



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

October 28, 2013

To: Members, Full Committee

From: Majority Committee Staff

Re: Hearing Entitled "PPACA Implementation Failures: Answers from HHS"

On Wednesday, October 30, 2013, at 9:00 a.m. in 2123 Rayburn House Office Building, the Committee on Energy and Commerce will hold a hearing entitled "PPACA Implementation Failures: Answers from HHS." This hearing will focus on the failures and issues surrounding the implementation of Patient Protection and Affordable Care Act's (PPACA) health insurance exchanges. The following provides background on the hearing.

I. WITNESS

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services

II. BACKGROUND

A. PPACA Implementation

PPACA implementation has involved multiple government agencies and contractors. Agencies such as the Centers for Medicare and Medicaid Services (CMS), Internal Revenue Service, Social Security Administration, Department of Homeland Security, and the Office of Personnel Management are involved in the implementation of the PPACA exchanges. In addition, the Department of Health and Human Services (HHS) has entered into contracts with organizations to assist with the creation and operation of such exchanges, including the Federally facilitated marketplace (FFM). These contractors are assisting with activities such as IT buildup, eligibility verification, developing procedures for the receipt and processing of paper applications, and the creation of a data services hub to route information between agencies, contractors, and exchanges. Several of these contractors appeared before the Subcommittee on Health in September to discuss the status of their work.¹

Open enrollment in the PPACA exchanges began October 1, 2013, with coverage planned to be effective on January 1, 2014. Prior to the open enrollment start date, many questions were raised related to the readiness, testing, and functionality of the exchanges. Missed deadlines, delays, and untimely guidance raised questions regarding consumer assistance and experience, eligibility accuracy, integration with existing State programs, and interagency coordination.

¹ Hearing before the Subcommittee on Health, "PPACA Pulse Check: Part 2", September 10, 2013.

In June, the Government Accountability Office (GAO) issued a report² raising key questions regarding the readiness of the FFM. GAO found that core functions of the FFM had yet to be completed and concluded that CMS “has many key activities remaining to be completed across the core exchange functions – eligibility and enrollment, including development and implementation of the data hub; program management; and consumer assistance.” GAO further stated that “much remains to be accomplished within a relatively short amount of time” and the “completion of certain activities was behind schedule.”³

Despite such issues, HHS officials repeatedly assured the public that implementation was progressing on time and as intended. In July, Secretary Sebelius stated that HHS was “on track to flip the switch on October 1 and say to people, ‘Come on and sign up.’”⁴

On August 1, 2013, CMS Administrator Marilyn Tavenner's written testimony⁵ stated “when consumers visit the Marketplace through Healthcare.gov beginning on October 1, 2013, they will experience a new way to shop for health coverage.” Administrator Tavenner further testified that “the online version of the application will be a dynamic experience that shortens the application process...”⁶

As recently as September 19, 2013, the head of CMS’ Center for Consumer Information and Insurance Oversight testified⁷ that “Consumers will be able to go online, they will be able to get a determination of what tax subsidies they are eligible for, they’ll be able to look at the plans that are available where they live, they will be able to see the premium net of subsidy that they would have to pay, and they will be able to choose a plan and get enrolled in coverage beginning October 1.”

B. Problems With the Federally Facilitated Marketplace

Since the October 1 start of open enrollment, major media outlets have described the launch of PPACA’s exchange program as “plagued by problems”⁸ and “nothing short of disastrous.”⁹ The launch of the exchanges has been fraught with significant problems that are leading to major delays for Americans attempting to shop for health coverage.

Review of 47 State exchanges, particularly sites run by the Federal government, turned up “frequent error messages or traffic overload notices.”¹⁰ Reports suggest these problems may be caused by inadequate server capacity, poor software coding, and system architecture.¹¹

² Government Accountability Office, *Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges*, June 2013.

³ *Ibid.*

⁴ Robert Pear, *Sebelius Stands Firm Despite Calls to Resign*, N.Y. TIMES, October 16, 2013.

⁵ Hearing before the Energy and Commerce Committee, “PPACA Pulse Check”, August 1, 2013.

⁶ *Ibid.*

⁷ Hearing before the Subcommittee on Oversight and Investigations, “Two Weeks Until Enrollment: Questions for CCIO”, September 19, 2013.

⁸ Kelly Kennedy, *Health Care Exchange Still Plagued by Problems*, USA TODAY, October 16, 2013.

⁹ Jan Crawford, *Obamacare Overload: Congress Demands Answers About Health Care Site*, CBS This Morning (October 9, 2013), <http://www.cbsnews.com/video/watch/?id=50156756n>.

¹⁰ David Morgan and Caroline Humer, *Web Traffic, Glitches Slow Obamacare Exchange Launch*, Reuters, October 1, 2013.

Other reports suggest such problems stem from a design element requiring users “create accounts before shopping for insurance.”¹² An HHS spokeswoman said the “agency wanted to ensure that users were aware of their eligibility for subsidies that could help pay for coverage, before they started seeing the prices of policies.”¹³ In addition, insurers have stated that the Federal exchange is “generating flawed data,” including “duplicate enrollments, spouses reported as children, missing data fields, and suspect eligibility determinations.”¹⁴

Secretary Sebelius recently concluded after a two week review that “[w]e didn’t have enough testing, specifically for high volumes, for a very complicated project.”¹⁵ Furthermore, the Secretary stated that “[HHS] had two years and almost no testing.”¹⁶

C. Energy and Commerce Committee’s October 24, 2013, Hearing

On October 24, 2013, the Energy and Commerce Committee held a hearing entitled “PPACA Implementation Failures: Didn’t Know or Didn’t Disclose?” At the hearing, the following contractors testified regarding the problems since October 1, 2013: CGI Federal, Optum/QSSI, Equifax Workforce Solutions and Serco. Wednesday’s hearing will be an opportunity to gather additional information on the problems from the HHS Secretary.

III. STAFF CONTACTS

Should you have any questions regarding the hearing, please contact Karen Christian, Sean Hayes, Paul Edattel, or Clay Alspach at (202) 225-2927.

¹¹ Christopher Weaver, Shira Ovide and Louise Radnofsky, *Software, Design Defects Cripple Health-Care Website*, WALL STREET JOURNAL, October 6, 2013.

¹² Christopher Weaver and Louise Radnofsky, *Healthcare.gov’s Flaws Found, Fixes Eyed*, WALL STREET JOURNAL, October 10, 2013.

¹³ *Ibid.*

¹⁴ Christopher Weaver and Louise Radnofsky, *Health Website Woes Widen as Insurers Get Wrong Data*, WALL STREET JOURNAL, October 17, 2013.

¹⁵ Monica Langley, *Health Law’s Rocky Debut*, WALL STREET JOURNAL, October 18, 2013.

¹⁶ *Ibid.*