comments-on-CMS-2380-PN-Basic-Health-Program-Proposed-Federal-Funding-Methodology-for-2015-date-01_22_14.pdf).

that might have a higher premium than the lowest-cost bronze plan. As the TTAG noted previously, making an adjustment to account for this enrollment pattern would more accurately reflect the actions that AI/ANs would take if enrolling in coverage through an Exchange. Further, making this adjustment would ensure proper calculation of PTCs and CSRs for AI/ANs in determining the associated federal payments to states for the BHP.

In the final rule, CMS responded:

With regard to the comments that American Indians and Alaska Natives who would enroll through the Exchange may select other bronze level QHPs than the lowest cost plan, we acknowledge the likelihood of the selection of different bronze level QHPs, but we believe it is not possible to project how these enrollees would select different plans for 2015 (similar to the limitations regarding the assumption of how enrollees would select plans other than the second lowest cost silver plan). In addition, while there may be instances where the value of PTC would exceed the value of some bronze QHP premiums, this may vary by age, household size, household income, and other factors; we believe this further limits the ability to project how enrollees would select different plans. Thus, we have selected what we believe to be an assumption that is reasonable and results in the correct level of funding for BHP. [79 FR 18392]

### **Revised Recommendation:**

The TTAG again requests that CMS modify the assumption used with regard to the selection of QHPs by AI/ANs. **The TTAG recommends that CMS assume that AI/ANs who enroll in coverage through an Exchange will enroll in the second lowest-cost bronze plan.** The TTAG has proposed this revised recommendation in recognition of the points made by CMS on the complexity of projecting QHP enrollment, which might vary by age, household size, household income, and other factors. This revised recommendation, on average, more accurately reflects actual plan selections by AI/ANs through an Exchange. Over the past few years, AI/AN enrollees have found that on many occasions the lowest-cost bronze plan does not contain adequate provider networks, prompting them to select a higher-cost plan. In addition, this revised recommendation parallels the CMS assumption pertaining to general population enrollment in silver plans, whereby it is assumed that the second-lowest-cost silver plan is the preferred plan.

## **2. Premium Tax Credit Adjustment**

Also in response to CMS-2380-PN, the TTAG recommended that, for any AI/AN-specific adjustment in the BHP formula for PTC payments to states, CMS should ensure it accounts for the likelihood that AI/ANs who enroll in a QHP through an Exchange will expend the full value of the PTC available to them. In its response, CMS clarified that the methodology as proposed assumes AI/ANs who enroll through the Exchange would choose a QHP with a premium at least equal to the value of the PTC. In the final rule, CMS first noted the comments received from Tribal representatives and then offered a response, as shown below. **The TTAG requests that CMS maintain the position it took in this response.**

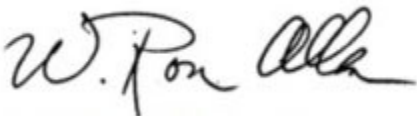
Comment: Several commenters requested that, when calculating the CSR component of the federal BHP payment, CMS account for the likelihood that American Indians and Alaska Natives will elect to enroll in a bronze-level QHP that would utilize the entire PTC that would have otherwise been available to the enrollees rather than assuming the enrollees will select the lowest cost bronze level QHP. The commenter noted that while American Indians and Alaska Natives purchasing coverage in the Exchange will likely select a bronze level QHP, they may not always select the lowest cost bronze plan.

**Response:** We appreciate the commenters' concerns about the level of funding related to American Indians and Alaska Natives enrolled in BHP. With regard to comments that the methodology assume that American Indians and Alaska Natives who enroll through the Exchange would choose a QHP with a premium that is at least equal to the value of the PTC, the payment methodology is consistent with this assumption ... Thus, we have selected what we believe to be an assumption that is reasonable and results in the correct level of funding for BHP [*i.e.*, the calculation assumes full expenditure of the PTC otherwise available to AI/ANs through an Exchange]. [79 FR 18392]

### *Conclusion*

We thank you for the opportunity to provide comments and recommendations on the agency's proposed revision of the BHP funding methodology. Should you have any questions about TTAG's comments as set forth in this letter, please contact Devin Delrow, Director of Policy at the National Indian Health Board, at [ddelrow@nihb.org](mailto:ddelrow@nihb.org).

Best regards,

A handwritten signature in black ink that reads "W. Ron Allen". The signature is written in a cursive, flowing style.

W. Ron Allen, Chair  
Tribal Technical Advisory Group