

SUMMARY

Covered California is promoting a “no wrong door” approach to enrollment assistance in which applicants will be helped to enroll in any insurance affordability program for which they are eligible by any Covered California-certified Assister or agent from which they seek assistance. Covered California will pay certified Assisters \$58 per enrollment, while licensed agents who are certified and enroll individuals in Covered California health plans will be paid on a commission basis by the plan in which a consumer enrolls. Whether an Assister or licensed agent, those certified to help consumers must (1) provide unbiased and neutral assistance and (2) help individuals enroll in Medi-Cal, for which Covered California provides no compensation. The compensation difference between Assisters and agents creates the potential for financial arrangements in which agents provide compensation to other Covered California enrollment personnel or community-based organizations for providing referrals and/or additional enrollment assistance services. Because of the concern that financial arrangements between agents and grantees, Assisters or community-based organizations would increase the overall cost of marketing and enrollment assistance, which are directly reflected in health plans’ costs, staff have considered this issue as warranting policy clarification.

Staff recommendations: *Covered California encourages non-monetary partnerships among all groups offering enrollment assistance. With regard to financial arrangements that could increase overall marketing and enrollment costs, staff recommend adoption of the following recommendations:*

- 1. Prohibit grantees and Assisters from accepting payment or other valuable consideration from agents for referrals and/or enrollment services; and*
- 2. Prohibit agents trained and certified by Covered California from providing payment or other valuable consideration to grantees, Assisters and other community-based groups for referrals and/or enrollment services as a condition of program participation.*

ISSUE

Covered California is using an “all hands on deck” approach to provide assistance to individuals eligible to enroll through Covered California beginning in 2014. This approach includes the use of grantees that will provide outreach and education services, paid Assisters who will generally receive \$58 for a successful enrollment¹ and agents who will continue to receive commissions based on percent of premium which can range from 9 to 15 percent for individual sales². Covered California will also work with community-based organizations that want to promote coverage but are not trained and certified to provide outreach or enrollment services. The compensation difference between agents and other outreach and enrollment personnel creates the potential for financial arrangements in which agents compensate grantees,

¹ Some Assisters may be compensated through grants rather than payment for successful applications. Other Assisters (e.g., providers) will not be compensated due to the direct benefit they will receive from the applicant gaining coverage.

² California Health Benefit Exchange. “SHOP Agent and General Agent Strategy.” August 2012. Pages 38-49.

Assisters and community-based organizations for providing referrals and/or additional enrollment assistance services.

Covered California's existing policies described below require that certified Assisters and agents provide enrollment assistance for the full range of insurance affordability programs including Advance Payment Premium Tax credits available through Covered California as well as Medi-Cal and Healthy Families (California's Medicaid and Children's Health Insurance Program, respectively), as well as unsubsidized coverage through a Covered California Plan. Assisters and agents who can better serve the cultural and linguistic needs of the applicant can and should receive appropriate referrals. In cases where a referral is necessary, Assisters will be able to use an Assister locator feature that will be available through the California Healthcare Eligibility, Enrollment and Retention Systems (CalHEERS), California's new enrollment portal.

A core value of Covered California is to provide affordable health insurance while assuring quality and access. Because health plan marketing costs including agent commissions are built into premium costs, Covered California must to make efficient use of the agent enrollment channel, ensuring that applicants can benefit from agent services without be exposed to unnecessary premium costs.

COVERED CALIFORNIA ENROLLMENT ASSISTANCE PRINCIPLES AND REQUIREMENTS

In June 2012, Covered California adopted the following [principles](#) for enrollment assistance:

- Promote maximum enrollment of individuals in coverage – including subsidized coverage in the Individual Exchange and Small Business Health Option Program (SHOP), Medi-Cal and Healthy Families programs, as well as for individuals who can purchase coverage without subsidies.
- Build on and leverage existing resources, networks and channels to maximize enrollment into health care coverage, including close collaboration with state and local agencies, community organizations, businesses, and other stakeholders with common missions and visions.
- Consider where eligible populations live, work and play. Select tactics and channels that are based on research and evidence of how different populations can best be reached and encouraged to enroll and, once enrolled, retain coverage.
- Marketing and outreach strategies will reflect and target the mix and diversity of those eligible for coverage.
- Establish a trusted statewide Assisters Program that reflects the cultural and linguistic diversity of the target audiences and results in successful relationship and partnerships among Assisters serving state affordable health insurance programs.
- Ensure Assisters are knowledgeable of both subsidized and non-subsidized health coverage and qualified health plans and that Assisters are equipped with the information and expertise needed to successfully educate and enroll individuals in coverage, regardless of the type of program for which they are eligible.
- Promote retention of existing insurance coverage in public programs and the individual market, as well as in employer-based coverage.

- Continue to learn and adjust strategies and tactics based on input from our national partners, California stakeholders, on-going research, evaluation and measurement of programs' impact on awareness and enrollment.

These principles are intended to establish an enrollment assistance program that allows applicants to receive comprehensive service from an Assister regardless of program eligibility. The first principle above also recognizes that partnerships and referral mechanisms will be key to ensuring that applicants can be quickly connected with Assistors that speak their language and meet their needs.

Covered California's strategy is to maximize enrollment of eligible individuals by promoting outreach, education and application assistance through trusted sources to be deployed where eligible individuals live, work and play. Key components of that strategy include:

Outreach and Education Grantees: Grantees will be funded by Covered California to provide community-based education of potentially eligible individuals with the goal of raising program awareness and developing enrollment "leads." Organizations receiving grant funds will also be able to offer enrollment services if they employ Assistors described below.

Community Outreach Network: In addition to providing funding, Covered California looks forward to supporting many organizations throughout the state that want to help promote enrollment.

Assistors: Assistors will help applicants apply for health coverage options beginning in October 2013. Assistors will be trained and certified to complete education, eligibility, and enrollment activities. All Assistors will be sufficiently trained to assist individuals in completing eligibility requirements and selection of and enrollment in a plan for all insurance affordability programs. Paid Assistors will generally receive \$58 per application that results in a successful enrollment in a Covered California Plan with or without a subsidy.

Agents: Agents trained and certified by Covered California will receive market-rate commissions for enrollment in Covered California Plans³. As a condition of working with Covered California, agents will be expected to enroll their clients in all insurance affordability programs. Eligibility for a potential subsidy in Covered California can only be determined by a process that also first determines if an individual is eligible for Medi-Cal. Because of this, agents will need to understand the full range of eligibility rules to assist individuals. Beyond assisting anyone on the basics of eligibility, Covered California would require that agents assist Medi-Cal eligible individuals in completing their

³ Agents will be compensated by issuers for enrollment in the individual Exchange and by Covered California for enrollment in the Small Business Health Options Program (SHOP). Covered California is developing distinct policies for plan-based ("captive") agents.

enrollment in those programs. They would provide the same full scope of counsel and advice as would an Assister, but would not receive compensation through Covered California for enrollment in Medi-Cal. The arrangement would be considered a cost of doing business with Covered California, and would be consistent with past practice, whereby agents often assisted individuals in enrolling in Healthy Families with no direct compensation.

RELEVANT FEDERAL AND STATE LEGISLATIVE AND REGULATORY REQUIREMENTS

The Affordable Care Act and final and proposed regulations⁴ prohibit Assistors from receiving any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any eligible individuals or employees into a QHP in either the Individual Exchange or SHOP. Additionally, Section 1631 of the California Insurance Code prohibits a licensed agent from compensating unlicensed individuals, which would include Assistors, for recommending that clients or potential clients purchase insurance through that agent.

DISCUSSION AND RECOMMENDATION

Covered California is promoting a “no wrong door” approach to enrollment assistance in which applicants can be enrolled in any insurance affordability program for which they are eligible by any Covered California-certified Assister or agent from which they seek assistance. Covered California is also building an online tool in CalHEERS that will facilitate referrals of applicants to certified Assistors who can provide culturally and linguistically appropriate services. In addition, grantees will be encouraged to become Assister entities in order to facilitate the entire spectrum of outreach, education and enrollment activities once open enrollment begins. Grantees that do not become Assister entities will be able to use the CalHEERS Assister locator to refer potential applicants to the Assistors best suited to serve their needs.

Financial arrangements between Assistors and agents that increase the overall cost of marketing and enrollment assistance are inconsistent with Covered California policies for enrollment assistance described above as well as financial sustainability principles. Specifically, Covered California is using federal Establishment funding to support development of an Assister locator that will obviate the need to develop financial partnerships to facilitate referrals. Covered California-certified Assistors and agents will be required to provide enrollment assistance for all insurance affordability programs for applicants who seek their services. In addition, depending on the nature of the arrangements, they could be in violation of the Affordable Care Act and state law.

Covered California encourages non-monetary partnerships among all groups offering enrollment assistance. However, in order to address financial partnerships that could increase overall enrollment costs, staff recommend adoption of the following recommendations:

1. Prohibit grantees and Assistors from accepting compensation from agents for referrals and/or enrollment services; and

⁴ See 45 CFR 155.210(d) for final rule and 45 CFR 155.125(a)(1) for proposed rule (codified at 78 Fed. Reg. 20595).

2. Prohibit agents trained and certified by Covered California from compensating grantees, Assistors and other community-based groups for referrals or enrollment services as a condition of program participation. This prohibition would not apply to individuals compensated by agents for providing non-enrollment services such as translation.

This policy would not apply to agents who are not certified by Covered California as we will have limited ability to monitor or enforce these recommendations among this subset of agents. Those agents, however, will not have the ability to support enrollment in Covered California.

IMPLEMENTATION CONSIDERATIONS

If the recommendations proposed in this Brief are adopted, Covered California will have to address the following implementation issues:

- **Grantee contracts:** prohibition will need to be added to grantee contracts.
- **Training:** conflict of interest training for Assistors and agents will have to be expanded to include this prohibition.
- **Certification requirements:** Agent and assister certification requirements will need to include this prohibition.
- **Monitoring and enforcement:** Covered California will have to develop mechanisms to identify potential breeches of this policy and take appropriate enforcement action including possible penalties.
- **Agent appointments with qualified health plans:** Covered California will consider whether to include the prohibition as a condition of agent appointments with Covered California issuers.

INPUT SOLICITED

Input on the recommendation outlined above should be sent to info@hbex.ca.gov by **Friday, May 10, 2013**, to be considered by the Board for action on May 23, 2013. In particular, Covered California seeks input on including the agent payment prohibition as a condition of agent appointments with Covered California issuers.

REFERENCES

California Health Benefit Exchange. "SHOP Agent and General Agent Strategy." August 2012. Pages 38-49.

http://www.healthexchange.ca.gov/BoardMeetings/Documents/August_23_2012/VIII-A_CHBE-SHOPEXchangeBoardRecommendationsBriefs_8-23-12.pdf

California Health Benefit Exchange. "Individual Market: Agent Payment Options." August 2012.

http://www.healthexchange.ca.gov/BoardMeetings/Documents/August_23_2012/VII-B_CHBE-BRB_AgentPaymentOptions_8-23-12.pdf