



**California Senate Committee on Health
Hearing on “Affordable Care Act in Jeopardy:
What Does it Mean for California? – California Impacts”
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**Written Testimony Submitted By:
Peter V. Lee
Executive Director
Covered California**

Good afternoon Chairman Dr. Pan, Vice Chair Melendez, and distinguished members of the committee. My name is Peter V. Lee and I serve as the Executive Director of Covered California – California’s state-based health insurance marketplace for the individual and small group markets.

Thank you for the opportunity to participate in today’s hearing. The information and perspectives I will provide are based on seven years of experience operating a robust and successful state-based marketplace as well as over 20 years working to make sure health care better meets the needs of America’s consumers.

The COVID-19 pandemic and economic crisis highlight the critical importance of the protections of the Affordable Care Act. Covered California is poised to enter this year’s open enrollment period with an all-time high of 1.5 million renewing enrollees, illustrating the need of Californians to access affordable, quality coverage in a time of need. As a nation, especially at a time of crisis, we should be looking to protect and build on the Affordable Care Act, not promoting policies that undercut the law or taking actions threaten to invalidate it. There is much at stake, and throughout my testimony, I hope to provide the Committee with key perspectives on:

- How the Affordable Care Act serves as a necessary lifeline and safety net fostering access to affordable, quality coverage for millions of Californians and Americans.
- California’s approach to protect and build on the law, and Covered California’s efforts maintain a strong, stable marketplace for Californians when they need it the most, and lessons from the COVID-19 pandemic that illustrate the critical role the Affordable Care Act plays at a time of crisis;

- How reversing the gains made under the Affordable Care Act would be catastrophic for millions who rely on the law for financial help and critical consumer protections that have made health coverage accessible for so many.
- How we, as a nation, could and should be looking toward strengthening the Affordable Care Act to the benefit of millions throughout the nation.

California has Protected, Built-on, and Gone Beyond the Affordable Care Act

More than 10 years after its passage, many of the transformative policies of the Affordable Care Act are generally taken for granted and the implications of turning back the clock to the days before these vital protections were commonplace would be catastrophic for tens of millions of Americans. Among its fundamental tenets are ground-breaking, consumer-protective policies that have now become almost universally accepted by Americans across the political spectrum, including:

- Protecting Americans with pre-existing conditions from being discriminated against by insurers;
- Requiring coverage by insurers to meet minimum coverage standards with requirements that premium dollars are spent on health care;
- Changing the nature of the health insurance markets to reward health plans that provide better access to affordable care, rather than rewarding them for avoiding sicker consumers;
- Expanded benefits for Medicare beneficiaries, including more prescription drug benefits; and,
- Making coverage more affordable by expanding Medicaid and providing financial help through marketplaces to Americans without employer-sponsored insurance or other forms of coverage.

The Medicaid expansion and the marketplaces created under the Affordable Care Act – such as Covered California – were always intended to provide a coverage backstop for individuals who are not eligible for other coverage through their jobs, Medicare, or other sources. Today, the Affordable Care Act is facing the first “pressure test” of responding to Americans’ needs in the face of the biggest public health crisis and economic downturn in many years. Covered California has sought to rise to the challenge as millions of Californians have lost jobs or income due to the COVID-19 pandemic and recession, and our state has invested in the Affordable Care Act through bold policies that positioned us to be able to better respond.

Before we move ahead, it is important to look back at the steps California has taken that have led us to this moment. Embracing the Affordable Care Act, California expanded its Medicaid program providing coverage to millions of newly eligible Californians. Additionally, California led the nation by being the first to enact legislation establishing a state-based marketplace, Covered California.

Covered California has used all the tools of the Affordable Care Act to build a strong and sustainable individual market that helps keep health care premiums as low as possible. Covered California's 11 contracted qualified health plans vie for consumers based on price and quality. Our significant investments in marketing and outreach have led to strong, steady enrollment and a consumer pool that is consistently among the healthiest in the nation.

Leading up to the 2020 coverage year, California made coverage more affordable by offering state subsidies to eligible consumers, including becoming the first state to provide financial help to middle-income consumers earning up to 600 percent of the federal poverty level. In addition, California implemented a state individual mandate penalty in response to federal action that zeroed out the federal individual mandate penalty. Further, Covered California continued its practice of making large marketing and outreach investments – \$121 million for the 2020 open-enrollment year. These actions fostered confidence from the health insurance carriers that robust outreach would promote greater and healthier enrollment. Taken together, these actions led health insurance carriers to reduce rates by between two and five percentage points and resulted in a 41 percent increase in new enrollment during the most recent open-enrollment period.

The individual market in California has seen premium increases over the past six years that have been about half those in the federally-facilitated marketplace states. More recently, California's individual market has enjoyed two consecutive years of record-low rate changes of 0.8 percent for the 2020 coverage year and, based on preliminary rates, an increase of only 0.5 percent for 2021. Major beneficiaries of these low premium increases are the over 800,000 Californians who are "off-exchange" and receive no state or federal subsidies.

A key driver of these low premium increases is larger, healthy enrollment and steady retention – by both subsidized and unsubsidized consumers. When compared to the rest of the nation, individual market health care premiums in California are estimated to be about 20 percent lower than what they would have been if the health of our enrollees was at the national average. Between 2014 and 2018, Covered California's risk scores were approximately 20 percent below the national average for the individual market, resulting in likely savings of approximately \$2.5 billion per year for enrollees and the U.S. Treasury. This translates to approximately \$12.5 billion in savings over this five-year period, and those savings are likely to have continued, if not become larger, in 2019 and now in 2020.

While we ended the 2020 open-enrollment period with strong enrollment, Covered California has continued to use all the tools of the Affordable Care Act to provide quality coverage at the best value as it has responded to the pandemic and recession. Covered California invested in outreach during the recent COVID-19 special-enrollment period and increased our marketing and outreach budget for the 2020-21 fiscal year by \$30 million to a total of \$157 million.¹ We have also allocated \$13 million for additional customer service upgrades to meet the needs of consumers who may have lost their job-based coverage.

¹ Covered California, July 16, 2020 – "Covered California Increases Investments in Marketing and Outreach to Reach Uninsured Californians During the COVID-19 Pandemic," <https://www.coveredca.com/newsroom/news-releases/2020/07/16/covered-california-increases-investments-in-marketing-and-outreach-to-reach-uninsured-californians-during-the-covid-19-pandemic/>

Consumers will continue to benefit from competition and choice, with 11 carriers serving the state and two of them expanding their coverage areas. In 2021, virtually all (99.8 percent) Californians will have two or more health carriers to choose from, and about four out of five (77 percent) will have four or more plan choices.

In much of the country, the challenges have been exacerbated by recent federal policy actions – including the federal elimination of the individual mandate penalty, promotion of short-term, limited duration insurance, and the reduction in marketing and outreach by the federally-facilitated marketplace. As a result, these actions have chipped away at the integrity of the Affordable Care Act, forced millions to lose their coverage and steadily raised the national uninsured rate from 8.6 percent in 2016 to 9.2 percent in 2019.

While uninsured rates have been rising across the nation since 2016, California’s uninsured rate has been reduced from 17.2 percent in 2013 to 7.7 percent in 2019.² When you count only those currently eligible for coverage through Medicaid or our marketplace — not including individuals who are ineligible for coverage due to their immigration status — California’s “eligible uninsured rate” is about 3 percent. We in California still have work to do, but by fully implementing the Affordable Care Act and using the tools available today we are approaching universal coverage for those eligible.

Covered California’s Lessons from the COVID-19 Pandemic

As described in a recently released report, [*Coverage When You Need It: Lessons from Insurance Covered Transitions in California’s Individual Marketplace Pre and Post the COVID-19 Pandemic*](#), Covered California’s overall enrollment reached an all-time high of 1.53 million actively enrolled consumers as of June 2020. This represents an 8 percent increase over Covered California’s previous high of 1.4 million in March of 2018. The record enrollment in Covered California is what would likely be expected for marketplaces that were established to be part of the safety net for consumers with gaps in coverage, but it did not “just happen.” Rather, the enrollment has been driven by significant investments in marketing and outreach throughout Covered California’s history, along with patient-first policies during the current pandemic and recession.

California is the nation’s most populous state, and when the COVID-19 pandemic began to rage across the country, it became the first state to issue stay-at-home orders to nearly 40 million people on March 19. One day later, Covered California announced a special-enrollment period to provide a path to coverage for those who were uninsured amid the pandemic.³ The move opened the marketplace to anyone who met Covered California’s eligibility requirements, similar to the requirements in place during the annual open-enrollment period.

² U.S. Census Bureau, Sept. 15, 2020 – “Health Insurance Coverage in the United States: 2019,” <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-271.pdf>

³ Covered California, March 20, 2020 – “California Responds to COVID-19 Emergency by Providing Path to Coverage for Millions of Californians,” <https://www.coveredca.com/newsroom/news-releases/2020/03/20/california-responds-to-covid-19-emergency-by-providing-path-to-coverage-for-millions-of-californians/>

In the weeks and months after the launch of the COVID-19 special-enrollment period, millions of Californians lost their jobs, including many who also lost their job-based health insurance coverage. California's unemployment rate skyrocketed to a record 16.4 percent in May, and while there has been marked improvement since then, millions of people remain out of work.

Covered California also responded by launching new television ads, to encourage the uninsured to sign up for coverage, as part of a \$9 million campaign.⁴ The marketplace also worked with California's Employment Development Department so that every unemployment check includes a flyer describing Covered California and Medi-Cal (the state's Medicaid program) - delivering 3.5 million inserts with unemployment benefits.⁵

Covered California's history of being recognized by many Californians as the place to turn if they lose coverage and the promotion during the pandemic resulted in a significant increase in consumers signing up for coverage during our COVID-19 special-enrollment period. Between March 20, 2020 and August 31, 2020, more than 289,000 people signed up for coverage, which is more than two times the rate seen during the same time period a year ago.

Of those enrolling, the vast majority (79 percent) would have been eligible to enroll for coverage in a normal special-enrollment period. They enrolled because they lost job-based coverage, or experienced other qualifying life events, and knew where to go to get help because of Covered California's efforts both during this period and over the past five years. Further, about 21 percent were uninsured at the time of their plan selection, meaning they were most likely ineligible to sign up for coverage under normal special enrollment rules.⁶ Based on the overall volume of new sign-ups with Covered California the decision to declare a special-enrollment period for the uninsured allowed an estimated 60,000 more Californians to sign up for coverage than would have otherwise.

Further, the COVID-19 pandemic highlights the fragility and inadequacy of employer-sponsored insurance for many consumers, where not only is the quality of coverage deteriorating for many, but millions across California and the nation have suddenly been left without coverage due to the pandemic. Our analysis found 57 percent, or approximately 165,000 plan selections during this year's special enrollment were made by consumers previously enrolled in employer-sponsored coverage – a nearly 20-point increase as compared to the 2019 open enrollment period. The survey found that only 14 percent left the marketplace for job-based coverage during the COVID-19 special-enrollment period, compared to 54 percent during the 2019 open-enrollment member survey, which highlights the fact there are fewer employment opportunities available during the current recession.

⁴ Covered California, May 4, 2020 – “Covered California Launches New Ad Campaign That Focuses on the COVID-19 Pandemic and Encourages the Uninsured to Sign Up for Coverage,” <https://www.coveredca.com/newsroom/news-releases/2020/05/04/covered-california-launches-new-ad-campaign-that-focuses-on-the-covid-19-pandemic-and-encourages-the-uninsured-to-sign-up-for-coverage/>

⁵ Covered California, April 14, 2020 – “Covered California Enrolls Tens of Thousands as Impacts of COVID-19 Pandemic Hits California Households,” <https://www.coveredca.com/newsroom/news-releases/2020/04/14/covered-california-enrolls-tens-of-thousands-as-impacts-of-covid-19-pandemic-hits-california-households/>

These new enrollees also appear to be contributing to the individual market in California's positive healthy risk mix. The positive risk profile information was information used by health plans in California that set premiums increases for 2021 resulting in an average weighted increase of only 0.5 percent (after an increase of only 0.8 percent in 2020). By opening its doors and making more consumers eligible for coverage during the pandemic, Covered California increased its ranks of healthy consumers and drove premiums down for all consumers in the individual market.

The fact that Covered California was able to enroll hundreds of thousands of people during such a dramatic upheaval and loss of employer coverage is evidence that the Affordable Care Act can work to keep people covered when the worst happens. Individual marketplaces **should** see significant gains in enrollment during an economic downturn because they are part of the safety net that is most needed during a health crisis and recession. However, in order for that safety net to work right, consumers will be better served if it is reinforced by state actions such as we those undertaken in California: robust marketing and outreach; a history of getting the word out about the role of the marketplace; Medicaid expansion; and protection from junk short-term plans that do not ensure pre-existing coverage, and from policies that undermine comprehensive coverage.

The federally-facilitated marketplace – which provides coverage for Americans in 38 states – has significantly reduced its efforts in marketing and outreach in recent years, promoted short-term plans that put consumers and major financial risk, and did not launch a COVID-19 special-enrollment period. In contrast to the enrollment seen in California, the federal marketplace saw only a 27 percent increase in enrollment through the end of May at a time when millions of Americans were losing their job-based health insurance.⁷

Our analysis finds that if the federally-facilitated marketplace had experienced the same level of growth as California did during special enrollment, then more than 500,000 Americans would have gained health care coverage instead of going uninsured during the pandemic. What this data makes clear is that not only does the Affordable Care Act provide the tools to protect consumers, but the decision to not use those tools results in many more Americans facing the pandemic without health insurance coverage.

You cannot look at the pandemic, and how marketplaces have responded, without looking more broadly at how a marketplace has served its people over time. Policies matter and the goal of any marketplace should be to promote enrollment and ensure that people have the coverage they need to protect themselves and their families during their time of need, particularly if they are one of the 130 million Americans with a pre-existing condition.

⁷ CMS, June 2020, "Special Trends Report: Enrollment Data and Coverage Options for Consumers During the COVID-19 Public Health Emergency," <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/SEP-Report-June-2020.pdf>

Reversing the Gains Made Under the Affordable Care Act Would Harm Millions of Consumers in California and Throughout the Nation

Reversing the gains made under the Affordable Care Act over the last 10 years would be catastrophic for millions of Californians and Americans who rely on the law for the financial help, and critical consumer protections that have made health coverage accessible for so many. The core pillars of the Affordable Care Act mentioned at the top of my testimony are reforms – Medicaid expansion, financial help through marketplaces, pre-existing condition protections, and others – are deeply embedded in our state and nation’s health care and coverage landscape. To return to a paradigm of an insurance market for only the “healthy and wealthy,” where millions of consumers are unprotected, priced out of coverage or discriminated against would be a reversal of progress we cannot afford to bear.

A critical point that should be made is that core provisions of the Affordable Care Act are woven tightly together, making the law difficult to parcel out. The provisions and protections of the Affordable Care Act work are interconnected to ensure we have a market where comprehensive, meaningful coverage is accessible regardless of health status; federal financial help is available so more can afford the coverage; and health care is brought within reach of those who need it. The law is constructed to keep market robust, healthy, and working for consumers.

We have heard a lot of news about federal proposals to protect pre-existing condition protections, but not address other provisions of the law. However, saying you have a policy that can preserve pre-existing condition protections without addressing the other elements of the law is like saying we will keep a plane in the air by protecting its wings, but ignoring the fact that the plane needs an engine, a rudder to steer, and landing gear. While an airplane needs wings to fly, it also needs other core elements to get its passengers to their destination safely.

To say you can separate out pre-existing condition protections from the other core elements of the ACA such as subsidies and changes in other insurance rules is both an economic and health care fallacy.

Additionally, the committee should be aware that the Affordable Care Act provides approximately \$7 billion to Californians in the form of federal premium subsidies to make coverage more affordable through Covered California. This federally funded financial assistance is an essential element of making coverage real for consumers, and nearly 90 percent of the 1.5 million Californians who buy coverage through Covered California get financial assistance from the Affordable Care Act. In the absence of this federal funding, the public will be left holding the bag as millions return to being at risk of joining the ranks of the uninsured. Those who remain covered would undoubtedly spend more as the number of healthy people purchasing coverage would decline leaving a sicker risk pool and higher premiums. And, California and states throughout the nation would grapple with higher health care costs to make up for uncompensated care, and sicker population as many avoid or delay care when they can’t afford it which could in turn have devastating public health impacts during a pandemic.

Looking Ahead to Building on the Affordable Care Act

While we rightly discuss concerns about the potential outcomes of the *California v. Texas* case, bear in mind that we could also be at a point where building on the Affordable Care Act federally could be back to front and center.

The Affordable Care Act has provided a strong framework that has helped millions of Americans gain access to quality health coverage and care. Yet, there is more work to be done both in California and across the nation, and we have highlighted key areas of importance where federal solutions are needed:

- **State Efforts Are Not a Substitute for National Solutions** – While several states, including California, have instituted their own policies to either build on the Affordable Care Act or restore measures that have been removed by federal action, they are not sustainable over the long-term. Policies such as reinsurance, individual mandate penalties and enhanced subsidies are best instituted on a national basis instead of a patchwork of state efforts.
- **Increased Subsidies for Low- and Middle-Income Consumers are Needed** - California addressed the infamous “subsidy cliff” for middle-income consumers by creating a new state subsidy program and extending those benefits to eligible people who earn up to 600 percent of the federal poverty level. The program has helped hundreds of thousands, including more than 30,000 middle-income Californians pay for their health insurance coverage. However, California’s state subsidies are time-limited, and we are getting to ready to enter year two of the 3-year program. Further, as outlined in our analysis, the share of consumers who left the marketplace to become uninsured is increasing, with nearly one in four (24 percent) reporting they left Covered California to be uninsured – over two times the number who reported that in 2018 (10 percent). This data appears to reinforce prior research that affordability of individual market coverage remains a challenge, a concern especially in the context of a global health pandemic.⁸

The federal government would have a much greater impact by permanently expanding subsidies nationwide, using gold plans as a benchmark and limiting premium costs to no more than 8 percent of income and eliminating the “subsidy cliff,” which can shut consumers out of receiving financial help once they reach the current income eligibility threshold and require them to spend a significant portion of their income on health insurance premiums. Increasing financial help and removing the cliff entirely will increase the number of Americans who have health insurance and move our nation closer to universal coverage.

- **Give Americans with Inadequate Employer Coverage a Path to Meaningful Coverage** – For many, employer-sponsored coverage works and works well, especially for those with coverage negotiated on their behalf by unions. However, many Americans, most of them low-income earners, have employer sponsored coverage that is inadequate. In a recent report by The Commonwealth Fund,

⁸ The Commonwealth Fund, Aug. 2019 – “Who Are the Remaining Uninsured, and Why Do They Lack Coverage? The Commonwealth Fund,” <https://www.commonwealthfund.org/publications/issue-briefs/2019/aug/who-are-remaining-uninsured-and-why-do-they-lack-coverage>

about one-quarter of adults with employer plans are “underinsured.”⁹ The fact that high deductibles and cost-sharing can lead to consumers missing needed care is well documented – the same report noted the high proportions of those with insurance coverage but “underinsured” were likely to either skip recommended tests or not visit a doctor or clinic when they had a medical problem. For those with private insurance, including both those with employer coverage and coverage through the individual market, as of 2020, almost half (46 percent) have deductibles of more than \$1,000.¹⁰

While there are similarities between the affordability challenges faced by many in the individual market and those with employer-sponsored insurance, one major difference is that few with employer-sponsored insurance have support for their premium or cost-sharing that is adjusted for their income.¹¹ The Affordable Care Act ties co-pays and deductibles to your income – you earn less, you pay less for a doctor’s visit – the same is not true for most people with job-based coverage. Consumers whose employer-sponsored insurance does not meet certain standards or value should be allowed to look to the marketplaces for more affordable and better coverage or the nation needs to address other routes so those with thin employer-sponsored coverage do not have coverage in name only.

- **Lower Underlying Health Care Costs** – The United States continues to lead the way, by a significant margin, when it comes to high health care costs. The most recent data shows that the United States spent 16.9 percent of its Gross Domestic Product on health care, which is nearly twice the average of 10 other high-income nations.¹² However, we continue to see the lowest life expectancy and highest chronic disease burden among the 11 nations. Covered California is working to improve health system performance by holding carriers accountable for assuring quality care and promoting delivery system reform.¹³ More effort must be made address the underlying costs of health care, whether it is through making publicly negotiated pricing available to all consumers or through reforms to high prescription drug costs, the current situation is not sustainable over the long-term.
- **Addressing Equity and Disparities** – The pandemic highlighted the fact that a global health crisis impacts communities differently. Despite Covered California’s record enrollment, a critical concern moving forward is to ensure that these coverage gains do not further exacerbate disparities in health outcomes, especially as research shows that people of color are disproportionately affected by COVID-19.¹⁴ Enrollment in Covered California during this special-enrollment

⁹ Commonwealth Fund, August 2020, “U.S. Health Insurance Covered in 2020: A Looming Crisis in Affordability,” <https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial>

¹⁰ Commonwealth Fund, August 2020, “U.S. Health Insurance Covered in 2020: A Looming Crisis in Affordability,” <https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial>

¹¹ Covered California 2018 & 2019 California Health Coverage Survey

¹² Commonwealth Fund, Jan. 30, 2020, “U.S. Health Care from a Global Perspective, 2019: Higher Spending, Worse Outcomes,” <https://www.commonwealthfund.org/publications/issue-briefs/2020/jan/us-health-care-global-perspective-2019>

¹³ Covered California, Dec. 2019, “Covered California Holding Health Plans Accountable for Quality and Delivery System Reform,” https://hbex.coveredca.com/data-research/library/CoveredCA_Holding_Plans_Accountable_Dec2019.pdf

¹⁴ Kaiser Family Foundation, Sept. 16, 2020 – “COVID-19 Racial Disparities in Testing, Infection, Hospitalization, and Death: Analysis of Epic Patient Data,” <https://www.kff.org/report-section/covid-19-racial-disparities-in-testing-infection-hospitalization-and-death-analysis-of-epic-patient-data-issue-brief/>

period shows the distribution among race and ethnicity to be relatively similar to prior open- and special-enrollment periods, spurring the need for more research, as people of color are believed to be overrepresented in industries most impacted by the recession. As we work to improve health equity in California, dealing with long-standing disparities facing communities of color will take a concerted and unified effort.

Conclusion

It is regrettable that at a time of health and economic crisis we are speaking to the potential of reversing progress in our state and nation with respect to the Affordable Care Act, particularly given the evident gains made over the last ten years. The Affordable Care Act remains the most significant piece of health legislation passed since the establishment of Medicare and Medicaid in 1965. While it is not perfect, it has protected Americans with pre-existing conditions and provided quality care to those who have no other coverage options. Looking forward, I am hopeful that we can move the federal policy dialogue away from undercutting this important law, to one that aims to build on the progress made in the past ten years and better meet the needs of consumers. California has championed the Affordable Care Act, and I am confident that we can continue to make a positive difference for consumers in our state and nationally.

I would like to close by stating that it is important for the committee and the public to know that Covered California is strong, stable, and well-positioned to continue its job of enrolling Californians in affordable, quality health coverage. Open enrollment for the 2021 coverage year is around the corner, and we are poised to launch a statewide campaign that will help cut through the noise and reassure consumers that we are here and that now is the time to enroll. We hope to enroll hundreds of thousands of new enrollees and ask for your partnership in that effort. Given the pandemic and economic challenges our state is facing, as well as a federal policy dialogue that can cause confusion and uncertainty among the public, that partnership is more important now than ever.

I would like to thank the committee for inviting me to testify. I am honored to represent Covered California, and as always, I hope my testimony helps inform the health policy dialogue at both state and federal levels. Please do not hesitate to reach out to us if we can provide you with any additional information that can assist you as you consider health care proposals that come before you in the Legislature.