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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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September 29, 2016

CMS Acting Administrator Slavitt  
Center for Medicare & Medicaid Service  
Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Dear Acting Administrator Slavitt:

The overwhelming majority of Consumer Operated and Oriented Plans (CO-OPs) created by Section 1322 of the Affordable Care Act (ACA) have struggled and failed to offer health care coverage in the individual and small group markets. Despite the Centers for Medicare & Medicaid Services (CMS) taking a number of steps to loosen requirements for CO-OPs, only 6 of the 23 that offered coverage in 2014 remain fully open today. Approximately 75 percent of the \$2.4 billion awarded to CO-OPs through start-up and solvency loans was spent on the 17 failed CO-OPs.<sup>1</sup>

This scenario presents two particular challenges. The first is to protect consumers that are still enrolled in a CO-OP plan and considering one for next year. The second is to ensure that the taxpayer dollars spent on this failed experiment are appropriately repaid.

With the fourth open enrollment period for the individual market beginning shortly, it is paramount that Congress and consumers have a clear understanding of the financial viability of all remaining CO-OPs that intend to offer coverage in 2017 to avoid plan cancellations and disruptions for consumers that could impact health care costs (such as premiums and deductibles) and access to doctors during the coverage year. An important measure of financial viability is risk-based capital (RBC), which is an estimate of the capital needed for an insurer to fulfill business operations. Since 2015, when CMS converted 12 of the CO-OP startup loans to surplus notes, CO-OPs have been able to count these funds as capital rather than debt in financial filings, which in turn, raises the RBC, giving the appearance of greater financial stability than likely exists. In fact, more than half of the CO-OPs that increased capital and surplus based on this conversion have since closed or are in the process of closing.

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<sup>1</sup> The 17 failed CO-OPS are CoOpportunity Health in Iowa and Nebraska, Louisiana Health Cooperative, Inc., Nevada Health Cooperative, Health Republic Insurance of New York, Kentucky Health Care Cooperative, Community Health Alliance Mutual Insurance Company in Tennessee, Colorado HealthOp, Health Republic Insurance of Oregon, Consumers' Choice Health Insurance Company in South Carolina, Arches Mutual Insurance Company in Utah, Meritus Health Partners in Arizona, Consumers Mutual Insurance in Michigan, InHealth Mutual in Ohio, HealthyCT in Connecticut, Oregon Health's CO-OP, Land of Lincoln Health in Illinois, and Health Republic Insurance of New Jersey.

To ensure that the remaining six CO-OPs are expected to be financially viable throughout the 2017 coverage year and do not disrupt coverage for thousands of consumers, we request the following information:

- An assessment of the financial viability of each of the remaining CO-OPs;
- The amount of RBC for each open CO-OP that plans to offer coverage in 2017, and
- The amount of RBC for each open CO-OP that plans to offer coverage in 2017 when the amount of the surplus net is recorded as debt rather than capital.

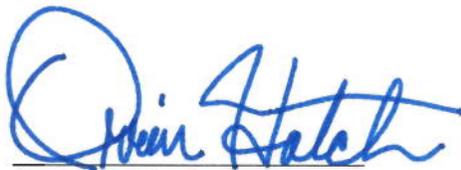
CO-OPs with questionable financial viability should not be permitted to offer plans in the individual market or small group markets for the 2017 coverage year. Given there are only six remaining CO-OPs, we request that this information, along with a recommendation as to whether or not each of the remaining CO-OPs should be permitted to participate in the exchanges next year, be provided to us and made publically available prior to open enrollment beginning on November 1, 2016.

Furthermore, as the 17 failed CO-OPs work to prioritize payments of their assets to creditors, it is important for Congress to understand the criteria CMS is applying and why different criteria might be applied. For instance, a number of CO-OPs have reported that while CMS has not yet withheld funding due to a “super priority” proof of claim, CMS has withheld ACA-related payments such as advanced premium tax credits, cost-sharing reductions, reinsurance, risk corridor and risk adjustment payments. However, it is our understanding that other CO-OPs in similar stages of closure have not had any ACA-related payments withheld.

To help us understand what criteria are being applied to the 17 failed CO-OPs, we request that you provide us with the following information by October 21, 2016:

- The names of the CO-OPs from which CMS has withheld or plans to withhold funding;
- The amount and type of funding withheld or planned and the dates associated with those decisions;
- The rationale behind the decisions to withhold funding;
- The rationale for not withholding funding from the other failed CO-OPs; and
- Any standards, guidance or regulation supporting decisions to withhold or not withhold funding.

Sincerely,



Orrin G. Hatch  
Chairman



Chuck Grassley  
United States Senator



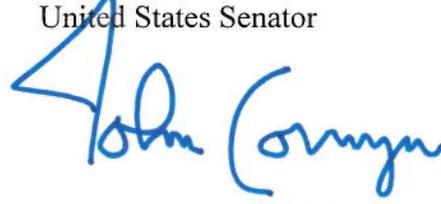
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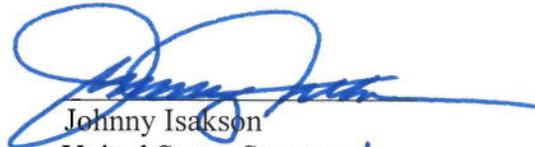
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John Cornyn  
United States Senator



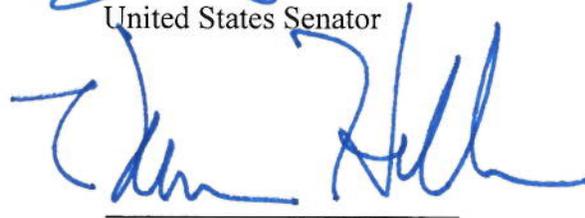
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Johnny Isakson  
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Rob Portman  
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