The Health Consumer Alliance

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Governor Jerry Brown
c/o State Capitol, Suite 1173
Sacramento, CA 95814
FAX: (916) 558-3160

Sent via hand delivery and FAX

July 2, 2014

Re: Health Consumer Alliance's Recommendations on Medi-Cal application backlog

Dear Governor Brown,

We write you as members of the Health Consumer Alliance to urge DHCS to take swift, comprehensive steps to correct the Medi-Cal application delays. The HCA is made up of legal services advocates around the state that hold contracts with various state and federal agencies to ensure that low-income Californians can access health care. For over fifteen years, we have worked with the counties to help persons with immediate medical need get coverage and access to care and taken cases to state fair hearings. Now, our clients are too often left without remedy because the system is broken. The backlog is too great and the county workers are too overburdened to effectively resolve our clients' problems. We can no longer reliably fix individual problems at the county level, even when our clients have urgent medical needs, and increasingly stipulated hearing decisions are not acted upon. Even when all parties agree that our clients are eligible for Medi-Cal, the counties are unable to approve or restore benefits because of the pervasive computer problems with the California Healthcare Eligibility, Enrollment and Retention System (CalHEERS). The counties simply don't have the tools they need to resolve these cases. This has been a persistent problem for the last six months, and relief has been woefully insufficient so far.

This failure to ensure access to medical services for and to protect the due process rights of low-income Californians puts numerous low-income eligible people's health and lives at risk and threatens California's leadership in health reform implementation.

We know DHCS and CalHEERS staff are working on solutions, but the results are not happening quickly enough to improve applicants' access to the benefits they are entitled to receive. We

seek swift action on the recommendations below with a response in writing from DHCS. The Department's direct response should address each of our requests with specific plans to make good on the promise of the ACA and comply with the Medicaid statutes requiring eligibility determinations within 45 days of application. Most importantly, benefits must be provided to those found eligible. We seek a response within 10 days to our recommendations and demand that DHCS uphold these legal mandates to those awaiting application processing.

Background

On January 1, 2014, millions of Californians became newly eligible for Medi-Cal. Unfortunately, the computer system (CalHEERS) designed to serve the Medi-Cal population was not ready to enroll applicants into the Medi-Cal system and neither were many of the policies and protocols needed to ensure full, local implementation of the ACA for timely, accurate application processing. Those problems persist to date without meaningful improvement, nearly eight months since open enrollment began in October 2013. As a result, the last confirmed numbers we have for the backlog is that there are over 900,000 people waiting to get Medi-Cal coverage, including people who applied in Fall 2013. We understand this number may be less now, but DHCS has so far refused to share its updated data, including the performance indicator data that is reported to CMS and would include this number. Furthermore, others who were already on Medi-Cal are having difficulties staying on Medi-Cal because CalHEERS is causing erroneous terminations and eligibility results.

Legal requirements of Medi-Cal

The massive backlog places DHCS out of compliance with existing application processing laws. With this letter, we seek assurances that DHCS will comply with specificity, and make good on these legal requirements.

Under federal Medicaid requirements, an application not based on disability must be processed within 45 days of the date of application. 42 CFR § 435.912(c)(3)(ii).

In addition, California's single point of entry requires children under 19 be provided accelerated enrollment (AE) into the Medi-Cal system. Section 1920a of the Social Security Act; Cal. Welf. & Inst. Code § 14011.6. Currently CalHEERS is that single point of entry.

Recommendations:

Based on legal obligations of the state and HCA's statewide work assisting Medi-Cal applicants, we recommend DHCS take the following steps to resolve this crisis:

1. **Grant Presumptive Eligibility for Applications Pending Longer than 45 Days.**
   Grant presumptive eligibility to all persons who have been waiting to get Medi-Cal for more than 45 days. Federal law requires eligibility determinations within 45 days. Those that have been waiting longer should be sent a Medi-Cal card, as DHCS did in December, along with a notice on how to use the Medi-Cal card to access services. The presumptive eligibility should date back to the first of the month of application so that applicants and providers may submit claims to Medi-Cal for services rendered during the application pendency and should continue until a complete eligibility determination is made. This

should be done in a batch process automatically when applications reach 45 days, and continue on a rolling basis until systems, policies and local implementation efforts are in full compliance with timely, accurate application processing requirements.

2. **Provide Accelerated Eligibility to all children regardless of the application channel by which the application was submitted.**
   It is unclear how many children are in the backlog of pending applications and could be approved for AE and have immediate access to health care. We have been told that the state's position is to limit AE to only those applications submitted via CoveredCA.com rather than including other application channels as well. There is no reason the state cannot provide AE to all eligible children, especially in light of the ACA's no wrong door approach. See Cal. Welf. & Inst. Code § 15926. (an individual shall have the option to apply for insurance affordability programs in person, by mail, online, by telephone, or by other commonly available electronic means).

3. **Instruct counties to approve pending applications if income is "reasonably compatible."**
   Federal law allows for a reasonable opportunity after enrollment to verify some information, such as immigration status, which is largely electronically verifiable, and self-verification of other information, such as residency, where there would be little incentive to lie. Even for harder information to verify, such as income, verification only needs to be "reasonably compatible." In other words, if someone can show that they are earning less than the Medi-Cal limit for free care, their benefits should be approved.

   Federal law only requires electronic verification where such information is electronically available. See 42 CFR 435.948(b) and 42 CFR 435.949(b). Furthermore, state law clearly allows self-attestation for household income and should now be used as a primary method to verify income until the backlog is eliminated. Cal. Welf. & Inst. Code § 15926(f)(2). We know from conversations with county leadership that there is inconsistency in how counties understand these requirements, and the lack of state guidance is correctable. These policies need to be clearly communicated to county workers in a written guidance that all can access.

4. **Increase IT access for county workers.**
   County workers and leadership report to advocates that a very small number of workers are authorized to make changes to a person's case on either the Medi-Cal Eligibility Determination System (MEDS) or CalHEERS. For example, only 32 out of 8000 workers in Los Angeles county are authorized as MEDS liaisons, soon to increase to 64, which is still less than 1% of the workforce. Similarly, less than 200 out of 8000 workers in Los Angeles have direct CalHEERS access. This means that even when a worker knows that one of the systems is incorrect, the worker cannot change it to give the applicant access to Medi-Cal.

These bottlenecks are unacceptable but easily fixable by swiftly granting more access slots and freeing up counties to correct CalHEERS errors and MEDS updates directly.

5. **Acknowledge and communicate directly with all pending applicants.**
Many applicants have not heard from Medi-Cal since they applied. They have no knowledge of the status of their application, whether it was even received, or what to do in the meantime if they need care or have incurred a medical expense. We hear increasing frustration, anger, and mistrust of the system in our communities that is aimed at clinics, counties, providers, and many other groups without power to fix these mistakes. All pending Medi-Cal applicants should be sent a notice by DHCS, in their preferred language, with the following key points:
    - Confirmation their application has been received and is still being reviewed.
    - Where to go if they need care (e.g. the emergency room if it's an emergency, to a Medi-Cal provider if it is not).
    - Instructions not to apply again, and how to bring an urgent medical need to the attention of the county to determine the status of eligibility.
    - What to do if they already have bills for care received.

    We are including with this letter drafted language that such a generalized notice should contain.

6. **Immediately stop Medi-Cal renewals for existing beneficiaries.**
From both a workload perspective and a systems perspective, the decision to proceed with renewal does not make sense and is increasing the application processing delay and resulting harms. Your Administration could delay these renewals for a year while sorting out the implementation problems, but has chosen not to do so despite the hundreds of thousands of people waiting to access care and the problems that may be caused by the renewals themselves.

    Do not send renewal packets to beneficiaries who are scheduled for redetermination and have not been mailed the form. Inform workers to maintain eligibility for all existing pre-ACA beneficiaries unless there is ex parte information they are clearly not eligible (e.g., died, moved out of state).

    Do not terminate any beneficiary for failure to return or provide info on the renewal form this year. Beneficiaries are already required to report changes that might affect their eligibility and many have already lost eligibility when trying to add or remove someone from their household. Any further unnecessary tinkering will only cause more harm.

7. **Provide more education to Medi-Cal providers.**
   Educate all participating Medi-Cal providers on what information they should provide a patient who needs care, but hasn't received a response to her Medi-Cal application. These patients should not be turned away from care. The Department must immediately issue a provider bulletin that describes the new presumptive eligibility and hospital presumptive eligibility, tells providers how to find which hospitals participate in hospital presumptive eligibility, reminds providers of the retroactive billing rules, and tells providers who they may contact when someone has medical needs who appears to be Medi-Cal eligible. A quick fact sheet should be distributed to health plans, IPAs, and other providers to give the basic FAQs to provider staff as well as patients.

We expect a written response to this letter within 10 days from the Department of Health Care Services that includes 1) a response to each of the requests outlined above, and 2) a detailed outline of the steps that DHCS intends to take to solve the backlog problem that includes updated numbers of affected individuals and estimated dates for completion. Should you have questions or need more information to respond, please contact Jen Flory at 916-282-5141.

We will continue to work with the Department and the Administration to fulfill the promise of health reform in California and continue California's leadership in the country. We cannot, however, ignore the effect this backlog is having on our clients.

Sincerely,

The Health Consumer Alliance

cc: Michael Cohen, Director, Department of Finance
Diana Dooley, Secretary, Health & Human Services Agency
Toby Douglas, Director, Department of Health Care Services
Centers for Medicare & Medicaid Services

Case Stories:
HCA assists thousands of individuals state-wide and has a long history of working with their Medi-Cal county agency to resolve individuals' enrollment and access to services problems. However, the case stories below demonstrate the added challenges applicants as well as the advocates who assist them are currently experiencing, many of which can be avoided with clearer guidance and instructions from DHCS to workers or hearing specialists as well as interim communication with applicants who are currently in limbo.

1. **Delay in processing of Medi-Cal forces young woman with gall bladder problems to seek care from emergency room on multiple occasions.**

A young Spanish-speaking working mother in San Mateo County applied for Medi-Cal in January 2014. She needed urgent surgery to remove her gallbladder, however she could not schedule the surgery because she was uninsured and had not been approved for Medi-Cal. The client had no other recourse than to seek care in the emergency room when the pain from the gallstones became unbearable and had thus accumulated numerous ER bills by the time she came to Legal Aid in late May. The Legal Aid attorney promptly submitted a hearing request to the County for failure to timely process her Medi-Cal application. The following day, she called her Legal Aid attorney because she was in pain and was very worried about whether she should go to the emergency room again. The attorney told her to go and immediately submitted a request for an expedited hearing due to immediate medical need. The attorney also contacted county supervisors asking for expedited processing of the case.

After 10 more days passed, with no expedited hearing scheduled and no response, the Legal Aid attorney brought the issue to the attention of the Western Center on Law and Poverty, who escalated the case with the Department of Health Care Services. San Mateo County then pulled the client's application and discovered that it had, in fact, been approved in the County's system but was not showing up in the statewide Medi-Cal system. Due to ongoing problems with CalHEERS, the county had to perform a workaround to fully process her application, resulting in an eligibility decision within one day. The client was very relieved and thankful that she could now schedule her surgery using her Medi-Cal coverage, and could go back to work in good health.

2. **Parents are unable to get Medi-Cal until renewing their children's case and then get stuck with medical bills due to wrong application date.**

One Kern county client applied back in January. The county has been unable to get a decision from CalHEERS on the case although they know the client is eligible. The county won't do a workaround because there are no immediate medical needs and do not want to cause further system problems. The client's husband has diabetes and has been paying out of pocket for medication but is keeping receipts. The client turned in the renewal forms on a separate Medi-Cal case for her children, who were up for renewal in June. When the worker processed the renewal in CalHEERS, it granted all family members, including my client and her husband Medi-Cal, giving them an effective date of June 1. The worker called the Kern Health Consumer Center to inform us that the county would be denying the original application now that the family is on Medi-Cal once the CalHEERS system is able to make negative actions such as denials. This leaves the client with unpaid bills and forces a hearing on an issue that should

have been resolved months ago.

3. **Family still dealing with hospital bills due to delay in Medi-Cal decision.**

An Alameda county resident applied for health insurance in Alameda County through Covered CA for himself and his wife and his child in February 2014. They were later transferred to Alameda county Medi-Cal office but had heard nothing further from Medi-Cal. Client's wife was hospitalized in March 2014 and incurred bills. Client came to Bay Area Legal Aid in May for help in the processing of their application. While Bay Area Legal Aid was trying to resolve the matter, his son was admitted into the ER for appendicitis, causing the family to incur medical bills. Bay Area Legal Aid was able to get Alameda county to expedite their application, but this unnecessary delay caused the family undue stress, and highlights the inefficiencies and high cost of providing care to the uninsured, as the providers already spent time in billing the family and moving towards sending the account to collections but now must bill Medi-Cal instead.

4. **Applicant unable to get an expedited decision from county despite note from provider describing her pain and the urgency of receiving treatment.**

An enrollment counselor helped a Kings County couple apply for health insurance through Covered California in early March 2014. Covered California referred the couple to Medi-Cal. The wife was receiving treatment for abdominal pain at the Avenal Clinic. She was referred to a specialist in late May, who refused to see her because her Medi-Cal was still pending. The specialist wrote a note, "Patient is having pain in her left pelvic area – scan shows a large ovarian cyst. Needs further evaluation and treatment ASAP." The wife personally delivered a copy of this note to the Medi-Cal office that same day. She was told her application was pending. She was not able to get onto Medi-Cal until she found help at Central California Legal Services and an advocate was able to work through the complex income rules involved in this case.

5. **Applicant waiting for Medi-Cal for waiting for over 6 months and needs care for a possible tumor.**

A 28 year-old Los Angeles County resident applied for health coverage on her own via CoveredCA.com. She was told her application would be forwarded to her county for Medi-Cal application processing. Her only income is $850 per month. While waiting for a decision, she found a lump in her chin. She paid out of pocket for an ultrasound, which unfortunately indicated abnormal results. Her doctor recommended that she get an MRI as soon as possible, but she cannot afford it as is extremely scared. Neighborhood Legal Services of L.A. County filed an urgent case complaint with L.A. County and is awaiting action.

6. **Delay in processing Medi-Cal application results in medical bills for mother of young child.**

A young mother applied for Medi-Cal for herself and her daughter in February 2014. She requested coverage retroactive to January because her infant daughter had a bill for over $2,000 in emergency care received in January. The client requested a hearing after her application had been pending more than 45 days. Because San Mateo County could not get any response from CalHEERS to verify her income and identity, the client had to provide new income and identity verifications to the County. The county thereafter agreed to a Conditional

Withdrawal, promising to process the application manually. At the present time, it is still in process and neither the client nor her daughter has Medi-Cal coverage.

7. Applicant waits 5 months to get Medi-Cal despite severe infection; parents still have no coverage.

In January, a part-time college student in Monterey County completed an online application for his parents and himself, through Covered California. He lives at home with his parents, who declare him as a tax dependent. No one in the family had health insurance. They were notified their case was being referred to Medi-Cal. After a few months, Medi-Cal sent a packet which his mom completed, and mailed in with the documents requested. In early May, his mother went in person to the Salinas Medi-Cal office to inform them her son was in need of medical attention. His sister, a nurse in the Bay Area, expressed serious concerns about his toenail, which was mangled, exposing the flesh below. The toe had been badly infected for over a month, and was bleeding and excreting pus. The nurse worried the infection could move into the blood stream. The Medi-Cal office advised her the family's application was pending.

When CCLS was contacted in mid-May, a Monterey County Medi-Cal supervisor located the file and promised their eligibility worker would return the call. She advised the system was backed up due to system problems with the CalHEERS interface. CCLS had to reach out again three days later to again describe the urgency of the situation. This son was finally granted a temporary Medi-Cal card through a computer workaround, but not without repeated follow up by legal advocates. The parents are still without Medi-Cal six months after initial application.

8. Applicant with diabetes runs out of medications while awaiting Medi-Cal processing.

A refugee client with diabetes and high medical needs applied for Medi-Cal in Alameda County for his family and himself in early January 2014. The application was not timely processed within the 45 day limit and the client consequently was at imminent risk of hospitalization when he ran out of all of his medications. Bay Area Legal Aid's requested a hearing and an expedited administrative decision on the client's behalf. The Administrative Law Judge issued a decision ten days later directing the county to process his Medi-Cal application. The client's Medi-Cal was processed and he and his family now have full scope benefits. Although Bay Area Legal Aid's advocacy resulted in an expedited resolution, the significant delay in processing the client's application could have been avoided had the County complied with its legal obligations at the outset and had fewer system errors within Cal HEERS, and wasted the resources of the Alameda County Appeals Division and Legal Aid to be available to resolve more complex cases.

9. Applicant receives a Medi-Cal card, but benefits not activated causing delaying in care.

A 57-year-old, Spanish-speaking, Los Angeles man applied for health coverage at a Medi-Cal office six months ago. He receives food stamps and $160 per month in general relief cash aid. He received a Medi-Cal card in the mail, but when he went to the dentist with extreme dental pain, he was told that his benefits were never activated. Through an urgent case complaint to the Chief of Los Angeles County social services, NLSLA was able to get his Medi-Cal benefits turned on.

10. Applicant with need for intensive services denied Medi-Cal without adequate opportunity to provide verifications.

The daughter of a senior with both physical and mental impairments applied for Medi-Cal for her mother in April 2014, while her mother was in the hospital in a coma. After the senior left the hospital, she was unable to walk without assistance and needed intensive personal care services. Her daughter followed up with San Mateo County on the application, however she did not receive any information until early June 2014, when she received a "Final Notice" asking her to submit income and asset verifications. She had not received any letters prior to the "Final Notice" and thus the final notice was also the only notice. She submitted the requested verifications less than a week after receiving the final notice letter, at which time she was told that her Medi-Cal application had already been denied. Legal Aid Society of San Mateo County requested a fair hearing, which is pending.

11. Delay in processing leads to outstanding medical bills.

Sacramento county resident applied for Medi-Cal in late December 2013. As of today, he has not received anything yet from Medi-Cal and is still uninsured. This client had an ER visit in January 2014. He is now being billed by the hospital even though he has informed them that he has a Medi-Cal application pending.

12. Applicant loses Medi-Cal due to processing delays.

A 24-year-old Contra Costa county resident applied for Medi-Cal in December 2013 and received a "Welcome to Medi-Cal" letter and card. However in March 2014, she was notified over the phone that her Medi-Cal would not be active as of 3/31/2014. She is eligible for expanded Medi-Cal and we are unclear as to why her health insurance was cancelled. She is currently uninsured but requires medical attention. She was recently admitted to the E.R. several times in the past month and told to meet with a specialist for her condition. She has been trying to schedule a CT scan but was told she could not make an appointment without health insurance. The county social services agency kept telling Bay Area Legal Aid that they were unable to continue processing her case because they were waiting for the State to verify her information. Bay Area Legal Aid requested a state fair hearing and through negotiations with the County Appeals Officer was finally able to fully process her Medi-Cal application and get approved for coverage. Waiting for verification from the state put the client's health in jeopardy because she needed ongoing medical attention, which could have been avoided since she had $0 income and was therefore presumptively eligible.

13. Applicant waits 5 months for coverage.

A Sacramento county resident with Covered CA coverage lost his job in February 2014 and filed a change in income online to get on Medi-Cal. Client did not hear anything from Medi-Cal until he called the county last week. He now has coverage.

14. Person with urgent medical needs cannot get coverage due to "lost" application.

A Solano county resident applied for Medi-Cal via Covered CA in April 2014. Client has urgent medical needs. Both the county and Covered CA state the other party is currently in possession of the application.

15. Applicant waits 5 months for Medi-Cal while medical problems go untreated.

An Orange County resident applied for Medi-Cal online in January, 2014; however, she did not receive any information regarding her case for months. Five months later, in May, Client contacted the Health Consumer Action Center because she didn't know the status of her Medi-Cal application and her health conditions had worsened. Prior to January, she had a minor hand blister which then continued to grow and she feared that it might be a tumor. In addition, Client developed sharp abdominal pains. Client feared further complications would arise. She finally got approved after receiving assistance from HCAC in how to expedite her application directly with Orange County Social Services.

16. Applicant has been waiting 8 months to get health coverage.

An Alameda county resident applied online for health insurance through the Covered California in Nov 2013 and did not receive a reply until Feb 2014 informing her she was not eligible for a Covered California plan because she was potentially eligible for Medi-Cal. The client is still waiting for her Medi-Cal application to be processed and was told by Alameda County that there was nothing they can do to expedite the process. Bay Area Legal Aid requested a state fair hearing, which is pending.

17. Delay in benefits causes visit to emergency room and medical bill.

A Los Angeles County family applied for benefits via CoveredCA.com and were told that they qualified for Medi-Cal. They still have not heard anything about their application. The mother needed medical treatment and went to an emergency room. As a result, she now has a large medical bill and has no access to follow up care.

****IMPORTANT INFORMATION ABOUT YOUR APPLICATION FOR HEALTH INSURANCE****

[TAG LINE FOR OTHER LANGUAGES]

Date:
Department of Health Care Services

Dear Applicant:

Thank you for recently applying for affordable health insurance in California. We know you or your family members are still waiting to find out what health insurance you can get this year.

What happened to my health insurance application?

We are sorry that you have not yet heard back from us regarding your application. You should have received an answer regarding your health coverage within 45 days from the date you applied by law. Unfortunately, due to computer problems, we have not been able to finish processing many applications, including yours. But we want to let you know that we have your application and will make a decision about your and your family's health coverage based on the information you gave us in the application. **You do not need to apply again.**

Do you need more information from me about my application?

If we need more information from you, we will send you a written letter asking for the specific information we need to be able to finish evaluating your application. If you receive a request letter from us, please reply to the contact person on that letter with the information we need. If we do not receive the additional information we are asking for by the due date in the letter, we will have to deny your application. Don't worry if you are not asked for more information; your application will be reviewed and we will send you an answer as soon as we can.

When will I get an answer about my application?

We hope to make a decision about your application soon, but we cannot give you a certain date. After we finish reviewing your application and decide which health care coverage is most affordable for you or your family, you should receive a written letter with an answer from us. That letter will also give you information about how to start your coverage or how to appeal if you do not agree with the decision.

What if I need health care while I am waiting?

If you need medical treatment right now, you should go to a doctor, health clinic, or hospital. Make sure to keep any receipts for any treatment you have to pay which can help you get a refund later from your new insurance plan. If you can go to a doctor or clinic that accepts Medi-Cal as insurance, that can help you get a refund later. If you need urgent medical care but can't get it without insurance, call the county Medi-Cal office at XXX-XXX-XXXX and ask them to review your application more quickly because of your urgent medical need.

What if I have medical bills for health care that I got while I have been waiting?

You may have medical bills for services you had to get while you have been waiting for an answer from us. If you are approved for health insurance, your coverage may go back to the month you applied and you can then ask your doctor to bill your insurance. You may also be able to get a refund if you paid for health care services. Medi-Cal also can help pay for most medical services you got three months before the month you applied, if you are approved for Medi-Cal. For more information, go to www.healthconsumer.org

If you currently have medical bills, you can:

1) Call the number on the bill and tell them you are waiting to hear about your health insurance application. Ask them not to send your bill to the collection agency. You can also send them a copy of this letter.
2) After your application is approved, you will get an insurance card in the mail. You should give your insurance information to the contact person on the bill. You may need to send them a copy of your insurance card.
3) You should also contact the insurance plan to let them know you have medical bills and the date(s) you got the medical care (not the date of the bill).

Will I have to pay a tax penalty for not having insurance while I am waiting?

Under the new health care law, most people must have health insurance this year or will have to pay a tax penalty in April 2015. You will not have to pay the tax penalty for the past months that you did not have insurance because you applied before May 2014 and are still waiting to get an answer from us. You may also be able to avoid paying the tax penalty if you have other reasons that you could not get insurance this year. If you have any questions, you can contact the Health Consumer Alliance at XXX-XXX-XXXX.

Where can I get more information about my application?

If you applied online, go to www.coveredca.com and sign into your account or call XXX-XXX-XXXX. If you applied with an application assistor or a local Medi-Cal office, you should call your county office at: XXX-XXX-XXXX. If you have any other questions or need information, please contact XXX-XXX-XXXX.