

COVERED CALIFORNIA BOARD MINUTES  
Thursday, June 14, 2018  
Covered California Tahoe Auditorium  
1601 Exposition Blvd.  
Sacramento, CA 95815

**Agenda Item I: Call to Order, Roll Call, and Welcome (Discussion)**

Peter V. Lee explained that Board Chair, Diana Dooley accepted the position of the Governor's Chief of Staff. As there is no Vice Chair, Paul Fearer will stand in as the Acting Chair until the Board addresses the situation in the Open Session and elects a new Board chair.

Paul Fearer called the meeting to order at 11:02 am.

**Board members present during roll call:**

Paul Fearer, Acting Chair  
Jerry Fleming  
Dr. Sandra Hernandez  
Art Torres  
Mike Wilkening

**Agenda Item II: Closed Session**

A conflict disclosure was performed and there were no conflicts from the Board members that needed to be disclosed. The Board adjourned into Closed Session to discuss personnel, contracting and litigation matters pursuant to Government Code Sections 100500(j), 11126(a), 11126(e)(1), and 11126.3(d).

Paul Fearer, Acting Chair called Open Session to order at 1:03 pm.

Paul Fearer, Acting Chair welcomed Mike Wilkening to the Board. Mr. Wilkening was appointed by the governor to serve as Secretary of Health and Human Services.

**Agenda Item III: Approval of Board Meeting Minutes**

**Motion/Action:** Paul Fearer, Acting Chair asked for a motion and a second to approve the May 17, 2018 meeting minutes.

**Presentation:** May 17, 2018 Meeting Minutes

**Discussion:** None

**Motion/Action:** A Board Member moved to approve the May 17, 2018 Meeting Minutes. The motion was seconded.

**Public Comment:** None

**Vote:** Roll was called. Michael Wilkening abstained from the vote. The motion was approved by unanimous vote of the other Board members.

#### **Agenda Item IV: Election of the Board Chair**

**Motion/Action:** Paul Fearer, Acting Chair nominated Michael Wilkening to the role of Board Chair for the remainder of 2018. Art Torres seconded the motion.

#### **Public Comment:**

Beth Capell for Health Access California, said that although they will miss Secretary Dooley, they welcome Secretary Wilkening as the Chair of the Board.

Dr. Sandra Hernandez stated the Board has an extraordinarily good working relationship with the Department of Health Care Services. She stated her appreciation for Mr. Wilkening's willingness to take the position and said she looked forward to working with him.

**Vote:** Roll was called. Michael Wilkening abstained from the vote. The motion was approved by unanimous vote of the other Board members.

Chairman Wilkening thanked the Board and said it was a privilege to work with the Board members, Peter V. Lee, and the staff at Covered California. Chairman Wilkening said California has been an example of the potential of the Affordable Care Act. He looks forward to building on Covered California's previous success and squarely facing the challenges in coming years.

#### **Agenda Item V: Executive Director's Report**

Peter V. Lee, Executive Director noted that he is thrilled to work with Michael Wilkening. Mr. Lee commented on Diana Dooley's contributions and expressed his gratitude for her service.

#### **Announcement of Closed Session Actions (Discussion)**

Mr. Lee reported contracting matters, litigation and personnel issues were dealt with during the Closed Session. Mr. Lee reported that, as called for in legislations, the Board approved Covered California engaging in a contract to develop a report for the legislature on the merger of the individual and small group markets. The report will be provided to the legislature by this coming December. A vendor will be engaged to help develop the report and bring it into public session in the fall.

The Board also approved a revision to the Contracting Manual to provide for leases that we may engage in. The Board also revised its Personnel Committee with Diana Dooley's departure to add Mike Wilkening to the Personnel Committee to join Paul Fearer. The other discussions were on qualified health plans; Covered California is in the midst of negotiating with health plans.

### **Navigator Program 2019 (Discussion)**

The Navigator Program was discussed during closed session. Mr. Lee stated that the Navigator Program would also be discussed as an Agenda Item during Open Session. Covered California remains committed to its Navigator program and the partnership with the grantees and community partners who have been a part of the “Five Years Strong” success. During Closed Session, the Board opted to extend the Navigator Program for ten months. Covered California will issue a Request for Application (RFA) for a three year period from 7/1/2019 to 6/30/2022 early next year. Mr. Lee reported that the Navigator Program is working very well and has contributed to Covered California’s success. Covered California will actively engage with the grantee partners in the development of a refreshed program that will build on existing expectations and provide robust incentives and rewards for continuing the good work of helping Californians get and keep health insurance coverage. Over the next year, Covered California will share data with grantees that will assist in the development of new standards that may be used in the next grant period.

Mr. Lee highlighted two items regarding the extension period. First, some individual grantees may have their grant for next year adjusted up or down given the service plans they have had in this last year. This has happened every year under the Navigator Program. Second, Covered California will not be putting at-risk, so to speak, a portion of payments for individualized enrollments for the next 10-month period. The uncertainty we all face in the world of having no penalty makes having performance payment adjustments particularly uncertain.

Covered California will provide new sets of reports to all grantees, both on the past basis of reporting, which has looked at number of enrollment, but also, things like plan selections.

Mr. Lee asked if there was any public comment.

**Public Comment:** None

### **Executive Director’s Update (Discussion)**

Mr. Lee highlighted items included in the Board Materials. Mr. Lee described an initiative targeting college grads. There have been a number of commencement speakers that remarked on the importance of having healthcare coverage. An op-ed was co-written by two of those commencement speakers, Cástulo de la Rocha, the CEO of AltaMed, along with Ken Kizer.

Mr. Lee praised the marketing team for their development of a radio spot that would run during the World Cup. The radio advertisement involves a radio soccer announcer who is distracted and cannot focus because he does not have health insurance. The advertisement was targeted to the Latino community and received the Mercury Award. The advertisement affirms what Covered California is doing year-round to make sure people know that Covered California is open for business.

Mr. Lee then noted a letter Covered California recently wrote to Secretary Alex M. Azar, the Health and Human Services Secretary (HHS). This letter affirmed some of Covered California's alignment with the Federal HHS Secretary to have four priority areas for the nation. Those areas are to promote value in delivery reform, to address the opioid epidemic, to address the challenge of high cost drugs, and address affordability.

Posted with the Board material, is a declaration that Covered California filed in support of Attorney General Becerra's recent intervention in defense of the Affordable Care Act in a Federal Court action in Texas (*Texas v. the United States*). Mr. Lee encouraged everyone to familiarize themselves with this case. About twenty states filed this action against the federal government challenging the constitutionality of the Affordable Care Act. They challenged the constitutionality saying that since the Supreme Court found the mandate was a tax, and this was a law supported as a tax act with the elimination of the penalty, the law is now unconstitutional. The United States, under the current Administration filed a brief agreeing the individual mandate is unconstitutional, and while not arguing that the entire ACA is unconstitutional, said that with the individual mandate going away, having a guaranteed issue or a community rating was unconstitutional.

The California Attorney General joined nineteen other attorney generals to intervene and was accepted to intervene to defend the constitutionality of the Affordable Care Act. Covered California filed a brief to note what it would mean to Californians if the law were found unconstitutional. If a Court were to agree with the United States and find that the mandate guaranteed issue and community rating provision were unconstitutional that would not have affects in 2019. California, would have the opportunity to put in place parallel provisions, which right now in state law are directly tied to the existing Affordable Care Act. California law ties back the guaranteed issued requirements to the existing Affordable Care Act. If those were not the case, Mr. Lee stated he is confident that California could step up and make sure Covered California can continue to protect Californians.

Mr. Lee then discussed Covered California's agenda to support better quality care at a lower cost. The Healthcare Evidence Initiative is an initiative in which Covered California requires all participating health plans to provide data on all services provided. Covered California is starting to do the analysis on the data and looks forward to sharing more of that analysis. Mr. Lee presented two items as "teasers." First, sixty-five percent of the dollars in spending of the 1.5 million consumers was incurred by just four-point-four percent of Covered California enrollees. Second, in looking at where the money is spent, thirty-five percent of spending is tied to (inpatient and outpatient) hospital spending. Prescription drugs account for twenty-four percent of premium dollars. Over seven billion dollars in the individual market are spent on prescription drugs. Covered California continues to focus on universal coverage and the affordability challenges.

Chairman Wilkening asked if there were any public comments.

**Public Comment:**

Doreena Wong, Asian Americans Advancing Justice Los Angeles, first thanked Covered California staff including Kelly Green, and Doug McKeever, Benjamin Walker, and Peter V. Lee for addressing some of the issues and concerns that they raised about the new proposed Navigator Program. Ms. Wong stated they have been with the Navigator Program since its inception. They've reached about two million Californians, enrolled almost 7,000 consumers into Covered California and over 13,000 into Medi-Cal. Ms. Wong stated their support of the additional time and their stressed their commitment to partnering with Covered California to ensure that all Californians are enrolled into Covered California and other health plans. Ms. Wong said it was prudent to get more Navigator input into any proposed program especially, when it's a lot of dramatic changes that were proposed. Ms. Wong thanked staff and the Board for taking their issues and concerns seriously. She stressed their commitment to work with Covered California to make the Navigator Program even more effective than it has been and to make Covered California the model for other states. She stated it is a model to be proud of.

Carrie Sanders, California Pan-Ethnic Health Network (CP-EHN) welcomed Michael Wilkening to the Board and his new position as Board Chair. She said she was sad to see Secretary Dooley's departure but happy that Chairman Wilkening is able to jump right in. Ms. Sanders thanked Peter V. Lee, Covered California Staff, and the Board for their decision on the Navigator Program extension. CPEHN is not a Navigator grantee. They do not receive funds directly to do the work, but they do work with a lot of community-based organizations throughout the state, some of which do receive the funds. Ms. Sanders stressed that the work they do is valuable and often involves reaching out to hard-to-reach individuals with limited proficiency in English. They reach out to very diverse populations throughout the state. These organizations also work with a lot of Medi-Cal eligible consumers who cycle in-and-out between Covered California and Medi-Cal coverage. These organizations are committed and dedicated to the ACA and getting people covered. Ms. Sanders expressed her appreciation for the additional time to have more robust conversations about the direction of the Program and how to make the Program performance-based while also keeping the valuable services provided intact.

Betsy Imholz, Consumers Union congratulated the new Chair and said they also look forward to celebrating and honoring the tenure of Secretary Dooley. Ms. Imholz expressed her appreciation in the ten-month extension of the Navigator Program. She said the Program creates stability for the community-based organizations which the Board values and whose work is so important to consumers. This also gives the Board a chance to gather and consider the evidence about what has worked in the past, as they develop a new path and find new ways to potentially alter the Program. Ms. Imholz then addressed Peter V. Lee's slide regarding cost and affordability challenges. She commended the focus on young adults and recent graduates. Ms. Imholz said she would be happy to meet with staff to talk about some informal findings that we had at Consumers Union. She said they recently had summer interns do a search as if they

were looking for insurance for the first time. She believes there may be some web enhancements that could help. Ms. Imholz said that the four percent that incur high costs do receive terrific medical care and coverage. To keep the risk mix healthy, we need to bring in young people who really don't understand a lot about health insurance.

Jen Flory, Western Center on Law and Poverty in the Health Consumer Alliance welcomed the new Chair and said they will miss Secretary Dooley. Ms. Flory said she concurred mostly with comments of colleagues, particularly regarding the Navigator Program. They are happy to see it continue as many of their local partners work closely with Navigator Programs. Ms. Flory said that when she was at one of their field programs, they partnered with the Navigator Programs to train the clinic-base enrollers and other enrollers. They are not affecting just the people that they are enrolling but they have a much broader effect in their community where they help other people who do enrollments, learn how to troubleshoot, and learn all the areas where people might fit in, not just in covered California. She thanked the Board for continuing that funding.

Alicia Kauk, National Health Law Program and the Health Consumer Alliance welcomed the new Chair and said they were excited to work with him. Ms. Kauk expressed appreciation to the Board for their responsiveness to the concerns of the Navigators. She said that while they do not receive Navigator funding, they understand their unique/important role especially for the hard-to-enroll population. Ms. Kauk said they appreciate the extension of the existing framework for ten months.

George Balteria, Quote Selection Insurance Services stated he is part of the certified enrollment agents and they are very happy to hear that the Navigator partners are being supported. They work with a number of other Navigator Programs in collaboration for enrollments and community outreach and also support Covered California. A number of their certified enrollment agents attended the Board meeting to show their presence in support of all the important work Covered California is doing.

Beth Capell, Health Access California echoed the comments of her colleagues regarding the appreciation to the Board and the Staff in adapting the comments they received regarding the Navigator Program and continuing it. Ms. Capell said she was struck in looking at the comments from a number of the organizations by how the difficulties in transitioning between Covered California and Medi-Cal continue to be a significant problem. It may be timely to relook at those transitions, in order to see if there is systemic changes that we can accomplish that would facilitate those transitions. Ms. Capell said that with respect to the information on the cost of care and who incurs it, they look forward to further discussion and plan management on those issues. Ms. Capell said they wonder if some of the skewing that we see in this data, reflects the much lower actuarial value in this market than in other parts of the market. She said everyone will benefit from a conversation about that and thinking through Benefit Design and other elements where we can be thoughtful, as well as the Marketing and Outreach, which Peter V. Lee, Executive Director has already thought of and pointed out.

Peter V. Lee then responded to the public comments. Mr. Lee said that having a deliberative process and being thoughtful and well engaged with the partners is one of the reasons why California's market has been successful. Mr. expressed his appreciation for the engagement of the Navigator community and also the staff which worked hard to rapidly try to meet a tough deadline. He recognized their flexibility in slowing things down for the sake of the process.

Mr. Lee then spoke of his appreciation for George Balteria and his team. Mr. Lee stated that it says a lot about California to have certified agents coming to Board meetings to praise the work of Navigators. Mr. Lee said this shows we have an "all-in" or "shoulder-to-shoulder" effort in many communities. Navigators and community-based organizations work shoulder-to-shoulder with certified agents.

Mr. Lee then responded to Beth Capell's comment regarding the data that was shared. Mr. Lee said Covered California is looking very closely at the data and how it compares to commercial data. Generally, people in the individual market are sicker on average than people in the employer market because of early retirees, etc. The individual market will always have a somewhat less healthy risk profile than an employed market. Mr. Lee said he spoke about the four-point four percent contributing 65% of the cost but he didn't highlight the other end. One third of the enrollees did not get services last year. Mr. Lee said this is not a bad thing. They are healthy people but if they think they got a bad deal they may choose to roll the dice and go without insurance. This affirms the need to not only reach out to enroll young healthy people but to also reach out actively to those who already have insurance today. Mr. Lee wants to affirm the value with them and ensure they understand that they were lucky not to need the insurance during the previous year but they may need it in the future. It is important to look at the whole spectrum.

Mr. Lee affirmed and appreciated Beth Capell's note regarding the lack of perfection in transitions between Medi-Cal and Covered California. He said there have been dramatic improvements over the last five years working with the Department of Healthcare Services. Transitions are better in particular for people in active care. These transitions do continue to be an area of friction. Covered California is doing initiatives and working with agents, service centers, and counties to better understand the problems.

## **Agenda Item VI: Covered California Policy and Action Items**

### **2018-2019 Budget (Action)**

Peter V. Lee invited Dora Mejia, Covered California's Chief Financial Officer to present on the Budget.

Dora Mejia welcomed Michael Wilkening to the Board and said that she and her team look forward to working with him. Ms. Mejia reminded everyone that, at the previous Board meeting, the proposed budget was reviewed. Ms. Mejia said that at this meeting, she would cover any changes and provided reminders for those, including

Michael Wilkening, who were not present at the previous meeting. Ms. Mejia reported that at the last meeting, there was deep discussion regarding Covered California's Vision and Strategic Pillars that Framed Budget Priorities. There were no changes in total dollars from what was proposed last month. There were no enrollment and revenue updates. There is a slight change in the fiscal year 2017-18 expenditure projections. Ms. Mejia said that she would also answer some questions presented by Board Members. Ms. Mejia said that expenditure projections were lowered by \$3 million for the 2017-18 Budget due to some contracts that will not materialize.

The Board was asked to formally set Covered California's enrollment assessment rates for benefit year 2019, and to formally approve the Budget for FY 2018-19. There were no changes to the FY 2018-19 Proposed Budget presented in May. The FY 2018-19 Proposed Budget of \$350.2 million includes: (1) An operating budget of \$340.2 million along with 1,399 positions, (2) funding for the capital projects reserve of \$10 million for facility related projects.

A proposed reduction in assessment rates to 3.75 percent of premium on Qualified Health Plans, including dental plans, for benefit year 2019 with an average rate of 2.3 percent when including those enrolled in mirrored products off the exchange. The recommended rate for CCSB policies remains at 5.2 percent of premiums.

Revenues from plan assessments exceed operating expenditures in FY 2018-19. The assessment rate is reduced for 2019 to 3.75 percent from its current 4.0 percent of premiums and maintains operating reserves of approximately 11 months. The proposed budget includes funding of the Capital Projects Reserve.

The forecast reflects a 3.75 percent plan assessment rate for 2019, which equates to an estimated \$22.48 per member per month, or 2.3 percent and \$13.87 per member per month when considering mirrored off-exchange plans, and is influenced by the anticipated premium growth. The higher than average estimated per member per month change of 18.4 percent in Plan Year 2018 is primarily the result of the Cost Sharing Reduction surcharge added to silver premiums. Covered California is projecting a modest increase of 4.1 percent for 2019, and then increases of 5.5 and 1.2 percent respectively in the next two plan years. Premium growth assumptions are based on all key factors including the elimination of the mandate penalty and would grow 11 percent in 2019 on average across all California carriers.

Peter V. Lee stepped in to say that healthcare costs go up a lot but we don't want Covered California to ride on those coat tails. Covered California endeavors to make the right investments to maintain a good risk mix to promote lower premiums. Mr. Lee said part of the trade-off is that in spending money on marketing, on Navigators, advertising, effective customer service that means an improved risk mix that has a 5 to 7-time return on investment of our spend compared to the impact on premium.

Dora Mejia showed a new chart (page 22 of the budget book).



Ms. Mejia presented a new addition to the budget book. She said that Covered California has to show that their policies do not negatively impact other health programs. Incorporated into the yearly budget book is evidence that these policies do not cause cost increases on other publicly-funded programs. The Exchange affirmed its compliance with GC 100521(e) as referenced in the 2018-19 Budget.

Covered California recommended that the Board adopt Board Resolution 2018-31 to: Approve the Operating Budget for Fiscal Year 2018-19, providing expenditure authority of \$340,243,865. Approve the Capital Projects Reserve Budget and appropriate \$10,000,000 from unspent funds in Fiscal Year 2017-18 and \$10,000,000 from Fiscal Year 2018-19, for a total reserve of \$20,000,000. For Fiscal Year 2018-19, provide expenditure authority of \$20,000,000 from the Capital Projects Reserve Budget. Expenditures from the Capital Projects Reserve in excess of \$1,000,000 in value will require Board review and approval. Any unexpended funds will remain in the Capital Projects Reserve and be made available for expenditure in subsequent fiscal years. Grant authority to the Executive Director to make adjustments to the Operating Budget, provided that 2018-19 expenditures remain at or below the level of expenditure authority approved by the Board; and that any material adjustments to program budgets and positions must be reported to the Board. For plan year 2019, charge a per-member per-month assessment of 3.75% of premiums on Qualified Health Plans, including dental plans, sold through the individual exchange and 5.2% of premiums for such plans sold through Covered California for Small Business.

The budget presentation concluded. Chairman Wilkening asked if Board Members had any questions or comments.

Paul Fearer asked if when Covered California looks at the enrollment decline estimates, is there a distinction between a decline that is simply absolute reduction versus a decline that is a result of movement from on-exchange Silver to off-exchange Silver? Mr. Fearer asked if it was trackable.

Dora Mejia replied that it should be evident because the membership reports display who is enrolling. Ms. Mejia is not sure if it is possible to determine specifically if one person went off-exchange, and has insurance off-exchange, or simply is not enrolling any longer.

Mr. Fearer said he asked because as it does not affect the budget itself, it does affect the interpretation or understanding of the enrollment decline.

Peter V. Lee stated this is looked at very closely. Covered California does an internal analysis. It does have implications for our budget because even though health plans spread the cost of our assessment across the entire market, it is calculated directly only on-exchange. Mr. Lee said that there is not much anticipated change in the next year but it is tracked and analyzed.

Dr. Sandra Hernandez thanked the team saying they did a nice job on the original budget and in responding to questions. Dr. Hernandez asked how the operating reserve has looked year-over-year. She asked if there is an ideal goal of a year's worth of reserve or how to think about optimal operating reserve in a climate with the uncertainties under which we are currently operating.

Dora Mejia explained that Covered California first considers what the law will allow. The law allows Covered California to keep enough to cover the next year's operating budget. Covered California keeps as close to twelve months as possible. This allows Covered California more time to make any necessary changes. Covered California does a deep review of what is coming up considering not only the budget for the next year but also two and three years into the future. Ms. Mejia provided an example of a Request for Proposal (RFP) for CalHEERS that is expected to entail a lot of cost. This was built into the budget. Covered California tries to predict what is going to happen in the future regarding benefit costs and staffing costs. All of these are examined and considered when planning the budget and determining how to ensure there is enough cash in the bank without having too much cash in the bank.

Dr. Sandra Hernandez asked if a dashboard was used to examine this information.

Dora Mejia explained that Covered California does create a monthly dashboard. With the new Financial and Audit Committee, his dashboard is expected to be shared with the Board more frequently.

Dr. Sandra Hernandez stated that considering this is a year of a lot of unknowns, it would behoove the Board to examine the dashboard on a regular basis. Dr. Hernandez complimented Ms. Mejia's work and thanked her.

Chairman Wilkening asked if there were any further comments from the Board.

Peter V. Lee stated that Ms. Mejia is a very good fiscally conservative steward. He said that Covered California has followed prior Board direction in keeping ten to twelve months of finances available. Mr. Lee said the Board could suggest this is "too close to the edge" but hopes the Board would not do that. He believes this is the right level.

Chairman Wilkening thanked Ms. Mejia and said it was a really good budget. He said it was easy to understand and very clear where the changes were made and why they were made. He stated his appreciation and thanked Ms. Mejia.

Chairman Wilkening asked if there was a motion to approve the budget.

**Motion/Action:** Dr. Sandra Hernandez moved for approval. The motion was seconded.

**Public Comment:** None

**Vote:** Roll was called. Paul Fearer was absent during the vote. The motion was approved by unanimous vote of the other Board members.

Peter V. Lee thanked Dora, the team in Finance and the entire organization. The budget is a product of every part of the organization building how to address issues of affordability, consumer choice, and consumer centeredness throughout what Covered California. It was a very good team effort in developing the budget, and Covered California appreciates the Board's guidance as they move forward.

### **Eligibility and Enrollment Regulations, Individual Market – Authorization to Submit Permanent Rulemaking Package to the Office of Administrative Law (Action)**

Peter V. Lee introduced Bahara Hosseini stating these Eligibility and Enrollment Regulations for the Individual Market were previously presented as discussion and were now being presented seeking action.

Bahara Hosseini welcomed the new Board Chair. Ms. Hosseini provided background information. Covered California was granted emergency rulemaking authority by the Legislature through January 1, 2019 for the eligibility and enrollment regulations for the individual and small business exchanges. With an emergency rulemaking, once the emergency regulations are adopted, the agency must then go through the regular rulemaking process to make the regulations permanent. First approved by the Board and the Office of Administrative Law in September 2013, these regulations are the result of ongoing collaboration with the CDSS, DHCS, DMHC, CDI, consumer advocates, QHP issuers, and other stakeholders. On October 5, 2017, the Covered California Board approved the 11th readoption and the start of the Permanent Rulemaking Process for the Eligibility and Enrollment and Appeal Process for the Individual Exchange Regulations. Stakeholders were provided a 45-day period to review and comment on the proposed changes. Subsequent to the noticing period, there were several changes resulting from both stakeholder feedback and changes in federal regulation, specifically the U.S. Department of Health and Human Services' 2019 Final Payment Notice. Some definitions were revised, per federal rules. Covered California removed the Exchange's "direct notification" requirement before eligibility for APTC could be denied due to the tax filer's failure to comply with the tax filing requirements, per federal rules. Covered California revised the verification process for increases in income, per federal rules. Covered California revised the enrollment period dates, per State law and federal rules. Covered California Revised the special coverage effective dates for some triggering events, per federal law. On May 18, 2018, Covered California published a 15-Day Notice of Text Modifications and received no comments. Ms. Hosseini requested that the Board approve these regulations and authorize the staff to file the Certificate of Compliance for the permanent adoption of the Individual Eligibility Enrollment and Appeals Regulations with the Office of Administrative Law and the Resolution 2018-28.

Chairman Wilkening asked if there were any questions or comments from the Board. There were none.

There was some discussion regarding the previous voting to approve the budget. The budget vote was reopened and unanimously approved.

Chairman Wilkening returned to the Eligibility and Enrollment Regulations. He asked again if there were any questions or comments from the Board. There were none. He asked again if there was a motion to approve

**Motion/Action:** Jerry Fleming moved for approval. Art Torres seconded the motion.

Chairman Wilkening asked for public comments.

**Public Comment:**

Jen Flory, Western Center on Law and Poverty and the Health Consumer Alliance, stated that there were bumps along the way in moving to make the final regulations. Ms. Flory stated they did see these when they were posted in March but missed them when the revisions were posted in May. She stated that all of the advocates missed them and had not had time to review them. Ms. Flory said some good things were incorporated such as the flexibility around special enrollment. She said this is appreciated but that in going from the emergency regulation process back to the formal rulemaking process there were bumps along the way. Ms. Flory said that if there are problems, they will seek to amend them at a future date.

Alicia Kauk, National Health Law Program and the Health Consumer Alliance seconded the comments of Jen Flory at Western Center. Ms. Kauk said that specifically, there was one revision to the failure to reconcile population, which is the consumers that receive advanced premium tax credits and do not comply with the requirement to file taxes. Ms. Kauk said Covered California's perspective changes at the federal level. She said that The National Health Law Programs' position is that there are still constitutional due process requirements. Their expectation moving forward would be that consumers still receive notice prior to changes in their coverage. They look forward to working with Covered California on this moving forward.

Beth Capell, Health Access California, agreed that on moving into the formal regular rulemaking process, there were many bumps along the way. Ms. Capell stated the changes made during the 15-day period were significant from their perspective and might or might not be determined by the Office of Administrative Law to have warranted a 45-day rulemaking period. She stated they will have to re-review the laws. Ms. Capell noted that they also did not have the opportunity to review the changes in detail as they were brought to their attention shortly before the meeting. Ms. Capell stated that their experience in the past has been that in reviewing the regulations, they have caught inconsistencies with state law. Often the development of the regulations has been focused on federal rule and federal law and reconciling with that. Sometimes,

it takes a bit of work to reconcile with our state law, which is sometimes somewhat different. Ms. Capell stated that their preference would be for the Board to not move forward but instead look forward to amending these at a future date. Ms. Capell stated they felt troubled that they found themselves in this unfortunate place.

Peter V. Lee asked Kathy Keeshen to explain the issues regarding waiting until the next Board Meeting for adoption. Mr. Lee stated that the budget could be amended after the final adoption.

Kathy Keeshen explained that the emergency rulemaking authority expires on September 30, 2018. While it is possible to delay for one month, it runs the risk of having comments and questions from the Office of Administrative Law. Time would then run out because there would not be sufficient time to respond to those concerns. Ms. Keeshen stated Covered California's preference would be for the Board to move forward with the permanent rulemaking package today and then work with stakeholders to amend regulations as they become permanent on an emergency basis.

Dr. Sandra Hernandez asked if both federal and state laws were considered by legal in drafting the budget. She asked if they were confident that the concern regarding reconciling federal laws and state laws had been addressed by the team. Legal responded "yes".

Chairman Wilkening asked if there were any further questions from the Board. There were none.

**Vote:** Chairman Wilkening called for a vote. The budget was passed unanimously by all members of the Board.

Peter V. Lee thanked the Board and stated that Covered California would work with advocates and others to amend regulations as needed on a special basis. Mr. Lee then introduced Linda Anderson to discuss Eligibility Enrollment Regulations on Covered California for Small Business.

Linda Anderson welcomed Michael Wilkening to the Board. Ms. Anderson stated she was there to submit authorization to submit a permanent rulemaking package to the Office of Administrative Law.

Ms. Anderson provided background on this subject. Covered California was granted emergency rulemaking authority by the Legislature through January 1, 2019 for the eligibility and enrollment regulations for the individual and small business exchanges. With an emergency rulemaking, once the emergency regulations are adopted, the agency must then go through the regular rulemaking process to make the regulations permanent. First approved by the Board and the Office of Administrative Law in September 2013, these regulations are the result of ongoing collaboration with the CDSS, DHCS, DMHC, CDI, consumer advocates, QHP issuers, and other stakeholders. On March 15, 2018, the Covered California Board approved the 7<sup>th</sup> readoption and the

start of the Permanent Rulemaking Process for the Covered California for Small Business Eligibility and Enrollment.

As a part of the permanent rulemaking process, stakeholders were provided a 45-day period to review and comment on the proposed changes. However, Covered California received no comments. Subsequent to the noticing period, there were minor changes to language in order to ensure clarity and compliance with federal requirements. Additionally, CSSB added an additional section within Section 6522 regarding dental eligibility requirements. The first section added allows employees the option to enroll only in a dental plan. The second section added is that in order to enroll one child in a family in a dental plan, all children under the age of 19 must enroll under the same dental plan. The third section added states that if an employer sponsored group dental plan are available, a qualified employer may choose to offer the plan as long as the employer meets the 50% contribution requirement and 70% participation requirement. On May 25, 2018, Covered California published a 15-Day Notice of Text Modifications and received no comments.

Ms. Anderson stated her request that the Board approve these regulations and authorize Covered California to file the Certificate of Compliance for permanent adoption of the Covered California for Small Business Eligibility and Enrollment Regulations with the Office of Administrative Law, Resolution 2018-29.

Chairman Wilkening asked if there were any questions of comments from the Board. There were none.

Chairman Wilkening asked if there was a motion to approve. Paul Fearer made the motion and it was seconded by Art Torres.

Chairman Wilkening then asked if there was any public comment.

**Public Comment:**

Beth Capell, Health Access California, stated that Health Access, along with Small Business Majority, sponsored the legislation that created the small business rules in California. Ms. Capell stated they are pleased to have done this. It was an important set of changes in the small business market. Ms. Capell said that as the Board looks forward to the potential merger of the small business market and the individual market to also re-examine the role of Covered California in the small group market. She said she understands it is contemplated by the staff and that the regulations may need to be revisited. She suggested the importation of some of the lessons learned from the individual market into the small group market.

**Vote:** Chairman Wilkening stated there was a motion to approve and called for a vote. Roll was called and the motion was passed unanimously.

Peter V. Lee introduced the last Agenda item, establishing an Audit/Finance Committee and appointing Audit Committee Members. Mr. Lee stated that Virginia Corbitt would present.

Virginia Corbitt introduced herself as the Branch Chief of Program Oversight and Compliance within the Program Integrity Division of Covered California. Ms. Corbitt said there were four items that she would like to accomplish at this meeting. The first is the establishment of the Audit and Finance Committee. The second is the adoption of the associated charter that supports the committee. The third is the appointment of two members to participate in the committee. The fourth item is the approval of the resolution.

Ms. Corbitt stated the purpose of the committee is to assist the Board in fulfilling oversight responsibilities, including, but not limited to, programmatic and financial performance. The Committee has authority to conduct or authorize investigations of any matters within its scope of responsibility. The Committee is comprised of two members appointed by the Board. Appointment shall remain until a Committee member resigns or is removed.

Ms. Corbitt reported that the Committee's roles and responsibilities were developed based on public and private standards, requirements, and best practices of Government Code, Internal Auditing Standards, and the Audit Committee Toolkit. Responsibilities include, but are not limited to, being briefed on results of internal and external audits, status of corrective action plans and mitigation strategies, risks and exposures for programmatic operations and financial reporting, accounting and financial reporting processes and understanding those processes, and Meeting at least twice a year. Ms. Corbitt anticipates more frequent communication throughout the year.

Ms. Corbitt asked the Board to establish the Audit and Financial Committee, adopt the Charter, and appoint committee members. This is Resolution 2018-30.

Chairman Wilkening asked if there were any questions or comments from the Board.

Jerry Fleming stated committee appears to me more of an audit committee than a finance committee. Mr. Fleming asked why the word "finance" was added to the committee name.

Virginia Corbitt explained that the decision was made by the finance committee in relation to outcomes of audits and risks associated with those audits.

Dr. Sandra Hernandez questioned the indefinite membership to the committee. She asked why a term for committee members was not contemplated.

Virginia Corbitt stated she believes the last committee did have terms but in order to prevent gaps in reporting they opted not to have a term. She stated it could happen and that there could be a change at any time. She said it is not necessary to have the same

continuous committee members. Ms. Corbitt explained that the previous committee had a term of two years. By eliminating the term length, they are trying to avoid tying a timeline to the ability to have a committee.

Paul Fearer advised that a term length is preferable. He said for audit committee, you don't want to project a notion of in perpetuity.

Peter V. Lee noted that when there was a term limit, they ended up with a period without an audit committee. In order to avoid that again, Mr. Lee suggested an initial two-year term subject to reappointment every two years by the Board.

Dr. Sandra Hernandez welcomed Peter's suggestion as an amendment to the Charter. Dr. Hernandez moved for the approval of the Charter as proposed with the added amendment of a two-year term limit with eligibility for reappointment, reviewed every two years by the Board. Art Torres seconded the motion.

Chairman Wilkening asked if there was any public comment.

**Public Comment:** None

Peter V. Lee thanked Virginia Corbitt and staff that worked on the Charter.

**Vote:** Roll was called. The motion was unanimously approved.

Chairman Wilkening asked if there were nominations of volunteers to serve on the Audit and Finance Committee.

Jerry Fleming and Dr. Sandra Hernandez agreed to serve on the Committee. Chairman Wilkening called for a motion to appoint Jerry Fleming and Dr. Sandra Hernandez.

Paul Fearer made the motion which was seconded by Art Torres.

Chairman Wilkening asked if there was any public comment.

**Public Comment:** None

**Vote:** Roll was called. The motion was unanimously approved.

Peter V. Lee thanked the Board and staff stating Covered California has become such a well-functioning organization. Mr. Lee said that the issue of adopting a \$350 million budget in times of uncertainty with \$330 million reserve, with making \$107 million investments in Marketing and Outreach, and with us being in the midst of negotiating with plans, says a lot about what Covered California has built over the last five years. Mr. Lee repeated his thanks to Diana Dooley.

The meeting was adjourned at 2:31 p.m.