

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 25, 2016

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Madam Attorney General:

Our Committee's investigation of the Cover Oregon collapse is nearly complete, and we are referring the matter to the Department of Justice for criminal investigation and prosecution. More than \$305 million in federal taxpayer dollars were sent to Oregon State for purposes of implementing a state exchange to benefit the people. The state exchange never came to fruition, and the money is gone. Our investigation shows Oregon State officials misused federal funds, and improperly commingled official and political resources for the purpose of enriching the political prospects of then-Oregon State Governor John Kitzhaber. A staff report detailing the findings of the Committee's year-long investigation is enclosed with this letter.

For more than a year, the Committee has investigated allegations Oregon officials misused \$305 million of federal taxpayer dollars awarded by the Department of Health and Human Services to create a state-based health insurance exchange under the Patient Protection and Affordable Care Act (PPACA).¹ The Committee obtained more than 170,000 pages of documents from the State of Oregon, the Centers for Medicare and Medicaid Services, the outside IT vendor Oracle, and testimony from five key witnesses. Documents and testimony show Oregon state officials likely violated federal law and misused federal funds. The facts are explained below, and relevant documents are attached for your ready reference.

First, the Oregon Health Authority may have failed to allocate costs to its establishment grants and the Medicaid program in accordance with federal requirements. Oregon was attempting to modernize its entire healthcare technology system and create an integrated system that provided eligibility determination and enrollment services for both Qualified Health Plans (QHPs) and state-based public health care programs, such as Medicaid. Oregon sought funding from various federal sources that provided benefits for these programs. States were required to

¹ Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Jim Jordan, Chairman, Subcomm. on Health Care, Benefits and Administrative Rules, Mark Meadows, Chairman, Subcomm. on Gov't Operations, and Will Hurd, Chairman, Subcomm. on Information Technology, to Hon. John Kitzhaber, Governor of Oregon (Feb. 13, 2015).

allocate shared costs among Medicaid, the Children's Health Insurance Program (CHIP), and the commercial marketplace consistent with federal cost allocation principles.² The Committee obtained documents from May 2013 that show the Executive Director of Cover Oregon believed the Oregon Health Authority was improperly handling and tracking the use of federal funds.³

Moreover, the Committee obtained documents and testimony that seem to show Oregon officials knowingly misrepresented the status of the health insurance exchange to HHS in order to secure federal funds. In a cooperative agreement funding announcement for the exchanges, HHS stated:

State progress will be assessed through the Establishment Review process, progress reports, and, as appropriate, the Medicaid IT Review process for compatibility, and other grant/Cooperative Agreement monitoring activities. The Medicaid IT Review process may be applicable due to the independence of the Exchange and Medicaid Eligibility systems and the importance of a seamless experience on the part of the consumer.⁴

On August 20, 2013, the Oregon Department of Human Services (DHS) and the Oregon Health Authority (OHA) submitted an Implementation Advance Planning Document Update (IAPD-U) to the Centers for Medicare and Medicaid Services and the U.S. Department of Agriculture to "provide an annual update for Oregon's funding partners, address objectives for the next year and request approval from CMS and FNS to fund planned efforts."⁵ In the submission, OHA and DHS stated: "OHA through the HIX-IT project successfully delivered a functional insurance exchange to Cover Oregon on April 30, 2013."⁶

Elsewhere in the IAPD-U, OHA and DHS stated that "Since submission of the last IAPD-U, Oregon Health Authority (OHA) achieved the deliverables outlined in the early innovator grant and successfully delivered a functional insurance exchange to Cover Oregon."⁷

Documents obtained by the Committee show OHA and DHS made these statements knowing that they were false. The documents show the Executive Director of Cover Oregon,

² See U.S. Dept. of Health and Human Services, Centers for Medicare & Medicaid Services, "Supplemental Guidance on Cost Allocation for Exchanges and Medicaid Information (IT) Systems, Questions and Answers" (October 5, 2012); U.S. Dept. of Health and Human Services, Centers for Medicare & Medicaid Services, "Guidance for Exchange and Medicaid Information Technology (IT) Systems" (May 2011).

³ Email from Rocky King to Aelea Christofferson (May 3, 2013) (Oregon Production GOV_HR00018536-40).

⁴ U.S. Dept. of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, "Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchanges," Funding Opportunity Number: IE-HBE-12-001 (Dec. 6, 2013) at 12-13.

⁵ Oregon Dept. of Human Services, Oregon Health Authority, "DHS Modernization Project: Implementation Advance Planning Document Annual Update," Submitted for approval by Centers for Medicare and Medicaid Services, U.S. Dept. of Agriculture (Aug. 20, 2013) at 3.

⁶ *Id.* at 5.

⁷ *Id.* at 3.

Rocky King, believed the website was not fully functional and was “in the middle of development” as of May 4, 2013—shortly thereafter the date identified in the IAPD-U.⁸

The documents and testimony also show former Governor John Kitzhaber and his staff improperly influenced, interfered with, and manipulated the Cover Oregon Board of Directors to cause a switch from the state supported IT platform to Healthcare.gov. The administrator of the majority of the federal grant funds was the Oregon Health Insurance Exchange Corporation.⁹ The involvement of the Governor, his official staff, and his campaign staff in decisions related to Cover Oregon likely violated the terms and conditions of Cover Oregon’s and the Oregon Health Authority’s federal grants.¹⁰ The conduct also violated Oregon State law, which established Cover Oregon as an independent public corporation.¹¹

Among other things, the Governor’s official and campaign advisers undermined the Technology Options Workgroup that was convened to make a technology recommendation for Cover Oregon. Documents show that, despite the expertise of the Technology Options Workgroup members, the Governor’s team refused to accept the group’s March 27, 2014 recommendation to continue using the technology developed to date and to work with a new vendor to finish the state-based exchange.¹² Instead, the Governor’s team engineered a switch to the federal exchange, HealthCare.gov.

Documents and testimony also show Oregon officials attempted to thwart recordkeeping laws through the use of off-line, secret back channels. For example, Cover Oregon Executive Director Bruce Goldberg used his personal email account to communicate with Kitzhaber’s Chief of Staff, Michael Bonetto. In fact, many of the discussions regarding Cover Oregon were as a matter of course conducted in secret on personal email accounts. The routine usage of personal, non-official email accounts to discuss Cover Oregon demonstrates the Governor’s official staff were aware that their communications with the Governor’s political staff were problematic, and that they wanted to shield those communications from public records requests.

⁸ Email from Rocky King to Aelea Christofferson (May 4, 2013) (Oregon Production GOV_HR00018536-40).

⁹ U.S. Dept. of Health and Human Services, Centers for Medicare & Medicaid Services, the Center for Consumer Information & Insurance Oversight, “Oregon Health Insurance Marketplace Grants Awards List,” *available at* <https://www.cms.gov/ccio/Resources/Marketplace-Grants/or.html>. According to the funding announcement, “Recipients and assigned points of contact retain the primary responsibility and dominant role for planning, directing and executing the proposed project as outlined in the terms and conditions of the Cooperative Agreement and with substantial HHS involvement.” *See also*, U.S. Dept. of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, “Cooperative Agreement to Support Establishment of the Affordable Care Act’s Health Insurance Exchanges,” Funding Opportunity Number: IE-HBE-12-001 (Dec. 6, 2013) at 44.

¹⁰ *See* U.S. Dept. of Health and Human Services, Office of the Assistant Secretary for Resources and Technology, Office of Grants, “Grants Policy Statement” (Jan. 1, 2007) at I-37.

¹¹ Oregon Senate Bill SB-99, 76th Legislative Assembly, 2011 Regular Session.

¹² According to the May 8, 2014 Cover Oregon Final Report, the March 27, 2014 recommendation of the Technology Options Workgroup was to “continue development and deployment of the current technology solution with a new vendor while actively retaining the ability to migrate to the FFM solution as a contingency if key Cover Oregon milestones were missed.” Alex Pettit, PhD, State Chief Information Officer and Cover Oregon Acting Chief Information Officer, Cover Oregon Final Report, at 7 (May 8, 2014).

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The Committee also obtained evidence that shows the Governor appeared to have commingled campaign funds and official State business. One of Kitzhaber's top political operatives, Patricia McCaig, testified under oath to the Committee that Kitzhaber used "funds from his campaign . . . to assist him in his formal capacity."¹³ McCaig also testified: "What we did was use funds that were available out of the campaign to add capacity, in an appropriate and legal way, to work to support the Governor."¹⁴

Federal grant recipients have an obligation to federal taxpayers to ensure that grant funds are used responsibly. The documents and testimony obtained by the Committee indicate that Oregon State employees misused federal funds and commingled campaign funds with official State business.

Oregon was awarded \$305 million in federal taxpayer dollars to build a health insurance exchange. It never happened. Promises by Oregon officials to use the money to help State residents fell flat. The money is gone and taxpayers are left holding the bag. We trust you will see that this matter is investigated and prosecuted fully.

Thank you for your attention to this important matter.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

¹³ H. Comm. on Oversight and Gov't Reform, Deposition of Patricia McCaig (Feb. 25, 2016), Tr. at 43.

¹⁴ *Id.*