STATEMENT OF JULIE MIX MCPEAK
COMMISSIONER, TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

HEARING ENTITLED "EXAMINING THE COSTLY FAILURES OF OBAMACARE'S CO-OP INSURANCE LOANS"

THURSDAY, NOVEMBER 5, 2015

INTRODUCTION

Good morning Chairman Murphy, Ranking Member DeGette, Representative Blackburn and Members of the Subcommittee. Thank you for inviting me to testify before the Subcommittee this afternoon.

I am Commissioner Julie Mix McPeak. I am Commissioner of the Tennessee Department of Commerce and Insurance (TDCI). TDCI is comprised of several Divisions that regulate professions ranging from the insurance industry to local salons, and in my capacity as Commissioner, I also serve as the State's Fire Marshal. In addition to my responsibilities at home, I also serve in Committee leadership roles at the National Association of Insurance Commissioners (NAIC), as an Executive Committee Member of the International Association of Insurance Supervisors (IAIS), and as a Member of the Federal Advisory Committee on Insurance (FACI). I have spent most of my career in Insurance Regulation, previously serving as the Commissioner of the Kentucky Department of Insurance, and have a strong affinity for the country's state-based system of insurance oversight.

My testimony today will highlight the history of Community Health Alliance Mutual Insurance Company (CHA), Tennessee's Consumer Operated and Oriented Plan (Co-Op) under the Affordable Care Act (ACA). My comments will focus on 2015 events that ultimately led to CHA voluntarily entering runoff on October 14, 2015.

CHA INCORPORATION AND LOANS

CHA was incorporated on September 27, 2011, as a mutual benefit non-profit corporation authorized to transact business in the State of Tennessee. The Centers for Medicare & Medicaid Services (CMS) awarded $73,306,700 in loans and advances to CHA to launch the company.

Startup loans totaling $18,504,700 enabled the Company to begin operations and those loans were progressively funded by CMS between September 6, 2012, and December 20, 2013. Solvency contributions totaling $54,802,000 which serve to meet statutory surplus requirements were fully funded by CMS between March 4, 2013, and February 26, 2015.

2014

The first year for Co-Ops to operate on the Marketplace (Tennessee has a Federally Facilitated Marketplace (FFM)), as this Committee knows, was 2014. The FFM was new to all carriers and correct projections of rate and members were of utmost importance. Projections were particularly important for Co-Ops as they were new to the market with a limited amount of funds and federal limitations on the use of those funds. In the case of Tennessee, CHA had a trying first year of operations with significant expenses that exceeded minimal revenues.

In 2014, CHA offered plans in five (5) of Tennessee's eight (8) rating/service areas, including the

major metropolitan areas of Knoxville, Memphis, and Nashville. The company, like its sister company in South Carolina, entered the FFM solely with exclusive provider organization (EPO) plans. An EPO provides no out-of-network benefits.

In addition to offering EPOs where most other FFM carriers offered broader preferred provider organization (PPO) plans, CHA plans carried price tags that were approximately 20 percent higher than the FFM leader, BlueCross BlueShield of Tennessee (BCBSTN).

The company achieved minimal membership in 2014 in large part due to having plans priced significantly above the FFM leader and also due to having limited network options. CHA, at its high point in 2014, achieved several hundred covered lives in its FFM block of business.

The company's membership and rate challenges were compounded by a population that was less healthy and/or that sought more medical services than projected. In fact, CMS released guidance earlier on June 30, 2015, showing that Tennessee has the highest average risk score in the U.S. for the individual marketplace.

Low enrollment and poor experience for 2014 contributed to CHA recording a net loss of approximately $22 Million at year-end 2014. Those losses include business in the FFM, non-FFM, and group markets.

2015

Federal guidance required rates and forms to be approved mid-year 2014 for rates that would not be effective until January 1, 2015. That short window for CHA to decide 2015 strategy left it with little time to evaluate its incomplete 2014 experience before policies and rates were filed for 2015. The company invested in PPO plans and expanded its offerings to every rating/service area in Tennessee and planned to make itself more competitive by proposing a rating structure for 2015 that was largely based on where the market leader's plans were priced for 2014. Considering the Company's lack of credible experience to support its rating plan, the Department recognized proposed rates were likely inadequate. After discussions with CHA leaders, rates were ultimately approved by the Department at levels approximately 10 percent greater than the company had initially proposed.

CHA saw its enrollment grow exponentially during the 2015 open enrollment period and, during the same period of time, projected medical costs significantly increased. The Department, CHA, and CMS quickly recognized that the membership growth combined with its increased medical losses was too much too fast and our Department wrote a letter (Exhibit 1) to HHS Secretary Sylvia Burwell on January 8 requesting that HHS place an immediate enrollment freeze on CHA due to the company trigging the Department's Hazardous Financial Condition Rule. The freeze and corresponding suppression of CHA's FFM files went into effect on January 15, 2015. The decision to freeze enrollment was, and remains, the right decision for the company and most importantly for Tennessee insurance consumers. Throughout 2015, CHA peaked at more than 40,000 covered lives before falling down to almost 25,000 lives on the FFM where they remain

today.

2016

Proposed rates and forms for the 2016 plan year were due to the Department on May 15, 2015. The company, still under the freeze (which stayed in place for the remainder of 2015), recognized that it needed to request a significant rate increase to become a viable option for consumers in 2016. The company requested an average rate increase of over 32 percent and proposed pulling out of one rating/service area (Note: Under HHS guidance, this strategic company decision would not be considered a “market withdrawal” for 2016, but will in subsequent years for FFM carriers.)

After a thorough actuarial review that involved Department contractors and examiners, the Department approved a rate increase of almost 45 percent for 2016. We approved the rates tentatively expecting to unfreeze CHA in time for the November 1 Open Enrollment period. However, we were not going to formally unfreeze the company until we reviewed initial results from a targeted financial examination called to evaluate the company’s expenses, projections, and financial viability, and until CMS released federal guidance on the risk corridor program.

RUNOFF

As CMS was pushing the Department for a response on unfreezing CHA for Open Enrollment, on September 29, 2015, CMS wrote to CHA (Exhibit 2) announcing its intent to place CHA on a corrective action plan (CAP) and on an enhanced oversight plan (EOP). The letter stated that

"…CMS has identified certain issues that threaten CHA's viability." and outlined several ongoing concerns, many of which CHA had been working to address with CMS.

A week later, on October 5, CMS released information on the risk corridor program that indicated that the percentage of payment for the 2014 plan year was only going to be at 12.6 percent, an amount significantly lower than the anticipated 100 percent. The inability of CMS' Risk Corridor Program to be fully funded created a net worth deficiency for CHA which ultimately could not be cured.

The Department recognized that a 12.6 percent payment percentage for 2014 made it highly unlikely that any amount will be paid out of the risk corridor program for the 2015 plan year, particularly because CMS still needed to collect over $2.5 Billion for 2014 before it moved on to 2015 and CMS risk corridor flexibility was limited by the Consolidated and Further Continuing Appropriations Act of 2015 (Cromnibus) that required the program to be budget neutral.

The Department then wrote to CHA on October 9, 2015, (Exhibit 3) requiring the company to develop a corrective action plan to rectify its solvency shortcomings that resulted from the company's $17,000,000 anticipated 2015 plan year risk corridor recovery that could no longer count towards company surplus after the CMS risk corridor announcement. Our letter required the plan to be acknowledged as acceptable to CMS if we were to approve it and allow the company to offer insurance policies on the FFM in 2016.

CHA's only ability to cure its net worth deficiency was to increase surplus with additional contributions. The Company asked the Department if the $18.5M startup loan could be counted as surplus if the loan terms were changed to be identical to the terms of the CMS solvency contributions. The Department did not think that option was appropriate but told the Company that Statutory Accounting Principles would require the loan money to be classified as surplus if CMS and CHA bilaterally altered the loan agreement terms. CMS, after review with the Department, ultimately concluded that the loan conversion was not prudent given the competitive market in Tennessee and the financial struggles at the company and refused to allow the loan to be recharacterized.

CONCLUSION

The Tennessee Department of Commerce and Insurance, CMS and its contractors, and CHA are working in close cooperation to ensure a successful runoff. Our focus is on Tennesseans first and foremost and the Company's current financial projections indicate that it has the resources to pay all claims that will be incurred through December 31, 2015, such that no consumer or treating physician is unfairly harmed.

The runoff will continue well into 2016, and there may be additional surprises, but as of today, cooperation between the three entities has helped ensure a smooth transition.

Thank you for the opportunity to discuss the Tennessee experience with this Subcommittee. I look forward to your questions.

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BILL HASLAM
GOVERNOR

JULIE MIX McPEAK
COMMISSIONER

January 8, 2015

The Honorable Sylvia Burwell
Secretary, Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Burwell:

As Commissioner of the Tennessee Department of Commerce and Insurance (TDCI), I respectfully request that the Department of Health and Human Services (HHS) place an immediate enrollment freeze on Community Health Alliance (CHA), a Tennessee-domiciled consumer oriented and operated plan pursuant to the Affordable Care Act (ACA). The immediate enrollment freeze and corresponding suppression of Federally Facilitated Marketplace (FFM) files is necessary due to the company's current tenuous financial condition.

On January 5, CHA provided TDCI with a December 31, 2014, projected Financial Statement, a December 31, 2015, Pro-forma Financial Statement, and other supplemental filings and projections. The Insurance Division reviewed the material and has found the company to be in violation of the Division's Hazard Rule (Chapter 0780-01-66, *Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition*, hereinafter "Rule"). The Rule lists various standards to consider in determining whether the continued operation of any insurer might be deemed to be hazardous to its policyholders, creditors or the general public. The Division based its decision in part on the following information.

- CHA expects to incur a $24.7M net loss for 2014 and its projected surplus at December 31, 2014 is $2.8M. The amount of the loss puts CHA in Hazardous Financial Condition according to our Rule. Pursuant to our Rule, any company that has a net loss in the last twelve-months which is greater than 50 percent of its remaining capital and surplus in excess of a $2M minimum is by definition in Hazardous Financial Condition.
- Company solvency is able to be maintained only because CHA plans to draw $34.7M against its available surplus loan balance, and recognize the draw in its 2014 financial statements. The amount of the draw was limited to the amount necessary to maintain surplus at 450 percent of RBC. This leaves the Company with approximately $20M in available solvency loans which it plans to completely draw and record in its 2015 financial statements. Even if the Company recorded the full amount of available solvency loans in the 2014 financial statements, it would still be defined by our Rule as being in Hazardous Financial Condition.

- CHA triggers the Rule because the insurer lacks adequate financial and administrative capacity to meet its obligations, as evidenced by its 130 percent combined ratio projected for 2015. Further, variable costs for claims and expenses exceed premium revenues in 2015 before even considering the Company's fixed overhead expenses.
- CHA projects an $11.2M risk corridor receivable which will be fully admitted as an asset in its December 31, 2015 financial statement. This is not guaranteed to be fully funded—this is "budget neutral" and "highly uncertain" for 2015 per Milliman, the company's consulting actuary. It is widely anticipated that these amounts may not be fully collected. As the final receipt of this amount is questionable, the Rule is violated because the collectability of receivables is uncertain. Without this asset, the Company's projections show that it would otherwise be insolvent by December 31, 2015.
- Based on its current (and growing) enrollment, CHA projects that it will have an RBC ratio of 228 percent at December 31, 2015, and a combined ratio of 126.2 percent for the year. This assumes the full risk corridor payment will be received. Even if this occurs, it will still trigger a Company Action Level Event in accordance with Tenn. Code Ann. § 56-46-104 (a)(1)(B), requiring CHA to prepare and submit an RBC Plan for corrective action to the Commissioner.

Though the current projections indicate the Company will be impaired (possibly insolvent) by December 31, 2015, there is still significant uncertainty about CHA's true current and future financial condition. The Company has continuously provided our Department with unreliable estimates of enrollment, medical losses, administrative expenses, and net income. The most recent estimates include a 100 percent increase in membership over the company's original estimates. The medical loss ratio estimates are now 18 percent more than the company's original estimates and administrative expenses are now 29 percent more than their original estimates. Unless and until we feel that reliance on CHA's estimates is justified, we must consider the possibility that these projections will also have adverse development.

In addition, TDCI has received a significant number of complaints in these first eight days of 2015 against CHA. The complaints address CHA not accepting premium payments, inadequate physician networks, and CHA's failure to pay agent commissions, among other things. TDCI is actively investigating these complaints, but is discouraged with the call volume. We question whether the company was adequately prepared to handle increased enrollment.

TDCI has been in communication with CHA and the company has requested an enrollment freeze. The Department agrees completely that an enrollment freeze is urgently required and will, in fact, require the company to cease enrolling new applicants. This action will not impact existing policyholders.

TDCI appreciates the time your team has spent with us to analyze CHA's financial condition and to assist in evaluating options to help protect CHA policyholders. Please advise regarding the soonest possible date that HHS can freeze CHA enrollment and suppress the related FFM files.

Sincerely,

Julie Mix McPeak
Commissioner

cc: Lourdes Grindal-Miller, Director, Division of Plan Management Policy and Operations
Kelly O'Brien, Director, Co-Op Division, Insurance Programs Group
Gina Zdanowicz, Director, Division of Plan Management Rate and Benefit

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

INSURANCE PROGRAMS GROUP

September 29, 2015

VIA ELECTRONIC MAIL: randmbramm@att.net
Mr. Ron Braam
Director and Chair of the CAP Oversight Committee
Community Health Alliance
445 S. Gay Street
Knoxville, TN 37902

Re: Corrective Action Plan (CAP) and/or Enhanced Oversight Plan (EOP)

Dear Mr. Braam:

On January 15, 2015, at the request of Tennessee Department of Commerce and Insurance (TDCI), the Centers for Medicare & Medicaid Services (CMS) placed an enrollment freeze on Community Health Alliance (CHA) health plans. On February 3, 2015, CMS placed CHA on a corrective action plan (CAP) citing hazardous financial condition (HFC), management deficiencies and member complaints regarding inadequate physician networks, failure to pay agents and brokers and acceptance of member complaints and CHA's failure to comply with section 7.1 of the Loan Agreement, which requires CHA to remain in compliance with all applicable Tennessee insurance laws and regulations. On April 30, 2015, CMS notified you that it approved your CAP.

In accordance with section of 11.1 of the Loan Agreement, CMS has continued to monitor CHA's performance in the CO-OP Program. As such, CMS reviewed required reporting such as your first and second quarter 2015 regulatory filings and pro forma financial statements and your 2016 rate filing. In addition, CMS conducted an onsite visit on July 10-11, 2015 and had several conversations with state insurance regulators.

Issues Identified by CMS

Based on review of the above information, CMS has identified certain issues that threaten CHA's viability. Specifically, CMS' assessment of your organization identified the following issues:

Financial Issues: CMS has concerns regarding CHA's financial viability because CHA is sensitive to any deviations from its financial projections due its 2015 year-end capital position. In addition, based on CHA's September 2015 pro forma financial statements, CHA is projecting a risk-based capital (RBC) level less than 500% for 2016. Thus, in accordance with CMS's

guidance released on December 9, 2014, CHA is in potential violation of Section 7.2 of the Loan Agreement, which states that surplus reserves held by Borrower cannot be more than 10% below the RBC level stated in the Business Plan (500%) for the applicable year at any time. Although your projection for 2016 is currently in compliance with the Loan Agreement, CMS is uncertain about your strategy to maintain the aforementioned requirement for RBC.

Operational, Compliance & Management Issues: CHA has experienced ongoing operational problems tied to issues with the processing of enrollment and downstream transactions by its vendor, Softheon. However, CMS acknowledges that CHA has made significant changes to address these ongoing problems, including:

- Creation of special teams to work with Softheon to address transaction processing issues;
- Increased member services support to respond to and resolve member, provider, and broker complaints and issues; and
- Development of a new software solution (Project Phoenix) to replace the Softheon vendor solution.

CHA shares its C-Suite and several administrative and operational personnel with Consumers' Choice Health Plan (CCHP). The two CO-OPs have entered into a Shared Services Agreement (SSA) that outlines how personnel responsibilities between CO-OPs and how employee costs are shared between the two CO-OPs. CMS shares the concerns raised by both CHA's and CCHP's board about the existing shared services agreement (SSA) and board governance and oversight processes, such as the proper allocation of resources, which include administrative infrastructure, IT infrastructure and vendor agreements. However, we acknowledge the actions taken thus far by CHA and CCHP to address these concerns which include creating a Shared Services Committee (SSC), which aims to re-evaluate the SSA, with recommendations expected to be implemented by June 30, 2016. However, CMS is uncertain of the recommendations approved by the SSC thus far, and is concerned with the effectiveness of your planned timeline.

CHA experienced high member, provider and broker complaint levels, driven, at least in part, by ongoing issues with the processing of enrollment transactions by it vendor, Softheon. The processing issues led to downstream problems in a number of other operational areas, including recognition of premiums, member access to care, and processing of provider claims. Other issues resulted from confusion on the part of providers who were unaware they were contracted with CHA through its integrated delivery system partners.

Competitive Environment/Strategy Issues

As of July 2015, CHA has 29,773 members and plans to increase its membership. However, CHA's health plans were under an enrollment freeze in 2015. Additionally, it is unclear what impact CHA's overall rate increase of 44.6% in the individual market will have on its membership.

CMS has concerns that these issues may impede CHA's viability. However, at this time, we believe these issues can be addressed by placing CHA on a CAP and an enhanced oversight plan (EOP).

CAP Requirements
The CAP must include a detailed plan describing:

- your strategy for resolution,
- key milestones,
- start and end dates, and
- proposed evidence of completion for each issue identified.

Failure to submit, obtain approval for, or successfully implement the CAP, or failure to achieve the required level of performance upon completion of the CAP, may result in termination of the Loan Agreement or other corrective actions as provided for in the Loan Agreement.

Specifically, the requirements of the CAP are the following:

1. Continue to meet the requirements of the current CAP;

2. Continue special operations and activities and the development of its new software solution to address ongoing Softheon-related transaction issues until a more permanent solution is fully implemented and validated;

3. Provide a detailed plan on how the "Project Phoenix" software solution will be fully tested and implemented by an appropriate time by October 30, 2015;

4. Provide a detailed contingency plan for transaction processing in the event "Project Phoenix" is not fully operational prior to open enrollment;

5. Complete CHA's consulting engagement to assess the existing shared services agreement. In the event significant changes are recommended, CHA should review required changes and provide developed plans for appropriate transition by January 30, 2015;

6. Provide a detailed plan that describes how CHA will continue to monitor complaint levels and sources of those complaints to determine whether the solutions implemented are addressing the appropriate root causes. If appropriate, CHA may need to consider continuing with the existing work-around and expanded member services to address ongoing operational issues;

7. Provide a detailed plan on how CHA will achieve its enrollment goals. The plan should also address the impact on CHA' enrollment goals if TDCI does not lift the enrollment freeze; and

8. Provide a detailed plan on how CHA will lower its administrative cost ratio (ACR) and meet CMS's 500% RBC requirement.

EOP Requirements
Based on the above information, CMS will increase its monitoring of CHA's financial viability by placing it on an Enhanced Oversight Plan (EOP). Accordingly, we require an explanation of CHA's plan to address the concerns referenced. To appropriately evaluate the financial risk posed

by CHA's current position. Under the EOP, you are immediately required to provide the following until further notice:

1. On a weekly basis, submit report that reflects CHA's progress in implementing "Project Phoenix" prior to open enrollment.

2. On a monthly basis, submit a report that reflects complaints received from CHA members. The report should reflect whether CHA has responded and/or resolved the complaint and how long it took to resolve the complaint.

3. On a bi-weekly basis, provide an update to CMS on CHA addressing the shared services agreement issues.

4. Submit Monthly/Cumulative Profit (Loss) Statement;

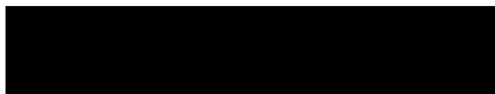
5. On a monthly basis, submit administrative spending vs budget; and

6. Submit monthly claims and loss ratio updates with detail including individual, small group, and large group lines of business.

The EOP requirements are critical to CMS's ability to evaluate whether CMS can remain confident that CHA will meet its obligations under the CMS CO-OP Loan Agreement. In accordance with section 16.2 of the Loan Agreement, a CO-OP's viability remains in the sole and absolute discretion of CMS. Thus, CMS may terminate your Loan Agreement if CMS receives additional information that indicates it is unlikely CHA will maintain a viable and sustainable CO-OP that serves the interests of its community and the goals of the CO-OP Program.

The CAP and EOP requirements requested in this letter are due to CMS no later than ten (10) business days from the date of this letter. Please contact Ms. Kathleen Scelzo at 301.492.4121 or Kathleen.Scelzo @cms.hhs.gov if you have any questions or concerns.

Sincerely,



Kevin J. Counihan
Chief Executive Officer, Health Insurance Marketplace
Director, Center for Consumer Information & Insurance Oversight

Cc: Julie Mix McPeak, Commissioner, Tennessee Department of Insurance
Gary Oakes, Chair, Board of Directors
Jerry Burgess, CEO, Community Health Alliance
Matthew Lynch, Insurance Programs Group Director
Kelly O'Brien, Director, CO-OP Program Division

Reed Cleary, Manager of the Finance and Risk Management Team
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October 9, 2015

Via Email

Jerry Burgess
Community Health Alliance
445 South Gay Street
Knoxville, Tennessee 37902

Re: Proposed Plan of Action Regarding Mandatory Control Level Event

Dear Mr. Burgess:

As you know, Community Health Alliance ("CHA") was found to be in hazardous financial condition in January of 2015 and CHA was frozen from accepting new enrollees at that point. CHA continues to be in hazardous financial condition as of the date of this letter and is still prohibited from accepting new enrollees. Further, on or about October 5, 2015, the Centers for Medicare & Medicaid Services ("CMS") of the U.S. Department of Health and Human Services ("HHS") released information regarding the risk corridor program for qualified health plans. This information indicated that the percentage of payout from the risk corridor program for the 2014 plan year was only at twelve and one half percent (12.5%), an amount significantly lower than the anticipated one hundred percent (100%). Considering this payout percentage for the 2014 plan year, it is highly unlikely that any amount will be paid out of the risk corridor program for the 2015 plan year. As such, statutory accounting will not allow the risk corridor recoverable to be counted as an admissible asset.

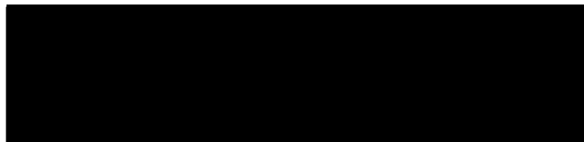
Prior to the updated risk corridor payout information, CHA booked one hundred percent (100%) of their approximate seventeen million dollar ($17,000,000) anticipated 2015 plan year risk corridor payment as an anticipated recoverable in their surplus. As this payout is no longer likely to occur, this amount cannot be considered as a part of CHA's surplus. As a result, the anticipated 2015 year end risk based capital ("RBC") percentage for CHA is approximately one hundred sixteen percent (116%). This low level RBC places CHA in hazardous financial condition pursuant to Tenn. Comp. R. & Regs. 0780-01-66. Furthermore, such an RBC falls below the mandatory control level RBC and triggers a mandatory control level event pursuant to Tenn. Code Ann. §§ 56-46-102 and 56-46-107.

Considering this new information, and the letter the Division received on or about September 29, 2015 from CMS stating that CHA is in a tenuous financial condition and that CMS questions CHA's viability, the Division requires CHA to develop a corrective action plan ("CAP") to rectify the RBC shortcomings to ensure viability of CHA for the 2016 plan year no later than October 12, 2015. The CAP should specifically address solvency concerns, operational concerns, and financial projections that demonstrate CHA's continued viability. The action steps outlined in the CAP should be acknowledged as acceptable to CMS before such CAP is submitted to the Department. When submitted, the Division will review and consider approval of the CAP. Please be aware, the submission of this CAP is not a guarantee that the Division will lift its previous determination that CHA is in hazardous financial condition. However, absent an **acceptable** CAP, as defined above, Tennessee law requires the Department to implement strict regulatory control over the company, which may include any actions contemplated under the provisions of Title 56, Chapter 9. The October 12, 2015, deadline is in consideration of the deadline imposed by federal guidelines and CMS guidance.

At this time, my paramount concern is to protect the policyholders of the State of Tennessee and ensure they are in no way harmed by any potential future insurer insolvencies.

If you have questions, please contact me at the above telephone number.

Sincerely,



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