HEALTH CAPITAL Topics
Volume 9
Issue 8
August 2016
Jessica L. Bailey-Wheaton, Esq., Editor
Todd A. Zigrang MBA, MHA, ASA, FACHE, Publisher

ACA CO-OP Closures: Impact on U.S. Health Insurance Markets (Part Two of a Two-Part Series)

The closures of over two-thirds of the 23 original *Consumer Operated and Oriented Plans* (CO-OPs) created under the *Patient Protection and Affordable Care Act* (ACA) have negatively impacted access to health insurance for many individuals, and have caused disruptions within the health insurance markets previously served by the plans. Due to market-based factors (e.g., competition from larger health insurers) and legislative factors (e.g., the *risk adjustment program*), the struggles of many CO-OPs have left numerous individuals and small markets without adequate access to, and competition for, health insurance.[1] Additionally, the implementation and enforcement of the ACA's *risk adjustment program*, has prompted certain CO-OPs to file suit seeking to delay payment of, or receive payment for, monies owed under this program. Although non-ACA specific factors have contributed to the struggles faced by many CO-OPs, the volatility of the CO-OP program may nevertheless represent a hurdle for government regulators to overcome in the ACA's overall effort to improve access to, and competition in, the health insurance market. This second installment of the two-part *Health Capital Topics* series on ACA CO-OPs will discuss the implications of the CO-OP struggles on the broader health insurance market and how, if at all, these closures reflect on insurance reforms under the ACA.

As discussed in Part One of this series, 16 of the 23 CO-OPs formed under the ACA have ceased offering health insurance to their enrollees;[2] these actions have caused significant difficulties for both state insurance regulators and the enrollees of such plans. In ceasing operations, when any health insurance issuer, including a CO-OP, is declared insolvent, the insurance commissioner of the state in which the insurer operated will be appointed to facilitate the liquidation process "*in an orderly fashion*."[3] Subsequently, the members of the closed CO-OP will likely transfer over to either: (1) a solvent health plan; or, (2) a state *guaranty association* (GA).[4] GAs are established in all 50 states and the District of Columbia, and "*protect customer insurance policies issued by insolvent insurance companies, subject to certain benefit limits and various exclusions specified by state law.*"[5] If the members of a CO-OP are transferred to the state's respective GA, the GA may then either: (1) continue to administer the closed CO-OP's policies; or, (2) implement replacement policies for the plan's enrollees.[6]

However, some of the members formerly insured by the CO-OPs that are no longer operational did not receive the option to transfer over to their state's GA, because some CO-OPs failed to receive guaranty fund protection due to licensing issues.[7] For example, *Health Republic Insurance of New York* (Health Republic), which had over 215,000 members at the time it ceased operations, was not covered by New York's GA, as GA coverage in New York requires health insurance claims to arise from life insurance policies, not policies specific to health insurance coverage.[8] For the individuals previously covered by Health Republic, which made up nearly 20% of the market on New York's individual exchange established under the ACA, this meant that no state GA handled the winding down process of the CO-OP, forcing the enrollees of the plan to personally find and register for new health insurance policies prior to the CO-OP's closure.[9] In contrast, the 120,000 members previously insured by the Iowa/Nebraska CO-OP, CoOportunity,[10] were able to work with a GA to during the winding down process of the CO-OP, allowing members to avoid a gap in coverage during the liquidation process of CoOportunity without rushing to locate and register for new coverage.[11] Further, the GA administering the winding down of CoOportunity processed and covered over $110 million of hospital and physician claims.[12]

With CO-OPs enrolling over one million members in 23 states prior to the recent closures, many enrollees of these plans have been forced to acquire new health insurance coverage.[13] For example, Meritus Health Partners Service, the CO-OP operating in Arizona, enrolled 59,000 members[14] whose plans were honored through the end of 2015.[15] At the time of Meritus's closure, eight companies within the CO-OP were expected to offer nearly 120 individuals plans, and three companies were expected to offer approximately 15 small group plans.[16] Similarly, Colorado HealthOP, the CO-OP operating in Colorado, enrolled 82,785 members, and during 2015 "*had the lowest prices in eight of Colorado's nine rating areas*."[17] As stated in the announcement of its closure, the CO-OP would honor health insurance plans through the end of 2015, after which time members would have to switch to another health plan.[18] Although a majority of

(Continued on next page)

the seven, still operational CO-OPs were profitable in the first quarter of 2016, risk adjustment payments may cut into this profit, potentially endangering the viability of these CO-OPs.[19]

In addition to effects on individual consumers, the local markets in which CO-OPs operated are likely to see changes regarding premium pricing for plans on the ACA exchanges.[20] According to a report by the *United States Government Accountability Office* (GAO), 2015 premiums offered by CO-OPs were lower than both 2014 premiums offered by CO-OPs, and 2015 premiums offered by other issuers.[21] For the majority of the 20 states with a CO-OP health plan on their respective ACA exchanges in the 2014 and 2015 open enrollment periods, the GAO found that "*the state-wide average monthly premium for a 30-year-old individual to purchase a CO-OP silver health plan was lower for 2015 than for [2014]*."[22] Specifically, consumers purchasing CO-OP plans in fourteen states experienced decreases in average monthly premiums, ranging from $1.47 per month in Kentucky, to $180.44 per month in Arizona.[23] Similarly, in comparison to other health insurance issuers, for the 23 states with a CO-OP health plan on their respective ACA exchanges in 2015, the GAO found that "*the average monthly premiums for CO-OP health plans in all tiers were lower than the average monthly premiums for other health plans for 30-year-old individuals in most rating areas*."[24] For all five tiers of health coverage, i.e., bronze, silver, gold, platinum, and catastrophic, "*the average premiums for CO-OP health plans were lower than the average premiums for other health plans in more than 75 percent of ratings areas where both a CO-OP and at least one other issuer offered health plans.*"[25] With the closures of more than two-thirds of the 23 CO-OPs, the availability of health insurance coverage at premium rates lower than other plans on the ACA exchanges may be negatively impacted during the next open enrollment period.

Certain CO-OPs have resorted to litigation in an effort to maintain viability. As stated in Part One of this two-part series, the enforcement of the *risk adjustment program* by the *U.S. Department of Health and Human Services* (HHS) disproportionately burdened many CO-OPs with risk pools composed of beneficiaries in better health relative to the risk pools of other insurers, as the program required such entities to make payments to other, larger insurers with less healthy patient pools.[26] Many CO-OPs partially attribute their closure to the enforcement of this program,[27] with a few CO-OPs filing lawsuits against HHS arguing that the methodology utilized in calculating risk adjustment payments is incorrect.[28] Notably, one of those CO-OPs, Evergreen Health Cooperative, in Maryland, failed to receive a time extension on paying its $24 million owed under the *risk adjustment program* during the proceeding of its lawsuit.[29] The CO-OPs in New Mexico and Massachusetts, New Mexico Health Connections, and Minuteman Health, Inc., respectively, filed similar lawsuits, asking the courts to "*[d]eclare that the Risk Adjustment methodology applied… for years 2014 and 2015 and intended to be applied going forward is arbitrary, capricious, and contrary to law."*[30] The lawsuits are currently pending.

With the cascading closures of CO-OPs that occurred, and may continue to occur, those insured by the CO-OPs, as well as the local markets in which the CO-OPs operate, may experience disruption in coverage and competition. More broadly, the recent history of the CO-OP program may serve as another reflection on how the ACA has been subject to numerous forces in its implementation, whether through market forces, regulatory decision-making, or Congressional alteration. Such forces may not be directly attributable to the ACA, but they have nevertheless impacted the satisfaction of the goals of this landmark legislation, such as improving access to quality and affordable health insurance coverage.[31] Future proponents of healthcare reform efforts may be prudent to view the struggles of the CO-OP program as a reflection of the difficulties of implementing landmark legislation, such as the ACA, due to the numerous regulatory and market-based pressures that may influence whether the goals of such laws are ultimately satisfied.

---

1 "CO-OP health plans: patients' interests first: Only 7 of the 23 Consumer Operated and Oriented Plans remain" By Louise Norris, HealthInsurance.org, August 3, 2016, https://www.healthinsurance.org/obamacare/co-op-health-plans-put-patients-interests-first/ (Accessed 8/8/2016); "16 of 23 ACA CO-OPs Closed (Part One of a Two-Part Series)" Health Capital Consultants, Vol. 9, No. 7 (July 2016), https://www.healthcapital.com/hcc/newsletter/07_16/CO-OP.pdf (Accessed 8/8/2016).

2 Norris, August 3, 2016; "Friday Night Lights-Out: Oregon's Health CO-OP Shuts its Doors as Taxpayer Losses Surpass $1.5B" The Energy and Commerce Committee, United States House of Representatives, July 11, 2016, https://energycommerce.house.gov/news-center/press-releases/friday-night-lights-out-oregon-s-health-co-op-shuts-its-doors-taxpayers (Accessed 7/15/2016); "Oregon, Illinois CO-OPS to Shutter Operations, House Subcommittee Chair Predicts All Will Fold" The American Health Lawyers Association, July 15, 2016, https://www.healthlawyers.org/Pages/home.aspx (Accessed 7/15/2016).

3 "Consumer Operated and Oriented Plan (CO-OP) Program: Frequently Asked Questions" By Annie L. Mach and Grant A. Driessen, Congressional Research Service, March 11, 2016, https://www.fas.org/sgp/crs/misc/R44414.pdf (Accessed 8/2/2016), p. 12.

4 *Ibid*.

5 *Ibid*.

6 *Ibid*.

7 "What happens if health insurers fail?" By Allison Bell, LifeHealthPro, June 8, 2015, http://www.lifehealthpro.com/2015/06/08/what-happens-if-health-insurers-fail (Accessed 8/8/2016).

8 "New York Health Co-Op's Collapse Hits Physicians: Unpaid claims from Health Republic total millions of dollars" By Corinne Ramey, The Wall Street Journal, November 27, 2015, http://www.wsj.com/articles/new-york-health-co-ops-collapse-hits-physicians-1448670548 (Accessed 8/8/2016).

9 "Health-Insurer Shutdown Jolts N.Y. Marketplace: Health Republic Insurance of New York had insured 215,000 members" By Corinne Ramey, The Wall Street Journal, October 12, 2015, http://www.wsj.com/articles/health-insurer-shutdown-jolts-n-y-marketplace-1444694820 (Accesesd 8/8/2016).

10 "CoOportunity Health falters, taken over by state" By Tony Leys, Des Moines Register, December 30, 2014,

(Continued on next page)

http://www.desmoinesregister.com/story/news/2014/12/24/coopportunity-health-taken-iowa-insurance-division/20856151/ (Accessed 8/9/2016).

11 "CoOportunity Health Liquidation Frequently Asked Questions For Individuals" Nebraska Life and Health Insurance Guaranty Association, January 23, 2015, https://www.nelifega.org/documents/NE%20coopindividualqanda.pdf (Accessed 8/9/2016).

12 Ramey, "New York Health Co-Op's Collapse Hits Physicians: Unpaid claims from Health Republic total millions of dollars," November 27, 2015.

13 "Can Health Insurance Co-ops Survive?" By Michael Ollove, PEW Charitable Trusts, September 21, 2015, http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/09/21/can-health-insurance-co-ops-survive (Accessed 8/10/2016).

14 "Meritus Health Placed Under Supervision" Arizona Department of Insurance, https://insurance.az.gov/press-release-meritus-health-placed-under-supervision (Accessed 8/30/2016).

15 *Ibid*.

16 *Ibid*.

17 Norris, August 3, 2016.

18 "Colorado Health Insurance Cooperative not available for 2016" Colorado Department of Regulatory Agencies, October 16, 2015, https://www.colorado.gov/pacific/dora/node/116051 (Accessed 8/2/2016).

19 Norris, August 3, 2016.

20 "ACA co-ops cut prices, heat up competition" By Phil Galewitz, USA Today, December 6, 2014, http://www.usatoday.com/story/news/nation/2014/12/06/kaiser-obamacare-co-ops/19889603/ (Accessed 8/9/2016).

21 "Private Health Insurance: Federal Oversight, Premiums, and Enrollment for Consumer Operated and Oriented Plans in 2015" United States Government Accountability Office, March 2016, www.gao.gov/assets/680/675742.pdf (Accessed 8/2/2016), p. 25, 27.

22 *Ibid*, p. 25.

23 *Ibid*.

24 *Ibid*, p. 27.

25 *Ibid*.

26 "ACA 'Premium Stabilization' Program Hits CO-OPs, Small Plans" By Sara Hansard, Bloomberg BNA, August 26, 2015, http://www.bna.com/aca-premium-stabilization-b17179935263/ (Accessed 7/13/2016); Health Capital Topics, July 2016.

27 "$900K Bill Is Death Blow To Oregon Health Co-Op" By Dani Kass, Law360, July 11, 2016, https://www.law360.com/articles/816004/-900k-bill-is-death-blow-to-oregon-health-co-op (Accessed 8/8/2016).

28 "ACA Co-Op Can't Delay $24M Payment, 4th Circ. Rules" By Jeff Overley, Law360, August 1, 2016, http://www.law360.com/articles/821169/aca-co-op-can-t-delay-24m-payment-4th-circ-rules (Accessed 8/8/2016).

29 "Evergreen Health Cooperative, Inc. v. United States Department of Health & Human Services" Case No. 16-1834 (4th Cir., August 1, 2016), Order, p. 1; "Evergreen Health Cooperative, Inc. v. United States Department of Health & Human Services" Case No. 16-1834 (4th Cir., July 22, 2016), Plaintiff-Appellant's Emergency Motion for an Injunction Pending Appeal or, in the Alternative, for a Temporary Injunction Until October 31, 2016, p. 1.

30 "Minuteman Health, Inc. v. United States Department of Health and Human Services" Case No. _ (District of Massachusetts, July 29, 2016), Complaint, p. 50; "New Mexico Health Connections v. United States Department of Health and Human Services" Case No. _ (District of New Mexico, July 29, 2016), Complaint for Declaratory and Injunctive Relief, p. 45.

31 "Health Care that Works for Americans" The White House, 2016, https://www.whitehouse.gov/healthreform/healthcare-overview (Accessed 8/23/16).

(Continued on next page)

HCC
HEALTH CAPITAL CONSULTANTS

(800)FYI - VALU

Providing Solutions in the Era of Healthcare Reform

Founded in 1993, HCC is a nationally recognized healthcare economic financial consulting firm

- HCC Home
- Firm Profile
- HCC Services
- HCC Experts
- Clients & Projects
- HCC News
- Upcoming Events
- Contact Us
- Email Us

HCC Services

- Valuation Consulting
- Commercial Reasonableness Opinions
- Commercial Payor Reimbursement Benchmarking
- Litigation Support & Expert Witness
- Financial Feasibility Analysis & Modeling
- Intermediary Services
- Certificate of Need
- ACO Value Metrics & Capital Formation
- Strategic Consulting
- Industry Research Services

Robert James Cimasi, MHA, ASA, FRICS, MCBA, CVA, CM&AA, serves as Chief Executive Officer of **HEALTH CAPITAL CONSULTANTS** (HCC), a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Master in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Institution of Chartered Surveyors (FRICS – Royal Institution of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Certified Valuation Analyst (CVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, and is the author of several books, the latest of which include: "*The Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA]; "*Healthcare Valuation: The Financial Appraisal of Enterprises, Assets, and Services*" [2014 – John Wiley & Sons]; "*Accountable Care Organizations: Value Metrics and Capital Formation*" [2013 - Taylor & Francis, a division of CRC Press]; and, "*The U.S. Healthcare Certificate of Need Sourcebook*" [2005 - Beard Books].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious "*Shannon Pratt Award in Business Valuation*" conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows. In 2011, he was named a Fellow of the Royal Institution of Chartered Surveyors (RICS). In 2016, Mr. Cimasi was named a "*Pioneer of the Profession*" as part of the recognition of the *National Association of Certified Valuators and Analysts* (NACVA) "*Industry Titans*" awards, which distinguishes those whom have had the greatest impact on the valuation profession.

Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS** (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 20 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 1,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "*The Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).

John R. Chwarzinski, MSF, MAE, is Senior Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC). Mr. Chwarzinski's areas of expertise include advanced statistical analysis, econometric modeling, as well as, economic and financial analysis. Mr. Chwarzinski is the co-author of peer-reviewed and industry articles published in *Business Valuation Review* and *NACVA QuickRead*, and he has spoken before the Virginia Medical Group Management Association (VMGMA) and the Midwest Accountable Care Organization Expo.

Mr. Chwarzinski holds a Master's Degree in Economics from the University of Missouri – St. Louis, as well as, a Master's Degree in Finance from the John M. Olin School of Business at Washington University in St. Louis. He is a member of the St. Louis Chapter of the American Society of Appraisers, as well as a candidate for the Accredited Senior Appraiser designation from the American Society of Appraisers.

Jessica L. Bailey-Wheaton, Esq., is Vice President and General Counsel of **HEALTH CAPITAL CONSULTANTS** (HCC), where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Ms. Bailey is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the *Journal of Health Law & Policy*.

Kenneth J. Farris, Esq., is an Associate at **HEALTH CAPITAL CONSULTANTS** (HCC), where he provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services, and tracks impact of federal and state regulations on healthcare exempt organization transactions. Mr. Farris is a member of the Missouri Bar and holds a J.D. from Saint Louis University School of Law, where he served as the 2014-2015 Footnotes Managing Editor for the *Journal of Health Law & Policy*.