

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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March 31, 2019

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: Re-Review of Summary of Benefits and Coverage Documents

Dear Chairman Allen:

I write on behalf of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC) to report on a recent follow-up survey conducted by the TSGAC. The TSGAC re-reviewed a sample of Summary of Benefits and Coverage (SBC) documents for 2019 to assess their accuracy in describing the cost-sharing protections provided to eligible American Indians and Alaska Natives (AI/ANs) under the Affordable Care Act (ACA).¹ Specifically, the TSGAC re-reviewed sixteen Indian-specific SBCs describing bronze-level qualified health plans (QHPs) offered by eight issuers across four states to determine whether these issuers addressed concerns identified in an initial review of these SBCs by the TSGAC in 2018.²

After transmittal of the initial TSGAC survey of health plan SBCs to the Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare and Medicaid Services (CMS), CCIIO conducted outreach to Marketplace health plan issuers, as well as state regulators, on the proper application of the Indian-specific cost-sharing protections. Specifically, it is our understanding that CCIIO communicated the expectation that any errors in SBCs are to be corrected. CCIIO subsequently requested that the TSGAC and/or the TTAG conduct a follow-up review to determine if errors in the SBCs had been corrected. This survey was conducted in response to the CCIIO request.

SBCs are a critical tool for educating (potential and current) enrollees in Marketplace plans about the cost-sharing protections available to them, as well as a tool for ensuring that the plans themselves understand and accurately apply the federal protections.

¹ AI/ANs who meet the definition of Indian under the ACA and enroll in a Marketplace plan qualify for one of two types of comprehensive cost-sharing protections, meaning they pay no deductibles, co-insurance, or copayments when receiving essential health benefits (EHBs) from Indian health care providers (IHCPs) or non-IHCPs. Eligible AI/ANs who have a household income between 100% and 300% of the federal poverty level (FPL) and who are eligible for premium tax credits can enroll in zero cost-sharing (Z-CSV) plans, and all other AI/ANs can enroll in limited cost-sharing (L-CSV) plans. Enrollees in Z-CSV plans do not need a referral from an IHCP to receive cost-sharing protections when served by non-IHCPs. Enrollees in L-CSV plans, however, must obtain a referral from an IHCP to avoid cost-sharing when served by non-IHCPs.

² To access the TSGAC review of SBCs in March of 2018, please see <https://www.tribalselfgov.org/wp-content/uploads/2019/03/TSGAC-Letter-to-TTAG-on-Review-of-SBCs-2018-03-01d.pdf>

In summary, the zero cost-sharing variation (Z-CSV) plan SBCs remain comprehensive and largely accurate, but the limited cost-sharing variation (L-CSV) plan SBCs continue to have several inaccuracies (see Attachment A). The deficiencies tend to involve an inaccurate description, and possibly a misunderstanding, of the proper application of the comprehensive cost-sharing protections under the L-CSV for health services received at non-IHCPs. In large part, this deficiency can be remedied by indicating in the SBC where appropriate: “Cost-sharing waived at non-IHCP with referral from IHCP.” **Based on these findings, the TSGAC recommends the following:**

- 1. Individual health plan issuers identified in the report be contacted by CCIIO, informed of the deficiencies in their SBCs, and educated on the need to act rapidly to correct these deficiencies; and**
- 2. Given the amount of time that certain health plan issuers have posted inaccurate descriptions of the Indian-specific cost-sharing protections in their SBCs, it is warranted that CCIIO conduct a review of the operations of these issuers to determine if they have applied the L-CSVs correctly and completely and, if they have not, require these issuers to make whole individual AI/ANs enrollees for any erroneous cost-sharing expenditures made.**

We are providing this information to you in your role as Chairman of the TTAG to help coordinate efforts by the TSGAC and the TTAG to secure needed revisions to the preparation and review of SBCs.

Background

On February 14, 2012, CMS, in conjunction with the Departments of Labor and Treasury (collectively, the Departments), issued a final rule that included regulations requiring QHP issuers to prepare a single SBC for each plan offered through a Marketplace, as well as a general SBC template to help issuers meet this requirement.³ The Departments updated these regulations and the general SBC template in a final rule issued on June 6, 2015.⁴ In comments on the proposed version of this second rule, the TTAG cited past inaccuracies in some SBCs voluntarily prepared by some issuers to describe Z-CSV and L-CSV plans and asked the Departments to develop sample language, for use by issuers in the preparation of SBCs, to describe how the Z-CSV and L-CSV plan variations impact cost-sharing for services received at in-network and out-of-network providers.⁵

The TTAG raised similar concerns in an earlier May 29, 2014, letter to CCIIO, asking the agency, among other recommendations, to 1) require issuers to develop separate SBCs for each cost-sharing variation of their QHPs and 2) require Marketplaces to develop an SBC template for Z-CSV and L-CSV plans for use by issuers operating in their Marketplace.⁶

³ See TD 9575/CMS-9982-F, “Summary of Benefits, Coverage, and Uniform Glossary” (77 FR 8668), at <https://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3228.pdf>.

⁴ See TD-9724/CMS-9938-F, “Summary of Benefits and Coverage and Uniform Glossary” (80 FR 34292), at <https://www.gpo.gov/fdsys/pkg/FR-2015-06-16/pdf/2015-14559.pdf>.

⁵ See TTAG “Comments on Summary of Benefits and Coverage and Uniform Glossary Proposed Rule (CMS-9938-P),” dated February 28, 2015, at <https://www.nihb.org/tribalhealthreform/wp-content/uploads/2015/03/TTAG-Comments-on-CMS-9938-P.pdf>.

⁶ See TTAG letter to CCIIO on “Qualified Health Plans and Indian-Specific Cost-Sharing Variations,” dated May 29, 2014, at <https://www.nihb.org/tribalhealthreform/wp-content/uploads/2014/07/TTAG-Letter-to-CCIIO-QHPs-and-AI-AN-CS-Var-2014-05-20d.pdf>.

CMS subsequently took steps to address concerns about inaccuracies in SBCs prepared for Z-CSV and L-CSV plans. In the final Notice of Benefit and Payment Parameters for 2016,⁷ CMS amended 45 CFR 156.420 and 156.425 to require QHP issuers to provide SBCs that accurately represent plan variations, beginning no later than November 1, 2015; the rule also stipulated that issuers cannot combine information about multiple plan variations in one SBC. In addition, on July 13, 2016, after engaging with Tribal representatives, CMS released SBC templates for Z-CSV and L-CSV plans and posted these documents on the CCIIO Web site.⁸

Despite these efforts by CMS and Tribal representatives, Tribal representatives have continued to identify a number of examples of 1) inaccuracies in some SBCs and 2) incorrect application of the cost-sharing protections by QHP issuers. In response to these deficiencies, the TSGAC in 2018 decided to conduct a larger sampling of SBCs to determine the extent of the problems. This review of eight Z-CSV and eight L-CSV plan SBCs found a number of inaccuracies, particularly in the L-CSV plan SBCs. After the TSGAC reported the results of this review to CMS, the agency offered trainings to QHP issuers and state regulators regarding SBCs prepared for Z-CSV and L-CSV plans.

Disappointingly, a re-review of the eight Z-CSV and eight L-CSV SBCs examined in the 2018 review found that almost all of the previously identified inaccuracies persisted in 2019. These inaccuracies have the effect of depressing enrollment in Marketplace plans and resulting in eligible AI/ANs not securing the cost-sharing protections guaranteed to them in federal law. *As before, we would like to emphasize that the inaccuracies in the reviewed SBCs for 2019 are more than a paper failing, as these inaccuracies have been found to mirror incorrect application of cost-sharing protections for AI/AN enrollees in Marketplace coverage.*

Findings

The TSGAC conducted a re-review of two Indian-specific SBCs for eight QHPs offered across four states in 2019 and compared the results with the results of the 2018 review. In both years, the TSGAC reviewed SBCs for bronze-level plans, as bronze-level coverage is the preferred option for AI/ANs eligible for the comprehensive Indian-specific cost-sharing protections.⁹ The findings are detailed in Attachment A: Analysis of SBCs for Zero and Limited Cost-Sharing Variations of Sample Marketplace Bronze Plans; Selected States, 2018 and 2019.¹⁰

Key findings from the re-review of a sampling of SBCs include:

- In general, the Z-CSV plan SBCs remain comprehensive and accurate, but the L-CSV plan SBCs continue to have several inaccuracies.

⁷ The 2016 Notice of Benefit and Payment Parameters was issued on February 27, 2015.

⁸ CCIIO required issuers to use the new SBC templates and associated documents for the 2018 coverage year. See the 3/11/2016 CCIIO FAQ at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQS-30_final-3-11-16.pdf.

⁹ Individuals eligible for the Indian-specific cost-sharing protections can enroll in a bronze-level plan and still receive the cost-sharing protections. For the general population, individuals must enroll in a silver-level plan to receive the partial cost-sharing protections available to those who have a household income at or less than 250% of the federal poverty level (FPL) and who are eligible for premium tax credits.

¹⁰ Web links to the reviewed SBCs are included in Attachment A.

- As was found in the 2018 review, there is no consistency in the labeling of the SBCs to indicate that an SBC is for a Z-CSV or L-CSV plan, and several SBCs have no designation indicated on the front page of the SBC in this regard; only one of the eight QHP issuers made an effort to address this issue in 2019.¹¹
 - The use of the term “300%” as an SBC descriptor for the L-CSV could be misleading, as eligibility for L-CSV plans extends to AI/ANs of any income level (and without regard to whether the AI/AN qualifies for premium tax credits).
- In the series of terms that are defined in the SBC, a definition of AI/ANs (for purposes of eligibility for the Indian-specific cost-sharing protections) still is not included.¹²
- In one Z-CSV plan SBC, the SBC still indicates “no charge” when using an IHCP but “not covered” when receiving services from a non-IHCP.¹³ Under a correct application of the Z-CSV protections, “no charge” for cost-sharing applies whether an enrollee is seen at an IHCP or non-IHCP.¹⁴
- At least one L-CSV plan SBC continues to indicate that cost-sharing protections apply to services received at IHCPs (when the IHCP is in-network) and not to services received at non-IHCPs with a referral from an IHCP (or at out-of-network IHCPs).¹⁵
- Three of the L-CSV plan SBCs still do not accurately describe the protections from payment of deductibles. The L-CSV plan SBCs should indicate that the Indian-specific cost-sharing protections include payment of deductibles, as well as other types of patient cost-sharing.¹⁶
- One L-CSV plan SBC still incorrectly indicates, on pages 1-4, that cost-sharing payments are required, regardless of whether services are received at IHCPs or at non-IHCPs with a referral; however, the bottom of page 6 includes the following note:

"If you are a Native American enrolled on this plan and receive services directly from the Indian Health Service, Indian Tribe, Tribal Organizations, or Urban Indian Organization, or through referral under the contract health services, the services will not be subject to any Deductible, Co-payments, or Co-insurance."¹⁷

For clarity, the end note should be included as a note on all pages, or the tables should be revised to indicate in each cell that cost-sharing is waived at IHCPs or at non-IHCPs with IHCP referral.

¹¹ New Mexico Health Connections changed the SBC descriptor for its Z-CSV and L-CSV plans, respectively, from “Zero CSR” to “AI/AN Zero” and from no designation to “AI/AN Limited.”

¹² Terms are defined in a linked Glossary Health Coverage and Medical Terms.

¹³ See footnote 6 in Attachment A.

¹⁴ However, “balance billing” charges might occur if an out-of-network provider does not accept the combined plan payment and patient cost-sharing as payment in full and charges an additional amount to the patient.

¹⁵ See footnote 9 in Attachment A.

¹⁶ For example, the SBC for the “Montana Health CO-OP: CONNECTED CARE BRONZE NALCS” (L-CSV) plan repeatedly states that enrollees must pay a deductible, and the SBC for a Molina bronze plan offered in New Mexico indicates that the deductible is eliminated only when enrollees are seen at an IHCP. Neither of these SBCs indicates that deductibles are waived at non-IHCPs with referral from an IHCP. Also, see footnote 11 in Attachment A.

¹⁷ See footnote 3 in Attachment A.

- Some L-CSV plan SBCs continue to exclude (intentionally or through oversight) certain services from the Indian-specific cost-sharing protections,¹⁸ despite the fact that the protections apply to all covered essential health benefits (EHBs).
- With regard to the “Coverage Examples,” some of the SBCs still present the net estimated out-of-pocket (OOP) costs assuming the patient received services at an IHCP or at a non-IHCP with a referral; other SBCs continue to present net estimated OOP costs assuming no benefit from the Indian-specific cost-sharing protections.¹⁹

Based on these findings, the TSGAC makes the following recommendations to CCIIO:

1. Contact individual health plan issuers identified in the report, inform them of the deficiencies in their SBCs, and educate them on the need to act rapidly to correct these deficiencies; and
2. Given the amount of time that certain health plan issuers have posted inaccurate descriptions of the Indian-specific cost-sharing protections in their SBCs, conduct a review of the operations of these issuers to determine if they have applied the L-CSVs correctly and completely, and, if they have not, require them to make whole individual AI/AN enrollees for any erroneous cost-sharing expenditures made.

In addition, based on continued findings, the TSGAC renews the following recommendations to CCIIO:

- In sub-regulatory guidance, clarify which governmental agency has lead responsibility for reviewing the SBCs, depending on the type of Marketplace, and indicate that CCIIO will enforce requirements in the absence of adequate lead-party oversight.
- Indicate that reviews of SBCs are not performed merely to determine if SBC documents are posted at a live Web link but that a thorough evaluation of their content is required.
- Although the Z-CSV and L-CSV SBC templates are offered as a guide to issuers and the specific language contained in the templates are not mandated for use, in reviewing issuer SBCs, recommend specific language to correct inaccuracies or confusing descriptions.
- Establish consistent descriptors to place in the header on the front page of each Indian-specific SBC—such as (1) “AI/AN 02 CSV” and “AI/AN 03 CSV,” (2) “AI/AN Z-CSV” and “AI/AN L-CSV,” or (3) “AI/AN Zero” and “AI/AN Limited”—and through a link to the “Glossary of Health Coverage and Medical Terms,” define the descriptors.
- Through a link to the “Glossary of Health Coverage and Medical Terms,” indicate that “AI/AN” eligibility for the Z-CSV and L-CSV plans, in part, is limited to “an enrolled Tribal member in a federally-recognized Tribe or a shareholder in an Alaska Native regional or village corporation.”
- Require issuers to present the net out-of-pocket costs in the Coverage Examples to reflect application of the Indian-specific cost-sharing protections (*i.e.*, assuming enrollees receive services from an IHCP or from a non-IHCP through a referral from an IHCP) and insert a note indicating that cost-sharing might be greater if seen at a non-IHCP without referral from an IHCP.

¹⁸ See footnotes 7 and 10 in Attachment A.

¹⁹ See footnotes 2a and 2b in Attachment A.

- For example, an SBC prepared by Blue Cross Blue Shield of New Mexico for an L-CSV plan correctly states: “Note: These numbers assume the patient received care from an IHCP provider or with IHCP referral at a non-IHCP. If you receive care from a non-IHCP provider without a referral from an IHCP your costs may be higher.”
- Revise the CCIIO Z-CSV and L-CSV SBC templates, as appropriate, based on the review of existing SBCs.

Conclusion

Thank you for the opportunity to raise these concerns. 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. If you have any questions or wish to discuss these issues further, please contact me at (860) 862-6192 or via e-mail at lmalerba@moheganmail.com.

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, Acting Director, Office of Tribal Self-Governance, IHS
TSGAC Members and Technical Workgroup

Attachment: Analysis of SBCs for Zero and Limited Cost-Sharing Variations (Z-CSVs and L-CSVs) of Sample Marketplace Bronze Plans; Selected States, 2018 and 2019

**ATTACHMENT A: Analysis of Summaries of Benefits and Coverage (SBCs) for Zero and Limited Cost-Sharing Variations (Z-CSVs and L-CSVs)
of Sample Marketplace Bronze Plans; Selected States, 2018**

State	Issuer	Sample Bronze Plan	Plan Type	SBC Analysis							
				Z-CSVs				L-CSVs			
				CSV Designation in Plan Name ⁸	No Deductible Indicated	No Copays/ Coinsurance Indicated	Accurate Coverage Examples	CSV Designation in Plan Name ⁸	No Deductible Indicated (for Services Received at IHCPs or Non-IHCPs with Referral)	No Copays/ Coinsurance Indicated (for Services Received at IHCPs or Non-IHCPs with Referral)	Accurate Coverage Examples
Alaska	Premera Blue Cross	Preferred Plus Bronze 5250 HSA	PPO	AI/AN	Yes	Yes	Yes	AI/AN 300%	No ¹¹	Only at In-Network IHCPs ⁹	No ^{2a}
Montana	BC BS of Montana	Blue Preferred Bronze PPO 201	PPO	None	Yes	Yes	Yes	None	Yes	Not stated for OPDs ⁷	Yes ¹
	Montana Health CO-OP	Connected Care Bronze	PPO	NAZCS	Yes	Yes	Yes	NALCS	No	No	No ^{2b}
	PacificSource	PSN Bronze HSA 6550	PPO	(0)	Yes	Yes	Yes	(AI)	Yes ³	Yes ³	No ^{2b}
New Mexico	BC BS of New Mexico	Blue Community Bronze HMO 201	HMO ⁴	None	Yes	Only at IHCPs ⁶	Yes	None	Yes	Not stated for OPDs ⁷	Yes ¹
	Molina	Molina Marketplace Bronze	HMO ⁴	Molina AI/AN Zero Plan	Yes	Yes	Yes	Bronze AI/AN Limited Cost Sharing	Only at IHCPs	Only at In-Network IHCPs ⁵	Yes
	New Mexico Health Connections	Care Connect Bronze Plus	HMO ⁴	Zero CSR	Yes	Yes	No ^{2a}	None	Yes	Only at IHCPs	Yes ¹
Oklahoma	BC BS of Oklahoma	Blue Preferred Bronze PPO 206	PPO	None	Yes	Yes	Yes	None	Yes	Most services ¹⁰	Yes ¹

Notes:

¹ This SBC correctly (1) calculates the patient cost-sharing assuming application of the LCSV protections and (2) indicates that the coverage examples assume the services are received at IHCPs or at non-IHCPs with a referral and that costs to plan enrollees could increase if services are received at non-IHCPs without a referral.

^{2a} This SBC presents costs in the Coverage Examples as if there is no application of the LCSV protections. (To correct: (1) The Coverage Examples should be changed to reflect application of the LCSV protections; and (2) a footnote should be added stating "The coverage examples assume the services are received at IHCPs or at non-IHCPs with a referral and that costs to plan enrollees could increase if services are received at non-IHCPs without a referral.)

^{2b} In the Coverage Examples, this SBC presents patient cost-sharing as if the LCSV protections are not added. And, this SBC incorrectly indicates in a footnote that the coverage examples assume the services are received at IHCPs or at non-IHCPs with a referral and that costs to plan enrollees could increase if services are received at non-IHCPs without a referral. (To correct: The footnote should remain and the Coverage Examples should be changed to reflect application of the LCSV protections.)

³ The tables in this SBC indicate cost-sharing for services, regardless of whether they are received at IHCPs or at non-IHCPs with a referral; however, the bottom of page 6 (last page) includes the following note: "If you are a Native American enrolled on this plan and receive services directly from the Indian Health Service, Indian Tribe, Tribal Organizations, or Urban Indian Organization, or through referral under the contract health services, the services will not be subject to any Deductible, Co-payments, or Co-insurance."

⁴ Only HMOs are available in the New Mexico Marketplace. These plans generally have no out-of-network coverage.

⁵ For New Mexico Marketplace plans, Molina considers all IHCPs "in-network," regardless of whether they appear in the plan provider directory.

⁶ Incorrectly indicates that health services are only covered at IHCPs.

⁷ For pharmacy services, does not include the statement "Cost sharing waived at non-IHCP with IHCP referral" which is indicated for other services, such as physician services and tests. As such, incorrectly communicates that LCSV protections do not apply to prescription drugs.

⁸ These SBC documents typically lack a descriptor on page 1 of the SBC labeling the document as the SBC for the 02/ZCSV or 03/LCSV. In addition, "AI/AN" needs to be defined through a live weblink (as are other terms used in the SBC); could be defined as "American Indians and Alaska Natives (AI/ANs) are defined under the Affordable Care Act as enrolled Tribal members and shareholders in Alaska Native regional and village corporations."

⁹ Incorrectly states that co-insurance applies if receiving services at a non-IHCP. Could be remedied by adding "Cost sharing waived at non-IHCP with referral from IHCP."

¹⁰ For "Preventive care/screening/immunizations", a 30% co-insurance is indicated at non-IHCP, non-participating providers. Could be remedied by adding "Cost sharing waived at non-IHCP with referral from IHCP."

¹¹ SBC States that deductibles apply (without saying elimination of deductibles if seen at an IHCP or through referral from an IHCP. Could be remedied by adding "Deductibles do not apply at non-IHCP with referral from IHCP."

<u>State</u>	<u>Plan</u>	<u>CSV</u>	<u>Link</u>
Alaska	Preferred Plus Bronze 5250	Z-CSV	https://www.premera.com/documents/042178_2018.pdf
		L-CSV	https://www.premera.com/documents/042179_2018.pdf
Montana	Blue Preferred Bronze PPO	Z-CSV	https://www.bcbsmt.com/sbc/2018/MT0550040-02.pdf
		L-CSV	https://www.bcbsmt.com/sbc/2018/MT0550040-03.pdf
	Connected Care Bronze	Z-CSV	https://www.mhc.coop/wp-content/uploads/2018/2018_MT_Native_American_Connected_Care_BRZ_NAZCS_SBC.pdf
		L-CSV	https://www.mhc.coop/wp-content/uploads/2018/2018_MT_Native_American_Connected_Care_BRZ_NALCS_SBC.pdf
	PSN Bronze HSA 6550	Z-CSV	https://www.pacificsource.com/2018/SBC/23603MT0290004-02.pdf
L-CSV		https://www.pacificsource.com/2018/SBC/23603MT0290004-03.pdf	
New Mexico	Blue Community Bronze HN	Z-CSV	https://www.bcbsnm.com/sbc/2018/NM0390079-02.pdf
		L-CSV	https://www.bcbsnm.com/sbc/2018/NM0390079-03.pdf
	Molina Marketplace Bronze	Z-CSV	http://www.molinahealthcare.com/members/nm/en-US/PDF/Marketplace/summary-of-benefits-bronze-zero-2018.pdf
		L-CSV	http://www.molinahealthcare.com/members/nm/en-US/PDF/Marketplace/summary-of-benefits-bronze-lcs-2018.pdf
	Care Connect Bronze Plus	Z-CSV	http://mynmhc.org/care-connect-bronzeplus-0-hmo-ind-2018.pdf
L-CSV		http://mynmhc.org/care-connect-bronzeplus-lim-hmo-ind-2018.pdf	
Oklahoma	Blue Preferred Bronze PPO	Z-CSV	https://www.bcbsok.com/sbc/2018/OK0320093-02.pdf
		L-CSV	https://www.bcbsok.com/sbc/2018/OK0320093-03.pdf