

COVERED CALIFORNIA BOARD MINUTES  
Thursday, March 14, 2019  
Covered California Tahoe Auditorium  
1601 Exposition Blvd.  
Sacramento, CA 95815

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

Jerry Fleming called the meeting to order at 10:08 am.

**Board Members Present During Roll Call:**

Jerry Fleming  
Sandra Hernandez  
Art Torres

Mr. Fleming noted that Paul Fearer was on route and would arrive shortly.

**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).

Acting Chairman (Vice Chairman) Paul Fearer called Open Session to order at 12:00 p.m.

Acting Chairman Paul Fearer relayed that Michael Wilkening has vacated his role as Chairman of the Board. Governor Gavin Newsom has appointed Dr. Mark Ghaly to serve as the Health and Human Services Secretary and the Covered California's Board. Acting Chair Fearer thanked Mr. Wilkening for his service and leadership. Acting Chair Fearer said he looked forward to welcoming Dr. Ghaly to the Board. Acting Chair Fearer said he would be chairing meetings until Dr. Ghaly's arrival.

**Agenda Item III: Approval of Board Meeting Minutes (Action)**

**Motion/Action:** Acting Chairman Fearer asked for a motion and a second to approve the February 21, 2019 meeting minutes.

**Presentation:** February 21, 2019 Meeting Minutes

**Discussion:** None

**Motion/Action:** Art Torres moved to approve the February 21, 2019 Meeting Minutes. The motion was seconded by Jerry Fleming.

**Public Comment:** None

**Vote:** Roll was called. The motion was approved by unanimous vote.

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

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

Peter V. Lee reported on a number of contracting issues discussed in closed session. Mr. Lee said these items would be posted with contracting updates. An update to the procurement manual was among the changes. Mr. Lee stated that even though they were listed as action items on the agenda, the Certified Agent Policies on Affordable Care Act Non-Compliant Plans and Health Plan Standards on Agent Commissions would not be presented for Action at the March meeting. The discussion topic, Marketing and Outreach Advisory Committee Charter would be carried forward to the next Board Meeting.

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

Peter V. Lee called attention to a Commonwealth Fund report looking at the employer market and how many lower income people with employer-based coverage struggle with underinsurance. He also called attention to a report by the Health Care Cost Institute on looking at cost trends and what is driving them.

Mr. Lee noted that Mike Wilkening is no longer the Health and Human Services Secretary. He joined Paul Fearer in his appreciation for Mr. Wilkening's work. Mr. Lee said that Mark Ghaly is scheduled to join Governor Newsom's administration as the new Health and Human Services Secretary in early April.

Mr. Lee showed a slide with a picture of the first graduating class of Covered California's Leadership Academy.

Mr. Lee congratulated Karen Ruiz for earning CIO of the year from the Public Sector Academy. Ms. Ruiz was named one of the two CIO's of the year. The CIO from Cal Fire was also awarded CIO of the year.

Mr. Lee said that at the last board meeting they shared some of the early results from Covered California's Healthcare Evidence Initiative. He said the info would be shared at the Board Meeting and in a press release. Mr. Lee said that sharing this report nationally is important to remind folks that are in other marketplaces or federally, that the job isn't just to get people insurance cards, it's to make sure that people get the right care at the right time.

### **Federal Policy Update (Discussion)**

Peter V. Lee reported that he was in Washington D.C. the previous week. Mr. Lee gave testimony to a House Energy and Commerce Committee looking at a number of ways to improve on the Affordable Care Act. He spent time with legislative leaders from two states (Massachusetts and Washington), met with Members of Congress and the Congressional Budget Office. Mr. Lee said he would provide highlights on the report which was also included in the Board materials.

Speaking of his testimony, Mr. Lee said it is very important to know that California has done a very good job but California is not the only state that has been working in positive ways to make the Affordable Care Act work. Two examples are Massachusetts and Washington.

Massachusetts was in many ways the forerunner of the Affordable Care Act. They had a requirement to get coverage, they had subsidies. Today, Massachusetts, with a Republican Governor, today, as they had when they founded their Connector, has an insurance coverage of almost ninety-eight percent. Mr. Lee said they are not as diverse a state as California. They do not have as many undocumented as California. California is approaching an uninsured eligible rate of about three percent.

Mr. Lee said that Washington has also done a very good job. They started at the same time that California started. Like California and Massachusetts, Washington has seven or eight health plans competing in their environment. They have also weighed in on marketing. California, Massachusetts, and Washington have shared a story of how states that do marketing, that implement policies such as the penalty that Massachusetts has had in place, such as having common patient-centered designed, which both California and Massachusetts have, are doing compared to the federal marketplace.

Mr. Lee said that since 2014, in the thirty-six federal marketplace states, premiums have risen on average eighty-five percent. They have almost doubled. In our three states, premiums have risen less than half that, thirty-nine percent. The main lesson here is not one state story, it is that states that lean in and do the right things can have a dramatic impact on premiums. When you have premiums going up that much, eighty-five percent, almost doubling, what does it mean? It means for people who do not get subsidies, many are being priced out of coverage.

Peter V. Lee showed a slide with two charts. The slide showed how penalty and state subsidies appear to drive major differences. Massachusetts saw an increase of thirty-one percent in enrollment. California saw a drop in new enrollment of twenty-four percent. Mr. Lee noted that a key difference between Massachusetts and California is the presence of a penalty. Analysis showed that unsubsidized people are more effected by the penalty going away.

Massachusetts has had a penalty in place since before the Affordable Care Act. They leaned-in this past year to do marketing and promote and remind people that penalty was in place and they were the bellwether state that went against trend across the nation. Other states saw drops in coverage and again, federal marketplace states that had already lost most healthy people still saw big drops. California, has done a good job of keeping healthy people in, still saw bigger drops than expected. Massachusetts saw a bump in enrollment. Mr. Lee said that more study is warranted.

Mr. Lee presented a slide on six areas for additional research. These were listed as off-exchange impacts, effectuated enrollment, risk mix, public charge, end date for open enrollment period, and other state specific considerations.

Mr. Lee talked about risk mix. What does it mean in terms of the health status of who's enrolling or being retained? What does it mean for public charge? California is looking at the potential of significant drops in enrollment of non-English speakers. In particular, Chinese speakers, Korean speakers, and Spanish speakers, who had a bigger drop in new enrollment than the average population. Mr. Lee said that Covered California is quite concerned this drop is out of fear and concern engendered by proposed regulations related to public charge where people may feel their permanent immigration opportunity would be limited if they got tax credits through Covered California.

Mr. Lee talked about the end date of open enrollment saying there appears to be a strong correlation between having the Open Enrollment go longer versus ending it shorter. Many of the state-based marketplaces end their Open Enrollment when the federal marketplace does in December. The poster child of success for enrollment is Massachusetts. They don't go all the way to January 31<sup>st</sup>, but they do go to January 23<sup>rd</sup>. Going through January 23<sup>rd</sup> means they can get as many people in as possible and all of those people have coverage live on February 1<sup>st</sup>. They aren't having many consumers have two months of non-coverage, but they're staying open longer.

Mr. Lee said Covered California needs to look at other state's specific considerations, such as prohibiting short-term plans, Medi-Cal expansions, and spending on marketing.

Mr. Lee then spoke about seat belts. Mr. Lee said that he spends a lot of time thinking about how to communicate complex policy discussions in relatively simple ways. Mr. Lee said he has been told that the implementation of a state penalty is tough politics. He said he has been surprised that people feel this way. Mr. Lee said that many were surprised that Governor Newsom leaned-in and said, California should have a penalty and California should expand subsidies for the middle-class.

Mr. Lee told a story about an accident that happened in his early childhood. He was seven. His mother's station wagon did not have seat belts. He said that his mother had a tiny fender-bender accident and he flew through the air. He broke his nose and there was blood all over the place. Mr. Lee said that he was okay but if that had been a bad accident, he would not have been okay.

Thirty years later, driving his 1987 Honda Civic Hatchback, Mr. Lee was in another accident. He was with his partner when they were broadsided by a car that went through a stoplight. They were going around 50 miles per hour at the time of the accident. They were wearing their seatbelts but there were no airbags. Mr. Lee and his partner were trapped in the car. When they were pulled from the wreckage, they were transported to the emergency room. Both cars were totaled. Mr. Lee said this was a terrifying event but he and his partner walked away with bruised ribs. If not for the seat belts, they would not have survived.

Mr. Lee said that the previous week, he took an Uber in New York. He asked his driver two questions. The first was how long it would take to get to his destination. The second question was if the driver had health insurance. Mr. Lee said that his driver did, in fact, have health insurance. Mr. Lee questioned the driver further and found the driver had never been in an accident. Mr. Lee asked him why then, does he wear a seat belt. The driver said "I wear it because it is the law and just in case something might happen."

Mr. Lee said he would explain why patient-centered benefit designs and the mandate is just like seat belts. Mr. Lee said that the vast majority of individuals in California wear their seat belts despite the chances being relatively low that they will get into an accident. They wear them because it's the law. Auto manufacturers put seat belts into every car and they are easy to use. Everyone is reminded that wearing seat belts is the right thing to do. Wearing a seat belt lowers the risk of dying in an auto accident by half. The risk of injury drops by half. Society benefits because there is no injury to pay for.

Before the mandate's federal promotion, cars did not have seat belts. There were no national design requirements, no advertising, many people did not survive accidents. Today, there is a mandate. In forty-nine states, seat belts are a requirement. There is one state where seat-belts are not required. It is the "live free or die state" of New Hampshire. Mr. Lee said he still would wear a seat belt in New Hampshire.

Mr. Lee said that today, there are three states and the District of Columbia that do have a mandate to have insurance. One year ago all states had a mandate. Today, consumers are not encouraged to wear the virtual seat belt of insurance coverage.

Mr. Lee said that you are not expected to be an engineering expert when buying a car. You are not expected to understand how/if the seat belt will work for people of varying heights. There are detailed federal standards. These standards are similar to what Covered California does in California in the patient-centered benefit designs. You don't need to be an expert to understand deductibles, coinsurance, mental health coverage, or if there is a maximum that means your coverage will stop at \$250,000. There are standards. Some states can ban short-term plans. This means consumers buy a short-term plan and later be surprised that it doesn't provide the coverage they need. Mr. Lee compared association and short-term plans to using a strip of spaghetti as a seat belt in a car. It doesn't do the job. Mr. Lee said standards matter.

Mr. Lee said that promotion is important. He saw a billboard in Times Square by the national Transportation Safety Administration. Mr. Lee said they spend over thirty million a year promoting wearing seat belts. Mr. Lee said people know they need to wear a seat belt but they still need to be reminded of why it is important. Mr. Lee said that Covered California spends 106 million promoting people to get coverage and keep their coverage. He said that sixty million of this is on advertising. The average Californian hears about Covered California fifty-nine times.

Seat belts don't work if you don't wear them. Health insurance only works if you have coverage. If you are a state like California and know what insurance you're getting and you get coverage, you're going to have that coverage when you need it.

Mr. Lee then turned to California legislation. He said there were a number of bills that specifically touch on Covered California. Mr. Lee said that Covered California does not take positions on legislation but they do seek to provide technical assistance and inform. The four that Mr. Lee noted related to auto enrollment and marketing, data sharing, open enrollment, and waiver authorities. Mr. Lee said that Governor Newsom made very bold proposals and many legislative members have said these proposals should go further. Mr. Lee said Covered California's job is to inform the debates and policies in creation in California. Mr. Lee voiced his appreciation for the work done on the Affordability Report issued by Covered California. Mr. Lee said the report is being used by many parties in California and nationally.

Acting Chairman Paul Fearer asked if there were any comments from the Board.

Dr. Sandra Hernandez asked about AB 1063. She asked if Covered California currently had authority or if Covered California would have to obtain statutory authority before seeking a state innovation waiver.

Kelly Green, Director of External Affairs said the bill would make it explicitly clear that Covered California would have to obtain statutory authority before seeking the waiver.

Mr. Lee said that one item in the amendment to the federal rules, made it unclear as to if a state could seek a waiver through an Executive Order of a Governor without having a legislative action. Mr. Lee said he believes this is what the bill clarifies. In California, there wouldn't be an executive action work-around without legislative action.

**Public Comment:**

MJ Diaz, Health Access California stated that Mr. Lee was correct regarding AB 1063. Under the Obama administration rules, states were required to get explicit legislative authority prior to a 1332 waiver submission. The new administration changed that. States could submit a 1332 waiver without getting the explicit authority through their legislature. Ms. Diaz said they co-sponsored with the Western Center on Law and Poverty and that was their intent with AB 1063. Ms. Diaz said they appreciate the

studies that Covered California is engaged with especially looking at other states' efforts and outcomes. Ms. Diaz said they have similarly looked at other states and noted how they can model some of their affordability proposals as well as seeking reinstatement of the individual mandate penalty in California. Ms. Diaz said that Health Access supports those efforts and looks forward to reviewing Covered California's analysis. Ms. Diaz said that Health Access California is proud to be sponsors and co-sponsors of legislation to help Covered California ensure that there is not another reduction in new enrollment next year. She said it is their hope that with the legislation, they are helping Covered California do the successful work that it has done since 2014 in the ongoing future.

Jen Flory, Western Center on Law and Poverty and the Health Consumer Alliance said they were also proud co-sponsors on AB 1063. She said they ran a similar effort last year on the Medi-Cal waivers. As some people might know today, being argued in court by the National Law Program and others is a case to try and strike down those waivers that are happening to Medi-Cal programs because tens of thousands of people have lost coverage due to them. This is the same from the Trump administration and what they are seeking through the 1332 waivers is a total gutting of the Affordable Care Act and they just want to make sure that our State legislatures are ready for that. With regards to the individual mandate, Ms. Flory said they are aware of how much it can lower premiums and how much it improves the pool. She said they just hope that any efforts to reinstate the individual mandate come with additional affordability because as the Affordability Report shows, a lot of people are still struggling.

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

### **Qualified Health Plan Certification Standards and issuer Contracting for 2020**

James DeBenedetti said he first presented the certification for 2020 back in January. Mr. DeBenedetti said they received some feedback from stakeholders and some minor corrections and adjustments were made. The biggest concern was voiced by Covered California's carriers. There was a concern that Covered California had a requirement that they dedicate at least .6 of premium towards marketing and at least two-thirds of this be dedicated towards direct response tactics. There was some push back on the formulas and the percentages as well as some concern that there is a lot more to acquisition expenditures than just marketing, there is also commissions in other areas that health plans spend their money in. So, instead of being more rigid in this single requirement for this area, Mr. DeBenedetti said Covered California is saying if someone has an alternative approach that they believe will meet Covered California's needs just as well, they need to explain it to Covered California and provide evidence of why they think it will meet Covered California's needs. This will be part of an ongoing discussion of how Covered California develops the conversations towards acquisition spending for carriers. Mr. DeBenedetti said this was the only significant change from what was presented previously.

**Motion/Action:** Dr. Sandra Hernandez moved to approve. The motion was seconded by Art Torres.

**Public Comment:** None

Mr. Lee said he would add that the issue about an acquisition sounds like Covered California buys a member. But promotion, enrollment, getting people signed up, having them pick the right plan, and keeping them is a big job that is supported by Covered California, by health plans financially, by agents, by Navigators, and by many others. Understanding how and what we all spend as part of the premium dollars is really a vital issue.

**Board Comment:** Dr. Sandra Hernandez praised the work of James DeBenedetti and his team.

**Vote:** Roll was called. The motion was approved by unanimous vote.

### **Standard Benefit Plan Designs, Health and Dental**

James DeBenedetti stated that much of the information had been presented at the previous Board Meeting. He said he would just cover the changes.

The deductible for medical transportation was removed. The deductible in the small business products for Silver and Gold, will still apply to medical transportation for small business Silver and Gold products, just to be consistent with Covered California's approach for the emergency room. Mr. DeBenedetti said for the most part, this is basically ambulance rides.

Plan Management convened the 2020 Benefit Design Workgroup to discuss options for resolving the Bronze HDHP actuarial value (AV) issue and developed the following path forward. The Bronze HDHP presented in the plan design documents has a MOOP/deductible of \$6,950 and meets the AV requirements at 61.97%. The IRS will release the annual limit for the MOOP in May. Covered California is continuing to work internally and with stakeholders to find a solution for offering a Bronze HDHP that meets all requirements.

Mr. DeBenedetti said that Covered California is exploring a pilot VBID program for select regions for the 2021 plan year for the most prevalent chronic conditions, including diabetes, chronic obstructive pulmonary disease (COPD), and hypertension. Specifics of the program will be developed over the next few months and will be informed by VBID-X – National Workgroup on VBID for the Exchanges, issuer VBID programs (i.e. already in place or in the development stage), and input from researchers, stakeholders, etc.



**Motion/Action:** Art Torres moved to approve. The motion was seconded by Dr. Sandra Hernandez.

**Board Comment:**

Jerry Fleming said that each year, the dilemma is that because our product includes a lot of copayments, the math of it works out if there continues to be inflation, you always have a challenge when you have fixed copays. Covered California has to make adjustments every year. Mr. Fleming said that one of the questions that has occurred to him every year, is that over time, they may find that they're expecting a larger amount of costs for various kinds of categories and members. In other words, people who are very high-risk vs. lower. Mr. Fleming encouraged everyone to think about some way that they can start to show the impact of these changes on particular classes of patients. Otherwise, we could find over a period of time that we have come up with a very different risk between people who are relatively well and how much they have to pay versus relatively sick.

Dr. Sandra Hernandez said that as Covered California thinks about these regions and doing kind of regional comparisons is that for these types of chronic conditions, social determinants have enormous impact. As Covered California thinks about regions, it's really important that the research take into effect that there are vast disparities and social determinants that impact these chronic conditions. Researchers need to be very thoughtful in their thinking about how to compare and what is actually learned from those comparisons. She said she is very excited about the work.

**Public Comment:**

MJ Diaz, Health Access California said they appreciate all of the work that Covered California's staff has done, especially as it relates to the standard benefit design. Ms. Diaz said she understood how the design changes were limited and minimized so that consumers would not be impacted negatively. Ms. Diaz said that on the Bronze HDHP issue, Health Access California was the original sponsor of the existing law that limited the variances of the AV. They felt responsible to address the issue given that there are around 230,000 Californians that have that type of coverage. She said they looked to a state legislative solution and hopefully, a budget action that would address this issue sooner rather than later because they know that it effects plan year 2020 and plan issuers have to plan months ahead of when the plan year starts. She said they look forward to working with everyone on that solution.

Jen Flory, Western Center on Law and Poverty and the Health Consumer Alliance said they appreciate the Board Members comments about the impact of some of the increases and the costs that are happening with the plans. They are very grateful to being working with the staff on the plan benefit designs every year. She said it hurts a little when you see those deductibles going up or the out-of-pocket maximum going up. The Actuarial Value Calculator is what it is. Understanding who is being hit hardest by it is important to understand. Ms. Flory said that on the value-based insurance design, they've always had a bit of skepticism but they do appreciate that Covered California is

a very data-driven organization. She said they are happy to keep working and looking at where the data takes us.

**Phone Comment:** Debra Madden, California Health Care Conversations said that as an advocacy organization that supports universal coverage for Californians, they really appreciate the involvement of Covered California in working with legislators and educating them about the individual market. She said that people who are not getting subsidies are having a very difficult time and it makes it very difficult to have conversations sometimes about expanding coverage to other communities when there are people who are facing 16 to 18% of their income in their policies. She said she hadn't heard of the Value-Based Insurance Design (VBID) Pilot, but on a personal note, as a parent of someone with Type 1 Diabetes, she said she could assure everyone that anything that helps to draft people who are living with chronic diseases and to help them manage it, not only to be healthier, but to address the cost issues. She said it's integral and she appreciates that Covered California is looking forward to that community.

**Vote:** Roll was called. The motion was approved by unanimous vote.

Peter V. Lee stated that 111 comments were received from the 12,000 agents. Mr. Lee said that he read every comment and found them insightful and interesting. He said they provided a "gut sense" of where agents are.

**Certified Agent Policies Regarding Non-Affordable Care Act Compliant Products**

Doug McKeever said this, and the next item, were both presented at the previous Board Meeting. He said he would give a brief overview and then focus on the changes. There are many health care products being marketed today to consumers that may not be compliant with the Affordable Care Act and its consumer protection provisions. Unlike the rest of the nation, California has taken measures to protect consumers from many of these products including short-term medical plans but there are some non-insurance products being sold in California that pose significant financial risk to consumers. Californian consumers have been targeted by extensive marketing and media campaigns in the last year.

Covered California received comments from various stakeholders about establishing standards regarding Certified Agents selling ACA non-compliant plans (particularly Sharing Ministries). Mr. McKeever provided a link on the slides to the comments received from 88 agents as of March 8, 2019. Comments reflected a wide diversity of opinion, with many respondents supporting Covered California taking action (ranging from banning the sale of Sharing Ministries by certified agents to requiring disclosure) and many opposing Covered California taking any action. Mr. McKeever showed a slide that broke down the agent comments.

Mr. McKeever then showed a slide which broke down the stakeholder comments and provided a link to the comments. The California Association of Health Underwriters

provided a comment. One comment was received from sharing ministry plan, Christian Care Ministry. Comments were also received from Qualified Health Plans.

Mr. McKeever showed a slide on staff recommendations and the next steps. As a result of research to date, more non-Qualified Health Plan products have been identified in addition to Sharing Ministries. Covered California will be conducting additional research to discover the array of non-QHP products and their implications for consumers and the market. Some of these products may not be compliant with the Affordable Care Act (ACA). Covered California staff expects to bring to the Board a recommendation requiring a disclosure statement with all ACA non-compliant products listed, based on research to be conducted. This disclosure will be created with input from the Department of Managed Health Care, the California Department of Insurance, the Certified Agent community, consumer advocates and Covered California's Qualified Health Plans in order to address all ACA non-compliant products.

Peter V. Lee said that many of the agents commented on the reason people buy Sharing Ministry plans is many of them don't get subsidies, they make more than 400% of poverty. Many of the agents commented that the real underlying problem is cost, that healthcare is too expensive and these products are less expensive. Currently, based on Covered California's best information, 12% of the agents who are certified by Covered California can list themselves as a Certified Agent, also can sell these products. These agents would be affected by this policy.

There are four factors that Covered California looks at in this: First, our brand is important. Consumers seeing products sold by someone certified by Covered California may give that product extra creditability. Second, Covered California wants consumers to make good choices. Covered California wants consumers to make informed choices. Third, Covered California is concerned about the risk mix. Healthy people opting into cheaper products means that the cost for products for everyone else will go up. Ministry plans or other plans that do risk selection, screen out people with pre-existing conditions. They will get healthier risk mix but the costs go up for everyone. Fourth, Mr. Lee stated his concern for what this will mean for the Covered California brand. He said they are worried about people signing up through Covered California agents and receiving products that end up not meeting their needs.

Mr. Lee said that Covered California appreciates the input from the agent community. He said he understands from their comments how for some individuals this is a "something better than nothing" perspective.

Mr. Lee said that Covered California believes disclosure is the right path forward.

**Board Comment:**

Paul Fearer said he supports the direction that Mr. McKeever and Peter V. Lee described. Mr. Fearer said that he also spent time reviewing the comments. He said he has concerns regarding non-compliant plans and the potential for customer confusion.

Going through the comments, he came to appreciate some of the complexities that surround this issue. Mr. Fearer said that he would rather not take action which is in the form of a blunt instrument that has possibly unintended adverse consequences. He said he believes a disclosure in the near term makes sense. He said Covered California and the Board should learn more about the issue of non-compliant plans and consider further action over time as needed, depending on what is learned.

Jerry Fleming said that he agreed with everything Mr. Fearer said. There is certainly a dilemma in that there is a continual concern about maintaining good risk pool because a good risk pool then translates into affordable rates for people. There are a lot of actions that have been taken that are kind of chipping away at that. Another dilemma can be seen when consumers need coverage but it's not an open enrollment period. They don't have a qualifying event but they need coverage...or they can't afford the coverage. Mr. Fleming spoke about finding the common good which is to get everybody in the same pool and the individual what they need. Mr. Fleming said a better understanding and more metrics are needed to determine where the risk pool is going. More information is needed to determine what the next steps should be.

Dr. Sandra Hernandez said that one of the things that she thinks is important about the success of Covered California and getting a large risk pool is that it has been a very intentional team sport of which agents play a significant role. Disclosures are very blunt instruments. No matter how clear they are and how consistent they are, people tend to sign them and off you go. Covered California needs to monitor the growth of these non-compliant products because they are a marker for lack of affordability, and Covered California is very committed to affordability. Dr. Hernandez said she supports going forward with disclosures but feels consumers get inundated with all kinds of information. That said, Covered California has a role to educate people. Getting more input from this segment of our broker community is incredibly important. Brokers are talking to consumers every day and it is another input and voice that Covered California should consider. She said she looks forward to the next conversation on this subject.

**Public Comment:**

Faith Lane Borges, The California Association of Health Underwriters (CAHU) said that they appreciate the dialogue and the engagement that they've had between their membership and the Covered California Board. She said they appreciate the webinar Covered California put together. She said their members found incredibly useful and informative. She said they appreciate the opportunity to provide their feedback. Ms. Borges said that as an association, they recommend no action be taken at this time. She said they agree with the comments that were just made that this requires robust conversation and informed decision-making about the impact that it'll have on consumers. But with that said, their membership felt strongly that they should work together to create a voluntary disclosure form where they can notify consumers about the potential risks and with the recognition that a very small number of our agents sell these products and a small number of Californians use them, what they didn't want to

do is create the unintended consequence of removing agent access for somebody who might be committed for their personal reasons to purchasing a plan and restricting their capability to speak with an agent about those hazards and risks. Ms. Borges said they like the idea of providing notification. They feel their members do a good job and part of their job description about making sure their clients know what products they're choosing and what benefits their needs. She said they appreciate the opportunity to continue the conversation in a way that ensures access, but also quality of care. They are happy to be a part of the team that is making sure that Californians have the best care possible.

Jen Flory, Western Center on Law and Poverty and the Health Consumer Alliance said they had a couple of issues with these. She said they would actually urge the Board to go further and have an actual ban on agents selling these products. In addition to the actual quality of the products, she saw from some of the agent comments that they were talking about what if someone missed open enrollment? Well, why is buying a product that has a 12-month exclusion a good solution to that? It seems you're still not really in a better position if you can't actually cover the conditions that you have. Ms. Flory said she thinks that Covered California should consider very carefully where its name and its logo is associated. Health Sharing Ministries, by their very design discriminate, most of them based on religion, most of them require you to be Christian, most of them do not cover all female reproductive services or even pregnancy, most of them have lifestyle exclusions, including being LGBT, and they all discriminate in some way against pre-existing conditions and people with disabilities. To associate a product that California has great pride in, like Covered California, with something that is so contrary to California values, I think that does require some serious consideration. Like many of the consumer advocates here, Ms. Flory said they do hear the affordability issues and they are in fact, spending a good amount of their time trying to address those in another way. Selling somebody a product that is cheap that doesn't actually cover their needs is not a solution to the affordability problem.

Marques Castrejon, California Pan-Ethnic Health Network (CPEHN) said he would like to align his statements with the previous speaker (Jen Flory) and urge the Board to go a little bit further. Disclosures, while they provide some information, are not a complete fix to the problem. A lot of the people being targeted by these plans, previously purchased Bronze plans in Covered California. A lot of these consumers are LEP (limited English proficiency) and don't have the same health literacy as other consumers. Understanding they may be purchasing something cheaper, but not having comprehensive coverage is definitely an issue.

Alicia Kauk on behalf of the National Health Law Program echoed the comments of her colleagues. She said they don't support selling healthcare Sharing Ministry plans and other non-ACA compliant products mostly because there is no contractual obligation to reimburse healthcare costs and there is not government oversight. They are deeply concerned that consumers will be enticed by lower monthly premiums without fully understanding that these are non-ACA plans and what that means in terms of coverage

and cost. They also believe that the ACA and Covered California has worked very hard to establish a baseline of coverage and this may be confusing to consumers. They also don't think that requiring agents to provide a disclosure before enrolling consumers is going far enough. She said they had some interesting data last week in the Marketing and Outreach and Enrollment Assistance Advisory Group that showed some large areas of opportunity for consumer education and healthcare literacy especially, among our subsidy eligible population. It's hard to rationalize how a disclosure can lead to ensuring that Covered California has consumers that are well informed.

MJ Diaz, Health Access California said she strongly supported comments of other advocate partners regarding Health Sharing Ministries. Health Access has done a tremendous amount of work to ensure that consumers get access to comprehensive coverage that actually provides coverage. She said they sponsored legislation to ban the sales of short-term plans because the sale of short-term plans provided a false sense of hope to consumers. She said they look forward to working with their partners in Covered California to facilitate easier transitions for people to different types of quality coverage.

Doreena Wong, Asian Americans Advancing Justice Los Angeles said that when they originally heard about Ministry Plans, they thought those types of plans would be prohibited similar to how Short-Term plans were prohibited. She said they are actually glad that Covered California is doing further research. She said they need to examine the impact of these plans. She said they are glad that they might even be considering additional non-compliant plans to see what the impact is on clients and community members. They haven't had enough time to check and see who is buying Ministry plans, what kinds of coverage they have, and what kinds of problems they've been having. Ms. Wong said she is pleased that Covered California is taking the time to look at this. She said they are concerned that simply having disclosure is not adequate especially for immigrant populations, and limited English-speaking populations, and those with low health literacy comprehension. It is hard to ensure the monitoring of the agents to make sure that consumers are getting all they information they need. Ms. Wong said she hoped Covered California would be open to a range of options, whether it is actually prohibiting the selling of these non-compliant ACA plans or even requiring or mandating the disclosure. She said they look forward to providing input.

Phone Comment: Michael Lujan, Oscar Health said they submitted a written comment. He said they felt there was a good consensus that there is more work to be done to better understand the issue. Mr. Lujan said they support a more clear disclosure if not a restriction on Certified Agents selling these non-compliant products.

Peter V. Lee assured Mr. Lujan that his comment was received by the Board. Mr. Lee thanked everyone for their comments.

Paul Fearer asked for clarification. He said his understanding was this is not specifically time sensitive. He asked if it is feasible to choose to do something, for example, in the middle of next year.

Peter V. Lee said that just as Covered California wants to provide an economic and planning environment that has certainty for Covered California's health plans, Covered California wants to do the same thing for agents in the agent community. Mr. Lee said he would be loathed to have policies that don't start at the beginning of the year. Mr. Lee said that implementation of any decision would likely start in the next calendar year. It could be done on a different cycle but in the interest of providing full notice and time, it would most likely be tied to a calendar year.

Paul Fearer said he understood that there would need to be some very compelling reason to do otherwise. Mr. Fearer then asked if there was a statement or record regarding the Board's position.

Peter V. Lee said that this Board has acted on is on our products and how our Certified Agents sell and represent our products. This is a new area to work in regarding how Certified Agents and who they have contracts with and what they do that affects our products and our market. Mr. Lee said that up until this point, He didn't think Covered California's Board had established any policies that reach beyond. The Board has (and through policy) adopted Certified Agent Policies that extend beyond California that affect the entire individual market. Covered California has had policies on agent's commissions paid on-and-off-exchange.

Mr. Lee noted that while there are federal standards with regards to the definitions of Sharing Ministries because there aren't other standards other states have approached this in different ways. He called out the State of Massachusetts. They have disclosure forms they have developed with what is called the Massachusetts connector with their Attorney Generals and Department of Insurance. They actually note that Sharing Ministry products that do not meet certain minimum eligibility coverage standards do not qualify an individual to be exempt from the state penalty.

Mr. Lee noted that under federal law being enrolled in a Sharing Ministry product exempts an individual from being subject to the federal penalty. He said that this is a very complex issue. This is one of the reasons that Covered California appreciates having some more time. Covered California will be looking at it not just in the context of Sharing Ministry, but of other non-compliant products. Other products could raise the same concerns of individuals being uninformed of what they're buying under our brand and having impacts on what is a common risk pool.

### **Potential Agent Payment Standards as Part of Qualified Health Plan Contracts**

Doug McKeever said Covered California conducted a study into the role of Certified Agents and the commissions they're currently being paid by Covered California's

Qualified Health Plans. Agents play a vital role in Covered California's program. They account for almost 50% of Covered California's enrollment on an annual basis. It is important to look at not just agent commissions, but what else is it that's out there relative to the total acquisition cost that draw consumers in to enroll in Covered California. Mr. McKeever said Covered California identified four areas for further exploration. First, looking at agent compensation as one component of total acquisition costs and impact to consumers. Second, evaluating adequacy of compensation programs. Third, recognizing the value to the independent agent channel to have predictable revenue streams to plan and invest in their operations. Fourth, ensuring agent incentives align with consumer protections.

Covered California's Outreach and Sales conducts continued outreach to all 14,000 Certified Agents, Qualified Health Plans, regulators, and advocates. They conducted a webinar with the agent and stakeholder community on March 1, 2019. There were 388 individual participants on the webinar. Outreach and Sales discussed the information available about agent commissions and presented Covered California's observations and concerns.

Covered California received comments from various stakeholders about establishing standards regarding Plans' commission payments to agents. One hundred and eleven comments were received from Agents as of March 8, 2019. Mr. McKeever showed a slide breaking down the comments and stated the comments were included in the Board Materials. Mr. McKeever then showed a slide on the common themes of the comments received. His next slide highlighted comments received from the California Association of Health Underwriters and Qualified Health Plans. Mr. McKeever said all eleven plans opposed Covered California taking action at this time.

Mr. McKeever said that, based upon all of the collective feedback, Covered California has taken a number of steps. Covered California received a voluntary commitment from the 3 Qualified Health Plans (Anthem, Blue Shield of California, and Kaiser) whose current commissions without bonuses are below the 1.7% weighted average of all plans to not lower agent commissions below today's commission levels for the next 2 years (plan years 2020 and 2021). With this commitment, Covered California believes that rather than take any action, Covered California should conduct further research before making a recommendation to the Board on actions it might take regarding agent compensation. In order to develop recommendations, Covered California will review the range of inputs needed to promote broad enrollment and a healthy risk mix, including total acquisition costs (including commissions, bonuses, and marketing expenses made by Covered California and its QHPs), market and regulatory conditions, and agent engagement. This action is based, in part, on the anticipation that California may enact an individual coverage penalty that would increase enrollment in 2020 and that there will not be other major federal or market activities that disrupt the individual market. In the event there are major disruptions, Covered California may revisit the need to establish a binding policy of some sort.



Mr. Lee said that before going to questions, he wanted to thank Anthem, Blue Shield of California, and Kaiser. Mr. Lee said that if there are major changes in the environment, i.e. if a new federal rule changed things dramatically, these qualified health plans would want to engage Covered California to re-examine the situation. Mr. Lee agrees that this is absolutely right. He said the hope and expectation is that the penalty in California may take effect. If there are changes in the other direction, Covered California would want to look at that and acknowledge that.

Mr. Lee said that Covered California looks at this in the context of all of the expense and efforts incurred by Covered California and agents to promote the healthiest risk pool possible and to get everyone in the door. Health Plans, Covered California, Agents, and Navigators need to look at how Covered California can best use our resources to get and retain a healthy risk mix, but to get as many Californians coverage as possible.

Doug McKeever said that Covered California does plan to potentially spend a year on this but may come back with information sooner.

**Board Comment:**

Paul Fearer said he has spent time reviewing and recognizing the critical role that Agents play in the success of Covered California. He said he appreciates the broad range of concerns that were expressed, but he also came away with a sense that it raised a lot of difficult issues about how Covered California might approach this or what Covered California might consider doing. He said he thinks Covered California needs time to take a deeper dive into these issues and the concerns that have been expressed.

Jerry Fleming said he agreed with everything Paul Fearer said. Mr. Fleming said he listened in on one of the sessions and he read a lot of the comments. He said he would encourage the plans, especially the plans that were mentioned specifically, to take and review those comments because sometimes the comments were beyond commission. Mr. Fleming then said that it is not surprising that a large number of brokers are requesting more pay. It's not surprising the plans would say they want to charter their own path. What is missing is a really good understanding of what the economics actually are of our brokers. It would be a good idea to collect more information on broker call volume and average time of handle.

**Public Comment:**

Phone comment: John Hanson, said that as an agent, he would like the Board to be supportive of their ability to continue selling these plans. He said it is especially helpful for agents during the Special Enrollment Period to have something to sell to people who don't have coverage. Mr. Hanson said that in regards to commissions, one of the challenges agents face is that it has become harder and harder for them to stay profitable as agents selling Covered California plans. There are challenges with Open Enrollments during the holidays. During all major holidays of the year, agents are selling health insurance. Mr. Hanson said it's very difficult to keep well-trained,

intelligent staffing on board year-round. Having other products to sell during other times of the year, like health sharing plans, is helpful. Mr. Hanson said the decreases in commission have been extreme over the past few years. Kaiser Permanente has always been the lowest. The commissions they pay now are the same as what they paid before the Affordable Care Act. Other carrier's commissions have gone down. He said It's not surprising that Anthem, Kaiser Permanente, and Blue Shield would say they are going to keep their commissions the same because their commissions are at the bottom and they are so low, it's very difficult to sell their products and do well and make a profit doing that. Agents are leaving the field. They are dropping staffing for individual and family support because of these challenges. Mr. Hanson said that some agents have been suggesting a base commission of four to five percent. Mr. Hanson said he prefers a per-member, per-month payment plan because he doesn't like that, in the back of his mind, he is aware that selling an expensive plan will make him more money. Mr. Hanson suggested that a base amount of around \$18 per-member, per-month as the minimum commission level would be fair and would keep good agents working in California.

Phone comment: Michael Lujan, Oscar Health said the previous commenter was "right on point." Mr. Lujan said this is the feedback that they have heard from agents when they held round table meetings in Southern California. Mr. Lujan referred to a paper done by the California Association of Health Underwriters (CAHU) years ago that did a breakdown of what an agent spends in advance of earning a commission. He said a lot of this is misunderstood or not well-known. Mr. Lujan said he believed Covered California received their written comment in support of standardizing agent commissions.

Faith Lane Borges, The California Association of Health Underwriters (CAHU) said they did share the paper mentioned by Mr. Lujan with Covered California. Ms. Borges said they supported the webinar Covered California did on this subject and it prompted robust dialog with many of their members. She said they strongly support the Board taking more time to thoughtfully consider what a base agent compensation could be in the future and think that information being data-driven will ultimately support good health outcomes for the constituents that our members serve. They are happy to remain engaged stakeholders in the process to provide that data on all that goes into making sure that consumers are not just enrolled in healthcare, but they have a face-to-face interaction and someone they can go to help them utilize the healthcare coverage that they have.

MJ Diaz, Health Access California said they appreciate the lengthening of the conversation on this topic. this conversation has led into thinking about the larger role of what agents can do amid a post-ACA world where Covered California has really made it easier for consumers to get coverage through the website, through standard benefit designs. She said that pre-ACA, they understood the agent's role. In a post-ACA world, more of the agents' tasks have been streamlined through Covered California and other partner organizations. She said she thinks that necessitates a

review of what agents should be paid. Ms. Diaz said Health Access does not have a position on this issue, but they would like to stay engaged in how the conversation moves forward. Especially, she said, if there are going to be proposals that would lower Medical Loss Ratios, which obviously, Health Access would oppose.

George Balteria, Quote Selection Insurance Services said their organization has processed over 50,000 enrollments since the start of 2014, including Medi-Cal. Mr. Balteria said he was pleased Covered California is waiting to make a decision. He said they would be in favor of moving away from a percentage of premium model. They would be in favor of a per-month, per member payment for agents. They would like to see further analysis. Mr. Balteria said they would be in favor of regulation by Covered California for agent compensation to set a minimum threshold of what agents are paid.

Doreena Wong, Asian Americans Advancing Justice Los Angeles said they understand the comments regarding how long it takes to enroll consumers in Medi-Cal and the lack of compensation. She said they also understands the need to plan for the next year. She said they haven't been able to engage as much as they would have liked because they were more focused on the Navigator Program given the timing of the RFA. She said they appreciate being given more time. She said they look forward to being a part of the conversation. She said they don't have a position right now but hope everyone will come together and form a consensus on the best way to move forward.

Peter V. Lee said that some things have become easier since the implementation of the Affordable Care Act and some things have become more complex. Agents and Navigators need to understand all the complexities. Agents, Navigators, and Service Center Representatives help people make better choices. Analysis shows that people make more informed choices when they work with Agents, Navigators, and Service Center Representatives. Mr. Lee said it is not taken lightly that Agents get paid nothing for helping people enroll in Medi-Cal. Mr. Lee said that Covered California does hope that the advocacy community, the plans, and others recognize what agents are doing for communities across California. That help and support is a phenomenal community service to Californians to helping people get service.

### **Proposed Navigator Program and Request for Applications for FY 19/20**

Peter V. Lee recognized Robert Kingston and Terri Convey's work and introduced Robert Kingston.

Robert Kingston reminded everyone that at the previous meeting, they discussed the Navigator RFA. The Program encompasses forty-two lead entities and sixty subcontractors. Over 100 community-based organizations are a part of Covered California's Navigator Program.

Mr. Kingston showed a slide on the importance of Navigator Outreach. Discussion with stakeholders helped improve Covered California's plan to include outreach in the

Program. In-person events, social media, and a commitment to help entities perform outreach objectives were discussed. Mr. Kingston said Covered California wants to provide a lot of support and resources to entities moving forward. That includes sharing data and research. Mr. Kingston then shared a slide titled “Why Social Media Matters: Smartphones Increase Access to Consumers.” The next slide looked at how many members of the target populations own smartphones. Mr. Kingston said it is important to find the right mix of social media along with the other outreach goals and objectives to ensure that Navigators find the consumers they serve, where those consumers are.

Mr. Kingston said that Covered California has shared their calculator where they made some adjustments to the actual structure of the goals themselves. Covered California listened to feedback and agrees that outreach is more than social media. Additional changes have also been made based on stakeholder feedback. This will be a work in progress and goals may be adjusted year over year. Every one of Covered California’s Navigator organizations has received the calculator.

Mr. Kingston presented a slide detailing the recommendation to the Board. Mr. Kingston said the final recommendation to the Board is that Covered California would release the solicitation for the Request for Application (RFA) in the coming weeks.

Peter V. Lee said that the funding every year is subject to the Board’s budget process. Mr. Lee explained how this three-year contract could potentially be extended (year-by-year) up to five years. Mr. Lee pointed out that applicants would be held to account on an annual basis. Some if they perform particularly well may get substantially bigger grants the next year or lower if they under perform. Covered California has had very good engagement with these 100 organizations in the past. Covered California hopes there may be some new organizations stepping up.

**Board Comment:**

Art Torres asked about a bullet on slide 44 that states that “specific enrollment goals and cost per effectuation (“CPE”) be adjusted annually.” He asked what criteria would be used to make that adjustment.

Robert Kingston said Covered California would look at enrollment trend. Essentially, ensuring that as additional potential affordability measures or individual mandate penalties might return and the total enrollment goes up substantially, Covered California may need to decrease the cost per effectuation in order to maintain budget stability.

Peter V. Lee said that the chart (slide 43) shows what grant funding would be at \$175 with certain “goal targets.” These “goal targets” were based on some of Covered California’s assumptions about potential significant drops in effectuated renewals. Mr. Lee said that looking at effectuation means there is a time lag and that’s a piece of sharing that information with the Navigators that get this information. This is a model

chart but as Covered California updates it, what the Navigators will see is updated with actual, true effectuated enrollment information and that's what Covered California would use to update this on an annual basis, as well.

**Motion/Action:** Art Torres moved for approval. The motion was seconded by Jerry Fleming.

**Public Comment:**

Doreena Wong, Asian Americans Advancing Justice Los Angeles thanked everyone for their work. She said that on the part of Asian-Americans Advancing Justice L.A. and our collaborative partners they feel pretty comfortable moving forward and supporting this revised Navigator Program. Ms. Wong said they have a couple of recommendations but they have been given assurances that be given an opportunity to provide some feedback. She said they are interested in what the criteria would be with the adjustment of the goals. She said they also have questions about the outreach events and the social, earned and unearned media requirements, and the proposed possible adjustments every year related to that. She said they feel comfortable because they have been able to work out a lot of those details with Covered California to continue to provide their input and feedback about how that's working out for our communities.

Marques Castrejon, California Pan-Ethnic Health Network (CPEHN) said he agreed with the previous speaker. While they don't completely love the changes, they do appreciate the back-and-forth with Covered California on this issue and the willingness there's been to listen to the concerns of consumer advocates and Navigators. They appreciate the acknowledgment of the special role that Navigators play in enrolling hard-to-reach populations, specifically, communities of color, immigrant communities, and LEP populations, which is particularly important with the declining enrollment and especially, the anti-ACA and anti-immigrant climate at the federal level.

Jen Flory, Western Center on Law and Poverty and the Health Consumer Alliance said she agreed with the comments of her colleagues. She said they appreciate that Navigators are part of the continuum of the services that they offer themselves at Consumer Alliance and they appreciate all of the collaboration that went on with the staff and the Navigators.

MJ Diaz, Health Access California said she appreciated the collaboration and the months of work that Covered California staff and others have engaged on this issue. She said they appreciate the intention around Covered California staff in making sure they understood that Navigators play an important role, especially, in mixed status households and how they can connect different people through different coverage.

Alicia Kauk on behalf of the National Health Law Program thanked Robert Kingston and Covered California for working so closely and continuously with the Navigators and other stakeholders on this process. She said she hopes that Covered California

continues to assess the point system in that it aligns with what outreach tools are best aligned with the specific population that Navigators work with.

George Balteria, Quote Selection Insurance Services said they are on the side of the certified insurance agent channel, and are not involved in any of the funding for Navigator Programs. He said he wanted to recognize that they see the value and the role that Navigators play within the communities that they serve and it's been great working with a number of them in California. He thanked Covered California for continuing to support the program.

Dr. Sandra Hernandez thanked the Covered California staff and the Navigator community saying she thinks this move to a performance-based contract is all in the spirit of trying to get enrollment maximized in some of these very difficult to reach areas of the State. She said Covered California is open to learning alongside the Navigators and the Board looks forward to being supportive of all of the above.

**Vote:** Roll was called. The motion was approved by unanimous vote.

### **Covered California Regulations – Certified Application Counselor (CAC) Permanent Regulation Package**

Peter V. Lee introduced Brian Kearns from Covered California's Legal Affairs Office. Mr. Kearns reminded everyone that he presented the order of events at the previous meeting. There was a second comment period between February 20<sup>th</sup> and March 8<sup>th</sup>. There were not a lot of major comments received during that comment period. Questions on minor clarifications were answered. Mr. Kearns said the final regulation package looks very similar to the current emergency regulations on file. There were two noteworthy changes which were identified at the previous Board Meeting. Section 6854(a) was amended to clarify that any person with legal authority can execute the agreement on behalf of the entity. Section 6860(d) was updated to include deadline to complete annual recertification training.

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

**Public Comment:** None.

**Vote:** Roll was called. The motion was approved by unanimous vote.

Acting Chairman (Vice Chairman) Paul Fearer adjourned the meeting at 2:53.