



1764 San Diego Avenue, Suite 200 San Diego, CA 92110

Phone 619-471-2637 Statewide Toll Free 888-804-3536 HealthConsumer.org

April 5, 2016

Ms. Diana Dooley, Chair
Paul Fearer
Genoveva Islas
Marty Morgenstern
Art Torres
Covered California Board
Via email to boardcomments@covered.ca.gov

Dear Covered California Board Members:

We write to you regarding the proposed Special Enrollment Policy verification regulations and planned audit. The Health Consumer Alliance has been the designated statewide independent consumer assistance program since before the first open enrollment. Through our individual and policy advocacy with Covered California consumers we have gained valuable insight into the consumer experience.

As our testimony at the last Board meeting indicated, our work with consumers has shown that additional verification requirements are a tremendous burden on low- and moderate-income Californians and are a substantial barrier on health care access, even for eligible persons. Mandatory SEP verification would be a significant burden on consumers and a workload and technology strain for Covered California. We commend Covered California for taking the interim step of auditing SEP eligibility in the coming year but we caution against any hasty implementation of policies or procedures that would deprive eligible applicants and enrollees access to health care.

To that end, we provide the following comments on the proposed guiding principles and audit process for SEP eligibility verification.

Proposed Special Enrollment Policy Guiding Principles

1. Integrity of the market risk mix and long term affordability

We believe that in order to keep consumer engagement and trust high while preserving affordability, any SEP eligibility verification should be narrowly targeted only to instances of suspected ineligibility or fraud and should use electronic verification rather than requiring paper documentation. While we understand the balance Covered California must strike between plans and consumers to achieve affordability, we believe that mandatory SEP eligibility verification will have a chilling effect. Excessive documentation requests may be a deterrent to potentially eligible Covered California applicants who may spread the risk and Covered California should take care not to discourage participation. Problems and consumer frustration with the verification process already exist—such as lost documents, trouble

uploading verifications, incorrect eligibility results, confusing notices, long call center wait times, and difficulty resolving issues. Adding another level of verification may jeopardize the integrity of the market mix by increasing consumer distrust and decreasing engagement with Covered California. At the same time, mandatory SEP eligibility verification will be time consuming and costly for both consumers and Covered California administration.

2. SEP Policy will not be overly burdensome to members

We commend Covered California for prioritizing minimal burden to Covered California applicants and enrollees. We also agree that electronic verification should be maximized, where available, and that Covered California should accept a wide range of documentation to support SEP eligibility. We urge Covered California to preserve its current practice and enumerated principle of always accepting attestation—whether it is in the first instance or as a last resort. The ability to attest to SEP eligibility may be the only viable method for consumers who have difficulty accessing documents, especially for consumers who are limited English proficient or who are in circumstances that make document acquisition nearly impossible, such as for domestic violence survivors, seasonal workers, those losing jobs, for those having to move in with other family members or experiencing homelessness, and for those experiencing displacement because of natural disaster or environmental hazards.

We believe the audit offers an opportunity for Covered California to study how consumers respond to notices, what documents consumers are able or unable to provide, what consumers need to attest to, and, perhaps most importantly, what types of and how much consumer assistance is necessary to verify SEP eligibility.

A policy of mandatory verification would be highly burdensome to consumers and to the Covered California staff required to obtain and process such verification, and we reiterate that to the extent that SEP eligibility is indeed an issue, verification requirements should be targeted only to cases where fraud or other ineligibility is expected.

3. SEP eligibility is conditionally granted to not jeopardize access to care

The consideration for access to care is paramount and we commend Covered California for including it among the four guiding principles. It is critical that Covered California allow conditional eligibility and plan enrollment while SEP eligibility verification is pending.

For some special enrollment qualifying events, it can take time to get the documents that demonstrate the event, for example records that must be requested from another state. This should not preclude eligible people from enrolling in the meantime.

The ACA only allows one short gap in coverage before levying penalties. For some people, this means not only will they be unable to access care while waiting to get documents to show they are eligible for special enrollment, they will also incur a tax penalty if they cannot enroll first and verify later.

The practice of QHP enrollment with conditional eligibility is used and works in other state-based marketplaces, such as Massachusetts. We also encourage that both during the audit and any long-term SEP eligibility verification that Covered California clearly define timeframes both for consumer response and a prompt eligibility determination.

4. Technology capabilities and resource limitations

Technology and resources, including Covered California staff time, is an important consideration that is linked with burden to consumers. Again, we think the audit is the right way to study how Covered California's technology infrastructure and resource are stressed by increased verification demands. Although processes are improving, consumers already have technological difficulty in uploading documents in the current application and SEP processes. In other verification situations, such as data matching issues or immigration inconsistencies, many consumers were told their documents were either lost or would take significant time to process, or had to endure long call wait times before reaching a representative who could provide any information about their case. Where there are problems with submitted verifications, we understand that there is increased Covered California staff time to work each case. Given the already existing constraints on technology and resources, we urge Covered California not to implement mandatory, across the board SEP eligibility verification.

2017 SEP eligibility verification audit

We commend Covered California on its decision to pilot an audit before considering full implementation of mandatory SEP eligibility verification. We believe the audit is a critical opportunity to study whether there is a problem of inappropriate SEP enrollment and, if so, the magnitude of it. Because the audit will be the first focused examination of special enrollment period eligibility, we caution against assuming any outcome. Depending on the results of that audit, Covered California can decide whether the problem, if any, requires mandatory SEP eligibility verification. Unless the audit yields significant evidence of widespread SEP abuse, we recommend requiring SEP verification only when there is an indication of SEP ineligibility or fraud.

It is vital that Covered California's policies and procedures for the audit and any ensuing SEP eligibility verification must be defined, with stakeholder input, before the audit begins, particularly with respect to audit selection process, consumer communications, legal rights, acceptable verifications, and consumer assistance.

We therefore recommend:

- The audit should have clear goals and objectives with well-defined methodologies to achieve and measure outcomes.
- Covered California should include consumer advocates in the planning, oversight, and evaluation stages of the audit.

- Covered California must ensure randomness so that selection for audit is not based on any personally identifiable characteristics or claims data.
- Consumers should receive clear instructions in their threshold language about their rights and what to expect in the audit process and what their legal rights are.

In conclusion, we urge Covered California to keep consumer interests, rights, and engagement at the forefront while deliberating the necessity of SEP eligibility verification. We also look forward to participating in the development of the SEP eligibility verification audit and analysis.

If you would like to discuss our comments please contact Cori Racela at (310) 736-1646 or racela@healthlaw.org or Jen Flory at (916) 282-5141 or jflory@wclp.org.

Sincerely,

The Health Consumer Alliance