



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

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

May 11, 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 re adoption of Covered California’s Individual Eligibility and Enrollment Regulations. The Health Consumer Alliance is Covered California’s designated statewide independent consumer assistance program since its inception. Our work with Covered California consumers gives us valuable insight into the consumer experience, which allows us to identify and address systemic issues through policy advocacy. We extend our appreciation to the Covered California Policy, Evaluation and Research division and General Counsel for meeting with us to discuss our comments and for incorporating many of our suggestions to the benefit of consumers. This letter focuses on three outstanding areas of concern: Covered California’s duty to translate its notices and forms, discrimination on the basis of gender identity, and the proposed special enrollment period (SEP) eligibility verification requirements.

The regulations must reflect Covered California’s duty to translate

Covered California’s current regulations and practice do not align with its statutory obligation to translate forms and notices. Specifically, the language access provisions of the proposed regulations §§ 6452 and 6454 do not meet the standard set forth in Welfare & Institutions Code § 15926(k)(2), which requires that all Covered California forms and notices must be translated into all of the Medi-Cal threshold languages, at a minimum.¹ Covered California’s duty to translate is not new. This state law applies to all California’s “insurance affordability programs,”² including subsidized health insurance offered through the Exchange and has been operative, including the translation requirement, since January 1, 2014. Yet, for over two years Covered California has failed to provide written translations as the law requires. It is critical that the Exchange regulations reflect Covered California’s duty to translate, and that these requirements in fact be met.

¹ Welfare & Institutions Code § 15926(k)(2) says: “Forms and notices developed pursuant to this section shall be developed using plain language and shall be provided in a manner that affords meaningful access to limited-English-proficient individuals, in accordance with applicable state and federal law, and at a minimum, provided in the same threshold languages as required for Medi-Cal managed care plans.”

² Welf. & Inst. Code § 15926(a)(3).

Although Covered California often provides Spanish translations, the failure to translate notices into any other threshold language is an impermissible distinction between threshold languages and is contrary to state law. Indeed, the numbers of applicants who speak or read a language other than English or Spanish are significant. According to the AB x1 1 Eligibility and Enrollment Report, jointly issued by Covered California and the Department of Health Care Services, between April and September 2015 over 129,000 applicants reported speaking a threshold language other than English or Spanish, and over 60,000 requested written materials in these other threshold languages.³ Should Covered California begin providing services to very low income immigrants via the Newly Qualified Immigrant wrap, the need for translation becomes all the more urgent.

Covered California's current and proposed regulation at § 6452(c) to provide language access through translated taglines is insufficient because it does not conform to the translation requirement cited above. In our experience, taglines do not effectively inform beneficiaries who are limited-English proficient of their rights because taglines often fail to convey the importance or urgency of a notice. In fact, requiring the recipients of the letter to take an extra step to understand its contents constitutes a barrier, not an invitation, to learning more about their health coverage and how to obtain and use their health benefits.

We urge the Board to include the translations requirements of Welfare and Institutions Code § 15926(k)(2) in the regulation § 6452, "Readability and Accessibility Standards," and § 6454, "General Standards for Exchange Notices."

The regulations should prohibit discrimination based on gender identity.

We urge the Board to include a prohibition of discrimination against gender identity to proposed regulation § 6470. Section 1557 of the Affordable Care Act⁴ broadly prohibits discrimination and the proposed federal regulations implementing that provision, which should be finalized this year, specifically enumerate gender identity as a protected class.⁵ Covered California has been a leader in inclusion and, as demonstrated by the 2017 Model QHP contract, dedicated to studying and eliminating health disparities on the basis of sex. It is therefore imperative that the Exchange regulations also explicitly prohibit discrimination on the basis of gender identity.

2017 SEP eligibility verification audit

We commend Covered California, specifically the Policy, Evaluation & Research division and the office of the General Counsel, for meeting with consumer advocates and releasing greatly improved proposed regulations for the SEP eligibility verification audit process. In particular, the current proposed

³ Department of Health Care Services and Covered California, *California Eligibility and Enrollment Report: Insurance Affordability Programs, For the Reporting Period April 2015 through September 2015* at 19-20, http://www.dhcs.ca.gov/formsandpubs/Documents/Legislative%20Reports/CA_Eligibility-Enrollment-Data_April2016.pdf.

⁴ Codified at 42 U.S.C. § 18116.

⁵ See 80 Fed. Reg. 54216-19.

regulations go further in protecting consumers by allowing attestations where documents do not exist or cannot be obtained, allowing extensions to submit documents when the consumer has made a good faith effort to comply, and prohibiting audits based on demographic, claims, or diagnosis data.

Nevertheless, the regulations could do more to achieve the guiding principle of the special enrollment process to minimize burden on consumers. First, there should be a time limit on Covered California's ability to select a consumer for SEP eligibility verification audit. Auditing a person who is many months into plan enrollment decreases the likelihood of obtaining the relevant documents and risks jeopardizing her health care while she spends time dealing with the audit. We urge the Board to restrict the Exchange's request for verification to within 30 days of a consumer's plan enrollment in § 6504(e). We also believe the regulations should be modified to ensure that if an enrollee or applicant is notified that she will be terminated for failure to provide verification, she be given the option to accept eligibility pending appeal.

Finally we believe the audit is an important opportunity to study whether there is in fact a problem of inappropriate SEP enrollment and, if so, the magnitude of it. We therefore urge the Board to add a provision to § 6504(e) to require reporting of audit results to ensure transparency and efficacy of the process.

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