



February 22, 2016

Mr. Peter Lee, Executive Director
Covered California
1601 Exposition Blvd
Sacramento, CA 95815

Via email to 1332@covered.ca.gov

**SUBJECT: Patient Protection and Affordability Act
Section 1332 State Innovation Waiver**

Dear Mr. Lee:

The California Association of Health Underwriters (CAHU) appreciates the opportunity to offer our comments regarding the development of a State Innovation Waiver (Waiver) as authorized by Section 1332 of the Patient Protection and Affordable Care Act (ACA).

CAHU is the state's largest association the health insurance agents. Our licensed members provide reliable insurance advice, act as the consumer's advocate when dealing with carries and provide a number of essential services relating to the individual and group insurance coverage and obligations post enrollment. Our members also act as a trusted and effective marketing channel for health information for all consumers and potential consumers of health care insurance coverage. Altogether, CAHU provides a unified voice for more than 32,000 California health insurance and benefit professionals throughout the state representing more than 15 million California health insurance consumers. CAHU also trains and mobilizes our diverse agent members to help serve all California throughout our Diversity Task Force.

CAHU believes that the 1332 Waiver allows states extraordinary flexibility for redesigning many of the key elements of the landmark federal health reform law. CAHU commends Covered California for initiating a public process for considering potential options and proposals. Nearly 15,000 Certified Insurance Agents (CIA's) are on the front-line for Covered California in every community in the state. Almost 200,000 consumers, 45% of the total, were enrolled by CIA's during the 2015-16 Open Enrollment Period. Licensed, certified health insurance agents' direct experience with consumers, small employers, their employees and families gives agents a unique understanding of what they want, need and find affordable. CAHU hopes to share our perspective through this stakeholder process on the Waiver.

Recognizing that innovation can be a "double edged sword" that could result in unintended consequences, the Section 1332 Waiver process establishes important guardrails to protect

consumers and the marketplace. Working within this framework, we will work to be effective partners with Covered California and other stakeholders to advance proposals that to achieve the following goals:

- Enrollment Process Simplification
- Greater Affordability
- Improvement of Covered California for Small Business

Overview:

With the close of the third open enrollment period, CAHU joins Covered California in celebrating the success in enrolling almost 440,000 new consumers. It is an impressive achievement in which we all may take pride.

Going forward, that strong foundation gives us all an opportunity to evaluate the potential for new strategies and approaches that will increase enrollment and reduce the number of uninsured in California. We know it will be harder, and will require more innovation and creativity.

According to CalSIM 1.91 projections, about 770,000 Californians remain uninsured in 2016, even in the enhanced model. Most will be subject to tax penalties. Our collective challenge is to find ways of reaching out and persuading these uninsured individuals to enroll and – equally important, stay enrolled in affordable, accessible health insurance coverage.

Building Covered California’s membership helps to spread out administrative costs, and allows for enhanced purchasing power in negotiations with health plans. Currently, almost 90% of Covered California’s current membership is eligible for federal subsidies. Finding new, innovative and creative ways to attract non-subsidy eligible members should be the overarching goal of all stakeholders and Covered California. In short, our goal is to find ways to cover more people, and increase enrollment in Covered California. A 1332 Waiver may help us get there.

Goal #1: Enrollment Process Simplification.

Since the October 1, 2013 launch, Covered California has made enormous progress in improving the consumer’s experience in the enrollment and renewal process. However, CAHU also recognizes more work needs to be done.

The 2015 NORC Consumer Tracking Survey released last fall reported a concerning levels of dissatisfaction among individual who visited the Covered California website but did not purchase. When these uninsured, non-purchasers were asked about the website as a place to shop, 60% said that they were “not very” or “not at all “ satisfied.

This finding is echoed in the user experience research conducted as part of the California Health Care Foundation ‘s February eligible to enroll in or renew a Covered California health plan did so during their observed research session. Streamlining and simplifying the 2016 report on

online enrollment. The report found that only 1 of the 31 individuals to enroll in or renew a Covered California health plan did so during their observed research session.

CAHU believes that streamlining and simplifying the enrollment process will reduce frustration and improve the consumer experience. Certified Agents appreciate Covered California's ongoing efforts to improve the website design and CAIHEERS functionality, the 1332 waiver may offer an opportunity for greater innovation.

- **Aligning the Eligibility Rules for Covered California and Medi-Cal.** An on-going source of confusion and unnecessary complexity are a baffling array of differences in the ground rules for determining eligibility between Covered California and Medi-Cal. For example, there are differences in the way income is counted, in how eligibility is verified, and when the enrollment start date begins. These differences can delay eligibility determinations, impede automated determinations (meaning that the consumer or an eligibility worker may have to take some manual action outside the automated application and eligibility system. The 1332 Waiver process – perhaps in combination with a Medicaid 1115 Waiver could provide a vehicle for addressing these alignment issues. Options to simplify and the streamline the process should also consider protections for consumers and beneficiaries.

- **Fixing the Password Glitch.** For both consumers and Certified Insurance Agents, the current security protocol password creation in CalHEERS is both unnecessarily frustrating and time consuming. Federal security rules now require consumers who wish to begin an account with Covered California to select a password that meets specific protocols. The required standards include a prohibition on the use of dictionary names or words. Additionally, there is a requirement to change the member password every 60 days for those who use a one-time use password, as most do. As noted in the CHCF report, new enrollees received multiple error messages because they had not followed the eight requirements for creating a password. The 1332 Waiver may offer some flexibility to establishing a protocol that is consistent with industry standards, maintains security, and is more consumer-friendly.

- **Allowing Enrollment of Undocumented Residents.** Prohibiting undocumented residents to enroll in unsubsidized coverage through Covered California creates an uneven playing field between the “inside and outside” marketplace and results in unnecessary confusion. Currently, undocumented residents can enroll in coverage in the outside market, but are unable to enroll in the state exchange. Removing this barrier would simplify the enrollment process and make it easier, in particular, for mixed status families in which one family member may be undocumented. The approach offered in SB 10 (Lara) appears promising.

Goal #2: Greater Affordability

Affordability continues to be the most significant concern for the remaining uninsured. According to the 2015 Kaiser Family Foundation survey, when asked why they haven't signed up for coverage, 44% of the uninsured said that insurance was too expensive. Further, those with coverage can be surprised by higher than expected out-of-pocket costs for deductibles, co-pays and co-insurance. These concerns are magnified for individuals for whom a small income change may result in a dramatic reduction in Advanced Premium Tax Credits or cost sharing subsidies.

CAHU is mindful that 1332 Waiver proposals must not increase the federal deficit. We also recognize that Covered California has been a leader in holding down premium increases, an outcome that has results in significant federal savings. Efforts to implement payment and delivery system reforms, as well as quality and cost containment initiatives are likely to achieve long term savings. To the extent these savings can be trended and quantified, the 1332 Waiver may be an opportunity to capture and reinvest the federal savings on proposals that improve affordability for California consumers.

- **Fix the Family Glitch.** The so called “family glitch,” now prevents dependents from accessing federal tax credits when an employed family member has access to “affordable” employer-sponsored insurance. The problem with the current system is that “affordability” of employer-sponsored insurance for spouses and dependents is based on the cost of individual coverage – not on the cost of covering the family. CAHU believes the 1332 waiver could be used to define affordability of employer-sponsored insurance on the basis of family coverage, rather than individual coverage. More children and dependents would be eligible for federal subsidies, and those increased costs would need to be offset by demonstrated savings. The most recent federal guidance on 1332 Waivers also suggests potential administrative barriers relating to the Internal Revenue Service’s capacity for implementing differing tax rules among the states.
- **Smooth Subsidy Cliffs.** The current structure for federal subsidies relies on income “bright lines” that establish eligibility for APTC and out-of-pocket cost sharing reduction. For example, in a household with older consumers, \$1 might be the difference for total income that is under the 400% Federal Poverty Level and therefore eligible for thousands of dollars in federal subsidies; or over the limit and not eligible for any premium assistance. Similarly, \$1 might be the difference for a Medi-Cal beneficiary whose income exceeds the 139% of FPL, thereby losing Medi-Cal eligibility and becoming Exchange eligible. Smoothing out the “subsidy cliffs” and establishing a less jagged continuum would improve affordability.
- **Copper Plans for Consumers Above 400% FPL.** According to the CalSIM 1.91 projection of enhanced enrollment, about 150,000 individuals are in households with incomes over 400% of FPL, and are uninsured. Without the availability of federal subsidies to reduce

premium costs, affordability becomes a critical factor. For example, during the 2015-16 Open Enrollment Period, 48% of the non-subsidized new enrollment opted for Bronze and Minimum Coverage products compared to 32% of the subsidized enrollees. To attract uninsured consumers above 400% of FPL, Covered California should explore more affordable coverage options that have greater cost-sharing than is currently allowed in the marketplace. For example, so-called Copper Plans would have an actuarial value of 50% compared to 60% for Bronze. These plans could be coupled with a required Health Savings Account (HSA). Covered California would have exclusive authority to offer Copper Plans, as it does now for Minimum Coverage plans. Although we are mindful of the pitfalls of high deductible plans, non-subsidized individuals face greater risks by remaining uninsured

Goal #3: Improve Covered California for Small Business

We continue to believe that small business and their employees can benefit by participating in Covered California for Small Business (formerly known as SHOP). Since January 2016, even more small businesses are now eligible as a result of the phase-in that allows employers with 51 to 100 employees to participate. However, the 1332 Waiver gives us an opportunity to revisit some of the structural issues of the program and consider innovative approaches that may enhance its competitiveness and yield greater enrollment.

There is no denying that small businesses need help. Small employers often pay up to 18 percent more than large employers to provide health insurance, in part because large employers have the economy of scale to negotiate lower premiums, provider reimbursement rates, and administrative costs; and often have better, more stable risk profiles. Covered California for Small Business can help “level the playing field” through tax credits, greater choice of health plans, and pooled negotiating power with health plans to get a better deal. But we are also concerned that continued low enrollment is indicative of structural issues that are hindering its ability to compete. As of June 30, 2015, about 18,000 consumers were enrolled in health plans offered by Covered California for Small Business. This is projected to grow to 84,000 by June 2018.

CAHU appreciates Covered California’s efforts to rebrand, improve operations, and enhance level of service to its participating small businesses. But more fundamental reforms maybe necessary. As the small group marketplace expands to include employers with up to 100 employees, the 1332 Waiver gives us a timely opportunity for a broader discussion of options that enhance the viability and competitiveness of Covered California for Small Business. This discussion could address the following issues:

- **Restructure Tax Credits.** Federal tax credits offered to participating small business can provide a compelling incentive for employers to offer coverage for their employees. However, the current credits are narrowly applied and benefit a limited number of small employers. The 1332 Waiver may allow an exploration of more innovative approaches

for restructuring or reallocating the funding for the small business tax credits. For example, Hawaii's recent draft 1332 Waiver proposal, submitted in September 2015, includes a redirection of \$46 million of federal funding that would otherwise pay for small business tax credits and instead allocate the funds into a "Premium Supplementation Fund" to assist employers with less than eight employees. To the extent the 1332 Waiver allows flexibility on the allocation of the small business tax credit, CAHU believes Covered California should consider approaches that incentivize small employers to offer coverage, potentially blending and leveraging federal subsidy dollars and employer dollars. When small employers with 50 or fewer employees provide coverage to low income workers, the federal government saves the cost of APTC subsidies for which the employees would be eligible for. The 1332 Waiver could provide a mechanism for capturing these savings and redirecting them to broaden eligibility for the tax credits, or provide cost sharing reduction subsidies for low income employees to help them pay their out-of-pocket costs.

- **Greater Choice of Plans.** There are currently only six health plans that participate in Covered California for Small Business. Giving employers and their employees more choice would make the program more attractive. For example, Covered California could require all of its Qualified Health Plans to participate in the small business program. Medi-Cal Managed Care plans in some counties may wish to participate under certain conditions. The 1332 Waiver allows us to consider a variety of options, although we recognize that some solutions may not require the waiver of federal law. The 1332 Waiver process provides an opportunity for considering "out-of-the box" options that would otherwise be off the table.

Conclusion

The 1332 Waiver process offers a unique opportunity to brainstorm, think out-of-the-box and re-imagine a better way for achieving the fundamental goals that are at the core of the Affordable Care Act in California. CAHU welcomes this opportunity to put our ideas on the table, and to be part of a process that brings other stakeholders together with Covered California to find common ground and problem solve. To the extent we can adopt policies that bend the cost curve, the waiver gives us a vehicle for capturing the savings and reinvesting them to improve affordability, and expand coverage.

Developing a 1332 Waiver requires a significant commitment of resources, expertise and time to explore the most viable options, determine their feasibility, and build consensus that will allow the passage of authorizing legislation. Technical experts, actuaries, and an on-going dialogue with CMS are all necessary for the development of a successful waiver package. CAHU believes this effort is worthwhile, and commit to working with Covered California and other stakeholders to get it right.

Given the complexities of develop a comprehensive waiver package, we suggest a two-step process. Covered California should take lead in identifying incremental yet important reforms that

can immediately improve operations and administration, particularly in areas that have the potential to boost enrollment. If a consensus can be reached on these technical fixes, CAHU supports moving forward toward a waiver proposal that can be submitted this year. A longer term process that considers broader reforms and addresses more fundamental issues should be initiated along with a commitment of resources to research, analyze, vet and recommend a waiver package in 2017.

Thank you for initiating this process and allowing us to share our initial suggestions toward the development of a 1332 State Innovation Waiver. CAHU and Certified Insurance Agents are strong partners of Covered California and we are committed to its success. CAHU looks forward to working with you on this and future efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Lujan", is centered on a light gray rectangular background.

Michael Lujan, RHU, CHRS
California Association of Health Underwriters 2015-2016 President

Cc: Members, California Health Benefit Exchange Board

California Association of Health Underwriters
2520 Venture Oaks Way, Suite 150 Sacramento, CA 95833
800.322.5934 www.CAHU.org