Comments to the Board - External

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August 20, 2015 Board Meeting

FOR PUBLIC DISTRIBUTION

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Congress of the United States
House of Representatives
Washington, DC 20515-0529

July 20, 2015

Mr. Peter V. Lee,
Executive Director
Covered California
560 J Street, Suite 290
Sacramento, CA 95814

Dear Director Lee:

We commend you for your work helping enroll nearly half a million Californians during the 2015 open enrollment period. Included among the newly insured are the hundreds of families who cannot be dropped from insurance when they get sick, and they can go to bed each night without the fear of a cold or injury wiping out their family finances.

Covered California has done an excellent job at ensuring that hard working Californians and their families have access to affordable health insurance. There is much to learn about the newly insured. We applaud you on working to save consumers tens of millions of dollars in premiums in 2015 through data analysis. This is an excellent example of how the use of data can benefit families that do everything in their ability to help keep their lights on, put food on the table, and still protect themselves from going bankrupt in the chance of a health emergency.

While analyzing this information is valuable for the well-meaning efforts of Covered California, we have concerns with a recent report in the L.A. Times that you plan to begin a major data-mining project on sensitive patient information. This project has the potential to provide greater insight into the newly insured and potentially into the many uninsured in our districts. We understand how critical it is to uphold the highest quality of care possible for patients; however, we are concerned about the cybersecurity and privacy risks involved in collecting such a large volume of sensitive data.

Cyber-attacks impact thousands of U.S. businesses and consumers each year. More than 200,000 cyber incidents involving federal agencies, companies that run critical infrastructure like nuclear power plants, dams and transit systems and contract partners occurred in 2013. Unfortunately, hackers are no longer interested solely in consumers' financial information anymore. According to a study conducted by the Ponemon Institute, more than 1.84 million people were affected by medical identity theft in 2012.

We respectfully request that you outline the measures you will be taking in order to ensure that patient information is protected. In particular, we are concerned about the following:

1. The option for consumers to opt out of medical data collection.
2. How Covered California will inform consumers about the way in which their data is being used.
3. What measures are being taken by Covered California and its subcontractors to ensure that all are use the best cybersecurity protections.
4. The notification policies that will govern the organization in the event of a data breach, so consumers are aware of any vulnerabilities to their personal information.
5. How Covered California will incorporate data encryption into its programs to protect sensitive information while assessing data.

It is our responsibility in Congress to protect our constituents, and in the Internet age that means their online lives as well. Covered California is an important apparatus that serves over 1.4 million Californians. Its continued success will depend on thoughtful measures taken to address the cybersecurity threats and privacy concerns.

We look forward to working with you and request a meeting to further discuss your data analysis plans and measures taken to address the concerns we have raised. We commend your efforts to gather deeper insight into who is benefitting from the implementation of the ACA. We are ready to support these efforts and hope that it can become an effective example for other states to do the same. We are here to encourage similar efforts and support them in their efforts to helping Californian workers and families gain access to affordable, quality healthcare.

Sincerely,

TONY CÁRDENAS
Member of Congress

MARK DESAULNIER
Member of Congress

ANNA G. ESHOO
Member of Congress

JUDY CHU
Member of Congress

COVERED CALIFORNIA

July 27, 2015

The Honorable Tony Cárdenas
United States House of Representatives
1510 Longworth House Office Building
Washington, D.C. 20515

Re: Covered California's Healthcare Evidence Initiative and Protecting Consumer Privacy

Tony

Dear Congressman Cárdenas,

Thank you for your letter regarding Covered California's Healthcare Evidence Initiative and your concerns regarding the privacy of consumers' confidential information. I appreciate the importance of this issue and in addition to answering your specific questions, I welcome this opportunity to provide you with some background on the Initiative.

As an active purchaser, Covered California chooses which plans and products to offer and negotiates rates in order to offer the best value for consumers. In contrast, most other state exchanges and the federal health care exchange accept all products that health insurance companies wish to offer, at the rates they want to charge, provided that they meet basic standards and have passed regulatory review.

Building on our role as an active purchaser and consistent with our mission, the purpose of the Healthcare Evidence Initiative is simple and will allow Covered California to use utilization and claims data to:

- Provide actionable information supporting Covered California's operations and policy such as delivering the right care, lowering costs, and improving health outcomes.
- Provide evidence to inform public and private policies so that purchasing strategies and benefit designs can improve quality, access, and value throughout the health care delivery system.

Covered California has always used data to support evidence-based policy making with a focus on assuring consumers have access to quality health care. The Healthcare Evidence Initiative will take our analysis to the next level with utilization and claims data.

Here are a few examples of where we are today and how the Initiative will provide new information to ensure consumers are getting the care they need at prices they can afford:

- *Are enrollees getting the right care at the right time?* Covered California has estimated the number of members who have been newly diagnosed with certain diseases. Today Covered California also tracks enrollment by race and ethnicity and other demographics compared to eligibility estimates. The Evidence Initiative will help us make this concrete, for example, assessing what percentage of Covered California members are getting recommended cancer screenings or appropriate care for their diabetes – and we will be able to do this analysis looking at race, language, income and other key variables.

- *Is Covered California negotiating competitive rates?* Covered California used state data on health care usage to help drive down the cost of premiums in 2015 and again for 2016. The Evidence Initiative will provide a complete picture of the health status and health care utilization of our members so Covered California can make sure rates are reasonable.

- *Did members choose the right plan for their health needs?* Today Covered California can tell how many members choose a Bronze plan even though they were eligible for a Silver Cost Sharing Reduction plan. The Evidence Initiative will tell us if those members experience high out-of-pocket costs for their health care (e.g. specialty drugs) or are avoiding getting needed care because of their out-of-pocket costs.

The Healthcare Evidence Initiative is not a new project, dating back to 2013 when the Covered California Board adopted the Qualified Health Plan model contract requiring QHPs to submit claims and utilization to Covered California. In 2014, after soliciting feedback from health plans, researchers, consumer advocates, regulators, clinicians and other stakeholders, Covered California released an "Enterprise Analytics Solution" competitive request for proposals. Earlier this year, Covered California awarded the contract to Truven Health Analytics (Truven).

Truven provides market-leading solutions built on data integrity, advanced analytics, domain expertise **and** assuring that the privacy of consumers' information is protected. For more than 40 years, their insights and solutions have been providing hospitals and clinicians, employers and health plans, state and federal government agencies, life sciences companies and policymakers the facts they need to make confident decisions that directly affect the health and well-being of people and organizations in the U.S. and around the world.

For example, Truven has worked with Medicaid and/or Health and Human Services departments in 36 states; every federal healthcare agency; 25% of the Fortune 500 companies; more than 4,000 hospitals across the U.S.; and with all of the top 25 Life Sciences companies. They have worked with over 8,500 Customers and more than 1,000 data suppliers.

Subject at all times to federal and state laws governing consumer privacy, Covered California's contractors sometimes require access to some of a consumer's information in order to perform their work with Covered California. All health plan claims and utilization data provided to Covered California will be encrypted by Truven and will not reveal the identity of any individual consumer.

In your letter you identified five specific issues regarding the initiative. Covered California's responses to those issues are as follows:

1. *The option for consumers to opt out of medical data collection*
   Consumers have the right at any time to request that the health plan they are enrolled with withhold their personal information and that it not be used for the project. To make the request, consumers need to contact their qualified health plan directly. Covered California is working with the health plans on the mechanics of implementing this law as it pertains to the Healthcare Evidence Initiative.

2. *How Covered California will inform consumers about the way in which their data is being used?*
   Under federal law, Covered California is only permitted to use a consumer's personal information for activities required by Affordable Care Act (ACA) privacy and security regulations. These permissible uses, along with examples, are published within Covered California's Privacy Policy which is accessible at http://www.coveredca.com/privacy/. Covered California is in the process of updating the privacy statement to include a description of this Initiative and will provide a notice to all enrollees in advance of this year's open enrollment period.

3. *What measures are being taken by Covered California and its subcontractors to ensure that all are using the best cybersecurity protections?*
   In accordance with applicable ACA regulations, Covered California has developed and implemented safeguards to ensure that each consumer's personal information remains confidential and is protected against unauthorized disclosure or use. These safeguards are based upon standards adopted by the Health and Human Services Agency, Center for Medicaid Services ("CMS"), as well as the National Institute for Standards and Technology ("NIST"). Covered California contractors which have access to a consumer's personal information are obligated by law and by their contract with Covered California to comply with these standards and to update them appropriately should they ever change.

Additionally, data security is at the core of Truven's business. As defined by HIPAA, they are a business associate to our covered entity clients, and they maintain administrative, technical, and physical data protection standards which meet or exceed those provided by HIPAA, California law, and industry standards.

In order to maintain the highest standard of data security, Truven implements and regularly audits a variety of administrative, physical and technical measures. For example, Truven ensures the following:

- Retaining an external expert to perform an annual SSAE-16 controls review of their Advantage Suite solution.
- Regular security testing against external penetration and application breach.
- Applying strict data access controls, governed by the "need to know" and "minimum necessary" principles required by law.
- Continuous monitoring of Truven networks and resources for signs of intrusion or malware. This monitoring uses the latest tools, including the ability to detect traffic from zero-day malware.

4. *The notification policies that will govern the organization in the event of a data breach, so consumers are aware of any vulnerabilities to their personal information.*
Under both California law and Covered California's Privacy Policy, Covered California is required to notify consumers directly if the Privacy Office suspects that the confidentiality of any personal information they provide has ever been compromised. In the event of a breach – in conjunction with consumer notifications – Covered California would also offer affected consumers free credit monitoring as a precautionary measure to help guard against potential identity theft.

5. *How Covered California will incorporate data encryption into its program to protect sensitive information while assessing data?*
In accordance with Covered California privacy and security standards, consumer personal information provided to Covered California must at all times be encrypted when it is being stored or during transmission. Encryption standards are based upon CMS and NIST encryption requirements and are applicable to third-party contractors who are permitted to access a consumer's personal information.

To reemphasize, Truven will at all times comply with both Covered California privacy and security standards, HIPAA and other regulations applicable to data security, including encryption of data both in transit and at rest. They protect data in transit using strong, industry standard encryption. They protect data at rest using full disk encryption as well as field-level encryption of sensitive identifier fields.

Covered California is committed to protecting our consumers' information as they enroll in new health care coverage options, just as we are committed to making sure consumers get the care they need and we hold health plans accountable.

Please feel free to reach out to me for further questions or discussion.

Sincerely,

Peter V. Lee
Executive Director

cc: The Honorable Mark DeSaulnier
The Honorable Anna G. Eshoo
The Honorable Judy Chu
Covered California Board

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California State Senate

SENATOR
TED GAINES
FIRST SENATE DISTRICT

COMMITTEES
INSURANCE
VICE CHAIR
TRANSPORTATION & HOUSING
VICE-CHAIR
ELECTIONS
PUBLIC EMPLOYMENT & RETIREMENT

July 13, 2015

Mr. Peter Lee
Executive Director
Covered California
1603 Exposition Blvd
Sacramento CA 95815

Dear Executive Director Lee

I recently became aware of new marketing and public relations contracts awarded by Covered California. In the past, I have taken an interest in Covered California's outreach efforts and budgeting, both because of the infamous Richard Simmons video and because it is a relatively new government entity that is expected to have large operating deficits and has been mostly dependent on federal money to conduct its operations. With that federal money disappearing, I am worried that California taxpayers will be called upon to subsidize the Exchange or that the monthly "Insurance Tax" paid by people who purchase health insurance through the Exchange will skyrocket to cover operating expenses, providing a disincentive for people to purchase insurance and making it increasingly difficult to afford.

I am particularly concerned in light of Covered California's sign-up projections being several hundred thousand above actual sign ups.

Affordable health insurance and responsible, transparent government budgeting and spending are of great concern to my constituents. I would like to be able to provide them with clear and detailed information about Covered California's operations, fiscal outlook, and efforts to enroll and retain Exchange policy purchasers.

With that background in mind, I am hopeful that you can provide me answers to these questions:

- What is the total marketing and outreach budget for Covered California for 2015/16; 2016/17; and 2017/18?
- How many total sign-ups are expected as a result of the recently-awarded outreach and marketing contracts awarded to Ogilvy Public Relations and Campbell Ewald?
- What specific ethnic, age and gender/sexual orientation groups have been identified as specific targets for outreach in the Ogilvy and Campbell Ewald contracts?
- What are the enrollment targets for the identified ethnic, age and gender/sexual orientation groups?
- What are the current budget deficit projections for Covered California for years 2015/16, 2016/17, and 2017/18?
- What is Covered California's plan to balance its budget in those years?
- What is the highest estimated "Per- Member Per-Month" fee anticipated to make Covered California self-sustaining?
- What is the retention rate of people who purchase health insurance plans through the Exchange (i.e. how many people continue to pay their premiums for all 12 months or from the time they enroll until the next enrollment period)?

As a business owner myself, I understand the importance of accurate forecasting and also of marketing and outreach. I know that the questions I am asking are questions that I would be able to answer clearly myself and am hopeful that Covered California can quickly provide me with all of this information.

Thank you for your timely response to these questions.

Sincerely,

TED GAINES
Senator, 1st District

COVERED CALIFORNIA

August 13, 2015

The Honorable Ted Gaines
State Capitol
Room 3070
Sacramento, CA 95814

Dear Senator Gaines,

Thank you for your letter regarding Covered California's budget and marketing and outreach efforts.

The Fiscal Year (FY) 2015-16 Budget—which was approved on June 18, 2015 by the Covered California Board— aligns with Covered California's vision to improve the health of Californians while also highlighting the prudent fiscal planning that has gone into establishing the largest state health exchange in the nation.

To help address your questions and concerns, I've attached Covered California's $335 million budget report, which includes a multi-year financial summary of all revenues, expenditures, and staff for each program area. As noted in the report, the current year budget plan includes an unrestricted, prudent reserve of $197 million, which provides a fiscal cushion of more than six months' worth of operating funds. Our multi-year forecast projects similar reserves in each of the fiscal years through FY 2018-19.

Below, I have responded to your specific questions and point you to the relevant sections of the attached FY 2015-16 Budget, where appropriate:

What is the total marketing and outreach budget for Covered California for 2015-16, 2016-17, and 2017-18?

For the 2015-16 fiscal year, the budget line item for Outreach & Sales, and Marketing is $121.5 million. Please refer to pages 25-27of the attached FY 2015-16 Budget. The Board has not adopted a marketing and outreach budget for future fiscal years.

How many total sign-ups are expected as a result of the recently-awarded outreach and marketing contracts awarded to Ogilvy Public Relations and Campbell Ewald?

Covered California relies on California Simulation of Insurance Markets (CalSIM)—a micro simulation model created by the UCLA Center for Health Policy Research and the UC Berkeley Center for Labor Research and Education that can be used to estimate impacts of various elements of the ACA—to model its enrollment projections. More information about CalSIM and the latest micro-simulation data is available at: healthpolicy.ucla.edu/programs/health-economics/projects/CalSIM/Pages/default.aspx.

Enrollment and revenue projections are informed by our actual experience and history of other comparable programs. Based on that analysis Covered California has developed low (70%), medium (75%), and high (80%) projections of the portions of subsidy eligible consumers Covered California will successfully enroll by 2018, with annual projections for the next three years. Please refer to pages 15-22of the attached FY 2015-16 Budget.

What specific ethnic, age and gender/sexual orientation groups have been identified as specific targets for outreach in the Ogilvy and Campbell Ewald contracts?

The competitive Request for Proposals (RFPs) that were won respectively by Campbell Ewald (for Marketing) and Ogilvy (for Communications/Public Relations) detailed the target audiences they would need to reach. Those RFPs can be found here: http://hbex.coveredca.com/solicitations/2014-20_RFP/ and http://hbex.coveredca.com/solicitations/2014-18_RFP/

Campbell Ewald along with its subcontractors have extensive experience in reaching our targeted eligible consumers, which include Latino, African American, Asian and Pacific Islander, and LGBT communities. Their demonstrated expertise in reaching these targets was a key consideration in RFP process.

A similar process was used to select our Public Relations contractor, Ogilvy Public Relations and its subcontractors. As part of an integrated communications and marketing strategy, Ogilvy will also be using its expertise in reaching Latino, African American, and Asian and Pacific Islander communities.

What are the enrollment targets for the identified ethnic, age and gender/sexual orientation groups?

While Covered California does not set specific enrollment targets for particular demographics, enrollment should generally align with subsidy eligible populations as projected under CalSIM.

What are the current budget deficit projections for Covered California for years 2015/16, 2016/17, and 2017 /18?

No budget deficits are projected in our multi-year fiscal plan. Instead our forecast reflects end-of-year reserves as follows:

Fiscal Year	End of Year Reserve ($ in millions)	Maximum Number of Months of Expenditures Covered by the Reserve
2014-15	297.9	9.3
2015-16	197.2	7.1
2016-17	156.4	5.6
2017-18	160.0	5.4
2018-19	189.2	6.1

For the complete multi-year financial forecast, please refer to page 23, Table 5 of the attached FY 2015-16 Budget.

What is Covered California's plan to balance its budget in those year?

As noted in the previous question, Covered California's budget is balanced and includes prudent reserves through the forecast period.

What is the highest estimated "Per- Member Per-Month (PMPM)" fee anticipated to make Covered California self-sustaining?

Covered California uses a constant $13.95 PMPM for all of its enrollment and revenue projections. As noted in our forecast, the calculation of the PMPM amount reflects a variety of factors variety and that assessment can be adjusted up or down depending on enrollment and/or expenses to assure Covered California meets its mission in the most cost effective manner possible. For more information, please see page 19, Table 2, of the attached FY 2015-16 Budget.

What is the retention rate of people who purchase health insurance plans through the Exchange (i.e. how many people continue to pay their premiums for all 12 months or from the time they enroll until the next enrollment period)?

As noted in on page 18 of the attached budget plan, about 1.5% of those insured disenrolled each month, compared with a forecast rate of 2.5%. This suggests a higher retention rate than previously forecast. The individual market is always one that is subject to substantial "churn" with individuals using the individual market in between employer-based coverage. For more detailed information please see pages 17-19 of the attached FY 2015-16 Budget.

Thank you again for your continued interest and concern about Covered California. Please feel free to reach out to me for further questions or discussion.

Sincerely,

Peter V. Lee
Executive Director

CC: Covered California Board

June 23, 2015

Peter Lee, Executive Director
California Health Benefit Exchange
1601 Exposition Blvd.
Sacramento, CA 95815

Dear Peter,

We were disturbed to learn that Covered California has successfully lobbied the federal government to delay public disclosure of qualified health plan rate change proposals for six weeks. Citizens of every other state now have access to proposed rate hikes, except the people of California, who are already disadvantaged by the absence of rate regulation in this state.

We call upon you to publicly disclose the health insurance plans' proposed 2016 rates now.

The people of California are entitled to see the proposed rate changes for 2016 prior to any modifications (increases or decreases) that Covered California's intervention may inspire.

You have previously acknowledged that Covered California's approach to balancing its various interests does not always result in the lowest possible rate for each carrier. In addition, industry sources have suggested that Covered California has previously asked some regional insurance companies to raise their rates in order to be more in line with Anthem Blue Cross, a favored carrier at the exchange.

California consumers are entitled to know what baseline proposals health plans submit so that they can more fully understand any alteration in those proposals and whether they are getting the lowest rates possible.

As you know affordability continues to be a critical issue for California policyholders and Covered California members, as evidenced by the May Kaiser Family Foundation survey.

How can the public judge what kind of deal Covered California is getting for members if the initial rate proposals are not posted? This is especially true given that prior Covered California negotiating teams have had prior employment with the health insurance industry. You have a duty to the public to supply such basic information, as is now disclosed in every other state, given the secrecy and exceptionalism Covered California enjoys.

Your unusual lobbying of the federal government to make an exception for California in disclosing rate hikes raises significant questions about the exchange's need for secrecy. You can put these issues to rest today by making California health plans' initial proposed rate changes public.

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EXPOSE. CONFRONT. CHANGE.
www.ConsumerWatchdog.org

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We also understand you have met multiple times with the health insurance plans to give them direction and guidance. As these meetings contain information that all QHPs are privy to, their disclosure could not compromise Covered California's one-on-one negotiations with insurers. Under separate cover, we are submitting a Public Records Act request that you disclose information concerning these meetings.

Given the revelation in yesterday's Los Angeles Times that you have thrown consumers' personal health information privacy to the wind, it would be the height of hypocrisy should you simultaneously seek to keep insurers' rate proposals and other information secret.

Thanks for your prompt response.

Carmen Balber

Jamie Court

COVERED CALIFORNIA

July 22, 2015

Carmen Balber & Jamie Court
Consumer Watchdog
2701 Ocean Park Blvd., Suite 112
Santa Monica, CA 90405

Dear Ms. Balber and Mr. Court,

Thank you for your letter regarding Covered California's process for negotiating qualified health plan rate changes for the 2015-16 plan year. Our Executive Director, Peter V. Lee, has asked me to respond on his behalf.

Covered California uses its authority as an active purchaser to get the best quality and value for our consumers. While affordability is central to our negotiations with health plans, there are a variety of other important factors that are considered as well. These include provider network availability, quality measures, unique regional concerns, and many other issues that relate to the overall value of plan choices that we offer to our consumers.

As an active purchaser, our process and timeline for determining rate changes is relatively unique. The Centers for Medicare & Medicaid Services (CMS) acknowledged this, and approved an adjustment from their guidance bulletin published May 13, 2015 that would accommodate our schedule.

We have now completed the rate negotiations process with health carriers for the 2015-16 plan year. We expect to announce our 2015-16 plan rates on Monday, July 27th, 2015, at which time the plans will file with their regulator, which will start the rate review period and make rates publically available.

Please let me know if you have more questions regarding our rate negotiations process.

Sincerely,

David Panush
Director of External Affairs

August 17, 2015

Diana Dooley, Chair
Paul Fearer
Genoveva Islas
Marty Morgenstern

Dear Covered California Board,

On behalf of Western Center on Law & Poverty, Health Access, National Health Law Program, Consumers Union, and California Pan-Ethnic Health Network, we write to express our reservations regarding the proposal to issue a Request for Proposal (RFP) that would allow Covered CA to enter into limited agreements with vision plans and provide links to vision plans' websites from CoveredCA.com. As consumer representatives seeking to ensure Californians have access to health care, we are concerned that the proposal, if implemented, could erode the Covered California brand in the public eye.

As explained at the July 23rd Plan Management Advisory Group meeting, because Covered California is unable to spend any revenue generated from Qualified Health Plans for programs that are not offering essential health benefits, which adult vision is not, Covered California cannot use its resources to manage a vision plan program. Given this scenario, Covered California proposes to provide links to vision plan vendor websites that it does not negotiate with and charge plans to apply to participate, as well as charge a commission on plans sold. As described at the Plan Management advisory committee meeting, consumers would be unable to contact the Covered California customer service center for assistance with enrollment problems or questions about plan benefits or cost-sharing. The lack of standardized plan offerings, a departure from Covered California's practice, would further confuse consumers and be contrary to the Board's policy.

While we applaud Covered California's recognition that vision care is a significant piece missing from our health plan offerings, we are concerned with the proposal being put forward for approval at the August 20th Board meeting. Covered California is still in the midst of refining the implementation of the state's private health insurance exchange, which has not been without its glitches. While Covered California staff has been working to improve its staffing and systems, all too often considerable effort is required to resolve individual consumer problems. To introduce a new, unsupported program in this context risks further reducing public faith in the Covered California brand while at the same time offering a product Californians can purchase on their own.

Therefore, we ask that the Board not approve this proposal without substantial modification, and instead dedicate valuable staff time to providing better customer service and support to ensure that the Qualified Health Plans bearing the Covered California brand truly serve the quadruple aim of lower

costs, better health care, better health, and improved health equity. A branded link to vision plans generating commissions with little or no oversight by Covered California does not serve these aims.

Sincerely,

Jen Flory
Senior Attorney
Western Center on Law & Poverty

Health Access
National Health Law Program
Consumers Union
California Pan-Ethnic Health Network

HCA
Health Consumer Alliance

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August 17, 2015

Ms. Diana Dooley, Chair
Paul Fearer,
Genoveva Islas,
Marty Morganstern,
Covered California Board

Dear Covered California Board Members:

We write to call your attention to serious issues faced by Covered California enrollees that need further attention and resources from your staff. The Health Consumer Alliance (HCA) is Covered California's contracted independent consumer assistance program. We help consumers navigate barriers to enrollment and access to services and meet regularly with Covered California staff to elevate trends we encounter in our advocacy work in order to identify issues that need resolving.

As detailed below, many consumers face considerable difficulties in enrolling in the correct plan with the correct level of financial assistance, even after coming to agreement with Covered California staff as to what should be done or after winning a favorable appeal decision. Others are facing serious tax consequences due to errors in their cases or difficulty in obtaining the correct tax forms. Some of these issues have continued for some time, including issues we first raised in early 2014, without adequate resolution for consumers. While we have recently met with Covered California staff to elevate these concerns and identify next steps toward problem solving, we feel it is our duty to inform the Board now of the impact of these problems and involve the Board in setting expectations around resolution.

- **Some consumers cannot access health coverage for months due to Covered California's lack of capacity in overriding computer problems.**

We represent consumers who have been unable to access health coverage for months, and in the worst cases, since 2014. Even where Covered California agrees about the consumer's eligibility, staff cannot make the system work and get the consumer enrolled and the premium tax credits correctly attributed in a timely fashion. Some of these consumers have unusual income, health coverage, or family situations that caused the error in the first place, but all of them are entitled to the health coverage program for which they are eligible. For example, in Los Angeles, advocates are helping two consumers who were erroneously enrolled in Covered California because CALHEERS erroneously counted state disability insurance income as countable income. Both consumers should be in Medi-Cal rather than Covered CA and were having difficulty affording their plan premiums – premiums they never should have had to pay. Given the number of Californians on state disability insurance at any one time, advocates believe this may be a more widespread problem.

In addition, the CalHEERS computer system programming struggles to adequately account for the complexities of Covered California and Medi-Cal eligibility rules. As a consequence of current system

limitations, many consumers have been unable to enroll in or have been incorrectly terminated from coverage, thus leaving them either unable to access care or leading them to incur substantial medical debt. Although Covered California staff have been working diligently to resolve issues, their capability is constricted by a procedure under which they must submit a "help desk ticket" so that CalHEERS can address the specific problem. Covered California staff have no control over when or how a case is resolved once a "help desk ticket" has been submitted to the CalHEERS staff. Consumers wait in the "help desk" queue for months with no assurances that any care they receive in the meantime will be covered or reimbursed, forcing most to go without needed medical assistance. For example, one Orange County consumer is just now having coverage effectuated to resolve a large medical bill that occurred in late 2014 when she was moved to Covered California from Medi-Cal during a course of treatment. She was previously told that no help could be provided until the help desk ticket was resolved.

Almost since the launch of the system, we have requested that there be workarounds to get people into coverage when the system just cannot do it, whether that be an alternate method of forwarding consumer information to plans or persons on Covered California staff who can manually override the logic of the system in order to achieve the necessary coverage for the consumer. Covered California must develop workaround procedures and alternate methods of transmitting consumer enrollment information to the plans when the computer system cannot.

- **Covered California does not adequately comply with Administrative Law Judge decisions**

When a consumer receives an administrative law judge decision from the Department of Social Services Fair Hearings Division on a Covered California appeal case, the consumer has already tried to contact Covered California to resolve the matter, gone through the Covered California informal resolution process, and waited the 90 days from the request of the hearing to the issuance of the Administrative Law Judge decision. For many, this means they have already been without access to coverage for a minimum of three months. Once the consumer receives a favorable decision, the consumer rightly believes that he or she will then have access to coverage. However, given the computer issues mentioned above, Covered California fails to transmit instructions to plans related to coverage until the help desk tickets are resolved, and the help desk tickets are not resolved until system fixes are done. This process is cumbersome, not only taking months, but failing to be timely simply because Covered California does not have a workaround to the CalHEERs system fixes that are queuing up.

For example, a Butte county consumer was erroneously concurrently enrolled in both Medi-Cal and Covered California, which caused numerous enrollment, billing, and access to care problems. While she did receive a positive Administrative Law Judge hearing decision ordering Covered California to enroll her into coverage for 2014 and 2015, it took 80 days for Covered California to comply with the hearing decision with regards to her 2015 coverage and she is still waiting for her 2014 coverage to be implemented.

Some of these consumers must also pay back several months of premium payments when they were unable to make regular appointments and access care because they have a medical bill that they need

their plan to cover. For example, advocates are assisting a consumer in San Joaquin County to resolve an incorrect plan enrollment date. The consumer has been unable to use her health coverage while trying to resolve this error, but has been told when the error is corrected she will be required to pay six months' worth of premiums at once.

Unlike counties which must implement decisions within 30 days or face consequences, Covered California adheres to no timeline in implementing Administrative Law Judge decisions. This violates due process. Covered California must adopt and adhere to clear and timely compliance standards.

- **Covered California is failing to implement "continued eligibility" rights contained within its own regulations and procedures**

In addition to not ensuring that hearing decisions are timely implemented, Covered California staff have not assisted consumers who need "continuing eligibility" – that is, the plan would not keep a consumer enrolled in the plan pending the hearing and outcome of an appeal as is required by the regulations if requested by the consumer. In a recent case, when Covered California was informed of a plan's refusal to allow for "continuing eligibility," Covered California staff did nothing more than refer the consumer to a different agency to file a complaint.

- **1095-A tax forms have not been corrected despite repeated requests**

Covered California has still been unable to resolve numerous issues from the last tax filing season, creating an enormous burden on consumers. Consumers who receive premium tax credits to help pay for coverage through Covered California must file 1095-A forms from Covered California with their federal income taxes. As premium tax credits are based on estimated income, some consumers will have to pay money if they received too much in premium tax credits and others who did not receive sufficient amounts of tax credits will be owed money at tax time. Many consumers were issued inaccurate 1095-A forms in 2014 because they contained errors in tax credit amounts and/or applicable months of coverage. Several of our consumers reported that after they utilized a Covered California dispute process to request a corrected form, their request was somehow lost. For example, one consumer in Orange County reported sending in a 1095-A dispute form in March, and twice in May, and received no response – only to find out later that Covered California still did not have an accurate tally of the months she was enrolled in a Covered California plan. Another consumer in the Inland Empire had a problem with her Covered California account. Because Covered California staff could not correct it, they tried to correct it by closing her old account and opening a new one. This caused an inaccurate 1095-A form to be generated and a "help desk ticket" has been open to correct the problem since *January 28, 2015*.

In addition, consumers are not getting clear notice as to the outcome of their dispute. Without the corrected forms, some consumers ended up paying more taxes than they owed because they feared filing something different than appeared on their 1095-A form, conflicting with the goal of the Affordable Care Act which was to ensure access to affordable coverage. Other consumers have had to pay for additional assistance to file corrected tax forms if they wanted to recoup the credits to which they are entitled.

HCA was assigned a point of contact at Covered California specifically for 1095-A disputes but unfortunately, HCA has been unsuccessful in utilizing this contact to resolve any problems As Covered California increases its enrollment and people continue to have life changes that cause them to change plans or enroll family members, these problems will continue. Covered California needs to have adequate staff resources to form a rapid response team so that consumers do not bear the burden of filing amended tax forms or fronting taxes they do not owe.

- **Consumers are facing real tax consequences for errors and inaction by Covered California**

Whether because of incorrect 1095-A forms or incorrect eligibility determinations, HCA has assisted consumers who: 1) cannot get the tax credits they are entitled to; 2) owe thousands in taxes; or 3) cannot finalize their taxes which in turn affects other aspects of life, such as filling out school financial aid forms. This is a terrible obstacle to meeting the goals of the ACA, which is to make affordable coverage a reality. In fact, we are concerned that public support for the ACA will erode as more and more consumers encounter these types of tax problems and face exposure to IRS debts and penalties.

In some cases, consumers owe taxes because they relied on incorrect information provided by the Covered California Service Center. Consumers have little choice but to pay the taxes owed. Two consumers being helped by advocates in the Central Valley were wrongly advised as to how their social security income should be included in the application. In each case, the consumers were not actually eligible for advanced premium tax credits at all, being just above the 400% federal poverty level limit and owed thousands when they filed their taxes. Advocates in Los Angeles have helped several consumers who were erroneously enrolled in both Medi-Cal and Covered California and who now worry that they will have to repay all the premium tax credits received when they could scarcely afford the subsidized premiums they were wrongly paying.

We urge the Covered California Board to ensure that the CalHEERS system and Covered California staff are properly resourced to ensure accurate eligibility determinations. Where mistakes are made, Covered California must work with the IRS to ensure that a form of leniency or forgiveness exists for those who honestly reported their financial situation yet owe taxes due to Covered California's error. If additional solutions for this group of people are not created, people will be afraid to enroll in coverage for fear of tax consequences later. Otherwise, Covered California becomes a program in which consumers do everything they are told to do but must live with the financial consequences when the system makes a mistake.

Covered California Staff Must Uphold Recent Commitments to Resolving Consumer Problems

In recent meetings with Covered California staff, we have been informed that a team from different departments, including legal counsel, plan management, operations, policy, IT, and Accenture has been assembled to engage in a project plan to address these problems. Staff have agreed to set time frames for resolving our "urgent" problems, some of which have been waiting for many months, and for problems prospectively. They also have agreed to share data with us as to the number of problems that are awaiting resolution, both in the help desk ticket queue and in the 1095-A dispute process and to differentiate between cases identified as urgent, those awaiting compliance with hearing decisions, and

those sent as a result of conditional withdrawal. We are looking forward to getting this specific information and would kindly request that a time frame be set for that.

Additionally, Covered California staff have agreed to stop waiting for help desk tickets to resolve individual problems, including utilizing “manual” transactions to send official instructions to health plans, which will go a long way toward resolving individual problems and ensuring health plans are appropriately instructed. We have not seen this take place yet but are looking forward to it and again, would kindly request a time frame be set for this.

We urge the Covered California Board to exercise its oversight to ensure that these commitments are sustained and consumers do not continue to be harmed.

Sincerely,

The Health Consumer Alliance