

# United States Senate

WASHINGTON, DC 20510

SENT VIA ELECTRONIC COPY TO: [Jim.Esquea@hhs.gov](mailto:Jim.Esquea@hhs.gov)

August 6, 2015

The Honorable Sylvia M. Burwell  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Burwell:

Thank you for responding to my May 6, 2015 letter regarding the collapse of CoOpportunity Health in Iowa and Nebraska, one of 23 start-up insurers that participated in the ACA's Consumer Operated and Oriented Program (CO-OP). As you know, the sudden takeover by Iowa in December 2014 and subsequent liquidation of CoOpportunity in March 2015 caused tens of thousands of Nebraskans and Iowans to lose their health plans in the middle of the plan year. I am, however, disappointed that your response failed to answer many of my questions and I would appreciate a more complete response.

This is now especially important given that, since receiving your response, information has come to light that reveals the problems with the CO-OP program are broader than those experienced by CoOpportunity. Specifically, on July 24, 2015, the Louisiana Health Cooperative (LAHC) announced that it would cease operations after the end of plan year 2015.<sup>1</sup> In addition, the Department of Health and Human Services (HHS) Office of the Inspector General (OIG) has issued a report showing that as of December 31, 2014, only one out of 23 CO-OPS was operating at a profit.<sup>2</sup>

With the collapse of CoOpportunity and LAHC and the unprofitability of the other CO-OPs, there may be a systemic problem with the CO-OP program. Taxpayers have spent a total of \$2.4 billion on loans for CO-OPs and hundreds of thousands of Americans have enrolled in these health plans. It is imperative that we understand the cause of these failures and that the Centers for Medicare and Medicaid Services (CMS) be working to protect taxpayers from wasted spending and consumers from unstable health plans.

---

<sup>1</sup> Website of Louisiana Health Cooperative, "News Release—LAHC forgoes participation in Open

<sup>2</sup> Report of the U.S. Department of Health and Human Services, Office of the Inspector General, "Actual Enrollment and Profitability was Lower than Projections made by the Consumer Operated and Oriented Plans and Might Affect Their Ability to Repay Loans Provided Under the Affordable Care Act," Audit (A-05-14-00055), July 2015, <https://oig.hhs.gov/oas/reports/region5/51400055.pdf>.

Indeed, it remains unclear if and when CMS became aware of CoOpportunity's financial troubles and what role CMS could have played to prevent or mitigate the damage done by CoOpportunity's collapse.

In my previous letter to you, I asked, "[o]n what basis did CMS determine that CoOpportunity has a high probability of becoming financially viable?"<sup>3</sup> In your response, CMS placed responsibility for decisions related to awarding taxpayer-funded CO-OP loans with its outside contractor, Deloitte. The letter said:

"CMS used an outside consultant, Deloitte LLC, to evaluate applications for CO-OP loan funding. Deloitte used criteria established under statute, and also guidance developed by a federal advisory committee convened for that purpose, also pursuant to statute. Reports evaluating each application were provided to an internal CMS selection committee consisting of subject matter experts whose regular assignments are outside of the CO-OP division. In regularly scheduled meetings the committee deliberated on each application and determined which to recommend to CMS for contract negotiations, and which to deny... The decision-making process was documented by the Deloitte reports, correspondence to applicants and information developed in the course of negotiating and closing each loan."<sup>4</sup>

Your response that Deloitte managed the loan deliberation process does not address why CoOpportunity was ever eligible in the first place. Presumably, CMS could have reviewed the aforementioned documents and correspondence to explain how CoOpportunity qualified to receive loans.

In addition, your response letter says,

"CO-OPs are required to submit quarterly financial statements that include cash flow data and future projections and undergo annual external audits."<sup>5</sup>

Yet your letter does not indicate how these reports were analyzed to evaluate CoOpportunity's financial status over time or to determine the cause for failure at CoOpportunity. This is especially troubling given your capacity to take action when a CO-OP is showing signs on financial difficulty. According to the July, 2015 OIG report,

"CMS may place a CO-OP on an enhanced oversight plan if the CO-OP underperforms or has difficulty meeting program milestones identified in its loan agreement and these difficulties are chronic or significant. Under an enhanced oversight plan, CMS conducts more frequent and thorough reviews of the CO-OP's operations and financial status. CMS may also place a CO-OP on a corrective action plan developed by the CO-OP and approved by CMS to correct any failure to meet a CO-OP program requirement or term and condition of the

---

<sup>3</sup> Letter from U.S. Senator Ben Sasse to Health and Human Services Secretary Sylvia Burwell on May 6, 2015.

<sup>4</sup> Letter from Health and Human Services Secretary Sylvia Burwell to Senator Ben Sasse on June 26, 2015.

<sup>5</sup> *Ibid.*

agreement.”<sup>6</sup>

Despite having these processes in place, CMS has never indicated that it put CoOpportunity on an enhanced oversight plan.

As highlighted in my previous letter, CoOpportunity’s financial troubles were likely due to its inability to properly price its products.<sup>7</sup> As a result, premium revenue was not great enough to cover claims’ costs. Concerning the oversight of CoOpportunity’s rates, CMS takes no responsibility, writing, “[r]ate review and approval as it relates to specific plans and products is a matter of state regulatory authority.”<sup>8</sup>

In the response letter, you failed to explain CMS’s denial of additional solvency funds for CoOpportunity in December 2014 with any specificity. The response simply explains that the amount requested by CoOpportunity (\$55 million) and other CO-OPs was in excess of the remaining available funds. This gives no insight into the specific circumstances involving CoOpportunity. CMS said that using the existing criteria, “including: the reasonableness and viability of the business plan; contingency plans; market impact; and CMS’s evaluation of the CO-OP experience and performance to date,” CMS decided not to fund CoOpportunity’s request. However, CMS provided no detail on what caused CoOpportunity to fail these criteria.

I would appreciate greater detail and clarity surrounding the issues with CoOpportunity and the rest of the CO-OP program. To illuminate the reasons behind the CO-OP program’s financial troubles generally and CoOpportunity’s closure specifically, please provide the following information.

1. Please explain whether or not CMS was aware that CoOpportunity’s financial situation would cause it to become unsustainable.
  - a. If CMS was aware, when did they become aware?
  - b. If CMS was not aware, why were they not aware?
2. According to your response, CMS places rate review responsibility solely with the state department of insurance.
  - a. Does this mean that CMS does not participate at any point during the premium rate review process for plans selling on the federal exchange?
  - b. Did CMS review CoOpportunity’s proposed rates for 2014 or 2015?
3. As transcribed above, your response indicated that CO-OPs must submit quarterly financial statements.
  - a. Based on the data presented in the quarterly reports, was CMS or its

---

<sup>6</sup> Report of the U.S. Department of Health and Human Services, Office of the Inspector General, “Actual Enrollment and Profitability was Lower than Projections made by the Consumer Operated and Oriented Plans and Might Affect Their Ability to Repay Loans Provided Under the Affordable Care Act,” p. ii.

<sup>7</sup> Letter from U.S. Senator Ben Sasse to Health and Human Services Secretary Sylvia Burwell on May 6, 2015.

<sup>8</sup> Letter from Health and Human Services Secretary Sylvia Burwell to Senator Ben Sasse on June 26, 2015.

- contractor, Deloitte, able to discern that there were irresolvable financial concerns at CoOpportunity or LAHC?
- b. If so, did CMS notify either insurer that their quarterly report suggested severe unsustainability?
  - c. Please provide any quarterly reports from CoOpportunity.
4. Regarding CMS's denial of additional solvency loan funds in December 2014:
    - a. Why was CoOpportunity approved for additional funding in August 2014 but disapproved for a funding request December 2014?
    - b. What about CoOpportunity's situation had changed over that period? Please provide any document related to the request or denial of solvency funds for CoOpportunity.
    - c. Were any other CO-OPs denied additional solvency loans in December 2014?
    - d. If others were denied, which CO-OPs were denied and why?
  5. Did CMS ever identify CoOpportunity or LAHC as underperforming?
    - a. If so, when did it do so in both cases?
    - b. Did CMS ever place either CO-OP on an enhanced oversight or corrective action plan?
    - c. Please provide any plan or analysis related to whether or not the CO-OPs met CMS's requirements.
  6. Which component of CMS is responsible for reviewing the status of CO-OPs and making decisions regarding their financial viability?
    - a. Do the individuals employed in this department have particular qualifications to perform these duties? Please explain.
  7. Has CMS performed, or does CMS intend to perform, an analysis of why CoOpportunity and LAHC failed?
    - a. If so, please provide a copy of the analysis.
    - b. If not, why not?
  8. CoOpportunity received \$14.7 million in start-up loans and \$130.6 million in solvency loans for a total of \$145.3 million in loans from the federal government.
    - a. Does CMS expect CoOpportunity to repay their taxpayer-funded loans?
    - b. Is there a repayment plan in place?
    - c. If so, please provide a copy of that plan.
  9. As of May 22, 2015, the liquidator of CoOpportunity reports that less than 600 CoOpportunity members remain enrolled in CoOpportunity and that these members' plans will terminate after August 31, 2015.
    - a. How many enrollees does CMS anticipate will have coverage terminated on August 31, 2015?
    - b. Will CMS take any actions to inform and assist these remaining enrollees?

I appreciate in advance your help in answering these questions. Please let me know if you need any clarification of these inquiries.

Sincerely,

A handwritten signature in blue ink that reads "Ben Sasse". The signature is written in a cursive style with a long horizontal stroke at the end of the word "Sasse".

Ben Sasse  
U.S. Senator