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State of Louisiana
Department of Health and Hospitals
Office of the Secretary

TESTIMONY

Hearing on

**“Federal Implementation of Obamacare:
Concerns of State Governments”**

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Statement of
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Introduction

Good morning, Chairman Lankford, Ranking Member Speier, Chairman Jordan, Ranking Member Cartwright, and distinguished members of the subcommittees. Thank you for the invitation to testify on the obstacles we are facing at the state level as the Patient Protection and Affordable Care Act (PPACA) is implemented, particularly as it relates to the Federally-Facilitated Health Insurance Exchange in Louisiana.

My name is Kathy Kliebert, and I am the Secretary of the Louisiana Department of Health and Hospitals (LDHH) and senior health policy advisor to Governor Bobby Jindal. Prior to my appointment as secretary, I served as the Department's deputy secretary, where I provided leadership to the agency's program offices, including the Offices for Citizens with Developmental Disabilities, Behavioral Health, Public Health, and Aging and Adult Services. Prior to my appointment as Deputy Secretary, I led the Office of Behavioral Health, where I managed the merger of the Department's mental health and addictive disorders offices to better serve Louisianians in need. I also spearheaded the development and implementation of Louisiana's new approach to both delivering and financing behavioral health services for approximately one million Louisiana children and adults through a fully integrated, single-point-of-entry system.

I have dedicated the bulk of my career to serving individuals with developmental disabilities through the Department's Office for Citizens with Developmental Disabilities (OCDD), which I also led as Assistant Secretary for six years. During my tenure with OCDD, we successfully completed a multi-year transition to move individuals out of institutions and into community-based services, reducing the number of individuals living in institutions by more than 26 percent. Prior to leading OCDD, I served as diversification director of the Metropolitan/Peltier-Lawless Development Centers in New Orleans and Thibodaux, where I led the expansion of community-based options for people with developmental disabilities. I have more than 20 years of experience as a licensed clinical social worker and have a master's degree in social work. I also currently serve as Secretary of the Louisiana Educational Television Board and as a member of the Louisiana Children's Cabinet.

Introduction

Since PPACA was signed into law, we have repeatedly shared our concerns regarding its policy implications, lack of sufficient guidance and unreasonable timelines for implementation. Over the past few years we have seen our warnings become reality. Today, I would like to address some of those continuing concerns.

On March 23, 2011, the State of Louisiana announced that it would not assume the risk of building a state-based health insurance Exchange as outlined by the PPACA. Over time, this has proven to be a sound decision for our state and for the 33 others who joined us. Just last week, a senior official from one of the leading consulting groups assisting states with Exchange development, Leavitt Group, told your colleagues on the Health Subcommittee of House Energy and Commerce that not a single state-operated Exchange appeared to be completely ready to launch on October 1, 2013. As was noted in his testimony, these Exchanges remain an enormously complex IT project with frequently changing and delayed guidance. It is not surprising that many states are narrowing the scope of their day-one Exchange capabilities as we near their mandated launch.

Meanwhile, contractors building the federal Exchange that will serve 34 states have, under the close watch of the U.S. Department of Health and Human Services (HHS), unsurprisingly offered their assurances that the federal Exchange will launch on October 1. Despite these reassurances, I am frustrated by what appears to be, based on our own front-line experience, a lack of forthrightness from federal officials and contractors about the status of critical components. With less than two weeks until the doors open for individuals to enroll, many questions remain about whether the systems are ready.

There is a common misconception that states that have opted not to expand their Medicaid programs or build their own Exchange are free of the onerous mandates of PPACA. To the contrary, we are faced with numerous new requirements, which I will highlight. Through my testimony I will describe the major hurdles Louisiana has faced, touching on the three main areas of concern, which are (1) guidance from CMS, (2) conflicting messages and misinformation, and (3) technical issues and delays.

Exchange Implementation Issues

Although PPACA was signed into law in 2010, it was not until this past year that federal officials began to release the bulk of the guidance related to critical components of this law. While we have elected not to expand Medicaid or establish our own Exchange, our staff, particularly our Medicaid eligibility and information technology teams, has been working non-stop to meet the complex new mandates set by the law. Although our concerns are many, the main issues we have experienced thus far with the rushed implementation of this law are described as follows.

Guidance

Much of the guidance and regulations have been issued in rapid succession over the past year. This condensed timeline has provided states with far too little time to carefully read and thoroughly understand them, much less provide meaningful questions and comments. Even more concerning is that the rules keep changing. For example, CMS released in June 2013 what it claimed to be the final version of guidance that will govern how interactions between the Exchange and state Medicaid programs will work, but we have since learned from CMS officials that they are making tweaks to this without a firm delivery date. While we are unsure what these changes will include, we know they will likely require reprogramming efforts for states.

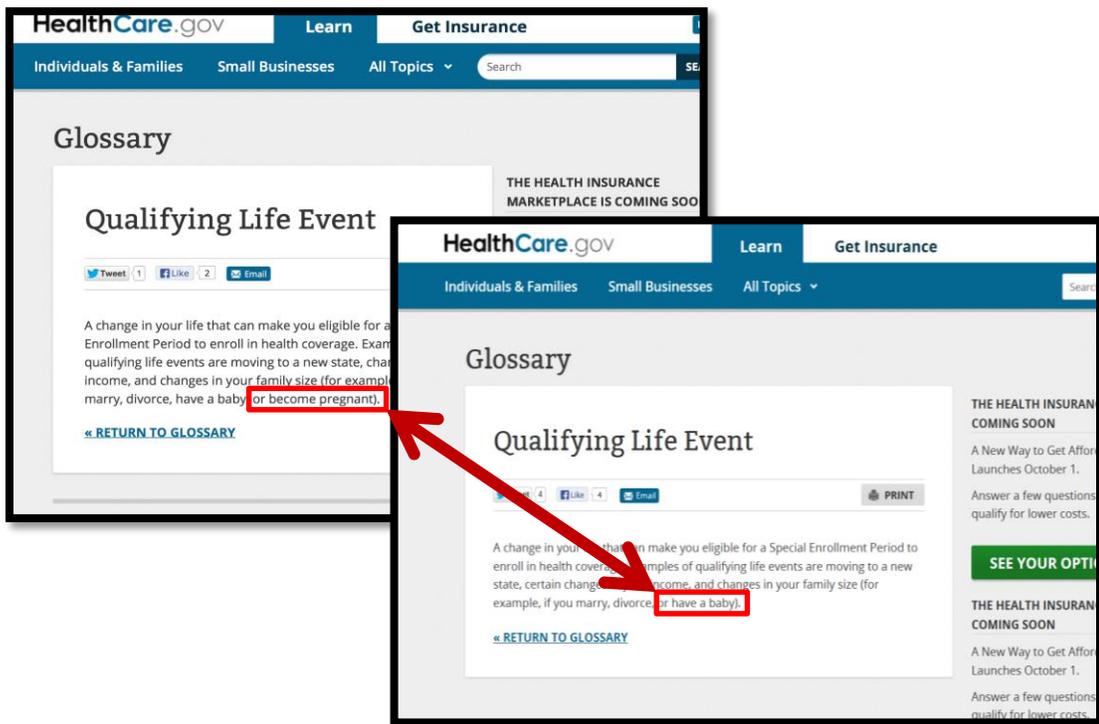
In addition to the issues we face because of late guidance releases, we've struggled to get timely answers to pertinent questions from federal officials. For example, on April 1, 2013, CMS agreed to provide details on how data transfers would be structured in response to requests made by Louisiana Medicaid staff on multiple occasions. This information was never received and our contractor was forced to comply by other means, wasting precious time and resources, which could easily have been avoided with proper guidance. It would often take CMS three or four months to respond to other critical questions about eligibility operations. We cannot afford to wait months for these answers as we prepare for the fast approaching, federally-mandated readiness deadlines.

Conflicting Messages and Misinformation

While there are clearly many dedicated career officials at the federal level working on PPACA, they've been tasked with the job of implementing an unworkable law within an

even more unrealistic timeframe. As a result, it is not surprising that states are often faced with conflicting and changing guidance.

To provide just one example, Louisiana Medicaid eligibility staff recently requested clarification on the issue of whether pregnancy is considered a “qualifying life event” to enroll in the Exchanges outside of the designated open enrollment period. Until very recently, HHS’s primary Exchange Website, Healthcare.gov, had included in its definition of qualifying life event the example of when you “become pregnant.” However the information on the site recently changed to state that it is the birth of the baby that qualifies the woman for coverage. On our requests for clarification, we’ve received multiple and conflicting answers from various HHS officials. The below screenshots, taken only a few weeks apart, illustrate this frustrating inconsistency.



Healthcare.Gov - Glossary

Additionally, we continue to be concerned with how HHS is conducting education and outreach in states. Although HHS set aside \$1 billion for the implementation of PPACA, the agency has made repeated requests for billions more, including solicitations to private industry.¹ Though Healthcare.gov is the main Website for consumer information and is the access point for the federal Exchange, it was only redesigned and focused for consumer access at the end June 2013, on the same day its corresponding call center launched a soft

¹ Budget request denied, Sebelius turns to health executives to finance Obamacare, Washington Post, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/10/budget-request-denied-sebelius-turns-to-health-executives-to-finance-obamacare/>, May 10, 2013.

open.² Most concerning is the fact that federal officials have assigned much of their responsibility for education and outreach in Louisiana to federally-funded “Navigators,” which were only announced on August 15, 2013. With almost no oversight, these groups have essentially a month in a half to train their staff on the complex workings of this new federal program and to begin educating the public about how to appropriately access the Exchange and make an informed decision.

Furthermore, we have serious concerns with how effective the Exchange call center will be in answering consumer questions. Similar to the Navigators, the call centers that were contracted to answer consumer questions and enroll individuals are on a rapid timeline for hiring and training. In July 2013, it was announced that a 600-person call center serving seven states with a federal Exchange was being opened in the small town of Bogalusa, Louisiana with an anticipated start to operations expected in September 2013.³ That means the employees in the call center answering consumer questions will have less than a month of training. We were alarmed this past week upon receiving word from a constituent in Louisiana who had called the Exchange hotline to find out about how he could enroll in a health plan on October 1, only to be directed to first contact his state’s Medicaid office. He was told that many states are expanding their Medicaid eligibility and he may now qualify for the Medicaid program in Louisiana. This left the individual in a frustrating cycle as our staff had to answer basic questions about the Exchange and direct him back to the appropriate channels. If the federal call center employees do not even know basic information like which states are expanding Medicaid and which are not, how are they to be expected to help individuals navigate the complex process of qualifying for an advanced premium tax credit and selecting from potentially hundreds of health plan coverage options?

Technical Issues and Delays

We’ve already seen delays of critical pieces of the law, including the mandate that larger employers offer health coverage to their workers and the requirement for state-based Exchanges to verify applicant income. Other delays have forced compromises in readiness. I previously mentioned how the organizations tasked with helping people enroll are only now starting to be trained. Some of those training requirements, such as those for the navigators, now have been scaled back from a requirement of 30 hours of training to only 20.⁴

We’re additionally concerned about the lack of interoperability between systems and a duplication of efforts. PPACA was touted as a means to sync state and federal operations, notably through efforts such as the single streamlined application and the federal data services hub. Both efforts have proven to be problematic.

² HHS launches Health Insurance Exchange educational tools, <http://www.hhs.gov/news/press/2013pres/06/20130624a.html>, June 24, 2013.

³ General Dynamics brings 600 new jobs to Bogalusa, <http://www.fox8live.com/story/22970885/general-dynamics-brings-600-new-jobs-to-bogalusa>, August 6.

⁴ Preparations for Health Exchanges on Tight Schedule, <http://online.wsj.com/article/SB10001424127887324170004578638100820728288.html>, August 7, 2013.

For example, Louisiana requested an ability to link to the single streamlined application being built on the federal level as replicating those efforts at the state level would be a costly duplication. It was then our understanding that each state was responsible for building its own single, streamlined application, based on the federal version (which was not completed until April 2013). Essentially, each state would be duplicating efforts already made by the federal government. Multiple requests were made to CMS in July of this year for its online application source code, in order for our contractor to check the coding being used for Louisiana's version. That source code was never provided to us.

One of the criticisms most frequently cited recently has been the delay in and lack of security and functionality testing for components of the Exchange. As you are surely aware, the Government Accountability Office (GAO) warned in June 2013 of a likely delay in its launch, and just last month the HHS Office of the Inspector General pointed out that testing of the new "data services hub" that will support the Exchange was more than a month behind schedule. The final deadline for certifying the security of the system was pushed back to Sept. 30 – one day before the Exchanges are set to go live. Given the highly sensitive nature of the information that will be transmitted through this process, this is most concerning.

The problems are not just isolated to the inner workings, but could have a real impact on consumers. It was revealed on a recent conference call between federal contractors and insurance industry representatives that there were significant issues with how information about health plan cost information was being displayed on the new Exchange website⁵. One Florida insurer noted that their information made it appear that there was no charge at all for some medical services, when in fact that was only the case after a deductible had been met. This led to federal officials delaying their timeframe for signing final agreements with companies issuing health plans on the federal Exchange while these issues were worked out.

New federal requirements have also placed a significant burden on states. For example, states are required to convert their Medicaid eligibility standards to the new MAGI (Modified Adjusted Gross Income) standard. This requires extensive modifications to states' Eligibility systems and external interfaces. In a March 2013 CMS presentation, Federal officials promised to provide states with a no-cost solution called "MAGI-in-a-box." State integration and testing for this solution was initially scheduled for the end of May 2013. However, Louisiana Medicaid staff learned on June 13, 2013, during one of our regularly scheduled calls with CMS, that the service would not be available after all. We were told that we should now consider other alternatives. This left the state with the responsibility of executing contracts and conducting systems modifications to meet the October 1, 2013 deadline. We anticipate it will take our contractor 5,437 hours of work at \$138.86 per hour to meet all of the MAGI-related mandates, for a total cost of roughly \$750,000. To frustrate matters further, we finally learned last week that the federal solution was ready – far too late to be useful as we've already had to complete the work in order to meet CMS deadlines.

While states are faced with onerous and often unalterable federal deadlines, we've learned that HHS officials often apply a different standard to themselves. Just this last week,

⁵ Technical snafus confuse charges for Obamacare plans, <http://www.reuters.com/article/2013/09/05/us-usa-healthcare-technology-idUSBRE98405E20130905>, Sep. 5, 2013

Louisiana Medicaid staff attended the MESC Conference in Charleston and learned from a Deputy Director for the Centers for Medicaid and CHIP that the federal government would not be ready to make account transfers on October 1, 2013, as it was supposed to do. The federal Exchange is intended to have the capability of making Medicaid eligibility determinations using our eligibility guidelines and transferring the applicant's file to the state to activate coverage. With that capability now delayed, we asked what CMS's contingency plan was, and the official stated the Exchange was going to hold the application and tell the individual that if they needed immediate coverage they should contact the state directly, which essentially requires individuals to apply twice. The CMS official could not provide a timeframe for how long it would take the agency to have the system ready to make transfers. It is extremely frustrating that states are often told that our compliance by hard deadlines is expected while federal officials delay their own capabilities and requirements repeatedly.

Conclusion

I'd like to reiterate that although Louisiana is not operating our own Exchange or expanding our Medicaid program, we are not free of the impact of this law, nor are our residents. In my testimony I described some of the major hurdles Louisiana has faced as federal officials force a rushed implementation of this law, though I did not touch on every issue that we have faced. Certainly, we expect more problems to arise as October 1, 2013 approaches. Without timely, clear guidance from CMS, and facing an abundance of conflicting messages, misinformation, and numerous technical issues and delays, Louisiana continues to have serious concerns about the implementation of the Affordable Care Act. While these facts raise serious questions about whether implementation of the Exchanges should be delayed, we continue to believe that the best solution for our nation and state is that the law be repealed and replaced with a more affordable and market-driven solution that gives states the flexibility to design programs that best meet the needs of their individual populations.