

## Fingerprinting & Background Clearance Checks for Assisters

### SUMMARY

Covered California is committed to be a trusted source that provides a high quality customer service and consumer-friendly experience to Californians who will need to purchase affordable health coverage. The targeted 5.3 million people who will be eligible to purchase coverage through Covered California beginning in 2014 must be afforded with strong consumer protections and safeguards. Ensuring that consumers receive strong protection and safeguards from fraud, scams, and identity theft is an important priority for Covered California. This will be critical in order to promote a positive image of the program and to maximize enrollment.

Policy issues under consideration are:

- Whether to require Assisters to pass a fingerprinting and background clearance check prior to being certified as Assisters.
- Whether the associated costs of the fingerprinting and background check should be borne by Covered California or by the Assister Enrollment Entity (AEE).

This Board Update Brief provides an analysis, a summary of options, and initial recommendations on the need to require Assisters to undergo a fingerprinting and background check as part of the certification process for the Assisters Program. Fingerprinting and background clearance checks for Assisters will help ensure that the Assisters Program maintains its integrity and protect the public from dishonest individuals from becoming Assisters. Additionally, the initial recommendation is that the Assister Enrollment Entity assumes the costs for fingerprinting and background checks. Covered California staff will make its final recommendations at the March board meeting and in the meantime will be exploring the form of state legislation that would be required to implement the recommendation.

### BACKGROUND

A federal criminal background check is the standard means whereby employers and licensing agencies ensure that an applicant has not been convicted of a disqualifying crime. Among those required to submit federal criminal background and fingerprinting checks are insurance agents, child care workers, teachers, taxi drivers, fire fighters, security guards, and police officers. Some health plans' non-agent representatives also go through criminal background checks. Individuals with access to personal, confidential and financial information are often required to undergo these types of clearances and checks.

Under Section 1033(e) of Title 18 of the United States Code, it is a criminal offense for an individual who has been convicted of a felony involving dishonesty or breach of trust to willfully engage or participate in the business of insurance unless that person has first obtained the written consent of the appropriate regulatory official. Legal review by Covered California has determined that Section

1033(e) is not directly applicable to Assistors because Assistors are not participating in the business of insurance. While Section 1033(e) of Title 18 does not encompass the scope of work carried out by Assistors, many of the same rationales for having the requirement apply: they are required to provide fair, accurate, impartial information and services, and must maintain a high level of integrity and trust in the handling of personal, confidential, and financial information. For example, such information includes the handling of the consumer's name, address, date of birth and social security number. Covered California staff believes that ensuring that individuals certified as Assistors do not have a prior record of dishonesty or breach of trust is in the best interest of the consumers we will serve and the program as a whole. Additionally, instituting the requirement for a fingerprinting and background check will also serve to prevent individuals with prior records from becoming Assistors.

Staff are still researching the extent to which this requirement may be an obligation under the Affordable Care Act.

There are two types of clearances:

- (1) Background Check and,
- (2) Background Check with Fingerprinting.

A background check is conducted using the applicant's identifying information, such as social security number and does not include fingerprinting nor the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) background checks. The fingerprinting clearance is considered more accurate and is more inclusive. The fingerprinting clearance relies on an applicant's fingerprint, prevents falsification of personal information, and includes the DOJ and FBI background checks and Subsequent Arrest Notifications.

## **PRACTICES BY OTHER STATES**

Covered California conducted a review of fingerprinting and background check policies being considered and adopted by other state exchanges. Early research indicates that many states are planning to have requirement of background checks although some states are still in the process of determining what to require of their Assistors.

On the issue of who would bear the costs, some states suggest that the costs not be borne by Assister entities and recommend that their Exchange assume the costs; other States do not specify who must bear the associated costs. Exhibit 1. at the end of this Brief provides a summary of other state's considerations.

**FINANCIAL ANALYSIS**

The Table 1. below depicts the cost associated with each option, assuming that approximately 21,000 Assisters will undergo either of the two clearances cited above:

Table 1. Comparison Chart Background Check Cost vs. Background Check With Fingerprinting Cost			
<b>Background Check</b> (Relies on Social Security Number and only checks county data sources. This does not include DOJ and FBI background check clearances)	\$55 Each	<b>Background Check With Fingerprinting</b> (Also includes DOJ ,FBI background check clearances and Subsequent Arrest Notifications )	\$65 Each <sup>1</sup>
<b>Cost (IF born by Covered California)</b>	\$1,155,000	<b>Cost (IF born by Covered California)</b>	\$1,365,000
<b>Cost (IF born by Assister Enrollment Entity) per Entity*<sup>2</sup></b>	\$330	<b>Cost (IF born by Assister Enrollment Entity) per Entity*<sup>1</sup></b>	\$390

**FINGERPRINTING AND BACKGROUND CHECK CLEARANCE OPTIONS**

Covered California Options for Background Checks		
Options	Considerations	Risks
<p>1. Require individual Assisters to undergo a federal background check and fingerprinting.</p> <ul style="list-style-type: none"> <li>• Costs are born by Covered California</li> <li>• Exclude individuals with a felony on record.</li> <li>• Exclude individuals with certain types of misdemeanors (TBD) involving crimes of dishonesty or moral turpitude.</li> </ul>	<p>Standardization of background clearance criteria across the program. Some Assister Enrollment Entities will conduct background clearance as a matter of course; others do not. As a result, standardization throughout the program will be important.</p> <p>Background checks or fingerprinting are standard practice for many large employers.</p> <p>Access to sensitive consumer information creates an opportunity for identity theft and other types of fraud.</p> <p>Excluding bad actors will be important in promoting a positive image of Covered California and protecting consumers.</p>	<p>Additional financial cost to Covered California (estimated at \$1.2 million)</p> <p>Programs that hire ex-offenders may not participate. May be viewed as excluding certain individuals.</p> <p>Background check adds an additional step and can take more time to complete.</p>

<sup>1</sup> \$65 is average cost. Actual cost may range from \$60 to \$75.  
<sup>2</sup> \*Assumes 6 Assisters employed per Assister Enrollment Entity

<p>2. Require individual Assisters to undergo a federal background check and fingerprinting.</p> <ul style="list-style-type: none"> <li>• Costs are born by the Assister Enrollment Entity.</li> <li>• Exclude individuals with a felony on record.</li> <li>• Exclude individuals with certain types of misdemeanors (TBD) involving crimes of dishonesty or moral turpitude.</li> </ul> <p><b>Staff Recommendation</b></p>	<p>See option 1 (above) Requiring entities to pay for the background clearance will likely encourage those entities that are serious about enrolling consumers to participate.</p>	<p>See above. Cost of fingerprinting and background check may seem excessive for some entities. Certain entities will elect not to participate which may affect number of enrollment entities and ultimately capacity of the Assister network to conduct QHP enrollments statewide.</p>
<p>3. Require individual Assisters to complete screening questions regarding their employment and criminal history.</p> <ul style="list-style-type: none"> <li>• Exclude individuals with a felony from serving as Assisters.</li> <li>• Exclude individuals with certain types of misdemeanors (TBD) involving crimes of dishonesty or moral turpitude.</li> </ul>	<p>No financial cost Covered California or Assister Enrollment Entities. Will be perceived as more inclusive by some stakeholder entities. Process is completed more quickly.</p>	<p>Relies on self-reporting from individual Assister; bad actors may not self-identify. Increased likelihood that bad actors end up serving as Assisters. Failure to adequately protect consumers may negatively impact consumer and public perception of Covered California. Lack of standardization across the program.</p>

**INITIAL RECOMMENDATION**

Staff recommends that:

1. Individual Assisters be required to undergo fingerprinting and background clearance checks. The main basis of this recommendation is that:
  - Formal processes that preserves the image and public perception of the Assisters and Covered California.
  - Increases the quality of Assisters by disqualifying Assister applicants that have a history of offenses and/or prior misdealing's.
  - Dis-incentivize individuals with negative and criminal histories from attempting to become Assisters.
  - Avoid future negative publicity by hiring Assisters who have been previously convicted of crimes or dishonesty.

2. Costs associated with background checks and fingerprinting clearance be assumed by the Assister Enrollment Entity and not by Covered California. The main basis of this recommendation is that:
  - Costs to Assister Enrollment Entity are modest compared to potential application assistance payments received.
    - \$65 per Individual Assister assuming an average of six (6) per AEE.  
Approximate cost per AEE, \$390.
    - AEE will receive \$58 per successful initial enrollment in Qualified Health Plan (QHP) and \$25 per successful annual re-determination.
  - If born by Assister Enrollment Entity, allows investment in the program and will attract entities that are truly committed about the work of enrolling consumers and will deter entities with low levels of interest from registering.
  - If born by Covered California, cost is approximately \$1.4M. This is an additional cost and may remove the incentive and motivation for the Assister Enrollment Entity to ensure a return on their investment.
  - Models standard industry practice on who bears costs.
3. Covered California recommends that it negotiate a state-wide discount rate through a company like LiveScan and offer the services to Assister Enrollment Entity. Any Assister Enrollment Entity would be eligible to receive the discounted rate with program documentation, which will help reduce the cost.
4. Covered California staff recommend that it establish clear policies to allow individuals to apply for exceptions for mitigating circumstances based upon which Covered California might still consider them eligible to serve as Certified Assisters.

Exhibit 1. Summary of State Exchange Approaches to Background Checks	
STATE	APPROACH
Arkansas <sup>3</sup>	Requires that Navigators “agree to a criminal background check in accordance with State and Federal rules,” without specifying who must bear the associated costs.
Maryland <sup>4</sup>	Has determined that Navigators must be certified and Producers must be authorized to conduct Assister activities. Relevant legislation does not specify whether background checks will be required, and conditions for denial of a certification or authorization request are stated in general terms.
Mississippi <sup>5</sup>	Has not finalized its certification requirements of Navigators. Initial research and recommendations have pointed to a requirement of background checks, while a recommendation that these not create undue barriers to participation suggests that costs may not be borne by Navigator entities.
Nevada <sup>6</sup>	Distinguishes between individual Navigators, for whom all costs associated with licensing and certification must be borne by the Navigator entity, and Producers, who must be licensed by the Department of Insurance and cover all costs associated with licensing. Producers in NV are required to submit to a background check and fingerprinting as a condition of licensure. Nevada’s Exchange and the Department of Insurance (DOI) are currently determining the type of licensing that will be required of Navigators and whether a background check will be a condition.
Oregon <sup>7</sup>	Has detailed the role of Business Entities licensed by the state that will maintain no fewer than two licensed Producers conducting assistance activities. The Exchange will assume the costs associated with licensing these to mandated Producers.
Vermont	Requires that Navigators self-disclose prior felony or misdemeanor convictions. Felony conviction will be grounds for denial of a Navigator certification request; misdemeanors will be subject to review. The Exchange is still considering whether to require background checks and fingerprinting.

<sup>3</sup> [http://www.statereform.org/sites/default/files/121030\\_navigator\\_certification\\_requirements-wpw.pdf](http://www.statereform.org/sites/default/files/121030_navigator_certification_requirements-wpw.pdf)

<sup>4</sup> <http://mlis.state.md.us/2012rs/bills/sb/sb0238f.pdf>

<sup>5</sup> [http://www.statereform.org/sites/default/files/ms\\_finalrecomexchadvboardoeae.pdf](http://www.statereform.org/sites/default/files/ms_finalrecomexchadvboardoeae.pdf)

<sup>6</sup> [http://exchange.nv.gov/uploadedFiles/exchangenvgov/Content/Meetings/06A-Producers%20and%20Navigators%20in%20the%20Exchange\(1\).pdf](http://exchange.nv.gov/uploadedFiles/exchangenvgov/Content/Meetings/06A-Producers%20and%20Navigators%20in%20the%20Exchange(1).pdf)

<sup>7</sup> [http://coveroregon.com/pdfs/board/4\\_12\\_12\\_board\\_documents.pdf](http://coveroregon.com/pdfs/board/4_12_12_board_documents.pdf)