

Article	Section #	Other Document Cross-Ref	Comment	Covered California Response
1	1.3		<p>Section i. should say that the Contractor is responsible for all federal standards relating to Qualified Health Plans in 45 CFR Parts 155 and 156. Plans are not responsible for regulations that are only applicable to the Exchange itself.</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)(i) do not impose any requirements beyond what it required under 45 C.F.R. § 156.340.</p> <p>No change will be made.</p>
	1.3 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>COMMENTS: 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>
	1.4.1		<p>Cal. Govt Code Sec. 6250 is being repealed and replaced with Govt Code 7920.000 as of January 1, 2023.</p>	<p>Update was already made, Covered CA has updated this language accordingly.</p>

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1	1.5 d)		<p>We respectfully request the removal of ", including any enforcement actions resulting in monetary penalties equal to or exceeding \$10,000," as this threshold is inconsistent with material concerns. If a carrier hypothetically has 10,000 enrollees with average gross monthly premium of \$500, that's \$60 million in annual gross premium. While a carrier is expected to be taking actions to limit exposure to enforcement actions, \$10,000 on this hypothetical example of \$60 million in gross premium is not material. This could result in administrative burden for both carriers sending and Covered California receiving non-material concerns.</p>	<p>The requirement to report material concerns raised by State and Federal regulators has long existed in the QHP contract. However, QHP issuers have been inconsistent in how they interpret materiality for the purposes of reporting. Enforcement actions with penalties can indicate systemic issues that impact Covered California Enrollees. As such, Covered California wants to ensure that it is aware of any such concerns.</p> <p>See update made to the threshold amount.</p>
1	1.5 d) ii.		<p>Would be is the reporting of enforcement actions of \$10k and above only required if it may impact Contractor's performance under the agreement? Or is it any and all enforcement matters equal to \$10k or above?</p>	<p>Enforcement actions with penalties can indicate systemic issues that may impact Contractor's performance under the agreement, including requirements related to quality, access to care, and customer service. Thus, the reporting requirement is for all enforcement actions, with an updated threshold of \$100,000 or more.</p>
	1.5(d)(ii)		<p>We are concerned at the current threshold for reporting because the new law imposing a max of \$25k for a single offense will likely be the new norm, which may increase the number of reportable actions beyond what Covered CA is intending with this provision.</p>	<p>The requirement to report material concerns raised by State and Federal regulators has long existed in the QHP contract. However, QHP issuers have been inconsistent in how they interpret materiality for the purposes of reporting. Enforcement actions with penalties can indicate systemic issues that impact Covered California Enrollees. As such, Covered California wants to ensure that it is aware of any such concerns.</p> <p>See update made to the threshold amount.</p>

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	1.5(d)(ii)		If setting a threshold enforcement fine/penalty, then we ask that a date range is set too (e.g., report if an enforcement fine relates to an incident/action in the last year). The DMHC often issue enforcement actions for incidents that occurred years ago.	No change will be made. Reporting is upon occurrence.
	1.5(d)(ii)		What is Covered CA trying to achieve? We want to be compliant with the reporting requirements on this, but we also don't want to report occurrences that Covered CA thinks is irrelevant.	The requirement to report material concerns raised by State and Federal regulators has long existed in the QHP contract. However, QHP issuers have been inconsistent in how they interpret materiality for the purposes of reporting. Enforcement actions with penalties can indicate systemic issues that impact Covered California Enrollees. As such, Covered California wants to ensure that it is aware of any such concerns.
	1.8		<p><u>Modified Language:</u> CoveredCalifornia shall 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.</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>Section 1.5 f) reference only discusses the Quarterly Business Review meetings, not the performance standard added in 1.5 d)ii. for notification of material concerns or enforcement actions of the updated threshold of \$100,000 and above, which is a separate reporting item. Any topic may be addressed by Covered California during the Quarterly Business Review meeting.</p> <p>No change will be made.</p>

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1	1.15		Same question as 1.5: Would be is the reporting of enforcement actions of \$10k and above only required if it may impact Contractor's performance under the agreement? Or is it any and all enforcement matters equal to \$10k or above?	Enforcement actions with penalties can indicate systemic issues that may impact Contractor's performance under the agreement, including requirements related to quality, access to care, and customer service. Thus, the reporting requirement is for all enforcement actions of the updated threshold of \$100,000 or more.
	1.15		<p>What is the timeframe for us to update the report? What is the annual due date? What is the mechanism for submitting this? Will there be a clearer definition for "material concerns"? The obligation to notify CoveredCA of enforcement actions is repeated in section 1.5(d)(ii) - but here it lists a 10 day timeframe. Can this obligation only be written into one section, and consistently describe the requirements (such as timeframe) for clarity?</p>	<p>To clarify the different timeline requirements between material concerns and enforcement action reporting, from FWA compliance program reporting they will be separated paragraphs.</p> <p>The methodology for submitting notifications has been cross-referenced to Section 1.5.</p> <p>See the updated contract amendment.</p>
	1.15		We respectfully request the removal of ", including any enforcement actions resulting in monetary penalties equal to or exceeding \$10,000," as this threshold is inconsistent with material concerns. If a carrier hypothetically has 10,000 enrollees with average gross monthly premium of \$500, that's \$60 million in annual gross premium. While a carrier is expected to be taking actions to limit exposure to enforcement actions, \$10,000 on this hypothetical example of \$60 million in gross premium is not material. This could result in administrative burden for both carriers sending and Covered California receiving non-material concerns.	<p>The requirement to report material concerns raised by State and Federal regulators has long existed in the QHP contract. However, QHP issuers have been inconsistent in how they interpret materiality for the purposes of reporting. Enforcement actions with penalties can indicate systemic issues that impact Covered California Enrollees. As such, Covered California wants to ensure that it is aware of any such concerns.</p> <p>See update made to the threshold amount.</p>

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	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</p>

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	2.2.4		<p>Covered California and Contractor must send a termination transaction to the other party within ten (10) business days of any individual Covered California Enrollee termination</p> <p>Comments: This is not a redline change and is in both the QDP and QHP contract indicating both CovCa and Contractor must send term transactions to each other within 10 business days - however the Contractor can only send terminations for Non Payment of premium, and those are required to be sent with ten (10) Days (defined in the definition section as calendar days) of grace period expiration (which is also what is in the Performance Measure Standard).</p> <p>Recommended Change: Covered California must send a termination transaction to Contractor within ten (10) business days of any individual Covered California Enrollee termination. Contractor must send a termination transaction to Covered California within ten (10) Days of grace period expiration.</p>	Covered California agrees to this contract change.
	3.2.1 3.2.2.1 Co-branded Materials		<p>Can we include something to the effect of: "For the 2023 Plan Year, and any year thereafter, Contractor is expected to spend at least 0.4% of <u>[projected]</u> premium on direct response advertising-" in the contract to reflect expectations and resources?</p>	Covered California agrees to this contract change.
3.3 Agents in the Covered California for the Individual Market		QDP CONTRACT COMMENT 11/9/2022	<p>Since this is a multi year agreement consider modifying the first sentence as follows "Covered California recognizes that Certified Agents provide an indispensable service to the Exchange and its QDPs, enrolling and renewing approximately 40% of Covered California's Enrollees annually." By making this statement it's something that doesn't need to be updated based on changes in mix.</p>	Covered California made this update in the QDP contract based on a comment and is applying to the QHP contract as well. Covered California recognizes that Certified Agents provide an indispensable service to the Exchange and its QDPs [and QHPs], enrolling and renewing Covered California's Enrollees.

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	4.6.4		We request the following be added to ii. "Contractor may adjust hours as required by customer demand with prior agreement of Covered California." for consistency with i. and the true customer service needs of our customers. Have customer service hours that exceed expectations of customer needs increases administrative costs which can lead to increased premiums.	Covered California agrees to this contract change.
	4.6.4		We request for b) that Covered California notify carriers at least 30-days in advance so technical and staffing changes can be made.	No contract update will be made.
	9.1.1 iv.		We recommend the language revision in red: iv. Cyber Liability insurance at such levels consistent with industry standards and reasonably determined by Contractor to cover network security, unauthorized access, unauthorized use, receipt or transmission of a malicious code, denial of service attack, unauthorized disclosure or misappropriation of private information and privacy liability Protected Health Information and Personally-Identifiable Information. The insurance must cover notification costs, credit card monitoring, and fines and penalties to the extent insurable incurred by Covered California due to Contractor's mistake or error.	Covered California agrees to this contract change.

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	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>
	9.1.1		<p>It appears that auto, crime, and professional liability have been struck from the requirements. Can the rationale behind this removal please be explained?</p>	<p>We reviewed the insurance requirements to determine whether some can be removed or modified if they do not sufficiently relate to the services rendered. As a result of our review, we removed the auto, crime, and professional liability requirements and added a cyber liability provision. We believe the current insurance requirements most closely relate to the services rendered under the QHP Agreement and provide sufficient protection to both Covered California and the Issuer.</p>