COVERED CALIFORNIA

July 28, 2021

Submitted electronically via www.regulations.gov

The Honorable Xavier Becerra
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Re: Covered California Comments on Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule (CMS-9906-P)

Dear Secretary Becerra,

Covered California is pleased to submit comments supporting many of the proposed policies in the updated payment parameters proposed rule. In this letter, you will find comments on proposed policies addressing the extended open enrollment period, standardized plans, increased user fee rates, and the new monthly special enrollment period, as well as our strong agreement for multiple proposals that would roll-back actions taken by the prior administration that have the effect of undercutting the stated intent of the Affordable Care Act (ACA). These comments are based on our experience and analysis of the necessary efforts to ensure ongoing sustainability for a state-based marketplace, maintaining a healthy and viable risk mix, and providing affordable, quality health plans to the consumers we serve.

Covered California's investments in marketing and outreach, along with consumer-first policies that protect and build on the ACA, have led to lower costs and more people being covered. Since 2014, Covered California's individual market enrollment has increased each year, with enrollment increasing from more than 1.1 million to over 1.6 million as of June 2021. In addition, California's individual market average rate change was 0.6 percent for the 2021 plan year, which is the lowest mark since the launch of the ACA and follows a rate change of only 0.8 percent in 2020. This is in sharp contrast to federal policies from the past administration that led to higher premiums and millions of people losing coverage.

Covered California applauds and appreciates the recent steps by HHS to rescind and modify harmful policies that created barriers for consumers in obtaining quality, affordable coverage and hindered the success of the ACA. As HHS finalizes the proposed policies, Covered California offers the following comments:

OPEN ENROLLMENT EXTENSION

Covered California applauds HHS's proposal to extend open enrollment an additional 30 days, through January 15. Beginning in plan year 2020, California extended its open-enrollment period for a full three months, through January 31 (with coverage effective February 1 even for consumers enrolling near the deadline). We have seen strong enrollment numbers with this extended open enrollment period, especially in the later part of January, and strongly encourage HHS to further extend open enrollment to January 31, as it did in 2016 and 2017. In doing so, it is imperative to allow coverage to begin no later than February 1 to ensure consumers do not experience a gap in coverage following plan selection. Based on Covered California's experience, a longer open enrollment has resulted in increased consumer enrollment, and lower premiums due to a healthier risk mix.

Covered California also recommends HHS conduct robust outreach and marketing to promote open enrollment in general and specifically the extension. We believe this would be a highly effective way to communicate the enrollment timeline for consumers and see the maximum number of new enrollees.

STANDARDIZED PLAN OPTIONS

Covered California was disappointed by the discontinuation of standardized plan options in 2019. We appreciate and encourage HHS to revisit and readopt this option for plan year 2023. Covered California appreciates and applauds the recently signed Executive Order 14036 that directs HHS to implement standardized options as well.[1] The readoption of standardized plans will revitalize the health care market, create more competitive pricing among health plans, and allow consumers to make more informed health plan choices.

As you know, Covered California's Qualified Health Plan (QHP) issuers have offered only standard patient-centered benefit designs since 2014. To the extent QHP issuers want to offer non-standardized products, they need to demonstrate that such designs are also patient-centered. To date, issuers have not seen the value in promoting additional options. Having standard patient-centered benefit designs allows consumers to shop and compare health plans based on price and quality. Covered California believes that all standardized benefit designs should be centered around promoting better value for consumers, reducing confusion. As stated in our 2016 comment letter regarding standardized plans,[2] we continue to believe that limiting the number of QHPs in each metal tier substantially benefits consumers by improving their choice experience and allows them to make more informed decisions. Covered California supports the return to standardized plan options and encourages HHS to again look at how those standardized plans are offered next to non-standardized plans and if non-standardized plans should be offered at all through the Federally-Facilitated Exchanges (FFE).

[1] Executive Order 14036, July 9, 2021.
[2] Covered California comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters (NBPP) for 2018; CMS-9934-P (RIN 0938-AS95) – Standardized Options Approach for 2018 (Section 156.20) and Differential Display of Standardized Options (Section 156.265)

INCREASED USER FEE RATES

Covered California commends HHS on the proposal to increase user fee rates from 2.25 to 2.75 percent for the FFE, and from 1.75 to 2.25 percent for the State-based Exchanges on the Federal Platform (SBE-FP), to support increased consumer outreach and education and the ability of the FFE to effectively meet its other responsibilities. While this increase from the rates finalized by the prior administration in the 2022 Benefit and Payment Parameters final rule is called for, it is unclear to Covered California why the user fee is not returned to the 3 percent it was previously. Currently, Covered California collects a health plan assessment of 3.25 percent of premium to fund its operations, of which a large percentage is devoted to marketing, outreach, and service center operations.

In our previous 2022 Proposed Benefit and Payment Parameters comment letter to HHS, we outlined our concerns that reducing the user fee rates from 3 percent to 2.25 percent would not provide sufficient resources to retain current members, enroll new members or support effective health plan review and oversight processes. From 2017 to 2020, new enrollment in the FFE decreased dramatically while Covered California's enrollment increased by 13 percent.[3] A core contributing factor is that during this period, the prior administration virtually eliminated needed marketing and outreach investments and significantly cut back support to Navigator programs.

Covered California strongly believes the user rate needs to be considered based on what resources are required to do robust and ongoing marketing, as well as oversight of QHP issuers to assure they are delivering quality care to Americans. California has demonstrated that its spending, supported by its user fee, has reduced premiums by far larger than the assessment by garnering a healthier risk mix and provide resources to assure QHP issuers in California focus on and improve quality while addressing health disparities.

Covered California urges HHS to consider the adequacy of its user fee as detailed in our prior comment letter and provide further visibility on its budget and a detailed breakdown of its expenditures that would enable a more complete assessment of the sufficiency of the user fee.

NEW MONTHLY SPECIAL ENROLLMENT PERIOD FOR LOW-INCOME CONSUMERS

Covered California supports the proposal to implement a new monthly Special Enrollment Period (SEP) for those consumers under 150 percent of the Federal Poverty Level (FPL). This new flexibility will maximize opportunities for this subset of consumers to become insured and gain the most from the enhanced benefits under the American Rescue Plan in the form of near premium-free coverage. Covered California suggests, as with the open enrollment extension, conducting a marketing and outreach campaign to advertise this new option, if finalized.

[3] Figure 1: Comparison of the Federally-facilitated Exchange and Covered California – 2017 and 2020 in the Covered California Comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations; CMS-9914-P (RIN 0938-AU18). Dec. 30, 2020.

OTHER PROPOSALS TO PROTECT AND BUILD ON THE ACA

Finally, Covered California applauds and supports proposed actions to rescind and modify harmful policies that created barriers for consumers in obtaining quality, affordable coverage and hindered the success of the ACA that we commented on in prior years when these actions were taken by the prior administration, including:

- Covered California supports the proposed repeal of the direct enrollment option that allows states to transfer their public enrollment function to private brokers to promote non-ACA compliant products. As we noted in our comments, this option is directly at odds with the ACA, which created Exchanges under 1311(b) as a mechanism for organizing the health insurance marketplace to help consumers and small businesses shop for coverage in a way that permits easy comparison of available plan options based on price, benefits and services, and quality;

- Covered California supports rescinding less restrictive 1332 Waiver interpretive guidance. As we noted in our comments, this guidance allows states to undercut consumer protections that were put in place by the ACA while encouraging cheaper, less-comprehensive non-ACA compliant products with potentially negative impacts both on consumers and the risk mix; and

- Covered California supports repealing the unnecessary requirement that QHP issuers send a separate bill for premium portions attributable to non-Hyde abortion services. As we noted in our comments when proposed, this requirement causes substantial consumer confusion and undue administrative burden.

We appreciate your consideration and response to our comments in this letter. We look forward to continuing our partnership with you to make the ACA work as effectively as possible and build on its foundation as we work to assure that all Americans have access to affordable health coverage.

Sincerely,

Peter V. Lee
Executive Director