October 6, 2016

Secretary Burwell
Attention: CMS-9934-P
Centers for Medicare & Medicaid Services,
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Covered California comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018; CMS-9934-P (RIN 0938-AS95); Section 155.220(C)(1) **Direct Enrollment by Web-Based Entities**

Dear Secretary Burwell,

Covered California is submitting comments in response to the proposed regulations CMS-9934-P. The comments in this letter refer to HHS' proposals pertaining to direct enrollment through web-based entities (Section 155.220(c)(1)). Covered California has also submitted comments on the following additional areas: FFE user fee, standardized options and differential display, innovations in Qualified Health Plans, and proposals affecting the Small Business Health Options Program.

In the Proposed Department of Health and Human Services Notice of Benefit and Payment Parameters (NBPP) for 2018, the Department of Health and Human Services' (HHS) seeks comments on an enhanced direct enrollment pathway and new procedures and additional consumer protection standards for web-brokers and issuers. Although these proposals apply to the Federally-Facilitated Marketplace (FFM) and State-Based Marketplaces on the Federal Platform (SBM-FP), Covered California provides technical guidance and considerations for implementation as federal policy continues to evolve.

The proposal for the enhanced direct enrollment pathway would permit Web-Based Entities (WBEs) to allow consumers to remain on the website of the WBE for an eligibility determination, plan selection, and enrollment. In lieu of the double redirect process occurring today, CMS would permit WBEs to collect the required application data and transmit it to the FFM for an eligibility determination via back-end processes. In the context of the decisions CMS has already made, Covered California believes the move to an enhanced direct enrollment pathway via Eligibility and Verification as a Service (EVaaS) is a positive direction because it simplifies and enhances the user experience. Covered California, however, recommends that the FFE and other marketplaces look beyond the issues of mechanics of how WBEs could do direct enrollment and consider the benefits and risks of additional enrollment through WBEs in the context of their overall marketing and sales channel distribution strategy, health plans' cost structure for paying WBEs as part of their agent enrollment channel, and the IT and administrative costs for managing interfaces with WBEs.

Before commenting on these broader issues, Covered California provides comment on the specific elements of the proposed direct enrollment process.

The proposal requires that WBEs differentially display standardized plan options when they facilitate enrollment through an FFM or an SBE-FP that has implemented differential display. Similar to the proposal in the 2017 NBPP, this proposal does not delineate standards or expectations relative to the consumer experience and support provided by WBEs for consumers related to the health plan they chose, the specific product (where health plans offer multiple products) or the level of coverage (e.g., bronze, silver) – collectively referred to in this comment letter as the "choice architecture."

Covered California believes that having clear standards and expectations of WBEs' choice architecture is of critical importance to ensuring consumers are well served. In the absence of clear standards, consumers may experience confusing displays of health plan options, make less optimal plan and product choices, be routed to off-exchange products, or not get appropriate in-person support when it is needed. Having poor or confusing plan choice display runs the risk of resulting in smaller enrollment (lower effectuation rate) and a worse risk pool.

To the extent HHS allows for WBEs to process end-to-end enrollment, it should set clearly articulated high standards for the consumer choice architecture to be provided by WBEs and qualified health plan (QHP) issuers via direct enrollment vendor arrangements. There is considerable variation in WBEs' consumer plan choice experiences today and many services do not apply proven elements of plan choice decision support. For example, many web broker services do not offer choice architecture features that Covered California considers important:

1. The critical importance of choice architecture;
2. Appropriate staffing to support WBE post enrollment activities;
3. Enforce the requirement that WBEs fairly display the scope of products available; and
4. The validation of WBEs' and QHPs' plan choice and decision support services.

1. The Critical Importance of Choice Architecture—Plan Choice Decision Support Elements

Covered California believes that choice architecture is an absolutely critical part of consumers' experience when they are enrolling in coverage. The choice architecture can determine the extent to which a consumer picks the "best value plan" for their situation, maximizes their use of the federal Advanced Premium Tax Credit and Cost-Sharing subsidies, and how effectively the consumer is educated through their enrollment to be a more educated user of insurance -- which can have direct implications on fostering better retention, a vital component to ensuring a good risk mix over time. Given these concerns, which are generally relevant for consumers' plan-choices under any enrollment experience, HHS should consider requiring that WBE vendor products include the following elements:

- Elicit user preferences/needs – at a minimum, query user about interests in access to a particular provider and/or comparing provider networks;
- User-match-to-plans algorithm – prohibit the use of "lowest premium cost" plan sort default; require that user preferences are available to use (e.g., provider in-network, out-of-pocket cost estimate, formulary medication, HSA interest) and assure the plan sort default is based on consumer value;

- Default display should consider preferential display of standard patient-centered benefit designs and sort first by combined premium and out-of-pocket costs (which should lead to preferential display of cost-sharing reduction products);
- Provide a consolidated, all-plan provider directory to easily search for in-network providers;
- Provide a consolidated, all-plan formulary function to easily search for medication coverage;
- Present in standardized and prominent manner QHP quality ratings that include the QHP product global rating and enrollee experience rating;
- Out-of-pocket and total cost estimator – including premium paid after APTC and out-of-pocket – to provide an estimate of user's cost share for each QHP based on the consumer's likely utilization;
- Renewal experience that includes comparing currently enrolled QHP with alternatives; and
- Consumer plan selection and effectuation rates that are consistent with that of in-person assistance or call center rates.

2. Appropriate Staffing to Support WBE Post Enrollment Activities

The federal proposal also requires that WBEs engage in post enrollment services, such as resolving data mismatches for eligibility. This requirement is appropriate and important as WBEs are licensed agents who should be expected to fulfill these functions and reduce burden on a service center. To improve the rollout of this requirement, HHS should specify that WBEs commit to specific staffing and/or service level thresholds and standards such that consumers using the web service can access trained and competent online chat support, and telephone support. In order to support both enrollment and retention, WBEs should possess the capacity for and there should be the expectation that they fully support applicants and enrollees. One of the valid rationale's for using WBEs is to take workload and expense off of the federal or state-based call center and be equally effective in terms of consumer effectuation rates. This value proposition requires the FFE to put clear standards in place.

3. Enforce the Requirement that WBEs Fairly Display the Scope of Products Available

A valid concern about WBEs serving as direct enrollment sites is that they may present only off-Exchange products to non-subsidy eligible users unless the user opts-out and requests consideration of off-Exchange products only. Federal regulations require WBEs to display QHP information in a fair and impartial manner.[1] CMS has also issued guidance in which it expects that the sort order or sorting algorithm for QHPs will not steer a consumer to a particular QHP based on the WBE's financial considerations.[2] Although federal regulations prohibit WBEs from steering consumers, enforcing these provisions may prove difficult. Because of their local position, state-based marketplaces partnering with WBEs may be better positioned than the FFM to ensure that consumers view plan options in a fair and impartial manner.

Issuer-specific direct enrollment vendors are also required to present all marketplace plans for a given geography and not limit the QHPs to issuer-only products unless the user opts-out and requests consideration of only the QHP issuer's health plans. Though federal regulations provide consumers with the ability to withdraw from the process and use the Exchange website, the "opt-out" should also be monitored to ensure that consumers are informed about the potential availability of other plan options that may be lower cost.

[1] 45 CFR 155.220(c)(3).
[2] https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/agent-broker-5-1-2013.pdf

4. Validation of WBE/QHPs' Plan Choice Decision Support Service

HHS should adopt processes to ensure that direct enrollment vendors' plan choice decision support and WBE's service performs well by ensuring consumers are making an informed health plan choice. Among the processes that HHS should adopt are:

a. Check-list and review of required plan choice elements

HHS should adopt a "plan choice required elements" template to be completed by vendors seeking qualification. The direct enrollment vendor also should provide login credentials that HHS can use to directly validate the vendor's plan choice displays, tools, and other elements of their application.

b. Plan choice validation testing

HHS should adopt a "seal of approval" recognition standard that qualified direct enrollment vendors can use in their branding. The "seal of approval" should be awarded for those direct enrollment vendors whose plan choice applications have been validated using HHS approved or sponsored software. In the validation test, a sample of simulated consumers are entered into the enrollment vendor's application and hypothetical plan choices are made; these plan choices are evaluated against expected results based on a reference set of "informed plan choices" for those simulated consumers whose demographics are representative of the Marketplace enrollees.

c. Consumer plan choice experience monitoring data

HHS should adopt a plan choice experience reporting template to be completed and submitted at periodic intervals by the direct enrollment vendor. The plan choice template should capture two dimensions of plan choice experience:

i. Consumer plan choice experience to include HHS supplied standard questions (e.g., pop-up survey at close of session); and
ii. Web analytics that capture important aspects of the experience such as the median session time, use of key information elements, frequency of abandoned sessions by exit page, and etc.

Covered California currently deploys a multi-pronged sales and marketing strategy to attract, enroll and retain Californians across our diverse and large state. Entering the fourth coverage year, Covered California has enrolled over 2.8 million individuals cumulatively, an accomplishment that builds on significant investments in marketing, strong relationships with Certified Insurance Agents, Navigators, and other Enrollment Assisters, our contracted health plans, as well as robust choice architecture tools that help enrollees make informed health plan selections. Use of WBEs needs to be considered as part of the larger marketing outreach strategy.

HHS should also consider WBE services in the context of the value they add by increasing enrollment and reducing costs to the FFM call center – value that is paid for out of the commission payment made by contracted plans and incorporated in plans' overall premium. In this context, we present comments in two areas: 1) strategically assess WBEs in the context of the broader marketing and member retention effort; and 2) assess the upfront and ongoing IT and administrative costs prior to implementation.

1. Strategically Assess WBEs in the Context of the Broader Marketing and Member Retention Effort

When a marketplace is examines partnerships with WBEs, it should consider them through the lens of their overall marketing and sales channel distribution strategy. This requires closely examining the way WBEs harmonize or conflict with existing relationships with QHPs and agents, as well as the downstream impacts to consumers. Not all WBE business models are the same. As marketplaces assess opportunities to increase enrollment, a key value proposition for partnering with WBEs is based on the extent to which certain models can reach consumer segments at the point of decision-making that complements an exchange's own marketing efforts, such as individuals experiencing job transitions. In this capacity, a WBE might complement the efforts of a marketplace by providing additional membership, maximizing enrollment and ensuring a diverse risk mix.

On the other hand, there is potential for harm to a marketplace if a WBE cannibalizes sales that would have otherwise occurred directly through the marketplace. Such a scenario could result in higher acquisition costs for the marketplace and potential sales channel conflicts with QHPs, agents and brokers. When WBEs compete with the FFM for members who would have enrolled through the FFM otherwise, the WBE may compete with keyword search terms on Google and other search engines. This could drive up marketing costs for the marketplace that is attempting to reach the same customer. The net effect is that the FFM or SBM could potentially end up paying more in online marketing and competing for members they would have enrolled anyway. In addition, if these same individuals would have enrolled directly with the exchange QHPs may be incurring unwarranted agent commission expenses.

Given these significant implications, Covered California offers the following strategic sales and marketing considerations for marketplaces as they contemplate partnerships with WBEs:

a. Impact to Marketing Investments

While there is concern that WBEs may compete for members the marketplace would have enrolled through their own website, partnering with WBEs may be particularly suitable for exchanges with a limited marketing budget. These partnerships could enable marketplaces to extend their marketing investment by having WBEs target and enroll consumers that they may not be able to reach. It is important to recognize that the "marketing" done by WBEs is funded from plan commission payments and is reflected in total premiums charged.

b. Additional Sales Distribution Costs for QHPs

In order to participate in a state or federal marketplace, participating QHPs are assessed a user fee (e.g., the proposed 3.5% of premium in the FFM). If WBEs cannibalize enrollment that would have occurred on the Exchange's own website, this would increase costs for QHPs. On top of the user fee assessed by the marketplace and administrative costs incurred for monitoring and overseeing WBEs, QHPs would also pay additional distribution costs for insurance agent commissions.

Since QHPs are the suppliers of the products in the marketplaces, it is in the interest of a marketplace's long-term sustainability to incent the participation of QHPs. To ensure that a marketplace has competition among QHPs, it is imperative that the Exchange's sales

distribution mix (agents, Navigators, self-enrolled, service center) align with QHP strategies to maintain sustainable relationships that serve consumers.

Agents and WBEs play a valuable role in the marketplace and can offset exchange enrollment, retention and service center costs. The cost vs benefit, in light of the exchange's marketing and sales strategy, should be evaluated when considering sales WBE distribution costs and impacts to QHPs.

c. Potential to Create Sales Channel Conflict

The vast majority of insurance agent sales in exchanges is through local, in-person efforts. WBEs have the potential to create sales channel conflict with insurance agents who offer consumers local, in-person assistance but lack the technology and resources to participate in a WBE. WBEs could potentially be a vehicle to engage certified insurance agents if the WBE offered access to its system via a licensing or a general agent agreement. This may be an effective strategy in states that need to gain support of the insurance agent community or who want to avoid channel conflict by offering both WBE arrangements and arrangements with WBEs that are essentially resellers to local agents.

d. Plan Selection and Effectuation Rates

WBEs should be expected to meet contractual performance expectations or service level agreements (SLAs) regarding plan selection and consumer effectuation rates. These rates should meet or exceed the plan selection and effectuation rates that are similar to other sales channels and should be monitored by the marketplace to maintain high levels of consumer satisfaction. A consumer who enrolls with a WBE is enrolling with the marketplace and if a problem occurs with effectuation, the consumer could end up thinking they were enrolled when they actually were not.

2. Assess the Upfront and Ongoing IT and Administrative Costs Prior to Implementation

In determining the business value of partnering with WBEs, a critical consideration is the IT costs for incorporating them into a marketplace's technical architecture.[3] Covered California believes the proposed enhanced direct enrollment pathway has merit for the FFM because it maintains the marketplace's authority for determining eligibility via backend processes and allows the consumer to remain on one website during this experience. However, establishing the EVaaS interface between the WBE and the marketplace needs to consider the potentially significant technical development and integration testing, as well as modifications to security agreements with federal partners.

The implementation of EVaaS would in essence extend the system boundaries as it would build bi-directional services between the marketplace and participating WBEs. Since the WBE sites would be available to consumers through the Internet, and the WBE site would connect through to the Federal Data Services Hub via the marketplace system, it would be necessary to have each participating WBE complete and maintain something similar to the marketplace Authority To Connect (ATC) to ensure all of the Minimum Acceptable Risk Standards for Exchanges (MARS-e) v 2.0 security controls are in place. There would also be administrative costs for the marketplace to perform oversight and monitoring of WBEs to validate the content of the ATC-equivalent documentation and ensure Plans of Action and Milestones (POAM's) are developed to address any deficiencies. The marketplace should also ensure each WBE conducts and

[3] It is important to note that marketplaces already have significant maintenance and operations activities for its eligibility and enrollment system, plan selection tools, tax and financial data, and interfaces with carrier systems.

provides the results of regular vulnerability and penetration tests on any externally facing components of their solutions.

Covered California has examined whether the IT costs justify the investment for direct enrollment and found that each partnership with a WBE would need to meet substantial enrollment to justify incurring the IT and administrative oversight expenses. For this reason, any marketplace evaluating a partnership with a WBE should consider the upfront and ongoing IT and administrative costs prior to implementation.

Thank you and please contact me if you have any questions.

Sincerely,

Peter V. Lee
Executive Director

cc: Covered California Board of Directors