

Congress of the United States
Washington, DC 20515

January 30, 2015

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell:

We write in light of new concerns that information about consumers who visit HealthCare.gov (“consumer information”) has not been adequately protected, and to urge a response to our September 17, 2014, letter to the Centers for Medicare and Medicaid Services (CMS).

We contacted CMS in September after a report by the Government Accountability Office (GAO) indicated that mismanagement of the HealthCare.gov website’s development created numerous security vulnerabilities.¹ That report was released just weeks after CMS announced that malicious software installed on a server within the HealthCare.gov network went undetected for almost two months.² To date, more than four months later, CMS has still not responded to our requests for information about the safety and security of HealthCare.gov for individuals who browse or purchase health insurance through the website, nor has CMS responded to our request to take specific steps to assure the American people that it is safe to use HealthCare.gov.

New and potentially more serious reports now further underscore why HealthCare.gov implementation failures cannot be simply overlooked – because they have real consequences for American consumers who visit HealthCare.gov.

On January 20, 2015, the Associated Press reported that information about individuals who visit HealthCare.gov is being transmitted to private companies with a commercial interest in the data, and that a number of companies had embedded connections (“cookies”) into user browsers through HealthCare.gov that would allow personal information about the user to be tracked and gathered by numerous private companies.³ The same day, the Office of the Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) released a report that details numerous HealthCare.gov contract planning and procurement failures, many of which raise additional questions about the safety and security of the website.⁴

¹ GAO Report 14-730, *Actions Needed to Address Weaknesses in Information Security and Privacy Controls* (September 2014), available at: <http://www.gao.gov/assets/670/665840.pdf>.

² Danny Yadron, *Hacker Breached HealthCare.gov Insurance Site*, The Wall Street Journal (September 4, 2014), <http://www.wsj.com/articles/hacker-breached-healthcare-gov-insurance-site-1409861043>.

³ Ricardo Alonso-Zaldivar and Jack Gillum, *Government healthcare website quietly sharing personal data* (January 20, 2015), Associated Press, <http://bigstory.ap.org/article/31490a20926d4ed3b98ff2d0ed8fc81d/new-privacy-concerns-over-governments-health-care-website>.

⁴ HHS OIG Report OEI-03-14-00230, *Federal Marketplace: Inadequacies in Contract Planning and Procurement* (January 2015), available at: <https://oig.hhs.gov/oei/reports/oei-03-14-00230.pdf>.

Based on analysis by our staff conducted since January 20th, it appears that when an individual visits HealthCare.gov, information about that person is shared through an automated process with companies such as Google, Twitter, Yahoo, and Advertising.com. In most instances, this information is shared long after their visit to HealthCare.gov has concluded.⁵

The administration initially defended its information sharing practices in the wake of these revelations,⁶ but in a Saturday, January 24th, evening blog post it acknowledged that at least some of the consumer protection concerns raised about HealthCare.gov are warranted.⁷ Specifically, in the blog post, the administration announced that it had taken “an additional step to better protect consumers’ information” by encrypting part of the Window Shopping Tool (an online calculator designed to help consumers estimate the cost of coverage by entering personal information such as zip code, income, age, parental status, pregnancy status, and smoking habits).⁸ Unfortunately, it is not at all clear that this layer of protection is sufficient.

The CMS blog post also noted that the agency had launched an ongoing review of its privacy policies, contracts for third party tools, and web address construction to determine whether to take any further action.⁹ Instead of making decisions piecemeal, after problems have been discovered, CMS should have a standard protocol that protects consumer privacy.

Information discovered through staff analysis conducted directly before and after CMS’ January 24th, announcement has also raised questions about whether at least one company with access to HealthCare.gov consumer information is sharing all or some subset of that information with third parties. Many of these third parties appear to be primarily media advertising companies. While it is not yet clear which pieces of consumer information are being passed to other third parties, this sort of information sharing practice raises serious questions about the relationships between all parties involved. Although some forms of data sharing may be benign and necessary to support the effective operation of HealthCare.gov, the information outlined above raises many questions about the security of consumers’ personal information.

So that we may appropriately evaluate and address these privacy and security issues, please respond to the following questions in writing by no later than close of business on February 13, 2015:

⁵ Most cookies identified during analysis were “persistent.” The cookies placed by these companies on one staff member’s browser during analysis performed on January 22, 2015 will last – i.e., continue to allow for sharing information about the user – for an average of 999 days. One of the cookies identified during analysis will last for over nine years.

⁶ Ricardo Alonso-Zaldivar and Jack Gillum, *Privacy Concerns Over Health Care Website Prompt Reversal* (January 23, 2014), Associated Press, available at: <http://abcnews.go.com/Health/wireStory/apnewsbreak-govt-reverses-health-care-privacy-problem-28434266>.

⁷ Press Release: CMS Blog: *Protecting Consumer Privacy on HealthCare.gov* (January 24, 2015), <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2015-Press-releases-items/2015-01-24.html>.

⁸ Id. According to CMS, this change should “help prevent third parties from viewing the data the consumer entered.” Id.

⁹ Id.

1. Has HHS or CMS at any time authorized the sharing or distribution of any consumer information,¹⁰ or a derivative thereof, between HealthCare.gov and any company or non-U.S. Government (USG) group, organization, or entity? If so, please identify each entity and authorization involved; specify the particular types of consumer information each entity may access, share and/or distribute; and explain why such information is being shared and/or distributed.
 - a. Please also provide copies of any contracts, orders or memoranda authorizing and/or limiting commercial use of consumer information. Documents should be provided in unredacted form and include all attachments, including standard operating procedures.
 - b. If limitations to information usage, access, or distribution exist, please provide documentation and describe any limitation or control mechanism used by CMS, HHS, or any contractor thereof to monitor the use of consumer information.
2. Has HHS or CMS at any time authorized the sharing of any consumer information, or a derivative thereof, between a company with access to HealthCare.gov consumer information and one or more third party organizations? If so, please identify all entities involved and provide a copy of any contract, order, memorandum, or policy governing such information sharing.
 - a. If not, please identify and describe all known or suspected instances where such information sharing occurred in an unauthorized fashion. Please also identify any and all entities involved and describe any actions taken by HHS or CMS to address same.
3. Is HHS or CMS aware of any instance, authorized or unauthorized, in which consumer information, or any derivative thereof, has been sold, traded, or otherwise used for any commercial or political purpose? If so, please specify how, when, why, and under what terms or conditions (if any) such use occurred.
4. Has any HHS or CMS contractor or third party with access to HealthCare.gov consumer information ever paid the USG for access to such data, or any derivative thereof? If so, please provide copies of any related contracts, orders or agreements. Documents should be provided in unredacted form and include all attachments, including standard operating procedures.
 - a. If not, please explain why access appears to have been provided at no charge.
5. What consumer information is currently shared by or through HealthCare.gov with any individual, company, or non-USG group, organization, or entity? Please specify the type

¹⁰ Please note that for the purpose of this letter, the phrases “consumer information” and “personal information” should not be read to limit the scope of your response to “personally identifiable information” or any other subset of information less than what may be accessed, collected, stored, tracked, shared or otherwise used about any individual who visits HealthCare.gov.

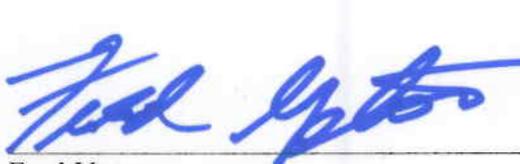
of data shared with private companies, nonprofit organizations, associations, partnerships, and any other non-USG entity.

- a. Please also provide quantitative measurements of how much HealthCare.gov consumer information has been shared with non-USG entities during each quarter of the website's operation, as well as a description of any oversight HHS or CMS conducts to ensure that HealthCare.gov consumer information is used and shared appropriately.
6. The January 24th, CMS blog post noted above describes "third party tools" used to "reach the uninsured through digital media and advertising," referencing "contracts with companies that help us to connect interested consumers to HealthCare.gov and continuously measure and improve site performance and our outreach efforts."
 - a. Please identify all third party tools used on, or in conjunction, with HealthCare.gov, explain their purpose, and provide a copy of each contract referenced in the January 24th, blog post. Please also list all entities, USG and non-USG, involved in the "consumer education" efforts described in the posting. Among other things, this list should include any entity involved in related information sharing and/or the development of "educational" content.
 - b. Please explain how "interested consumers" are identified, how many have been identified to date, and how HHS or CMS "connects" such interested consumers to HealthCare.gov. Also indicate how long consumer information may be compiled, stored, accessed, or otherwise used after a visit to HealthCare.gov, and what specific consumer information is used to "educate" uninsured consumers and "connect" them to HealthCare.gov.
 7. The January 24th, CMS blog post references a new layer of encryption that has been added to the Window Shopping Tool on HealthCare.gov, but acknowledges that further action may be needed to adequately protect consumer information. What individuals and entities were involved in the creation, development, and maintenance of this encryption, and are you confident that it will sufficiently protect all HealthCare.gov consumer information and any derivative of same?
 - a. Does the encryption protect consumer information shared or used by other tools?
 - b. How, if at all, may this change have affected the number and/or type of private companies with embedded connections on HealthCare.gov that share consumer information with third parties?
 - c. Will this layer of protection have any negative impact on the operation or function of HealthCare.gov?
 8. The January 24th, CMS blog post cites an ongoing review of privacy policies, contracts for third party tools, and URL construction. Please identify all individuals and entities

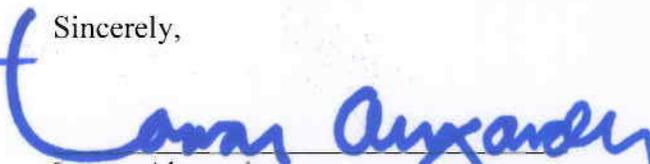
involved in this review; any related recommendations, accepted or rejected, that have been made to date; and any actions HHS or CMS has taken as a result of this review.

Thank you for your time and attention to this important matter. Should you have any questions, please contact Emily Newman with the House Committee on Energy and Commerce at (202) 225-2927 or Virginia Heppner with the Senate Committee on Health, Education, Labor, and Pensions at (202) 224-6770.

Sincerely,



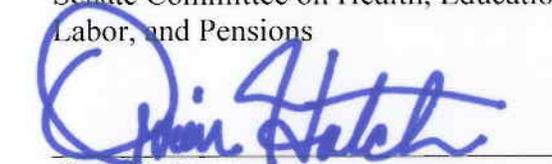
Fred Upton
Chairman
House Committee on Energy and
Commerce



Lamar Alexander
Chairman
Senate Committee on Health, Education,
Labor, and Pensions



Paul Ryan
Chairman
House Committee on Ways and Means



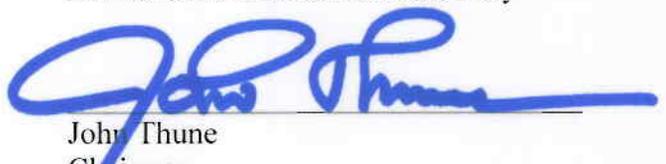
Orrin G. Hatch
Chairman
Senate Committee on Finance



Jason Chaffetz
Chairman
House Committee on Oversight and
Government Reform



Chuck Grassley
Chairman
Senate Committee on the Judiciary



John Thune
Chairman
Senate Committee on Commerce, Science,
and Transportation



Rob Portman
Chairman
Senate Committee on Homeland Security and
Governmental Affairs
Permanent Subcommittee on Investigations