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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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March 25, 2014

The Honorable Mark Dayton
Governor of Minnesota
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Governor Dayton:

Over the past four years, the Committee on Oversight and Government Reform has been conducting oversight of the Obama Administration's implementation of ObamaCare. We are writing to you because the Committee has learned that the Obama Administration took actions in the summer and fall of 2013 that appear to have placed the private information of Minnesotans at risk with the launch of ObamaCare's health insurance exchanges. We write to provide you with information pertinent to the citizens of your state as well as to request your assistance with the Committee's ongoing oversight.

It is clear that the Minnesota exchange has failed to live up to expectations. Despite receiving over \$155 million dollars in federal grants to set up its ObamaCare exchange, the exchange has managed to enroll only approximately 38,000 people.¹ Put differently, for every person enrolled by the exchange, federal taxpayers gave the State approximately \$5,000.²

Since enrollment opened on October 1, 2013, the Minnesota exchange has consistently failed to deliver a usable product for its citizens. Last year, the exchange had to manually process 30,000 applications due to software errors.³ Outside experts, including consultants hired by the state, concluded that the exchange's problems may require the state to scrap the system altogether.⁴ In December 2013, the exchange's executive director, April Todd-Malmlov, resigned due to site's ongoing failures.⁵ While the functional problems with the exchange are

¹ Kaiser Exchange Grants, HHS enrollment estimates as of Mar. 1 2014. See Dep't of Health and Human Services, Health Insurance Marketplace: March Enrollment Report, available at http://aspe.hhs.gov/health/reports/2014/MarketPlaceEnrollment/Mar2014/ib_2014mar_enrollment.pdf.

² Enrollment numbers as of Mar. 1, 2014. See *id.*

³ Christopher Snowbeck, *For thousands of users, promise of MNsure remains 'pending,'* DULUTH NEWS TRIBUNE Feb. 2, 2014, <http://www.duluthnewtribune.com/event/article/id/290416/>.

⁴ Clint Boulton, *Minnesota Health Exchange Could Take Two Years to Fix, MNsure Consultant Says,* WALL ST. J. Jan. 23, 2014, <http://blogs.wsj.com/cio/2014/01/23/minnesota-health-exchange-could-take-two-years-to-fix-mnsure-consultant-says/>.

⁵ Christopher Snowbeck, *Under fire, MNsure's executive director abruptly resigns,* Pioneer Press, December 17, 2013, http://www.twincities.com/politics/cj_24745362/under-fire-mnsures-executive-director-abruptly-resigns

well known, little is publicly known about the major security vulnerabilities that were present with the exchange on October 1, 2013, and which potentially remain today.

Independent Security Assessment of Minnesota's Exchange Raised Security Concerns

Since October 1, 2013, Americans in states with exchanges established by the federal government have been entering their personally identifiable information (PII), such as birth dates, Social Security numbers, and income as well as PII of family members into HealthCare.gov. Individuals in states that established state health insurance exchanges, including Minnesota, have likewise been entering this information into similar websites. Federal agencies, including the Internal Revenue Service and the Social Security Administration, have responsibility for verifying much of the information provided by individuals applying for coverage through the ObamaCare exchanges. The information provided by these agencies passes through the federal data services hub to the exchanges, where the information is then stored.⁶

Minnesota contracted with WIPFLi LLP to conduct an independent security assessment of its exchange as required by the Centers for Medicare and Medicaid Services (CMS) Minimum Acceptable Risk Standards for Exchanges (MARS-E).⁷ On August 29, 2013, WIPFLi issued the Security Assessment Report for the Minnesota exchange.⁸ The purpose of the report was to assess controls for MNsure, in order to determine the risks associated with the controls so that MNsure could correct or mitigate the risks prior to the website's launch on October 1, 2013.

WIPFLi's assessment raises significant questions about the security of the Minnesota exchange when it launched on October 1, 2013. WIPFLi assessed a total of 282 controls; of those controls, only 145 were found to be fully implemented a month before the launch of the website. Some of the notable controls that were incomplete include "unsuccessful login attempts," "use of external information systems," and "information system backup."⁹ Furthermore, of the 40 identified system security risks, seven were found to be moderate, risking "moderate loss to the system, networks, and data."¹⁰

The large number of security controls unable to be tested appears to violate CMS's MARS-E.¹¹ According to MARS-E, a "security assessment of **all security controls** must be

⁶ Department of Health and Human Services, Office of Inspector General, Observations Noted During the OIG Review of CMS's Implementation of the Health Insurance Exchange—Data Services Hub (Aug. 2013), <https://oig.hhs.gov/oas/reports/region1/181330070.pdf>.

⁷ Centers for Medicare and Medicaid Services, Catalog of Minimum Acceptable Risk Controls for Exchanges – Exchange Reference Architecture Supplement 42-44 (Aug. 1, 2010), *available at*: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Catalog-of-MinAcceptable-Risk-Controls-for-Exchanges-ERA-Supp-v-1-0-08012012-a.pdf>.

⁸ Security Assessment Report, MNsure, Aug. 29, 2013.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Centers for Medicare & Medicaid Services, Catalog of Minimum Acceptable Risk Standards for Exchanges – Exchange Reference Architecture Supplement, Ver. 1.0 (Aug. 1, 2012), *available at*

conducted prior to issuing the initial authority to operate for all newly implemented systems.”¹² [emphasis added] It is unclear when, if at all, these untested security controls were tested prior to the exchange going launching to Minnesota residents.

Obama Administration Allowed Minnesota to Connect to Federal Data Hub Despite High Risks

The Committee has recently obtained the security risk assessment of the Chief Information Security Officer (CISO) at CMS for allowing states to connect to the data services hub. State exchanges and Medicaid systems needed authority to connect (ATC) agreements from CMS in order to connect to the federal data services hub.

After its review, the CISO only recommended four state systems be allowed to connect to the hub. According to the reviews, the CISO deemed 35 state systems as a high risk and an additional ten state systems as a moderate risk of connecting to the data hub.¹³ The National Institute of Standards and Technology (NIST) defines a moderate risk as a risk where “the loss of confidentiality, integrity, or availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals”¹⁴ and a high risk as a risk where “the loss of confidentiality, integrity, or availability could be expected to have a severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals.”¹⁵

Despite the CISO’s negative assessments that generally revealed incomplete documentation and inadequate security testing, CMS allowed most of these states to connect to the federal data hub on October 1, 2013. A few days prior to October 1, 2013, Ryan Brewer, CMS’s CISO from 2009 through 2011 and currently an advisor to CMS on information security matters, offered the following assessment to current CMS CISO Teresa Fryer: “Allowing these states to connect to the Hub and FFM [Federally Facilitated Marketplace] without the appropriate review of their documentation introduces an unknown amount of risk to the Hub and FFM. **This in turn puts the PII of potentially millions of users at risk of identity theft and fraud to the CMS marketplace healthcare subsidy program.**”¹⁶ [emphasis added]

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Catalog-of-MinAcceptable-Risk-Controls-for-Exchanges-ERA-Supp-v-1-0-08012012-a.pdf>

¹² *Id.* at 42.

¹³ CMS CISO Reviewer Overall Comments & Recommendations (on file with Committee staff).

¹⁴ See U.S. Dep’t of Commerce, Federal Information Process Standards Publication, Standards for Security Categorization of Federal Information and Information Systems, FIPS PUB 199, at 2 (Feb. 2004) (hereinafter “FIPS PUB 199”). According to NIST, a serious adverse effect means that, for example, the loss of confidentiality, integrity or availability might: (i) cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced; (ii) result in significant damage to organizational assets; (iii) result in significant financial loss; or (iv) result in significant harm to individuals that does not involve loss of life or serious life threatening injuries. See *id.*

¹⁵ See *id.* at 3. According to NIST, a severe or catastrophic adverse effect means that, for example, the loss of confidentiality, integrity, or availability might: (i) cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions; (ii) result in major damage to organizational assets; (iii) result in major financial loss; or (iv) result in severe or catastrophic harm to individuals involving loss of life or serious life threatening injuries. See *id.*

¹⁶ E-mail from C. Ryan Brewer, Principal, GrayScout, LLC, to Teresa M. Fryer, CISO, CMS (Sept. 18, 2013, 2:17 PM) (on file with Committee staff).

It does not appear, however, such concerns were welcomed by senior CMS management in the days leading up to the October 1, 2013, launch date. In response to a September 29, 2013, E-mail from Mike Mellor, CMS Deputy CISO, about an ATC “signing party,”¹⁷ Ms. Fryer wrote, “normally I just review and sign what Ryan [Brewer] gives me anyway because **the front office is signing them whether or not they are a high risk.**”¹⁸ [emphasis added] At the time, CMS’s front office consisted of CMS’s Chief Information Officer Tony Trenkle, CMS’s Deputy Chief Information Officer Henry Chao, and CMS’s Chief Technology Officer George Linares.¹⁹ Ms. Fryer testified that by authorizing states to connect to the data hub CMS accepted “a risk, again, of the unknowns, because things haven’t been tested.”²⁰

On September 28, 2013, CMS’s CISO completed its assessment of Minnesota’s ATC package.²¹ The CISO considered several factors in its assessment, including CMS’s security experts’ review of documentation submitted by the Minnesota exchange and the fact that 110 security controls were either not documented or incomplete. Based on this information, the CISO concluded that there was a high risk if CMS allowed Minnesota’s exchange to connect to the data hub.²² The CISO recommended ways that Minnesota could reduce the high risk, but these fixes, if they took place, likely did not occur until after October 1, 2013.²³ Despite the high risk, CMS allowed Minnesota’s exchange to connect to the data hub on October 1, 2013.

Due to the decision of the Obama Administration to launch the exchanges on October 1, 2013, before states could properly test their systems and government security experts could properly review security documentation and address known problems, the personal information of millions of Americans who have sought to obtain coverage through the exchanges was put at risk. As the Committee continues its oversight of ObamaCare, we request that you provide the following information to the Committee by April 8, 2014.

- 1) All documents and communications between any employees, contractors, or agents of the State of Minnesota and any employees, contractors, or agents of the U.S. Department of Health and Human Services, including but not limited to any employees, contractors, or agents of the Centers for Medicare and Medicaid Services, referring or relating to the Minnesota exchange or the federal data services hub between May 1, 2013, and the present.

¹⁷ E-Mail from Michael Mellor, Deputy CISO, CMS, to Teresa M. Fryer, CISO, CMS (Sept. 29, 2013, 7:02 AM) (on file with Committee staff).

¹⁸ E-mail from Teresa M. Fryer, CISO, CMS, to C. Ryan Brewer, Principal, GrayScout, LLC, and Michael Mellor, Deputy CISO, CMS (Sept. 29, 2013, 8:15:55 AM) (on file with Committee staff).

¹⁹ Transcribed Interview with Thomas Schankweiler, Information Security Officer, Centers for Medicare and Medicaid Services, in Wash. D.C. (Dec. 17, 2013).

²⁰ Transcribed Interview with Teresa Fryer, Chief Information Security Officer, Centers for Medicare and Medicaid Services, in Wash. D.C. (Dec. 17, 2013).

²¹ CISO Reviewer Overall Comments and Recommendations of the Minnesota MNsure Application ATC (Sept. 28, 2013).

²² *Id.*

²³ *Id.*

The Honorable Mark Dayton
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- 2) All documents and communications between any employees, contractors, or agents of the State of Minnesota and any employees, contractors, or agents of the White House, including but not limited to the Executive Office of the President, referring or relating to the Minnesota exchange or the federal data services hub between May 1, 2013, and the present.
- 3) All assessments or audits of the Minnesota exchange's development, readiness, or security between July 1, 2012, and the present.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. If you have any questions about this request, please contact Brian Blase or Meinan Goto of the Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

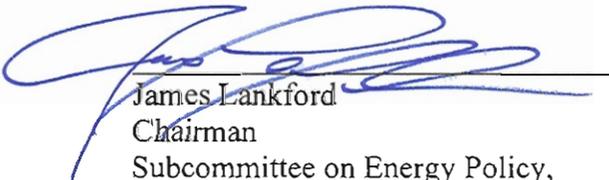
Sincerely,



Darrell Issa
Chairman



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation, and Regulatory Affairs



James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care and Entitlements