American Hospital Association

Liberty Place, Suite 700
325 Seventh Street, NW
Washington, DC 20004-2802
(202) 638-1100 Phone
www.aha.org

Submitted Electronically

March 2, 2011

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Room 445–G
Washington, DC 20201

Re: Request for Comments regarding CO-OP under the Patient Protection and Affordable Care Act: OCIIO–9983–NC

Dear Secretary Sebelius:

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our 40,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the development and implementation of the Consumer Operated and Oriented Plan (CO-OP) program, as described in Section 1322 of the *Patient Protection and Affordable Care Act* (ACA).

The ACA provides $6 billion in loans and grants for the development of new nonprofit health cooperatives to be sold as qualified health plans through state insurance exchanges in the individual and small group insurance markets. The AHA believes that CO-OPs have the potential to be successful alternatives to traditional for-profit insurance models by operating as nonprofit entities that have a strong consumer focus and use profits to lower premiums, enhance benefits or improve the quality of health care delivered to plan members.

We support the ACA provisions that place higher standards on health plans to improve quality, lower prices and shift the competitive dynamic among health plans toward value. The ACA requires the Secretary for Health and Human Services (HHS) to establish criteria and standards to protect consumers and ensure success and sustainability. We believe, however, that the rules governing the CO-OPs must balance those needs against the potential that the requirements are so restrictive that they discourage the formation of CO-OPs.

The AHA's comments focus on three issues regarding the development and sustainability of CO-OPs in the insurance marketplace:

- Standards that permit integrated delivery systems and providers to develop and sponsor CO-OPs;
- Access to funding that ensures CO-OPs can provide quality services and achieve financial stability; and
- Governance that is consumer-focused and qualified to provide the leadership and skill necessary to compete with for-profit insurance companies.

Provider-related CO-OP models. Cooperatives function in a wide variety of businesses, and there are many different applications of the business model. The flexibility in meeting different types of needs is both attractive and challenging, and the ACA recognizes that no one size fits all. We encourage HHS to adopt a regulatory approach that balances the need for clarity on the definition of CO-OPs that qualify for grants and loans under the ACA, against the need for flexibility within the statutory framework to support different approaches to CO-OP formation and operation.

There are a number of successful health care CO-OP programs. According to testimony presented to the Federal Advisory Board on the ACA's CO-OP Program (Advisory Board), successful health cooperatives in the United States have strong links to high-performing, integrated delivery systems that have been able to provide high-quality integrated and coordinated health care. We encourage HHS to utilize the experiences of successful health cooperatives as it establishes the ground rules for the development of a substantial number of new organizations across the country. Successful non-profit, consumer-focused integrated delivery systems such as Health Partners (MN), Group Health Cooperative (WA), Geisinger Health Systems (PA), Intermountain Healthcare (UT) and Kaiser Permanente (CA) could serve as potential models for the CO-OP program. No one model is preferred; they all reflect a strong commitment to excellence and response to the goals and mission of their founding members.

A Commonwealth Fund report, "The Consumer Operated and Oriented Plan (CO-OP) Program under the Affordable Care Act: Potential and Options for Spreading Mission-Driven Integrated Delivery Systems," outlines the components that have contributed to the success of these mature CO-OPs:

- A non-profit organization with a consumer-focused mission;
- Accountability to a board of trustees with a strong consumer focus;
- Close links with, or ownership by, care systems and networks of providers;
- Commitment to evidence-based care and informed-patient engagement;
- Strategic use of electronic health records to support care redesign;
- Care coordination and accountability for the total care of patients;
- A team approach to care;

- A culture of continuous improvement that aims for health system transformation; and
- Affiliation or close links with health plans

CO-OPS formed by mission-driven integrated delivery systems should be encouraged and funded, and we urge HHS to use these existing models to inform its approach to the development and implementation of the CO-OP program.

Access to capital. We recognize that health insurance cooperatives have to overcome a number of challenges to establish and meet all the requirements that apply to other issuers of qualified health plans. These include those related to solvency, licensure, payments to providers, network adequacy, rate and form filing and applicable state premium assessments, but CO-OPs also have to compete in the marketplace as a new entrant.

CO-OPs will need sufficient capital for planning and operations to be able to compete with well-financed large private insurers. Since it will take time for CO-OPs to raise capital and they initially will not have the capacity to borrow significant amounts of money, federal funds will be needed to set up administrative functions of the CO-OP. These include organizing the boards, hiring staff, developing policies and procedures, setting premiums, signing up members, establishing provider network and payment protocols and setting up claims processing functions, as well as meeting reserve requirements. While it is a laudable goal that the CO-OPs will become self-supporting over time, we urge HHS to ensure that there are adequate resources in the Center for Consumer Information and Insurance Oversight (CCIIO) to certify an entity to receive loans to defray startup costs so that the organizations can move forward to complete formation of the CO-OP.

We recommend that HHS identify the reasonable capital resources that a startup or expanding CO-OP will need in light of the variation in state laws on how to determine the solvency of a startup insurer. In addition, we urge HHS to work with the National Association of Insurance Commissioners (NAIC) and the Advisory Board to recommend a model approach to capital, particularly reserves and reinsurance, that HHS can use as a standard to evaluate capital needs. The standards could also help ensure that parties interested in forming CO-OPs are informed of the capital requirements they will need to meet in order to qualify under state law. HHS should develop a reasonable process for determining if or when those funds must be repaid. HHS should consider repayment schedules based on the status of the CO-OP development.

Governance. CO-OPs are intended to be nonprofit entities with a strong consumer focus that use any profits from the issuers' operations either to lower premiums or improve the quality of health care delivered to its members. The ACA seeks to protect CO-OPs against the involvement and interference in governance of certain outside interests by prohibiting federal, state or local government representatives, as well as certain representatives of insurance issuers, from serving on the CO-OP boards. We believe the limits on board composition are warranted and that strong conflict of interest and ethics

policies should be adopted and enforced to help ensure that board members exercise their fiduciary responsibilities to the CO-OP. We do not, however, believe that HHS should place additional limits on board membership or mandate board composition.

CO-OPs are complex organizations that will be competing for business with sophisticated for-profit insurance companies. The board of a CO-OP needs to be composed of a sufficient number of knowledgeable, independent and active members who have the professional qualifications and skills to fulfill their governance and oversight responsibilities. It is also important that senior management has extensive experience in or working with the health insurance industry.

We urge HHS not to limit the governance structure of a CO-OP beyond the statutory requirements and hope that HHS avoids being prescriptive regarding board composition. Strict board requirements in existing federal programs, such as community mental health centers and federally qualified health centers, have created problems in their development and overall success.

The AHA looks forward to continuing to work with HHS to ensure that the ACA's goals of achieving affordable and high quality health care coverage are met. If you have questions about our comments, please contact me or Ellen Pryga, policy director, at (202) 626-2267 or epryga@aha.org, or Molly Collins Offner, policy director, at (202) 626-2326 or mcollins@aha.org.

Sincerely,

/s/

Linda E. Fishman
Senior Vice President, Public Policy Analysis and Development