

**Formal Testimony of**

**Mark E. Rust, Esq.**

**before**

**The Consumer Operated and Oriented Plan (CO-OP) Advisory Board**

**Office of Consumer Information and Insurance Oversight**

**Washington, D.C., Monday, March 14, 2011**

Good afternoon, Mr. Chairman and Board Members. I am Mark Rust, Managing Partner of the Chicago office of Barnes & Thornburg LLP and chair of its national Healthcare Department. Barnes & Thornburg is a 520-attorney firm with offices in 12 cities. We have represented health insurers, including non-profit, provider-sponsored health plans. In addition, we represent a large number of healthcare providers around the country.

You may recall that I have testified at both previous Advisory Board hearings, generally making the Board aware that a significant, definable segment of the health care provider community is highly interested in assisting CO-OP development as initiating sponsors. In my view, they are also, among possible applicants, the parties most likely to effectuate the consumer-oriented aim of CO-OP creation.

I represent parties in initial planning for provider-initiated CO-OP and application development matters in several states. In that regard, as we await proposed regulations, I would note that several themes on which this Committee has focused are in fact the concerns of initial sponsors. The first is how the "substantially all" definition will limit many community hospital partners, for example, from fully participating in products they wish to help develop, and how the actuarial nature of the individual/small group market may change between the CO-OP planning stage and the twenty-four months after initial operation. The second is the degree of unnatural restraints, beyond what is clearly required by the statute, that may be imposed on the manner of initial CO-OP governance. The third concern is the degree to which the playing field may not be level with a single dominant insurer within a market, both regarding past practices of marketing for the "healthiest" patients and future constraints that may be placed on CO-OPs in their initial marketing efforts.

In the interim, you should be aware that the approach those provider organizations are taking toward development of a provider product is one in which the organization is clinically accountable to a CO-OP board, with elements of risk, data collection and assessment, and focus on cost reduction. Development of the infrastructure to address those ends is costly in dollars and, most importantly, time, but is proceeding on the hope that such efforts will not be stymied by regulations unnecessarily insensitive to the reality that ideas for the delivery of a less costly insured product have got to come first from the providers who deliver that product to the enrollees who consume that product, and ultimately run the organization.

You may find that provider organizations in league with other committed potential members, utilizing ideas for scalable development and infrastructure, are among your most appealing group of initial applicants. On behalf of those parties, I would reemphasize that the Board should encourage this possible outcome.

Thank you, Mr. Chairman, and I would be happy to answer any questions you may have.

Mark Rust