



December 21, 2015

Secretary Burwell  
Attention: CMS-9937-P  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services

Re: Covered California comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; CMS-9937-P (RIN 0938-AS57)

Dear Secretary Burwell,

Covered California is submitting comments in response to the proposed regulations CMS-9937. The comments in this letter refer to a variety of important topics. Covered California has also submitted comments on the following additional areas: [standardizing health plan benefits](#), [direct enrollment and web-based entities](#), and the [FFE user fee](#).

### **Contiguous Rating Areas**

HHS seeks comment on §147.102 regarding whether HHS should seek more uniformity in the size of rating areas or establish a minimum size.

Covered California believes that if HHS were to require each rating area to be geographically contiguous, it would adversely affect service area strategies that identify non-contiguous areas with similar pricing and network dynamics that may warrant placing them in the same service area. Regions with similar characteristics should not be separated simply because they are not contiguous.

### **Navigator Standards**

HHS seeks comment on the proposal preventing Navigators from providing tax-related advice while performing enrollment assistance as a Navigator.

If the proposed change to §155.510(e)(9)(ii) is adopted, consumers may look to Navigators for tax assistance regarding exemptions and the minimum essential coverage requirement. Navigators cannot provide tax assistance or interpret tax rules, unless they are otherwise independently qualified to provide such assistance. Therefore, Covered California supports the proposal requiring Navigators to provide consumers with a disclaimer stating that they are not

acting as tax advisers and cannot provide tax advice within their capacity as Navigators. This disclaimer may help avoid consumer misunderstandings and detrimental reliance on Navigator advice.

**Eligibility Process – Notifying Employers**

HHS seeks comment on §155.310 regarding the notice that may be sent to an enrollee’s employer.

Covered California seeks clarification as to what “enrollment” refers to in the proposed §155.310; is enrollment plan selection or effectuation?

**Verification Process Related to Eligibility for Insurance Affordability Programs**

HHS seeks comment on allowing states to establish an alternate threshold for income-related eligibility.

Covered California supports the proposed change to §155.320 that grants additional flexibility to Exchanges to establish thresholds for purposes of verifying annual household income.

**Timeline for Rate Submissions and Public Disclosure**

In section §154.301, HHS proposes a rate review process and seeks comment.

HHS should grant states flexibility regarding the rate review timeline. California and many other states require QHP carriers to submit rates to regulators and undergo thorough examination, the timing of which may not align with HHS’ timeframe.

**Out-of-Network Providers working in In-Network Facilities**

HHS seeks comment on §156.230 which outlines costs associated with out-of-network providers serving in an in-network setting.

California state law requires that out-of-network providers rendering emergent services in in-network facilities cannot balance bill consumers. The proposed regulations in their current form, which apply to both emergent and non-emergent services, continue to allow balance billing, which may result in unforeseen costs for the consumer. By allowing carriers to simply “notify” consumers about the possibility of out-of-network charges, consumers may not fully understand their financial liability. HHS should consider policies that specifically limit out-of-network charges that would not be reasonably understood by a consumer.

Thank you and please contact me if you have any questions.

Sincerely,



Peter V. Lee  
Executive Director

CC: Covered California Board of Directors