Consumers Union
POLICY & ACTION FROM CONSUMER REPORTS

Covered California has emphasized consumer choice as a fundamental principle at the heart of the Affordable Care Act (ACA). The federal law clearly provides consumers the autonomy to decide for themselves which products are in their best interests, guided by simple and clear information provided by Exchanges. For example, the ACA ensures as a matter of consumer choice the ability to select a Qualified Health Plan (QHP) and tier level; the decision whether to opt in or out of insurance affordability programs; the option to take premium tax credits in advance or defer taking them until tax filing, and the ability for family members to choose individual policies or a family policy.

It is our understanding that Covered California is contemplating requiring anyone in a family who is enrolling in the Exchange to be on the same family policy. Family policies are likely to be the right choice for most family members enrolling in Covered California because of the cost-sharing and the ease of making one premium payment. Some family members, for reasons of care continuity or otherwise, may prefer to purchase an individual policy distinct from one that other family members have purchased. The ACA is clear that this is a required option.

ACA Does Not Permit Exchanges to Limit Consumer Choice

Under the ACA, every individual has the freedom to enroll in a QHP of his or her choosing; the law states that "a qualified individual may enroll in any qualified health plan available to such individual and for which such individual is eligible."[1] Issuers must accept any individual that applies for coverage, regardless of whether that individual is married or not.[2] Issuers may not decline to offer coverage to any individual based on her or his family status.[3] Furthermore, in the specific section on "empowering consumer choice," the statute articulates that a qualified individual may enroll in any QHP.[4]

The ACA also requires individual choice regarding enrollment in insurance affordability programs. Individuals can opt to have an Exchange conduct an eligibility determination for insurance affordability programs, and to accept or decline an eligibility determination for such programs.[5]

[1] 42 U.S.C.§18032(a)(1).
[2] See statutory provision on guaranteed issue, 42 U.S.C. § 300gg-1.excepting those individuals ineligible because of immigration or incarceration status.
[3] See statutory provision on guaranteed availability, 42 U.S.C. § 300gg-41.
[4] 42 U.S.C.§18032(d)(3)(C). The exception is the limitation on purchasing catastrophic plans.
[5] 45 C.F.R. § 155.310 (b). However, if an individual chooses to request an eligibility determination for affordability programs, he or she may not do so for fewer than all of them.

For the tax credit affordability program specifically, Exchanges must allow consumers the option to take all, part, or none of the premium tax credit.[6] It is the enrollee's choice regarding what portion of the premium tax credit s/he would like to take in advance; individuals may choose to defer taking the tax credit until tax return filing.

The ACA consistently defines enrollment as it relates to individuals.[7] In establishing premium payment rates, even though family size is considered, QHPs are required to apportion the premium "per individual."[8] States with community rating that operate with a family tiering policy must have a method in place for determining "per-person" premium rates.[9]

The federal regulations specifically account for the possibility that household members will be enrolled in multiple QHPs.[10] In the Preamble to the Benefit and Payment Parameter rules, regarding calculation of premium tax credits, CMS stresses that Exchanges must give families the ability to weigh the costs and benefits of enrolling in individual or family policies:

> HHS will encourage Exchanges to provide appropriate guidance to consumers on the relative costs and benefits of enrolling in one family policy versus multiple individual policies so that families can best take advantage of cost-sharing reductions.[11]

The Preamble further identifies an example of a family made up of one child and two parents who enroll in two different QHPs, one for the child and one parent and a second for the other parent.[12] The example recognizes the importance of QHP choice and the rules ensure that many choices are possible.[13] No federal statute or regulation provides the Exchange authority to take away the ability for consumers to evaluate the pros and cons of enrolling in a family policy or individual policies.

[6] 45 C.F.R. § 155.310 (d)(2)(i).
[7] 42 U.S.C. § 18031(d)(2)(A).
[8] 45 C.F.R. § 147.102 (c)(1).
[9] 45 C.F.R. § 147.102 (c)(2).
[10] 45 C.F.R. § 155.340 (e).
[11] 78 F.R. 47. page 15475
[12] Exchange Responsibilities With Respect to Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions, 78 F.R. 47, page 15476 (March 11, 2013).
[13] CMS references stakeholder comments that consumers should not be dissuaded from appropriate coverage or encouraged to select one family policy when it may not be in the best interest of the family. CMS responded by recognizing the importance of a transparent shopping experience, stating that it therefore will allow Exchanges flexibility in making the allocation of the tax credit visible throughout the selection process. Notice of Benefit and Payment Parameters for 2014, 78 FR 47, page 15476 (March 11, 2013).

It is notable that CCIIO has indicated that the Federally Facilitated Exchange (FFE) will allow members of the same household to purchase individual or family policies. Other state-based Exchanges, as well, will permit consumers to choose between individual policies and a family policy.[14]

Advantages of ACA Family Policies

Purchasing family policies from Covered California will be a preferable option for most households, rather than purchasing separate individual policies, for several financial and convenience reasons:

- *Family policies reduce consumer cost-sharing due to a cap of twice that of an individual policy*.[15] For 2014, that means that the out-of-pocket maximum would be $12,700 in a family policy, contrasted to $6,350 for each individual policy. Three family members in 3 individual policies would thus have a total out-of-pocket maximum of three times $6,350, or $19,050.

- *Family policies can reduce premiums for large families.* For families with four or more children, under a family policy Exchanges can only include the parents and the three eldest children in calculating the premium for family coverage.[16] The remaining children will be covered under the family policy at no additional premium charge. If that same family were to purchase individual policies for each member, premiums would be charged for every single child, not just the three eldest children.

- *Family policies will require only one premium payment for the entire family.* Families wishing to ease the burden of writing multiple checks, paying different issuers, or being charged multiple fees for money orders or pre-paid card transactions, will be able to make one single premium payment to one issuer for the entire family.

- *Family policies allow access to the same network.* Families under one single policy will share the same physician network and have access to the same hospitals.

[14] It is our understanding that state-based Exchanges in Colorado, Maryland, Massachusetts, Nevada, Oregon, and Vermont, provide consumer choice of individual or family policies.
[15] 45 C.F.R. § 156.130 (b)(2)(ii).
[16] 45 C.F.R. § 147.102 (c)(1).

Family Policies May Not Always Address the Needs of Individual Family Members

Family policies require that all individuals in a family enroll in the same QHP, which means all members must choose the same metal tier, with the same provider network. For some families, this may result in significant barriers to care, including in continuity of providers.

For example, a younger family member's pediatrician may not be in the same provider network as her mother's primary care physician. In order to enroll in a family policy, one of the family members will have to discontinue her longstanding relationship with her provider. The family needs the full choice provided by the ACA to ensure that the mother has the option to enroll her child in a different plan so she can remain with her pediatrician. This continuity of care will take on special significance for those with chronic conditions who thus have complex medical histories over a long period of time.

For families with only two adults, each adult will be required to enroll in the same QHP with the same provider network, restricting their choice of caregivers, a policy that will not apply to couples who are not married.

The ACA Requires Covered California to Offer Consumers the Choice of Individual Policies or a Family Policy

We do not find legal authority in the ACA to limit choice of QHPs based on family status. While we understand the confusion that having too much choice can generate, Covered California does not have the authority to require all family members to purchase only family coverage. While many families will want to buy a family policy, as it is in their best interest for the cost-saving reasons cited above, some families may not benefit from purchasing a family policy based on their individual circumstances. [17]

Family status should not prohibit an individual from being able to select the right QHP for his or her health needs. For the reasons cited above, and as required by the ACA, Covered California must permit family members to choose individual policies if the families deem such products in their best interest.

[17] Exchanges will want to include pop-up boxes, flags, or other clear notices on the website when families are at the point of choosing coverage, to alert consumers that while choice is open, they may get a better financial benefit from choosing a family plan for all family members. In addition, a tool should be provided on-line to enable families to compare and contrast the financial and other implications of purchasing a family policy versus one or more family members purchasing individual policies.