Secretary Burwell's Hearing
"FY 2016 Budget" Before
House Ways & Means Committee
June 10, 2015

Questions from Representative Adrian Smith from Nebraska:

The ACA created 23 Consumer Operated and Oriented Plan Programs, or CO-OPs, which were an alternative to the public option and are low cost, government subsidized health care plans. As I mentioned in the hearing, Nebraska was served by one such CO-OP, CoOportunity Health, which has since been seized by the State of Iowa and liquidated. I have been frustrated by the lack of information HHS has provided surrounding this situation, including at the June 10, 2015 hearing, and respectfully ask for a response to the following questions.

1. **CO-OPs are funded by two different loan programs, low interest government loans with 5 years to repay and solvency loans with 15 years to repay. How much money has HHS provided to the CO-OPs through each of these loan programs? How much to each individual CO-OP, including CoOportunity?**

Answer: HHS is committed to working with you and your staff. Section 1322 of the Affordable Care Act provided start-up and solvency loan funding to eligible entities to help establish and maintain new CO-OP plans. The total amount of start-up loan funding obligated and available to a particular CO-OP was based on the estimated cost of specific start-up activities. Solvency loan award levels were set based on industry standards and state regulatory capital requirements. Approximately $2.4 billion has been awarded to CO-OPs as of December 16, 2014, when the final awards were made. Of this amount, CoOportunity was awarded a total of about $14.7 million in start-up loan funds and about $130.6 million in solvency loan funds.

Information on loan awards made to CO-OPs in other states may be found here: https://www.cms.gov/CCIIO/Resources/Grants/new-loan-program.html.

2. **What safeguards are in place to ensure the CO-OPs repay these loans within the 5 year and 15 year windows respectively? Will CoOportunity be required to repay any of the approximately $150 million they are reported to have received**

in taxpayer dollars? Are there any penalties in place if a CO-OP does not make a loan payment on time?

Answer: HHS is committed to safeguarding the interests of CO-OP beneficiaries and taxpayers in our management of the CO-OP program. The Centers for Medicare & Medicaid Services (CMS) continues to conduct oversight of CO-OPs in their operational phase. CO-OPs are required to provide monthly data on enrollment, quarterly financial statements, including cash flow data, and semi-annual reporting. In tandem with state Divisions of Insurance and other state oversight, CMS evaluates the data to assess performance and compliance. CO-OPs also undergo site visits by CMS and submit to regular external audits. While the day-to-day oversight of insurance companies, and review and approval of their products and rates is performed by state regulators, CMS continues to monitor each CO-OP's progress. CMS communicates weekly or more frequently with all CO-OPs regarding performance and challenges, and engages in regular communications with state regulators.

Under the terms of the loan agreements between CO-OPs and CMS, in the event that any payment due under the agreement is more than 60 calendar days late, CMS has the right to exercise any right or remedy specified in the loan agreement or available under applicable law, including the right to discontinue further loan disbursements or terminate the agreement. In the event that any payment due under the agreement is delinquent for more than 180 days after the due date, CMS shall refer the matter to the Department of Justice for processing and other federal action, in accordance with the terms of applicable federal law. If a CO-OP is unable to make a payment as a result of a state solvency payment restriction, state reserve requirements, other state solvency regulations or requisite surplus note arrangements, and a notice is provided to CMS with sufficient documentation to verify the claim, CMS will provide the CO-OP with a 60-day grace period to remedy the deficiency.

HHS is focused on maximizing the recovery of government funds from CO-OPs, including CoOportunity Health,within the Affordable Care Act's multi-faceted framework for stabilizing insurance markets nationwide. CMS is working with the liquidators responsible for CoOpportunity Health to quantify the scope of CMS's interests based on the required run-out of remaining policies as well as claims and obligations arising under the risk-adjustment, risk corridor, and transitional reinsurance programs for FY 2014. The liquidator has established December 15, 2015 as the last day to file claims in the liquidation proceeding, after which the amount recovered will be determined.

3. **CMS is supposed to be carefully monitoring the CO-OPs financial stability through, among other measures, audits and semi-annual program reports, yet provided CoOportunity with $32.7 million in taxpayer dollars on September 26, 2014. What did CMS know regarding CoOportunity's finances according to the most recent audit and program report CMS had at that time?**

Answer: In making loan award decisions for additional rounds of funding in 2014 (made in September and December), CMS reviewed applications, including assessing updated business plans, conducting feasibility studies, and assessing programmatic and regulatory compliance, actuarial soundness, and pro forma financial statements. The applications included actuarially-certified analysis and financial projections, which necessarily incorporated data regarding the current, and projected, level of enrollment. In accordance with guidance issued on April 30, 2014, an external panel reviewed and provided to CMS an assessment of each funding request, consistent with the CO-OP Program Funding Opportunity Announcement and the CO-OP Program Final Rule. In addition to the information provided by the external review panel, and CMS's analysis, the number of awardees and the total amount awarded were limited by the availability of resources. CMS made the final loan award decisions based on the information provided in the application and these analyses.

On September 26, 2014, CMS mademade a loan award to CoOpportunity Health of $32,700,000, which was the full amount requested by the CO-OP in response to the funding opportunity announcement released by CMS on April 30, 2014.

Additional loan funding availability for existing CO-OPs OPswas also announced through guidance issued on August 22, 2014 and, CMS received a request from CoOportunity Health for an additional $55,000,000 in federal loan funding. When using these criteria to review CoOportunity's request leading up to the December 2014 award announcement, based on the financial analyses discussed above, CMS and the external review panel believed the capitalization needs of CoOportunity Health to be well in excess of additional funds available and ultimately decided not to fund this request. In late December, the state of Iowa brought to our attention their immediate concerns over the rapidly deteriorating financial viability of the CoOportunity insurance company.

4. **My understanding is Iowa and Nebraska were told they could not suspend enrollment on CoOportunity and have it remain a Qualified Health Plan, yet Tennessee was later allowed to do so. How and why was that policy changed?**

Answer: CMS did not prevent CoOportunity from freezing enrollment. Section 2702 of the Public Health Service Act and regulations at 45 CFR 147.104 generally require issuers to guarantee the availability of coverage. However, the law permits issuers to close enrollment where the issuer demonstrates to the applicable state authority that it does not have the financial reserves necessary to underwrite additional coverage. The Tennessee CO-OP froze enrollment during 2015 open enrollment based on a demonstration to state regulators that further enrollment would exceed current financial capacity, as permitted by the state statute and regulation.

5. **Recent reports claim only one CO-OP did not have an operating loss in 2014. Is that true? Do you project any others are in danger of liquidation?**

Answer: CMS regularly monitors each CO-OP's operational performance, financial performance, and compliance. This monitoring is concurrent with on-going financial and operational monitoring by state insurance regulators. If, based on this monitoring, there are concerns regarding a CO-OP's performance or compliance, CMS may solicit additional information from the CO-OP or provide technical assistance. In cases where more serious concerns are identified, and in coordination with state regulators, CMS may put the CO-OP on a corrective action plan (CAP) or enhanced oversight plan (EOP). Additionally, CMS may terminate the CO-OP's Loan Agreement.