



Ancillary Products & Services and Need for a Legal Structure

November 25, 2013

Background

- Since late 2011 C4HCO and other State Based Marketplaces (SBMs) have been planning to offer Ancillary products & services to consumers via the Marketplace
- CMS provided guidance to SBMs in March 2013 related to the offering of Ancillary products & services through the Marketplaces

CMS Guidance – Ancillary Services

- Ancillary insurance products, which are not QHPs, may be offered via separate and distinct programs that can share resources and infrastructure with an SBM
- The Marketplace IT infrastructure can be reused by the separate program to facilitate sales of Ancillary products & services
- The program facilitating the Ancillary products & services must be legally and publicly distinct from the Marketplace

CMS Guidance – Ancillary Services

- Federal funds, user fees or assessments may not be used to support non-Marketplace efforts
- A percentage of the costs of rent, maintenance, etc., must be charged across from the Marketplace to the separate program

Legal Structure of the Separate and Distinct Program

- HB 13-1245
10-22-106 The Board may create a separate program that shares resources and infrastructure with the Exchange to offer Ancillary products & services.
- The sale of Ancillary products & services is a commercial activity and likely not construed as “charitable, educational or scientific” for the purposes of tax exempt status. Thus, the sale of Ancillary products & services is likely a for-profit venture
- The establishment of a separate for-profit program under the umbrella of the Colorado Health Benefit Exchange allows the profit to be returned to Connect for Health Colorado and be used to reduce the costs of running the non-profit organization
- A percentage of the costs of rent, maintenance, etc., must be charged across from the Marketplace to the separate program

What C4HCO Should Do

- Establish a separate legal entity to develop and coordinate Ancillary products & services
- Develop a strategy to comply with guidance while fulfilling the mission of C4HCO, putting the customer at the heart of product & service offerings and supporting sustainability goals

Entity Selection Options

Options	Advantages:	Disadvantages:
COHBE Division <ul style="list-style-type: none"> • Separate line of business • Different trade name • Not a separate legal entity 	<ul style="list-style-type: none"> • Straightforward • Easy to maintain separation • Could be publicly distinct with different trade name • Consistent with COHBE statute 	<ul style="list-style-type: none"> • Not consistent with CMS guidance • Could jeopardize 501(c) status
Nonprofit Subsidiary <ul style="list-style-type: none"> • Conducted in a separate legal entity • COHBE maintains control as sole member of the subsidiary 	<ul style="list-style-type: none"> • Consistent with nonprofit mission and values • Separate entity & name that is publicly distinct (per CMS guidance) • No jeopardy to tax exempt status • No liability for business activities of subsidiary 	<ul style="list-style-type: none"> • Not likely to be tax-exempt nonprofit • Not able to help offset ongoing costs of COHBE operation • Some portion of allocated payments made to COHBE will be reportable unrelated business income tax
For-Profit Subsidiary - LLC <ul style="list-style-type: none"> • Conducted in a separate legal entity • COHBE could maintain control as a sole member 	<ul style="list-style-type: none"> • Separate entity & name that is publicly distinct (per CMS guidance) • Wholly-owned subsidiary 	<ul style="list-style-type: none"> • LLC is a disregarded entity for tax purposes, which would likely be a risk to COHBE's tax exempt status • LLC creditors can obtain a charging order against COHBE assets for debts of LLC

Entity Selection Options

Options	Advantages:	Disadvantages:
For-Profit Subsidiary – C Corporation <ul style="list-style-type: none"> Conducted in a separate legal entity COHBE could maintain control as a sole member 	<ul style="list-style-type: none"> Separate entity & name that is publicly distinct (per CMS guidance) No jeopardy to COHBE tax exempt status Dividends can be distributed to COHBE to offset ongoing costs No unrelated shareholders to reap benefit of infrastructure No liability for business activities of subsidiary 	<ul style="list-style-type: none"> Some portion of payments made to COHBE for allocated rent, staffing, platform license fees will be reportable unrelated business income tax (UBI) to COHBE
Public Benefit Corporation <ul style="list-style-type: none"> Conducted in a separate legal entity COHBE could maintain control as a sole member “Public benefit” means positive effects on individuals and communities other than shareholders 	<ul style="list-style-type: none"> Same as for-profit C-corporation Must elect to be operated to produce a public benefit Must operate in a responsible and sustainable manner Consistent with the mission and values of COHBE 	<ul style="list-style-type: none"> New concept – just became valid in Colorado Same as for-profit subsidiary

Recommendation

- Staff recommendation is the Public Benefit Corporation
- Upon presentation, the Advisory Group found the C4HCO approach to be reasonable and logical