COVERED CALIFORNIA

March 7, 2017

Secretary Tom Price
Attention: CMS-9929-P
Centers for Medicare & Medicaid Services
Department of Health and Human Services

RE: Covered California comments on Patient Protection and Affordable Care Act; Market Stabilization Proposed Rule; CMS-9929-P (RIN 0938-AT14).

Dear Secretary Price,

Covered California, California's state health benefit exchange, is submitting comments in response to the proposed regulations CMS-9929-P. As discussed in the transmittal to our comments from California Health and Human Services Secretary Diana Dooley, we send these comments informed by our five-year experience of effectively implementing policies to best serve the needs of California's consumers. Over the past three years, California has cut its uninsured rate by nearly 10 percent, from 17 percent in 2013 to 7.1 percent as of September 2016 – our lowest rate in history. We have done this by applying state-specific solutions and strategies while working in concert with federal policies and resources. All consumers in the individual market have benefitted from smaller premium increases, with an average increase of about 7 percent over Covered California's first three years.

In addition, while we send these comments specific to the issues raised regarding the proposed Market Stabilization Proposed Rules, we need to underscore that far more fundamental to assuring market stabilization than these appreciated proposed rules are how the administration works to assure for 2018, 2019 and beyond policies are implemented to assure a good risk mix in the individual market. To that end, please refer to the Consumer and Market Implications of Affordable Care Act Repeal without a Viable Replacement, which highlights the critical nature of maintaining the penalty until such time as there is in place an adequate replacement, funding Cost-Sharing Reduction Subsidies, and the federal government promoting robust enrollment marketing. The Administration not doing any of these three key practices or Congress enacting a reform that does not provide for an adequate planning horizon would run the risk of causing the individual market in many locales to collapse as carriers would view their participation being too risky.

Covered California looks forward to working with this Administration to build on the lessons learned from the past five years and working together to create a competitive market for health care that puts consumers at the center.

BOARD MEMBERS Diana S. Dooley, Chair Paul Fearer Genoveva Islas Marty Morgenstern Art Torres EXEC. DIRECTOR Peter V. Lee

OPEN ENROLLMENT PERIODS

The Department of Health and Human Services (HHS) seeks comment on the proposed amendment to paragraph (e) of § 155.410, which provides the dates for the annual Exchange open enrollment period in which qualified individuals and enrollees may apply for or change coverage in a qualified health plan. In prior rulemaking, HHS proposed to use the current November 1 through January 31 open enrollment period for 2018. In this proposed rule, HHS proposes shortening the transition period by offering a 45-day open enrollment period for the 2018 benefit year (November 1 to December 15, 2017). Covered California offers the following comments:

Open Enrollment Summary and Recommendation:
Covered California strongly recommends that either (1) states have the option of maintaining the current open enrollment period, or (2) the current open enrollment timeframe of November 1 through January 31 be maintained for the 2018 benefit year. While Covered California understands that there are benefits to ending open enrollment by December 15th, we do not believe that our consumers would be well served by changing the open enrollment period for the 2018 benefit year amid other major proposed changes to health care programs. To the extent that the final rule provides states with flexibility to set open enrollment periods, Covered California would work with stakeholders to assess potential changes for 2019 and beyond.

***Allowing for State Flexibility*:** As changes to the Affordable Care Act (ACA) are debated and health insurance issuers look for market stability, we urge HHS to recognize that health care and health insurance markets are local. Requiring the same national open enrollment period for all states – irrespective of their particular circumstance – runs the risk of putting in place a policy that could negatively impact the risk mix in some states. We believe that would be the case for California. Because of this, we strongly recommend that either (1) states have the option of maintaining the current open enrollment period, or (2) the current open enrollment timeframe of November 1 through January 31 be maintained for the 2018 benefit year. Consumers, issuers and marketplaces have adapted to these dates, and changing them before the full package of ACA changes is known will increase confusion in the market making it more likely that younger and healthier enrollees will miss the sign-up deadline.

Covered California strongly urges HHS to provide state-based marketplaces the flexibility to set their own open enrollment periods as long as they span, at minimum, the federal open enrollment period. This recommendation is supported by health plans, the agent community and other key stakeholders. As you will see from our comments below, Covered California has successfully operationalized the current open enrollment period, which is set in California state law for the on and off-exchange markets. We believe that changes to the open enrollment period in California will negatively impact our risk mix, enrollment and premiums, in addition to causing confusion for our consumers and creating an administrative burden not only for our organization but also for our carriers and the thousands of agents and community partners who have built their operations around an open enrollment period of November 1 through January 31. We understand, however, that there may be enrollment patterns in some states that would lead health plans to conclude that the shorter enrollment period supports a better financial position for consumers.

Implications for Risk Mix, Enrollment and Premiums: Covered California believes that states should have flexibility to establish a longer open enrollment period than the federal open enrollment period based on market conditions. In California, we believe that a shorter open enrollment period could result in reduced sign-ups, having a negative impact on enrollment of young adults, which would in turn lead to a less healthy risk mix in the individual market and higher premiums for all enrollees – but particularly for those who are not eligible for subsidies. There is evidence that shortening the enrollment period would have a negative impact on enrollment, risk mix, and ultimately, premiums in our market.

Covered California sees a significant share of total open enrollment sign-ups occur in the last month of open enrollment. For open enrollment for plan year 2017 – during which there were over 412,000 new enrollees – 39 percent of new enrollment came in January (Figure 1). Also during open enrollment for the 2017 plan year, 52 percent of all new enrollment plan selections in the open enrollment period occurred in the period from December 16 to January 31st. Finally, the share of new enrollment of young adults increased as a percent of total plan selections from 35 percent in the first week to 41 percent in the final week (see Figure 2). While the 2017 open enrollment experience represents a decrease from the 2015 and 2016 open enrollment periods (in which the January share of new enrollment was 49 percent and 46 percent, respectively), we note that enrollment in the last month is still significant, and we believe that shortening the open enrollment period will lead to a reduction in overall sign-ups.

When examining risk scores among Covered California enrollees for the most recent open enrollment period, we find that as age increases so too does the average risk score. Younger enrollees (ages 18-34), who constitute a critical demographic for ensuring a healthy risk mix, tend to have risk scores well below the average. When examining data from Covered California's 2016 open enrollment period (11/1/2015-2/6/2016) the same trend was evident – there was a steady decline in the average weekly risk score throughout the open enrollment period. For example, during the first three weeks of the 2016 open enrollment period, the average risk score was slightly above average at 1.02 and in the final three weeks of the 2016 open enrollment period, the average risk score fell to .93.[1]

Covered California recognizes that predicting the impact of changing enrollment periods is fraught with uncertainty. There is an advantage to consumers for having a full 12 months of coverage – which is promoted by closing the open enrollment period by December 15th. The trade-off is the risk of having lower enrollment, and particularly lower enrollment of healthier individuals. In fact, some states may find it beneficial to start open enrollment earlier than November 1st to maximize the time consumers have to shop and make the right plan choice for them. Rather than prescribe one national answer or set of assumptions, providing state flexibility will allow states and the federal government not only to develop policies specific to their circumstances – it will provide a true laboratory for the states to test key assumptions and methods.

[1] The results above are based on the Chronic Illness and Disability Payment System's (CDPS) risk modeling of Covered California's enrollees using encounter data from the Office of Statewide Health Planning and Development (OSHPD).

Figure1. Share of New Enrollee Plan Selections by Month of Open Enrollment for 2017 Benefit Year

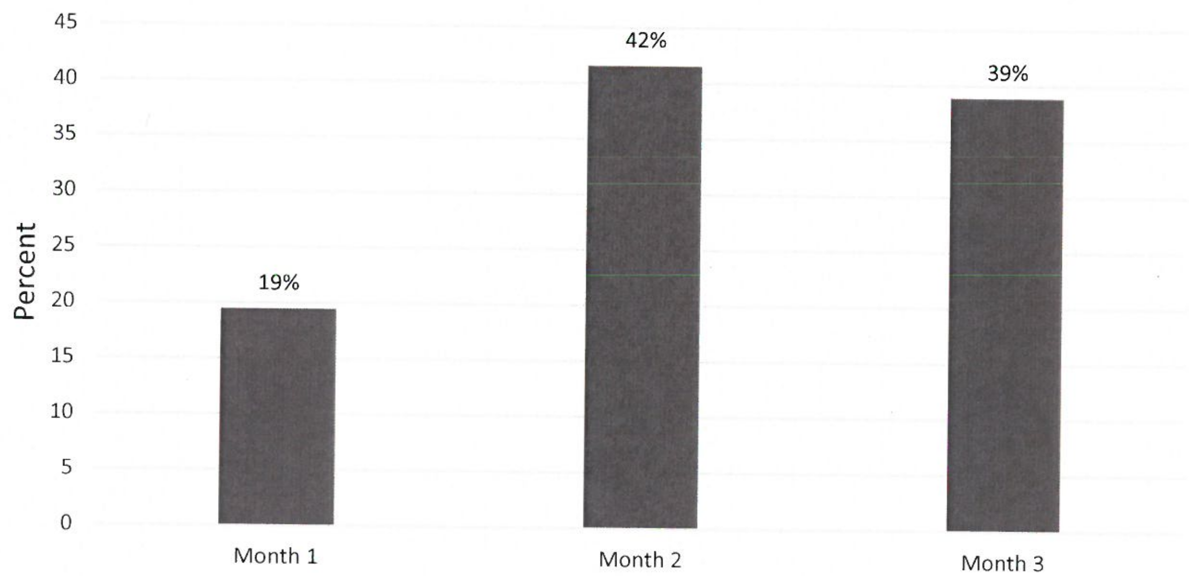
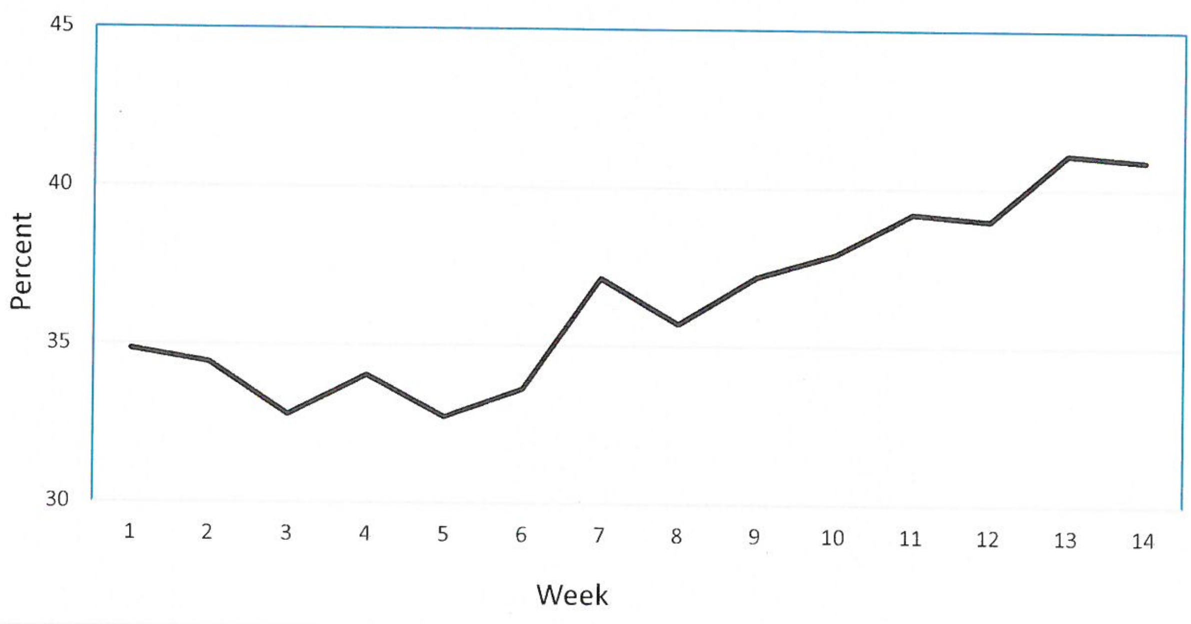


Figure 2. 18-34 Year-Olds as Share of Total New Open Enrollment Plan Selections by Week for 2017 Benefit Year



Risk of Year-End Enrollment Raising Consumer financial burden: A significant body of research demonstrates that affordability is the number one concern of potential Covered California enrollees. Covered California believes that shortening open enrollment to end on December 15 will put a burden on consumers during the holiday season. New enrollees may have trouble making a binder payment for January coverage, which could lead to a lower overall enrollment by forcing potential enrollees to make financial tradeoffs for their families' year-end and holiday expenses versus making "future-related" health insurance expenditures for the next year. If healthier individuals are more easily deterred than sicker individuals by a shorter open enrollment period, the risk mix will worsen and premiums could increase as a result.

Feedback from Major Stakeholders: In developing our position, Covered California has actively reached out to health plans, leadership of insurance agents and navigators and consumer advocates to inform our estimates of the potential impact of changing the enrollment period on enrollment and risk mix. All of the feedback received to date supports providing states the ability to set the right open enrollment period for their environment. In terms of what period is best for California, the weight of the feedback has been strongly in support of keeping the current enrollment period, with the exception of many of our qualified health plans.

- Representatives from Covered California's sales force, a group of more than 20,000 certified insurance agents and enrollers who operate more than 800 storefronts statewide, report that enrollment mostly slows in December because so many consumers are preoccupied with holiday shopping, travel and family gatherings. While there has been a bump in enrollment leading up to the December 15 deadline in each of the past three years, it's significantly smaller than the enrollment surge Covered California has experienced in the final days of open enrollment in January in each of the last three years.
- The agent community has expressed concern that by overlapping the open enrollment period with the December 1 group coverage renewal date and the Medicare open enrollment period, they will have less time to provide high quality assistance to Covered California consumers. Representatives from these service channels represent almost half of all Covered California enrollments and comments we have received during engagement with agent representatives indicate that shortening the open enrollment period would likely have significant workload volume and consumer service implications which could negatively impact enrollment. Specifically, the California Association of Health Underwriters, the largest group representing the agent community in California, has recommended that the current longer enrollment period be continued – at least for 2018. Based on their feedback, Covered California believes that it is highly unlikely that the surge of consumers enrolling in late January would all be able to complete their enrollment during a six-week enrollment period before December 15.
- Consumer advocates have also noted their support for the longer open enrollment period in California.
- Blue Shield of California, Kaiser Permanente, Chinese Community Health Plan, LA Care, Molina, SHARP, Valley Health Plan, and Western Health Advantage have expressed support for a longer open enrollment period that would begin earlier than November 1st and close by December 15th.

Consumer and operational considerations: Covered California understands that there are consumer and operational benefits to completing open enrollment prior to the beginning of the plan year. In particular, we recognize the financial benefit to carriers of having 12 full months of paid premium collected instead of ten or eleven months for individuals who sign up in January. And, for consumers, they have the benefit of having a full year of coverage for which they get credit of medical expenses to their deductible and maximum out-of-pocket.

However, we believe those benefits are far outweighed by the potential impact to the risk mix discussed earlier, and to operational risks and burdens of the proposed 45-day open enrollment period. We are concerned that this shortened period will lead to a de-stabilization of the market as enrollees will ultimately find the process confusing and risk not obtaining coverage by the deadline. Covered California is also concerned about the following elements:

- Effects on the federal Data Services Hub (HUB) as the Centers for Medicare and Medicaid Services has daily limits on the amount of data that can be verified.
- Longer wait times when calling the Service Center with the likely impact of healthier individuals being less inclined to endure longer wait times in order to enroll.
- Capacity challenges of insurance agents who during the same period are busy with Medicare open-enrollment and many are serving small and medium size businesses that have year-end open-enrollment (as noted above, in California, almost half of our enrollment is from insurance agents). This runs the risk of there being decreased Marketplace enrollment due to consumer confusion and lack of resources in the agent community and with Covered California.

Misplaced Comparison of Medicare and Employer Open Enrollment Periods. We understand that some have argued that the individual market open enrollment should be aligned with Medicare and employer open enrollment periods. This desire for alignment does not accurately reflect core differences between the new enrollment that occurs through the Marketplace from enrollment through Employer Sponsored Insurance (ESI) and Medicare. For both Medicare and ESI, virtually all new enrollment occurs on a rolling basis throughout the year and the open enrollment period is really "renewal only." Marketplaces are still new and therefore enroll large numbers of new consumers during open enrollment, in addition to those who enroll throughout the year because they qualify for Special Enrollment. Covered California enrolls over 400,000 new enrollees during the current 3-month open enrollment period. This requires targeted marketing and a large sales push, which takes time to resonate with potential enrollees.

SPECIAL ENROLLMENT PERIODS

HHS proposes to increase the scope of pre-enrollment verifications for special enrollment periods to 100 percent of consumers attempting to newly enroll in all Special Enrollment Period (SEP) categories. Covered California is actively working to implement a SEP pre-enrollment verification process that would leverage electronic verifications. In developing the process for the federal marketplace, we would urge HHS to establish a verification process that maximizes the number of verifications that can be completed electronically, guides and supports consumers in their effort to provide required information and documentation, and limits delays in consumers obtaining coverage.

FLEXIBILITY OF THE DE MINIMIS ACTUARIAL VALUE

HHS proposes to provide increased flexibility in the de minimis range from +/-2 percentage points to -4/+2 for all non-grandfathered individual and small group plans. Covered California has adopted the consumer-centric policy of promoting consistency across plans benefit designs, by offering common patient-centered designs. This means that health plans in California compete in offering different networks of physicians and hospitals, drug formularies, delivery approaches and, most importantly for many consumers, price. Because of this, the implications of the proposed changes in California would be greatly moderated by our ability to continue to promote consumer-friendly benefit designs – an ability not in practice in most of the nation. In addition, California, state law sets the de minimis range at +/-2 percentage points for on and off-exchange. In states without this limitation or a marketplace without established common patient-centered designs, consumers could see their tax credit reduced if carriers lower the actuarial value of their Silver products.

Covered California understands, however, that price sensitive consumers may prefer a lower-cost option. As Covered California has considered the trade-offs that may be considered in implementing these changes, we developed "model" designs to demonstrate how marketplaces and carriers could leverage the flexibility to have a higher actuarial value Bronze to provide a competitive option for price sensitive consumers without lowering the value of the Silver plan and thus decreasing the affordability of coverage for subsidy-eligible consumers. Covered California looks forward to investigating the potential of such designs for plan year 2019, as we also look forward to investigating the potential of using Cost-Sharing Reduction subsidies to pre-fund Health Spending Accounts for eligible individuals who select a Bronze product.

Thank you for your consideration of our comments. If you have any questions or would like more information, please feel free to contact me.

Sincerely,

Peter V. Lee
Executive Director

CC: Covered California Board of Directors