

Governance Subcommittee

Proposed Recommendations & Remaining Questions/Issues

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Charge to the Subcommittee on Governance

Review testimony, statute, examples of CO-OPs in other disciplines/markets, innovative capital friendly designs, and provide guidance on the range of issues raised.

Qualifying Nonprofit Entity

Proposed Recommendation:

- Applicant shall have formed the relevant nonprofit entity prior to completing the applications for CO-OP loan or grant funds and present evidence to this effect.

Rationale:

- Indicative of seriousness of intention
- Individuals are protected from liability
- Loans and Grants are provided to an incorporated entity

Definitions

Charge:

Define consumer, member, “consumer focused” and “consumer oriented” as it might be dealt with to evaluate proposals regarding governance and operation of the CO-OP

Proposed Recommendation:

- Member is defined as the individual insured life.

Conflict of Interest

Charge:

Identify best practices in disclosure, conflict of interest; safeguards, and related issues with respect to needed public and member accountability.

Proposed Recommendation:

- The BOD be composed of members who meet ethical and conflict of interest standards and disclosure requirements that
 - :ensure no improper insurance industry influence, pursuant to the CO-OP statute.
 - Require transparent, upfront disclosure of potential conflicts of interest by all BOD members.

Board of Directors (BOD)

Charge:

Identify common elements across various model designs to ensure strong consumer governed CO-OPs. Describe desirable Board of Directors (BOD) governance organization, processes, and areas of potentially needed expertise.

Proposed Recommendation:

- Prior to operation of the CO-OP entity, the initial BOD should include persons who will be eligible to purchase health insurance from the CO-OP entity
- Once the CO-OP eligible entity begins operations, the BOD should be elected by a majority vote of its members who receive insurance from the CO-OP entity (i.e. members)

Board of Directors (Continued)

- Flexibility to allow for representation from employers and providers who are also members of the CO-OP itself.
 - Preference for creation of a nominations committee to nominate eligible director candidates for election by members,
 - Preference for BOD selection based on certain criteria (i.e. financial, human resources, or other relevant expertise)
- Require transparent disclosure of potential conflicts of interest
- Require BOD elections shall occur within the first year of operations (i.e. once the consumer membership has been determined)
- Consumer members should compromise at least 51% of the voting membership of the BOD.
 - Preference for articles or bylaws indicating nominations committee intent to nominate more candidates per BOD than vacant seats.

“Related Entities”

Charge: Define “related entities” and “predecessors” to determine eligibility for loans and grants.

Proposed Recommendations:

- Applying entity must be a nonprofit or to carry out the purpose of the statutes.
 - entity could own any legal subsidiary (for-profit, nonprofit) with controlling interest and proceeds to the parent
 - Parent company of a grant or loan applicant cannot be a for-profit entity
 - Partnerships or joint ventures allowed so long as appropriate benefits accrue to the CO-OP members. (This applies to the actual qualifying entity and not sub-contractors)

Remaining Questions/Issues

1 of 4

- IRS filing
- Provider, MEWA conflict of interest
- Public disclosure and transparency- specific guidelines for the application
 - Once operational how much transparency?

Remaining Questions/Issues

2 of 4

- Explore ability to limit conversion to for-profit or non-consumer governed issuer.
- Explore prohibition on governmental instrumentality establishing a CO-OP with respect to state university or local government affiliated providers.
- Define “related entities” and “predecessors” to determine eligibility for loans and grants.
- Can sponsors of existing health plans, that are not health insurance issuers, create unrelated nonprofit issuers that are eligible for grants and loans?

Remaining Questions/Issues

3 of 4

- In defining “related entities” and “predecessors” to determine eligibility for loans and grants: Are there re-structuring options that would allow nonprofit health plans that were issuers on July 16, 2009 to participate in the program and grow to scale.
- If unrelated entities partner together to form a single CO-OP,(e.g. a business association and a multispecialty large group practice or a community association and a group of community health centers), should such arrangements be favored as showing significant private support or potential for better coordinated care?

Remaining Questions/Issues

4 of 4

- How should the mission of the CO-OP with respect to responsiveness to consumers be demonstrated?
- Definitions of “consumer focused” and “consumer oriented”
- What must the founding organization demonstrate to ensure that governance will meaningfully include consumers once enrollment begins? Are there governance models that mix enrollees and non-enrollees