



# Comments to the Board

## Table of Contents

November 21, 2019 Board Meeting

### **FOR PUBLIC DISTRIBUTION**

#### **Correspondence with Elected/Government Officials**

- None

#### **Correspondence with Stakeholders**

- Kevin Knauss, Certified Covered California Agent – Comments regarding the proposed acknowledgement and disclosure form to be obtained by certified insurance agents – October 28, 2019



Covered California Board of Directors  
1601 Exposition Blvd.  
Sacramento, CA 95815

October 26, 2019

Re: Proposed Health Care Sharing Ministry Consumer Acknowledgment and Disclosure

The requirement that Covered California certified insurance agents collect a consumer acknowledgement and disclosure form from clients who the agent may enroll in a health care sharing ministry program is a misplaced and undue regulatory mandate on agents. These health care sharing ministry programs are outside the jurisdiction of Covered California. The requirement to collect such consumer documents is content-based compelled speech for a product that Covered California has no vested or regulatory interest in.

The ultimate penalty to agents for noncompliant behavior to the proposed rule is being de-certified as a Covered California agent and the loss of subsequent commissions from the insurance companies for the agent's enrollments into Covered California health plans. Certified Covered California insurance agents are being targeted with this disclosure proposal when other licensed health insurance agents, not affiliated with Covered California, have no such requirement regarding a consumer acknowledgement and disclosure. This is clearly discrimination based solely on an agent's certification with Covered California.

The irony of the proposed rule is that it sets out to punish agents for behavior Covered California doesn't like, similar to the health care sharing ministries programs who punish members by denying claims for medical treatment caused by behavior they find objectionable. Covered California is employing the same discriminatory conditions on agents they accuse the health care sharing ministries of engaging in with their members. If adopted, agents for Covered California, like members of health care sharing ministry programs, can be punished for engaging in legal activities.

For example, if I break my ankle while dancing at a gay nightclub in drag, as a member of a health care sharing ministry, the circumstances under which I broke my ankle – being gay, dancing in a gay bar, in drag – could be seen as violating the statement of faith principles in the health care sharing ministry agreement. That perceived transgression of the rules, while engaging in a perfectly legal activity, could be sufficient grounds for the program to deny paying any claim for medical services associated with breaking my ankle. I would be punished for behavior that the health care sharing ministry found objectionable, but was legal and not specifically excluded in the health care sharing ministry agreement.

Covered California wants to impose similar subjective behavioral rules upon agents. They want agents to collect a document of consumer acknowledgement and disclosure if the agent enrolls an individual or family into a health care sharing ministry program. The failure to collect the disclosure agreement could result in the agent being barred from selling Covered California health plans through the exchange. It is perfectly legal for agents to assist a consumer with enrollment into a health care sharing ministry. But Covered California wants to punish agents if they don't follow their behavioral rules, just like a health care sharing ministry.

Covered California has every right to demand their certified insurance agents adhere to certain rules when it comes to presenting the health plans on the Covered California exchange. But when was their mandate expanded to controlling the behavior and speech of agents representing and selling products that Covered California has no connection with?

Just as health care sharing ministry programs don't like homosexuality, Covered California doesn't like the health care sharing ministries. The dislike expressed by both the ministries and Covered California is rooted in a paternalistic perspective that they know what is best for society. Even if the behavior is legal, and causes no injury to the program or organization, they each feel a need to oppose it by levying punitive damages in the form of withholding money.

We can all agree that for the vast majority of consumers, health care sharing ministries are bad news. Without a thorough understanding of the terms, conditions, limits, and exclusions of the program, coupled with a commitment on the part of the consumer to the statement of beliefs and principles outlined in most health care sharing ministries, there is a high probability for uncovered medical expenses and consumer dissatisfaction.

It is not within the jurisdiction of Covered California to attempt to regulate these health care sharing programs by forcing certified agents to obtain a disclosure for products that Covered California neither sells nor likes. There are plenty of health care insurance products that are as odious as health care sharing ministries that Covered California does not attempt to thwart the sale of. The acknowledgement and disclosure forms are a thinly veiled attempt to intimidate agents from not selling these programs, and if they do, dissuade consumers from enrolling in the programs.

Other dubious products, with lots of caveats and pre-existing condition clauses, that may also be sold by certified agents include accident and hospital indemnity plans, critical illness and cancer policies, and discount prescription drug and dental programs. If Covered California can see its way clear to mandate a disclosure form from agents for the sale of health care sharing ministries programs, why not these other insurance products and discount plans?

On several occasions, I have written about the inherent hazards of health care sharing ministry programs on my website ([insuremekevin.com](http://insuremekevin.com); *Health Care Sharing Programs For Short Term Medical Coverage and Lost Health Insurance? Maybe Health Care Sharing Will Work.*) In these posts I outline the serious deficiencies of health care sharing ministry programs.

As a member of the LGBTQ community, I was particularly distressed at a membership-based discount health care services program marketed to the gay and lesbian community. I wrote that this program was little more than the old discount medical plans from Multiplan wrapped in a

rainbow flag ([insuremekevin.com](http://insuremekevin.com); *LGBT Community Targeted With Dubious Health Care Plan.*)  
The program was not health care insurance by any stretch of the imagination.

Unfortunately, with the ban on short term medical plans, some consumers have little alternative but to at least investigate some of these programs. My issue with the certified agent collection of a consumer's acknowledgement and disclosure form is not about my support for these types of programs, but that it is not a certified agent's role to further regulate products that are not sold through Covered California.

It has been cited that the Medicare Scope of Appointment regulation is a foundational precedent for requiring the health care sharing ministries disclosure forms.

Medicare Scope of Appointment forms prohibit speech, while the Covered California disclosure form compels speech on the part of the agent. Medicare requires that an agent obtain a Scope of Appointment form before discussing any Medicare Advantage plan benefits and costs. Medicare Advantage plans are subsidized by the federal government. The focus of the Scope of Appointment form is to keep the discussion on health care insurance and not have the agent veer off into discussing auto, home, or life insurance products. Such mixed conversations can confuse seniors. There is no prohibition on the agent from following up with the client to discuss other insurance products.

The significant difference between the Medicare Scope of Appointment and Covered California's attempt to stymie agents from selling health care sharing ministry programs is that the Medicare Scope of Appointment applies to health plans it regulates. Covered California is attempting to impose conditions on plans it does not regulate. The Medicare Scope of Appointment and marketing rules do not apply to plans such as dental or vision insurance that Medicare does not regulate and does not subsidize. Covered California wants to intervene in the market place for programs it does not subsidize, does not sell, and does not like.

Years ago, I advocated for a Scope of Appointment form for Covered California enrollments. My concern was - and still is today - that some agents pitch a Bronze HDHP coupled with an accident, hospital, critical illness, or cancer indemnity plan and a discount prescription drug plan. All of the ancillary products pay a far higher commission than the individual and family health plans. The consumer may be receiving poor guidance from an agent to enroll in a Bronze plan packaged with these other products, when enrolling in a higher priced Silver plan may better serve the consumer.

Additionally, Medicare requires agents to state they will be compensated by the Medicare Advantage plan for the enrollment. Where is the Covered California requirement that agents state they are paid by the health plan – and not Covered California – and which plans they are appointed with?

Finally, Medicare does have the onerous requirement upon agents to keep records and forms for 10 years. Thankfully, many of the carriers have electronic Scope of Appointment and enrollment forms today. Covered California seems to be under the impression that agents meet face to face with their clients. This is not the case. I live in the Sacramento region, but most of my clients are in the Bay Area and Southern California. How will Covered California



accommodate agents who do not physically meet with their clients to collect any disclosure form?

If the goal of Covered California is to dissuade consumers from enrolling in a health care sharing ministry program, what about people who opt not to enroll in any health insurance? Is it not more dangerous to be un-insured? Will Covered California require agents to obtain a form from prospective clients who choose not to enroll and that they will be subject to an individual mandate penalty and perhaps exorbitant medical expenses?

There are many situations where consumers should be notified of deficiencies with in health plans and conditions regarding the Premium Tax Credits. What about other disclosure forms that agents should also be collecting that are directly related to Covered California?

1. A form that states that the consumer understands that if their final MAGI exceeds 400% of the federal poverty level, they must repay ALL of the federal APTC. Or for 2020, if the consumer's MAGI exceeds 700% FPL, they will have to repay all of the California premium subsidy.
2. Consumer acknowledgement that Oscar health plans offered through Covered California will no longer have Hoag or UCLA physicians and hospitals in-network for 2020.
3. Disclosure form notifying consumers that the Silver 70 deductible has jumped from \$2,500 in 2019, to \$4,000 in 2020.
4. A woman's acknowledgement that if she reports she is pregnant to Covered California, there is a high probability she will be terminated from her Covered California health plan and enrolled in Medi-Cal.
5. The consumer's acknowledgement that if they enroll in an off-exchange Silver 70 plan because the rates are 10% to 15% lower, they will not be able to enroll in a Covered California plan if their income decreases. Plus, there is no 90-day grace period related to late premium payments for off-exchange plans. If the plan member is late by 31 days, the plan is terminated and cannot be reinstated.
6. A disclosure form that a consumer who enrolls in an off-exchange family dental plan understands that their dependents may have pediatric dental and vision benefits through their health plan.

I share Covered California's concern that health care sharing ministry programs are a mine field waiting for someone running from ridiculously high health insurance premiums to step on and have the bomb explode. However, I disagree with Covered California's proposed use of certified agents to be their foil to limit the enrollment in these products. Agents are not the jailers charged with keeping the citizens within the health insurance pool.

If the stated aim is to educate consumers about real health insurance and the potential deficiencies of health care sharing ministry programs, Covered California should work with the Department of Insurance, Department of Managed Health Care, and the Department of Consumer Affairs to draft legislation that will require a model disclosure form that must be obtained by either the agent representing these programs or the sponsor of the programs.

It is completely understandable that Covered California is concerned about the potential proliferation of health care sharing ministry programs spurred by the impending California

individual mandate penalty. Consumer notification and disclosure should have been written into the original bill language creating the penalty.

However, the burden to monitor consumer enrollment in the health care sharing ministry programs should not fall on the backs of certified Covered California agents. Just as Covered California does not require mandated disclosure forms from agents selling membership-based health care discount plans, the suspect medical indemnity plans, or even off-exchange health plans with fewer consumer protections, we should not be forced to document that a consumer understands the deficiencies and risks or enrolling in a health care sharing ministry program.

Thank you for your time and attention to my concerns.

A handwritten signature in black ink, appearing to read "Kevin Knauss". The signature is fluid and cursive, with the first name "Kevin" written in a larger, more prominent script than the last name "Knauss".

Kevin Knauss

Certified Covered California Agent  
8712 Pendleton Dr.  
Granite Bay, CA 95746  
916-521-7216  
[kevin@insuremekevin.com](mailto:kevin@insuremekevin.com)  
CDI # 0H12644