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ONE HUNDRED FOURTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

October 14, 2015

Ms. Donna Frescatore
Executive Director
New York State Health
Empire State Plaza
Corning Tower, 14th Floor
Albany, NY 12237

Dear Ms. Frescatore:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is continuing to conduct oversight over the states' health insurance marketplaces.

On September 29, 2015, the committee held a hearing entitled "An Overdue Checkup: Examining the ACA's State Insurance Marketplaces." The hearing examined how state exchanges spent $5.51 billion in federal establishment grant dollars and the sustainability challenges state exchanges currently face despite this enormous taxpayer investment.

The committee's hearing shed some light on how states have used federal grant dollars to establish their state exchanges, and how CMS has approved and overseen the use of these funds. The hearing, however, did not answer all the committee's questions nor fully assuaged its concerns that tax dollars have been, and are being, spent inappropriately. Therefore, the committee is writing to seek additional information concerning the use of federal funds in the establishment and maintenance of the health exchange in your state.

The Affordable Care Act (ACA) established a private health insurance marketplace through health insurance exchanges in all 50 states and the District of Columbia.[1] Section 1311 of the ACA provides funding assistance to the states to help them plan and establish their marketplaces.[2] According to the law, a marketplace must be self-sustaining by January 1, 2015.[3] To date, over $5.51 billion has been awarded in federal establishment grants to

[1] Patient Protection and Affordable Care Act of 2010, § 1311 (2010).
[2] *Id.*
[3] *Id.*

states.[4] December 2014 was the last month CMS could award establishment grant funding assistance. During that month alone, CMS awarded approximately $420 million to state-based marketplaces and state partnership marketplaces.[5]

On April 27, 2015, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) alerted CMS Acting Administrator Andy Slavitt that state exchanges may be using federal establishment grant funds for operational expenses after the January 1, 2015 deadline, which is prohibited by law.[6] The OIG noted that both in media reports and in its own review of state exchanges' budget information, some state exchanges face uncertain operating reviews for 2015 and beyond. Because of this uncertainty, the OIG acknowledged the risk that state exchanges might use establishment grant funds to cover operational costs. The OIG encouraged CMS to develop and issue clear guidance to state exchanges on the use of establishment grant funds. On June 8, 2015, CMS issued guidance intended to clarify how states can use establishment grant funds.[7]

To assist the committee's inquiry, please provide the following documents and information by October 28, 2015:

1. All "work plans" the state exchange has provided to CMS from June 2010 to the present.

2. All reports, updates, audits, memoranda, presentations, analyses, and other documents provided to the HHS, CMS, and Centers for Consumer Information and Insurance Oversight (CCIIO) relating or referring to the status of the state exchange, including, but not limited to, any federal grants or funds for the building, operation, or maintenance of the state exchange.

3. A list of all meetings between employees or representatives of HHS, CMS, and CCIIO and employees or representatives of the state exchange. This includes, but is not limited to, state administration officials and private companies or organizations responsible for performing work on the state exchange.

4. An explanation for the unused federal establishment grant funds that have been granted to the state exchange ($264,266,087). As part of this explanation, please also provide answers to the following questions:

    a. Does the state exchange plan to use the remainder of the funds? If yes, how does the state plan to use the remaining funds?

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[4] U.S. Gov't Accountability Office, State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Projects (GAO-15-527) (September 2015), http://www.gao.gov/assets/680/672565.pdf.
[5] Early Alert: Without Clearer Guidance, Marketplaces Might Use Federal Funding Assistance for Operational Costs When Prohibited by Law (A-01-14-02509) (Apr. 27, 2015), http://oig.hhs.gov/oas/reports/region1/11402509.pdf.
[6] *Id.*
[7] The Centers for Medicare and Medicare Services, FAQs on the Clarification of the Use of 1311 Funds for Establishment Activities (June 8, 2015).

b. Did CMS grant permission for the use of these funds? If yes, who, when and how?

5. Did the state exchange receive any federal funds between October 1, 2014 and December 31, 2014? If yes, how will the funds be spent?

6. Has the state exchange applied for a "No Cost Extension" from CMS for the use of federal establishment grant funds? If yes, please include all documents related to the No Cost Extension, including, but not limited to, communications between the state exchange and CMS.

7. Has the state exchange used any federal dollars from cost allocation, including, but not limited to Medicaid reimbursement dollars, to fund any aspect of the state exchange, including but not limited to operational expenses? If yes, please explain. As part of this explanation, address whether the expenditure of federal cost allocation or reimbursement dollars for state exchange activities approved by CMS or any other federal government agency?

8. Did the state exchange conduct any independent audit reports of its IT systems or financial records, including but not limited to projections for the financial sustainability of its exchange? If yes, provide all independent, third party audits. Did CMS request the state exchange to conduct and/or provide any independent audits? If yes, explain CMS' requirements.

An attachment to this letter provides additional information about how to respond to the committee's request. If you have any questions regarding this request, please contact Jessica Donlon or Emily Felder with the majority committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Tim Murphy
Chairman
Subcommittee on Oversight
and Investigations

Joe Pitts
Chairman
Subcommittee on Health

Attachment

cc: The Honorable Frank J. Pallone, Jr., Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigation

The Honorable Gene Green, Ranking Member
Subcommittee on Health