

**Andrew Slavitt's Hearing
"PPACA Implementation"
Before
Energy & Commerce Committee
Oversight & Investigations Subcommittee**

July 31, 2014

Attachment 1—Additional Questions for the Record

The Honorable Bruce Braley

- 1. Mr. Slavitt, as you are aware, I and many members are very interested in the proper implementation of Section 2706 of the Affordable Care Act, which addresses provider non-discrimination. As you are also aware, I recently joined more than 40 of my colleagues here in the House in a letter to the Secretary urging the Department to rectify the flawed FAQ guidance on 2706 issued over a year ago and to implement the statute as intended. Just last week, the Senate Appropriations subcommittee on Labor/HHS issued a report to accompany their funding bill for fiscal year 2015, a section of which stated that CMS has not followed a previous congressional directive to fix the FAQ and a certain date was given to fix the FAQ or explain to Congress why CMS is ignoring congressional intent in this respect.**

- a. Mr. Slavitt, can you explain to the Subcommittee why CMS continues to ignore congressional intent on Section 2706?**

Answer: As you know, on April 29, 2013, the Departments of Labor, Health and Human Services, and the Treasury (the Departments) issued a Frequently Asked Question (FAQ) regarding section 2706(a) of the Public Health Service Act. Since the FAQ was issued, we have received feedback from many stakeholders, including provider groups and Members of Congress. On March 12, 2014, the Departments published a Request for Information regarding this provision. We requested comments through June 10, 2014, on all aspects of the interpretation of section 2706(a) of the Public Health Service Act. We received over 1,500 comments and are currently reviewing them.

The Honorable G.K. Butterfield

- 1. Apart from HealthCare.gov, it's important to recognize that this is not the only significant IT investment under CMS' purview. The most recent data on the IT Dashboard indicates that there are almost 30 investments where we're spending \$15 million dollars or more in FY 2014 – including 4 where we're spending over \$100 million in FY 2014. All too often, we're using cost-plus contract arrangements that place all the risks for cost overruns on the taxpayer and not holding contractors accountable for what they deliver.**

- a. How are you ensuring that these investments are regularly delivering useful functions to end-users every six months or, at least, every year – as is the standard practice in the private sector?**

Answer: CMS has a number of information technology needs across all programs, including Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and the Marketplace. CMS is committed to strengthening its system development life cycle processes. With the increasing need to respond quickly to business demands, CMS created a structured Enterprise System Life Cycle Development process called Expedited Life Cycle (XLC) to help coordinate and develop IT projects. Consistent use of the XLC process combined with rigorous cost and schedule reporting helps to ensure that investments made through contracting result in useful deliverables. CMS also uses multiple Technical Review Boards throughout the systems development lifecycle to accelerate implementation of usable system functionality and force consideration of the use of existing public and private sector business solutions.

- b. As an example, for the top 10 investments, totaling a little over \$1.4 billion in spending for FY 2014, what functional capabilities were or will be actually rolled out to users this calendar year?**

Answer: Many of the larger IT investments are in mixed lifecycle status, entailing both Development/Modernization/Enhancement and Operations and Maintenance. CMS uses periodic software releases to address new business needs as determined by the investment's change control board and senior agency officials. For instance, the HITECH investment successfully implemented Stage 2 Meaningful Use criteria for Electronic Health Records, the agency's accounting system deployed the initial capability to account for Health Insurance Marketplace payments, and CMS' public websites included updated plan information and program changes to improve customer service.

- c. For these same top 10 investments, how are you incorporating existing solutions, whether from elsewhere in government or from the commercial market, that could be used to deliver useful functionality within 6 months or, at least, within a year?**

Answer: For each new business need, CMS relies on the principles of Enterprise Architecture to encourage re-use of existing technology and minimize duplicative efforts. Specifically, CMS promotes enterprise shared services to reduce application and data redundancy across its programs, commercial software-as-a-service tools to streamline data analysis and performance monitoring, and a cloud-computing center approved by the Federal Risk and Authorization Management Program.

- d. To the extent that you are doing this, how are you structuring contracts to incentivize success, rapid delivery of actual capabilities, and to shift risk from the taxpayer onto private industry?**

Answer: For larger, complex development and maintenance contracts, CMS has utilized a Cost Plus Award Fee arrangement to incentivize exceptional performance. Additionally, CMS is

placing emphasis on structuring our contracts with clearly defined deliverables and utilizing enhanced contract monitoring to track contractor performance and to identify performance issues quickly and take effective remedial action, if necessary.

- e. In particular, how are you using firm-fixed price arrangements that put more of the onus of budget and schedule control onto the contractor?**

Answer: CMS uses firm fixed price contracts whenever feasible. In planning for all new acquisitions, CMS determines the appropriate contract pricing arrangement after considering the unique factors associated with the requirement. When the requirements are well-defined, and the uncertainty can be predicted with an acceptable degree of accuracy, CMS uses a firm fixed price arrangement. Our firm fixed price arrangements include the acquisition of commercial items, infrastructure and hosting services, requirements support, testing services, and security support services.

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Tim Murphy

- 1. Most of these plans cover an initial visit and some preventative care. Have you surveyed people to find out if they have been able to see their physicians for any necessary follow-up appointments and reviewed their costs, payment levels, copays, deductibles, etc.?**

Answer: Millions of Americans now have access to the health care services they need to stay healthy, and we are closely monitoring all available data to make sure consumers are benefiting as the law intended.

The Honorable Michael C. Burgess

- 1. Please provide the memorandum that I requested from Mr. Cohen.**

Answer: HHS has provided the memorandum and it is publicly available on the Committee's website.^{1, 2}

¹<http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20140619HHSResponse.pdf>

The Honorable Morgan Griffith

- 1. Please provide the Committee with the waiver that you had to sign once becoming employed by CMS. Please explain the details of this waiver.**

Answer: CMS is providing a copy of this waiver to your staff. The waiver is publicly available through the United States Office of Government Ethics.³

The Honorable Renee Ellmers

- 1. Please provide the Committee with any changes or updates to site protocols or standards to address breaches to accessed information.**

Answer: No person or group has maliciously accessed personally identifiable information from HealthCare.gov. Like other consumer facing websites, HealthCare.gov is a routine target of malicious attacks, and has successfully defended against these attacks. CMS conducts continuous monitoring using a 24/7, multi-layer IT professional security team, added penetration testing, and ongoing testing and mitigation strategies implemented in real time. Security testing is conducted on an ongoing basis using industry best practices to appropriately safeguard consumers' personal information. All suspected security incidents are reported and investigations into any incidents begin immediately.

² <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20140619HHS-GAOResponse.pdf>

³ <http://oge.gov/DisplayTemplates/SearchResults.aspx?query=slavitt>