

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

October 27, 2016

Mr. Andrew Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Mr. Slavitt:

Recent reports regarding a proposal by Evergreen Health, a CO-OP created by the Affordable Care Act, to convert from a non-profit into a for-profit entity appear to be prohibited by statute, Centers for Medicare and Medicaid Services' (CMS) own guidance, and loan agreements signed by the CO-OP and CMS. Pursuant to these concerns, we seek documents and additional information regarding Evergreen Health's plans.

Section 1322 of the Patient Protection and Affordable Care Act created the Consumer Operated and Oriented Plan (CO-OP) program.¹ Created as an alternative to the public option, CO-OPs were intended not only to operate as a non-profit but also to meet specific statutory requirements. In order to stand up the program, CMS provided \$2.4 billion in taxpayer subsidized loans to 23 CO-OPs.² Since 2014, all CO-OPs have encountered significant financial challenges and as a result of these challenges only 6 CO-OPs will remain in operation.³

In 2012, Evergreen Health received a federally funded loan of \$65 million. Specifically, on September 27, 2012, Evergreen Health, a CO-OP operating in Maryland, signed a loan agreement with CMS. In the agreement, Evergreen received a total of \$65.4 million in loans, including \$13.3 million in startup loans and \$52.1 million in solvency loans.⁴ Included as part of the agreement's program requirements was a condition that Evergreen could never convert into a for-profit entity. According to the loan agreement, "[b]orrower cannot convert or sell to a for-profit or non-consumer operated entity at any time after receiving a loan (including after full repayment of the Loans)."⁵

¹ ACA Section 1322 (codified at 42 U.S.C. § 18042).

² Department of Health and Human Services, Office of Inspector General, *Conversions of Startup Loans to Surplus Notes by Consumer Operated and Oriented Plans Were Allowable but Not Always Effective* (Aug. 2016). ACA originally provided \$6 billion, but Congress later withdrew remaining funds.

³ *Id.*

⁴ Loan Agreement, U.S. Department of Health and Human Services, Centers of Medicare Services "the Lender" and Evergreen Health "the Borrower," Sec. 7.1 (Sept. 27, 2012).

⁵ *Id.*

Despite these facts, on October 3, 2016, the Washington Post reported that Evergreen Health intended to convert to a for-profit entity.⁶ The same article also reported that Evergreen Health was in negotiations with the Office of Management and Budget (OMB) and CMS to return a portion of the loans received; however, it is unclear how much of the \$65 million received would ultimately be returned to taxpayers.⁷

Further, a review of the relevant regulations governing CO-OPs and loan agreements between Evergreen Health and CMS demonstrate that converting the CO-OP to a for-profit is not allowed.

For example, the conversion to a for-profit is prohibited by CMS regulations. Specifically, 45 C.F.R. §156.520(f) states:

The loan recipient shall not convert or sell to a for-profit or non-consumer operated entity at any time after receiving a loan under this subpart. The loan recipient shall not undertake any transaction that would result in the CO-OP implementing a governance structure that does not meet the standards in this subpart.⁸

In addition to the statutory requirement that a CO-OP is organized as a non-profit, Congress placed additional requirements on CO-OPs, including restrictions on involvement by individuals in the insurance industry, a requirement that profits be used to lower premiums or improve benefits of enrollees, and a requirement that a substantial portion of the CO-OPs business are issuing qualified health plans (QHPs) in the individual and small group market.⁹ Also, CO-OPs that fail to meet the program's requirements face a statutory penalty. Specifically, the statute requires that CO-OPs that don't meet the CO-OP program's requirements must repay "10 percent of the aggregate amount of loans and grants received under this section" and "interest on the aggregate amount of loans and grants received under this section for the period the loans or grants were outstanding."¹⁰

Taxpayers have already wasted billions of dollars on these failing organizations, which have forced hundreds of thousands of Americans off of their insurance, and those federal funds were never intended to be used to subsidize for-profit conversions of CO-OPs. We are concerned that taxpayer-subsidized losses by CO-OPs could also potentially be used to offset taxes elsewhere. Taxpayers must be made whole before any substantive changes to any CO-OP's governance structure should be even considered.

To assist the Committee, please provide the following information no later than November 10, 2016:

⁶ Amy Goldstein, Maryland's ACA Health Co-Op Will Switch to For-Profit to Save Itself, Washington Post (Oct. 3, 2016).

⁷ *Id.*

⁸ 45 C.F.R. §156.520(f).

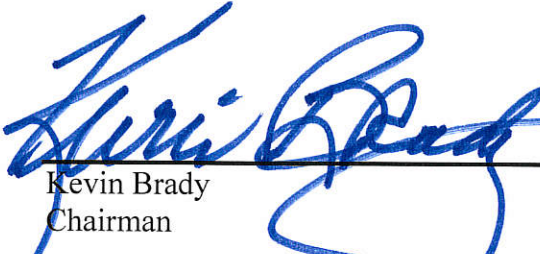
⁹ 42 U.S.C. § 18042(c).

¹⁰ 42 U.S.C. § 18042(b)(2)(C)(iii).

1. All documents referring or related to loan agreements between Evergreen Health and the Centers for Medicare and Medicaid Services, including but not limited to any loan agreements or any modifications of such agreements.
2. All documents referring or related to Evergreen Health's compliance requirements of the CO-OP program, including but not limited to any corrective action plans.
3. All documents referring or related to the proposal to convert to a for-profit entity between Evergreen Health and the Centers for Medicare and Medicaid Services, and any other agent of the federal government.
4. All documents referring or related to any repayments of outstanding CO-OP loans.
5. Responses to the following questions related to the 45 C.F.R. §156.520(f) prohibition on the conversion of CO-OPs into for-profit entities:
 - a. Does CMS intend to issue a waiver to allow the conversion to take place? If so, what are the terms?
 - b. What is the basis for CMS's authority for allowing the conversion to take place?
 - c. Why did CMS forego notice and comment rulemaking when developing this policy?
 - d. Is CMS aware of any additional CO-OPs seeking to convert to a for-profit entity? If so, which CO-OPs?
6. Per the 42 U.S.C. § 18042(b)(2)(C)(iii) requirement that loan recipients that fail to meet the CO-OP program's requirements must repay 110 percent of the aggregate amount loans received plus interest, will this repayment provision be triggered in the event that Evergreen Health loses its non-profit status? Why or why not?

If you have any questions, please contact Committee staff at (202) 225-9263.

Sincerely,



Kevin Brady
Chairman



Peter J. Roskam
Chairman
Subcommittee on Oversight



Pat Tiberi
Chairman
Subcommittee on Health

Mr. Andy Slavitt
October 27, 2016
Page 4 of 4

cc: The Honorable Sander Levin, Ranking Member
The Honorable John Lewis, Ranking Member, Subcommittee on Oversight
The Honorable Jim McDermott, Ranking Member, Subcommittee on Health