California Association of Health Plans

1415 L STREET
SUITE 850
SACRAMENTO, CA 95814

916.552.2910 P
916.443.1037 F
CALHEALTHPLANS.ORG

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California Health Benefit Exchange Board
c/o Diana Dooley
California Health and Human Services Agency
1600 9th Street, Room 460
Sacramento, CA 95814

Dear California Health Benefit Exchange Board:

The California Association of Health Plans (CAHP), representing 39 public and private organizations that collectively provide health care coverage to over 21 million Californians, is writing to inform you of the dangers AB 52 (Feuer) would pose for the Exchange. CAHP and our member plans pledge to be a constructive voice in the establishment of the Exchange. Health plans play a vital role in providing high quality health care to Californians at premium rates that are at or near the national average. We believe that this bill, if signed into law, would damage the board's ability to contract with plans, hinder the market power of the exchange, and threaten the ability of the exchange to open on time with a robust offering of health care coverage options for enrollees. We believe that the board should oppose passage of this bill for the following reasons.

AB 52 (Feuer) grants the Department of Managed Health Care and the Insurance Commissioner the power to approve, deny, or modify any proposed rate for new or existing health insurance both inside and outside the exchange. This includes, but is not limited to, premiums, base rates, underwriting relativities, discounts, copayments, coinsurance, deductibles, and other out of pocket costs.

Separately, under last year's SB 900 and AB 1602, California created an independent Exchange with authority to selectively contract with health plans and insurers through a competitive process. That contracting process will ultimately result in the development of premium rates for coverage in the exchange.

In our view, the combination of these requirements makes AB 52 both dangerous and unnecessary for reasons we discuss below.

AB 52 Threatens Exchange Board's Ability to Sign Plans

Under state law (AB 1602) health plans, whether they participate in the insurance Exchange in 2014 or not, must offer products outside of the Exchange that mirror product offerings in the Exchange. Federal law requires that health plans and insurers pool their risk and charge the same premiums for identical products inside and outside the exchange. These provisions were intended to prevent adverse selection.

As a result, the Exchange board has significant power to design products, establish cost sharing amounts, and influence premiums for health plans offered in the individual and small group market both inside and outside of the exchange.

In our view, the provisions of AB 52 would be entirely counterproductive if applied together with the Exchange's selective contracting authority, threatening the ability of the Exchange to attract a wide array of health plans and ensure vigorous competition.

This is because the proposed legislation, read in the context of existing law establishing the Exchange, effectively creates an untenable conflict between the new Exchange authority and existing state regulators. AB 52 would give the DMHC and DOI complete veto authority over any products, including standardized insurance products developed by the Exchange, that have been negotiated between carriers and the Exchange. This will be extremely disruptive to the ability of the Exchange to attract health plans and insurers to participate in offering coverage in this important initiative of the federal health care law.

The Exchange must attract sufficient health plan and insurer participation to provide coverage across the entire state. AB 52 creates a situation where the Exchange, using its bargaining power, would develop terms of coverage and enrollee cost sharing, contract with plans and insurers to offer coverage, only to have regulators or interveners to block those contracts. This will result in delays in establishing the Exchange, block enrollees from receiving federal subsidies for coverage, and restrict access to coverage to millions of California.

Exchange Clout Eliminates Need for AB 52

Second, the unique authority California has conferred to its Exchange dramatically undercuts the premise of AB 52, making its enactment both a threat to the viability of the Exchange and, when considered in light of the Exchange's selective contracting authority, a solution in search of a problem. Proponents of AB 52 argue that today consumers don't have protection from health plans and insurers raising premiums. This argument ignores current law regarding regulatory review of rates and mandatory independent actuarial certifications for all small group and individual rates.

Moreover, in 2014 the Exchange will become the largest purchasing pool in California and premium rates in the Exchange will become a benchmark for rates in the market. California law will require that carriers offer plans in the outside market for the same price as the Exchange negotiates, which means that the Exchange will have enormous influence over prices in the market. These dynamics make AB 52 not only a threat to the viability of the Exchange, but unnecessary.

Lengthy AB 52 Process Causes Timing Problems for Exchange

Even if the issues outlined above could be overlooked, the legislation creates an untenable timeline for the establishment and operation of the Exchange. AB 52 creates a lengthy process for health plan and insurer rate filings of Exchange-approved products. This will cause significant problems for the Exchange as contracts are agreed to by carriers and the Exchange rushes to transform the insurance market in 2014.

AB 52 requires plans to file rates 60 days prior to their effective date. For purposes of this analysis we will assume a November 1 rate filing for rates effective on January 1. The public, or regulators,

can request a public hearing upon notice of a rate filing. Public hearings under AB 52 are subject to the hearing process that begins with Government Code Section 11500.

This public hearing process includes an administrative law judge, discovery, filings of motions, witnesses, cross examinations, prehearing conferences, and more.

We will generously assume that any public hearing will take approximately 60 days to be noticed and conducted. This means that a public hearing for a rate filed in November is concluded by March 1. AB 52 requires regulators to issue a decision on a rate filing within 100 days after the hearing. For this analysis we will assume the regulator issues a decision in 90 days. The calendar now reads June 1.

AB 52 allows interveners to file a motion for a judicial review within 60 days of the issuance of an order. If an intervener files such a motion the calendar could now read August 1st- a full 10 months after the rate filing and 8 months after the original effective date of the new or changed rate.

There is no estimated timeline for a judicial review of a rate filing in AB 52. It is not unreasonable to assume that could take 4 - 6 months.

For the Exchange to be assured that it can offer products on January 1, 2014 that meet the federal definition of essential benefits, that it has contracts in place with carriers to offer those products, that those contracts have been approved by regulators, would need more than one year of lead time to navigate AB 52.

Health plans and insurers currently develop their rates months in advance of a rate filing. It is therefore very likely that under AB 52, carriers would have to be able to estimate the costs of providing coverage in the exchange nearly two years in advance of January 1, 2014. There is also a strong probability that the Exchange may choose to open enrollment in the fall of 2013 further pushing back the timeline to approve products under AB 52.

Further complicating matters is that, if regulators (or the judicial determination) denies, or modifies, an Exchange product the Exchange must have sufficient time to re-open its contracts with carriers.

Conclusion

AB 52 undermines the ability of the California Health Benefits Exchange to effectively negotiate coverage and cost sharing at sustainable premium amounts.

AB 52 gives two regulators (who are not provided seats on the Exchange Board) authority to veto the work of the Exchange and would delay access to coverage for millions of Californians.

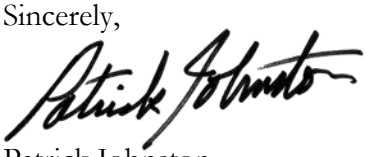
AB 52 will create substantial uncertainty among potential carriers in the Exchange that the premium rates they develop for coverage in Exchange will be approved by regulators.

AB 52 creates an extraordinarily long process for final approval of Exchange products that could jeopardize the Exchange's ability to offer products beginning January 1, 2014 as required by Federal law.

AB 52 would result in health plans and insurers attempting to estimate the cost of premiums in the Exchange well over a year in advance of the Exchange opening. Because pricing this far in advance will likely require guessing at certain regulatory requirements that will not have been finalized, this could lead to a higher degree of error by the Exchange and plans, leading to a troubling first year for the Exchange.

The California State Senate is currently considering the fate of AB 52. The bill will be heard in Senate Appropriations Committee on August 15th and likely be eligible for a floor vote on August 26th. We believe that it is in the best interests of the Exchange to oppose passage of AB 52. Otherwise your ability to successfully open the exchange on time and with robust health plan and insurer participation will be significantly compromised.

Sincerely,



Patrick Johnston
President & CEO