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March 14, 2016

Mr. Kevin J. Counihan
Chief Executive Officer, Health Insurance Marketplace
Director, Center for Consumer Information & Insurance Oversight
Department of Health & Human Services
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue, SW
Washington, DC 20201

Re: Maine Community Health Options – State and Federal Regulatory Cooperation

Dear Mr. Counihan:

Maine Community Health Options ("CHO") was organized in 2011 as a Maine-domiciled Consumer Operated and Oriented Plan ("CO-OP") and commenced business in 2014. It was capitalized with $132.3 million from the United States pursuant to the Patient Protection and Affordable Care Act ("ACA") and has offered ACA-compliant qualified health plans (QHPs) through the Federally Facilitated Marketplace (FFM) as well as outside the FFM in Maine and New Hampshire. Since commencing business, CHO's enrollment has grown rapidly to 84,269 members at February 29, 2016, making it the largest writer of individual health insurance in the State of Maine.

The Maine Bureau of Insurance ("BOI") licenses CHO and is its principal financial regulator. The Centers for Medicare & Medicaid Services ("CMS") act for the United States respecting the capital investments made in CHO as well as its on-going status as a writer of QHPs.

CHO reported 2014 net income of $7.3 million, the only CO-OP in the country to report positive income. In August 2015, CHO provided a revised business plan to the BOI and CMS which projected a $3 million loss for the year. Late in October, CHO advised it had incurred a $17.2 million loss during the third quarter but expected to break even for the rest of the year. Consistent with its preliminary reports to the BOI, on March 1, 2016 CHO filed its annual statement for 2015 reporting a net loss of $74 million for the year. (CHO's reported Risk-Based Capital Ratio as of December 31, 2015 was below 500% of authorized control level, the target established by the Loan Agreement dated March 23, 2012 between CHO and CMS.) This loss includes a $43 million Premium Deficiency Reserve ("PDR"). Since the premium rates for CHO's 2016 individual health business are inadequate and under the ACA cannot be

changed until January 1, 2017, CHO has had to estimate and set a reserve for the cost of the premium deficiency. CHO's actuarial consultants at Milliman assisted it in determining the size of that PDR reserve.

In retrospect, CHO's 2015 individual health insurance rates were also inadequate. An issuer of QHPs is required by federal regulations to set its ACA-related health insurance rates well before the year they become effective. Adding to the pricing challenge, CHO, consistent with its mission, has sought to insure individuals who were previously uninsured and whose use of medical services once covered is difficult to predict. A number of large for profit insurers have also mispriced ACA-compliant coverage and been required to establish Premium Deficiency Reserves.

A few key statistics demonstrate the variability in CHO's potential results:

- CHO's 2015 Net Premium Income increased by 97.5% in comparison with 2014 while Benefits and Loss Related Payments increased by 131%.

- CHO's membership at December 31, 2014 (39,743) grew by 88.7% during 2015 to 74,981 at yearend. Membership as of February 29, 2016 was 84,269, a 12.4% increase from yearend 2015.

- In late December 2015, CMS made the final available capital investment into CHO -- $55.5 million. CMS also converted $12.5 million of existing CHO debt into capital/surplus so that in total, during December, CMS increased CHO's capital by $68 million.

- CHO's 2015 annual statement reported yearend capital and surplus of $49.8 million. This is net of the $43 million PDR.

With CHO's report in October 2015 of its third quarter loss, the BOI increased its level of regulatory supervision to the highest level possible short of a judicial proceeding. The BOI also asked CHO to stop writing new underpriced individual health insurance but CMS and the FFM could not "suppress" CHO on the website until December 27, 2015. Consequently, individual health insurance membership continued to increase beyond the levels expected in CHO's 2016 plan.

Due to CHO's 2015 results, the BOI has been concerned with CHO's capital position, particularly the relationship of that capital to its larger-than-planned insured risk. Membership has grown dramatically and rapidly; the BOI concluded that it would be prudent to reduce membership to a more appropriate level. In this way, CHO's capital (margin to absorb unexpected risk) could be effectively increased thereby positioning CHO for 2016 and into 2017 when the existing federal reinsurance program will cease. CHO's management and board agreed with this concept.

As Superintendent of Insurance, I would have filed a rehabilitation petition in the Maine Superior Court with CHO's consent. CHO would have been placed into receivership and, if the supervising court agreed, a portion of CHO's individual membership (agreed with CHO management and in consultation with CMS) would have been terminated with sixty days' notice. The selection of policies for termination would have been random so that individual loss experience had no role. Terminated members would have been protected from the double payment of deductibles or annual out-of-pocket maximums. CHO would then have been released from receivership with its capital position enhanced.

The insurance laws of all the states grant the chief insurance regulator the power to seek such relief in a rehabilitation proceeding, before an insurer becomes insolvent (unable to pay its obligations in the normal course of business) in order to minimize risk to consumers and the public. There is no Maine guaranty fund to back-up CHO should it ever become insolvent. Such losses would be borne by medical service providers and CHO's members.

I see CMS as a regulatory partner and consequently described to CMS both my concerns about CHO's capital and the resulting membership reduction plan. This consultation included a description of the legal authority for me to take such action as well as sharing the actual proposed rehabilitation petition and proposed order. Unfortunately, CMS advised me on February 29, 2016 that, in its opinion, such a step could not be taken consistently with federal law. The expressed basis for this position was that federal regulations mandating the "guaranteed renewability" of QHPs trump action by a state official to terminate any such contracts midterm. CMS staff was concerned that such a step might create a "loophole" undermining the mandated guaranteed renewability of QHPs.

I find it difficult to understand how action by a state official pursuant to a state court order restricting an insurer's privilege to transact business can be deemed to constitute a "loophole". I believe that federal and state law can be readily harmonized, and that the presumption should be to that effect, especially if it serves a consumer-beneficial purpose.

Because of the nature of its business, CHO faces the risk of wide variability of results. This reality is demonstrated by its 2015 losses. CHO's management and employees have worked very hard to reduce 2016 expenses and other costs and with their consulting actuaries have prepared a detailed 2016 monthly plan. The BOI's actuary has reviewed this plan and advised that its projected results fall within a reasonable range of outcomes but that there is the possibility of wide variability in results. CHO's January net income was better than its plan. (The BOI will learn of CHO's February results during the last week of March.)

Absent the position taken by CMS, the BOI would have acted to reduce membership, increase capital, and thereby better protect the remaining CHO members and their health care providers from the risk presented by the type of losses experienced in 2015. That said, the BOI has not concluded that CHO is unable to meet its obligations in the normal course of business. The BOI's concern is that CHO is thinly capitalized and that adverse variation from plan could in the future adversely impact its ability to continue to transact an insurance business. The effect of the position taken by CMS is to remove regulatory tools from the state regulator's toolbox which are intended to permit resolution of a capital problem before it becomes too late.

With decisions comes responsibility, because CMS's decision has precluded my ability to act as proposed, CMS now must share responsibility for the risk of an outcome we all very much hope to avoid. The measured steps I intended to take respecting CHO are the same as I would have taken regarding any other Maine-domiciled insurer in the same financial position. I believe they are also the same actions my state regulatory colleagues across the country would have taken under similar circumstances. The nature of the coverage afforded (its mandated guaranteed renewability feature) should not be used to undermine the ability of a state insurance regulator to address the financial capacity of the insurer to actually meet its commitment to such renewability as provided for by state law. Surely if an insurer becomes insolvent,

the mandated guaranteed renewability of its insurance contracts becomes meaningless. Why not permit state officials to use their long established statutory tools, under judicial supervision, to take measured steps to preserve the insurer's ability to meet those mandated obligations and avoid the risk of a failure that would impact every member and provider? If CO-OPs are to prosper, the rules (as CMS sees them) need to change and the critical role of state insurance officials in supervising CO-OPs for financial solvency needs to be given greater respect by our federal colleagues.

Regardless of my disappointment with the action taken by CMS and the particular concerns expressed above, I and the Maine insurance regulatory team are committed to continuing to work with CMS to maximize the opportunities for CHO's success and protection of the consumers it serves and the health care providers who provide their care across the States of Maine and New Hampshire.

Very truly yours,

Eric A. Cioppa
Superintendent of Insurance

cc: Honorable Paul LePage, Governor
Honorable Susan Collins, United States Senator
Honorable Angus King, United States Senator
Honorable Chellie Pingree, Member of Congress
Honorable Bruce Poliquin, Member of Congress
Honorable Roger Sevigny, New Hampshire Insurance Commissioner
W. Douglas Smith, Chair, Maine Community Health Options
Kevin Lewis, Chief Executive Officer, Maine Community Health Options
Andy Slavitt, Acting Administrator, Center for Medicare and Medicaid
Matthew Lynch, CMS Insurance Programs Group Director
Meghan Elrington-Clayton, Acting Director, CMS CO-OP Program Division
Reed Cleary, CMS Manager of the Finance and Risk Management Team
Senator Rodney L. Whittemore, Chair Insurance & Financial Services Committee
Representative Henry E. M. Beck, Chair Insurance & Financial Services Committee