December 21, 2015

Secretary Burwell
Attention: CMS-9937-P
Centers for Medicare & Medicaid Services
Department of Health and Human Services

Re: Covered California comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; CMS-9937-P (RIN 0938-AS57) -- User Fee and State-Based Marketplace on a Federal Platform Recommendations

Dear Secretary Burwell,

Covered California is submitting comments in response to the proposed regulations CMS-9937. The comments in this letter refer to the FFE User Fee for 2017 (Section 156.50). Covered California has also submitted comments on the following additional areas: standardizing health plan benefits, direct enrollment and web-based entities, and other issues.

Federal Proposal

In relation to the proposed regulations establishing the FFE user fee for 2017, Covered California provides the following comments based on our experience and analysis of what efforts are necessary to assure a viable risk mix and ongoing sustainability. The proposal details two related fee structures: one for the Federally Facilitated Exchange (FFE) (with a fee of 3.5% of premium) and one for State-Based Marketplace on a Federal Platform (SBM –FP) (with a fee of 3% and allowance for the state to add any fee amount on top of that for its functions). The regulations further delineate what functions are covered respectively by the two fees and what functions would be the responsibility of the state opting to operate as a SBM-FP (see Table 1.)

Table 1. Division of Responsibilities: State and Federal Roles in State-Based Marketplace with Federal Platform ("FP")	
Function	**State or FP**
Provision of Consumer Assistance Tools	State
Consumer Outreach and Education	State
Management of a Navigator Program	State
Regulation of agents and brokers	State
Eligibility Determinations	FP (where using Federal Exchange IT and Call Center)
Enrollment Processes	FP (where using Federal Exchange IT and Call Center)
Certification Processes for QHPs	State
Administration of SHOP Exchange	FP (where using FE IT and Call Center

Implicitly in making this proposal and made explicit in direct communications with HHS staff, the respective fee structures proposed reflect the current planned resource allocation such that for 2017, 3% of premiums collected by the FFE are required to operate the Federal Exchange information technology and the call center infrastructure, with 0.5% available for all other marketing, outreach, plan management and oversight functions.

Appropriateness of Assessment Levels and Structures

Covered California makes these comments based on our technical and market experience in the context of the fact the FFE user fee does not apply to State-Based Marketplaces such as California. In addition, California has no plans or intention to change its structure to become a State-Based Marketplace on the Federal Platform. Nonetheless, we want all marketplaces across the nation to be successful and make these comments to contribute to building on the success we have already seen across the nation in the initial launch of federal and state-based marketplaces.

Based on our experience and a detailed review of other comparable systems, Covered California believes that requiring 3% of premium to support IT and call center functions is likely reasonable. However, Covered California believes strongly that an assessment of only 0.5% to support marketing which is essential to the growth and maintenance of a strong enrollment – let alone all plan oversight and management functions -- is inadequate to assure the federal marketplace grows and maintains a good risk mix. In addition, the SBM-FP fee structure as

articulated would be very likely to either result in a significant level of underspending on marketing, outreach and plan management as the exchange "norm" against which any state marketplace will be judged, or result in most states migrating to the FFM model.

Summary of Covered California's Concern and Alternative Proposal

The fundamental element required for the success of any marketplace is generating enrollment that reflects, and continually refreshes, the risk mix to assure the lowest possible premiums for all consumers (and for the federal government that is paying a substantial portion of the premium through the Advanced Premium Tax Credit). Exchanges face constant churn with a substantial portion of consumers moving out of exchanges each year to other forms of coverage and new enrollees joining as they become newly eligible. A good risk mix and a viable business proposition for exchanges does not "just happen" – insurance must be sold. Selling insurance – which is different than providing a free benefit to a beneficiary, as is the case in most Medicaid programs -- requires ongoing and significant investments in marketing and outreach to both promote retention of current enrollees and new enrollment that reflects a balanced risk pool.

The Federal Marketplace and SBMs have achieved very strong enrollment over the first two open enrollment periods, during special enrollment and all indications are very positive for the third open enrollment period that is currently underway. For the FFE, that enrollment has been the result of a number of factors, including in particular very high public interest and media coverage. The significant amount of free coverage has supplemented and complemented by marketing investments that have been relatively limited and effectively targeted, (e.g., focused navigator funding, targeted digital marketing and well-designed programs to follow-up on those who have started the enrollment process). Partner efforts from groups such as Enroll America have also invested in community outreach and promotion in many FFE states. The importance of sales and marketing efforts will only increase in coming years as the free, earned media garnered by the historic nature of the Affordable Care Act subsides and the efforts of foundation-supported enrollment and marketing efforts decrease and more people gain coverage.

Based on Covered California's experience, which are described in more detail in the following sections, Covered California makes two recommendations to improve on HHS' proposal:

- In addition to what is required to maintain Healthcare.gov and the call center, the FFE should assess at least an additional 2% of premium (for a total assessment of at least 5% of premium) and dedicate the vast majority of that amount to support sales, marketing, and outreach. An increase of the plan assessment by 2% should provide sufficient funds for both outreach, sales and marketing as well as for plan administration and other functions. This level of funding is not only warranted but more on par with industry norms related to member retention acquisitions costs. Retaining and attracting more and healthier enrollees will improve the risk mix and make premiums both lower and more stable. As discussed below, a total assessment of 5% (the current 3% identified for IT/Call Center plus 2%) would not only be a marked savings to health plans compared to pre-Exchange costs to attract and retain new members in the individual

market, the marginal investment would have direct impacts on reducing premium costs to consumers and the federal government by improving the risk mix of those insured.

- For the SBM-FP, the federal government should consider collecting the same base amount as states operating under the FFE structure, but pass along to states the portion which is not required for the IT/Call Center with the requirement -- the 2% in the proposed structure above -- with the requirement that the State document how it would use the majority of such funds for effective marketing and plan management. States could still have the federal government collect additional funds if the State wanted even more robust marketing to assure a better risk pool and lower premium costs, but the federal funding would be a floor of marketing spending. (For example, if the FFE established 5% of premium as the assessment, it would pass along to SBM-FP's 2% for marketing and plan administration, requiring 75% of that amount be spent on marketing and outreach.)

What follow are data and observations to support these recommendations.

1. Context of Covered California's Experience and Results

Covered California has always approached its spending on marketing, outreach, and enrollment as sound business investments central to creating and maintaining a viable risk pool, lowering costs for all Californians in the individual market and critical to our ongoing sustainability. Covered California has used federal Establishment Funds to do marketing and outreach during the first two open enrollment periods, and are transitioning to using the plan assessment revenues for our continued efforts. The marketing and outreach investments have been large – as you would expect given the fact that California is the largest state, with diverse target populations and some of the most expensive media markets in the country. We believe that on a percentage basis, other states or the federal marketplace spending less proportionally than California would jeopardize their respective risk pools and negatively impact the premium trend in future years.

Covered California has been collecting a fixed per member/per month (PMPM) plan assessment since January 1, 2014 of $13.95. These assessments have built a substantial reserve that Covered California can use, along with new revenue, to fund future activities. Covered California has not set its plan assessment for 2017, but is considering converting to a percentage of premium.

The marketing, outreach and enrollment efforts of Covered California have included paid advertising (TV, radio and digital), support for enrollment by Navigators and Certified Enrollment Counselors, enrollment through our Call Center and coordination with health plans and Certified Insurance Agents (who are paid directly by our QHPs, but are certified and overseen by Covered California). (See Table 2, which presents Covered California's marketing spending as a percentage of premiums).

Table 2 - Summary of Covered California Marketing, Acquisition and Retention Costs					
	FY 2013-14 (OE1)	**FY 2014-15 (OE2)**	**FY 2015-16(OE3)**	**FY 2016-17 (OE4)**	**FY 2017-18 (OE5)**
Marketing/Outreach Expenditures	$134 M	$143M	$121M	$121M	$121M
Marketing as % of Premium	2.9%	2.8%	1.7%	1.4%	TBD
Total Enrollment (as of June, actual or projected)	1,074,017	1,300,086	1,459,868	1,636,294	TBD
Gross Premium (for Calendar Year, e.g., for OE1 for 2014)	$4,593M	$5,096M	$7,194M	$8,457M	TBD

Note:

- For full and detailed budgets see hyperlinks: for 2013-14, for 2014-15, and for 2015-16.
- While showing marketing as percentage of premium provides a common framework – initial years of any product or service require higher initial acquisition costs. Also, the initial year's marketing expenses were not paid out of a portion of premiums but from Federal Establishment Funds.
- Covered California has not determined its Marketing Budget for future fiscal years; for this model we show those expenses being held constant
- Marketing does not include an attribution of any Call Center expenses, which currently average about $100 million per year.

The results of Covered California's efforts have been very positive. While California and the rest of the nation have benefited from substantial free media from the coverage of Open Enrollment periods, we believe that the marketing investments have paid off in terms of enrollment and a better risk mix that has had a direct impact on moderating rate increases (see discussion in next section).

Based on our enrollment and the good risk mix that has been generated as a result, the weighted average rate increase for Covered California plans in 2015 was 4.2% and in 2016 it will be 4.0%. At the same time, health plans in California generally did not face losses nor have they needed to depend on the federal risk corridor program – because they priced their products for the good risk that was enrolled. Because our risk mix was even better than some plans anticipated, California's health plans contributed over $182 million – over 50% of all the Risk Corridor payments generated nationally by plans in Affordable Care Act products. Note that only

one California plan had unanticipated losses of $1.7 million (0.06%, or about one-half of a tenth of a percent) of the $2.87 billion in Risk Corridor losses nationally.

2. Marketing and Outreach Investments Results in Better Risk Mix/Lower Premiums

Covered California has acted from the point of view that "good risk is earned" and made both investments and policy decisions to promote broader enrollment to assure the best possible risk mix. Analysis of available data seems to confirm that marketing investments pay-off.[1] In assessing whether Covered California's significant marketing and enrollment support have "paid off" there are three potential basis of comparison: (a) measurement of actual risk mix; (b) relative rate increases; and (c) enrollment of subsidy eligible populations.

a. Measurement of Risk Profile

The actual risk mix of a state's individual market is the most important measure of the success of marketing and outreach. It is important both because "sales" are always needed for healthier individuals and because a better risk mix has a direct impact on the premium costs that will either support or deter future enrollment. The best standardized information about the national relative risk mix was developed by HHS in its ***Summary Report on Transitional Reinsurance Payments and Permanent Risk Adjustment Transfers for the 2014 Benefit Year*** (linked here) issued September 17, 2015. That report includes a state-by-state summary of each state's "plan liability risk score" for the individual market.

Analysis of that data provides a few important indicators of California's performance compared to other states and the potential benefits of investing in marketing/enrollment, including:

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[1] While marketing and outreach expenditures by an Exchange/Marketplace is one critical variable in promoting enrollment and a good risk mix in an exchange/marketplace, there are clearly other independent variables. The six other major variables we identify include:

1. The size and efficacy of marketing efforts spent by health plans or others.
2. Whether the state converted all plans to ACA-compliant plans and created a common risk pool. California converted all plans effective January 1, 2014. States that maintained grandfathered plans through 2016 will have continued uncertainty regarding their risk pool through the 2018 plan rating year.
3. Whether the state expanded its Medicaid program. To the extent states did not expand the Medicaid program, generally this would be likely to have a positive effect on the Exchange risk pool since the additional individuals with very high subsidies – those with incomes from 100% to 138% of poverty – would be expected to have very high enrollment.
4. Whether the state has a "Basic Health Plan." A Basic Health Plan would generally have a negative effect on the Exchange risk pool because removing individuals with higher subsidies would likely lower total enrollment.
5. The extent that carriers effectively price health plans. Prices could be wrong based on "bad planning" or with the intent of underpricing to garner enrollment.
6. The efficacy of enrollment processes that could have impeded enrollment (a concern about the early challenges with Healthcare.gov).

- For the 2014 Benefit Year California had the lowest standardized risk score in the nation (at 1.203)
- If California had the average risk score of the rest of the nation (of 1.600 – calculated based on a weighted average of enrollment) – ***it could have faced average premium increases of almost 30% instead of the 4.2% premium increase actually realized for 2015***, based on a simplified application of this risk score methodology.
- If the rest of the nation had the same risk mix as California's, instead of what they actually had – other states, and consumers in those states along with the federal government, would have faced substantially lower premium increases than they actually experienced – depending on the state's relative experience, premiums could have been anywhere from a few percent lower to as much as 30% lower premiums for consumers in those states in 2015.

The other measurement of risk mix can be seen in the Risk Corridor program and its mix of assessments and payments. Assuming health plans' actuaries did a good job pricing their products, losses incurred in 2014 were due to a substantially different risk mix than what was anticipated. As discussed above, in California health plans did not experience a negative risk mix. Rather, their prices were adequate to cover the risk mix and some plans even made larger than anticipated profits. The result was two years running of rate increases substantially below historic premium trends for the Individual Insurance market. In contrast, in the rest of the nation – with an average risk mix that was 25% worse than in California – health plans lost almost $3 billion and consumers faced substantial rate increases and uncertainty that will play out for the coming years.

b. Relative Rate Increases

As noted earlier, Californians – both inside of Covered California's marketplace and in the off-exchange individual market – have benefited from historically low average premium increases in 2015 and 2016, respectively **4.2% and 4.0%,** that were the product of Covered California's actions. It is difficult, however, to compare the changes in premium in California to that of other states. The main data available for national comparison is based on changes to second lowest silver plans, not to the weighted premium average of all enrollees in the market.

The Kaiser Family Foundation analyzed year-over-year premium changes for both 2015 and 2016, but that analysis looked only at the change in the second lowest silver plan. For both years, California's premium change was lower than average, but those reported results surely understates the magnitude of the difference since the change is not weighted by actual enrollment.

Despite the current lack of publicly available state-level, year-over-year weighted premium is very likely that California's relatively low premium increases are among the lowest in that nation and are directly attributable to a stable and strong risk mix.

California's low relative premium increases, can be attributed in part to our robust marketing and outreach efforts that have garnered large and diverse enrollment, resulting in a positive risk mix.

c. Enrollment of Subsidy Eligible Populations

Another potential measure of relative efficacy of marketing and outreach efforts is the extent to which a state has enrolled its subsidy eligible population. As of June 2015, based on the HHS reported percent of the subsidy eligible population effectuated as of June 2015, California had one of the ten highest rates of enrollment (at 68%), substantially higher than the national average of 57%. However, it is difficult to use these rates alone as the basis for comparison of the impact of marketing efforts for a range of reasons, including in particular the potential confounding effect of some states not expanding Medicaid which results in higher likely enrollment of lower income individuals eligible for large subsidies. In addition, large and more diverse states may have to invest additional resources to attract target audiences and smaller states with fewer or less expensive media markets may be able to enroll a higher percentage of the subsidy eligible population with the same or less effort than are larger states.

Another piece of evidence that quantifies that larger enrollment is specifically the result of making additional investments in outreach and marketing efforts is a soon-to-be published independent evaluation conducted by Mathematica Policy Research on Enroll America's campaign to promote enrollment in Federal Facilitated Marketplaces in the first Open Enrollment period. Enroll America did field outreach activities such as "commit cards" and phone banking, digital efforts to increase online presence, data and analytics for ongoing assessments of activities, and active promotion of earned media. The efforts were focused on particular target states, which enabled a quasi-scientific comparison to enrollment in states that did not benefit from Enroll America's activities. The report, written by Mathematica, presents a thorough, cross-state evaluation that estimates the campaign's effect on enrollment. Findings from the first year impact analysis are consistent with a large, statistically significant effect of Enroll America on Marketplace enrollment during the first open enrollment period compared to states that did not benefit from these efforts.

It is important to note that Enroll America's effort complemented those of the federal marketplace. While they did not approach the scale of the broad marketing and outreach that were possible with the resources Covered California and some other state-based marketplaces had in the first Open Enrollment period, they were sophisticated and targeted investments in promoting better enrollment. These findings suggest that investments in marketing and outreach have real and positive returns.

3. New Enrollment and Retention To Maintain Good Risk Will Require Substantial Spending in Future Years

Covered California's experience is that about one-third of those covered leave its marketplace each year. This "churning" of enrollees is a natural part of the individual market, but necessitates continual outreach to maintain enrollment, and further investments to expand a marketplace's enrollee pool. Most enrollees renewing into the next coverage year opt to passively renew, which means these enrollees do not use the online portal. It is also the case that many of those getting insurance with Covered California – and with the FFM – are relatively new to insurance. Because of this, there is the risk that they may not renew at high rates since relatively few actually use their insurance for expensive services. Marketing and outreach efforts are important to remind and reinforce for those enrolled who did not use the health care system very much the ongoing value of having insurance. This group is precisely the individuals who you want to be sure renew to maintain a good risk mix.

For both renewals and new enrollment, many have responded in Covered California to both paid marketing and outreach, as well as to "earned media" – coverage of Covered California in the news generated by our communications and PR activities that has resulted in high awareness from radio, print and television. The importance of both of these efforts -- paid and earned media -- were documented in independent surveying conducted by the University of Chicago/NORC surveying of consumers in subsidy eligible California consumers (available here). Those survey results affirm the importance of consumers hearing about Covered California and the benefits available because of the Affordable Care Act from both channels, and that whether they heard about the benefits of coverage and the availability of subsidies from marketing or news coverage, many then spoke to family or friends and ultimately enrolled because of that promotion. The FFE has benefited from media coverage as well, but it is important to note that media has been garnered with substantial investments in California both in terms of developing a highly trained and experienced team of media and communications professionals on staff and use of a communications firm to assist in delivering our message. In future years, there will be less media interest as the "newness" wears off. The FFE and SBMs (whether or not they operate on the Federal Platform) will need to invest, like Covered California, in building a media outreach team, content marketing efforts, and public relations activities. And while these investments will be important there will be an increasing need to rely on paid marketing and outreach to assure ongoing retention and new membership growth.

4. Higher Plan Assessments Still Reflect Cost Reductions Compared to Prior Acquisition Costs of Enrollees in the Individual Market and Complement Health Plan Spending

Getting consumers insured in the individual market has always been a costly proposition. The fact of the high cost of member acquisition was the central factor in the Medical Loss Ratio being set at 80% for the individual market compared to the 85% for employer groups. In the individual market, there are a number of reasons that an assessment of 5% of premium (or even greater) would still reflect savings to consumers and to health plans compared to costs related "acquiring covered lives" prior to the operation of exchanges. Covered California has done a review based on industry information and its experience with some of the nation's largest carriers and estimates that before paying an assessment, **health plans are on average**

spending about 6.5% LESS of premium on member acquisition than they were post-MLRs being in-place but before the advent of state and federal marketplaces. (See Table A linked here for detailed analysis. The major factors in that reduction in costs are:

- Decrease on the amounts paid to agents and an increase in sales not subject to agent commissions
- Elimination of underwriting costs.

While we also estimate that on average carriers may be marginally increased health plan service center and data-related costs, these increases are likely very small compared to the other areas of savings. The fact that with Covered California a smaller portion of health care premiums are being spent on enrollment and promotion is an important and relevant frame of reference, but the far more important fact is the positive impact on premiums by having a better risk mix as discussed above.

A number of other key facts are important in understanding the relative costs promoting enrollment in the individual market supported directly by health plans. First, we assume that on average health plans are spending about 2% of premium directly on marketing and acquisition of individual-market insureds (both on and off exchanges). The biggest portion of this – about 1.6% of premium is in the form of payments to agents. Agents have been a vitally important sales channel used in California and having fair and adequate compensation for agents is needed given the importance of having in-person or moderated support for consumers. The second major expense area is in direct marketing, digital and other promotional expenses. Covered California estimates that to be about 0.5% of premium based on the media and marketing spend of the plans it contracts with -- totaling over $40 million a year in California.

Spending by a marketplace complements and supplements the direct health plan marketing expenditures. In the case of Covered California, while the payments to Certified Insurance Agents are made directly by health plans – we actively work with agents in terms of branding, promotion and coordination. The fact that across California there are now more than 600 "storefronts," the vast majority of which are owned, operated and entirely supported by Certified Insurance Agents -- but all using common branding and promotion rules developed by Covered California. Covered California is literally on hundreds of "Main Street's" across California because of these efforts. The benefits of this effort are reflected both by the fact that 40% of Covered California's enrollment is through Certified Insurance Agents, and by the fact the even sales by agents in off-exchange insurance products benefits the overall risk mix.

With regard to the media and marketing spend of the plans Covered California contracts with, we actively coordinate with the plans to complement their advertising. All contracted plans are required to provide full and detailed marketing plans to Covered California, which are used in our identifying gaps and opportunities. For example, on reviewing the planned marketing spending of California's health plans we identified a gap in spending on in-language marketing targeting major communities speaking Chinese, Korean, Vietnamese and other Asian languages. Based on this analysis, Covered California targeted these channels with very positive results.

5. The Proposed FFE Plan Assessment Overstates Cost to Consumers or Plans Since In Reality It Is Spread Across the Entire Individual Market

The benefits resulting from Exchange activities, including improved risk mix due to enrollment gains, apply to both Exchange consumers as well as off-Exchange, individual market consumers. In addition, because of the pricing requirement that plans charge the same rate on and off-exchange for the same product – the effect is to spread the FFE percent of premium cost across the entire market for plans that sell both on- and off-Exchange. For example, in California, where virtually all of the major health plans offering individual coverage are in Covered California, this means that a 3.5% fee of premium assessment would only actually be a 2.1% fee since about 40% of the total individual market is off-exchange but plans spread the cost of the assessment to all insureds.[2]

6. Additional Spending Conform to Good Business Standards

In virtually every major service or product industry, a substantial portion of expenditures are and should be dedicated to "customer acquisition." There are two industry standards for considering appropriate market acquisition costs. The first is based on what portion of the business' expenses relate to "acquisition" of a new member. In many industries, while the amount varies from industry to industry, the portion of the budget that "should" be spent on acquiring new members is in the range of 30% to 40%.[3]

For the FFM currently, even if all of the proposed 0.5% that is not used for IT/Call Center were dedicated to marketing and outreach, that would represent only 14% of the federal spending. Covered California's current budget, allocates over 36% of its budget ($121 million) to outreach and marketing. (It may be appropriate for both Covered California and the Federal Marketplace to allocate some of the Call Center expenses to supporting acquisition, but these figures provide a common frame of reference.)

Another industry standard is that investment in member acquisition should be directly related to the life-cycle of the potential earnings from the member – with business' willing to spend much of the initial anticipated revenue on new member/customer acquisition on the basis of capturing margin and funds to support the other elements of a business' operations in the future.[4] This

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[2] Covered California's analysis shows that, in the aggregate and by enrollment, about 30-40% of the total ACA-Compliant market is off-Exchange.

[3] "It costs 6–7 times more to acquire a new customer than retain an existing one." Bain & Company Customer value and acquisition cost should be 3:1, which translates to 33% acquisition cost. (http://www.klipfolio.com/blog/are-you-spending-too-much-money-acquiring-new-customers) Healthcare industry's marketing spending as compared to other industries: (http://www.gartner.com/technology/research/digital-marketing/digital-marketing-spend-report.jsp)

[4] Many businesses dedicate a significant percentage of all revenues, some as much as 50%, to marketing efforts. "In 2014, Microsoft, Cisco, Quest Diagnostics, Intel, Salesforce, Constant Contact, LinkedIn, Marketo, Bottomline Technologies, Marin Software, IDEXX Laboratories, Tempur Sealy, Tableau and

model is also very instructive for assessing Covered California's and the FFE's experience. Based on the current plan assessment for Covered California – if California were to spend as much all of the first year's revenue generated from Covered California's mid-range estimate of 700,000 new enrollees to be enrolled in FY 2015/16 -- with the costs of retention and all other expenses born from the revenue generated from renewing members, Covered California's marketing and outreach budget would be approximately $117 million, which is very close to the actual budget of $121 million.

7. Proposed SBM-FP Fee Structure Would Discourage State-Based Efforts

Lastly, the proposed fee structure all but guarantees that no state would launch its own state-based marketplace. With under the FFE 0.5% of premiums dedicated to plan management, outreach, marketing, and other activities, few, if any states will be able to "compete" with the proposal that HHS sets forth. Any FFE state that later contemplates becoming a state-based marketplace will face strong fiscal pressure to remain a FFM, even if greater investments in plan management or outreach would benefit residents of the state.

Thank you and please contact me if you have any questions.

Sincerely,

Peter V. Lee
Executive Director

CC: Covered California Board of Directors

Twitter among many more all had marketing and sales budgets that were greater than 14% of revenue, some spending as much as 50%! All of these companies also grew year-over-year." (https://vtldesign.com/inbound-marketing/content-marketing-strategy/percent-of-revenue-spent-on-marketing-sales/)