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## Iowa Commissioner Sues HHS, Claims Agency Withheld Funds From CoOpportunity Health

DES MOINES, Iowa - Iowa Insurance Commissioner Nick Gerhart has filed a federal lawsuit against the U.S. Department of Health and Human Services and its Centers for Medicare and Medicaid Services, asking the court to find the agencies withheld more than \$20 million from failed health insurer CoOpportunity Health Inc., which is in liquidation.

The suit is a challenge to the federal government's claim of "super priority" over all claims and creditors, including policyholder claims, during liquidation. The complaint said this contradicts congressional intent. "If the federal government's claims are given 'super priority' as defendants claim, this would wreak havoc on any CO-OP insolvency and leave millions of dollars in policyholder-level claims unpaid," the complaint said.

The complaint said the federal agencies have "repeatedly and unilaterally" held or reduced payments owed to CoOpportunity "based on debts that HHS/CMS claims CoOpportunity owes to HHS/CMS." But the complaint said the move violates the liquidation order because the debts the agencies claim they can recover are substantially less than the \$130 million in risk corridor funds the HHS is obligated to pay CoOpportunity Health. The risk corridor program was designed to mitigate risks for insurers in the new Affordable Care Act markets. Gerhart said the federal government has not provided CoOpportunity Health with the reduced level of 12.6% of risk corridor funds for 2014 that it promised, even though it has made payments to other plans.

"Through the wind down of CoOpportunity, we've worked collaboratively with CMS and the federal government on many issues. In this instance, we tried diligently to settle our differences with the federal government in extensive discussions over several months, but were informed by the Department of Justice that further negotiations would be futile," Gerhart said in a written statement. "The federal government has tried to jump to the head of the creditor line, but is not following Iowa or federal law in withholding over \$20 million due to CoOpportunity. We are hopeful for a quick resolution in this matter and look forward to continued collaboration with the federal government in other matters during the continued wind down of CoOpportunity."

CoOpportunity Health emerged as one of the nonprofit Consumer Operated and Oriented Plans created under the ACA with the intent of increasing competition and helping to keep prices in the new ACA health exchanges down. The federal government in 2014 loaned \$14.7 million to CoOpportunity to capitalize the entry in the health care market in Iowa and Nebraska. It also provided it with \$132 million in solvency loans during its operations. The lawsuit claims HHS and CMS contractually agreed to make those loans subordinate to policyholder-level claims in the case of the start-up loan and to all other creditors in the case of the solvency loans.

The CMS rejected CoOpportunity's request for additional solvency loan funds late in December 2014 and the company was placed under a supervision order. A week later, Gerhart sought and was granted a request for rehabilitation, citing a failure of Congress to provide millions in solvency funds as part of the

ACA's risk spreading mechanisms as part of the reason CoOpportunity Health could not secure adequate capital (Best's News Service, Dec. 29, 2014). One month later, Gerhart asked the court to liquidate CoOpportunity Health after it became apparent rehabilitation was impossible (Best's News Service, Jan. 23, 2015).

The complaint was filed on May 3 in the U.S. District Court, Southern District of Iowa, Central Division.

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