COUNCIL FOR AFFORDABLE
HEALTH COVERAGE

1101 14th St. NW, Suite 700 Washington, DC 20005
o: 202.808.8858 w: CAHC.NET

July 5, 2016

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-9933-IFC
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Patient Protection and Affordable Care Act; Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program

Submitted Electronically

Dear Mr. Slavitt:

On behalf of the Council for Affordable Health Coverage (CAHC), I would like to thank you for the opportunity to provide feedback on the interim final rule with comment (RIN 0938-AS87), which establishes provisions that alter the parameters of select special enrollment periods and that revise certain rules governing consumer operated and oriented plans (CO-OPs).

CAHC is a broad-based alliance with a singular focus: bringing down the cost of health care for all Americans. Our membership represents a broad range of interests – organizations representing small and large employers, manufacturers, retailers, insurers, patient groups, and physician organizations. Our full membership list is available on our website at www.cahc.net.

CAHC's comments on specific areas of the interim final regulation with comment are below. These comments reflect the positions of the Coalition, but may not necessarily reflect the individual views of its members.

CO-OPs

We recognize that the interim final rule with comment amends a number of regulations governing the Affordable Care Act's (ACA) CO-OPs to provide "additional flexibility for CO-OP issuers to enter into strategic financial transactions with other entities, to improve the issuer's capital position and to further the ability of the program to facilitate the offering of competitive, high-quality health insurance on Exchanges that increases competition and consumer choice." However, given the dismal financial state of CO-OPs, we are concerned that these modifications may not have an overwhelming positive impact or encourage private market investments into this failing program.

Although proponents of CO-OPs claimed these non-profit, consumer-run health plans would improve coverage, increase competition, and provide a more affordable coverage option, these entities are not living up to these expectations. In fact, 14 of the original 23 CO-OPs have collapsed due to financial insolvency, forcing enrollees to find other coverage or go without and face a possible tax penalty.

Moreover, CMS has placed several CO-OPs on "Enhanced Oversight" or "Corrective Action" Plans to assist CO-OPs that are struggling financially and/or may not be able to repay their federal loans.

Despite the troublesome financial conditions of the remaining CO-OPs, the interim final rule with comment provides an exception to the requirement that two-thirds of the plans issued by a CO-OP must be Qualified Health Plans (QHP) and loosens loan repayment requirements, under certain circumstances. According to the preamble, the interim final rule with comment does "not necessarily require immediate loan repayment" if a CO-OP does not meet the two-thirds standard in a given year, as long as the CO-OP offers silver and gold plans; has a specific plan and timetable to return to compliance with the two-thirds standard; and acts with diligence and good faith to meet the requirement in future years. While we appreciate provisions to allow CO-OPs to diversity their product lines, we question whether diversification can coexist with efforts to strengthen and improve existing CO-OP offerings. We also question the impact that new segment offerings may have on the timing and certainty of full loan repayment and the impact temporary non-compliance will have with a CO-OP's tax exempt status.

The ACA requires that a CO-OP must meet all requirements that other issuers of QHPs must meet in any state where a CO-OP offers a QHP. Moreover, Section 1322(c)(5) of the ACA expressly requires that the CO-OP must meet all of the same state requirements for solvency and licensure, premium rate, and policy form filing rules and other "level playing field," laws, including fraud and abuse, solvency, and financial requirements. We believe the rule violates Congress' intent in these areas and urge you to withdraw this imbalance to retain a level playing field.

We question whether other entities will want to enter into business arrangements with distressed CO-OPs. Additionally, we are concerned that the rule does not address penalties on individuals who have lost health insurance because of a failed CO-OP -- and have no coverage other options. CAHC strongly believes that hard-working Americans should not have to lose health insurance coverage when a CO-OP disintegrates, and then pay a tax penalty for not having insurance.

We also noted that, under the interim final rule with comment, a CO-OP must be governed by an operational board with a majority of directors elected by a majority vote of a quorum of the CO-OPs members. However, it appears that a majority of Board members does not have to be CO-OP members. In addition, entities offering loans, investments or other services may now be represented on Boards. While directors are required to meet ethical, conflict-of-interest, and disclosure standards, we are concerned that the rule does not include detailed information on governing documents; the vendor evaluation and selection processes; the amount of funds CO-OPs spend on contracted services; and whether or not vendor services are provided at fair or above market value rates.

Regrettably, it appears that consumers and taxpayers have paid for poor CO-OP performance and lax CMS oversight and management, and may pay higher premiums as a result. Although greater transparency and accountability of taxpayer dollars allocated to the CO-OPs for start-up costs and solvency is urgently needed, the interim final rule with comment does not include any additional audit or review procedures to determine how taxpayer dollars were spent. It is disappointing that CMS did not include such additional measures, particularly at a time when budgets are stretched thin for both governments and families.

Special Enrollment Periods

We are pleased that CMS has recognized the need to refine the insurance exchange rules and procedures to ensure that only those who are eligible enroll through the special enrollment periods (SEPs). SEPs serve a valuable role in helping individuals who lose health coverage during the year or who experience major life changes to maintain continuous coverage—but it is equally important for the stability of exchange plan risk pools and premiums to ensure that SEPs are not misused or abused.

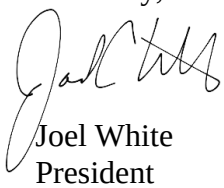
To this end, we support the interim final rule's requirement that individuals requesting a "permanent move" SEP must have minimum essential coverage for one or more days in the 60 days preceding the permanent move. This change will hopefully help ensure that individuals are not moving for the sole purpose of obtaining health coverage outside of the open enrollment period.

More broadly, CMS could more effectively support the viability of exchange risk pools and reduce the risk of premium increases by preventing SEP fraud before it occurs in the first place. Our primary concern with the current confirmation process, proposed in separate guidance, is that the verification of consumer eligibility appears to be retroactive. We strongly urge CMS to institute a prospective eligibility verification process that occurs before coverage becomes effective, similar to the processes that are traditionally employed off-exchange by private insurers. Once eligibility is determined, retroactive coverage could occur at the point of application for benefits and services that would normally be covered under a particular plan. Otherwise, ineligible individuals may generate significant claims costs before CMS completes the verification process to determine whether coverage was appropriately obtained through the SEP.

Closing

CAHC appreciates your careful consideration of our comments. We stand ready to serve as a resource to you and your staff on issues related to CO-OPs and SEPs.

Sincerely,



Joel White
President
Council for Affordable Health Coverage