The **Health Consumer Alliance**
1764 San Diego Avenue, Suite 200 • San Diego, CA 92110
Phone 619-471-2637 • Fax 619-471-2782
Statewide Consumer Assistance 888-804-3536

August 1, 2014

Cindy Mann, Director
Center for Medicaid and CHIP Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland, 21244-1850

Sent via e-mail

Re: California's Mitigation Plan to Address Medicaid Application
and Enrollment Processing Delays

Dear Ms. Mann,

We write to you as members of the Health Consumer Alliance (HCA) to express our grave concerns about the California Department of Health Care Services' (DHCS) mitigation plan regarding pending Medi-Cal applications that was sent July 14th in response to CMS' June 27th letter. The Health Consumer Alliance is made up of legal services programs around California that assist primarily low-income residents in accessing health care.

Given our direct experience with Medi-Cal consumers, we believe the state's mitigation plan fails to adequately address the current crisis for thousands of consumers who have yet to see the promise of the Affordable Care Act (ACA). The plan does not adequately provide for proactive communications to consumers as to how they can access care as requested by CMS. The state's plan also fails to acknowledge the additional enrollment and retention barriers that have been created by the new computer system for existing beneficiaries. From a consumer stakeholder's point of view, we outline below our concerns with the state's mitigation plan and offer some concrete actions that the state can immediately take to help consumers. We request CMS take these concerns into consideration prior to approving DHCS' mitigation plan.

Current Crisis

Although the HCA has assisted clients with application and enrollment barriers in the Medi-Cal program for over a decade and a half, the current situation for Medi-Cal applicants and beneficiaries is unprecedented. As demonstrated by the various client stories attached as an appendix to this letter, the application backlog is not a mere inconvenience, but a true barrier to accessing health care services or financial security for vulnerable Californians.

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The backlog is only one of many problems currently plaguing Medi-Cal beneficiaries. As a result of the continued technical problems with the statewide CalHEERS computer system and the county SAWS computer systems, the Medi-Cal system is failing on several levels with, among other things, no or faulty notices going out, current beneficiaries losing their Medi-Cal or given a high share-of-cost due to computer glitches, beneficiaries unable to switch to more beneficial programs, and beneficiaries unable to move to Exchange-based coverage when losing their Medi-Cal due to Medi-Cal coding on their case. Waiting until the computer programs are sorted out to give people basic access to healthcare ignores that our entire Medi-Cal system has been thrown into chaos and more drastic measures are needed to preserve people's rights to access care.

In addition, DHCS refuses to further delay redeterminations for existing beneficiaries this year as CMS has permitted. Instead, DHCS recently created a new, complicated renewal form for existing beneficiaries to complete, that has yet to be translated into threshold languages other than Spanish, but has been already received by over two-thirds of existing beneficiaries. These forms attempt to convert pre-ACA populations to MAGI and thus seek tax household information never before requested in language that is not easy to understand. The forms are also being sent to non-MAGI populations whom DHCS knows are exempt from MAGI income requirements under the federal regulations. Despite the high levels of confusion caused by these forms, DHCS has instructed counties to terminate beneficiaries who do not respond.

Because of the severity of our clients' situations, the HCA sent a letter on July 1st to California Governor Brown and DHCS that provided suggestions for interim solutions the state could implement to help assist harmed consumers. A copy of the letter is attached for your review. Consumers cannot simply continue to hope that a large computer system will be fixed in the near future when they need to be able to access health care services now. We urge you to require DHCS to focus on how to enroll and keep eligible individuals in the Medi-Cal program, regardless of the system being used to determine eligibility.

The HCA has seven key concerns with DHCS' mitigation plan as discussed below.

1. <u>DHCS continues to violate 45-day federal requirement for application processing.</u>

DHCS's mitigation plan fails to address the hundreds of thousands of applications still pending beyond the 45-day application processing limit.[1] DHCS states that it will process 350,000 of the 616,000 pending applications within six weeks. Even if that is true, over 250,000 applications will remain pending. Although the state claims most of the remaining 250,000 applications are within the 45-day window, the state's own chart indicates that there are only 34,000 pending applications submitted in June, leaving over 200,000 pending applications that will certainly be outside of the 45-day limit. Even with DHCS's recent announcement that the total number of pending applications has decreased to 487,000, almost 400,000 of these applications have been pending for more than 45 days, and 58,000 applications of those have been pending since January.[2]

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[1] See 45 CFR § 435.912(c)(3)(ii). State law in California is even more prescriptive with the newly enacted Welfare & Institutions Code § 15926(e) requiring immediate determinations of eligibility wherever possible. Section 15926(f) of the Welfare and Institutions Code has further procedural safeguards to curtail excessive verification and ensure that additional administrative burdens do not slow down or impede the eligibility determination process.

[2] Because we do not have from DHCS a detailed breakdown of this new total that is DHCS similar to the chart provided in the July 14th mitigation plan, we will continue to refer to the data DHCS has provided in the mitigation plan.

DHCS's mitigation plan also refers to a "smaller number of cases that require intensive manual work due to data errors or missing information on the application," but provides no timeline for when these cases will be processed. The 45-day federal requirement does not only apply to applications that are easy to process, but to every non-disability application. DHCS must explain how it will resolve this ongoing violation of timeliness and how it will prioritize processing applications that have been pending for more than 45 days.

We also strongly recommend that CMS require DHCS to provide presumptive eligibility (PE) to all applications that have been pending more than 45 days as part of the mitigation effort. Even if PE only provides the applicant with fee-for-service coverage (rather than managed care) while waiting for a final determination, such coverage will allow these applicants to obtain necessary care, including urgent or emergency care, while they wait without the fear of going into medical debt.

2. DHCS' plan to "proactively inform" pending applicants is insufficient.

To date, many consumers have received absolutely no information about their application. Worse, many consumers have received erroneous or conflicting notices, indicating they are eligible for Medi-Cal but also not eligible for Medi-Cal because, for example, they have "no linkage" to the Medi-Cal program**.** Because there are officially two separate enrollment systems operating concurrently, CalHEERS and SAWS, and the MAGI and non-MAGI eligibility rules exist solely in one system or the other, consumers are receiving eligibility notices from both CalHEERS and SAWS with eligibility decisions based on two different Medi-Cal eligibility rules. DHCS and the counties have been informed about these notices, copies of which are attached, yet no guidance has been issued requiring counties to suppress incorrect eligibility notices from the SAWS systems. Instead, confused consumers who may call the eligibility worker to find out whether or not they are eligible are simply told to "just ignore the other notice."

Additionally, while DHCS states in its plan that 350,000 applications are pending for lack of one or more verifications, DHCS does not indicate how many of these applicants have actually been contacted to collect the missing information. Applicants were told at the time of application that their information would be verified electronically, thus they would have no reason to know that their application cannot be processed until they provide any missing information.

Finally, DHCS's mitigation plan indicates that there are 240,000 applications that have been found eligible in the CalHEERS computer system, but cannot be granted eligibility in the Medi-Cal MEDS system. DHCS' only plan for this group of eligible applicants to be able to access services is to have them wait until their application can be "batch processed." Waiting for the opportunity to batch process this population, yet not providing any notice on the status of their application to these *eligible* consumers is unacceptable.

3. DHCS' notice to consumers and planned distribution is insufficient.

Fortunately, both CMS and the HCA requested in each of our letters that DHCS notify existing applicants regarding the status of their application and how to access care in the meantime. In fact, the HCA provided a model notice, which DHCS has adopted for the most part. DHCS recently posted the notice it plans to send applicants.

Unfortunately, the notice has yet to be sent or translated. We are also concerned that the notice alone, unlike presumptive eligibility, does not fully solve the problem of lack of access to care. Even when consumers are informed that Medi-Cal can cover the cost of services retroactively should they be approved, consumers want a guarantee that those services will be covered. More often, consumers will completely avoid seeking care until they have no choice.

Moreover, DHCS indicates in its mitigation plan that this notice to applicants will not be sent to consumers whose applications are scheduled to be batch processed soon. However, to our knowledge, batch processing of pending applications does not occur as quickly or as accurately as anticipated, nor is it successful at processing the original number expected due to the various problems with the system. Furthermore, we understand that once a group of applications are batch processed, the Medi-Cal eligibility workers must still "touch the case" in order for the applicant to get her Medi-Cal card and be able to access services, thus the timeframe as to when a batch-processed applicant will actually receive a Medi-Cal card is uncertain.

We disagree with DHCS's plan to not send a notice to consumers whose application is in batch processing. These consumers have the same right to be notified on how to access care as other pending applicants. Furthermore, as we stated earlier, we recommend that DHCS provide presumptive eligibility (PE) for applicants, in addition to a notice, since PE can actually help consumers in need of care now.

4. <u>DHCS assigning only one person as a liaison to consumer advocates is insufficient and has also been ineffective.</u>

As part of DHCS' mitigation plan, it offered to provide, and has, a dedicated DHCS contact as a liaison for consumer advocates to work with in order to help mitigate the impact of the backlog on consumers. We have been requesting such a liaison for the past several months and are happy to have such a resource. However, initial attempts to resolve applicants' problems with the assigned liaison suggest that the liaison has no better contacts with local county offices than HCA advocates already have nor does the liaison offer any additional strategy or mechanism to resolve pending applications. It is also unclear whether the liaison has sufficient authority to grant or deny eligibility on any identified application on her own, which seems unlikely based on our experience with the county workers and DHCS. Thus, consumer advocates, and ultimately consumers, are no better off as a result of DHCS's assigned liaison.

In addition, a liaison for consumer advocates, even if effective, ignores thousands of other pending applicants who are in need. A liaison for consumer advocates only helps those consumers who were able to find an advocate, and whose advocate also has access to the liaison and other advocacy strategies to help get their application moved to the head of the line. DHCS's plan does nothing to provide relief to those consumers who do not know how to access such resources. Most importantly, one liaison alone cannot systematically process half a million applications and eliminate the backlog.

5. <u>DHCS' mitigation strategies shift the burden to county eligibility workers by requiring significant additional work on top of their existing significant overload.</u>

Several steps outlined by DHCS will require significant effort by county workers, including the file clearance process after batch processes are implemented; the ongoing daily county operations calls with DHCS to discuss problems; case finalization and file clearance once verifications are in or to link family members' files together; and the de-duplicating of files. To compound matters, not all county eligibility workers have been provided access to the CalHEERS system. Not having access to a basic tool needed to process applications seriously hinders eligibility workers' ability to help reduce the backlog, particularly in the larger California counties.

Although we realize the responsibility for completing many of the tasks needed to reduce the backlog must fall on county workers, the problem cannot simply be solved by increasing workers' existing workload. These workers must at the same time assist existing Medi-Cal beneficiaries to process a change of circumstances and renewals. Given the state's refusal to delay renewals, at the same time

they are expected to work on the backlog, workers must redetermine eligibility for the entire existing Medi-Cal population under the new MAGI rules. County workers are also required to translate the information on the renewal forms by phone for limited-English proficient beneficiaries because the form is not available in their primary language.

Applicants' eligibility should not be held up indefinitely while largely administrative tasks to maintain state and county files and programming fixes are completed. Given that processing the existing applications will undoubtedly require additional work by county workers, we strongly recommend that DHCS put the consumer first in terms of priority and provide presumptive eligibility to all pending applicants.

6. DHCS' plan does not address how applicants who are denied Medi-Cal will seamlessly be transferred to Covered California and be able to immediately enroll in coverage.

DHCS' mitigation plan indicates that about five percent of pending applications (around 30,000 individuals) have already been determined ***ineligible*** for Medi-Cal, but remain in limbo until the negative functionality to deny applications in CalHEERS is implemented. At a minimum, these individuals should be informed that their Medi-Cal denial has been delayed because of computer problems, and that they have a right to appeal the denial or enroll in coverage through Covered California via a special enrollment period (SEP) due to their Medi-Cal denial. Of more concern is the lack of a plan to ensure these consumers denied Medi-Cal will be quickly and easily be able to enroll in Covered California without additional delay or barriers. These additional 30,000 consumers soon to be denied continue to remain uninsured, months after applying through "no wrong door." We are already assisting consumers who are unable to enroll in Covered California when advocates realize that they have been incorrectly referred to Medi-Cal based on their income. Given the lack of retroactive coverage available through the marketplace, DHCS must explain how it will ensure that applicants in the backlog who are found ineligible for Medi-Cal due to income, but have not yet received a formal denial, will be able to seamlessly enroll in Covered California and premium tax credits without any additional delay or burden to the consumers.

7. DHCS' lack of transparency about the data should be addressed.

Despite repeated requests over the past many months, DHCS's mitigation plan was the first time we were provided data about the Medi-Cal pending applications. Any additional information has only been gained through a Public Records Act request. As a result, we just recently received the data that DHCS had reported to CMS the past nine months, but the data shows little beyond the total number of applications. DHCS provided numerous excuses as to why it could not be more transparent with the data or answer our questions about the pending application, such as providing the data would divert IT resources from resolving the backlog. Yet given that DHCS had the data available since it would be impossible for the counties and DHCS staff to develop solutions without having any data or metrics as a basis, such excuses are unacceptable. Without clear and transparent accountability, the public is left in the dark, which threatens public trust for the ACA.

Our recommendations

In a letter we sent to Governor Brown sent earlier this month, we detailed seven concrete actions the state can take to immediately address the application backlog crisis. Those recommendations are outlined below:

- Mediation Action #1. For all applications pending over 45 days, grant presumptive eligibility to Medi-Cal, with a final determination to be conducted when the computer systems are fixed.

- Mediation Action #2: Accelerated eligibility for all children in the backlog regardless of whether the application as submitted through Covered California, by mail, in person or by telephone.

- Mediation Action #3: Allow counties to approve pending applications if income is "reasonably compatible."

- Mediation Action #4: Increase the access of county workers to the state's computer systems in order to make changes to a person's case.

- Mediation Action #5: Communicate directly with all pending applicants about the status of their application, where to go if they need care, and what to do with bills for care received while their application has been pending.

- Mediation Action #6: Immediately stop annual Medi-Cal renewals for existing beneficiaries so that county workers can focus on the working through the pending applications.

- Medication Action #7: Educate Medi-Cal providers on what information to provide patients who need care but haven't received a response on their Medi-Cal applications.

We ask for your serious consideration of these recommendations and urge CMS to exert its influence on the state to implement these actions as soon as possible. It is untenable that seven months into the year there are still nearly half a million applications simply waiting to be processed.

Thank you for your consideration of these recommendations on behalf of all low-income Californians. We request CMS not to accept DHCS' mitigation plan as adequate unless the specific steps are taken as suggested above to protect applicants and existing beneficiaries. We would be willing to meet with you to discuss these recommendations further, should you find that helpful. If you would like to contact us or need any additional information, please contact Jen Flory at Western Center on Law & Poverty at (916)282-5141 or Kim Lewis at National Health Law Program at (310)736-1353.

Sincerely,

The Health Consumer Alliance

Encl: July 1 Backlog Letter to Governor Brown with Client Stories
Sample Notices

Cc: Jennifer Ryan, Director, Intergovernmental and External Affairs Group, CMS
Jessica Kahn, Director, Division of State Systems, CMS