



Federal Consumer Operated and Oriented Plans (CO-OP): What It Could Mean for Minnesota

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Business and Health Law Sections
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Consumer Operated and Oriented Plans

- Created by Affordable Care Act that was signed into law by President Obama
- Section 1322- Consumer Operated and Oriented Plans (CO-OP)
 - Intended to create insurance competition through new nonprofit “CO-OP” health insurers
 - New CO-OPs would be state licensed
 - Insurers would be eligible to be listed on state exchanges
 - Unique 501(c)(29) tax exemption
 - \$6 billion in grants and loans to be provided by the U.S. Department of Health and Human Services (HHS)
 - President Obama proposes reducing the amount to \$3.8 billion as part of budget reduction agreement
 - Statute required U.S. Comptroller General to appoint 15 member CO-OP Advisory Board to HHS

CO-OP Opportunities for Minnesota

- Congress intended for at least one CO-OP in each state to be funded
- If assuming \$3.5 Billion available, then Minnesota might be eligible for \$70 million in grants and loans
- Twin Cities health care market is quite competitive with three leading insurers
 - HealthPartners is a Minnesota nonprofit insurer operating under cooperative principles
- Therefore, the CO-OP opportunity appears to be larger in Greater Minnesota
 - Congress intended beneficiaries to be individuals and small employer groups
 - Minnesota is seen by HHS as an experienced cooperative business state and health care innovator

Federal CO-OP Advisory Board

- Role
 - To advise HHS Secretary Kathleen Sebelius on general grant and loan criteria
 - Original thought: would be asked to ratify HHS recommendations given short timeframe
 - Actuality:
 - Advisory Board was asked by HHS to accomplish the following on an accelerated timeline:
 - Create application criteria
 - Determine specific grant and loan review criteria
 - Define ambiguous statutory terms and phrases

Federal CO-OP Board

- Board took significant public testimony from existing health care cooperatives:
 - Cooperative governance testimony
 - HealthPartners Executive V.P. Andrea Walsh
 - CEO Pete Farrow of Group Health Cooperative of Eau Claire, WI
 - Public Policy Director Diana Birkett Rakow of Group Health Cooperative of Puget Sound
 - National Cooperative Business Association CEO Paul Hazen and V.P. Adam Schwartz
 - State insurance regulators
 - Current insurers (i.e. competitors) and their lobbyists
 - Potential cooperators
 - Community health plans
 - Accountable care organizations
 - Attorneys creating new cooperatives and cooperative trade associations

Federal CO-OP Board

- Board divided into four working groups
 - Governance
 - Finance
 - Infrastructure
 - Criteria, Process and Compliance
- Governance proved to be the primary area of discussion because the ACA requires CO-OPs to be consumer governed

Statutory Governance Requirements

- ACA's governance requirements:
 - “The governance of the organization is subject to a majority vote of its members”
 - “Its governing documents incorporate ethics and conflict of interest standards protecting against insurance industry involvement and interference”
 - “The organization is required to operate with a strong consumer focus, including timeliness, responsiveness, and accountability to its members”
 - Profits must inure to the benefit of the members

Federal CO-OP Board Governance Recommendations

- Key Governance Recommendations:
 - What ensures these “CO-OPs” are consumer governed?
 - Advisory Board recommendations:
 - Member is defined as the individual insured life
 - “Substantial board majority” must be elected from members purchasing the insurance
 - Can have practitioner or small group board representatives
 - Board should have nominations committee seeking directors with varied talents
 - More than one candidate should be nominated for each board seat
 - All board directors must be elected by the full membership
 - Applicant must provide corporate organizational documents up front
 - Must provide evidence of consumer governance and benefit
 - Recommendations to be adopted by full board on April 15

Federal CO-OP Board

Governance Recommendations

- Key Governance recommendations:
 - Upstream relationships
 - Parent, if any, must be a nonprofit
 - For-profit parents are not allowed by statute
 - Parent cannot be a state licensed insurer prior to July 16, 2009
 - Process is created for dissolving of existing state licensed insurer to create a new nonprofit insurer
 - Can be staff carryover
 - Board members of prior company cannot serve on board of the new CO-OP
 - Government entities may not form the CO-OP

Federal CO-OP Board Governance Recommendations

- Horizontal relationships
 - Beneficial to extent relationship brings needed expertise or services
 - Board wants to encourage “helpful” relationships by providing flexibility
 - But relationships must be consistent with the purposes of the ACA
 - What joint ventures and partnerships are allowed?
 - Current insurers are generally not allowed to participate by law with certain exceptions - must meet statutory purpose
 - Current insurer is defined as those licensed to provide health insurance on July 16, 2009 by the states
 - Where joint venture, must provide proof “profit” insures to benefit of the co-op
 - Not intended to allow impermissible insurer interest since board is concerned about abuse of federal funds
 - May enter into formal relationships with provider-based entities owned by or affiliated with a state university or government entity
 - » State or local officials may not serve on the board
 - Primary focus of joint venture must be on individuals and small groups

Federal CO-OP Board Governance Recommendations

- Downstream relationships (subsidiaries)
 - More flexibility here
 - Could be nonprofit or for-profit
 - However, CO-OP must be the controlling entity
 - Benefits must accrue to the benefit of the CO-OP and its members

Federal CO-OP Board Governance Recommendations

- What restrictions on conversion to for-profit?
 - No conversion allowed until loan paid off and ten years
 - Must be approved by HHS Secretary and state regulatory authorities
 - Must demonstrate consumer benefit
 - Must give up tax benefit
 - Violations will lead to significant monetary penalties
 - Final recommendations will be considered by Board on April 15

Federal CO-OP Finance Recommendations

- Loans provided in two phases
 - Start-up planning
 - Start-up development
- Must submit proof of nonprofit creation
- Must submit a detailed business plan
 - Describe anticipated capital needs over time
 - Identify milestones
- Must meet applicable state insurance requirements

Federal CO-OP Finance Recommendations

- Must meet state solvency requirements
 - No waivers from state insurance regulations
 - Best to involve state regulators as soon as possible
- “Substantially all” insurance offerings must be focused on individual and small group markets
 - May be some initial flexibility to achieve scale
 - May partner with large employers, labor, etc. to achieve scale by sharing administrative services or provider relationships

Federal CO-OP Infrastructure Recommendations

- Success depends upon:
 - Timing so that co-op may participate in first open enrollment in state health benefit exchange
 - Improving the quality and efficiency of care provided
 - Developing adequate marketing strategy to maximize enrollment
 - Capitalizing on administrative and clinical information technology

Federal CO-OP Infrastructure Recommendations

- Preference for providing integrated care
 - Must describe integrated care model
 - Describe why appropriate for market area
 - Board understands there can be many different approaches
- Preference for strong local networks
- Must describe when CO-OP will be ready for Health Benefit Exchange
- Describe expertise of development and management teams
- Provider networks must be competitive

Federal CO-OP Infrastructure Recommendations

- Must demonstrate how financial and information technology systems will be rented, acquired or developed
- Must describe their provider and their consumer complaint and resolution processes
- Must describe how CO-OP will manage and supervise TPA's
- Must describe proposed quality oversight and improvement systems

Federal CO-OP Criteria, Process and Compliance Recommendations

- Priority to applicants demonstrating:
 - Qualified health plans on a statewide basis
 - Utilizes integrated care models
 - Demonstrate significant private support
- Consider applicant expertise and commitment to program goals
- HHS will seek to provide technical and management support
- HHS could discontinue a CO-OP's funding if key operational milestones are not met

Federal CO-OP Criteria, Process and Compliance Recommendations

- HHS will develop loan oversight process
- HHS will seek additional funding from foundations
- Loan repayment does not begin until CO-OP has received enrollment related revenue
 - Five (5) years for loans
 - Fifteen years (15) for grants
- Proposed timeline in report on HHS website

Federal CO-OP Program

- Board will make final determinations on April 15
 - Overall thrust: meet statutory expectations to create new nonprofit cooperative health insurers that create competition
 - Recommendations will be detailed to ensure funds are used for intended purpose
 - Not intended to be too prescriptive since insurers must operate in the marketplace
- Report will be provided to HHS Secretary Sebelius following the April 15, 2011 Board vote
 - HHS will proceed to publish draft regulations in spring of 2011
 - HHS will publish final regulations in Summer, 2011
 - HHS will begin reviewing applications in the Fall, 2011

Federal CO-OP Program

- Grant review panel
 - Mostly drawn from National Institutes for Health
 - Will include cooperative governance reviewers
- Emphasis will likely be given to applicants demonstrating:
 - Commitment to nonprofit business operations
 - Commitment to consumer governance
 - Commitment to meeting insurance need for individuals and small employers
 - A feasible business plan, including ability to compete with existing insurers
 - Strong and effective relationships with health care providers and other necessary parties
 - Active involvement with state insurance regulators

Federal CO-OP Program

- Information is available on HHS website at:
http://bit.ly/CO_OPBOARD
- Information available on Cooperative Network's website at: www.cooperativenetwork.coop
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