Congress of the United States

Washington, DC 20510

October 10, 2013

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

We are writing to seek information about the federal health insurance exchanges established by the Department of Health and Human Services (HHS). We are concerned by recent comments to the media that the system suffers from architectural problems that need design changes. We seek information about these problems as well as whether you still expect individuals to suffer a tax penalty if they do not purchase government-approved health insurance.

ObamaCare requires millions of individuals to enroll in government-mandated insurance or else face a tax penalty. The law required an online exchange be available by October 1, 2013, for individuals to compare plans and rates. For the 36 states that are not operating their own exchange websites, HHS established healthcare.gov for individuals to shop for insurance that would meet the law's mandated insurance coverage requirements. A Government Accountability Office report from June detailed that HHS spent almost $394 million over three years in contracts to establish the exchange and its related functions.[1]

Two top HHS officials, Marilyn Tavenner, the Administrator of the Centers for Medicare and Medicaid Services (CMS), and Gary Cohen, the Director for the Center for Consumer Information and Insurance Oversight, provided testimony to the House Committee on Oversight and Government Reform within the past few months suggesting that HHS would be ready for implementation on October 1, 2013. On July 17, 2013, Ms. Tavenner testified that she was "feeling pretty comfortable about the ability [of CMS] to be ready on October 1st."[2] She further stated that "I want to assure you that [on] October 1, 2013, the health insurance marketplace will be open for business. Consumers will be able to log onto healthcare.gov, fill out an application and find out what coverage and benefits they qualify for."[3] At a hearing on May 21, 2013, Mr. Cohen testified "I think we are very much on

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[1] John E. Dicken, *Patient Protection and Affordable Care Act: Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges*, GAO Report to Congressional Requesters (June 2013).
[2] *Evaluating Privacy, Security, and Fraud Concerns with ObamaCare's Information Sharing Apparatus, Joint Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Energy Policy, Health Care, and Entitlements, and H. Comm. On Homeland Security Sucbomm. on Cybersecurity, Infrastructure Protection, and Security Technologies,* 113th Cong. 20-21 (2013)
[3] *Id.*

schedule; we are moving forward. We are going to be ready October 1st for open enrollment to begin."[4] Mr. Cohen also testified that there would not be "any problems with [the] massive amount of data sharing."[5]

HHS launched healthcare.gov on October 1, 2013, as required by law. From day one, however, healthcare.gov has been plagued by what Administration officials initially referred to as technical glitches. After six days the Administration finally admitted the glitches were "design and software problems that have kept customers from applying online for coverage."[6] News reports detailed stories of people waiting as long as 36 hours to enroll for insurance, many waiting for hours only to give up.[7] As many as 99 of every 100 applications are not able to be processed, and experts are concerned that "federal officials could face a situation in January in which relatively large numbers of people believe they have coverage starting that month, but whose enrollment applications have not been processed."[8]

Among the many problems that have been identified in the media: many tens of thousands of people have started the application process but been unable to create accounts;[9] the system that determines whether people are eligible for federal subsidies or Medicaid has made inaccurate determinations;[10] the exchange will not be able to communicate with state Medicaid agencies until November;[11] drop down tools and identity checking systems have not properly functioned;[12] the website bottlenecks at the account creation stage;[13] insurers are receiving incomplete or corrupted applications;[14] and insufficient capacity has been allocated for the website.[15] The website was shut down for periods on October 5th, October 6th, and on October 8th in order for HHS to attempt to make changes.

To help us evaluate the extent of the problems with ObamaCare's rollout and for us to better determine whether any corrective legislative actions are necessary, please provide the Committees with the following information by October 24, 2013:

1. As of October 9, 2013, at midnight, how many people had successfully enrolled for insurance through the federal exchange? How many people attempted to submit applications?

2. Please describe, in detail, all technical problems (including software and design defects) that are preventing people from successfully creating accounts, applying for insurance, and enrolling in plans. Please describe in detail the administration's plans to address those problems and what has already been done to fix them. Please include which contractors were

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[4] *Examining The Concerns About the ObamaCare Outreach Campaign, Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Energy Policy, Health Care, and Entitlements, and Subcomm. on Economic Growth, Job Creation and Regulatory Affairs*, 113th Cong. 20-21 (2013)

[5] *Id.*

[6] Christopher Weaver, et al., *Software, Design Defects Cripple Health-Care Website*, Wall St. J. (Oct. 6, 2013).

[7] Sarah Kliff, *For Some Shoppers, Buying Obamacare is Turning Into a Marathon*, Wash. Post Wonkblog (Oct. 4, 2013).

[8] Dan Mangan, *99% of Obamacare Applications Hit a Wall*, CNBC (Oct. 4, 2013).

[9] *Supra* note 6.

[10] *Id.*

[11] Phil Galewitz, *Federal Insurance Marketplace Can't Yet 'Talk' to State Medicaid Agencies*, Wash. Post (Oct. 4, 2013).

[12] *Supra* note 6.

[13] Michael D. Shear, et al., *Health Exchange Delays Tied to Software Crash in Early Rush*, N.Y. Times (Oct. 7, 2013).

[14] *See, e.g.*, Drew Armstrong, et al., *Insurers Getting Faulty Data from U.S. Health Exchanges*, Bloomberg (Oct.8, 2013).

[15] Tim Mullaney, *Obama Adviser: Demand Overwhelmed HealthCare.gov*, USA Today (Oct. 6, 2013).

involved in the design and operation of those aspects of the exchange and which contractors are involved in correcting the problems.

3. How much has it already cost and will it cost to address the technical problems with the exchange? Does HHS need additional appropriations to solve the technical problems and if not, how will HHS pay for the changes? Please list specific appropriations accounts used.

4. According to several news reports,[16] the system that determines when people are eligible for subsidies to buy insurance or Medicaid appears to be malfunctioning, and thus many people may not be eligible for plans in which they are enrolled. What is your timeline for determining when people may have received inaccurate information about eligibility and for notifying affected individuals? How will individuals be notified?

5. According to a *USA Today* interview with HHS's Chief Technology Officer Todd Park, the Administration has said it hopes as many as 7 million people will eventually sign up for health insurance through the federal exchange. Yet, the administration only designed healthcare.gov to handle 50,000 to 60,000 simultaneous users.
   a. Why did the Administration build the site to accommodate so few people at a time when it expected many more to apply for insurance?
   b. How much load testing of the exchange was done? What is the maximum number of simultaneous users the exchange was tested to accommodate?

6. According to some reports,[17] the Administration was repeatedly warned that the federal exchange had significant problems. Insurers complained that during tests of the exchange there were difficulties with transmissions to insurers, with insurers not receiving all necessary data about individuals enrolling in plans during tests.
   a. Did HHS go live with healthcare.gov knowing there were problems with transmitting data to insurers?
   b. If those problems were resolved during testing, how were they resolved?

7. For the first five days of open enrollment, the administration insisted enrollment problems were a matter of unexpected volume. In an on the record interview with *USA Today* published October 6, Todd Park said "These bugs were functions of volume[.] Take away the volume and it works." On the same day, the Administration admitted to *The Wall Street Journal* that capacity was not the only problem, but the exchange suffered from design problems as well.
   a. When did HHS first learn of the design and software problems with the exchange?
   b. Please provide all documents, including emails, referring or relating to the design, software, and capacity problems with the exchange.

8. Will individuals who attempted to enroll in insurance through the federal exchange but who ultimately were unsuccessful due to the system's failures still face a tax penalty if they do not enroll for 2014? What about individuals who believe they successfully enrolled but later find out they were ineligible?

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[16] *Supra* notes 6 and 11.
[17] *See*, e.g., Juliet Eilperin, et al., *Many Remain Locked Out of Federal Health-Care Web Site*, Wash. Post (Oct. 8, 2013).
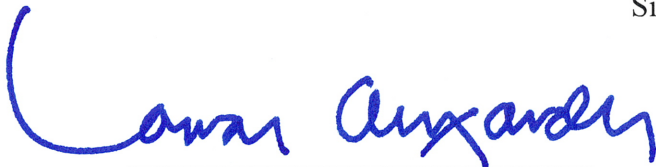
9. Please provide all documents referring or relating to the testing of the exchange and the federal data hub, including but not limited to contractual terms, reports or other data that were submitted by contractors, internal testing, internal emails, memos, power point presentations, and any communications from third parties such as insurers or other stakeholders on the performance of the exchange.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

In preparing your answers to these questions, please answer each question individually and include the text of each question in your response. When producing documents to the Committee on Oversight and Government Reform, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive documents in electronic format.

If you have any questions about this request, please have your staff contact Stacy Cline of the Senate Health, Education, Labor and Pensions Committee Staff at 202-224-6770 or Brian Blase of the House Committee on Oversight and Government Reform Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Sen. Lamar Alexander
Ranking Member
Senate Health, Education, Labor
and Pensions Committee

Rep. Darrell Issa
Chairman
House Committee on Oversight
and Government Reform

Enclosure

cc: The Honorable Tom Harkin, Chairman, Senate Committee on Health, Education, Labor and Pensions

The Honorable Elijah Cummings, Ranking Minority Member, Committee on Oversight and Government Reform