

§ 156.515 CO-OP standards.

(a) *General.* A CO-OP must satisfy the standards in this section in addition to all other statutory, regulatory, or other requirements.

(b) *Governance requirements.* A CO-OP must meet the following governance requirements:

(1) *Member control.* A CO-OP must implement policies and procedures to foster and ensure member control of the organization. Accordingly, a CO-OP must meet the following requirements:

(i) The CO-OP must be governed by an operational board with a majority of directors elected by a majority vote of a quorum of the CO-OP's members that are age 18 or older;

(ii) All members age 18 or older must be eligible to vote for each of the directors on the organization's operational board subject to a vote of the members under paragraph (b)(1)(i) of this section;

(iii) Each member age 18 or older must have one vote in each election for each director subject to a vote of the members under paragraph (b)(1)(i) of this section in that election;

(iv) The first elected directors of the organization's operational board must be elected no later than one year after the effective date on which the organization provides coverage to its first member; the entire operational board must be elected or in place, and in full compliance with paragraph (b)(1)(i) of this section, no later than two years after the same date;

(v) Elections of the directors on the organization's operational board subject to a vote of the members under paragraph (b)(1)(i) of this section must be contested so that the total number of candidates for contested seats on the operational board exceeds the number of contested seats for such directors, except in cases where a seat is vacated mid-term due to death, resignation, or removal.

(2) *Standards for board of directors.* The operational board for a CO-OP must meet the following standards:

(i) Each director must meet ethical, conflict-of-interest, and disclosure standards;

(ii) Each director has one vote;

(iii) Positions on the board of directors may be designated for individuals with specialized expertise, experience, or affiliation (for example, providers, employers, and unions); and

(iv) [Reserved]

(v) *Limitation on government and issuer participation.* No representative of any Federal, State or local government (or of any political subdivision or instrumentality thereof) and no representative of any organization described in § 156.510(b)(1)(i) (in the case of a representative of a State or local government or organization described in § 156.510(b)(1)(i), with respect to a State in which

the CO-OP issues policies), may serve on the CO-OP's formation board or as a director on the organization's operational board.

(3) *Ethics and conflict of interest protections.* The CO-OP must have governing documents that incorporate ethics, conflict of interest, and disclosure standards. The standards must protect against insurance industry involvement and interference. In addition, the standards must ensure that each director acts in the sole interest of the CO-OP, its members, and its local geographic community as appropriate, avoids self dealing, and acts prudently and consistently with the terms of the CO-OP's governance documents and applicable State and Federal law. At a minimum, these standards must include:

- (i) A mechanism to identify potential ethical or other conflicts of interest;
- (ii) A duty on the CO-OP's executive officers and directors to disclose all potential conflicts of interest;
- (iii) A process to determine the extent to which a conflict exists;
- (iv) A process to address any conflict of interest; and
- (v) A process to be followed in the event a director or executive officer of the CO-OP violates these standards.

(4) *Consumer focus.* The CO-OP must operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members.

(c) *Standards for health plan issuance.* A CO-OP must meet several standards for the issuance of health plans in the individual and small group market.

(1) At least two-thirds of the policies or contracts for health insurance coverage issued by a CO-OP in each State in which it is licensed must be CO-OP qualified health plans offered in the individual and small group markets.

(2) Loan recipients must offer a CO-OP qualified health plan at the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in every individual market Exchange that serves the geographic regions in which the organization is licensed and intends to provide health care coverage. If offering at least one plan in the small group market, loan recipients must offer a CO-OP qualified health plan at both the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in each SHOP that serves the geographic regions in which the organization offers coverage in the small group market.

(3) Within the earlier of thirty-six months following the initial drawdown of the Start-up Loan or one year following the initial drawdown of the Solvency Loan, loan recipients must be licensed in a State and offer at least one CO-OP qualified health plan at the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in the individual market Exchanges and if the loan recipient offers coverage in the small group market, at the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in the SHOPS. Loan recipients may only

begin offering plans and accepting enrollment in the Exchanges for new CO-OP qualified health plans during the open enrollment period for each applicable Exchange.

(d) *Requirement to become a CO-OP.* Loan recipients must meet the standards of § 156.515 no later than five years following initial drawdown of the Start-up Loan or three years following the initial drawdown of a Solvency Loan.

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