

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

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April 11, 2018

Rear Admiral Michael Weahkee
Acting Director
Indian Health Service
Department of Health and Human Services
5600 Fishers Lane
Mail Stop: 08E86
Rockville, MD 20857

Chairman W. Ron Allen
Tribal Technical Advisory Group to the
Centers for Medicare and Medicaid Services
1033 Old Blyn Highway
Sequim, WA 98382

RE: Recommendations for Improved Communication on Special Rule for Family Policies to AI/AN Marketplace Applicants to Prevent Loss of Comprehensive Indian-Specific Cost-Sharing Protections

Dear Acting Director Weahkee and Chairman Allen:

On behalf of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC), I write to bring your attention to the significant number of American Indians and Alaska Natives (AI/ANs) who enroll in health plans through the Health Insurance Marketplace but do not receive the comprehensive Indian-specific cost-sharing protections guaranteed to them under the Affordable Care Act (ACA).¹ Specifically, the TSGAC has concerns that eligible AI/ANs who are in families with non-eligible individuals (e.g., non-AI/ANs) do not receive adequate notice about the need to enroll in a different plan than their non-Indian family members to secure these cost-sharing protections. This lack of notice likely has led to thousands of AI/ANs receiving only the partial cost-sharing reductions (CSRs) available to the general population (or no CSRs at all), rather than the comprehensive protections for which they would otherwise qualify.

In 2017 alone, thousands of AI/AN Marketplace enrollees who qualified for the Indian-specific CSRs did not receive them, potentially because in many cases these enrollees were not aware that they needed to enroll in a different plan than their family members who were not eligible for these protections. To help address this issue, the TSGAC requests modifications to on-screen notices that appear during the Marketplace (HealthCare.gov) application process to ensure that AI/ANs understand fully the implications of enrolling family members in the same or different plans with respect to their eligibility for cost-sharing protections.

The TSGAC recognizes and appreciates the past efforts of the Centers for Medicare and Medicaid Services (CMS) to ensure that eligible AI/ANs receive the comprehensive Indian-specific CSRs to which they are entitled, but we believe that the agency can take additional steps to protect AI/ANs. The TSGAC looks to continue to support TTAG as it works with CMS to advance these recommendations.

¹ The comprehensive Indian-specific cost-sharing protections are available to individuals enrolled in a federally-recognized Tribe or shareholders in an Alaska Native village or corporation.

Background

Section 1402(d) of the ACA provides critically important CSRs for AI/ANs who enroll in Marketplace plans. These Indian-specific cost-sharing protections—under which AI/ANs who meet the ACA definition of Indian pay no deductibles, coinsurance, or copayments when receiving essential health benefits—serve as one means of upholding the federal trust responsibility to AI/ANs. Under sections 1402(d)(1) and (d)(2), eligible AI/ANs can enroll in either a zero or limited cost-sharing plan, depending on their income level and eligibility for premium tax credits (PTCs).² The ACA also provides general cost-sharing protections for individuals who have a household income of up to 250% of the federal poverty level (FPL) and enroll in a silver-level Marketplace plan.³

In determining eligibility for (Indian-specific or general) cost-sharing protections, the ACA includes a special rule for families whose members enroll in the same Marketplace plan (special rule for family policies). Under this rule, as implemented by federal regulations at 42 CFR 155.305(g)(3), “To the extent that an enrollment in a QHP in the individual market offered through an Exchange under a single policy covers two or more individuals who, if they were to enroll in separate individual policies would be eligible for different cost sharing, the Exchange must deem the individuals under such policy to be collectively eligible only for the category of eligibility last listed below for which all the individuals covered by the policy would be eligible.” As such, if an AI/AN who is eligible for the Indian-specific CSRs enrolls in a Marketplace plan with a family member who is not eligible, the AI/AN would not receive the comprehensive cost-sharing protections to which he or she is otherwise entitled.

Discussion

A lack of understanding among AI/AN Marketplace enrollees about the special rule for family policies likely has led to many AI/ANs losing access to the comprehensive Indian-specific cost-sharing protections. According to a recent CMS report on AI/AN Marketplace enrollment in 2017, of the 32,778 AI/ANs who enrolled in plans and were determined to be qualified for the Indian-specific CSRs, only 28,213 (86%) actually received these protections.⁴ Nearly 9% (2,819) of these AI/AN Marketplace enrollees received only the general CSRs, and more than 5% of these enrollees (1,746) received no CSRs at all, the report found (See the attached TSGAC memo titled “American Indian and Alaska Native (AI/AN) Marketplace Enrollment and Cost-Sharing Payments, as of November 2017” for more information.)

Based on a review of the Marketplace (HealthCare.gov) application process, AI/ANs who qualify for the comprehensive Indian-specific CSRs do not receive adequate notice that, if they are planning to enroll with family members who do not qualify for these protections, they must enroll in a different plan to secure these protections (as specified in the special rule for family policies). The Marketplace application process currently provides no indication of the implications of the special rule for family policies until the plan selection stage, at which point the following notice appears: “Based on your application, we put your household members into the groups below. You can

² Enrollees in zero cost-sharing plans have no cost-sharing, regardless of where and how they receive health care services. Enrollees in limited cost-sharing plans have no cost-sharing when they receive health care services through an IHS, Tribe or Tribal organization, or urban Indian organization (I/T/U) facility, as well as through an I/T/U referral to a non-I/T/U provider.

³ These general protections require QHP issuers to reduce cost-sharing in their standard silver plans, which have an AV of 70%, to meet a higher AV: 94% for individuals up to 150% FPL, 87% for those from 151-200% FPL, and 73% for those from 201-250% FPL.

⁴ The figures include AI/AN Marketplace enrollment in states with a Federally-Facilitated Marketplace, State-Based Marketplace on the Federal Platform, or State-Partnership Marketplace (all states using the HealthCare.gov platform). The figures exclude AI/AN Marketplace enrollment in states with a State-Based Marketplace.

choose one plan for everyone, a separate plan for each person, or some other grouping. You'll select a plan for each group one at a time." However, no explanation is given about why family members might want to enroll in separate Marketplace plans or the ramifications of enrolling the same plan.

Recommendations

In response to the concerns outlined above, the TSGAC believes that more effective communication is needed to prevent enrollment of AI/ANs who are eligible for the comprehensive Indian-specific CSRs into the same Marketplace plan as family members who are not eligible, as this would block access to these protections for AI/ANs.

The TSGAC urges the Tribal Technical Advisory Group (TTAG) to work with CMS to modify notification script(s) that appear during the Marketplace (HealthCare.gov) application process to provide improved notice of the special rule for family policies to AI/AN Marketplace enrollees. Specifically, this notice should explain the rationale for providing AI/AN Marketplace applicants with the option to enroll family members in the same or different plans and should clearly indicate the impact of enrolling family members in the same plan (*i.e.*, the loss of eligibility for the comprehensive CSRs for all AI/AN family members).

Further, the TSGAC requests TTAG to work with CMS to encourage Marketplaces that do not use the HealthCare.gov platform to include a similar notice in their application processes.

Conclusion

Thank you for the opportunity to express our concerns about access to the comprehensive Indian-specific CSRs for eligible AI/ANs. As always, we appreciate the continuing efforts of TTAG--and of CMS—to ensure that eligible AI/ANs receive these cost-sharing protections. 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: Jennifer Cooper, Acting Director, Office of Tribal Self-Governance, IHS
Terri Schmidt, RN, Acting Director, Office of Resource Access & Partnerships, IHS
TSGAC Members and Technical Workgroup

Attachment: TSGAC Brief, "American Indian and Alaska Native (AI/AN) Marketplace Enrollment and Cost-Sharing Payments, as of November 2017"