

SMALL GROUP HEALTH PURCHASING COOPERATIVES

**Report on the Informational Sessions
Held Between November 10, 2009 and January 12, 2010
on Group Purchasing Cooperatives**



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COMMISSIONER OF INSURANCE
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Acknowledgement

The enclosed report was prepared by staff reporting to the Commissioner, the Health Care Access Bureau, the Bureau of Managed Care and the Legal Division of the Massachusetts Division of Insurance (“Division”), including the following persons:

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The report is primarily based on materials presented at the November 10, 2009 through January 12, 2010 informational hearings, additional information submitted outside the hearings by interested parties for inclusion in the report. The Division has not audited or otherwise verified that the information presented at its hearings is accurate.

Background information was obtained from statistical and other public reports produced by the Division of Insurance, Division of Health Care Finance and Policy, Commonwealth Health Insurance Connector Authority and the Office of the Attorney General as noted within the reports.

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SUMMARY

Governor Deval Patrick directed the Division of Insurance (“Division”) to schedule special sessions with stakeholders to discuss the development of open-access purchasing cooperatives for insured health coverage during a press conference on October 20, 2009. The Governor noted that the creation of “group purchasing cooperatives” would allow small businesses and individuals to combine their purchasing power and seek out lower premiums through a larger entity.¹ He instructed that such cooperatives should not have any membership restrictions and that the cooperatives must be able to choose and sponsor their own wellness and health management programs.² The special sessions proceeded with the understanding that the aforementioned safeguards would be key to the success of group purchasing cooperatives.

Individuals and small employer groups of 1-50 (the “merged market” or “small group market”) currently have a guaranteed right to obtain access to any of the products being offered to any of the other eligible groups in the merged market. Carriers are required to price health insurance coverage offered to all such individuals and groups at rates based primarily on the average costs of the entire pool of persons covered by plans that comply with M.G.L. c. 176J (the “Small Group Health Insurance Law”)³. Critics of M.G.L. c. 176J claim this law is unfair because small employers are not allowed to band together to negotiate better rates and coverage options; proponents claim that the law is fair because the rates are based on the experience of all of the insured persons in the merged market (over 800,000 persons).

Based upon information learned during the series of special sessions conducted at the Division, an opportunity may exist for the creation of group purchasing cooperatives in Massachusetts if restrictions are put in place to maintain the integrity of the existing merged market and if the group purchasing cooperatives sponsor the types of wellness and health management programs that large employers offer, but that are not generally available to small employers. Representatives of small employers argue that with these safeguards members could collectively benefit with lower premiums from the size of the cooperative and its wellness programs, while still protecting the integrity of the small group market

There is unified opposition, however, from certain employer groups, health plans, and health advocacy groups against group purchasing cooperatives because of concerns that group purchasing cooperatives will: i) increase administrative costs, ii) unfairly split the market between the healthy and the less healthy, and iii) not bring down overall health costs. Opponents suggest that group purchasing cooperatives will not address the true drivers of health care costs and propose instead that existing law should be more flexible to encourage insurers to offer wellness and health promotion programs to small employers.

No matter the decision, it is important to note that any group purchasing cooperative could only be successful with strong leadership and dedicated members. Even if permitted to operate in Massachusetts, the challenge will be to put into effect the appropriate organization to effectively monitor and promote better choices for small employers.

Process

The Division held special sessions on group purchasing cooperatives as follows:

November 10, 2009	General Discussion of Small Group Laws
November 17, 2009	Cooperatives: Guarantee Issue, Product Design and Rating Rules
December 2, 2009	Cooperatives: Health Promotion Programs
December 9, 2009	Consumer Protections
December 16, 2009	Other Concerns
January 12, 2010	Summary Discussion

Interested parties were invited to participate in all discussions, either in person or by conference call, and the Division asked participants to forward written materials expressing positions on group purchasing cooperatives by December 28, 2009 (the “December 28th Documents”). The Division then circulated the December 28th Documents and asked participants to follow-up with additional comments by January 8, 2010. The January 12, 2010 session was held to determine whether there were any new positions the Division should consider when reviewing the stakeholders’ positions.

Experiences with Group Purchasing Cooperatives in Other States

The Division and participants reviewed similarly structured group purchasing cooperatives in other states as part of the special sessions. In states such as Florida and Texas, the cooperatives remained small and did not offer access to anything that was not already available through the normal market. California had one of the largest cooperatives, the “Pacific Business Group on Health”, covering almost 150,000 members, but it ceased operations in 2006.

The Cleveland, Ohio-based Council of Smaller Enterprises (“COSE”), which covers over 200,000 lives, is considered a successful cooperative. It is an independent, business-operated entity that is one of the dominant sources of coverage for small employers in northern Ohio. This cooperative began in 1972 and has long-term contracts with two insurers, Medical Mutual of Ohio and Kaiser Permanente Health Plan of Ohio. According to the literature, COSE offers rates that are slightly better than those available through the normal market.

COSE stands out as a success because most cooperatives have not brought meaningful product options to the small group market. It has been noted⁴ that successful group purchasing cooperatives do the following:

- Offer options not available elsewhere;
- Have “critical mass” to be able to negotiate; and
- Do not have more permissive rating rules than the outside market.

Characteristics of Small Group Health Insurance Market

During the special sessions, the insurance carriers discussed that employers in the small group health

insurance market are very price sensitive and switch annually from one carrier to another based on the premiums offered. Carriers are required to cover all eligible individuals and groups at any time. The carriers indicated that this “churning” makes it difficult to monitor and predict future group costs because rates are set prior to knowing which and how many small employer groups and individuals will join and stay with an insurance carrier.

The noted volatility of the market also makes it difficult for any carrier’s health management and wellness programs to have an impact on the overall health of the population in the small group market. If the employer switches to different carriers with different management programs annually, the covered person does not benefit from the programs and the carrier cannot effectively impact the costs of treating those with chronic illnesses or improve the overall health of the population.

Examining Rules for Group Purchasing Cooperatives

Open-Access in Group Purchasing Cooperatives

Carriers in Massachusetts were permitted to offer health coverage to members of associations that were not subject to guarantee issue, guarantee renewal and rating restrictions prior to the Chapter 297 of the Acts of 1996 Amendments. At that time, an association could establish membership restrictions that might enable it to limit certain employers with less healthy employees from obtaining coverage. In contrast to the former association health plans, the Governor directed the Division to consider open-access group purchasing cooperatives that would not permit any membership restrictions.

During the special sessions at the Division, the insurance carriers expressed their concern with creating open-access group purchasing cooperatives parallel to the small group market because of potential adverse selection, where groups or individuals could switch back and forth between a cooperative and the small group market in order to obtain better benefits from either market.⁵ The carriers suggested that there would need to be enrollment rules to reduce an individual’s opportunity to switch into and out of a cooperative to prevent churning.

Although there was general agreement that there should not be any monetary penalty for leaving a cooperative, the carriers believed that churning would be slowed if cooperatives charged an initiation fee⁶ and had lock-out penalties that would prohibit an individual/group who left the cooperative from coming back for a specified period of time. With these types of rules, an individual or group who voluntarily joins the cooperative would be more likely to stay within the cooperative and they would stabilize the membership of persons in the cooperative.

The insurance carriers also expressed their concern with the cooperatives being available to employers with more than 50 eligible employees. Currently, these employers obtain coverage outside the provisions of M.G.L. c. 176J based on their own medical claims experience. There was general concern that if cooperatives are available for more than small groups, it would create adverse selection as certain mid-size employers would switch between cooperatives and their normal market based on their claims experience. Since the Governor’s directive was targeted to small groups, there was general agreement that the cooperatives should limit any access to individual and employers

with up to 50 eligible employees.

Coverage and Rating Rules within Group Purchasing Cooperatives

Similar to the discussion on open-access rules, the insurance carriers expressed their concerns with any coverage rules that may encourage adverse selection. Although the cooperative may choose product options that might not be available in the small group market, *e.g.*, cost-sharing, tiering products or limited-network plans, there was general agreement that cooperative products should be subject to all the same coverage rules that apply to the small group market. This would mean that persons covered under cooperative products should have the same rights to renew coverage, to obtain continuation coverage when leaving a group, to access mandated benefits and to benefit from the limitations on waiting periods and pre-existing condition clauses.

There was general agreement that the small group rating rules should be consistent for coverage inside and outside the cooperative. Although the small business representatives believed that the cooperatives' rates should be based on the relative experience of cooperative members, participants agreed that there could be variation in the rates within the cooperative according to the 2:1 rating bands and rating factors that are used outside the cooperative. Using similar rating rules would maintain limits on variation in rates, reduce any potential adverse selection between the cooperative and the small group market, and reduce overall administrative complexity in managing rates between the two markets.

Access to Wellness/Health Management Programs

National employers, including Safeway⁷, Scotts Miracle-Gro Company⁸ and EMC, have implemented employer-promoted wellness/health management programs that the employers claim have had a significant impact not only on their employees' health care costs, but also on their morale and overall productivity. The Division did not review any conclusive studies that illustrate a positive impact on employer health costs, but employers who have embraced health management programs claim to have seen positive impacts on medical trend.

Although many programs concentrate on education and advice lines, the Division presented information from Mercer Consulting⁹ that indicated that more large employers were requesting employees to complete a health risk questionnaire and participate in behavior modification programs to improve their health. Almost all of the employers providing health risk questionnaires provide financial rewards or lower premiums for completing the survey. According to Mercer's study, employees are much more likely to be offered health management programs and financial incentives to participate in these programs if they work for large employers.

The carriers indicated that they found it difficult to implement health management programs with small employers who have limited human resource staff and little ability to monitor employees' or their dependents' health conditions. The carriers offer disease management programs to both large and small employers, but they identified that small employers tend to switch carriers more frequently than large employers and may not benefit from continuity in disease management programs.

While there was general agreement that wellness/health management programs are not as available

for small businesses as for large businesses, there was not agreement that wellness/health management should be coordinated by cooperatives. The insurance carriers indicated that they offered wellness programs and may be willing to expand them to small business, but they were not willing to commit to expand these programs to individuals or the smallest of small employers.

Some participants indicated that group purchasing cooperatives could administer wellness/health management programs and make participation in the wellness/health management program a condition for joining the cooperative. Individuals could be required to participate and a certain proportion of each employer could also be required to participate in the wellness/health management program. Employers could also be required to implement financial incentives for employees to encourage participation in the cooperative wellness/health management program.

The representatives of certain small employers on one side, and the health carriers and advocacy groups on the other side, disagreed about a cooperative serving as the administrator of a wellness/health management program. The small employers representatives argued that cooperatives provide a service currently not available to them due to the cost. The health carriers and advocacy groups argued that providing such programs through a cooperative would be administratively burdensome and would not bring down the overall cost of care for the covered small employers.

Establishing Consumer Protections

In general, the representatives from small businesses, insurance carriers and advocacy groups agree that any cooperatives, and any wellness/health promotion program offered by cooperatives, would need to be regulated by state government. Regulations could be established to clearly define all relevant restrictions and the oversight agency could have the power to examine the group purchasing cooperative to ensure that it is complying with what is required.

In addition, there was general agreement that there would need to be clear disclosures to all individuals and employers throughout the enrollment process so that any individual or employer seeking to join a cooperative is fully aware of any requirements to participate in wellness/health management programs, about any nonrefundable initiation fees and potential “lock-out” penalties that would prevent a group from coming back for a period of time after leaving the cooperative.

Identifying the Number of Cooperatives

There was no general agreement about the number of cooperatives that would be appropriate if permitted in the Massachusetts market. Although there was some sentiment that there be one cooperative offered through the Commonwealth Health Insurance Connector Authority, there was also comment that there should always be a cooperative choice administered *outside* of the government, for example, in the manner run by COSE.

General Discussion about Ways to Manage Open-Access Cooperatives

There continues to be disagreement about whether group purchasing cooperatives would be good for

the Massachusetts market, but there was a general discussion during the special sessions that the following protections would be important if group purchasing cooperatives are permitted¹⁰. The cooperatives:

- would be regulated by the Division of Insurance
- would offer wellness/health management programs subject to regulatory approval
- would accept all eligible small employers and Massachusetts residents not covered through an employer plan as long as they agree to participate in wellness/health management
- could charge initiation fee to cover administrative costs
- could impose a lock-out penalty preventing employers from returning to the cooperative for three years after leaving it
- could negotiate benefits and programs unavailable to small employers outside the cooperative, but would be required to cover all mandated health benefits and satisfy other coverage requirements
- could negotiate rates with carriers based on the experience of cooperative members
- would be required to apply rating rules within the cooperative that are the same as those that are applied outside the cooperative

General Disagreement about Whether to Permit Cooperatives

Despite efforts made during the special sessions to explore rules or protections that could make the concept of group purchasing cooperatives acceptable, there continue to be wide differences of opinion about whether cooperatives should be permitted in Massachusetts.

The Division received comments from the Massachusetts Farm Bureau Federation, Inc., National Federation of Independent Business, Cape Cod Chamber of Commerce and the Retailers Association of Massachusetts all strongly supporting the creation of group purchasing cooperatives as an appropriate option for small businesses in Massachusetts to obtain access to products, wellness/health management programs, and options that are not currently available to them in the small group health insurance market.

These participants believe that group purchasing cooperatives would:

- sponsor new programs and plans that are available in other states;
- increase the purchasing leverage for small businesses; and
- provide access to wellness/health management programs not currently being offered.

The Division also received comments from the Associated Industries of Massachusetts, Health Care for All, Small Business Service Bureau, Massachusetts Business Association, Massachusetts Association of Health Underwriters, Massachusetts Association of Health Plans and Blue Cross and Blue Shield of Massachusetts, Inc. all strongly opposing the creation of group purchasing cooperatives as an unnecessary and potentially dangerous option for Massachusetts.

These participants believe that group purchasing cooperatives would:

- destabilize the merged individual and small employer market and permit only the healthier risks to join the cooperative;

- distract government efforts away from activities that address the true drivers of rising health care costs and health insurance premiums;
- not offer anything different than what is currently available in the small group market, while increasing overall health plan's administrative costs because they would need to work with a wider array of purchasing cooperatives; and
- expand the need for government oversight of the cooperatives to make sure that they follow guarantee issue and rating rules.

Endnotes

¹ Group purchasing cooperatives are essentially buying groups designed to provide small groups and individuals with greater leverage to negotiate for lower premiums while still allowing unlimited access to comprehensive coverage. Group purchasing cooperatives that offer coverage without any membership restrictions have had limited success nationally, but have fared better where the cooperatives offer programs or options that are not otherwise available in the market, such as access to a wellness program.

² Wellness and health management programs provide employees with greater incentives to manage their health care, ultimately leading to lower health care costs.

³ Chapter 495 of the Acts of 1991 enacted M.G.L. c. 176J (the “Small Group Health Insurance Law”) and established a guaranteed issue, rate-regulated market for small employers with between 1 and 25 eligible employees. Prior to the enactment of this statute, there was great volatility in coverage for small employers, as rates could spike or coverage could be terminated if any employee or dependent was treated for a health condition in the prior year. Under this new law, carriers were required to do the following:

- (1) offer all small employers what was being offered to any other small employer;
- (2) renew coverage without regard to the health condition of any covered members;
- (3) limit pre-existing condition periods;
- (4) base overall rates on the collective experience of all small employers;
- (5) limit rate variations between the “best” and “worst” small groups within rating bands;
- (6) implement a transition period where rates would gradually move from 4:1 to 2:1 rating bands; and
- (7) use defined factors (e.g., age, group size, industry, participation rate, location) to vary rates from one employer to another.

The 1991 law also included provisions that exempted association health plans from the guarantee issue and rating restrictions that applied to the rest of the market. A related law, Section 78 of Chapter 153 of the Acts of 1992, identified that certain associations engaged in financial services were also exempt from the provisions of M.G.L. c. 176J.

M.G.L. c. 176J was amended by Chapter 297 of the Acts of 1996 to expand the protections of the Small Group Health Insurance Law to groups of between 26 and 50 eligible employees, providing carriers with a three-year period to move the newly protected small groups from 4:1 to 2:1 rating bands. Chapter 297 also provided that the rates for all small employers would compress to a 1.5:1 rating band by December 1, 1999, but this was repealed by Chapter 61 of the Acts of 1999. In another amendment, the M.G.L. 176J exemptions for association health plans (although not the financial services association plans) were eliminated, ending almost all association health plans offered in Massachusetts.

M.G.L. c. 176J was further amended by Chapter 58 of the Acts of 2006 expanding coverage to all eligible individuals on July 1, 2007. The effect was to allow individuals to purchase the same products that were available to small employers. As of December 31, 2009, a total of 815,931 persons were covered under small group health insurance plans; including 72,513 individuals and 743,418 covered through small employers.

⁴ Wicks, Elliot K., Hall, Mark A., Meyer, Jack A., *Barriers to Small-Group Purchasing Cooperatives*, Economic and Social Research Institute, March 2000.

⁵ For example, if the cooperative offered only a \$2,000 deductible plan and an individual needs an expensive procedure, the individual may leave the cooperative and enroll in a small group plan with only a \$500 deductible, have the procedure, and then go back to the cooperative after recovering from the expensive procedure.

⁶ COSE charges a nonrefundable initiation fee of \$450 per group.

⁷ Burd, Steven A., “How Safeway is Cutting Health-Care Costs,” *The Wall Street Journal*, June 12, 2009.

⁸ “Get Healthy – Or Else: Inside One Company’s All Out Attack on Medical Costs,” *Business Week*, 2007.

⁹ “Employer Health Management Programs: An analysis of Mercer survey results for the Massachusetts Division of Insurance,” Mercer Consulting, November 2009.

¹⁰ It should be noted that in their final written comments submitted on December 28, 2009, the group comprised of Health Care for All, Small Business Service Bureau, Massachusetts Business Association, Massachusetts Association of Health Underwriters, Massachusetts Association of Health Plans and Blue Cross and Blue Shield of Massachusetts, Inc. indicated that they do not support the establishment of group purchasing cooperatives “[b]ecause we do not believe that there are any circumstances under which a Cooperative could be established and not have...adverse consequences.”