Health Access California Testimony to the Department of Health and Human Services

Consumer Protections for Consumer Operated and Oriented Plan Program (COOPs)

Meeting of January 13, 2011

My name is Elizabeth Abbott. I am the Director of Administrative Advocacy for Health Access California, a coalition of over a hundred organizations that work to formulate and implement statewide public policy that assures access to quality and afford able health care for all.

Health Access California appreciates the opportunity to present testimony on Consumer Protections that should be part of the standards for the formation of COOPs under the Affordable Care Act.

Our fundamental premise is that consumers require and deserve the same consumer protections regardless of whether their coverage is provided by a cooperative or an insurer. Our second fundamental premise is that if COOPs are intended to be responsive to their members, then their governance must be dominated by consumers.

We find it helpful to distinguish between *health insurance cooperatives* and *health insurance purchasing co-ops.* These often have many of the same features of commodity cooperatives, such as the Western Growers' Association.

- Health insurance cooperatives were best known in the 1930's and '40's, particularly in the Midwest where as many as 600,000 people were insured through them. The governing principle was that insurance cooperatives were established to offer insurance to their members and included additional features and benefits based on the affinity of its membership. Two prominent examples still exist today: Group Health of Washington state and Health Partners in Minnesota.

- On the other hand, health insurance purchasing cooperatives are founded on the principle that consumers (or by extension purchasers representing consumers) get together to bargain with insurance companies to provide insurance for their members. They do not provide insurance themselves, but based on the size of their insurance pool, they are able to negotiate for favorable costs, coverage, and benefits for their members. These entities are similar to exchanges, union trust funds, or multiple employer welfare arrangements (MEWAs) and face many of the same challenges.

The challenges to setting up successful health insurance cooperatives include the size of the risk pool for negotiating power, breaking into a marketplace already dominated by large insurers, and meeting state regulatory requirements. These will be discussed by others at this conference.

Health cooperatives face two inherent dangers: they will either **fail** (and be unable to provide services to their members and cause financial hardship to consumers and providers) or they will **succeed** (and become so successful that they cease to be true cooperatives and are bought out by an insurance company or spun off.) The fundamental question remains: As these health insurance cooperatives are set up, how can we assure strong consumer protections for the consumers who will rely on COOPs? These goals can probably be most clearly articulated as:

First, consumers who rely on them should have **the same consumer protections as other health care coverage or delivery system models.** Second, **the governance of coops should be responsive to and driven by the interests of their members.**

Recommendations

We strongly recommend that the following Consumer Protections should be included as follows:

1. **Fiscal Solvency Should Be The First (and Ultimate) Consumer Protection.** The dislocation that consumers suffer when a health plan, cooperative, or insurer goes under financially (or withdraws from part of their service area) is devastating. Cooperatives should be required to meet rigorous financial solvency standards that will ensure their ongoing ability to serve their customers and remain in the market. If they are allowed to submit to less demanding standards, their viability is called into question. Recent examples in market contraction in California in the 1990's and in the financial services industry in late 2000's should be all the evidence you need. A cooperative that may be familiar to many of you is Sunkist: for many years, Sunkist operated a MEWA that served the citrus growers who are its members as well as some of their employees but in the 1990s this MEWA failed due to lack of adequate reserves to meet risk.

2. **The Complete List of Consumer Protections Must be Applied to Health Cooperatives.** Cooperatives should the same requirements and regulations that apply to other delivery mechanisms or the industry at large. If COOPs are exempted from these requirements, you will do a disservice to the consumers who depend on them for their care. These include, but are not limited to, licensing, network adequacy, claims processing requirements, credentialing, timely access to care, cultural and linguistic access to care,

reserve restrictions, internal controls, and other financial and audit requirements.

3. **The Board and its Regulatory Agency Must Adopt a Sustained Program of Oversight of the Health Cooperative.** Setting up the COOP is only part of the task; its performance must be overseen in this new health care world. This includes data-based monitoring such as tracking of enrollments and disenrollments, periodic assessment of the adequacy of provider networks, tracking of consumer and provider complaints, the timeliness of claims payments to contracted providers and other vendors, the rate of appeals overturned by third party adjudicators, etc. This information must also be publicly available on a timely basis to the board, consumers, advocates, regulators, and purchasers.

We now turn to recommendations that relate to governance. These are intended to assure that cooperatives are responsive to their members and free of debilitating conflicts of interest.

4. **Consumer Representatives should Be a Majority of the Governing Board of the Health Cooperative.** Some industry representatives would argue that that provision is unnecessary. Others would agree to its desirability, but leave it at token representation. It is insufficient to have one so-called consumer representative because it is easy for that member's views to be overwhelmed by its professional membership. While this might seem to be a high standard to attain, in California for the last thirty years the licensing boards for many professions have met this standard.

The governing board of California's newly created health exchange <u>excludes</u> insurers, brokers, physicians and hospital administrators on the premise that the exchange will be negotiating with the health care industry and thus that the industry should not be on both sides of the same table. California law provides that:

> A member of the board or of the staff of the Exchange shall not be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, a carrier or other insurer, an agent or broker, a health care provider, or a health care facility or health clinic while serving on the board or on the staff of the Exchange. A member of the board or of the staff of the Exchange shall not be a member, a board member, or an employee of a trade association of carriers, health facilities, health clinics, or health care providers while serving on the board or on the staff of the Exchange. A member of the board or of the staff of the Exchange shall not be a health care provider unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice.

This language is more applicable for a health insurance purchasing cooperative than for a health insurance cooperative, but the same principle applies in both circumstances: the board should have a majority of consumers on whose behalf the cooperative will negotiate rather than the

sector or sectors of the health care industry with which the cooperative will negotiate.

5. **The Expertise of the Consumer Representatives on the Governing Board Should be Drawn from Knowledgeable Sources.** It is often true that in addition to limited numbers of consumer representatives on state boards, the consumer representatives are drawn from well-meaning, but less knowledgeable amateurs. These consumers chosen to serve on these governing boards must be strong advocates on behalf of consumers imbued with their own base of knowledge of consumer protections as well as expertise in the work of the cooperative. Again, California law provides model language:

(c) (1) Each person appointed to the board shall have demonstrated and acknowledged expertise in at least **two** of the following areas:
(A) Individual health care coverage.
(B) Small employer health care coverage.
(C) Health benefits plan administration.
(D) Health care finance.
(E) Administering a public or private health care delivery system.
(F) Purchasing health plan coverage.
(2) Appointing authorities shall consider the expertise of the other members of the board and attempt to make appointments so that the board's composition reflects a diversity of expertise.

6. **All Governing Board Members Must Be Held to Standards to Protect Against Conflicts of Interest.** The governing board members must have clear, unambiguous standards that prevent them from profiting from serving on the board. California law has language that might serve as a model:

(g) No member of the board shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any decision that he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on him or her or a member of his or her immediate family, or on either of the following:
(1) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the member within 12 months prior to the time when the decision is made.
(2) Any business entity in which the member is a director, officer, partner, trustee, employee, or holds any position of management.

7. **Protections Against Self-Inurement for Board Members and Senior Management**

One of the inherent dangers of a COOP is that it will be so successful that either an insurer will seek to acquire it or that it will be tempted to spin itself off as a for-profit venture. Many states have had experience with non-profit conversions both of insurers such as the “Blues”, those formerly non-profit entities known as Blue Cross Blue Shield, as well as with the acquisition of

non-profit hospitals by for-profit corporations. California has had experience with both. Until legislative action prevented it, non-profits were undervalued at 10% or less than the market value while senior management profited from selling out to the new for-profit owners.

In one particularly egregious instance in California, a non-profit hospital system was valued at billions of dollars less than its market value while senior management of the non-profit were offered millions for selling out the interests of the non-profit to a for-profit entity. Fortunately, the California Attorney General intervened to prevent this travesty by telling the board members of the hospital system that they would be found individually and personally liable for any undervaluation.

To protect against these dangers, the board members and senior management of the cooperative should face strict rules against self-inurement in the instance of change of ownership, control or management of the cooperative. Board members should be precluded from voting on change of ownership, control or management if there is any personal benefit and senior management should be precluded from offering any information, advice or counsel to the board if there is any personal benefit to them.

8. **The Consumer Representatives on the Governing Board Must Be Accountable.** There must be constituent accountability to the consumer group represented and include ways to remove them from office. An example comes from the governing board for the California Public Employees Retirement System (Cal-PERS). One of their consumer representative positions is designated to represent California state retirees. That appointee is accountable to their constituency with procedures in place to be removed from office if they do not discharge their responsibilities faithfully.

9. **There Must Be a High Standard of Openness, Transparency, and Accessibility for the Deliberation and Decision-making by the Board.** This should include substantial advance notice of timing of meetings, accessibility to the meeting location (held throughout the service area as well as the accessibility of the meeting facility,) no cumbersome applications or registration for attendance, no fees or assessments as a pre-requisite, and the timely publication of the proceedings of the meetings.

Thank you.