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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

June 16, 2016

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue S.W.
Washington, D.C. 20201

Dear Mr. Slavitt:

On March 10, 2016, as Chairman of the U.S. Senate Permanent Subcommittee on Investigations, I released an investigative report regarding the failure of the Consumer Operated and Oriented Plans (CO-OP) program established by the Patient Protection and Affordable Care Act (ACA). At that time, twelve of the 23 health insurance CO-OPs funded by the Department of Health and Human Services (HHS) had gone under, leaving American taxpayers on the hook for up to $1.2 billion in unpaid loans and causing 740,000 people in 14 states to scramble to find new health coverage. Our report found that HHS was aware of serious problems with the failed CO-OPs' financial viability before the Department ever approved the initial loans. The failed CO-OPs ultimately racked up $376 million in losses in 2014, and more than a billion dollars in losses in 2015. But despite receiving regular reports that the CO-OPs were performing far worse than expectations, HHS took no corrective action for over a year and neglected oversight of this multibillion-dollar loan portfolio.

Unfortunately, since my investigation, the situation has only worsened, and Obamacare CO-OPs across the country continue to struggle. Ohio's Obamacare CO-OP, InHealth Mutual, recently filed for liquidation—causing serious disruption and headaches for more than 22,000 Ohioans enrolled through InHealth. These families were encouraged by the Administration to enroll in the Obamacare marketplace and trust in its plan options. Now they are scrambling to evaluate new coverage options and understand the risks of continuing coverage under InHealth. I am writing today to seek clear answers on behalf of these Ohioans.

The choice that InHealth enrollees now face is both unfair and uncertain. HHS has instructed InHealth enrollees that one option is to "obtain alternate coverage" immediately,[1] but with *no assurance* that deductibles they previously paid under their InHealth plan will be honored or reimbursed. Specifically, it is my understanding that many Ohio enrollees have paid substantial deductibles—up to thousands of dollars under InHealth's silver and bronze plans. But if those enrollees move to a new plan mid-year, they effectively lose credit for their previous deductible payments and have to start paying out-of-pocket again. That undermines a health insurance consumer's basic expectation that once a deductible limit is reached, full (or

[1] Ex. A (attached).

substantial) coverage will begin. Instead, many Ohioans stand to suffer large out-of-pocket losses due to the failure of the Obamacare CO-OP program. Yet remarkably, HHS now claims that it has no responsibility to protect these consumers, despite the fact that HHS designed and managed the CO-OP program and encouraged Ohioans to trust in the Obamacare marketplace.

The other option is no less problematic. HHS has told InHealth enrollees that they may keep their plans through the end of the year[2]—but with an important (and poorly disclosed) catch. Specifically, HHS has informed my office that InHealth's plan *no longer* meets the ACA's "minimum essential coverage"[3] mandate, as it will now be subject to a maximum benefit limit. As a consequence, it appears that Ohioans who stay with InHealth are exposing themselves to the Obamacare individual mandate penalty of up to 2.5% of annual household income,[4] *in addition to* a loss of thousands of dollars in premium tax credits starting in June 2016. As one Healthcare.gov notice to InHealth enrollees stated: "If you don't choose and enroll in another Marketplace health plan, any financial help you're getting to lower your monthly premium or out-of-pocket costs will end."[5]

In short, Ohioans who trusted in the Obamacare marketplace now find themselves between a regulatory rock and financial hardship. They deserve clear answers from the Administration concerning both the causes and consequences of the failed Obamacare CO-OP program in Ohio. To assist the Subcommittee in this matter, please provide the following information:

1. What steps has HHS taken to ensure that Ohioans who paid deductibles under their InHealth Mutual plans receive either a refund or credit towards a new health plan?

2. Has HHS evaluated the scale of potential out-of-pocket losses that InHealth enrollees stand to suffer in the form of uncredited deductible payments?

3. Will Ohioans who stay enrolled through InHealth Mutual through 2016 be subject to the individual mandate penalty, given that their coverage no longer meets the "minimum essential coverage" requirement? If not, please explain in detail the applicable statutory exemption from the penalty and describe the steps that HHS has taken to inform InHealth enrollees of available relief from the mandate penalty.

In addition, please provide the documents requested below:

a. All HHS notices sent to InHealth Mutual enrollees regarding the termination of the plan;

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[2] Ex. A (attached).
[3] 26 U.S.C. § 5000A.
[4] *Id.* § 5000A(c) (imposing a financial penalty for individuals who do not secure insurance meeting minimum essential coverage requirements).
[5] Ex. B (attached).

b. InHealth Mutual's quarterly financial reports and annual financial reports to HHS from January 1, 2013 through present;

c. InHealth Mutual's Semi-Annual Progress Reports submitted to HHS from January 1, 2013 through present;

d. InHealth Mutual's Monthly Project Plans submitted to HHS from January 1, 2013 through present;

e. InHealth Mutual's Monthly Enrollment Projections submitted to HHS from January 1, 2013 through present;

f. Any request submitted by InHealth Mutual to HHS seeking to apply surplus notes to federal start-up loans;

g. The date of each disbursement by HHS of any start-up loan funds or solvency loan funds.

Please submit the material responsive to this request as soon as possible, but in any event no later than June 30, 2016. In order to expedite the Subcommittee's review, we ask that you submit the material responsive to this request as it becomes available, rather than waiting to provide it all at once. To avoid unnecessary delays in connection with this production, we ask that you carefully review the attached *Procedures for Transmitting Documents to the Permanent Subcommittee on Investigations.* In addition, I would ask that you please make the appropriate members of your staff available to discuss the financial health of InHealth Mutual with Subcommittee staff at a mutually convenient time.

Thank you for your assistance with this matter.

Sincerely,

Rob Portman
Chairman
Permanent Subcommittee on Investigations

cc: Claire McCaskill
Ranking Member
Permanent Subcommittee on Investigations

Exhibit A

Gmail [redacted]

Fwd: NOTICE OF LIQUIDATION ORDER

[redacted]

From: InHealth Mutual <info@inhealthohio.org>
Date: June 3, 2016 at 6:34:33 PM EDT
Subject: **NOTICE OF LIQUIDATION ORDER**
Reply-To: InHealth Mutual <info@inhealthohio.org>

InHealth InSights
NOTICE OF LIQUIDATION ORDER

View this email in your browser

June 3, 2016

Dear Member:

On May 26, 2016 the Franklin County Court of Common Pleas issued an order placing InHealth Mutual into liquidation. You will soon receive in the mail a formal notice regarding the liquidation proceedings.

This action will have a direct impact on your insurance benefits. Over the next few weeks we will be providing additional information regarding your benefits and the steps that you may want to take to obtain alternate coverage or to keep your current policy. Below we have put together some immediate information that may help inform your next steps.

- **Your insurance coverage is NOT cancelled immediately.** The law provides for the continuation of coverage if an insurance company goes out of business. However, any continued coverage would be subject to a $500,000 maximum per person.
- **To avoid a gap in coverage, you must pay your monthly premiums when**

[redacted]

due. Payment methods should continue as normal for as long as you choose to keep the plan or until you secure another policy.

- If you have a policy with a subsidy, you are strongly encouraged to apply for a new policy through Healthcare.gov or by calling 1-800-318-2596;TTY 1-855-889-4325.
- If you are eligible for a subsidy, your subsidy is likely affected. You will need to contact Healthcare.gov to discuss your subsidy.
- If you have a policy without a subsidy, you should contact an agent or broker to discuss obtaining another policy or you may contact another insurance company directly.
- For assistance finding an agent or broker you may visit the Ohio Department of Insurance's website at www.insurance.ohio.gov and click the consumer tab towards the right of the page.
- Your individual coverage with InHealth will end when you either switch to another plan, or your plan year ends. Your individual coverage with InHealth will be subject to a $500,000 maximum per person as provided by Ohio law.
- Providers (your doctors, hospitals, pharmacies, etc.) are required by their contracts to continue treating you. If a doctor or other provider in your network refuses to honor their network agreements, contact InHealth directly at 800-580-8502 or the Consumer Services Division of the Ohio Department of Insurance at 1-800-686-1526.

For additional information please contact info@inhealthohio.org or visit www.inhealthohio.org/. If you have concerns or complaints, you may also contact the Consumer Services Division of the Ohio Department of Insurance at 1-800-686-1526.

Sincerely,
InHealth Mutual

Exhibit B

Gmail [redacted]

Fwd: Your health plan is changing and won't be part of the Marketplace after June 30, 2016

[redacted]

From: "HealthCare.gov" <Marketplace@healthcare.gov>
Date: June 7, 2016 at 12:56:43 PM EDT
Subject: **Your health plan is changing and won't be part of the Marketplace after June 30, 2016**
Reply-To: Marketplace@healthcare.gov

View in browser

HealthCare.gov

You need to pick a new plan or you'll lose your help paying premiums

Your Marketplace plan, InHealth, is changing and won't be part of the Marketplace after June 30, 2016. Your InHealth coverage became subject to limits on May 26, 2016, so you qualify for a Special Enrollment Period to join a new Marketplace plan. This Special Enrollment Period ends July 26, 2016.

If you don't choose and enroll in another Marketplace health plan, any financial help you're getting to lower your monthly premium or out-of-pocket costs will end. Enroll in a new plan by June 30, 2016 to avoid losing or having a gap in financial help.

Log in to your Marketplace account, choose your current application for

[redacted]

2016 and **report a life change** saying that you lost your InHealth coverage on May 26, 2016. Enroll in a new plan by June 30, so your new coverage will start July 1 and you'll continue to get financial help without a gap.

Log In

Because you now have new coverage limits in your InHealth plan, you could ask to have your new coverage start June 1 instead of July 1. This may be beneficial if you haven't already paid your June premium. Call the Marketplace Call Center at 1-800-318-2596 (TTY 1-855-889-4325) for more information.

Important: If you stay enrolled in InHealth after June 30, 2016, any financial help for premiums and out-of-pocket costs, like copayments and deductibles, will end.

Don't miss out: You only have until June 30, 2016 to join a new Marketplace plan and avoid a gap in financial help.

The HealthCare.gov Team

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