

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

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Submitted via <http://www.regulations.gov>.

February 28, 2015

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
Room 445-G
200 Independence Avenue SW
Washington, D.C. 20201

RE: Comments on Summary of Benefits and Coverage and Uniform Glossary Proposed Rule (CMS-9938-P)

This letter is sent on behalf of the Tribal Technical Advisory Group (TTAG) to the Centers for Medicare and Medicaid Services (CMS) to comment on the Notice of Proposed Rulemaking issued by CMS¹ on proposed regulations regarding the Summary of Benefits and Coverage (SBC) and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act (“Proposed Rule”).²

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), Indian Tribes, tribal organizations, and urban Indian organizations (referred to as I/T/Us, Indian health care providers, or IHCPs).³

Thank you for the opportunity to comment on the Proposed Rule.

I. Background.

This Proposed Rule,⁴ issued by the Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments), contains updated regulations regarding the SBC and the uniform glossary for group health plans and health coverage in the group and individual

¹ The Proposed Rule also is being issued by the Department of the Treasury, Internal Revenue Service as REG-145878-14/RIN 1545-BM53 and by the Department of Labor, Employee Benefits Security Administration as RIN 1210-AB69.

² 79 *Federal Register* 78578.

³ In this letter, the term “American Indians and Alaska Natives” is used to describe all persons eligible for services from an Indian health care provider. The term “Indian” is used to describe individuals who meet the definition of Indian as found in the Affordable Care Act.

⁴ CMS-9938-P/REG-145878-14, “Summary of Benefits and Coverage and Uniform Glossary.” See 79 *Federal Register* 78578 at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-30243.pdf>.

markets under the Affordable Care Act (ACA). It proposes changes to the 2012 final regulations⁵ that implemented the disclosure requirements under section 2715 of the Public Health Service Act (PHS Act)⁶ to help plans and individuals better understand their health coverage, as well as to gain a better understanding of other coverage options for comparison. In addition, it proposes changes to documents required for compliance with section 2715 of the PHS Act, including a template for the SBC, instructions, sample language, a guide for coverage example calculations, and the uniform glossary.

In conjunction with this Proposed Rule, the Departments issued a new set of proposed SBC templates, instructions, an updated uniform glossary, and other documents.

This proposed rule does not include any Indian-specific provisions, *per se*.

TTAG previously submitted recommendations in response to CMS-9944-P—and CMS agreed—on the need for an SBC for each of the Indian-specific cost-sharing variations that a plan is required to offer (*i.e.*, the “limited” cost-sharing variation and the “zero” cost-sharing variation).

II. Recommendations

TTAG continues to support the addition of the requirement (as proposed in CMS-9944-P) for issuers to prepare and make available SBCs for each Indian-specific cost-sharing variation. We expect, though, that some modifications to the SBC template may be needed as issuers work to incorporate the required plan information into SBCs for the two Indian-specific cost-sharing variations. The current template format might not fully match the information that will need to be added to the SBC for the “limited” and “zero” cost-sharing variations.

Recommendation 1: Review the SBC template to determine if modifications are needed to accommodate the information necessary for the “limited” and “zero” cost-sharing variations and engage with tribal representatives on this review.

In addition, in the past, tribal representatives have found some of the SBCs that were voluntarily prepared by some qualified health plan (QHP) issuers to describe the Indian-specific cost-sharing variations were not entirely accurate. For example, some issuers have not uniformly applied the Indian-specific cost-sharing protections to both in-network and out-of-network providers, as some issuers have (incorrectly) understood the Indian-specific cost-sharing protections to apply only to Indian health care providers and to in-network providers.

Recommendation 2: TTAG encourages CMS to review the SBCs that are prepared by QHP issuers for the Indian-specific cost-sharing variations to assess the accuracy of the application of the “limited” and “zero” cost-sharing variations.

⁵ CMS-9982-F/REG-140038-10, “Summary of Benefits and Coverage and Uniform Glossary.” See 77 *Federal Register* 8668 at <http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3228.pdf>.

⁶ Section 2715 of the PHS Act directs the Departments to develop standards for use by a group health plan and a health insurance issuer offering group or individual health coverage in compiling and providing an SBC that “accurately describes the benefits and coverage under the applicable plan or coverage.” Section 2715 also calls for the “development of standards for the definitions of terms used in health insurance coverage.”

Finally, because there has been confusion on the part of some QHP issuers on the scope and effect of the “limited” and “zero” cost-sharing variations, TTAG makes one additional recommendation.

Recommendation 3: TTAG recommends that CMS provide sample language—for use by QHP issuers in the preparation of the SBCs—to describe how the “zero” and “limited” cost-sharing variations impact deductibles, co-insurance, *etc.*, for in-network and out-of-network providers.

If this and the two prior recommendations are adopted by CMS, we believe there will be: a substantial improvement in providing the statutory protections available to AI/ANs, a reduction in confusion by enrollees, and an increase in efficiency in preparing and implementing the SBCs for the two Indian-specific cost-sharing protections.

III. Conclusion

Again, we appreciate the opportunity to comment on the Proposed Rule. We believe our recommendations, while narrow in scope, will make a measureable impact on the accuracy and efficiency of implementation of the Indian-specific cost-sharing protections.

Please do not hesitate to contact me at rallen@jamestowntribe.org for additional information or clarification.

Sincerely,



W. Ron Allen
Chair, TTAG

Cc: Kitty Marx, Director, CMS Division of Tribal Affairs