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Examining the Implications of Recent Health Insurance Consolidation, and the Latest Issues Related to the Seeming Demise of Health Insurance CO-OPs

Cynthia J. Borrelli
Principal
Bressler, Amery & Ross, P.C.

Patrick H. Cantilo
Partner
Cantilo & Bennett, LLP

JillAllison Opell
Counsel
Dentons

Tweeting about this conference?

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CO-OP Background

- What is a CO-OP?
  - A CO-OP is a health plan which has received federal loans pursuant to Section 1322 of the Patient Protection and Affordable Care Act (ACA) by meeting certain specific criteria for being both "consumer oriented" and "consumer operated" as established by the U.S. Department of Health and Human Services (HHS). *See* 45 C.F.R.§ 156.505.
- Why CO-OPs?
  - Alternative to the "public option“
    - Deleted from original bill text
  - More options for consumers purchasing coverage through state and federal exchanges.
  - New, private, non-profit health plans

See 76 F.R. 11392 (adopting final DHHS rules for CO-OPs).

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CO-OP Background: The Hope vs. The Reality

- The Hope
  - Access to extremely low-interest federal loans.
  - $3.8 billion initially appropriated by ACA to be loaned to new entities qualifying as CO-OPs.
  - At least one CO-OP to be formed in every state and Washington, D.C.
- The Reality
  - CO-OP loan appropriation effectively rescinded, loans to new CO-OPs prohibited by the American Taxpayer Relief Act of 2012 (Pub. L. 112-240).
  - Actually rescinded 90% of the unused portion of the original $3.8 billion.
  - The remaining 10% was to be managed by HHS in the form of a "contingency fund" to make loans to existing CO-OPs under the terms of then-existing loan agreements.
  - 24 CO-OPs had received loans by December 31, 2012.
  - 23 Actually licensed and offered coverages.
  - No new CO-OPs.

CO-OP Regulation: Overview

- Creatures of State Law
  - CO-OPs required by HHS to obtain licensure, *under state law*, to offer Qualified Health Plans (QHPs) on the applicable individual market "exchange." See 45 C.F.R. § 156.515(c)(3).
  - Typically subject to same state laws as traditional health insurers or HMOs (based on holding state insurance licenses), including state solvency requirements.
- Not all the same
  - Some licensed as insurers
    - Covered by Guaranty Associations
  - Others licensed as HMOs or other entities
    - Not covered by Guaranty Associations

CO-OP Regulation: Overview

- CO-OP Loan Program: Two Main Parts
  - (1) HHS directed to make “loans to provide assistance to such person in meeting its start-up costs” (Start-Up Loans)
  - (2) HHS directed to make “grants to provide assistance to such person in meeting any solvency requirements of States in which the person seeks to be licensed to issue qualified health plans” (Solvency Loans) (regulations clarify that "grants" are actually loans because they must be repaid, See 76 F.R. 477394 (Dec. 31, 2011))

ACA § 1322(b)(1)(A-B) (emphasis added)

- Other sources of CMS funding
  - ADVANCE PAYMENT OF PREMIUM TAX CREDITS (APTC)
  - COST SHARING REDUCTIONS (CSR)
  - RISK ADJUSTMENT PROGRAM
  - FEDERAL TRANSITIONAL REINSURANCE
  - RISK CORRIDORS

“3 Rs”

CO-OP Regulation: Solvency

- Solvency-Specific Issues
  - Solvency Loans awarded by HHS to CO-OPs intended to be "recognized by State insurance regulators as contributing to the State-determined reserve requirements or other solvency requirements (rather than debt) consistent with the insurance regulations for the States in which the loan recipient will offer a CO-OP qualified health plan." 45 C.F.R. § 156.520(a)(2). Thus, Solvency Loans are generally accounted for as assets (as opposed to liabilities) on the CO-OP's balance sheet .

  - As we have seen, Solvency Loans do not *guarantee* that the CO-OP will continue to meet solvency requirements imposed by state law.
  - CO-OPs' obligations to repay Solvency Loans (and Start-Up loans) can be deferred to comply with state solvency requirements (see 45 C.F.R. § 156.520(b)); however no provisions require (or allow) HHS to loan funds to an *insolvent* CO-OP.

CO-OP Regulation: Solvency - continued

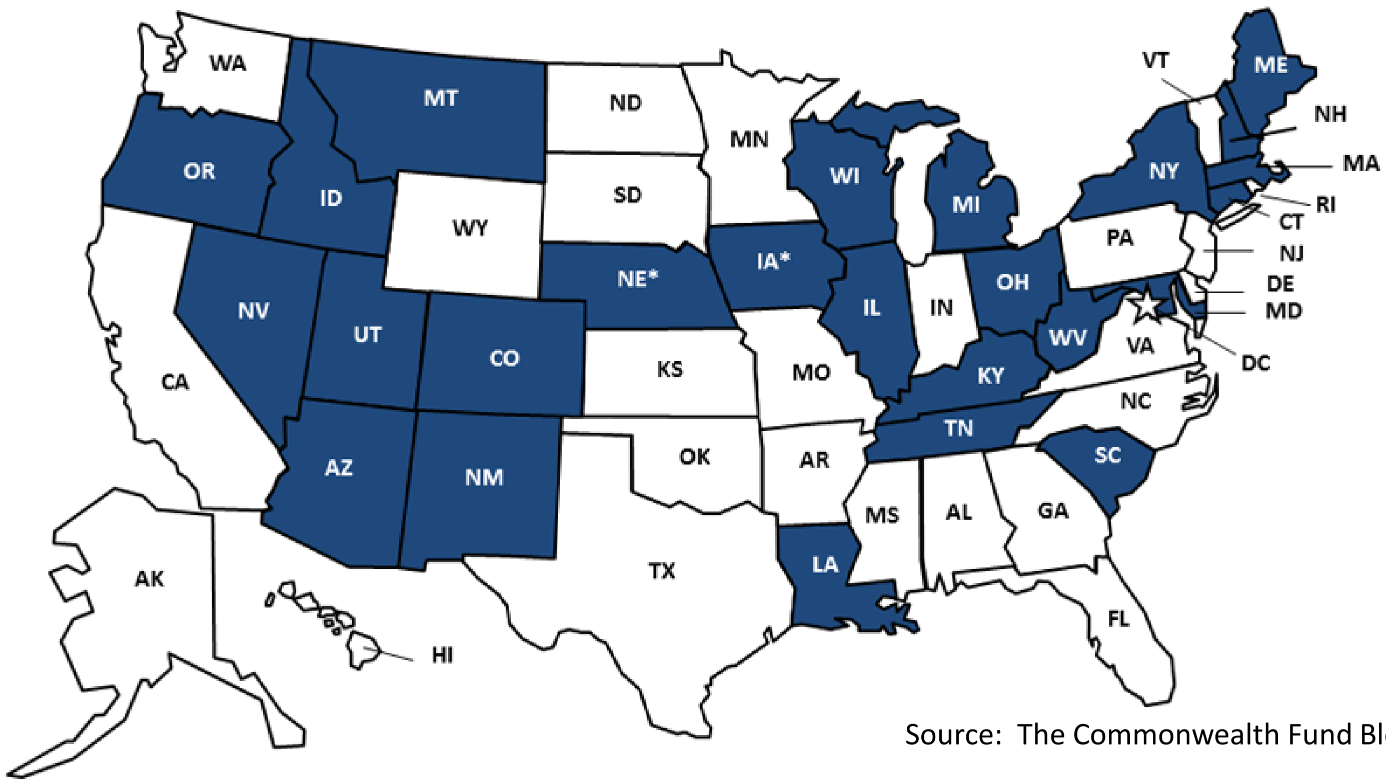
- Start-Up Loans can also be called by CMS, and there is some evidence that CMS will make a claim against an insolvent CO-Op's liquidation estate for outstanding start-up loans. Solvency loans, on the other hand, are treated as surplus relief notes and, at least in some instances, the notes on their face are subordinated to other policyholder and provider obligations in the event of insolvency. Moreover, repayment is subject to approval of the CO-OP's domestic regulator.

- In July, 2015, CMS issued a bulletin to CO-Ops encouraging them to seek authorization to convert their start-up loans to solvency loans, though in reality, such requests have not been granted once the CO-OP is experiencing financial distress.

- Depending upon how the CO-OP is created under state insurance laws (i.e. a stock insurer, an HMO or as is the case is South Carolina, a MEWA, and whether the state's guaranty fund law provides a grant of authority or a clear exclusion, state guaranty fund laws may or may not protect members (and ultimately providers) in the event of an insolvency.

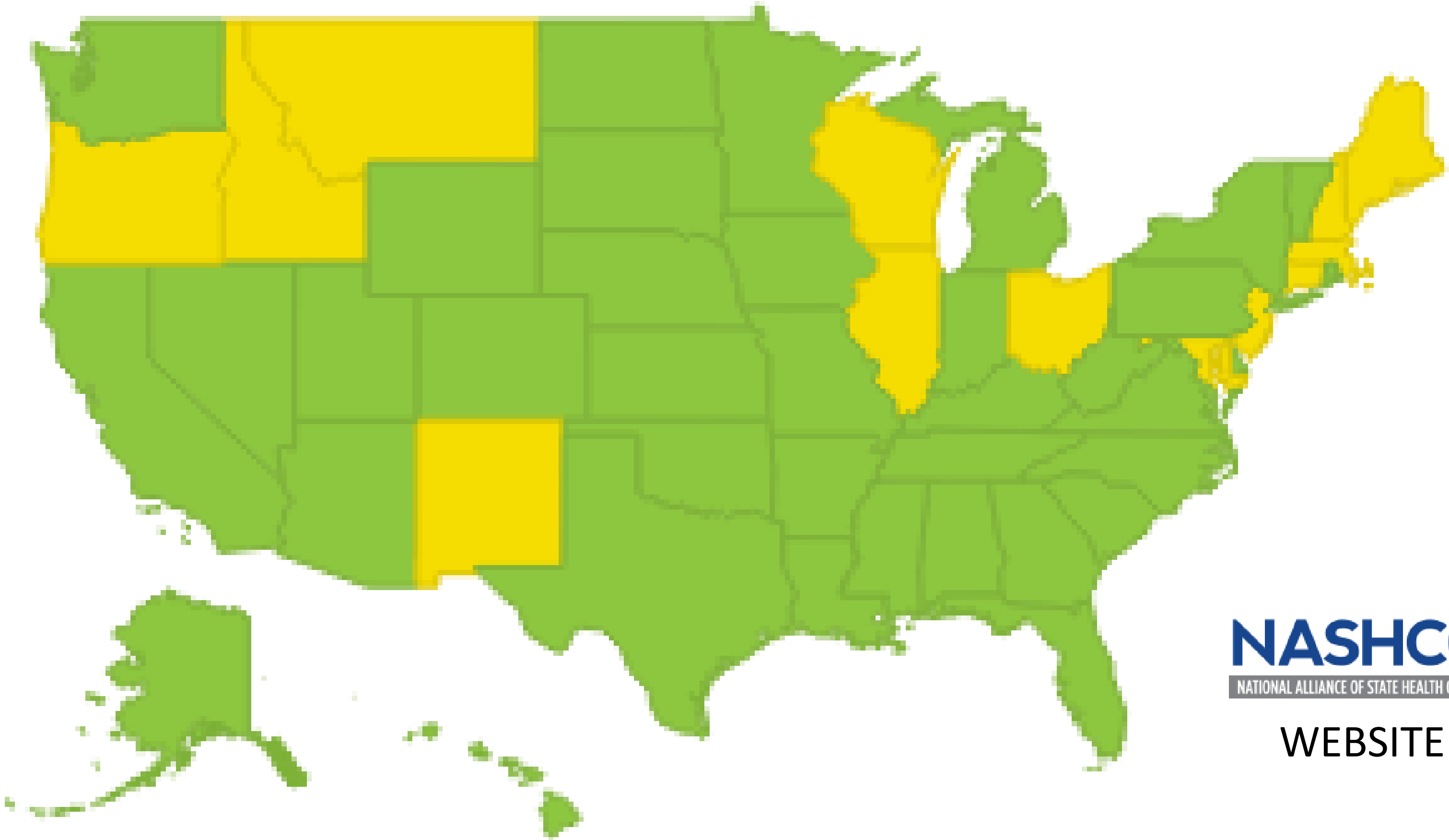
Affordable Care Act CO-OPs

States in blue have at least one CO-OP funded by the Affordable Care Act



Source: The Commonwealth Fund Blog

13 Remaining Co-ops As Of 1/15/16



NASHCO
NATIONAL ALLIANCE OF STATE HEALTH CO-OPS
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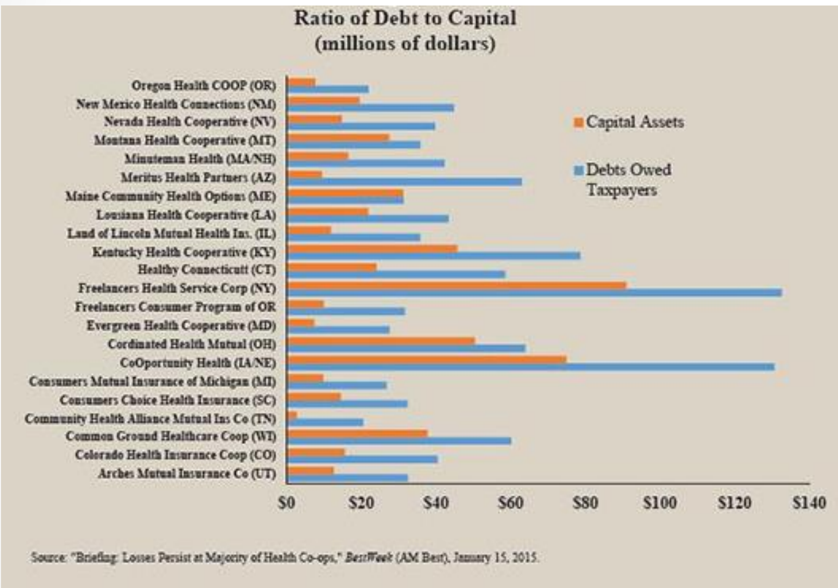
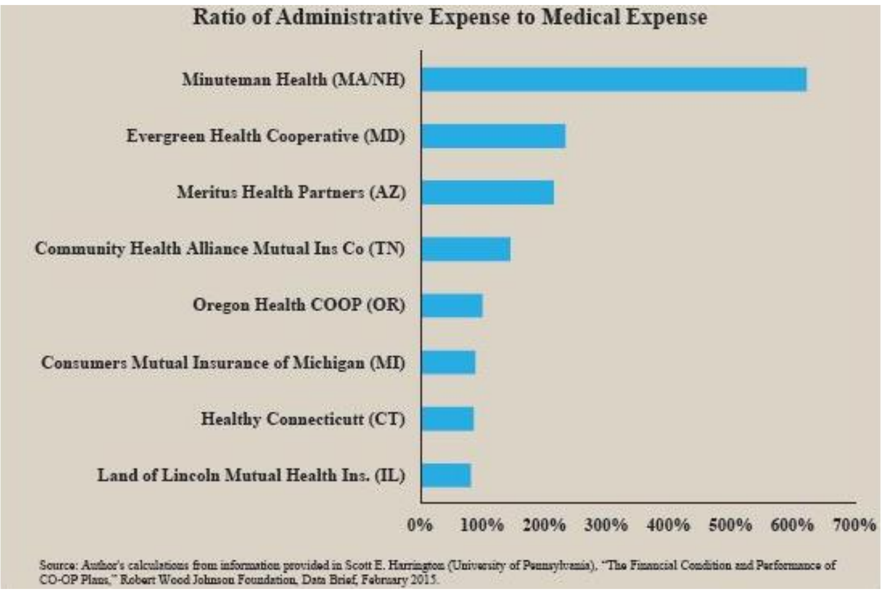
CO-OP PROBLEMS

- More debt than capital
- Very high administrative expense ratios





- Lower enrollment than anticipated
- Inexperienced management

CO-OP Loans

A Disappointing Performance

State	COOP	Loans	Net Income 12/31/14
AZ	MHP	$ 93,313,233	$ (7,218,887)
CO	CHICP	$ 72,335,129	$ (23,000,961)
CT	HCI	$ 127,980,768	$ (28,006,855)
IA/NB	CH	$ 145,312,100	
IL	LLMHI	$ 160,154,812	$ (17,669,335)
KY	KHCI	$ 146,494,772	$ (50,445,923)
LA	LHCI	$ 65,790,660	$ (20,655,020)
MA	MHI	$ 156,442,995	$ (20,238,329)
MD	EHCI	$ 65,450,900	$ (14,533,296)
ME	MCHO	$ 132,316,124	$ 5,865,457
MI	CMIM	$ 71,534,300	$ (16,336,646)
MT	MHC	$ 85,019,688	$ (3,529,402)
NJ	FCOO	$ 109,074,550	$ (16,452,229)
NM	NMHC	$ 77,371,782	$ (4,291,274)
NV	NHC	$ 65,925,396	$ (15,295,456)
NY	HRINY	$ 265,133,000	$ (35,189,379)
OH	CHMI	$ 129,225,604	$ (5,916,854)
OR	OHC	$ 56,656,900	$ (6,781,274)
OR	HRI(FCO)	$ 60,648,505	$ (14,084,933)
SC	CCHIC	$ 87,578,208	$ (3,808,177)
TN	CHAMIC	$ 73,306,700	$ (22,130,737)
UT	AMIC	$ 89,650,303	$ (19,907,360)
WI	CGHC	$ 107,739,354	$ (36,544,666)
Subtotal	**Active**	**$ 1,207,433,477**	**$ (148,098,057)**
Subtotal	**Failed**	**$ 1,237,022,306**	**$ (228,073,479)**
Total		**$ 2,444,455,783**	**$ (376,171,536)**

		Loans	2014 Income (Loss)
Subtotal	Active	$ 1,207,433,477	$ (148,098,057)
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Failing of Health Insurance CO-OPs

- An industry discussion of the recent failures of the "Consumer Operated and Oriented Plans" created under the ACA.
- Why are so many of them failing?
- What are the implications of this?
- How are policyholders and their health care providers affected in states where the CO-OPs have failed?
- Examine the heightened concerns about declining competition and the prospect of higher premiums.
- How are other carriers in the marketplace impacted when a CO-OP fails, i.e. forced to take on new members without the corresponding premium, etc. Consider the Health Republic situation in New York this fall, where NYDFS transitioned members to existing carrier as of November 30^{th} and created a special enrollment period to facilitate coverage for the displaced members.
- Are CO-OPs doomed? What do health care experts say about the future of the CO-OPs?

Changes In The Landscape

Mega Mergers

- AETNA to merge with Humana
- Anthem to merge with Cigna
- Approved by shareholders
- Under scrutiny by DOJ
  - DOJ has been more aggressive in antitrust enforcement in large mergers
  - Opposition by AMA, AHA, consumer groups and unions
- Scrutinized by 15 State Attorneys General

Health Insurance Consolidation

- Examining the recent rise in mergers in the health insurance sector.
- Three pending healthcare consolidation, Anthem/Cigna, Aetna/Humana and Centene/Health Net, raise serious anti-trust concerns as the U.S. Department of Justice struggles with analyses of reduced competition, increased insurance prices and diminished health plan quality.
- What are the potential antitrust risks and concerns? Are they really any different than those raised by DOJ in non-healthcare related consolidations such as the Comcast/Time Warner and AT&T/Direct TV deals. The AT&T deal proceeded this summer, while Time Warner/Comcast called their off due to DOJ concerns.
- How will this affect the success of the ACA?
- How are the regulators looking at this?
- How does this play into the current laws and administrative regulations that govern plan bidding, appeals and administration of health plans?

Health Insurance Consolidation (cont'd)

- How will this all play? Will antitrust enforcement deter excessive concentration in the insurance industry? Or will state regulation need to step in to curb or undo consolidation or strengthen regulatory controls on insurer pricing?
- What is on the horizon?

Questions?

- Questions?