



September 4, 2013

The Honorable Connie Conway
Republican Leader
Assembly Republican Caucus
California State Assembly
1020 N. Street, Suite 400
Sacramento, CA 95814

Dear Leader Conway and Caucus Members,

Thank you for sharing your concerns about Covered California's regulations providing for fingerprint-based criminal background checks on employees and other individuals who will work with California's new marketplace for health insurance.

Covered California's board has recently adopted a range of regulations and program policies designed to protect consumers and ensure an on-going trusted relationship with our enrollees. Consumer protection is a high priority, and we welcome the opportunity to outline the first steps we are taking to develop a robust program to prevent fraud, waste and abuse. As we design our program, we are engaging experts in consumer protection, including the California Department of Insurance, local district attorneys, the Office of the Attorney General, the Northern California Fraud Investigators Association, and other agency counterparts to assess our proposals and help us develop additional consumer protection measures.

The following provides an overview of our approach to consumer protection in the three areas of concern raised in your letter:

- How Covered California will respond to complaints;
- Fingerprint-based criminal background checks;
- Ensuring the integrity of the Enrollment Assistance Program.

Responding to Complaints: The Office of Consumer Protection

When enrollment begins, the frontline of Covered California's efforts to protect consumers will be the Office of Consumer Protection. This unit, which will be housed in our Customer Service Center, will track our consumers' concerns, monitor enrollment,

and investigate and take action when fraud or other misconduct is suspected, as follows:

- *Consumer Complaints:* The Office of Consumer Protection will intake consumers' concerns about any aspect of Covered California – regardless of whether the concern relates to a Service Center Representative, a Certified Enrollment Counselor, Certified Agent, a plan-based enroller, or any other individual associated with Covered California.
- *Monitoring:* In conjunction with the Office of Consumer Protection, two units at the Customer Service Center are dedicated to monitoring Covered California's enrollment activities for quality control: one unit will review Covered California's Customer Service Representatives' interactions with consumers through call recordings and monitoring, and a second unit will perform data-based monitoring of enrollments by Covered California staff to detect and prevent steorage by Certified Enrollment Counselors, Certified Agents, plan-based enrollers, and others. Even without a complaint being filed by a consumer, these divisions will communicate any concerns they identify to the Office of Consumer Protection for investigation. Additionally, through the use of "secret shoppers," customer satisfaction surveys, and other field investigatory techniques that will be used to ensure compliance with policies and protocols, the Office of Consumer Protection will provide oversight of the consumer experience.
- *Investigation, Response, and Escalation:* Staff in the Office of Consumer Protection will record, track, and investigate complaints, escalating to headquarters or referring to law enforcement, the California Department of Insurance, or other enforcement agencies when necessary. In addition, if the investigation identifies any breach of personal information, Covered California will notify affected customers. Our legal team has already taken action resulting in removal of the unauthorized use of our logo and name from several websites purporting to offer enrollment in our plans.

With the Office of Consumer Protection identifying and tracking fraud, Covered California will take aggressive action on any suspected fraud to ensure that our consumers are protected.

Fingerprint-based Criminal Background Checks

Following the enactment of the fingerprint and criminal background check authorizing legislation (SB 509) the Covered California Board adopted emergency regulations that mandate:

- *Fingerprint-based Criminal Background Checks:* Anyone working with Covered California who will have access to personal health information or personal identifying information – including employees, Certified Enrollment Counselors, plan-based enrollers, or any other individuals – will be required to submit fingerprints to pass a California Department of Justice and Federal Bureau of Investigation background check (which together cover all state and federal convictions).
- *Disclosure of All Convictions and Administrative Actions:* For the Certified Enrollment Counselor program, the Board expanded its fingerprint-based criminal background check program to require the “disclosure of all criminal convictions and administrative actions taken against the individual” as part of the initial application, as well as on an on-going basis.
- *Individualized Assessment for Consumer Safety:* Our top priority in implementing these background checks is the safety of our consumers and the integrity of the enrollment process. As you note, the regulations balance a comprehensive fingerprinting and background check requirement with an individualized assessment that considers several factors when making a determination based on the results of the checks, including the nature of the job held or sought, the age, nature and gravity of the offence, and any evidence of rehabilitation. An individualized assessment of these factors when evaluating an employee, prospective employee, vendor or volunteer is required to comply with Title VII of the Civil Rights Act of 1964. To ensure the highest level of scrutiny, we have a dedicated legal team performing background check reviews of all criminal histories containing potentially disqualifying offenses touching on an individual’s fitness to perform enrollment duties.

Ensuring Integrity in the Enrollment Assistance Program

Covered California will enlist a broad and diverse network of Certified Enrollment Counselors (previously referred to as “assisters”) as a core prong of our enrollment strategy to reach uninsured Californians where they live, work, shop, and play. Your letter of June 4, 2013 identified several policies and procedures that should be in place to protect consumers in the Enrollment Assistance Program, including the disclosure of criminal and administrative actions, training and education for counselors, and of a process to investigate complaints. We share your concerns. In addition to the previously noted requirement for the fingerprinted-based background checks of Certified Enrollment Counselors, we are now developing additional safeguards to protect the integrity of the Enrollment Assistance Program, as follows:

- *Training and Quality Assurance:* Certified Enrollment Counselors are also required to receive training on at least 16 subjects (including privacy standards), and successfully pass an exam every year prior to receiving certification as an enroller.
- *Conflicts of Interest:* Robust conflict of interest regulations prohibit any prospective entity or counselor who has a financial interest in a health plan from becoming certified.
- *Identity Verification:* Only Service Center Representatives and individuals who have been certified by Covered California will have the ability to enroll consumers. Certified Enrollment Counselors must display their badges during enrollment sessions. Consumers will be encouraged to confirm an enrollment counselor's identity and active certification online or by calling our service center to ensure that they can trust the individual who is giving them in-person enrollment assistance.
- *Consumer Education:* Consistent consumer protection messages are being developed and will be provided to consumers through our website, Service Center, and our Enrollment Assistance Program, to ensure that consumers can protect themselves from any fraudulent actors.
- *Security of Personal Identifying Information:* Certified Enrollment Counselors are prohibited by law from handling consumers' payments or retaining their paper applications. The CalHEERS system employs state-of-the-art security measures to prevent the unauthorized capture of information by certified enrollers or Covered California employees. Additionally, Covered California is in the process of adopting policies and protocols governing information technology and privacy security, which are binding on our vendors and contractors through Business Associate Agreements.

We are now developing a comprehensive consumer protection strategy that builds on the initial work that has already been done to protect consumers during enrollment, in order to ensure program integrity and to eliminate waste, fraud and abuse across all areas of our operations. The elements of the strategy will be presented to our board, and will be vetted publicly prior to open enrollment. We will share our strategies with you and welcome your comments and suggestions.

Covered California is committed to protecting the integrity of our consumers' experience, especially during the enrollment process. Winning our consumers' trust is essential for Covered California to meet its ambitious enrollment targets. This is why the

Board chose "integrity" as one of the organization's seven guiding values in Covered California's work to improve access to affordable, high-quality health care.

We appreciate the leadership of the Assembly Republican Caucus on this critical issue. We welcome your input on Covered California's approach to addressing criminal background checks and fraud during the enrollment process, and would be pleased to answer any additional questions or provide further details on our policies.

Sincerely,



Peter V. Lee
Executive Director

cc: Covered California Board of Directors