



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans

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March 6, 2020

Assemblywoman Pamela Hunter
New York State Assembly
LOB 553
Albany, NY 12248

Representative Deborah Ferguson
Arkansas House of Representatives
200 South Rhodes Street, Suite B
West Memphis, AR 72301

Submitted via email, wmelofchik@ncoil.org

**RE: BCBSA Recommendations on Proposed NCOIL Health Care Sharing Ministry
Registration Model Act**

Dear Assemblywoman Hunter and Representative Ferguson,

The Blue Cross Blue Shield Association (BCBSA) appreciates the opportunity to provide additional comments on the proposed National Council of Insurance Legislators' (NCOIL) "Health Care Sharing Ministry Registration Model Act" (Model).

BCBSA is a national federation of 36 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies that collectively provide healthcare coverage for one in three Americans. For 90 years, BCBS companies have offered quality healthcare coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare and Medicaid.

Disclosure of the Nature of a Health Care Sharing Ministry

BCBSA shares your goal that individuals participating in health care sharing ministries should be aware of the nature of and limitations on the arrangements in which they are participating and that state insurance regulators should have authority to enforce compliance with state insurance laws in appropriate cases. To achieve this goal, we suggest the following:

- *Notice:* Ensure receipt of the notice required by § 4 of the Model by requiring that a participant acknowledge in writing receipt of the notice.
- *Requirements for a Certificate of Registration:* Section 5(A) and (B) of the Model should be amended to clarify that all of the items listed are required for a health care sharing ministry to obtain a Certificate of Registration.
- *State Authority to Enforce State Insurance Laws:* Section 8 of the Model should be amended to clarify that state insurance regulators have authority to determine whether a health care sharing ministry remains qualified for a Certificate of Registration and to apply the provisions of the state insurance code if the health care sharing ministry is not exempt from the state's insurance laws.

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We appreciate your consideration of our comments. We look forward to working with you on the issue of health care sharing ministries. If you have any questions or want additional information, please contact Mike Lyle at 202.626.8622 or michael.lyle@bcbsa.com.

Sincerely,

A handwritten signature in black ink that reads "Clay S. McClure". The signature is written in a cursive, flowing style.

Clay S. McClure
Executive Director, State Relations
Blue Cross Blue Shield Association

Copies To: Rep. Martin Carbaugh, Indiana House of Representatives

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BCBSA DETAILED COMMENTS ON NCOIL HEALTH CARE SHARING MINISTRY REGISTRATION MODEL ACT

I. Require Participant Acknowledgement of Notice (Amend § 4)

Issue:

The Model wisely requires that participants in a health care sharing ministry receive a notice that the arrangement is not insurance, provides no guarantee of payment and does not relieve participants of responsibility for health care expenses. However, there is no assurance that participants understand the importance of the limitations described in the notice.

Recommendation:

The Model should be amended to require written acknowledgement of the notice by health care sharing ministries.

Suggested language (italicized and underlined language added):

Section 4. Notice Requirements

- (a) A health care sharing ministry must provide a written disclaimer on or accompanying all applications, marketing materials and guidelines materials distributed by or on behalf of the health care sharing ministry that states, in substance:

NOTICE

The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation constitute an insurance policy. Without health care insurance, there is no guarantee that you, a fellow participant or any other person who was a party to the health care ministry agreement will be protected in the event of illness or emergency. Regardless of whether you receive any payment for medical expenses or whether this organization terminates, withdraws from the faith-based agreement or continues to operate, you are always personally responsible for the payment of your own medical bills. If your participation in such an organization ends, state law may subject you to a waiting period before providing coverage.

Drafting Note: This notice should be harmonized to reflect any existing notice requirement that may exist for health care sharing ministries in the given state.

- (b) A participant shall acknowledge receipt of the "NOTICE" by signing below the "NOTICE" on the application.

Rationale:

Some states with issues arising from health care sharing ministries enacted exemptions from state insurance codes with disclaimer or notice requirements, but found it necessary to add a

participant acknowledgement requirement after experience showed that participants did not understand the nature of the health care sharing ministry arrangement. See, e.g., Ky. Rev. Stat. § 304.1-120(7)(d).

II. Requirements for a Certificate of Registration (Amend § 5)

Issue:

Some parties interpret § 5(A)(2) of the Model, requiring a health care sharing ministry to submit to a state “[a] copy of the certification letter issued to the Health Care Sharing Ministry by the Centers for Medicare & Medicaid Services [CMS]” in order receive a Certificate of Registration from the state, as allowing a health care sharing ministry to operate in a state as long as it has the certification letter from CMS, but it appears that the intent of the Model is to require all of the things listed in § 5(A) and (B).

Recommendation:

Section 5(A) and (B) should be amended to clarify that all of the items listed are required for a health care sharing ministry to obtain a Certificate of Registration.

Suggested language (italicized and underlined language added):

§ 5(A) should be amended to read as follows:

A Certificate of Registration as a Health Care Sharing Ministry shall be obtained by submitting *all of the following* to the Department of Insurance:

§ 5(B) be amended to read as follows:

The Certificate of Registration obtained pursuant to Section 5(A) may be renewed annually on or before January 1 by submitting *all of the following* to the Department of Insurance:

Rationale:

Our reading of § 5 of the Model is that *all* of the elements of § 5 must be met for the health care sharing ministry to qualify for a Certificate of Registration from the state. This should be made clear by amending § 5(A) and (B). The suggested language would clarify that all items listed are required and ensure that all of the language in the Model is given effect.

III. Clarify State Insurance Regulators' Authority (Amend § 8)

Issue:

The Model is not clear that state insurance regulators have authority to determine whether a health care sharing ministry remains qualified for a Certificate of Registration and to apply the provisions of the state insurance code if the health care sharing ministry is not exempt from the state's insurance laws.

Recommendation:

This authority should be spelled out in the Model.

Suggested language (italicized and underlined language added):

Section 8. Enforcement

Any purported Health Care Sharing Ministry that is operating in [state] without a current Certificate of Registration shall be subject to the full authority of the Department of Insurance pursuant to [cite the state's Insurance Code provisions for Unauthorized Insurance] and the State Attorney General's authority over non-profit corporations. *Even if a Health Care Sharing Ministry has a Certificate of Registration, the Department of Insurance retains authority to determine whether the Health Care Sharing Ministry remains qualified for a Certificate of Registration and apply the provisions of the [insert reference to state Insurance Code] if the Health Care Sharing Ministry is not exempt from [insert reference to state Insurance Code].*

Rationale:

Under the proposed language of § 8, a health care sharing ministry may argue that its Certificate of Registration insulates it from any authority of state insurance regulators to review or investigate its qualifications to retain a Certificate of Registration. While this authority may be implied from the existing Model language, it is better to spell out this authority to assure protection of the public.

We understand that some parties believe that the availability of an exemption from the Affordable Care Act's individual shared responsibility provision (the so-called individual mandate) means that state authority to regulate health care sharing ministries is preempted by federal law. This is incorrect because all the statute on the individual shared responsibility requirement provided only that individuals with health care sharing ministry membership are exempt from the individual shared responsibility requirement if the health care sharing ministry meets certain requirements. 26 U.S.C. § 5000A(d)(2)(B). It is not appropriate to read anything else into the statute that would prohibit states from fulfilling their traditional powers to regulate business to protect the health and welfare of their citizens. The suggested language emphasizes that states do not recognize any federal preemption relating to health care sharing ministries.