

Responses to Comments Received Federal Register Notice on Revised CMS-R-53 and Instructions

CMS received two comments on the February 14, 2014, notice on the proposed changes to the form CMS-R-53 that reflect the changes required by new cost sharing rules published on July 15, 2013 (FR 78 42307), effective January 1, 2014. The commenters were the National Health Law Program (NHELP) and the Tribal Technical Advisory Group (TTAG)

Cost Sharing for Non-Emergency use of the Emergency Department (ED)

One commenter felt that the question on PDF template G2a asking if the state charges the same cost sharing for non-emergency use of the ED to otherwise exempt individuals as it does to non-exempt individuals implies that higher than nominal cost sharing is allowed to be charged to otherwise exempt individuals. The commenter suggested revising the template to include the statement, “The cost sharing charges for [non-preferred drugs or nonemergency ED use] imposed on otherwise exempt individuals are the same as the nominal charges imposed on non-exempt individuals *with incomes below 100% FPL*”

CMS Response

We appreciate the comment but will not be revising the template to add this statement. PDF template G2a only applies to nominal cost sharing that the state imposes. The purpose of this question is to reduce the need for states to repeat the information if they intend to apply the same cost sharing for non-emergency use of the ED to otherwise exempt individuals as they do to non-exempt individuals. CMS will review state plan amendments (SPAs) submitted by states to ensure consistency with statute and regulations, and will ensure that states do not charge otherwise exempt individuals more than is allowed.

Beneficiary and Public Notice Requirements

One commenter suggested adding to the PDF template G1 a requirement that states post the cost sharing schedule on their Medicaid website.

CMS Response

CMS is not revising the template to require states to post their cost sharing schedule on the Medicaid website, because such a requirement would have to be done through rulemaking. In the July 15, 2013 final rule, we leave states with the discretion to determine the method of notifying beneficiaries and providers of the cost sharing requirements, as long as it is in a manner that ensures that affected applicants, beneficiaries and providers are likely to have access to the notice. We do suggest using the agency website as one form of providing this information, and many states do in fact post the schedule on their websites.

Enforceable Cost Sharing

One commenter indicated that CMS only asks for details about enforceable cost-sharing on the PDF template G2c, which collects information on “targeted” cost sharing. They are concerned that a state that does not impose targeted cost sharing might never see the requirement for additional details on its enforceable cost sharing.

CMS Response

The option for states to allow providers to require individuals to pay cost sharing as a condition for receiving items or services only applies to individuals with income over 100% of the FPL. The only way for a state to implement this option is through targeted cost sharing. Therefore there is only a need to have this question on the G2c PDF template.

Aggregate Cost Sharing Limits

One commenter noted that in states where a Managed Care Organization tracks each family’s incurred cost sharing, there may be additional premiums, copays or other cost sharing incurred by the family for Medicaid services not included in the MCO contract. The commenter suggested that the PDF template G3 be revised to require states to clearly delineate in its description of the tracking mechanism how the state and the MCO will combine MCO cost sharing with any cost sharing for carved out or additional services to satisfy the regulatory requirement.

CMS Response

The regulations at 42 CFR 447.56 are clear that the aggregate limit and tracking requirement apply to all Medicaid premiums and cost sharing imposed by the state. All premiums and cost sharing imposed by the state, regardless of whether they are tracked by an MCO, are described in the state plan, which allows CMS to ensure that all charges are accounted for in the aggregate limit and the state’s tracking mechanism. Therefore, CMS feels that the PDF template G3 as designed is sufficient to capture all relevant information to enforce the regulations.

Family Income and Medicaid Premiums

One commenter noted that the proposed templates do not include information collection related to premiums or the process states use to determine household size or income for purposes of imposing cost sharing.

CMS Response

These templates are only related to information that needs to be collected for cost sharing. CMS will be developing future templates to address premiums. States no longer have the discretion to determine what methodology they will use to determine household size or income for purposes of cost sharing; they must use MAGI methodologies. Therefore there is no need to collect this information in the state plan.

Exemptions for American Indians/Alaska Natives (AI/AN)

One commenter recommend that CMS work with tribal representatives to develop a template (or templates) of procedures that could be adopted by States that would implement and enforce the Indian-specific exclusions from cost sharing. The commenter also suggested that the templates should incorporate an option for states to accept self-attestation or electronic data matching to implement the exemption for Indians.

CMS Response

CMS does not believe there is a need to develop additional templates. PDF template G3 already incorporates everything the commenter is suggesting. Template G3 specifically asks states the how they identify Indians for purposes of the exemption from cost sharing, and provides examples of methods the state could use, including accepting self-attestation or using electronic methods. In addition, it includes a text box for states to describe any other methods that might use.

Medicaid Information Systems

One commenter recommended that State Medicaid information systems be modified to capture an identifier for persons determined to be eligible for the Indian-specific cost-sharing protections.

CMS Response

Modification of state Medicaid information systems is outside the scope of this notice of information collections. However, on the PDF template G3, CMS does provide an option for states to use their MMIS as one method for implementing the Indian exemption. We note, that claims information alone will likely not capture services received by non-Indian providers through a contract health service referral so states will likely have to use additional methods to effectively implement the Indian exemption.