

Article	Section #	Other Document Cross-Ref	Comment	Covered California Response
1	1.3 b ii		<p>New language: Contractor's delegation agreements shall comply with the specifications included in 45 C.F.R. § 156.340 and must include language stating that Covered California may demand and receive the delegated or downstream entity's books, contracts, computers, or other electronic systems, including medical records and documentation, relating to Contractor's obligations in accordance with federal standards until 10 years from the final date of the agreement period.</p> <p><u>COMMENTS:</u> This requirement may entail QHPs update ALL CONTRACTS and SERVICE AGREEMENTS with vendors and provides to add Covered CA specific language. This would be significant and administratively expensive endeavor for plans to undertake, and potentially unintended negative business implications by opening up a renegotiation of contracts/service level agreements, etc.</p> <p>We recommend this new language be removed, and that the QHPs and Covered CA discuss the intention and implications behind this additional language, including an understanding of the specific concerns and gaps with the existing 1.3.b language that Covered California needs to address.</p>	<p>New additions were added to this section in compliance with amendments made to 45 C.F.R. § 156.340 by the Notice of Benefit and Payment Parameters for 2023. The new amendments to 1.3(b)(ii) do not impose any requirements beyond what it required under 45 C.F.R. § 156.340.</p> <p>No change will be made.</p>
1	1.8		<p><u>Modified Language:</u> CoveredCaliforniashall evaluate Contractor's performance during Quarterly Business Review meetings with respect to fulfillment of its obligations under this Agreement on an ongoing basis, including as described in Section 1.5 f)</p> <p><u>Comments:</u> It is not clear how performance can be evaluated during a meeting, and CCSB does not have such business review meetings with plans.</p> <p><u>Recommended change:</u> Remove the Quarterly Business Review meeting reference, as expectation is that performance, including related to 1.5, will be monitored and evaluated on-going. While we may discuss performance at those meetings, it seems to limit the opportunities to evaluate and address performance to just a quarterly meeting - which we don't believe is in the best interest of either the QHP or Covered CA.</p>	<p>The phrase "during Quarterly Business Review meetings" does not apply to the CCSB plans and will be removed.</p> <p>Change will be made.</p>

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1	1.15		<p>[NEW, COMMENT NOT MADE ON 1.5] Contractor shall communicate within ten (10) Days timely communicate to Covered California any material concerns identified by Contractor or material concerns, including any enforcement actions resulting in monetary penalties equal to or exceeding \$10,000, by State and Federal Regulators related to regulatory compliance that may impact performance under this Agreement following Contractor's knowledge of such occurrence; provided, however, such notification shall be provided immediately if such occurrence may reasonably be deemed to adversely affect the quality of care or safety of Covered California Enrollees.</p> <p><u>Comments:</u> Ten calendar days is not consistently feasible, as "material concerns" often take time to both determine if they are both "material" and/or a "concern", including ascertaining the scope and enforcement actions are often negotiated. Additionally, Covered CA is able to be informed of enforcement actions directly from other CA state regulators. If this change is intended to address QHPs that operate in other States, recommend that the language be tailored to reflect out of state or federal actions.</p> <p><u>Questions:</u> Is the 10 day notification criteria specific to regulatory compliance concerns and/or enforcement actions, or does it also apply to Fraud, Waste and Abuse referrals? Would CovCa consider 30 Days or leaving the language as is? Does the \$10,000 criteria apply to just enforcement actions resulting in monetary penalties, or does the money threshold also define a material concern or apply to Fraud, Waste and Abuse referrals as well? For Fraud, Waste and Abuse referrals we feel that a 10 day notificaton does not give the carrier enough time to substantiate the case prior to referral, and would cause over notification to Covered Ca, additionally we would not want to include a \$10k threshold for these referrals as we believe that dollar amount is too low for Fraud, Waste and Abuse referrals.</p>	<p>Comment Questions: 1) <i>Is the 10 day notification criteria specific to regulatory compliance concerns and/or enforcement actions, or does it also apply to Fraud, Waste and Abuse referrals? Would CovCa consider 30 Days or leaving the language as is?</i></p> <p>Section 1.15 for FWA clearly states Contractor compliance programs will be supplied to CC upon request: "Contractor shall maintain an effective compliance program that includes... Contractor shall provide evidence of such compliance program as reasonably requested by Covered California."</p> <p>The 10 day notification language is specific to enforcement action reporting and will be broken out as a new paragraph to make clear it is a separate topic. No change will be to the 10 Day time requirement.</p> <p>2) <i>Does the \$10,000 criteria apply to just enforcement actions resulting in monetary penalties, or does the money threshold also define a material concern or apply to Fraud, Waste and Abuse referrals as well?</i></p> <p>The updated \$100,000 or greater threshold is specific to enforcement action reporting and will be broken out as a new paragraph to make clear it is a separate topic. It does not apply to FWA reporting.</p> <p>3) <i>For Fraud, Waste and Abuse referrals we feel that a 10 day notificaton does not give the carrier enough time to substantiate the case prior to referral, and would cause over notification to Covered Ca, additionally we would not want to include a \$10k threshold for these referrals as we believe that dollar amount is too low for Fraud, Waste and Abuse referrals.</i></p> <p>The 10 day notification and updated \$100,000 threshold language is specific to enforcement action reporting, not FWA referrals, and will be broken out as a new paragraph to make clear it is a separate topic. See the updated contract.</p>

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9	9.1.1		<p>Additional Cyber Liability Insurance requirement</p> <p>Comments: This specific requirement is redundant with 9.1.1. Required Coverage. Additionally, the specifics called out in the contract may not align with carrier policies (e.g. costs for monitoring, fines & penalties incurred by covered ca).</p> <p>Recommended Changes: Remove this added section and update the introductory paragraph (9.1.1) to allow Covered CA to conduct a detailed review of existing QHPs insurance coverage policies, and if Covered CA identifies a gap from industry standards / expectations in any area, then Covered CA can require that carrier to remediate that gap via additional coverage.</p>	<p>Covered California disagrees with this comment. Section 9.1.1 contains the only cyber liability insurance requirement in the QHP Agreement. It would be redundant if we required cyber liability coverage in another provision, however, that does not appear to be the case.</p> <p>No contract update will be made.</p>