

SMALL BUSINESS HEALTH INSURANCE PURCHASING COOPERATIVES

Overview and Introductions

Founded in 1969, the Small Business Association of Michigan (SBAM) is the only statewide and state-based association that focuses solely on serving the needs of Michigan's small business community. SBAM membership reaches over 10,000 small businesses in all 83 counties of Michigan. The SBAM health insurance program provides small business owners and their employees with a wide variety of options. SBAM has over 10,000 members and the SBAM health insurance program reaches over 4,000 small businesses and 65,000 employees and beneficiaries.

Background

Objectives of Our Programs. Our program can serve as national models for group purchasing alliances. Our collective experience at the crossroad of small employers and group health care cooperatives can help to shorten the development process and increase the likelihood of success. In our opinion, the Patient Protection and Affordable Care Act's effort to facilitate the establishment and operation of small business health insurance purchasing cooperatives must ensure that all such entities operate under the same rules, that the sponsored group health insurance programs are managed by representatives of participating small businesses, and such programs involve insured products or self-insurance funds with a high level of reserve funding available.

History of CO-OP efforts and Past Market Problems. Since 1974 various mechanisms and proposals have attempted to facilitate the collective purchase of health insurance for small business. The development of "multiple employer trusts" and "multiple employer welfare arrangements" left thousands of employees with unpaid medical bills. These entities sponsored self-insurance programs without active federal or state oversight and had little management control by the employer-purchasers. Regulatory disarray allowed the establishment of some self-funded MEWAs that were clearly mismanaged or, in some cases fraudulent. With proper regulation we should not repeat these mistakes by inadvertently allowing those types of schemes to reemerge as small business health insurance cooperatives.

A Basic Blueprint for Health Insurance Purchasing Cooperatives

Purchasing Cooperatives Would Contract with Regulated Insurers or could be self-insured. Purchasing cooperatives would sponsor insured programs, but the cooperatives themselves would not be insurance companies. The cooperatives would negotiate offerings and premium rates and contract with licensed and regulated insurers or qualified and licensed third-party administrators, which would offer coverage to members of the cooperative.

Purchasing Cooperatives Members Would Benefit From Their Efforts. To be successful in the long term the Purchasing cooperatives requires a serious commitment from the small businesses enrolled in the cooperative and the small business enrolled needs a serious commitment from the purchasing cooperative. Said differently, what is the "glue" that holds the cooperative together? If a cooperative is expected to bring something different than today's mutual insurance companies, the level of effort from the members' enrolled must be different. For example, could the small business be required to commit to a certain level of wellness program

participation in order to gain access to the cooperative? Could the enrolled members be eligible for a premium dividend, much like what is common in the workers' compensation field if the level of claims is well managed and less than expected?

Purchasing Cooperatives Must Meet Specified Standards to be Qualified. A non-profit membership organization with at least 1,000 small and/or medium size business or non-profit employer members could become a qualified health insurance purchasing cooperative. These criteria include the following: (i) at least 75% of all members must be small and/or medium businesses or non-profit employers (i.e., employers of one to 250 full-time employees); (ii) at least a majority of employers that participate in the Cooperative Program must be small and/or medium employers (iii) at least a majority of the governing body of the entity that manages a group health insurance program (a "Cooperative Program") for a Qualified Cooperative must be representatives of small and/or medium employers that participate in a Cooperative Program, (iv) membership in the Qualified Cooperative must not be based on health status-related factors, and (v) members cannot be discriminated against on the basis of such factors.

Application of Same Inter-State Rules that Apply to Existing Liability Insurance Purchasing Cooperatives. As now provided for liability insurance purchasing cooperatives, we suggest that Qualified Cooperatives be able to operate across state lines so long as certain information is filed with the insurance regulatory authority in each state where the Qualified Cooperative operates. States would be authorized to enforce non-preempted laws.

Examples of Management Structures Available. There are several ways a Cooperative Program could be managed.

1. **Management by Qualified Cooperative.** Under this structure a Qualified Cooperative would manage its own Cooperative Program and would enter a master program agreement with an insurer. The program agreement would spell out the essential terms of the Cooperative Program and require the insurer to offer and sell group health policies to small business and small non-profit members of the Qualified Cooperative that wish to enroll in the Cooperative Program. Larger business members of a Qualified Cooperative could also participate in the Cooperative Program if this was allowed by the terms of the Cooperative Program. The Qualified Cooperative would provide or arrange for the provision of various required services (*i.e.*, negotiating benefit design and premium rates, providing enrollment, billing and record keeping services and participating in marketing matters).

2. **Management by subsidiary of Qualified Cooperative.** Many membership organizations that become Qualified Cooperatives will also be tax exempt under section 501 of the Internal Revenue Code. They may prefer to have management operations and any associated revenue placed in a separate taxable entity that is controlled by the membership organization in order to avoid jeopardizing the tax-exempt status of the membership organization. Under such an arrangement, the controlled entity would manage the Cooperative Program of the membership organization, enter the master program agreement with the insurer and provide or arrange for the provision of the required program services.

3. **Management by management entity controlled by another Qualified Cooperative.** A Cooperative Program could be managed either by the Qualified Cooperative sponsoring the Program (as in Figure 1), by a management entity that is controlled by such Qualified Cooperative (as in Figure 2) or by a management entity that is controlled by another Qualified Cooperative (as in Figure 3). The third method of management is included in order to facilitate centralization of expertise and experience in the management of Cooperative Programs. It also allows smaller membership organizations to receive the benefit of being a Qualified Cooperative, while not being required to expend a great deal of money on the start-up and maintenance of management and administration operations for its Cooperative Program. This should also encourage the formation of more Qualified Cooperatives since they can rely on other experienced management entities instead of reinventing the management wheel in each instance.

Common characteristics

The following characteristics would be part of each of the above structures.

1. A membership organization would have to have at least 1,000 small and/or medium employer members that are eligible to participate in a Cooperative Program. This minimum number would help spread out the underwriting risk and administrative costs and, therefore, make the Cooperative Program more attractive to insurers.
2. There would be a master program agreement with respect to each Qualified Cooperative. This agreement would be between the participating insurer and the Qualified Cooperative or the management entity that manages the Cooperative Program sponsored by the Qualified Cooperative. The master program agreement would spell out the major features of the Cooperative Program (such as product options to be made available, eligibility rules, premiums to be charged, enrollment procedures, and billing and reporting responsibilities) and give each party the ability to enforce the other party's contract obligations.
3. Insurers would be allowed to offer a specific product in a state through Cooperative Programs and not be required to offer the same product to any other small employers in the same state.
4. Insurers could use aggregate loss ratios for the purpose of setting premium rates, and would be exempt from state laws that place limits on rate setting, including community rating laws, except those state rate laws that are designed to protect only small and/or medium employers.

Certain Protective Features

We suggest several features to prevent sham operations and to assure that the primary beneficiaries of the law are small businesses.

1. To help prevent the creation and operation of sham organizations that are set up solely to enrich insurers, brokers, sales agents, or health care providers the regulations would:
 - (a) require Qualified Cooperatives to be a non-profit legal entities, hold annual membership meetings, have their own governing bodies and obtain "qualified status" approval from a governmental body;
 - (b) prevent Qualified Cooperatives and management entities from being controlled by insurers, brokers, agents or health care providers, except in the case of associations whose members are only insurers, only insurance brokers and/or agents or only health care providers (provided all other Qualified Cooperative requirements are observed); and
 - (c) require Cooperative Programs to be under the management authority of a governing body that is controlled by representatives of small and/or medium employers.
2. To assure that the primary beneficiaries of a Cooperative Program are small and/or medium employers it should be required that:
 - (a) at least 75% of the members of a Qualified Cooperative must be small and/or medium employers;

- (b) at least a majority of the employers participating in a Cooperative Program must be small and/or medium employers;
- (c) the entity that manages a Cooperative Program must have a governing body that is controlled by representatives of small and/or medium employers.