



January 13, 2015

Diana Dooley, Chair, Board of Directors  
Peter Lee, Executive Director

California Health Benefit Exchange  
1601 Exposition Blvd.  
Sacramento, CA 95815

Re: Conditions for Participating Qualified Health Plans and Insurance Agents

Dear Ms. Dooley and Mr. Lee,

The California Labor Federation and Health Access California, the statewide health care consumer advocacy coalition, seek a change to the recertification and new entrant policy for the 2016 plan year.

We seek a requirement that participating qualified health plans that offer large employer coverage do not offer coverage to large employers that is less than 60% minimum value. We seek a similar requirement for insurance agents or brokers that sell coverage to large employers and that seek to serve Covered California enrollees, including SHOP employers.

While no current qualified health plan would be excluded from this rule, we think it is crucial for Covered California to actively discourage this practice of offering substandard coverage, a loophole in the minimum benefit guarantees and the employer responsibility section of the Affordable Care Act.

We understand there are health plans seeking to enter Covered California that do offer large employers coverage under 60% minimum value, which should be barred for three reasons:

- Covered California has a strong interest in making sure the Affordable Care Act works in California—and by allowing substandard plans that allow large employers to avoid their obligations, it undermines the

sustainability of health reform and the market that Covered California operates in.

- Covered California wants qualified health plans that will be good partners with the Exchange in fostering a marketplace that benefits consumers, rather than plans that use loopholes to undermine the goals of health reform.
- Covered California should use its active purchasing power to benefit and represent its potential enrollees—including the workers of large employers who would under this practice be barred from subsidies in Covered California if their employer offers such a plan.

## **Background**

State and federal law set a floor on the benefits that can be offered by health plans and insurers to individual and small employers, requiring that coverage sold to individuals and small businesses provide at least 60% actuarial value and include essential health benefits.

The employer responsibility requirement, now in effect, applies to large employers whose full-time, non-seasonal employees obtain subsidized coverage through an exchange. However, nothing in state or federal law prohibits a health insurer or plan from offering a large employer coverage that is less than 60% minimum value. Nothing in state or federal law prohibits an insurance agent or broker from offering a large employer coverage that is less than 60% minimum value. Large employers may offer coverage that is below 60% minimum value and does not include the essential health benefits.

The employer responsibility requirement is foundational to the Affordable Care Act: the financing of the Affordable Care Act was built on the assumption that virtually all employers with more than 50 employees offer those employees relatively comprehensive coverage.

## **Why This Matters**

Unfortunately, current federal guidance creates a loophole that may be attractive to large employers with low wage workers or high turnover workforces, allowing such employers to avoid the employer responsibility requirement while putting workers at risk of medical debt and not getting the care they need.

If an employee of a large employer accepts coverage from an employer that is less than 60% minimum value, the employee is put at risk in a number of ways. The worker who has accepted subminimum coverage is barred from receiving subsidies through Covered California. If the worker has a major chronic condition or a serious illness or injury, the employee will be exposed to thousands of

dollars in costs, plunging the individual into medical debt or bankruptcy and adding to hospital bad debt. An ample literature demonstrates that those who are underinsured avoid seeking care when they need it precisely because of the inability to pay.

Employees with such subminimum coverage would still be eligible for Medi-Cal if they were otherwise eligible for Medi-Cal—and would likely end up on Medi-Cal if the employee had a significant health need, further increasing state spending on Medi-Cal.

Large employers, particularly of lower wage workers, may be tempted to offer those lower wage workers sub-minimum coverage because such coverage is less expensive and may allow the employer to avoid the employer responsibility requirement. The attached power-points from Crawford Associations and United Healthcare clearly offer employer guidance on how to avoid employer penalties by offering subminimum plans. The consultant describes offering skinning plans as a “loophole” in federal law that the federal government has not yet clarified.

Small businesses are disadvantaged because state and federal law requires that the coverage they offer to their employees must be no less than 60% actuarial value while large employers can offer their employees sub-minimum coverage.

### **Current QHPs, New Entrants**

To the best of our knowledge, no currently contracting Qualified Health Plan offers large employers coverage that is less than 60% minimum value. We have confirmed, and re-confirmed, this fact with the commercial plans that are currently QHPs.

We have recently become aware that at least one major insurer which is seeking to be a new entrant to the Covered California marketplace is offering large employers coverage that is less than 60% minimum value—and encouraging large employers to offer the non-management employees such sub-minimum coverage while providing additional benefits to management employees. We are also aware that there are insurance brokers offering such coverage to employers, particularly in San Francisco which has a longstanding employer responsibility requirement unique to the City and County of San Francisco.

We have been pleased that Covered California has repeatedly recognized that employer coverage is foundational to the success of the Affordable Care Act. We ask that Covered California assure that its contracting Qualified Health Plans not engage in behavior that would undermine the employer responsibility requirements of the Affordable Care Act by offering large employers coverage that is less than 60% minimum value. We ask for a similar requirement for

insurance agents and brokers that serve Covered California enrollees and SHOP employers.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Flocks".

Sara Flocks  
Public Policy Coordinator  
California Labor Federation

A handwritten signature in black ink, appearing to read "Anthony Wright".

Anthony Wright  
Executive Director  
Health Access California