CALIFORNIA HEALTH BENEFIT EXCHANGE BOARD
May 7, 2013
Fair Political Practices Commission
428 J Street, 8th Floor
Sacramento, CA 95814

Agenda Item I: Call to Order, Roll Call, and Welcome

Chairwoman Dooley called the meeting to order at 9:00 a.m.

Board members present during roll call:
Diana S. Dooley, Chair
Kimberly Belshé
Paul Fearer

Board members participating remotely (from Los Angeles):
Robert Ross, MD

Board members en route during roll call:
Susan Kennedy

Board members absent:
None

Agenda Item II: Closed Session

A. Consideration of Contract-Related Matters per Government Code Section 100500(j)
B. Consideration of Personnel Issues per Government Code Sections 11126(a) and 100500(j)

Chairwoman Dooley called the meeting back to order at 11:05 a.m. A conflict disclosure was performed; there were no conflicts from the Board Members that needed to be disclosed.

Agenda Item III: Executive Director's Report

A. Announcement of Closed Session Items

Discussion:
Mr. Lee said there were no announcements from the closed session where the Board discussed contracting and negotiating.

B. Covered California Planning Overview

Discussion:
Mr. Lee announced that since the last Board meeting, Covered California has sent in comments to the federal government regarding federal Navigator and non-Navigator assistance rules.

The Centers for Medicare and Medicaid Services issued a new single streamlined application for federally-facilitated exchanges. Since it's critical to have an application that is easy, clear, and simple, California will design its own, but staff will review the federal applications to inform the development process.

Mr. Lee issued a reminder of two action items which will be presented at the May 23rd Board meeting. The first will be a policy on the relationship between agents and Assisters. Comments on this subject will be accepted until May 17. The Board will also decide if Covered California will become a consumer partner in the Choosing Wisely campaign, an initiative that encourages better dialogue between patients and clinicians.

Public Comments: None

Agenda Item IV: Qualified Health Plan Contracting

Mr. Lee prefaced the presentation by noting many changes have been made to the model contract since the version presented two weeks prior and he appreciates the many people who collaborated on it. The model contract makes it clear that Covered California is an active purchaser, and will work with the plans and other partners to ensure people get the best care possible.

A: Model Contract Approval

Andrea Rosen presented the many changes and revisions that were made to the model contract after considering public comments and input and explained how staff arrived at decisions.

Presentation: Covered California Health Plan Contracting

Discussion:
Mr. Lee acknowledged that the contract should be a living document and some minor revisions will be necessary. Staff has sought to be mindful of burden on plans and providers. For example, currently, the National Committee for Quality Assurance (NCQA) requires separate Healthcare Effectiveness Data and Information Sets (HEDIS) reporting for exchange plans and the commercial market; if that became part of standard accreditation, Covered California would accept and adapt to that.

It is the intent that this model contract serve for the vast majority of terms to be applied in the same manner to all plans. Some addenda will address plan-specific issues, but those will be the exception, not the rule. The resolution sought adoption of the model contract

with all attachments except #14. Attachment 14 covers performance standards and it is still being revised.

Motion/Action:
Board Member Ross moved to adopt Resolution 2013-28, authorizing the Executive Director and his agents to finalize the recommended model contract and all the attachments, with the exception of Attachment 14, to be revised on a limited basis as necessary. Board Member Fearer seconded the motion.

Discussion:
Board Member Ross appreciated staff's active listening engagement as well as all the stakeholders who provided input. The specification that any document provided by an issuer to the Exchange should be deemed confidential had seemed a bit too broad and over the top. When such information is required by existing law, the plans cannot be exempted from that.

Mr. Lee referenced the model contract's Section 2.03 on Exchange confidentiality responsibilities and said the plans are concerned about proprietary documents such as marketing plans, and Covered California can keep that confidential. Some material provided is public, and not confidential. The Board is authorizing staff to modify this before they execute the contract. On May 23, Covered California would like to announce tentative certification of plans; then the plans will submit their rates for regulatory review. Contracts will not be signed until the end of the process in early July.

Public Comment:
Beth Capell, Health Access California, expressed appreciation for the exclusion of health savings accounts and alternative benefit designs and the inclusion of coordination with other programs, enabling wraparound affordability. They are unsure of the date when noncompliant plans must be phased out and have concerns about non-contracting issuers being exempt. She asked that depression be added to the list of at-risk conditions.

Betsy Imholz, Director of Special Projects, Consumers Union, commented that this version of the model contract will achieve many goals. She agreed with Ms. Capell's comments and added appreciation for requiring that provider contract clauses be disclosed to Covered California.

Micah Weinberg, Senior Policy Advisor, Bay Area Council, inquired if the prohibition of plans incompliant with the Affordable Care Act applies to the small group market as well as the individual market, and asserted that would greatly disadvantage the SHOP's plans.

Charles Bacchi, Executive Vice President, California Association of Health Plans, expressed that, since their organization cannot participate in confidential bidder discussions, they had hoped to be part of a meaningful discussion about the model contract and would have liked to have seen more revisions. Considering the implications

for the Health Insurance Portability and Accountability Act (HIPAA), intellectual property issues, and Attachment 14, plans will be seeking lots of additional changes.

Cary Sanders, Director of Policy Analysis and the Having Our Say Coalition, California Pan-Ethnic Health Network, seconded Ms. Capell's and Ms. Imholz's comments. They have questions about how plans and Covered California will collect demographic data in all the categories that are covered by the Affordable Care Act's nondiscrimination provisions. They would like to consider current obligations and practices and how they can be improved.

Bill Wehrle, Vice President of Health Insurance Exchanges, Kaiser Permanente, would like the opportunity to wordsmith the language in the privacy section to reflect their conceptual agreement. He further stated that there will also be a challenge in getting third party providers and subcontractors to agree to the contract provisions.

Jeff Shelton, Vice President of Government Relations, Regulatory Affairs, and Compliance, Health Net, concurred with Mr. Wehrle's thoughts about provider agreements, and added that not all providers can quickly change their data systems. The privacy issue is of concern to them because they do encrypt data but not all their providers do so. They agree with Ms. Capell that the Board should sponsor legislation to eliminate carryover IFP products inside and outside the exchange.

Ruth Liu, Blue Shield of California, voiced that they have similar concerns to those of the other plans relating to contracting issues and confidentiality. Their business associations have branding rules they must comply with, so they are concerned about conflicts with Covered California's branding rules. Ms. Liu noted that some changes still need to be made, though the contract is much better in the current version.

Deborah Kelch, Kelch Policy Group and the Health Insurance Alignment Project, noted that the final contract still says Covered California will determine if issuers are licensed and in compliance with regulators and whether they have any material violations disqualifying them. The Board must get information on how the Exchange will determine this and how it will coordinate with the Department of Managed Health Care (DMHC) and the California Department of Insurance (CDI); an informal statement from staff will not mitigate the legal contract language that will be in the public domain.

Anne Eowan, Association of California Life and Health Insurance Companies, shared Mr. Bacchi's desire for further dialogue but from the preferred provider organization (PPO) perspective. They appreciate the changes regarding PPO products but have concerns about privacy and contracting.

Janice Rocco, Deputy Commissioner of Health Policy and Reform, California Department of Insurance, agreed with Ms. Kelch about the regulators' roles. She stated that terminating plans that are incompliant with the Affordable Care Act using Covered

California authority rather than law creates an unlevel playing field. Using essential health benefits as both the floor and the ceiling may cause people to shop outside the exchange if they want specific benefits like chiropractic care.

Kate Burch, Legislative and Policy Assistant, California LGBT Health and Health Services Network, noted the contract's definition of family excludes same-sex partners and possibly their children. The description of SHOP coverage uses the same definition, making it seem that same-sex couples can't get coverage through their employers if they buy through the SHOP, which is unfair and violates California law.

Elizabeth Landsberg, Director of Legislative Advocacy, Western Center on Law and Poverty, concurred with the consumer advocates, appreciating the exclusion of HSAs, the disallowance of alternative benefit plans, and the coordination of programs, especially important as related to pregnancy-related Medi-Cal and immigrant programs.

On phone: Abigail Coursolle, National Health Law Program, echoed the consumer advocates' comments and appreciates the language about coordination between programs. They are concerned about high-risk pregnancies, and would like the contract to help ensure a full range of services at the lowest cost possible to produce the best outcomes.

From LA: Francene Mori, California Exchange Director, Anthem Blue Cross, expressed concern about the costs of increased staffing, performance penalties, and new reporting requirements, and that some requirements depend on other parties or factors, like providers and pended claims. This contract could subject qualified health plans (QHPs) to an inability to perform to the standards Covered California and Anthem would desire.

From LA: Mari Lopez, Policy Director, Visión y Compromiso, seconded the consumer organizations' comments and Ms. Sanders's comments on the importance of data collection which will be key element in disparity reduction.

Mr. Lee pointed out that many state exchanges are not active purchasers; this contract lays out that Covered California is and it enables it to reform the delivery system. He agreed that there is a need for a level playing field inside and outside of the market and recognized a need for a law that bans all plans not compliant with the Affordable Care Act.

Covered California will work not just with plans but also with consumer advocates, providers, and other stakeholders on delivery system reform. This will be a public process. The Plan Management advisory group includes commissioners, consumer advocates, agents, and others that will address these issues.

Mr. Lee stated that many stakeholders commented about privacy, and noted that the resolution authorizes revisions before the contract is finalized. Information must be

gathered to shed light on what is happening, but keeping it secure and HIPAA-compliant is vital.

Mr. Lee also noted that the branding of Covered California is critical, and staff is working with plans to get it on their materials.

Covered California has been working with the regulators to determine violations of the regulatory processes. It is unclear at this time what constitutes violations.

Mr. Lee assured that Covered California will look at the definition of family. Plans cannot violate state law.

Board Member Belshé appreciated the clarification about how much staff will revise the model contract. She applauded Mr. Lee's characterization of the model contract as being 99 percent fixed and set. A common contract used by all the plans is important to transparency and informed decision-making.

Vote: Roll was called, and the motion was approved by a unanimous vote.

Board Member Ross voiced that he is in agreement with the plans' suggestions that Covered California first focus on getting the exchange up and running, and then focus more attention later on issues of data collection and disparities. Since the health plans have substantial experience in data collection, AAA ratings, and disparities, he would welcome some strategic thinking from them on using Covered California as a mechanism of reform.

Agenda Item V: Assisters Program

Mr. Lee noted there is a new federal draft of the application. Many Californians will need human help. This agenda item is not an action item yet.

A: Program Update
Thien Lam, Deputy Director, Eligibility and Enrollment, gave an update on the Assisters Program, its guiding principles and key issues.

Presentation: Assisters Program Update (part 1)

B: Draft Proposed State Regulations
Ms. Lam continued her Assisters Program Update presentation with an overview of proposed regulations affecting the Assisters' application process and appeals process.

Presentation: Assisters Program Update (part 2)

C: Agent and Enrollment Entity Relationship Requirements

Katie Ravel, Director of Program Policy, gave an update on the agent and enrollment entity relationship requirements, giving information on potential financial partnerships between agents and enrollment entities.

Presentation: Covered California Agent and Enrollment Entity Relationship Requirements

Mr. Lee called attention to the full board recommendation brief on the website. He also noted that the grant recipients would be announced the next week.

Board Member Belshé expressed interest in hearing more at another time from Ms. Lam about the certification and training for the Assisters Program.

Board Member Fearer requested additional discussion about Assisters training and how prepared Covered California is in terms of resources and timing. Assisters will have questions and need support, especially in the first few months, and the Board should be kept informed about the plan for supporting them once they are out in the field.

Public Comment:
On phone: Nancy Gomez, Health Access California, noted that outreach is working and people want to become Assisters, but is concerned that the requirement that Assisters be affiliated with an organization could create a shortage of Assisters. Will training be offered in all 13 threshold languages?

Tim Smith, Policy Director, Local Health Plans of California, was interested in nonqualified health plans participating in the Assisters program. He noted that QHPs are covered under the model contract, and many nonqualified health plans are already helping with enrollment for Medi-Cal and Healthy Families.

Athena Chapman, Director of Regulatory Affairs, California Association of Health Plans seconded the comment about allowing nonqualified health plans to be eligible for the Assisters program.

Mark Diel, Children's Health Initiative in Napa County, voiced concern about blocking agents and Navigators from working together. They want as many doors open as possible to enroll people, and would like to expand, not limit options.

Carla Saporta, Health Policy Director, the Greenlining Institute, feels they have reached consensus on many fingerprinting issues, although if someone has a problem, they should be able to go to Covered California, not the Department of Justice or the FBI. They want clarification on mitigating circumstances and evidence of rehabilitation, and support the staff recommendation regarding agents and enrollment entities.

Autumn Ogden, Policy Coordinator, California Coverage & Health Initiatives, asserted that errors and omissions coverage is unnecessary and will prevent a cost barrier for smaller organizations; they are also concerned about the agent/enrollment entities relationship proposals. Direct benefit Assisters were not defined or their certification described, and they would like clarification on whether there is a process for people to switch between the Navigators and Assisters programs.

In LA: Mari Lopez, Policy Director, Visión y Compromiso, sought clarification on the similarities between the personal assistance programs and Navigator program, noting that conducting public education is not reimbursable for Assisters, but it is included in the Navigator program.

Betsy Imholz, Director of Special Projects, Consumers Union, supported the staff recommendation regarding Assisters and brokers, and appreciated the regulations. She observed that Board Member Fearer made a good point about Assister support, and noted it will also be important to write marketing abuse issues into their curriculum.

Meaghan McCamman, Senior Program Coordinator, California Primary Care Association, pointed out that community clinics are listed as eligible for compensation, but clinics are listed as ineligible; neither are defined, which creates confusion.

Dave Schmitt, Wells Fargo Insurance Services, noted that some of their meetings would involve travel and thus require Assisters to incur costs; if they must be Skyped instead, the employees requiring their assistance would be treated as second-class citizens.

Vanessa Cajina, Legislative Advocate, Western Center on Law and Poverty, appreciated the work to ensure those with access to sensitive information go through an appropriate screening process. They support the substantial relationship language and applaud the Board's commitment to a no-wrong-door approach.

Beth Capell, Health Access California, reported her staff's observation that it could be common practice for a well-meaning agent to offer office space, phone lines, or travel, thus biasing the process.

On phone: Julianne Broyles, California Association of Health Underwriters, voiced strong support for getting people enrolled, and urged the Board to avoid unnecessarily closing doors.

Mr. Lee noted that a few of these questions were addressed in the background material, such as federal law and what constitutes a Navigator. The Board also welcomed comments via email.

Agenda Item VI: Adjournment

The meeting was adjourned at 12:41 p.m.