Comments to the Board - External

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October 27, 2016 Board Meeting

FOR PUBLIC DISTRIBUTION

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September 2, 2016

California Medical Association
Physicians dedicated to the health of Californians
1201 J Street, Suite 200, Sacramento, CA 95814-2906 • 916.444.5532 • Fax 916.444.5689

August 18, 2016

Lindsay Peterson
Covered California
1601 Exposition Boulevard
Sacramento, CA 95815

Sent via email to Lindsay.peterson@covered.ca.gov

RE: Covered California Primary Care Assignment and PCP Value Proposition

Dear Ms. Peterson:

On behalf of our more than 41,000 physician and medical student members, the California Medical Association (CMA) would like to thank you for considering stakeholder input on Covered California's 2017 primary care provider assignment initiative. CMA shares Covered California's commitment to improving health care quality, promoting better health, lowering costs, and reducing health disparities and makes the following recommendations regarding and recognizes the important role primary care providers play in achieving these goals. We offer these comments on Covered California's PCP Value Proposition document and urge Covered California to consider the impact of these policies on physicians contracted with Qualified Health Plans (QHPs), who are eager to with partner with Covered California in achieving better health outcomes for its enrollees.

Primary Care Providers v. Primary Care Physicians

Covered California's 2017-2019 QHP Model Contract, in Article 13 (Definitions) states that a "the following types of health care providers or organizations are considered Primary Care Providers: a California licensed doctor of medicine or osteopathy who is a general or family practitioner, internist, obstetricians-gynecologist, nurse practitioner, physicians' assistant, or Health Center and who has a contract with the Contractor to assume the primary responsibility for providing initial and primary medical care to enrollees." Accordingly, Attachment 7 to the QHP Model Contract (page 37) permits plans to "allow enrollees to select [n]urse [p]ractitioners and [p]hyisician [a]ssistants to serves as their [p]rimary [c]are clinician."

Covered California's PCP Value Proposition, however, indicates in the "Background" section (page 1) that "health plans are required to ensure that all Covered California enrollees either select a primary care physician (PCP) or have one recommended by the health plan…" and in the "Common Terminology" section (page 2) that "Covered California will use the term 'primary care physician' upon first mention and the acronym 'PCP' in referring to the product feature in all communications." Throughout the rest of the document, Covered California uses the term "PCP" in a manner that refers to providers – including physicians, nurse practitioners, or physicians' assistants – not just physicians. The use of "primary care physician" on pages 1 and

2 is thus inconsistent with the QHP Model Contract and Attachment 7, which allow patients to select a primary care provider in the broader definition rather than only a physician. CMA requests that Covered California change the word "physician" to "provider" in those two instances in order to make the PCP Value Proposition consistent with the QHP Contract, Attachment 7, and state law. [1]

PCP Assignment Methodology

During a recent stakeholder call, Covered California staff explained that for 2017 open enrollment, patients will be assigned to a primary care physician and will have the option to select a different primary care provider. [2] Staff also explained that Covered California is not requiring plans to implement a uniform patient attribution methodology and that they have not required plans to submit their attribution methodologies to Covered California for review. CMA is concerned that without any parameters for how to assign patients, plans will simply assign patients to the lowest-cost providers in their networks. Accordingly, CMA urges Covered California to require plans to submit their attribution methodologies for review and to develop standards for reviewing these methodologies that include factors other than cost.

The PCP Value Proposition (on pages 2 and 4) states (under "Who Can be a PCP") that "PCPs can be internal medicine doctors, family physicians or pediatricians" and that "[m]embers may opt to select a nurse practitioner…or physician assistant…as their preferred provider of primary care." This suggests that plans may not assign patients to and that patients may not select an obstetrician-gynecologist for primary care. However, state law and the QHP Model Contract permit enrollees to select a PCP from a range of providers that includes an obstetrician-gynecologist. Additionally, as plans have likely submitted their 2017 Evidence of Coverage (EOC) documents to the Department of Managed Health Care (DMHC) -- one of California's health insurance regulators -- for review and approval based on the requirements in state law, a directive disallowing patients from selecting an obstetrician-gynecologist for primary care would require a change to the EOC and would result in a considerable burden to the regulators and the plans. Accordingly, CMA urges Covered California to allow plans to assign patients to a primary care provider in a manner consistent with state law and with the 2017-2019 QHP Model Contract.

[1] California Welfare and Institutions Code § 14088 defines "primary care provider" as licensed physicians or osteopathic physicians who are an internist, general practitioner, obstetrician-gynecologist, pediatrician, or family practice physician, or nonphysician medical practitioner. A nonphysician medical practitioner "nonphysician medical practitioner" means a physician assistant performing services under physician supervision in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, a certified nurse-midwife performing services under physician supervision in compliance with Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code, or a nurse practitioner performing services in collaboration with a physician pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code.

[2] While the QHP Model Contract and Attachment 7 permit assignment to a provider, Covered California staff indicated that plans are only assigning patients to physicians but allowing them to select a provider – physician, nurse practitioner, or physicians' assistant - later.

Expectations of Physician Appointments

The PCP Value Proposition (on page 3) under "Your Appointment" indicates that patients need only "make one appointment to discuss a variety of health issues" they might be experiencing. While CMA understands the intent of this language is to explain to patients how they can utilize their primary care provider, we are concerned that it may create an unreasonable expectation for patients. Though it may be true that a patient can discuss a number of health issues with their primary care primary provider, unless discussed before the appointment is made, the amount of time scheduled may not be sufficient to allow the PCP to diagnose and treat all of the conditions in one visit. Covered California should also include the caveat that patients may incur charges related to cost sharing and deductibles if the services are not "preventive."

Removal of Physicians from Plan "Lists"

As Covered California is aware, SB 137 – the new state law requiring health plans to post online provider directories – went into effect on July 1, 2016. SB 137 (codified at Health & Safety Code § 1367.27 and Insurance Code § 10133.15) requires that online provider directories be accessible on the plan's website and that by July 31, 2017 (or 12 months after the departments develop standards for the directories) they be searchable by a number of fields including name, practice address, city, ZIP code, CA license number, NPI number, group, hospital, facility name, or clinic name. SB 137 additionally requires that the contract between a plan and a provider contain a requirement that the provider inform the plan within five business days if the provider is not accepting new patients or is accepting new patients when he or she was previously not accepting new patients.[3] Nothing in the law directs or permits a plan to remove a physician from a directory if he or she is not longer accepting new patients.

The Covered California PCP Value Proposition (on page 3), under "Contact From Members," states that a "plan will add or remove your name from the list of available providers depending on whether your practice is available to new patients." CMA sought clarification from Covered California staff as to what "list" this language refers to and was told that it refers to provider directories but that Covered California does not intend to post its own cross-plan provider directory for 2017 open enrollment. To the extent Covered California is requiring or allowing plans to remove physicians from their provider "lists" or directories due to a change in panel status, it is acting in a manner inconsistent with state law. Moreover, plans have already executed contracts with physicians for 2017 that incorporate the requirements of SB 137 and the addition of a new material provision such as this would require plans and physicians to renegotiate their contracts, at great administrative burden to both. Accordingly, CMA urges Covered California to strike this language.

Thank you again for the opportunity to provide input on Covered California's PCP Value Proposition document. We look forward to continuing our work with Covered California, the QHPs, and other stakeholders in our ongoing effort to improve access to cost effective, quality

[3] Health & Safety Code § 1367.27(j); Insurance Code § 10133.15(j).

health care for Californians. Please contact me at (916) 551-2552 or swittorff@cmanet.org if I may offer any additional information or clarify any of CMA's comments.

Respectfully submitted,

Stacey Wittorff, Esq.
Associate Director
Center for Health Policy
California Medical Association

cc: California Health Benefits Exchange Board, *via email to boardcomments@covered.ca.gov*
Plan Management Advisory Group, *via email to qhp@hbex.ca.gov*

CALIFORNIA RURAL INDIAN HEALTH BOARD, INC.

August 23, 2016

Covered California
1601 Exposition Boulevard
Sacramento, CA 95815

Re: Recommendations to Covered California for Tribal Consultation

Dear Board of Directors and Executive Director:

On behalf of the California Rural Indian Health Board (CRIHB), a Tribal organization authorized under the Indian Self Determination Act to provide health service support to twenty-six Federally recognized Tribes and seventeen Tribal Health Clinics in California, this letter is being submitted to Covered California as part of the August 24, 2016 Tribal consultation process, in care of the Covered California Board of Directors and its Executive Director, Peter Lee. The letter includes several Tribal recommendations and policy change requests, as follows: (1) designate an American Indian seat on the Board of Directors of Covered California, (2) request travel funding to insure meaningful participation in Tribal consultation, (3) restore full funding of the Tribal Community Mobilization program, (4) a much needed augmentation of Outreach and Education funds that target the American Indian/Alaska Native (AIAN) population in California, and (5) Tribal sponsorship of premium payments (see attached report).

American Indian Seat on the Covered California Board

Creation of an AIAN seat on the Covered California Health Exchange Board, by amending Section 100500 of the Government Code, would elevate Tribal concerns and ensure they are resolved. Establishment of a seat is also consistent with the special status of Indian Tribes and the trust obligation to provide health care services to Indian people. A designated seat for AIAN on a state health benefit exchange has been done in other states, like Nevada. The Affordable Care Act (ACA) contains important protections for AIAN, and Tribes have a government-to-government relationship with the state, but unfortunately, implementation of a number of the ACA's provisions for AIAN continues to be an uphill battle.

Despite active and committed participation by Tribes and Tribal Health Programs in Tribal consultation meetings with Covered California for several years, Covered California has not successfully implemented several of the most significant ACA Special Provisions for AIAN, including limited cost sharing. To date, Covered California has also not resolved a significant glitch in the California Healthcare Enrollment, Eligibility, and Retention System (CalHEERS) that prevents members of mixed Tribal families (in which some members are Tribal members and others are not) from enrolling as a household without the tribal members losing the benefits of their special protections. Numerous calls received by the CRIHB from AIANs who have been unable to enroll demonstrate that this glitch has become a persistent obstacle to enrollment.

Tribal Mobilization Program

Full funding of the Tribal Community Mobilization program would assist Covered California in effectively interfacing with Tribes. Part of that program used to include the lending of technical assistance to Covered California staff to remedy problems and troubleshoot procedures affecting AIAN enrollees. The initially approved proposal from CRIHB requested funding to provide technical assistance to Covered California and the Tribal Advisory Workgroup by developing background materials, producing a resource manual, and having subject matter experts on Indian-specific issues that would participate in planning meetings for Covered California.

In addition to Tribal and Indian health care delivery system representation in the planning process, research is needed to develop additional materials on some issues of lasting importance, and to more effectively reach Covered California's intended audience. There will need to be Tribal consultations on these products before they are finalized, as well as about policy issues that may be controversial. CRIHB is an expert in guiding Tribal consultations to achieve meaningful outcomes and will assist in coordinating with the state on Covered California's new Tribal consultation process.

Travel to Attend Tribal Consultation and Advisory Group Meetings

We are requesting reasonable reimbursement of all travel related to consultation and advisory roles. Being able to attend meetings is a pre-requisite for meaningful consultation within the meaning of the ACA and the Indian Healthcare Improvement Act. Tribal representatives should not be expected to pay for their own travel, particularly when the consultation function and seats on advisory groups or committees are not paid positions funded by the State of California. Indeed, in its most recent Tribal consultation held August 11, 2016, the California Health and Human Services Agency committed to fund travel for Tribal representatives to attend their consultation meetings.

Outreach and Education Funding

The timing is right to redouble efforts to reach and enroll the AIAN population in health coverage that reduces the morbidity and mortality rates, and saves clinic resources when treating patients. Given the very low number of AIANs enrolled through Covered California, there is a pressing need for augmentation of outreach and education funds to increasingly target the AIAN population in the state. When assisting remote or hard-to-reach Tribal communities, there are significant expenditures of resources at the local level, such as the budgeting of designated staff, the training time for benefit coordinators and outreach workers, enrollment activities, and outreach events at the clinic or in the surrounding communities.

Covered California has made significant effort and investment in outreach to Latino, Asian Pacific Islander, and African-American communities. In addition, the state is currently conducting extensive outreach to families with undocumented children to enroll them in the new Medi-Cal expansion for this population, as well as to mixed-immigration status families to encourage them to enroll in Covered California. Governor Jerry Brown, in signing the state budget for 2016-17, allocated General Fund costs of $820 million in this fiscal year to cover the decline in federal matching dollars. By 2020-21, the State of California will be paying 10 percent of the cost. CRIHB calls for the state's "significant" and "extensive" efforts and investment in outreach, education, and marketing to be increased for the AIAN population-- a large, underserved population facing health disparities, and to which legal entitlements in the ACA Special Provisions apply.

Tribal Premium Sponsorship

The administration of a Tribal sponsorship program is designed to entice AIAN to obtain health insurance through Covered California. CRIHB policy staff and its Chief Executive Officer resolved to collect input from Tribal leaders leading to a report with recommendations for a viable sponsorship program with state support, in time for this federally required Tribal consultation with Covered California's top leadership. Please review the report enclosed with this letter.

In closing, CRIHB and the Tribes and Tribal clinics that we partner with are looking forward to working with Covered California to incorporate the recommendations and remedies listed above.

Sincerely,

Mark LeBeau, PhD, MS
Chief Executive Officer

cc: Tribes and Tribal clinics that are members of CRIHB
CRIHB Board of Directors
Kelly Greene, Covered CA Director of External Affairs

4400 Auburn Blvd., 2nd Floor, Sacramento, CA 95841
Phone: 916-929-9761 · Fax: 916-929-7246 · www.crihb.org · mark.lebeau@crihb.org

***General* Comment Received via E-mail**

Public Comment

My name is Martha Zarate from California Rural Legal Assistance Foundation and I would like you to support this waiver because California is stronger when everyone has access to health care and no one should suffer or die from a treatable condition no matter where they were born or their immigration status. I am also representing those families that do not have access to view this meeting, call in or make any comments because they are out working. On behalf of them and myself we urge you to support this waiver that would provide the opportunity to those that do not have insurance to have be able to purchase.

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Thank you,
Martha Zarate
California Rural Legal Assistance Foundation

September 2, 2016

The Honorable Diana Dooley, Chair, Board of Directors
Peter Lee, Executive Director
Covered California
1601 Exposition Blvd.
Sacramento, CA
Via-email to: boardcomments@covered.ca.gov

Re: Draft Application for Section 1332 Waiver - Support

Dear Ms. Dooley and Mr. Lee,

Our organizations write in support of the draft application of Covered California for a Section 1332 waiver of the Affordable Care Act to permit undocumented Californians to

purchase California Qualified Health Plans from Covered California. This waiver of the requirement that Covered California sell only Qualified Health Plans by allowing Covered California to sell mirrored products called “California Qualified Health Plans” will allow undocumented Californians and those eligible for Deferred Action for Childhood Arrivals (DACA) the opportunity to walk in the front door of Covered California and buy coverage in the same way as every other Californian.

California has been a national leader in not only implementing the Affordable Care Act but also improving on it. This state has implemented the active purchaser role of Covered California, expanded Medi-Cal to undocumented children and childless adult Newly Qualified Immigrants and made innumerable changes in insurance market rules beyond what was required by the Affordable Care Act. This waiver application, to waive a specific provision of the Affordable Care Act, if approved, can be another example of California’s effort to improve on the provisions of federal law.

The legislation that authorized this waiver, SB 10 (Lara), was approved by bipartisan, two-thirds majorities of both houses of the California Legislature. Approval of the waiver would allow immigrant families and families with mixed immigration status to obtain coverage by purchasing it from Covered California.

Public Process

Prior to the development of the current waiver application, Covered California heard public testimony at numerous public board meetings about the importance of Section 1332 waivers and specifically about the importance of a waiver to allow those who are undocumented and those granted relief under the Deferred Action for Childhood Arrivals (DACA) to obtain coverage through the exchange.

Covered California also held several additional public meetings, including one that involved both the California Medicaid agency, the Department of Health Care Services, and the California Health and Human Services Agency, to hear from experts as well as public comment about a Section 1332 waiver.

We offer this letter as part of the public record for the August 18, 2016 Covered California public board meeting.

Deficit Neutrality, Affordability, Comprehensiveness and Scope of Coverage

Policy and legal experts among our organizations have reviewed the waiver application, including the appendices on deficit neutrality, affordability, comprehensiveness and scope of coverage. We concur with the conclusions of these experts that this waiver meets the criteria for a Section 1332 waiver.

Covered California, and the health policy community in California, has relied on the CalSIM model to provide California-specific modeling that meets national standards to project the possible impacts of health reform proposals as well as the projected impacts

of the implementation of the Affordable Care Act. The application is further strengthened by consultation with academic experts on immigration impacts which are particularly germane to this application.

No Federal Funds: Californians Using Their Own Money

This waiver application requires no federal funds. Individual Californians who are ineligible for federal subsidies by reason of immigration status will be expected to use their own funds to purchase coverage, without advanced premium tax credits or cost sharing reduction assistance. We note that the waiver application reflects the reality that some undocumented Californians and DACA recipients already purchase individual coverage in the outside market using their own funds.

This waiver application does not seek federal funds but simply gives another group of Californians the opportunity to purchase coverage, using their own dollars. This is the same opportunity that other Californians over 400% Federal Poverty Level have today.

Marketing and Outreach to Diverse Communities

From its inception, Covered California has engaged in marketing and outreach to the diverse communities of California, which include immigrant families and families with mixed immigration status as well as targeted efforts to Latino, African American, Asian American, Native Hawaiian and Pacific Islander populations. Since 2013, Covered California has invested hundreds of millions of dollars communicating to Californians the importance of having health coverage and the availability of new coverage options. Many of our organizations have joined in these outreach and education efforts.

Covered California's efforts were further amplified by additional outreach to those who were potentially Medicaid eligible, which included mixed immigration status families.

California's Record of Immigrant Inclusiveness

This waiver application continues California's longstanding record of inclusiveness for our immigrant communities, in both health care and other policy areas.

In health care, California has:

- Provided full-scope Medicaid coverage to newly qualified immigrants, present in this country for less than five years and who meet other Medicaid eligibility requirements such as income and categorical eligibility;
- Provided full-scope Medicaid coverage for pregnancy to undocumented women who are income eligible; and
- Recently expanded full-scope Medicaid coverage to undocumented children who are income-eligible.

In other policy areas, California has:

- Since 2002, allowed undocumented students to pay in-state tuition at public institutions of higher learning;
- Provided state financial aid and scholarship opportunities to undocumented students since 2012;
- Restored access to driver's licenses to all Californians, regardless of immigration status; and
- Provided state funding to support education, outreach and application programs for immigrants eligible for naturalization and deferred action (One California: Immigrant Integration Services).

This waiver builds on the long record of immigrant inclusion in California and within that tradition is a modest step forward.

Conclusion

Our organizations strongly support the application by Covered California for a Section 1332 waiver of the ACA provision requiring Covered California to sell only Qualified Health Plans. This will allow Covered California to sell California Qualified Health Plans so that all Californians, regardless of immigration status, are able to obtain health coverage through our state marketplace, Covered California. California has been a national leader in implementing, and improving on, the Affordable Care Act: this waiver application is another step forward.

Sincerely,

Access Women's Health Justice
Alliance for Boys and Men of Color
American Academy of Pediatrics – California
Asian & Pacific Islander American Health Forum
Asian Americans Advancing Justice - Los Angeles
Asian Law Alliance
Asian Pacific Policy & Planning Council (A3PCON)
ASPIRE
Association of Asian Pacific Community Health Organizations
California Black Health Network
California Coverage and Health Initiatives
California Health Professional Student Alliance
California Immigrant Policy Center
California Latinas for Reproductive Justice
California National Organization for Women
California Pan-Ethnic Health Network
California Partnership
California Physicians Alliance (CaPA)
California Rural Legal Assistance Foundation
CaliforniaHealth+ Advocates

Californians for Disability Rights, Inc.
Campaign for a Healthy California (CHC)
Centro Binacional Para El Desarrollo Indígena Oaxaqueño
Children Now
Children's Defense Fund-California
Clergy and Laity United for Economic Justice: Creating a Just and Sacred Society (CLUE)
Clinica Romero
Coalition for Humane Immigrant Rights of Los Angeles
Community Health Councils
Community Health Initiative of Orange County
Community Health Partnership
Congress of California Seniors
Consumer Federation of California (CFC)
Consumers Union
Doctors for America – California
Dolores Huerta Foundation
Dream Team Los Angeles
Ensuring Opportunity Campaign to End Poverty in Contra Costa
Esperanza Community Housing Corporation
Fathers & Families of San Joaquin
Filipino Youth Coalition
Fresno Center for New Americans
Having Our Say!
Health Access California
Healthier Kids Foundation
Healthy Richmond
Inland Empire Immigrant Youth Coalition (IEIYC)
Kheir Clinic
Korean Community Center of the East Bay
Korean Community Services
KRC Korean Resource Center
La Clinica de La Raza
Latino Coalition for a Health California
Latino Health Access
Law Foundation of Silicon Valley
Little Tokyo Service Center Sent a Logo, but unable to view/download it
Long Beach Immigrant Rights Coalition
Los Angeles Immigrant Youth Coalition
LULAC
Maternal and Child Health Access
Merced Lao Family Community, Inc.
Multi-faith ACTION Coalition
National Council of La Raza
National Health Law Program
National Immigration Law Center

NICOS Chinese Health Coalition
One LA IAF
PICO CA
Pre-Health Dreamers
Public Citizen
Public Law Center
Redwood Community Health Coalition
Santa Clara Valley Health & Hospital System
SEIU
SEIU 521
SEIU 721
SEIU-UHW
Services, Immigrant Rights, and Education Network
Silicon Valley Council of Nonprofits
Single Payer San Joaquin
Somos Mayfair
South Asian Network
Southeast Asia Resource Action Center
Thai Community Development Center
The Cambodian Family Community Center
The Children's Partnership
The Council Of Mexican Federations
The Greenlining Institute
The New You Center, Inc.
The Wall Las Memorias
Tongan Community Service Center
United Farm Workers Foundation
United Ways of California
UPLIFT
USW Local 675
Vision y Compromiso
Western Center on Law and Poverty
Women's Health Specialists of California
Working Partnerships USA
YNOT Community Services
Young Invincibles