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## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

AMBER COTTLE, STAFF DIRECTOR  
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February 6, 2014

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Administrator Tavenner:

We are writing to request information about how the Centers for Medicare & Medicaid Services (CMS) plans to reconcile the mistakes that have been generated in the healthcare.gov application process. As Americans continue to endure the badly botched rollout of a website that cost taxpayers hundreds of millions of dollars, we learned recently that thousands of applicants have been unable to correct mistakes on their insurance applications and that CMS does not have a system in place to resolve these mistakes. This latest impediment has caused individuals to pay more for their insurance or to go without it, and leaves applicants with almost no recourse to fix their problems.

*The Washington Post* reported this week<sup>1</sup> that 22,000 people have appealed to CMS to try to correct mistakes on their insurance applications filed through the federal health exchange. Our understanding is that most of the mistakes were caused by the website and not the individuals. For example, some people who need health insurance are not getting the full subsidy to which they are entitled. Others found that their applications had obvious mistakes, like declaring one of their children eligible for the Children's Health Insurance Program (CHIP) and the other one ineligible. Others became stuck in a never-ending loop when the exchange found them ineligible for exchange coverage because they were eligible for Medicaid, but their state disagreed. These consumers have legitimate complaints and their concerns should be remedied as expeditiously as possible by your agency.

However, according to the *Post*, CMS does not have a system in place to resolve these appeals. While this in itself is perplexing, the article further states that CMS has no plans to develop the appeals system in the near future. Like other "back-end" systems—such as the technology that sends enrollees' information to insurance companies through "834" electronic forms—the automated appeals system has not yet been constructed. Instead, people are directed

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<sup>1</sup> [http://www.washingtonpost.com/national/health-science/healthcaregov-cant-handle-appeals-of-enrollment-errors/2014/02/02/bbf5280c-89e2-11e3-916e-e01534b1e132\\_story.html](http://www.washingtonpost.com/national/health-science/healthcaregov-cant-handle-appeals-of-enrollment-errors/2014/02/02/bbf5280c-89e2-11e3-916e-e01534b1e132_story.html), viewed February 3, 2014.

to file appeals by mail, a more time-consuming process that could result in the denial of necessary care, or to delete their online profiles and start over, only to find themselves back in the same predicament. All of this is because the technology that would allow CMS staff to handle appeals has not been built.

CMS' intention to initiate hearings for some of the affected appellees is a step in the right direction, but generally, hearings do not result in timely resolution. Healthcare.gov's website states that "In general, we must tell you our decision and mail our response within 90 days of when we received your appeal request."<sup>2</sup> Ninety days or more is unacceptable to the thousands of Americans who may have their care interrupted, or be unable to insure themselves or their children, while they are waiting to have the issues with their application resolved. The challenges faced by these individuals should be investigated and promptly resolved by the appropriate officials. A seven-page form, followed by investigative hearings, is a burdensome process to resolve what are reportedly technical "glitches" that the affected individual had no part in creating.

We collectively are concerned about whether or not participants in the exchanges will have their problems resolved promptly and efficiently. To help us better understand how CMS intends to assist those negatively impacted by the healthcare.gov website, please provide us with answers to the following questions:

1. Which division within CMS is responsible for managing exchange-related appeals and which division had the ultimate responsibility for overseeing the development and operational functionality of the exchange appeals process?
2. How many healthcare.gov appeals has CMS addressed and resolved to date?
3. What is the schedule for resolving the current backlog of appeals?
4. How long does CMS anticipate it will take to resolve the average appeal and how is CMS communicating to appellees about the length of time for resolution of their appeals?
5. What is the timeline for building the infrastructure necessary to route appeals to the proper channels so that CMS officials can address their needs and resolve them expeditiously?
6. When will consumers be able to file appeals by phone or electronically?
7. What is CMS' rationale for not including the appeals infrastructure in the initial phase of the Federal exchange functionality?
8. Why was a contingency plan for handling appeals not developed sooner given the lack of infrastructure to handle appeals that was present from the launch of the exchanges onward?

We remain concerned that CMS has continued to over promise and under deliver. We urge you to carefully consider the above issues and to provide a written response to our questions by February 28, 2014. If you have any questions regarding this request, please have your staff

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<sup>2</sup> <https://www.healthcare.gov/can-i-appeal-a-marketplace-decision>, viewed February 3, 2014.

contact Kim Brandt with the Senate Finance Committee at (202) 224-4515, Tegan Millspaw of the Senate Judiciary Committee at (202) 224-5225, Riley Swinehart with Senator Enzi at (202) 224-3424, and Stacy Cline with the Senate Health, Education, Labor, and Pensions Committee at (202) 224-6770.

Sincerely,



Orrin G. Hatch  
Ranking Member  
Senate Committee on Finance



Charles E. Grassley  
Ranking Member  
Senate Committee on the Judiciary



Lamar Alexander  
Ranking Member  
Senate Committee on Health, Education,  
Labor, & Pensions



Michael B. Enzi  
Ranking member  
Senate Subcommittee on Children &  
Families