

COVERED CALIFORNIA BOARD MINUTES
Thursday, August 15, 2019
Covered California Tahoe Auditorium
1601 Exposition Blvd.
Sacramento, CA 95815

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

Vice Chairman Paul Fearer called the meeting to order at 10:33 a.m.

Board Members Present During Roll Call:

Jerry Fleming
Art Torres
Paul Fearer

Vice Chairman Fearer stated Chairman Mark Ghaly would be present for open session. Dr. Sandra Hernandez was absent for the entirety of the meeting.

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).

Chairman Ghaly called open session to order at approximately 12:30 p.m.

Agenda Item III: Approval of Board Meeting Minutes

Presentation: June 26, 2019 Meeting Minutes

Discussion: None

Motion/Action: Mr. Torres moved to approve the June 26, 2019 Meeting Minutes. The motion was seconded by Mr. Fleming.

Public Comment: None

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

Agenda Item IV: Executive Director's Report

Announcement of Closed Session Actions

Peter V. Lee, Executive Director announced that the Board discussed personnel and contracting matters. Contract matters included a discussion of Covered California's

Qualified Health Plan contracting negotiations. Leasing arrangements were discussed for the Sacramento and Fresno locations. Covered California entered into a new lease agreement in Fresno. The Fresno Service Center team will be moving into new offices in the coming months.

Personnel matters included a discussion on the Board's part-time engagement of Dr. Elliott Fisher. Dr. Fisher will advise the Plan Management team on improvements to the delivery system.

Executive Director's Update

Discussion: Reports and Research

Mr. Lee encouraged everyone to read the press coverage and reports included in the Board Materials. He called attention to Covered California's Annual Report which was previously adopted to the Board. Covered California's fiscal year 19/20 budget was set at \$379 million. About two thirds of this budget is related to serving and helping individuals obtain information and get enrolled. Covered California plans to spend \$121 million on marketing, outreach, and promotion. This is extremely important due to the current national uncertainty and new subsidies. A final version of Covered California's Annual Report was posted in the Board Materials.

Mr. Lee called attention to a report titled *Sources of Success in California's Individual Marketplace Under the Affordable Care Act* by Gerald Kominski and Petra Rasmussen.

Mr. Lee called attention to a Kaiser Family Foundation report titled *State Actions to Improve Affordability of Health Insurance in the Individual Market*.

Mr. Lee called attention to a report from the Centers for Medicare and Medicaid Services titled *Trends in Subsidized and Unsubsidized Enrollment*.

Discussion: Open Enrollment

Mr. Lee stated that preliminary rates were released. Open enrollment begins October 15, 2019 with a big kick-off on November 1st. Legislation is pending that may extend open enrollment through the end of January. California is already experiencing positive impacts on enacted state policies such as the new state subsidies and the return of the state mandate.

Discussion: Carrier Coverage

Mr. Lee displayed a slide detailing the return of all eleven health insurers for the 2020 plan year. Three of these insurers have extended their services. Anthem extended their services in some areas that previously had only one carrier. Now 99 percent of Californians in the individual market will have at least two plans to choose from. 87 percent of Californians in the individual market will have three or more plans to choose from.

Discussion: Reports Released

Covered California's report on preliminary rates was released and is under review by the Department of Managed Health Care. With these preliminary rates, there is an average premium increase of 0.8 percent. This trend is due to the assumption that there will be a better risk mix with the state penalty in place. Individuals not receiving subsidies will benefit. Over 900,000 Californians will be eligible for the new state subsidy. Approximately 235,000 will be eligible for subsidies for the first time. This report also notes the value of comparative shopping. Consumers can save 7 to 9 percent on their premiums by shopping and moving to the lowest cost plan. Plans are under pressure to offer the best value to consumers.

Covered California also released the new dental plan options and rates. All seven dental plans are returning in 2020 and there is an average decrease in rates of 0.5 percent overall. Anthem is expanding their coverage area. This affects about a quarter of a million individuals.

Discussion: State Subsidy Program

Katie Ravel, Director of the Policy, Eligibility and Research Division reported on the current status of the State Subsidy Program. Ms. Ravel said reconciliation would be discussed at the next Board meeting. Covered California is working with the Franchise Tax Board on reconciliation repayment limits. Legislation gives Covered California the responsibility to set up the program design but the Franchise Tax Board will administer. The development work is being tested internally and with carriers. It will launch in September. There will be a stakeholder meeting prior to the September Board meeting. Renewals will begin in October. There is a contingency plan documented. An update will be provided at the November Board meeting with a request for approval of the reconciliation repayment program.

State and Federal Policy Update

Discussion: State Legislation

Mr. Lee stated again that there may be a change to the open enrollment period.

Discussion: Public Charge

The Department of Homeland Security issued new final rules on public charge relative to what sorts of public benefits would count against certain immigrants applying in the U.S. to become a lawfully permanent resident or citizen. These do not include Covered California or the receipt of premium tax credits or cost-sharing reductions as a defined public benefit. It does include some Medicaid. This will likely negatively affect enrollment in Covered California.

Discussion: Non-Discrimination Provision of the Affordable Care Act

Covered California submitted comments on proposed federal rule changes. The Department of Health and Human Services, under the current administration, has proposed to eliminate non-discrimination protections related to sexual orientation, gender identity, and in some cases, gender. Covered California thinks this would be

contrary to both executive orders and to providing good health care. This could result in some groups of people not receiving health care. The comment letter is available in the Reports and Research section of the Board materials.

Board Comment:

Chairman Ghaly asked how Covered California can address Public Charge.

Mr. Lee said that the marketing team at Covered California has been looking into advertising the right messages that foster enrollment. Covered California will potentially increase spending in the affected communities potentially increasing advertising and targeted outreach. Service center representatives, insurance agents, and Navigators should not give counsel on immigration. However, Covered California is examining methods to counterbalance the chilling effect through marketing.

Public Comment:

Beth Capell, Health Access California thanked Covered California for their work implementing the affordability subsidies. She said it was a pleasure to assure the Legislature that Covered California could realistically implement the subsidy with a 2020 start date. Ms. Capell stated that reducing cost-sharing is just as important as improving premium subsidies. She hoped cost-sharing could be improved in future years. Ms. Capell appreciated the marketing efforts regarding public charge. Ms. Capell stated although California law already largely codifies the non-discrimination protections, they will revisit them to see if an update is needed due to federal action.

Doreena Wong, Asian-Americans Advancing Justice, L.A. stated that many advocates and some Navigators are preparing outreach and education to their communities regarding public charge. It is a complicated subject and they wish to ensure everyone understands. Ms. Wong stated it would be helpful to develop information and materials to tell consumers that the receipt of APTC or state subsidies does not affect their immigration status with regard to the public charge rule. She said they would like something that officially came from Covered California. They are also developing materials and translating them into multiple languages. Ms. Wong thanked Covered California for opposing changes to 1557. She hoped California could stand as a model to other states in promoting the importance of providing language assistance to limited English-speaking populations.

Alicia Kauk on behalf of the National Health Law Program said they are ready to assist Covered California in any way possible in making information available regarding public charge. She encouraged reaching out to Navigators and other enrollers to ask what might be helpful to their targeted populations. Ms. Kauk stated that the final rule is different than prior versions. She suggested it would be helpful to have webinars and materials available for those who help families enroll.

Jen Flory, Western Center on Law and Poverty, stated they were grateful for the work done to expedite the additional affordability assistance. She said they are very aware of

the effects of public charge and they are grateful for the action being taken. Ms. Flory said that there were improvements to how Medicaid was handled in the final rule but there is still confusion for individuals in understanding how it affects them.

Marques Castrejon, California Pan-Ethnic Health Network, agreed with previous statements on public charge. He agreed that the message should come through Covered California. He believes there is more that can be done in terms of further messaging on public charge.

Agenda Item V: Covered California Policy and Action Items

Health Plan Contract Update: Delivery Reform Planning

Discussion: Qualified Health Plan (QHP) Contract Extension

James DeBenedetti, Director, Plan Management Division, reviewed the reasons that a QHP contract extension was requested in November 2018. The refreshed contract will be presented in November 2020. The additional time is necessary to ensure there is informed stakeholder engagement in the development of new contract requirements. Mr. DeBenedetti reviewed accomplishments including a review of industry best practices. A comprehensive review of Covered California's experience to-date with the current contract is expected to be released in September 2019. Covered California has been meeting with DHCS and CalPERS to discuss alignment between large purchasers. A future meeting will cover mental health metrics. Mr. DeBenedetti presented a timeline for the contract extension period.

Board Comment:

Mr. Fleming stated his support for the extension saying there is a lot of work to be done. Mr. Fleming was interested in identifying the successes and the failures and using this information to build a solid framework.

Chairman Mark Ghaly stated the need and opportunity to align/re-envision the Covered California contracts with other contracts that matter at the state level. Chairman Ghaly specifically mentioned the Medicaid contracts and the procurement process. Consistency is appreciated and expected. All of California looks to Covered California in how mental health services are provided. Covered California has the opportunity to re-envision this now. Chairman Ghaly agreed with Mr. Fleming's desire to examine what drives successful outcomes.

Mr. Torres expressed his pride in the Board, the Covered California teams, and Mr. Lee. While celebrating the successes, Mr. Torres believes it is also the time to ensure individuals have access to the services and the plans that they need. Mr. Torres believes that California will be a harbinger for success nationwide and this will be especially important as time progresses especially during the upcoming presidential debates. Mr. Torres reiterated his pride in being a member of the Covered California Board of Directors.

Discussion: Presentation on Evidence Review and Measurement

Taylor Priestley from the Plan Management Division at Covered California provided context on the scope and significance of the presentations to follow. The combined evidence and measurement review report and the purchaser strategy report were both released in July. Health Management Associates cited more than 640 references. They provided a lot of information for Covered California to consider. A dedicated Attachment 7 Refresh Workgroup began in late July 2019 with seventy-one participants. Findings affirmed current priorities and direction of Attachment 7 with suggestions for improvement.

Nora Leibowitz, Project Director from Health Management Associates presented via phone. The goal of the project was to identify beneficial strategies for Covered California that could be considered for ongoing contracting with the Qualified Health Plan issuers. They began by contacting subject matter experts, reviewing literature, and gathering evidence. The areas examined for impact were: the potential for savings, improved quality of care, improved health, reduced provider burden, reduced administrative burden, and the potential to reduce health disparities. Ms. Leibowitz presented their recommendations and identified key drivers.

Mr. Lee noted that the report summary was included on pages four through eleven of the posted report.

Board Comment:

Mr. Fleming congratulated Health Management Associates on their exhaustive report. He commented that from the provider level, some recommendations may not be possible for solo practitioners. He suggested it would be very important to consider the capability inside the networks and asked Ms. Leibowitz if she agreed.

Ms. Leibowitz stated that Mr. Fleming very succinctly captured the idea. Providers need to be given the means and the incentives to get better. They need help organizing their systems to help them move forward in their capacity.

Chairman Ghaly stated that he also was thinking about capacity, but each idea should also be discussed individually and independently. They must assess which ideas are actually implementable. Chairman Ghaly said he has always been excited about exploring the use of the non-clinical provider network to deliver care.

Mr. Fleming said that as this is a major project, it would be more likely to happen if a large percentage of the payment base is asked the same question and with the same expectations. There are common capabilities that all providers want to have.

Public Comment:

Beth Capell, Health Access California said they are pleased to see Covered California leading the way on health equity. In the national discussions, the diversity that is California, is not as obvious. Ms. Capell concurred with the need to think about capacity

at the provider level. Ms. Capell noted that these subjects as well as screenings for depression were all brought up at the first workgroup. She said depression screening is an obvious and necessary step to take.

Roger Yang, an actuary from PricewaterhouseCoopers presented on the benchmarking and reference value system measures. In his summary of recommendations, Mr. Yang said Covered California should establish clear principles to guide selection and updating of measures and benchmarks. In the absence of nationally standardized and already-collected measures, for key domains Covered California should use its claims and encounter data to develop measures and benchmarks. Covered California may need to consider new measures or adopt less widely-used measures to further its objectives in important domains. Given the broad lack of alignment across purchasers, Covered California should align in ways that address priority concerns and that will foster better alignment in the future. Covered California should continue to leverage existing data collection, measures, and processes. Covered California should work to improve analysis and response rates to existing sources and build on those surveys to better capture patients' perspectives of their experience getting coverage and care.

Mr. Lee said that alignment will be a critical issue as well as areas that were identified as having existing gaps. Health equity and issues related to mental health were both identified by PricewaterhouseCoopers as having existing gaps in measures.

Board Comment:

Mr. Fleming noted that a portion of the Covered California population had a very high turnover. He asked Mr. Yang if there were metrics that should be more important to Covered California.

Mr. Yang replied that they did not find any measures that would be useful for that purpose.

Mr. Fleming stated that continuity of care is very important.

Mr. Yang agreed that it was a good point and that it relates to the alignment issue. If measures were aligned, it would promote collaboration and Covered California could better evaluate the population as a whole as the transition between the areas. In California, the all-payer database is currently being implemented. In a few years this will be a very useful tool.

Chairman Ghaly said that what is chosen on the measure side is going to drive the practice redesign. He said that Covered California needs to be really thoughtful on what are the not just high-quality but high-value measures that are considered as part of this opportunity. Chairman Ghaly said this is their opportunity to be much more thoughtful about what is measured. This is a unique opportunity in a place where the science and the evidence are certainly waiting to be developed.

Public Comment:

Beth Capell, Health Access California concurred with the finding that a lot of Covered California's enrollment turns over almost every year. She said they are examining whether those who turn over are different in some respect from the people who stay. She wondered if they, for example, were a population in their late 50s and early 60s who leave when eligible for Medicare. Ms. Capell mentioned that the scale of California is greater than other states.

Discussion: Presentation on Purchaser Strategy Projects

Jasmine Macies, PricewaterhouseCoopers said they were asked to review different focus areas among purchasers and help make prioritizations. She said their team has a very strong background in employer-sponsored benefits and working with employers around different strategies, which gave them some insight into what employers were doing in the market. They developed an open-ended discussion guide to ascertain current priorities, focus areas, and plans for the future.

Ms. Macies said that the key collaboration opportunities that came out were very similar to what Health Management Associates found. Standardizing measures and clinical information would be a huge asset to understanding how different strategies are performing, as well as using common measure sets and provider level reporting.

Board Comment:

Mr. Torres asked if Covered California is doing enough in respect to preventative care. He asked if there was a correlation between cost and reduction in acute care.

Ms. Macies stated that there are Affordable Care Act requirements to cover preventative services under basic primary care. She said they did not look at the measurements to find a correlation with reduction in acute care. She said they did hear from purchasers that early detection can help a lot. They found leveraging primary care physicians as the first line of defense for complex care and getting those people to the right facilities to get the right treatment and making sure that they have a plan of treatment that's not just a point in time can be extremely helpful in controlling costs.

Mr. Torres stated that many individuals don't realize there is a lack of accessibility to proper health care in rural areas. He asked if they assessed rural areas in terms of accessibility and if a rural location increased the potential for telemedicine.

Ms. Macies said a lot of employers are looking into telehealth and technology-based medicine in general. There are still areas that do not have access to telehealth and technology-based medicine.

Mr. Torres asked if they looked into farm workers' accessibility to health care in rural areas.

Ms. Macies said they did not.

Mr. Torres said it was unfortunate. He wondered if more attention was necessary considering external environmental issues such as pesticides.

Ms. Macies agreed that it was worth looking into. Their work did examine low-wage workers but did not single out those living in rural areas or those exposed to chemicals that may experience health issues in the future.

Mr. Torres stated that the Trump administration made a recent effort to do away with Proposition 65. He stated that some rural inhabitants don't even have access to clean drinking water. That adds to the cost of health care.

Mr. Fleming said he didn't see anything regarding whether employers were using performance guarantees as a key element in this particular domain. Lots of performance guarantees are around claims payments and various kinds of metrics. He asked if they found that employers are using those kinds of elements in this agenda.

Ms. Macies stated that they did not see a lot of performance guarantees being leveraged across these specific domains. Value-based payments or different types of payments are starting to maybe take the place of this. A lot of new entrants are providing performance guarantees, or ROI guarantees, as a way to prove that they have the ability to meet the claims that they're making.

Mr. Fleming said they need to understand the characteristics of Accountable Care Organizations that will create value. He asked if purchasers understood.

Ms. Macies said the level of sophistication varies by purchaser type. The plans and maybe the public purchasers have a little bit better understanding given that they work in that space or have created Accountable Care Organizations. Employers are thinking of Accountable Care Organizations more and more as just integrated delivery systems and not quite to the level of sophistication that might be seen from the Centers for Medicare and Medicaid Services and the measurements that they're providing.

Chairman Ghaly commented that mental health and behavior health were both noted in all three of the reports. He said that as the Board looks at their responsibility to beat that drum as much as possible, whether it's in the rural communities, art, or urban centers, it's the thing that matters and it's great to see it high on the employer list as well. It's impacting employers' workforce and the families of their workforce. It's important to keep pushing this forward.

Public Comment:

Beth Capell, Health Access California said that California did early implementation of the Medicaid expansion and there was an evaluation of the outcomes. Remembering that these were people who had often been uninsured for 30 or 40 years prior to the Medicaid expansion, what they found was that it took 24 to 36 months for them to get in,

get care, get their conditions stabilized and managed. The level of care they received was comparable to those who had similar conditions that were similarly advanced. If they had had continuous coverage their entire lives, they would have been healthier, but, in fact, it takes 24 to 36 months. It is the case that providing people care costs more than not providing people care. The cheapest thing is to let people die. On the issue of patient consumer engagement, the reports themselves use different examples and different terminology, so, using consumer shopping of different procedures doesn't seem to have much evidence that it works, and the plans seem to indicate that not very many people use it. Consumer engagement of people who have barriers appears to be very important. She said they must consider what they can prioritize that will make a difference in terms of quality and cost and disparities.

Mr. Lee thanked all the presenters and the entire PricewaterhouseCoopers and Health Management Associates teams.

Covered California Regulations

Discussion: Proposed Emergency Regulations for Hardship and Religious Conscience Exemptions

Bahara Hosseini, Office of Legal Affairs stated that the Legislature passed budget and trailer bills that established a California individual mandate and a penalty starting in 2020 requiring all California residents to enroll in and maintain minimal essential coverage, have an exemption, or pay a penalty. Covered California will grant exemptions year-round for hardship and religious conscience. Ms. Hosseini reviewed criteria for qualifying for an exemption. Covered California was granted emergency rule-making authority by the Legislature through January 1, 2022, for these exemptions. Ms. Hosseini presented an overview of the proposed regulation package. She stated that this would appear on the next Board meeting agenda with request for the Board to act before being filed with the Office of Administrative Law for approval. Any changes made before the next Board meeting would be presented at the meeting prior to action.

Mr. Lee asked if the exemptions under review are tracking to the federal exemptions. The decision made in California was to mirror the federal penalty so that if the federal penalty is reinstated, the exemptions would not have changed.

Ms. Hosseini said that Covered California is mirroring the federal process for the state mandate. Covered California is also taking over the federal exemption, hardship exemption process, for the purposes of enrollment in catastrophic health plans.

Discussion: Changes to Eligibility and Enrollment Regulations for Individual Market

Ms. Hosseini said that Covered California was granted emergency rule-making authority by the Legislature to January 1, 2022. The proposed regulations are the result of ongoing collaboration and consultations with consumer advocates, Department of Social Services, Department of Health Care Services, Department of Managed Health Care Services, Department of Insurance, Franchise Tax Board, our qualified health plan

(QHP) issuers and other stakeholders. Ms. Hosseini provided an overview of the mail proposed changes and noted the proposed regulations would be presented to the Board for action in September, prior to being filed with the Office of Administrative Law for approval. Any changes made before the September Board meeting will be presented at the meeting prior to action.

Public Comment:

Beth Capell, Health Access California stated that California did not precisely mirror the federal individual mandate penalty but instead adapted it to California's personal income tax which has a higher threshold. Ms. Capell encouraged Covered California to consider improving on what the federal government did with respect to hardship exemptions. She suggested California might lead the nation by example and encourage the federal government to look into additional exemptions if the federal mandate were restored.

Alicia Kauk on behalf of the National Health Law Program echoed Ms. Capell's comments on health exemptions and stated they would like to see an expansion upon what is defined as a hardship exemption. Ms. Kauk also thanked Covered California for the inclusion of their comments regarding eligibility and enrollment regulations.

Action: Covered California for Small Business (CCSB) – Changes to Eligibility and Enrollment Regulations

Dora Mejia, Chief Financial Officer began by providing a brief overview on how the payment process works for small business and the challenges returned payments pose for Covered California. She then provided an overview of the proposed CCSB regulations, noting that they would give Covered California the flexibility to assess a reasonable charge to cover more its direct costs. Upon adoption of the regulation, staff proposes to increase the current return payment fee of \$25.00 to \$50.00. This represents only a small percentage (less than 1%) of the overall returned payment amount. The proposed regulation would also apply to electronic payments made via automated clearing house (ACH). Lastly, the proposed regulation would require entities to submit a money order or cashers check for a 12-month period, following two or more insufficient fund payments made within a six-month period. Ms. Mejia also noted that employers will be notified via premium invoices and through their agreements.

Terri Convey, Individual and Small Business Outreach and Sales Director stated that pursuing payment is expensive to Covered California, it generates a liability to Covered California, and consumers/employers and their families are affected by the issue. Ms. Convey requested the Board formally adopt the regulation.

Board Comment: None

Public Comment:

Mark Herbert, with Small Business Majority stated his appreciations for the communication on this issue. Mr. Herbert stated his belief that the regulation successfully addressed chronic abusers while also ensuring space for small business

owners who made an administrative mistake. He said he looks forward to supporting this regulation.

Doreena Wong, Asian-American's Advancing Justice, L.A. apologized and said her comment was regarding the eligibility and enrollment regulations. Ms. Wong thanked Covered California for creating the standards in section 6452 on accessibility and readability. Regarding accessibility to limited-English speaking populations, Ms. Wong said there is opportunity for improvement. She said they would like an opportunity to speak with Covered California staff about how notices are translated into the threshold languages.

Motion/Action: Mr. Torres moved for approval. Mr. Fleming seconded.

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

Action: Identity Verification Regulations – Authorization to Submit Permanent Rulemaking Package to the Office of Administrative Law

Crystal Hirst, Office of Legal Affairs explained that anytime anyone submits an application through Covered California, Covered California must confirm their identity. The proposed regulations outline the methods used for verification. The current regulations are emergency regulations that were approved by the Board in October of 2016. This regulation seeks to make those regulations permanent. Ms. Hirst asked the Board to adopt the regulation package so it could be submitted to the Office of Administrative Law.

Board Comment: None

Public Comment: None

Motion/Action: Mr. Torres moved for approval. Mr. Fleming seconded.

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

Chairman Ghaly adjourned the meeting at 3:14 p.m.