IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

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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 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 survey conducted by the TSGAC. The TSGAC reviewed a sample of Summary of Benefits and Coverage (SBC) documents 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 reviewed sixteen Indian-specific SBCs describing bronze-level qualified health plans (QHPs) offered by eight issuers across four states. 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.

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 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.[2] The Departments updated these

[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 with 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 others 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] 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.

regulations and the general SBC template in a final rule issued on June 6, 2015.[3] 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 zero cost-sharing variation (Z-CSV) and limited cost-sharing variation (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.[4]

The TTAG raised similar concerns in an earlier May 29, 2014, letter to the Center for Consumer Information and Insurance Oversight (CCIIO) at CMS, 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.[5]

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,[6] 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.[7]

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.

The TSGAC, in response to these deficiencies, decided to conduct a larger sampling of SBCs to determine the extent of the problems. Disappointingly, from this review of eight Z-CSV and eight L-CSV SBCs, inaccuracies in the L-CSV Indian-specific SBCs appear somewhat common, although much less so for Z-CSV plans. 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. *We would like to emphasize that the inaccuracies in the reviewed SBCs 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.*

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[3] 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.

[4] 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.

[5] 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.

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

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

Findings

The TSGAC conducted a review of two Indian-specific SBCs for eight QHPs offered across four states. 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.[8] 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.[9]

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

- In general, the Z-CSV plan SBCs are comprehensive and accurate, but the L-CSV plan SBCs have several inaccuracies.
- 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.
    - 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) is not included.[10]
- In one Z-CSV plan SBC, the SBC indicates "no charge" when using an IHCP but "not covered" when receiving services from a non-IHCP.[11] 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.[12]
- At least one L-CSV plan SBC indicates 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).[13]
- Three of the L-CSV plan SBCs do not accurately describe the protections from payment of deductibles. The L-CSV plan SBCs should indicate that the Indian-specific cost-

[8] 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.

[9] Web links to the reviewed SBCs are included in Attachment A.

[10] Terms are defined in a linked Glossary Health Coverage and Medical Terms.

[11] See footnote 6 in Attachment A.

[12] 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.

[13] See footnote 9 in Attachment A.

sharing protections include payment of deductibles, as well as other types of patient cost-sharing.[14]

- One L-CSV plan SBC 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 (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."[15]

  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.

- Some L-CSV plan SBCs exclude (intentionally or through oversight) certain services from the Indian-specific cost-sharing protections,[16] despite the fact that the protections apply to all covered essential health benefits (EHBs).

- With regard to the "Coverage Examples," some of the SBCs 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 present net estimated OOP costs assuming no benefit from the Indian-specific cost-sharing protections.[17]

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

- Determine which governmental agency is responsible for reviewing the SBCs, depending on the type of Marketplace, and clarify this in sub-regulatory guidance.

- 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 the content of SBCs 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.

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[14] 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.

[15] See footnote 3 in Attachment A.

[16] See footnotes 7 and 10 in Attachment A.

[17] See footnotes 2a and 2b in Attachment A.

- Establish consistent descriptors to place in the header on the front page of each Indian-specific SBC—such as "AI/AN 02 CSV" and "AI/AN 03 CSV" or "AI/AN Z-CSV" and "AI/AN L-CSV "—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.
    - For example, an SBC prepared by Blue Cross Blue Shield of New Mexico for an L-CSV plan 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 provide 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,

Lynn Malerba

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