

November 1, 2018

Randy Pate
Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Review of CMS/CCIIO Presentation to QHP Issuers and State Insurance Regulators on Indian-Specific Cost-Sharing Protections and Preparation of Summary of Benefits and Coverage (SBC) Documents

Dear Director Pate:

I write on behalf of the Tribal Technical Advisory Group (TTAG) of the Centers for Medicare and Medicaid Services (CMS) to bring to your attention to an analysis prepared by the Tribal Self-Governance Advisory Committee to the Indian Health Service (TSGAC).


At the request of CCIIO, the TSGAC conducted review of a draft CMS/CCIIO PowerPoint presentation titled “ACA Protections for American Indians and Alaska Natives: Ensuring Zero and Limited Cost Sharing Plan Protections and Accurate SBCs.” This presentation is intended to serve as the basis for an upcoming Webinar that CMS/CCIIO plans to conduct with health insurance issuers that offer qualified health plans (QHPs) through a Health Insurance Marketplace (Marketplace) and state health insurance regulators to help ensure the proper application of the two Indian-specific cost-sharing variations (zero cost-sharing variation, or Z-CSV; limited cost-sharing variation, or L-CSV) available under the Affordable Care Act (ACA).

The TTAG recognizes and appreciates the continuing efforts of CMS/CCIIO to ensure that eligible American Indians and Alaska Natives (AI/ANs) receive the comprehensive Indian-specific cost-sharing protections to which they are entitled. The attached analysis has closely reviewed the draft PowerPoint presentation and proposes a number of changes to make the language and tables in the presentation consistent with the ACA and CMS/CCIIO regulations and guidance.

Thank you for the opportunity to bring this analysis to your attention. As always, we appreciate the continuing efforts by CMS to ensure that SBCs accurately describe the cost-sharing protections available to eligible AI/ANs, and that AI/ANs receive the benefits and protections

afforded to them under the ACA. The TTAG remains willing to assist CMS in these endeavors in any way possible. Please contact Melissa Gower, Chair of the TTAG ACA Policy Subcommittee, at Melissa.Gower@chickasaw.net if you have any questions on the issues addressed in these comments.

Sincerely,

A handwritten signature in black ink that reads "W. Ron Allen". The signature is written in a cursive style with a large initial "W" and a stylized "R".

Ron Allen
Chairman, Jamestown S’Klallam Tribe
Chairman, TTAG

Cc: Kitty Marx, Director, CMCS Division of Tribal Affairs, CMS
Lisa Wilson, CMS/CCIIO
Lina Rashid, CMS/CCIIO
Rachel Ryan Pedersen, CMS
Lynn Malerba, Chief, The Mohegan Tribe of Connecticut; Chairwoman, Tribal Self-Governance Advisory Committee

Attachment: Letter from the IHS Tribal Self-Governance Advisory Committee to the TTAG, “Review of CMS/CCIIO Presentation to QHP Issuers and State Insurance Regulators on Indian-Specific Cost-Sharing Protections and Preparation of Summary of Benefits and Coverage (SBC) Documents,” dated November 1, 2018

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education
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November 1, 2018

Mr. W. Ron Allen
Tribal Chairman and CEO, Jamestown S'Klallam Tribe
Chair, Tribal Technical Advisory Group (TTAG)
1033 Old Blyn Highway
Sequim, WA 98382

RE: Review of CMS/CCIIO Presentation to QHP Issuers and State Insurance Regulators on Indian-Specific Cost-Sharing Protections and Preparation of Summary of Benefits and Coverage (SBC) Documents

Dear Chairman Allen:

I write on behalf of the Tribal Self-Governance Advisory Committee (TSGAC) to the Indian Health Service (IHS) regarding the review of a draft CMS/CCIIO PowerPoint presentation titled "ACA Protections for American Indians and Alaska Natives: Ensuring Zero and Limited Cost Sharing Plan Protections and Accurate SBCs." This presentation is intended to serve as the basis for an upcoming Webinar that CMS/CCIIO plans to conduct with health insurance issuers that offer qualified health plans (QHPs) through a Health Insurance Marketplace (Marketplace) and state health insurance regulators to help ensure the proper application of the two Indian-specific cost-sharing variations (zero cost-sharing variation, or Z-CSV; limited cost-sharing variation, or L-CSV) available under the Affordable Care Act (ACA).

The TSGAC recognizes and appreciates the continuing efforts of CMS/CCIIO to ensure that eligible American Indians and Alaska Natives (AI/ANs) receive the comprehensive Indian-specific cost-sharing protections to which they are entitled. As promised, we have closely reviewed the draft PowerPoint presentation and propose a number of changes below to make the language and tables in the presentation consistent with the ACA and CMS/CCIIO regulations and guidance.

We are providing this information to you in your role as Chairman of the TTAG in an effort to coordinate the efforts of the TSGAC and the TTAG with an aim to ensure that eligible AI/ANs receive the cost-sharing protections and other benefits afforded to them under the ACA. If TTAG concurs with this analysis, please forward to CMS/CCIIO representatives.

Recommendations

The TSGAC recommends the following changes to the PowerPoint presentation:

Slide 3

The Z-CSV and the L-CSV are two in a range of QHP cost-sharing variations that QHP issuers must provide for each plan offered through a Marketplace, and eligibility for these two variations are limited to certain AI/ANs. In order to establish a context for the discussion of ensuring proper implementation of cost-sharing protections that are specific to AI/ANs, as well as the accuracy of associated Summary of Benefits and Coverage (SBC) documents, displaying the Z-CSV and L-CSV as two in the range of cost-sharing variations would communicate that other, non-CSV provisions are similar across all plans. **To achieve this, we ask CMS/CCIIO to create a new slide after this slide and insert a table similar to the one below.**

Actuarial Value of "Metal Level" Plans and Requirement on Qualified Health Plans to Prepare SBCs for Each Plan Variation*							
	Actuarial Value (AV) of Plan (AV = average % of costs covered by plan)	Cost-sharing variation code ("plan variation")					
		01	02	03	04	05	06
Metal Level		Standard variant: no additional cost-sharing protections	Meet ACA Definition of Indian: Between 100% and 300% FPL ("zero" CSV)	Meet ACA Definition of Indian: Any income level ("limited" CSV)	73% AV Level Silver Plan CSV (200% FPL - 250% FPL)	87% AV Level Silver Plan CSV (150% FPL - 200% FPL)	94% AV Level Silver Plan CSV (100% FPL - 150% FPL)
Bronze	60%	✓	✓	✓			
Silver	70%	✓	✓	✓	✓	✓	✓
Gold	80%	✓	✓	✓			
Platinum	90%	✓	✓	✓			

* SBCs are Summary of Benefits and Coverage documents

Slide 4

- The second bullet on this slide indicates that the ACA defines "AI/AN" (*i.e.*, "Indian") as a "member of a Federally-Recognized Tribe or Alaska Native Claims Settlement Act Corporation shareholder." The ACA (referencing section 4 of the Indian Self-Determination and Education Assistance Act) defines "Indian" as a member of a federally-recognized Tribe, which includes "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation."¹ **We recommend that CMS/CCIIO use in this bullet the following preferred short-hand definition: "The PPACA defines 'AI/AN' as a member of a federally-recognized Tribe or a shareholder in an Alaska Native regional or village corporation."**
- The third bullet on this slide indicates that the ACA makes "special" QHPs available to eligible AI/ANs, but only the cost-sharing protections, not the plans (which are the same as those available to the general population), are specific to eligible AI/ANs. **We recommend that CMS/CCIIO change this bullet to read as follows: "The PPACA provides Indian-specific cost-sharing plan variations for eligible AI/ANs who enroll in Qualified Health Plans (QHPs) through the Marketplace."**

¹ See ACA section 1402(d) and 25 USC 450b(d) and (e).

- The fourth bullet on this slide indicates that “QHPs may cover services not provided through Indian health care providers.” **We recommend replacing this sentence with the following: “Issuers offering QHPs in states with Federally-Facilitated Marketplaces in which CMS conducts plan management activities are required to offer contracts to all IHCPs operating in the service area of the plans.”**²
- **In addition, we recommend adding to this slide a bullet that defines “Indian health care providers (IHCPs)” as follows: “Indian health care providers consist of health care programs (IHCPs) operated by the Indian Health Service (IHS), a Tribe or Tribal organization, or an urban Indian organization (also referred to as I/T/Us).”**³

Slide 5

This slide indicates that AI/AN eligibility for the Z-CSV or L-CSV depends only on household income, but PTC eligibility also is a factor, as AI/ANs must qualify for PTCs to qualify for the Z-CSV.⁴ **We recommend adding the phrase “and PTC eligibility” after “Depending on income.”**

Slide 6

This slide indicates that eligibility for the L-CSV applies only to AI/ANs with a household income less than 100% FPL or more than 300% FPL, but AI/ANs who do not qualify for the Z-CSV qualify for the L-CSV regardless of their income.^{5,6} In addition, AI/ANs who do not wish to provide information on their income (and therefore do not check the related box in the HealthCare.gov online application asking whether to be considered for insurance affordability programs) also are eligible for the L-CSV. **We recommend replacing the graphic on this slide with a graphic similar to the one below.**

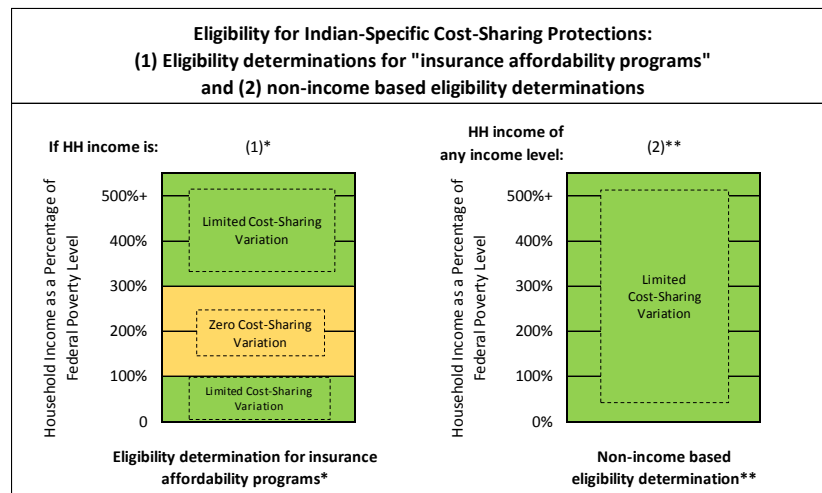
² See 45 CFR 156.235(a)(2)(ii)(A).

³ See 42 CFR 438.14(a)(ii)(D)(iv).

⁴ See letter from CCIIO to the TTAG dated September 15, 2015, page 4.

⁵ See 45 CFR 155.350(b), as well as letter from CCIIO to the TTAG dated August 4, 2015, page 2.

⁶ For example, AI/ANs who 1) are married and do not file a joint tax return or 2) decline employer-sponsored insurance that meets affordability standards might have an income of 100%-300% FPL and qualify for the L-CSV, rather than the Z-CSV.



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.

Slide 7

In general, it is recommended that CMS/CCIIO incorporate on this slide the following explanation of the Z-CSV: “For enrollees with ‘zero cost-sharing’ protections (Code 02), no cost-sharing (deductibles, co-payments, or co-insurance) when receiving essential health benefits (EHBs) at an in-network or out-of-network health care provider”; suggested bullet-by-bullet changes appear below.

- The first bullet on this slide lists the factors for eligibility for the Z-CSV but, again, does not specify PTC eligibility as a factor. **We recommend changing the phrase “who are not eligible for Medicaid” to “who are eligible for PTCs and not eligible for Medicaid.”**
- The second bullet on this slide indicates that no cost-sharing applies to services furnished by IHS providers to AI/ANs who qualify for the Z-CSV, but cost-sharing also is eliminated for other IHCPs, as well as non-IHCPs.⁷ **We recommend changing this bullet by replacing “Indian Health Service” with “Indian health care providers (IHCPs) and non-IHCPs.”**
- The third bullet on this slide gives a mis-impression, as no cost-sharing generally applies to services furnished by both in-network and out-of-network providers (see the exception below). **We recommend deleting this bullet and replacing with the sixth bullet, as revised below.**
- The fifth bullet on this slide indicates that cost-sharing “may apply to services received for non-EHBs through a QHP.” **To make the wording clearer, please change this phrase to “may apply to non-EHB services received through a QHP.”**
- The sixth bullet on this slide indicates that cost-sharing “may apply to services received from an out-of-network provider,” but it is important to clarify that the Z-CSV applies to services furnished by both in-network and out-of-network providers, with the exception of cases in

⁷ See 45 CFR 156.420(b)(1).

which the QHP provides no coverage for services furnished by out-of-network providers, as cost-sharing protections do not apply to non-covered services.⁸ **Please change this bullet to read as follows (and replace the third bullet above on “services received from in-network providers” with this bullet): “Zero cost-sharing for essential health benefits (EHBs) received from an in-network provider and from an out-of-network provider through their QHP, with the following limited exception:**

- **Cost-sharing protections do not apply to EHBs received from an out-of-network provider if the QHP does not cover services furnished by an out-of-network provider (as these are non-covered services).”**

Slide 8

The L-CSV protections are identical to the Z-CSV protections, except that a referral from an IHCP is needed to secure the comprehensive cost-sharing protections when receiving EHBs from a non-IHCP. **In general, it is recommended that CMS/CCIIO incorporate on this slide the following explanation of the L-CSV: “For enrollees with ‘limited cost-sharing’ protections (Code 03), no cost-sharing (deductibles, co-payments, or co-insurance) when receiving EHBs at an IHCP or with a referral from an IHCP when receiving EHBs at other in-network or out-of-network health care providers.”** Suggested bullet-by-bullet changes appear below.

- The first bullet on this slide lists the factors for eligibility for the L-CSV but, again, does not specify that AI/ANs who do not qualify for the Z-CSV qualify for the L-CSV regardless of their household income. **We recommend changing this bullet to read as follows: “AI/ANs who do not qualify for a zero cost-sharing QHP (and who are not eligible for Medicaid), regardless of their household income level, are eligible to enroll in a limited cost sharing plan through the Marketplace.”**
- The second and third bullets on this slide use the terms “IHS,” “IHP,” and “Indian health service providers.” **Please replace these terms and use a consistent term for Indian health care providers: either “IHCP” or “Indian health care provider.” Please define this term early in the presentation (such as in slide 4, as recommended above).**
- The second bullet on this slide indicates that no cost-sharing applies to services furnished by “IHS” providers to AI/ANs who qualify for Indian-specific cost-sharing protections, but cost-sharing is eliminated for services furnished by all IHCPs.⁹ **Please change this bullet by replacing “Indian health service providers” with “Indian health care providers” or “IHCPs.”**
- The third bullet on this slide:
 - Correctly describes the need for enrollees in limited cost-sharing QHPs to obtain a referral from an IHCP to avoid cost-sharing when receiving services from a non-IHCP but muddles the terminology for these providers. **To make this bullet clearer, please use the terms “IHCP” and “non-IHCP.”**

⁸ See 45 CFR 156.410(a).

⁹ See 45 CFR 156.420(b)(2).

- Incorrectly implies that cost-sharing applies to services furnished to enrollees in limited cost-sharing QHPs by an out-of-network non-IHCP, even with a referral from an IHCP. **Please delete the word “in-network” and use the term “IHCP” not “IHS.”**
- The fifth bullet on this slide indicates that cost-sharing “may apply to services received from an out-of-network provider,” but it is important to clarify that the L-CSV applies to services furnished by both in-network and out-of-network providers, with the exception of cases in which the QHP provides no coverage for services furnished by out-of-network providers, as cost-sharing protections do not apply to non-covered services.¹⁰ **We recommend changing the bullet to read as follows (and inserting this bullet after the third bullet above): “Zero cost-sharing for EHBs received from an out-of-network provider through their QHP, with the following limited exception:**
 - **Cost-sharing may apply to EHBs received from an out-of-network provider if the QHP does not cover services when furnished by an out-of-network provider (as these are non-covered services).”**

Slide 9

This slide includes a table indicating when cost-sharing does and does not apply under the Z-CSV and L-CSV. **We recommend that CMS/CCIIO make changes to this table as needed to reflect the corrections outlined above.**

- **For example, we recommend:**
 - **Changing the first box in the fifth row of the table that reads “EHB via QHP out-of-network” to read: “EHB/covered service via QHP out-of-network provider with referral from IHCP.”**
 - **Changing the second box in the fifth row to read: “No cost-sharing.”**
 - **Changing the third box in the fifth row to read: “No cost-sharing.”**
- **And, for example, we recommend changing the second and third column headers to read: “Zero Cost-Sharing Variation Plans” and “Limited Cost-Sharing Variation Plans,” respectively.**

¹⁰ See 45 CFR 156.410(a).

Conclusion

Thank you for the opportunity to provide this analysis and recommend changes to the draft PowerPoint presentation titled “ACA Protections for American Indians and Alaska Natives: Ensuring Zero and Limited Cost Sharing Plan Protections and Accurate SBCs.” We look forward to working with you and the TTAG (1) to present this information to CCIIO and (2) to ensure that these recommendations are considered, and implemented, as appropriate.

As always, we appreciate the ongoing efforts by TTAG and CMS to ensure that eligible AI/ANs receive the Indian-specific cost-sharing protections available under the ACA. The TSGAC remains willing to assist TTAG and CMS in these endeavors in any way possible. If you have any questions or wish to discuss these comments further, please contact me at (860) 862-6192 or via email at lmalerba@moheganmail.com. Thank you.

Sincerely,



Marilynn “Lynn” Malerba
Chief, The Mohegan Tribe of Connecticut
Chairwoman, Tribal Self-Governance Advisory Committee

cc: Kitty Marx, Director, Division of Tribal Affairs/IEAG/CMCS
Devin Delrow, Director of Policy, National Indian Health Board
Jennifer Cooper, Director, Office of Tribal Self-Governance, IHS
TSGAC Members and Technical Workgroup