Questions and Answers – October 6, 2011

Q15. After receiving the Letters of Intent (LOI) to apply for CO-OP loans, will CMS be releasing this information publicly?

A15: CMS does not anticipate publicly posting the names or locations of organizations that submit a Letter of Intent (LOI). However, applicants should keep in mind that all materials submitted to CMS are subject to the Freedom of Information of Act (FOIA) and any FOIA request will be examined against exceptions such as trade secrets outlined in the Department's FOIA regulation. Applicants may access the Department's FOIA guidelines here: http://www.hhs.gov/foia/45cfr5.html

Q16: Will CMS approve Start-Up Loan modifications necessary to satisfy the capital requirements associated with unexpected rapid growth or high enrollment?

A16: Consistent with the FOA, applicants should estimate their funding needs as accurately as possible in the business plan submitted as a part of the application. Applicants should not assume that loan modifications will be available to provide additional funding.

Q17: Will CMS allow applicants to submit detailed budgets only for the limited Start-Up period and less detailed forecasts for the periods after that?

A17: Consistent with the FOA, the budget and budget narrative must account for all uses of Start-Up Loan funds and cover the full period through which start-up funds are expended. The budget template attached to the funding opportunity announcement (FOA) is intended to be a sample of what CO-OP applicants should provide with their business plans. Applicants are expected to submit a budget plan for Start-Up and Solvency Loans with as much specificity as is feasible, with the expectation that CO-OPs will be updating their business plan as they become operational.

Q18: What would preclude a CO-OP from offering insurance prior to 2014?

A18: As described in Section 1322(c)(6) of the Affordable Care Act, an entity cannot be a qualified nonprofit health insurance issuer unless it "does not offer a health plan in a State until that State has in effect (or the Secretary has implemented for the State) the market reforms required by part A of title XXVII of the Public Health Service Act."

Q19: Can an organization partner with an existing health insurance issuer to develop a CO-OP?

A19: As a statutory requirement under section 1322(c)(2)(A)the Affordable Care Act, if an organization is a health insurance issuer that was in existence on July 16, 2009, a related entity, or any predecessor of either, that organization is not eligible for loans under the CO–OP program and cannot become a CO–OP.

Q20: Will CMS allow a Third Party Administrator develop a CO-OP?

A20: Consistent with the statute and Notice of Proposed Rulemaking (NPRM), a Third Party Administrator may develop a CO-OP unless the Third Party Administrator was also a licensed health insurance issuer on July 16, 2009.

Q21: If CMS is unlikely to fund applicants with overlapping service areas and two applicants submit Letters of Intent (LOI) to apply for funds, is the first applicant's application held until the second applicant's application is reviewed?

A21: The statute permits the funding of multiple CO-OPs in any State, provided that there is sufficient funding to capitalize at least one CO-OP in each State. Consistent with the FOA, we expect applications to be reviewed within 75 days of notice of an application being complete. Accordingly, applications will be evaluated on their own merits and awards will be made in the time-table outlined in the FOA. Final award decisions will be made by a CMS program official. In making these decisions, the CMS program official will take into consideration: recommendations of the external reviewers; reviews for programmatic compliance; the reasonableness of the size of the loan request and anticipated results of funding the application; ability to repay the loan, and the likelihood that the proposed project will result in the benefits expected.

Q22: Does the prohibition in the Notice of Proposed Rulemaking (NPRM) on provider rate setting by a private purchasing council prevent CO-OPs from arranging for their provider contract rates to be used by other CO-OPs for out-of-network care?

A22: Under the statute, CO-OPs will be allowed to establish private purchasing councils. As described in the statute, private purchasing councils may not "set payment rates for health care facilities or providers participating in health insurance coverage provided by qualified nonprofit health insurance issuers," and relevant antitrust law continues to apply. However, CO-OPs "may establish a private purchasing council to enter into collective purchasing arrangements for items and services that increase administrative and other cost efficiencies, including claims administration, administrative services, health information technology, and actuarial services."

CO-OPs should work with State insurance regulators to establish service areas that meet all applicable State laws.

Q23: Can the CO-OP use a management services organization to provide services for the benefit of the CO-OP, including providing executives for the organization?

A23: Consistent with the NPRM, a CO-OP must demonstrate that the management is controlled by the CO-OP members and is accountable to them. Applicants must show how they will achieve this accountability when transitioning from the Formation Board to Operational Board. Boards are permitted to include experts who are not plan members in order to obtain knowledge in areas such as finance, actuarial functions, and medical management.

Q24: Does CMS have any objection to a CO-OP paying reasonable fees to the members of the formation board of directors (BOD) or to the members of the operational board of directors (BOD)?

A24: The statute, NPRM, and FOA do not prohibit reasonable compensation. Applicants should consider that salaries will affect the size of the loans and premium rates in their business plan, which will be evaluated to ensure that they are viable in the CO-OP's target market.

Q25: If the individual/small group Medical Loss Ratio (MLR) requirement under the Affordable Care Act is 80 %, what are CO-OPs supposed to do during Start-Up, when their administrative costs will certainly exceed 20% of premiums for a time?

A25: Under the statute, the Medical Loss Ratio (MLR) standards that appear in Section 2718 of the Public Health Service Act apply to CO-OPs. These rules include a "credibility adjustment" when the insurer's medical loss ratio for a market within a State is based on less than 75,000 people enrolled for an entire calendar year. The credibility adjustment, recommended by the National Association of Insurance Commissioners (NAIC) and adopted in the regulation, addresses the statistical unreliability of experience based on a small number of people covered. In addition, consistent with NAIC recommendations, certain insurers that have newly joined the insurance market may be able to delay reporting their medical loss ratio until the next year. When 50% or more of an insurer's premium income accounts for policies that

have not been effective for an entire calendar, they are eligible to delay reporting until the following year. Allowing insurance companies to defer reporting newer business reduces barriers to market entry by reducing the risk of failing to meet the MLR standard and having to pay a rebate.
A fact sheet on MLR standards is available here:
http://www.healthcare.gov/news/factsheets/medical_loss_ratio.html.

Q26: Does CMS determine if a CO-OP is tax-exempt at the State level?

A26: Under the statute and NPRM, an applicant and a CO-OP must be "organized under State law as a nonprofit, member corporation," which is defined as "a nonprofit, not-for-profit, public benefit, or similar membership entity organized as appropriate under State law." State tax-exempt status is not an eligibility criterion.

Q27: Does an existing non-profit entity have to form a separate entity to apply for funds and become a CO-OP?

A27: First, as a statutory requirement under the Affordable Care Act, a health insurance issuer that was in existence on July 16, 2009 cannot sponsor a CO-OP. Under the proposed rule, the applicant must be the entity that will eventually become a CO-OP. Unless the sponsor wants to become a CO-OP, it should form a separate entity.

Q28: Can a CO-OP be founded by a consumer-run nonprofit self-insured Multiple Employer Welfare Arrangement (MEWA) that does not have an insurance license, but that is currently licensed in its domiciliary state as a non-profit, self-funded MEWA?

A28: Under the statute and NPRM, entities not licensed as issuers on July 16, 2009 are permitted to apply.