

September 10, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
& Governmental Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security
& Governmental Affairs
U.S. Senate
442 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
U.S. Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
U.S. Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lamar Alexander
Chairman
Committee on Health, Education,
Labor & Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor & Pension
U.S. Senate
428 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Johnson, Ranking Member Carper, Chairman Hatch, Ranking Member Wyden, Chairman Alexander, and Ranking Member Murray:

We are writing to encourage your oversight of the Consumer Operated and Oriented Plan (CO-OP) program.

The CO-OP program, established under Section 1322 of the Affordable Care Act (ACA), was included in the law an alternative to the “public plan option,” which would have put a government insurance entity in competition with private insurers. These non-profit, consumer-run health plans were intended to improve coverage, increase competition, and provide more-affordable options.

Although about \$2.4 billion in federal taxpayer dollars have been provided to CO-OPs, these entities are not living up to expectations. A Standard & Poor’s Rating Services report issued on February 10, 2015, indicates that all but one of the CO-OPs it studied had “negative net income.”¹ In fact, financial insolvency has caused some CO-OPs, such as those in Louisiana, Nebraska and Iowa, to completely collapse. This has caused enrollees to find other coverage or go without – resulting in a possible tax penalty to those who are no longer in compliance with the individual mandate.

We are concerned that the CO-OP program has been implemented in ways that make taxpayers liable for far more costs than originally planned or budgeted. We are even more concerned that the CO-OP

¹ Standard & Poor’s Rating Services, “Other U.S. Health Insurance Co-Ops Could Be Going Down The Same Bumpy Road As Iowa’s CoOpportunity Health,” February 10, 2015. https://www.staterforum.org/sites/default/files/2-10-15_-_other_us_health_insurance_co-ops_could_be_going_down_the_same_bumpy_road_as_iowas_coopportunity_health.pdf

program has been used to undermine plan competition in states in ways that ultimately drive up health costs.

This is unacceptable and requires immediate investigation. Given the critical need for Congressional oversight of the CO-OP Program, we respectfully request that the Committee work to develop hearings and investigations into the issues outlined below.

Overall Accountability

Various stakeholders are involved in the funding and operations of CO-OPs, but it remains largely unclear who or what entity should be held accountable for CO-OP solvency. We recommend that the Committee examine:

- The role of the Centers for Medicare and Medicaid Services and its Center for Consumer Information and Insurance Oversight, including: (1) the criteria and evaluation process used to determine the approval and allocation of CO-OP loan and solvency grant funds; (2) any correlation between the amount of solvency loans awarded and a CO-OPs total enrollment; (3) any audits, including site visits that Department of Health and Human Services agencies have employed to safeguard taxpayers and consumers;
- The role of the Internal Revenue Service (IRS), particularly in review and approval of CO-OP tax returns, which require information on: (1) the amount of reserves required by each State in which the CO-OP is licensed, and (2) the amount of reserves on-hand; as well as information concerning any tax penalties assessed to individuals who lose health insurance coverage due to a failed CO-OP; and
- The role of State insurance departments, particularly when it comes to: (1) reviewing and approving CO-OP premium rates and determining whether such rates are adequate to pay projected claims and expenses; and (2) monitoring CO-OPs for capacity and rapid customer growth.

The Role of State Guaranty Associations

When a CO-OP fails and there is a shortfall of funds necessary to meet the obligations to policyholders, it appears that state guaranty associations are activated. Insurers doing business in that state are assessed a share of the amount required to meet all covered claims. We recommend that the Committee examine:

- The role of state guaranty associations and the process that is required for their activation;
- Whether state guaranty associations are able to meet all policy obligations of insolvent CO-OPs; and
- The ramifications of CO-OP insolvency on state revenues, solvent insurance carriers, and taxpayers, in terms of cost-shifting.

Affiliations

Media reports have raised concerns about conflicts of interest, including CO-OPs using services provided by board members' for-profit entities, and which suggest that certain relationships may have been both highly lucrative and inappropriate. For example, a recent article in *The Times-Picayune* reported that the Louisiana Health Cooperative paid "more than \$3.6 million to businesses linked to board members -- including one who wrote years earlier that launching a CO-OP is a chancy endeavor made less risky with available federal funding."² Simply put, these affiliations, in many cases, may

² Richard Pollock, "Failing Obamacare Co-Ops Offer Lavish Executive Pay – And May Violate the Law," June 20, 2015. <http://dailycaller.com/2015/06/30/failing-obamacare-co-ops-offer-lavish-executive-pay-and-may-violate-the-law-video/>

create conflicts of interest that should be reviewed and approved or rejected by appropriate state and federal regulators. It appears these safeguards were not – and may not be currently – employed.

We are concerned that a conflict of interest may arise when a CO-OP chooses to use services provided by a board member’s for-profit entity. As a result, we recommend that the Committee examine:

- Governing documents, including ethics and conflict of interest standards, including any conflicts of interest between paid co-op executives and vendors;
- Vendor evaluation and selection processes;
- The amount of funds spent on contracted services; and
- Whether or not vendor services were provided at fair or above market value.

Loan Repayment

The federal government provided initial start-up funding for CO-OPs in the form of low-interest loans. A five-year re-payment period was provided. In addition, the federal government provided solvency grants with a 15-year re-payment period. We recommend that the Committee:

- Examine CO-OP solvency standards and whether State insurance departments considered federal loans and grants a liability or as debt;
- Determine whether CO-OP solvency funds purportedly for expansion efforts are being used for growth, existing operations, and/or other expenses; and
- Assess whether full re-payment of start-up loans and solvency grants is realistic.
- Determine who will be responsible for loan repayment.

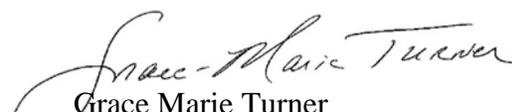
Thank you in advance for your consideration of our request and for your stewardship of taxpayer resources at a time when budgets are stretched thin for both governments and families. We appreciate your attention to this important issue and stand ready to help you moving forward.

Sincerely,



Joel C. White
President

Council for Affordable Health Coverage



Grace Marie Turner
President

Galen Institute

³ Rebecca Catalanello, “Louisiana Health Cooperative founders held lucrative deals before pulling plug,” August 18, 2015. http://www.nola.com/health/index.ssf/2015/08/louisiana_health_cooperative_f.html