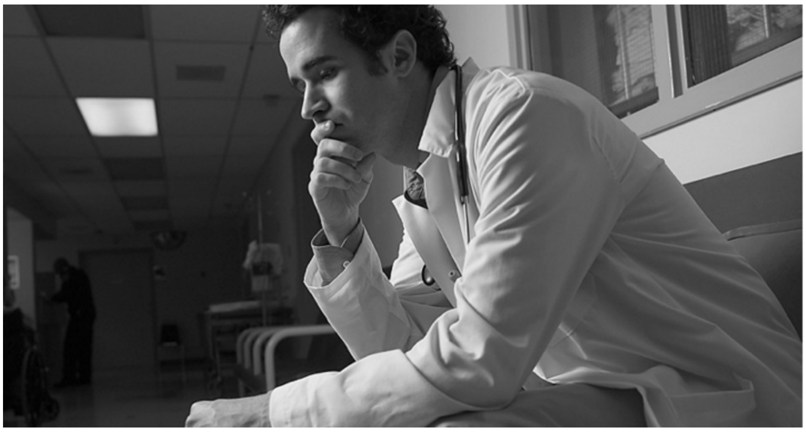
Doctors, Hospitals Owed by Failed ObamaCare Co-ops May Get Stiffed by Uncle Sam



Who gets paid first when an ObamaCare co-op goes belly up: the doctors and hospitals that cared for co-op enrollees or the federal government, which caused the co-op mess in the first place? If the Obama administration has it way, Uncle Sam will be at the head of the line to recoup losses, quite possibly leaving healthcare providers in the lurch, reported the Daily Caller.

Already, half of the 24 co-ops, nonprofit insurance schemes created by the Affordable Care Act, have flopped. The failed co-ops frittered away $1.4 billion in federal solvency loans, and their demise left at least 800,000 Americans uninsured, at least temporarily.

"The co-ops do not have enough money to pay out their enrollees' medical claims, much less to repay their loans to the taxpayers," Senator Ron Johnson (R-Wis.) told the Daily Caller. "Once again, American taxpayers will ultimately pay the price of another failure and broken promise of Obamacare."

That hasn't stopped the Obama administration from trying to get the Treasury's money back. Mandy Cohen, chief operating officer of the Centers for Medicare and Medicaid Services (CMS), told a House subcommittee in February that the administration plans to seek first dibs on repayment from the co-ops' liquidated assets. "For federal loans, there is an order of repayment," Cohen said. "I believe we are at the very top of all of the creditors."

According to the Daily Caller, "Cohen claimed the Justice Department will enforce the CMS policy," and a CMS spokesman confirmed Cohen's remarks.

If the administration gets its way, healthcare providers across the country are going to be left holding the bag for tens, if not hundreds, of millions of dollars' worth of care they delivered to co-op policyholders. Most likely they will try to recoup their losses by raising their fees, thereby harming future patients and driving up insurance premiums.

Co-Opportunity Health, a co-op that served Iowa and Nebraska, "burned through its 20-year federal solvency loan of $132 million in only two years, according to the liquidator's report," wrote the Daily Caller. "By Dec. 31, 2015, the co-op only had $61.6 million in assets and $234 million in liabilities."

To pay providers, Iowa officials organized a temporary guaranty association funded by private insurance companies. The association, with the permission of the liquidator and the court, has paid $60 million of $113 million owed to doctors and hospitals, but the co-op now must reimburse the guaranty association $54 million that it obviously does not have. To top it all off, CMS, which met with the liquidator to try to get its money back, is withholding $130 million in federal risk corridor payments and

$22 million in other receivables, most of which would go to healthcare providers.

Then there's New York's Health Republic co-op, which shut down November 30 after losing $130 million, leaving 100,000 Empire State residents without coverage. According to Syracuse.com, the Healthcare Association of New York State (HANYS), a hospital trade group, reported in mid-November that the co-op owed hospitals $160 million through the end of October, with more to come in November.

"HANYS continues to raise very serious concerns about the consequences of such a tremendous financial loss when hospitals are already financially fragile," an association spokeswoman said in an e-mail.

Meanwhile, the state Medical Society estimated that Health Republic owed doctors "tens of millions of dollars."

Healthcare providers want the state to follow Iowa's lead in establishing a guaranty association to reimburse them. Insurers oppose that on the grounds that it would amount to a new tax on health insurance, but they are asking the state to use other funds to pay providers. Either way, taxpayers will take a hit.

That seems to be a common thread running through the co-op failures. Dennis Edward Julnes, former chief financial analyst with the Washington State Office of the Insurance Commissioner, told the Daily Caller that even with a guaranty association such as Iowa's, "insurers are paying the guaranty funds, they get charged, they likely get to reduce their premium taxes that they would pay the states, so taxpayers are bailing out this whole thing."

Then again, if the feds can't get their money back, taxpayers will suffer a loss anyway. Julnes said that the matter of who gets paid first "is where the potential conflict could be" and that Iowa "is likely a test case."

He believes the Obama administration is wrong that the federal government is first in line for payment when an insurance company is liquidated, citing the case of *U.S. Treasury v. Fabe* (1993). In that case, the Supreme Court found that an Ohio statute establishing that policyholders of a liquidated insurer were to be paid first was not preempted by federal law to the contrary. Thus, most likely the federal government would lose if it took states to court to recover co-op loans — but only if those states had insurer-liquidation laws similar to Ohio's.

The Daily Caller also pointed out that CMS may be "violating its loan agreements with the co-ops by withholding payments to providers." A Louisiana loan agreement obtained by the website "states because the solvency loans meet the definition of 'risk-based capital' by state insurance laws, they are 'subordinate' to policyholder claims."

Whether or not the administration succeeds in stiffing doctors and hospitals, its hardball tactics prove one thing: ObamaCare was never about healthcare; it was always about power.