



July 20, 2011

The Honorable Diana Dooley  
Chair, California Health Benefits Exchange

The Honorable Kim Belshé  
The Honorable Paul Fearer  
The Honorable Susan Kennedy  
The Honorable Robert Ross, M.D.  
Members, California Health Benefits Exchange

Re: Exchange Board Staff Recommendations on Legislation

Dear Members of the California Health Benefits Exchange:

Health Access is either the organizational sponsor or one of the leading proponents of virtually all of the measures discussed in the staff recommendation to the Exchange Board. As such, we offer our comments on the staff recommendations and more detailed analyses of legislation.

It is critical that California continue its momentum in implementing federal health reform by putting in place that component pieces that need to be ready in late 2013 in order to be operational in 2014. Waiting until 2012 to pass legislation leaves less than a year to implement it. Health reform implementation will require a full legislative agenda of additional legislation next year as well. We respect the challenges faced by all parties in implementing health reform but every day we are mindful of the real Californians who go without care they need or face bankruptcy because of the lack of affordable coverage.

### **AB52 (Feuer) Rate Regulation**

We ask that the board not adopt the staff recommendation that the Exchange be exempted from rate regulation and instead that the board direct staff to work with the proponents of the measure, including Health Access and others, to develop a workable amendments.

Health Access strongly supports active regulatory oversight of health insurance rates. Like Senator Diane Feinstein, we believe it is urgent to enact legislation this year in order to avoid anticipatory price increases in advance of the implementation of health reform in 2014.

We find it extremely unfortunate that staff characterizes the Exchange as similar to DHCS and MRMIB. Unlike DHCS or MRMIB in MRMIB's recent history, the Exchange will play a critical role in the private insurance market, representing a very substantial share of the individual market and a lesser but important share of the small business market.

We respect the staff's concern that AB52 as currently drafted could delay the Exchange in premium rate negotiations or plan renewals. However, as described by Exchange staff, this is a timing and process issue. Amendments are being drafted to resolve the timing and process issue.

Products offered in the Exchange will also be offered in the outside market: if the Exchange is exempted from AB52, how does rate review of the products in the outside market comport with federal requirement that the products be offered at the same premium rate both inside and outside the Exchange? Exempting the Exchange from AB52 does not address this problem: solving the timing and process issues identified by Exchange staff would.

*Health Access request: Direct Exchange staff to work with Assemblymember Feuer to address the timing and process issues identified by Exchange staff.*

#### **AB714 (Atkins): Pre-Enrollment from Existing Public Programs**

Health Access is committed to maximizing enrollment in the Exchange and Medi-Cal on Day One of health reform to help Californians in need of affordable coverage, to draw down federal funds that will benefit our health care system and our economy. A big, robust risk pool is the best means of preventing adverse selection.

AB714 sets up the process for transferring as many as 3.3 million Californians who are covered by or otherwise connected to public programs funded out of the General Fund to 100% federally funded coverage through the Exchange and Medi-Cal.

Our estimates are that about 80% of these Californians are healthy lives, enrolled in programs such as FamilyPACT (childless adults under 200%FPL receiving reproductive health services) or family members of the almost 900,000 Healthy Families kids.

If enrollment of these healthy lives is to begin in the second half of 2013, just as with the LIHPs and CMSP, case file conversion needs to begin in 2012. Without the statutory authority this year, the transfer of millions of lives will need to occur in the extremely narrow window of the first few months of 2013.

The staff analysis notes correctly that AB714 also provides for notice to individuals enrolled in or dis-enrolling from a long list of public programs. However, this is only one element of AB714, albeit an important one.

Given the disinformation campaign by the opposition to health reform that will heat up in 2012, many individuals believe that health reform will be of no help to them or even that it has already been repealed. Changing these attitudes will not occur quickly. AB714 and its companion measure, AB792, are intended to provide objective and targeted information to clear up confusion that currently exists in the California public about the federal health reform law---and to do so at minimal cost and effort.

Federal grants have provided consumer assistance capacity to DMHC. If staff is concerned about the Exchange board staff capacity to handle questions or calls, the solution may be to direct consumers to the consumer assistance capacity funded out of the federal grant until such time as the Exchange stands up its own call center.

Waiting until 2013 to educate millions of Californians about the availability of coverage through health reform and to clear up the confusion engendered by those opposed to health reform is not conducive to the success of the Exchange. Failing to take advantage of the time needed to move millions of health lives to the Exchange when there is the opportunity to begin that work in 2012 will undermine the viability of the Exchange, exposing it to a much sicker risk mix.

*Health Access request: Direct staff to work with Assemblymember Atkins and Health Access to address staff concerns about call volume and other workload issues.*

### **AB792 (Bonilla): Auto-Application for COBRA eligible and Individual Market**

Our comments on this measure are similar to our comments on AB714 (Atkins).

More than half the uninsured are uninsured for less than a year. Recent literature indicates that only 10% of those eligible for COBRA take it, in part because the same event that makes an individual eligible for COBRA (job loss, divorce, etc) often results in a loss of income.

In addition, as the data provided to the Exchange indicates, about 58% of those in the individual market in California are income-eligible for either the Exchange or even Medi-Cal. AB792 creates a mechanism for auto-application for those individuals.

AB792 is not just a notification measure: it also creates mechanisms for auto-application for those losing coverage and those in the individual market. This legislation confers significant benefits on the Exchange as well as individual consumers.

The notification element is also important: there were more than 6.5 million job separations in California last year. More than 2 million Californians get their coverage as individuals. Combined with AB714, this measure would provide notice to well over 10 million Californians that help is on the way. Educating the public about the availability of coverage will take time. That is the experience of Healthy Families, of the HIPC, indeed of reduction in tobacco use.

*Health Access request: Direct staff to work with Assemblymember Bonilla and Health Access to address staff concerns about call volume and other workload issues.*

### **AB1083 (Monning) Small Group Market Reform**

Health Access is co-sponsoring AB1083 (Monning) along with Small Business Majority. We appreciate the staff recommendation to support some provisions of the measure.

AB1083 as crafted makes the minimal changes to conform longstanding California law with respect to small group rules to the new federal rules. While it is generally a conforming measure, as staff notes, there are a few changes from federal law.

An earlier version of the measure included wellness incentives that provided protections against insurer and employer discrimination: we are happy to work with staff on language similar to earlier versions of the measure.

Along with other disease and health organizations, Health Access would strongly oppose the tobacco surcharge. This allows greater risk rating than is currently allowed under California law. It constitutes backdoor underwriting. And there is no evidence whatsoever that basing premiums on tobacco use affects use of this extremely addictive substance. Health Access supports coverage of appropriate tobacco cessation programs. We also commend California's long and very effective public health campaign for reducing tobacco use dramatically. The answer for reducing tobacco are public health measures, including public education, not insurance premium pricing.

It is not clear whether staff is recommending that premiums vary based on tobacco use: Health Access opposes that.

*Health Access request: Adopt the staff recommendation, clarifying that it is limited to wellness incentives and not varying premiums based on tobacco use.*

### **AB1296 (Bonilla): Health Care Eligibility, Enrollment and Retention**

Given that the Exchange anticipates going out to bid for vendors early in 2012, statutory authority is needed this year. It is not sufficient for the Exchange or the Administration to conduct a stakeholder process unless there is legislative direction and legislative involvement.

*Health Access request: Direct staff to work with Assemblymember Bonilla and the organizational sponsors of this measure to seek necessary statutory authority in 2011, consistent with the federal grant proposal, while continuing the stakeholder process to develop specifics.*

### **SB703 (Hernandez): Basic Health Plan**

We are unclear as to what the staff recommendation implies. We would urge the Exchange Board to consider carefully whether it might be appropriate for the Exchange to operate a Basic Health Plan.

*Health Access request: Direct staff to work with Senator Hernandez to obtain further information and analysis.*

We appreciate your consideration of these requests.

Sincerely,

Anthony Wright  
Executive Director

CC: Assembly Speaker John Perez, author, AB1602  
Assemblymember Bill Monning, chair, Assembly Health; author, AB1083  
Senator Ed Hernandez, chair, Senate Health; author, SB703  
Assemblymember Mike Feuer, author, AB52  
Assemblymember Toni Atkins, author, AB714  
Assemblymember Susan Bonilla, author, AB792 and AB1296  
Senator Elaine Alquist, author, SB900