

# United States Senate

WASHINGTON, DC 20510

May 15, 2014

## VIA ELECTRONIC TRANSMISSION

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Tavenner:

We have written to you previously regarding the disastrous rollout of Healthcare.gov, which ended up costing taxpayers at least \$677 million and took several months to fix.<sup>1</sup> However, many states are experiencing similar issues with their exchanges and seem unable to resolve them. Fourteen states and the District of Columbia chose to create a state-run exchange. As of today, nearly half of the state exchanges still have significant problems that have rendered them virtually unuseable and may ultimately prove to be unfixable.

American taxpayers have already funded almost \$5 billion in state exchange grants.<sup>2</sup> Nearly half a billion of that has been spent solely on failed websites in four states – Maryland, Massachusetts, Oregon, and Nevada.<sup>3</sup> These states have exchanges that are still largely inoperable nearly eight months after the initial launch date on October 1, 2013. In the last few weeks, three states have announced that they are completely scrapping their system and Nevada is expected to make a decision about its exchange soon.

On April 1, 2014, the state of Maryland announced that it would need to completely rebuild its exchange website. Although Maryland spent at least \$118 million on its exchange, it crashed within minutes of its launch. Maryland now plans to spend another \$40 to \$50 million to switch to a new system.<sup>4</sup>

A few weeks after Maryland's announcement, Oregon said that the problems with its website were so severe that it was going to scrap the system and transfer operations to the federal exchange instead. Despite spending almost \$250 million on its exchange

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<sup>1</sup> *The Hill*, "HealthCare.gov Costs Total \$677M," December 11, 2013.

<sup>2</sup> Congressional Research Service, "Federal Funding for Health Insurance Exchanges," March 28, 2014.

<sup>3</sup> *Politico*, "\$474M for 4 Failed Obamacare Exchanges," May 11, 2014.

<sup>4</sup> *The Washington Post*, "Board of Md. Health-Insurance Exchange Votes to Hire Deloitte to Overhaul It," April 1, 2014.

website, Oregon estimated it would need at least another \$78 million to make it operational.<sup>5</sup>

Last week, Massachusetts announced that it was also going to connect to the federal exchange. In addition, Massachusetts plans to build an entirely new state exchange. Massachusetts estimates that it will need more than \$120 million to do so, and plans to ask the government to fund it.<sup>6</sup> This \$120 million in federal funding would be in addition to the \$180 million Massachusetts has already received from the government in health exchange grants.<sup>7</sup> In total, Massachusetts may spend almost half as much to build one state exchange as your agency has to build a federal one.

Nevada has not made a decision about its exchange, but it spent \$1.5 million to conduct a review of the website and the cost of fixing it. According to the vice-chair of Nevada's exchange, the review was not promising and it is unlikely that "all of these issues are going to be resolved" quickly enough to be ready for open enrollment in October 2014.<sup>8</sup>

Other states have struggled with their exchanges, including Minnesota, Hawaii, Vermont, and the District of Columbia. According to experts in Hawaii, its website is still experiencing technical glitches and security vulnerabilities that could be used to access personal information.<sup>9</sup> It is likely that all of these states will have to spend additional money to fix the problems.

Not only do the failures of state exchanges waste taxpayer dollars, but they will also create significant burdens on individuals trying to enroll in health care plans. The 75,000 people who tried to sign up for health care plans in Oregon will now need to go through the process again in the federal exchange. In Massachusetts, individuals will likely have to enroll through the federal exchange, and many have had to enroll temporarily in Medicaid while the state transitions from a state to the federal exchange.

On April 7, 2014, we wrote to the Department of Health and Human Services (HHS) Secretary Kathleen Sebelius about the failure of several state exchanges and the apparent lack of oversight from HHS. We appreciate your response to our letter, but it does not answer all of our questions. Given recent developments, this issue is even more concerning.

The massive amount of taxpayer dollars being spent on failing health care exchanges is unacceptable. The government has a responsibility to spend money responsibly and conduct oversight to ensure it is well used. It appears that the government is not carrying out its duty in the case of the state exchanges.

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<sup>5</sup> *The Oregonian*, "Cover Oregon: State Moves to Federal Exchange, but Oracle Technology Lives On," May 6, 2014.

<sup>6</sup> *The New York Times*, "Massachusetts Pushes Fix for State Health Exchange," May 8, 2014.

<sup>7</sup> Kaiser Family Foundation, "Total Health Insurance Exchange Grants," accessed May 9, 2014.

<sup>8</sup> See Note 2.

<sup>9</sup> *KITV*, "Hawaii Health Website Possibly Vulnerable to Hackers," March 2014.

We hope that we will receive answers from HHS in response to our April 7<sup>th</sup> letter as soon as possible. In addition, we ask that you provide the following information:

- 1) Did any states raise concerns to CMS about their websites prior to the launch date on October 1, 2013? Please provide all related correspondence.
- 2) Please provide all correspondence between CMS and each of the following states concerning their exchange websites from September 1, 2013 to present:
  - i. Maryland;
  - ii. Massachusetts;
  - iii. Oregon; and
  - iv. Nevada.
- 3) Has CMS conducted any analysis on why some state exchanges failed? If yes, please provide copies of all analyses and the criteria used. If no, please explain why not.
- 4) Does CMS plan to consider states' requests for additional funding in order to fix their exchanges or build new exchanges? If so, what criteria will CMS use to evaluate states' proposals?
- 5) How will CMS ensure that the criteria it uses in making decisions about state exchanges will be consistent for each state?
- 6) How did CMS oversee federal funding of state exchanges?
- 7) What mechanisms does CMS have to reclaim grant funds that resulted in failed websites?
- 8) Is CMS planning to increase its level of oversight in any states? If yes, please explain what actions CMS will take to increase oversight. If no, please explain why not.
- 9) How much additional grant money will CMS award to states to implement and/or fix their exchanges, and what is CMS's authority to issue additional funds for this purpose?
- 10) Are there any instances in which CMS would deny state requests for additional funding? If so, please describe the circumstances under which CMS would deny additional funding and any instances that CMS has denied funding requests for state exchanges to date.

Thank you for your attention to this matter. We would appreciate a response by May 30, 2014. If you have any questions, please do not hesitate to contact Tegan Millspaw with Senator Grassley's Judiciary Committee staff at (202) 224-5225 and Kim Brandt with Senator Hatch's Finance Committee staff at (202) 224-4515.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary



Orrin G. Hatch  
Ranking Member  
Committee on Finance