



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 the proposal to standardize Health Plan Options (Section 156.20). Covered California has also submitted comments on the following additional areas: [FFE user fee](#), [direct enrollment and web-based entities](#), and [other issues](#).

Covered California offers the following comments regarding HHS' proposal to promote the standardization of health benefits. Covered California currently offers standardized health plans and does not allow alternate, non-standard plans in the individual marketplace. Covered California developed the designs with input from consumer and health condition advocates, health plans and policy experts. Covered California has been open to receiving proposals for alternate benefit designs that would meet our goals of clarity for consumers and promoting effective access, but health plans have not submitted alternate designs that meet these goals. Covered California's standard plan designs for 2016 are available at <https://www.coveredca.com/shopandcompare/2016/#benefits> for reference. The benefits of the standard plan designs are significant, including:

- Californians seeking coverage through the marketplace can easily compare health plans knowing that every health plan has the same cost-sharing levels and benefits – this means that more important factors for differentiation are clearly used by consumers in making plan selection which is first and foremost price, that should include total price of both premium and likely out-of-pocket exposure and other factors (e.g., provider networks, plan quality);

- The standard plan designs are constructed to minimize financial barriers to access for consumers, reduce confusion and to have designs that actively reinforce efforts to promote higher value care delivery, such as better use of primary care. Elements that reflect these goals include not applying the deductible to most out-patient care; designs limiting the out-of-pocket costs for high cost prescription drugs; minimizing coinsurance; and having copayments for higher value care and services as low as possible given the actuarial value constraints (e.g., for primary care visits and generic medications); and
- Standardization simplifies both the “sales” and the enrollment process to boost enrollment and the delivery of services in clinician offices. The simplification is especially important to previously uninsured individuals or those who are otherwise new to the purchase of individual coverage. In addition, we believe simplified and standard designs means that consumers are more likely to select “higher value” products, in particular lower income consumers who are eligible for the cost-sharing subsidy are more apt to understand the relative value of their Silver Cost-Share Reduction plan in contrast to the Bronze alternative.

With regard to the HHS proposal, Covered California has comments in four areas: (1) the structure of the Proposed 2017 Standardized Options; (2) how the standardized cost-sharing plans are displayed to consumers compared to non-standardized plans; (3) future standardization; and (4) the need for ongoing analysis of the implications of plan design for consumer access to care.

1. Proposed Standard Benefits

Covered California believes that HHS has done a good job presenting a structure for the elements of the Proposed 2017 Standardized Options. The exemption of routine services, including primary, specialty, and generic drugs, from the deductible for standardized plans reduces barriers to needed care and aligns with efforts to encourage effective coordination and integration of care building on the foundation of effective primary care. Building on this good work, Covered California offers the following technical assistance:

- Minimize the application of co-insurance due to consumer confusion that often arises from cost-sharing that is based on a percentage of a cost that is generally unknown to the consumer. We recognize that the wide variation in costs nationally and the need to apply the national actuarial value standards makes eliminating co-insurance very difficult, but we would encourage HHS to review the elements where Covered California has moved from co-insurance to copayment designs. Because California is a large state that also has wide variation of costs across that state, our experience should be instructive as to what is possible nationally.
- The Emergency Room Services should not be subject to the Deductible. While we support a copayment that is substantially higher than that applied to either out-patient physician visits or urgent care – to discourage inappropriate use of the emergency room – not exempting Emergency Room Services from the deductible makes a \$400 copayment meaningless, since the consumer will almost invariably need to meet the full

deductible. Note that Covered California is considering making this change for its 2017 benefit design.

2. Display of Standardized plans and Non-Standardized plans

The FFM enrollment website should clearly identify the standardized plans so that consumers can make fully informed choices. While the FFM using bold text or some other easy to recognize feature for standard plans is necessary and important, it does not go far enough to prevent confusion and allow consumers to make an informed plan selection. We recommend that standardized plans be displayed preferentially to the non-standardized plans. Placing all standardized plans at the top of the list on the website, regardless of the sorting criteria would allow consumers to easily identify standardized options. For instance, if the standard display criteria is to “rank” plans by the premium – all standardized plans would be displayed first and then non-standardized plans would be displayed, irrespective of premium. In the absence of such a display policy, non-standardized products – that may, for example, have deductibles applied to all services – come up before standardized products and superficially look like a “better deal.” We would note the example of the 2015 “Bison-Flex Silver” plan in Colorado, which in Denver has the lowest premium. However, this product applies the \$3,900 deductible to all primary care and out-patient services. Mere labeling of products as “standard” is not sufficient and runs the risk of consumers making uninformed and less than optimal decisions. Similarly, by publicly noting a policy of displaying standardized plans first, Qualified Health Plan issuers would have a strong incentive to offer standardized plans.

HHS should also limit the number of Qualified Health Plans a carrier may offer and should apply a screen as to what benefit designs it allows based on promoting consumer understanding and access to needed care. Implementing this for 2017 will result in consumers choosing health plans that have the best value for the enrollees.

3. Future Standardization

In California, we believe our active purchaser model, in which shelf-space is devoted to a limited number of products in each tier, is a substantial benefit to consumers. At the same time, we recognize the need for innovation and evolution of product design over time. We believe that the proposed HHS model of some standardized options in each tier with clear designation and preferential display is a good first step. We encourage HHS to continue to consider additional methods in the future to ensure consumers make fully informed decisions about their health plans.

4. Need for Ongoing Analysis

The continuing improvement of benefit designs should be based on evidence of the implications of respective designs with regard to consumer understanding, access to services, cost and other factors. HHS should describe its plans to evaluate the impact of different benefit designs and design features and how those impacts may differ by the characteristics of the consumers using them (e.g., income level, subsidy level, education, language, and race/ethnicity).

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

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Lee".

Peter V. Lee
Executive Director

CC: Covered California Board of Directors