AMERICAN ACADEMY OF FAMILY PHYSICIANS
STRONG MEDICINE FOR AMERICA

September 15, 2011

Donald Berwick, MD
Administrator
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS–9983–P
P.O. Box 8010
Baltimore, MD 21244–8010

Re: Establishment of Consumer Operated and Oriented Plan (CO–OP) Program

Dear Dr. Berwick:

On behalf of the American Academy of Family Physicians (AAFP), which represents more than 100,300 family physicians and medical students nationwide, I write in response to the proposed *Establishment of Consumer Operated and Oriented Plan (CO–OP) Program* as published in the July 20, 2011 *Federal Register*.

As stated in the proposed regulation, the Centers for Medicare & Medicaid Services (CMS) issued this regulation to implement Section 1322 of the *Affordable Care Act* which calls for the Consumer Operated and Oriented Plan (CO–OP) program. This program provides loans to foster the creation of consumer-governed, private, nonprofit health insurance issuers to offer qualified health plans in the Affordable Insurance Exchanges, with a goal of having at least one health insurance CO-OP in each state. As a longstanding supporter of efforts to improve patient access to affordable health insurance coverage, the AAFP was pleased this section was included in the *Affordable Care Act*. The AAFP is also pleased that the CO-OP Advisory Board charged with helping CMS draft rules governing the program includes three outstanding family physicians.

On July 28, the CMS published an announcement and application for a loan opportunity to assist with CO-OP start-up costs and solvency requirements. The *Affordable Care Act* directs HHS to consider plans that:

- Adhere to recommendations of the advisory board appointed by the Government Accountability Office (GAO),
- Demonstrate private support,
- Are ready to expand statewide, and;
- Utilize integrated care models.

As discussed in our March 3 letter, the AAFP strongly urges CMS to fully incorporate the patient centered medical home concept into the CO-OP program. An increased focus on physicians whose practices serve as a patient centered medical home will result in increased CO-OP enrollee access to preventive care, better coordination of their health care and better management of the care they need for chronic diseases, and appropriate care for acute illnesses. The PCMH is an organized practice exercising disciplined financial

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management while relying on clinical systems that support the delivery of high-quality care. We are therefore happy the proposed regulation discusses that the anticipated benefits of the CO-OPs will be "new models and new arrangements that are more patient-centered than the current fragmented delivery system. Improved delivery systems may provide better health outcomes due to coordinated care, better chronic disease management, and improved quality of care."

Eligibility
AAFP state and territorial chapters or family physicians, singly or in groups, could potentially sponsor the creation of a CO-OP. Under its proposed eligibility rules, CMS says more about who cannot participate than who can, leaving fairly broad room for organizations to sponsor applicants and potential health insurance cooperatives. CMS proposes that only nonprofit, not-for-profit, public benefit or similar membership entity organizations, organized as appropriate under state law, may be eligible for CO-OP loans. Existing organizations may sponsor the creation of the CO-OP by helping to establish a nonprofit member organization. However, the new nonprofit, not the sponsor, will be the recipient of any loans granted by CMS.

As CMS evaluates CO-OP grant applications, we urge the agency to consider that the reduction in the growth of healthcare costs, decreased mortality rates, and improved participation in preventive and screening services are some of the many benefits of the patient centered medical home.

The AAFP is a longstanding supporter of efforts that allow physicians to engage in collective bargaining to improve the ability of physicians to negotiate with insurance and managed care companies so that they can become stronger patient advocates. Similar to the comments the AAFP submitted to the FTC and Department of Justice on May 25, 2011, we believe the administration should develop greater incentives that further motivate communities, organizations, and medical practices to pursue the CO-OP concept. As such, we urge CMS to work with the Federal Trade Commission to develop possible "safe harbors" with the CO-OP program. Changes to antitrust regulations and to Stark self-referral regulations need to be explored to allow physicians, especially those practicing in small- and medium-sized practices to fully participate. CO-OPs, as designed, should significantly increase competition through self-regulation of price gouging by facilities, health systems, labs, specialists, etc. while promoting patient-centered care. The AAFP believes that physicians need clear guidelines on how to satisfy FTC policy as greater integration is pursued. We applaud the FTC and CMS for working together to develop the Medicare Shared Savings model but the AAFP believes the agencies also must collaborate to implement Section 1322. Antitrust laws should not create barriers that inhibit clinical integration.

Governance
CMS proposes that CO-OPs implement policies and procedures to foster and ensure member control of the organization, including a board of directors elected by a majority vote of its members, with every member eligible to vote. CMS proposes that a majority of the voting members of the board of directors be members of the organization. The agency makes provision for CO-OPs to reserve positions for directors with particular, relevant health care experience (providers, actuaries, etc.). Those directors with specialized experience may not constitute a majority of the voting members of the operational board, even if those directors are also members of the CO-OP. For example, this would preclude an operational board from having physicians as a majority of the voting members.

The CO-OP Advisory Board recommended, and CMS concurred with, four principles for awarding start-up and solvency loans:

1) Consumer operation, control, and focus must be the salient features of the CO-OP and must be sustained over time;
2) Solvency and the financial stability of coverage should be maintained and promoted;

3) CO-OPs should encourage care coordination, quality and efficiency to the extent feasible in local provider and health plan markets; and
4) Initial loans should be rolled out as expeditiously as possible so that CO-OPs can compete in the Exchanges in the critical first open enrollment period.

CMS will award loans to assist with costs associated with start-up and meeting the financial solvency requirements of the state(s) in which the plan will operate. The *Affordable Care Act* mandates repayment periods of five years for start-up loans and 15 years for solvency loans, however CMS retains discretion to develop specific loan terms. The AAFP appreciates that CMS recognizes that solvency requirements vary state-by-state and that some states may consider solvency loans as debt rather than risk-based capital. The *Affordable Care Act* establishes penalties for loan recipients who fail to meet contractual obligations or use federal funds in a prohibited or improper manner: the recipient must repay 110 percent of the aggregate amount of loans received, plus interest. CMS proposes that the interest rate be equal, rather than benchmarked, to the average interest rate on marketable Treasury securities of similar maturity.

The AAFP urges CMS to specify that the CO-OP operational board must utilize primary care physicians in the top leadership positions to ensure that CO-OPs are primary care driven. Significant and equitable representation from primary care and specialty physicians in a CO-OPs administrative structure, policy development, and decision-making processes will help to ensure the program's success.

Health Plan Issuance
The *Affordable Care Act* requires that "substantially all" of a CO-OP's activities consist of the issuance of qualified health plans. CMS proposes that a CO-OP will meet the "substantially all" standard if at least two-thirds of all contracts issued, not patients covered, by the CO-OP are qualified health plans. A CO-OP must continually meet this standard. CMS, interestingly, notes that it proposes this standard to, "allow providers wishing to sponsor CO-OPs to enroll their own employees… and thereby encourage provider participation." CMS further discusses that this standard would permit or encourage CO-OPs to participate in Medicaid and the Children's Health Insurance Program (CHIP), which may offer patients greater continuity of care as they move between forms of coverage. The AAFP supports this flexibility as a step toward achieving better healthcare coverage for patients, particularly low income working families and individuals.

We appreciate the opportunity to provide these comments and make ourselves available for any questions you might have or clarifications you might need. Please contact Greg Martin, State Government Relations Manager, at 202-232-9033 or gmartin@aafp.org.

Sincerely,

Lori J. Heim, MD, FAAFP
Board Chair