Level III Low-Income Cost Sharing In Plans with Deductibles Less Than the Statutory Level III Amount

Q: Please clarify the lesser of calculation used to determine Level III Low Income (see table below) cost sharing in a plan with a deductible less than the statutory Level III deductible ($50 in coverage year 2006). Should the lesser of calculation include the $50 deductible, thereafter basing the lesser of calculation on 15% of any remaining gross covered drug cost for the prescription event? We are asking how to use the lesser of test to calculate and report Level III low-income cost sharing in plan benefit packages (PBPs) with deductibles that are less than the statutory amount.

Statutory low-income cost sharing subsidy reductions, 2006

Level of low-income subsidy	Income category (FPL)	Deductible	Initial coverage	Coverage gap	Catastrophic coverage
Level I	≤100% and full dual	$0	$1 generic $3 brand	$1 generic $3 brand	$0
Level II	<135% or >100% and full dual	$0	$2 generic $5 brand	$2 generic $5 brand	$0
Level III	**<150%**	**$50**	**15% co-insurance**	**15% co-insurance**	**$2 generic $5 brand**
Institutionalized full dual	Full-benefit dual eligible	$0	$0	$0	$0

A: The Level III low-income cost sharing shall consist of whichever is less: the statutory Level III deductible or the deductible under the PBP in which the beneficiary is enrolled. We begin by reviewing what the lesser of test is. Then we clarify the rules for using it to calculate and report PDEs for Level III low-income subsidy beneficiaries. Finally, we provide examples of calculating and reporting.

The formula for determining low-income cost-sharing subsidy (LICS) amounts and cost sharing due from low income subsidy eligible beneficiaries is:

LICS Amount = Non-LI cost sharing - LI cost sharing

We refer to this formula as the LICS Amount formula. The non-low-income (non-LI) cost sharing is the amount due from a non-low income subsidy beneficiary for a given dispensing event under the PBP. The low-income (LI) cost sharing is the maximum allowable amount due under the statute from a low-income subsidy beneficiary for that same dispensing event (see table above).

- **Lesser Of Logic:** In accordance with statutory and regulatory provisions, if the applicable amount is greater than the amount of cost sharing that would be due under the PBP (standard or enhanced) for a beneficiary who is not low-income, the beneficiary is only responsible for the non-low-income cost-share (the lesser cost-sharing amount). In this guidance, we clarify that this logic shall be used in determining any deductible applicable to Level III beneficiaries as well as to all low-income co-pays and coinsurances.

Specifically, when PBP deductible < Level III deductible: The Part D final rule in 423.782(b)(2) states that the Level III low-income cost sharing is a 15% coinsurance "after the annual deductible under the plan" for Level III beneficiaries. Accordingly, in the LICS Amount formula, the Level III low-income cost sharing shall include whichever is less: the statutory Level III deductible or a lower deductible amount if provided under their PBP.

In sum, in the LICS formula and the lesser of test:

- Include the entire statutory Level III deductible when the PBP deductible ≥ the statutory Level III deductible ($50 in 2006).
- Include a partial Level III deductible equal to the PBP amount if the PBP deductible is < the statutory Level III deductible and > $0.
- Exclude the entire statutory Level III deductible when the PBP has a deductible = $0.

This rule applies to Level III low-income cost sharing in both basic and enhanced plans. Also note that year to date (YTD) total covered drug cost, not TrOOP cost, satisfies deductibles in Part D. Therefore, if the YTD gross covered drug cost ≥ the statutory Level III deductible amount, even if a third party payment or the lesser of test has reduced actual beneficiary liability below that amount, the beneficiary has met their Level III deductible.

The examples below show how to calculate Level III low-income cost-sharing in all three cases: when the PBP deductible ≥ statutory Level III deductible; when the PBP deductible is < the statutory Level III deductible but > zero; and in a zero deductible plan. For deductible plans, we show two claims to illustrate the calculations before and after the deductible is satisfied.

	PBP Provision	(a)	(b)	(c)	(d)	(e)	(f)
		PBP Deductible	**YTD Gross Covered Drug Cost**	**Negotiated Price**	**Non-LI PBP Cost Sharing**	**LI- III Maximum Cost Sharing**	**Actual Level III Cost Sharing: Lesser of (d) or (e)**
1A	Deductible (Defined Standard Plan)	$250.00	$0.00	$100.00	$100.00	$57.50[1]	$57.50
1B			$50.00	$100.00	$100.00	$15.00[2]	$15.00
2	No Deductible, $25 copay	$0.00	$0.00	$100.00	$25.00	$15.00[2]	$15.00
3A	Deductible < Level III, $25 copay	$40.00	$0.00	$100.00	$65.00[3]	$49.00[4]	$49.00[4]
3B			$40.00	$100.00	$25.00	$15.00[1]	$15.00

[1] $57.50 = $50.00 + (0.15 * $50.00)
[2] $15.00 = 0.15 * $100.00
[3] $65.00 = $40.00 + $25.00
[4] $49.00 = $40.00 + (0.15*60.00)