
(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. 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; 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, in

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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.

4 Ibid.
5 Ibid.
6 Ibid.
10 “CoOpportunity Health falters, taken over by state” By Tony Leys, Des Moines Register, December 30, 2014,

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Norris, August 3, 2016.


Norris, August 3, 2016.


“Ibid. p. 25.

“Ibid.

“Ibid.

“Ibid. p. 27.

“Ibid.


“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.

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).


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. Zigzag, 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. Zigzag has over 20 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 1,000 transactions and joint ventures. Mr. Zigzag is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigzag 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. Zigzag 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. Zigzag 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, MS, 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.