



January 8, 2019

Seema Verma  
Administrator of the Center for Medicare and Medicaid Services  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244

Re: Covered California comments on Patient Protection and Affordable Care Act;  
Exchange Program Integrity CMS-9922-P (RIN 0938-AT53)

Dear Administrator Verma:

Covered California submits these comments in response to the proposed Program Integrity regulations CMS-9922-P, specifically, on the unnecessary proposal to require separate billing for non-Hyde abortion services. We provide the following comments based on our experience and analysis of the necessary efforts to ensure ongoing sustainability for state-based marketplaces and effective services to the consumers we serve. Through our strong relationships with the 11 health insurance companies participating in Covered California, we have created a robust health insurance market that fosters a competitive environment while empowering consumers to choose plans that give them the best value.

Covered California believes these proposed regulations are unnecessary, would impose a substantial burden, and will not be beneficial for consumers or the individual market. Current rules and processes ensure that funds are segregated, and no federal funds are used for non-Hyde abortion services. Should Health and Human Services (HHS) not withdraw this proposed rule, Covered California requests that HHS delay the effective date to allow time for affected entities to mitigate consumer confusion and implement the required changes to information technology systems.

As proposed, HHS would withdraw its previous guidance, which permits Qualified Health Plan (QHP) issuers to satisfy the separate payment requirement in one of several ways, including by sending the enrollee a single monthly bill that separately itemizes the premium amount for non-Hyde abortion services. Currently, HHS also allows consumers to make the payment for non-Hyde abortion services and the payment for all other services in a single transaction. HHS is now proposing to require issuers to send—and consumers to pay—two entirely separate bills for the premium

attributable to certain (non-Hyde) abortion services and the premium for all other services. Additionally, HHS is proposing that any consumer who fails to pay the full premium in both bills will be terminated for non-payment (subject to state and federal grace periods).

### **Increased Consumer Confusion**

If finalized, this regulation will be confusing for consumers and will likely lead to consumers dropping coverage due to inadvertently not paying the full premium. While HHS asserts that consumer confusion can be mitigated by sending bills only through email or other electronic communication, this does not address the underlying confusion that will occur due to two separate bills being sent to a consumer for their QHP. Not only does this practice conflict with widely accepted industry standards, there is no practical way to implement such a policy as a consumer cannot be forced into forgoing mail as their preferred method of communication. In California, we encourage our consumers to opt into email as their preferred communication but even after our encouragement, 70% of enrollees continue to receive communications via standard mail. HHS's proposal also does not consider the fact that some individuals do not have consistent access to the internet and would be unable to receive or make their monthly premium payment.

### **Increased Administrative Burden on the Exchange and QHP Issuers**

These proposed regulations will impose millions of dollars of new costs and significant operational burdens on Exchanges and QHP issuers, diverting resources from other important work that Exchanges and carriers perform to provide affordable and reliable health coverage to their consumers. For example, Covered California will need to protect the market from known adverse impacts of this proposed regulation by redirecting vital funds from other programs to consumer outreach and marketing.

In addition, before QHP issuers could implement the segregated billing requirement, several complex and costly operational changes would have to be made, including significant modifications to enrollment and billing systems to generate two bills for every policy, for each month of enrollment, as well as additional postage, printing, credit card processing, and banking fees. QHP issuers will also need to devote time and money into system testing for billing accuracy, monthly quality assurance measures, and verification and reconciliation of the two separate bills.

As part of the increased awareness campaign and additional regulatory burdens put in place by these proposed regulations, Exchanges and QHP issuers would be required to generate and send notices regarding the need to make separate payments and additional notices for the many new consumers who inadvertently fail to pay the full premium amount and enter into a grace period for nonpayment.

Furthermore, Exchanges will experience an increased burden on its service centers and certified enrollers due to a significant increase in consumer questions regarding billing

errors, grace periods, notices, and requests for appeals and reinstatements. The proposal's immediate effective date is not feasible for exchanges and issuers, forcing them to be 'non-compliant' should the proposed rule be finalized.

These regulations will cause significant consumer confusion and impose serious administrative and operational burdens on Covered California. If these new, unnecessary and burdensome regulations are implemented, Exchanges could not possibly put them in place in the time proposed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter V. Lee". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter V. Lee  
Executive Director

cc: Covered California Board of Directors