U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

September 25, 2015

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing entitled "An Overdue Checkup: Examining the ACA's State Insurance Marketplaces."

On September 29, 2015, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled "An Overdue Checkup: Examining the ACA's State Insurance Marketplaces."

Section 1311 of the Affordable Care Act provided funding assistance to the States to help them establish their own health insurance exchanges. The Federal government granted States at least $5.51 billion toward this effort. By law, the State exchanges were supposed to be self-sustaining—that is, have a funding source other than Federal grant dollars—by January 1, 2015. Despite this multi-billion dollar investment, many are struggling to become self-sustaining. The Department of Health and Human Services (HHS) Office of Inspector General (OIG) alerted the Centers for Medicare and Medicaid Services (CMS) that these faltering State exchanges may be using establishment grants to help cover operational costs. With growing maintenance costs and lower than expected enrollment numbers, States are weighing their options, including shutting down their exchanges and migrating to the Federal system. The Subcommittee is conducting oversight to understand the sustainability challenges State exchanges are facing. The hearing also will examine how Federal establishment grant dollars were spent.

I. WITNESSES

- Peter V. Lee, Executive Director, Covered California, State of California;
- Jim Wadleigh, Jr., Chief Executive Officer, Access Health CT, State of Connecticut;
- Jeff M. Kissel, Executive Director, Hawaii Health Connector, State of Hawaii;
- Louis Gutierrez, Executive Director, Massachusetts Health Connector, State of Massachusetts;
- Allison O'Toole, Interim Chief Executive Officer, MNsure, State of Minnesota; and
- Patrick Allen, Director, Department of Consumer and Business Services, State of Oregon.

II. BACKGROUND

Section 1311 of the Affordable Care Act

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 section 1311, "a State shall use amounts awarded under this subsection for activities (including planning activities) related to establishing an American Health Benefit Exchange."[3] No grant shall be awarded after January 1, 2015, for the purposes of establishing a State marketplace and that a marketplace must be self-sustaining by January 1, 2015.[4] In March 2014, CMS issued guidance that Federal funds may not be used to cover maintenance and operating costs after January 1, 2015.[5] CMS, however, allows establishment grant funds to be used for non-operational costs after January 1, 2015, through No Cost Extensions (NCEs), including the complete design, development, and implementation activities of a marketplace.[6]

To date, over $5.51 billion in Federal grants has been awarded to States in Federal marketplace grants to States.[7] (See Appendix A, which demonstrates how much Federal grant dollars each State received.) 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.[8]

April HHS OIG Alert

On April 27, 2015, the HHS OIG alerted Andy Slavitt, Acting Administrator for CMS, that State exchanges may be using Federal establishment grant funds for operational expenses after January 1, 2015, which is prohibited by law.[9] The OIG noted that both in media reports and its 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 also noted that certain terms in section 1311—such as "operating expense" and "design, development, and implementation expenses"—lacked "meaningful distinction."[10]

---

[1] Patient Protection and Affordable Care Act of 2010, § 1311 (2010).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] The Centers for Medicare and Medicaid Services, FAQs on the Use of 1311 Funds and No Cost Extensions (Mar. 14, 2014).
[6] *Id.*
[7] 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.
[8] 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.
[9] *Id.*
[10] *Id.*

The OIG encouraged CMS to develop and issue clear guidance to State exchanges on the use of establishment grant funds. Specifically, the OIG encouraged CMS to clarify what "constitutes (1) operational costs and (2) design, development, and implementation costs to minimize the marketplaces' improper use of establishing grant funding." The OIG further encouraged CMS to review State exchange plans for using establishment grant funds to ensure that CMS' guidance addresses real-world examples such as call centers, in-person assisters, bank fees and printing and postage expenses. Lastly, the OIG encouraged CMS to actually monitor the State exchanges' use of establishment grant funds.[11]

On June 8, 2015, CMS issued guidance intended to clarify how States can use establishment grant funds.[12] According to its guidance, States are permitted to use establishment grant funds for designing, developing, and testing information technology functions, setting up Federally compliant financial and program audit policies and procedures, outreach and education to boost enrollment, call center activities, and long-term capital planning. States also can use these funds to cover costs indirectly supporting establishment work such as salaries. Unallowable costs include, but are not limited to, rent, hardware/software maintenance and operations, telecommunications, and call center operations that do not constitute establishment activities.[13] The guidance did not provide real-world examples to help clarify what constitutes operational costs.

III. STATE EXCHANGES

Based on media reports, the HHS OIG, and the U.S. Government Accountability Office (GAO), States have struggled to establish their State-based exchanges and become financially sustainable. This hearing will provide the Committee the opportunity to hear from representatives from the following State exchanges:

Covered California

California received over $1 billion in Federal grant dollars to establish its exchange, Covered California.[14] California's exchange suffered from early call center and website failures.[15] At one point, more than half of all callers could not get through and abandoned their calls.[16] Apart from long wait times on the phone, website glitches slowed the application process and caused confusion.[17] In January 2014, California received an additional $155 million in Federal funding intended to improve customer service and enrollment numbers.[18] Despite call

[11] *Id.*
[12] The Centers for Medicare and Medicare Services, FAQs on the Clarification of the Use of 1311 Funds for Establishment Activities (June 8, 2015).
[13] *Id.*
[14] Dept. of Health and Human Services, 5 Years Later: How the Affordable Care Act is Working for California (last accessed Sept. 22, 2015), http://www.hhs.gov/healthcare/facts/bystate/ca.html.
[15] Chad Terhune, *Covered California Gets Federal Money to Improve Service, Enrollment*, L.A. TIMES, Jan. 23, 2014, http://articles.latimes.com/2014/jan/23/business/la-fi-california-exchange-20140124.
[16] *Id.*
[17] *Id.*
[18] *Id.*

center and website woes, California had the highest enrollment in 2014, but only retained 65 percent of its 2014 enrollees.[19] This year, California's enrollment numbers reached 1.4 million, falling 300,000 short of expectations.[20] More recently, a consumer group representing legal aid groups across the State wrote a complaint to Covered California describing a litany of problems, including problems dating back to early 2014.[21] In response, Covered California has announced that it will release a detailed report in October addressing the complaints.[22]

Access Health CT

CMS awarded Connecticut approximately $176 million in Federal establishment grants.[23] Connecticut received a Federal Early Innovator Grant of $44 million to develop, share, and leverage insurance exchange technology, along with several other New England States, including Rhode Island, Maine, Vermont, and Massachusetts.[24] The University of Massachusetts Medical School was the grant holder.[25] The State of Maryland, which suffered high-profile technology problems with its exchange, is using Connecticut's exchange software and hired Connecticut's contractor, Deloitte Consulting.[26] In May, the board of Connecticut's health insurance exchange approved a 22 percent hike in the fee it charges insurers to help fund its operations.[27]

Hawaii Health Connector

CMS awarded Hawaii approximately $205 million in Federal establishment grants.[28] The Hawaii Health Connector's website was taken down almost immediately after its October 2013 launch and did not go back online until two weeks later.[29] In its first year, Hawaii enrolled 8,592 individuals, the lowest enrollment numbers in the country.[30] At its peak, enrollment reached less

---

[19] AVALERE, STATE-BASED EXCHANGES SAW HIGHER ATTRITION FROM 2014 TO 2015 THAN FEDERALLY-FACILITATED EXCHANGES (Apr. 7, 2015) http://avalere.com/expertise/managed-care/insights/state-based-exchanges-saw-higher-attrition-from-2014-to-2015-than-federally.

[20] Chad Terhune, *Amid Slower Growth, California's Obamacare Exchange Cuts Proposed Spending*, L.A. TIMES, May 13, 2015, http://www.latimes.com/business/la-fi-obamacare-money-20150513-story.html.

[21] Chad Terhune, *California's Obamacare Exchange Criticized for Not Fixing Enrollment, Tax Errors*, L.A. TIMES, Aug. 21, 2015, http://www.latimes.com/business/healthcare/la-fi-obamacare-covered-california-20150821-story.html.

[22] *Id.*

[23] Dept. of Health and Human Services, 5 Years Later: How the Affordable Care Act is Working for Connecticut (last accessed Sept. 22, 2015), http://www.hhs.gov/healthcare/facts/bystate/ct.html.

[24] Kaiser Family Foundation, "State Marketplace Profiles: Connecticut," available at: http://kff.org/health-reform/state-profile/state-exchange-profiles-connecticut/

[25] *Id.*

[26] Jenna Johnson, "Maryland Looks to Connecticut for Health Exchange Answers," THE WASHINGTON POST, May 31, 2014.

[27] Arielle Levin Becker, Access Health Increases Fee on Insurers, THE CT MIRROR, May 28, 2015.

[28] Dept. of Health and Human Services, 5 Years Later: How the Affordable Care Act is Working for Hawaii (last accessed July 21, 2015), http://www.hhs.gov/healthcare/facts/bystate/hi.html.

[29] Maeve Reston, *Hawaii Health Marketplace Off to an Especially Rough Start*, L.A. TIMES, Feb. 25, 2014, http://articles.latimes.com/2014/feb/25/nation/la-na-obamacare-hawaii-20140226.

[30] Haeyoun Park, et. al, *Health Enrollment Ended with a Surge*, N.Y. TIMES, May 1, 2014, http://www.nytimes.com/interactive/2014/01/13/us/state-healthcare-enrollment.html?module=ArrowsNav&contentCollection=U.S.&action=keypress&region=FixedLeft&pgtype=Multimedia.

than 40,000 individuals.[31] On June 5, 2015, Hawaii Governor David Ige announced that Hawaii Health Connector will shut down because it has not generated "sufficient revenues to sustain operations."[32] More recently, however, Hawaii announced it will keep the Health Connector operational through October 2016 rather than September 30, 2015, as originally planned.[33]

Massachusetts Health Connector

CMS awarded Massachusetts approximately $234 million in Federal establishment grants.[34] Although the Massachusetts health insurance exchange was the template for the Affordable Care Act, the website had significant problems when it was updated to meet the requirements of the ACA.[35] The site had problems determining whether applicants were eligible for Federal subsidies.[36] Tens of thousands of applications had to be processed by hand.[37] Due to exchange's inability to complete eligibility determinations and fully process applications, CMS granted Massachusetts use of Federal Medicaid funds for approximately 100,000 to 200,000 individuals who have applied for coverage, but whose final coverage had not been adjudicated in the Medicaid program.[38] In fact, almost 300,000 temporarily were placed in Massachusetts' Medicaid program, regardless of income.[39] The Massachusetts Health Connector's struggles contributed to the State's health care costs spiking 4.8 percent in 2014, doubling the rate of growth from 2013.[40] Thousands of State exchange customers also will face higher premiums, co-pays, and deductibles next year.[41]

Mnsure

Minnesota received $189 million in Federal grants to launch MNsure, its State exchange.[42] When it launched in October 2013, MNsure had significant functionality problems.[43] Due to ongoing

---

[31] Chloe Fox, *Hawaii Pulls the Plug on Embattled Health Insurance Exchange*, THE HUFF. POST, June 6, 2015, http://www.huffingtonpost.com/2015/06/06/hawaii-health-insurance_n_7524426.html.
[32] *Id*.
[33] Lorin Eleni Gill, *State, Feds to Pay $3.3M and $2.8M to Extend Life of Hawaii Health Connector*, PAC. BUS. NEWS, Aug. 28, 2015, http://www.bizjournals.com/pacific/news/2015/08/28/state-feds-to-pay-3-3m-and-2-8m-to-extend-life-of.html.
[34] Dept. of Health and Human Services, 5 Years Later: How the Affordable Care Act is Working for Massachusetts (last accessed Sept. 22, 2015), http://www.hhs.gov/healthcare/facts/bystate/ma.html.
[35] Jess Bidgood, *Massachusetts is Given an Extension*, N.Y. TIMES, Feb. 13, 2014, http://www.nytimes.com/news/affordable-care-act/2014/02/13/massachusetts-is-given-extension/.
[36] *Id*.
[37] *Id*.
[38] Health Insurance Marketplace: March Enrollment Report, For the Period: October 1, 2013 – March 1, 2014, (March 11, 2014), http://aspe.hhs.gov/health/reports/2014/MarketPlaceEnrollment/Mar2014/ib_2014mar_enrollment.pdf.
[39] Priyanka Dayal McCluskey, *In a Setback for Mass., Health Care Costs Spike in State*, BOSTON GLOBE, Sept. 2, 2015, https://www.bostonglobe.com/business/2015/09/01/healthcosts/W470z61YbrKIhrS7xuDyVI/story.html.
[40] *Id*.
[41] Shira Schoenberg, *Higher Prices, Fewer Plans Ahead for Some Massachusetts Health Connector Customers*, MASSLIVE, Sept. 10 2015, http://www.masslive.com/politics/index.ssf/2015/09/higher_prices_fewer_plans_for.html.
[42] Dept. of Health and Human Services, 5 Years Later: How the Affordable Care Act is Working for Minnesota (last accessed Sept. 22, 2015), http://www.hhs.gov/healthcare/facts/bystate/mn.html.

software errors, the exchange had to process manually 30,000 applications.[44] In early 2014, a consultant group hired by the State concluded that MNsure's problems could take 12 to 24 months to fix.[45] Citing poor project management and over 200 software defects, the group suggested scrapping the system altogether as one option.[46] Late last year, MNsure received another $34 million, in part to fund ongoing fixes to the IT system.[47] Despite this infusion of additional funds, MNsure is struggling with public health insurance renewals.[48] In July, reports indicated that the backlog has grown to 180,000 cases.[49] Minnesota's Department of Human Services also is struggling to send premium notices to thousands of enrollees, despite the additional $34 million MNsure received to help fix its IT system.[50] Minnesota has announced that it would revert to an old system next year for MinnesotaCare premiums because of the continued MNsure problems.[51]

Cover Oregon

Oregon received approximately $305 million in Federal grant dollars to establish its State exchange, Cover Oregon.[52] Only California and New York received more money. Despite this heavy investment, Oregon's State exchange website failed to sign up a single person.[53] Oregonians were forced to file paper applications in order to receive coverage.[54] There is evidence that campaign and political operatives played a role in key decisions about the operation of Cover Oregon.[55] Governor Kate Brown signed a bill earlier this year, which dissolved Cover Oregon and transferred its responsibilities to the Department of Consumer and Business Services.[56] The Cover Oregon office closed on June 30, 2015. Oregon also announced rate increases for 2016 that affect more than 220,000 customers.[57] These proposed increases are

---

[43] Elizabeth Stawicki, *Problems Continue for Some Users on Minnesota's Health Insurance Exchange*, KAISER HEALTH NEWS, Oct. 8, 2013, http://khn.org/news/mnsure-health-insurance-technical-problems/.
[44] Christopher Snowbeck, *For Thousands of Users, Promise of MNsure Remains 'Pending*,' DULUTH NEWS Trib., Feb. 2, 2014, http://www.duluthnewstribune.com/content/thousands-users-promise-mnsure-remains-pending.
[45] Clint Boulton, *Minnesota Health Exchange Could Take Two Years to Fix, MNsure Consultant Says*, WALL ST. J., Jan. 24, 2014, http://blogs.wsj.com/cio/2014/01/23/minnesota-health-exchange-could-take-two-years-to-fix-mnsure-consultant-says/.
[46] *Id.*
[47] Christopher Snowbeck, *MNsure Tech Issues Creates Renewal Backlog of 180,000 cases*, STAR TRIB., July 11, 2015, http://www.startribune.com/backlog-of-renewals-at-mnsure-now-at-180-000-cases/313349301/.
[48] *Id.*
[49] *Id.*
[50] Christopher Snowbeck, *State continues to struggle sending premium bills to MinnesotaCare enrollees*, STAR TRIB., Sept. 17, 2015, http://www.startribune.com/state-continues-to-struggle-sending-premium-bills-to-minnesotacare-enrollees/328111921/.
[51] *Id.*
[52] Dept. of Health and Human Services, 5 Years Later: How the Affordable Care Act is Working for Oregon, (last accessed July 21, 2015), http://www.hhs.gov/healthcare/facts/bystate/or.html.
[53] Samantha Masunaga, *Oregon Abolishes Its Hopelessly Bungled Health Insurance Exchange*, L.A.TIMES, March 7, 2015, http://www.latimes.com/nation/la-na-cover-oregon-abolished-20150307-story.html.
[54] *Id.*
[55] Nigel Jaquiss, *Kitzhaber's Secret Weapon*, WILLAMETTE WEEK, Feb. 25, 2015, http://www.wweek.com/portland/article-24134-kitzhabers_secret_weapon.html.
[56] *Id.*
[57] Robert Pear, *Health Insurance Companies Seek Big Rate Increases for 2016*, N.Y. TIMES, July 3, 2015, http://www.nytimes.com/2015/07/04/us/health-insurance-companies-seek-big-rate-increases-for-2016.html.

higher than several other States.[58] The State currently is operating as a "Federally-supported State-based Marketplace." The State relies on the Federally-facilitated Marketplace IT platform. Consumers apply for and enroll in coverage through Healthcare.gov.

IV. ISSUES

The following issues may be examined at the hearing:

- Are State exchanges on track to becoming self-sustaining?
- What are CMS' oversight mechanisms to monitor how States spend establishment grant dollars?
- Do States have remaining Federal establishment grant dollars? If so, are they spending it on operational costs?
- If a State exchange chooses to abandon its infrastructure and instead use the Healthcare.gov platform, what steps is CMS taking to recover establishment grant dollars?

V. STAFF CONTACTS

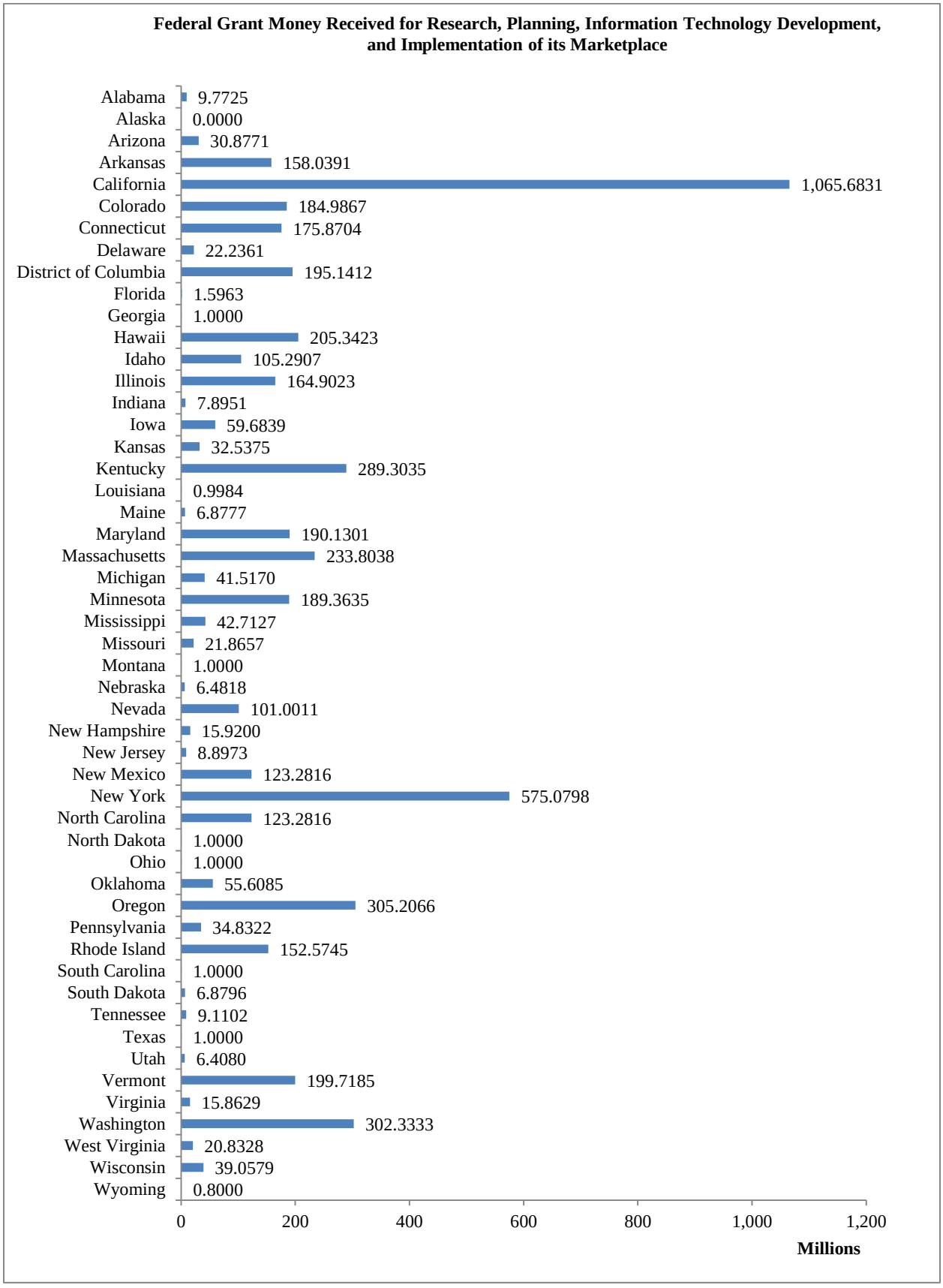
If you have any questions regarding this hearing, please contact Jessica Donlon, Emily Felder, or Brittany Havens of the Committee staff at (202) 225-2927.

[58] Louise Radnofsky, *Oregon Backs Rise in Health-Insurance Premiums*, WALL ST. J, July 3, 2015, http://www.wsj.com/articles/oregon-backs-hefty-rise-in-health-insurance-premiums-1435873598.

APPENDIX A

PAGE LEFT INTENTIONALLY BLANK

(CHART NEXT PAGE)


Federal Grant Money Received for Research, Planning, Information Technology Development, and Implementation of its Marketplace
Alabama 9.7725
Alaska 0.0000
Arizona 30.8771
Arkansas 158.0391
California 1,065.6831
Colorado 184.9867
Connecticut 175.8704
Delaware 22.2361
District of Columbia 195.1412
Florida 1.5963
Georgia 1.0000
Hawaii 205.3423
Idaho 105.2907
Illinois 164.9023
Indiana 7.8951
Iowa 59.6839
Kansas 32.5375
Kentucky 289.3035
Louisiana 0.9984
Maine 6.8777
Maryland 190.1301
Massachusetts 233.8038
Michigan 41.5170
Minnesota 189.3635
Mississippi 42.7127
Missouri 21.8657
Montana 1.0000
Nebraska 6.4818
Nevada 101.0011
New Hampshire 15.9200
New Jersey 8.8973
New Mexico 123.2816
New York 575.0798
North Carolina 123.2816
North Dakota 1.0000
Ohio 1.0000
Oklahoma 55.6085
Oregon 305.2066
Pennsylvania 34.8322
Rhode Island 152.5745
South Carolina 1.0000
South Dakota 6.8796
Tennessee 9.1102
Texas 1.0000
Utah 6.4080
Vermont 199.7185
Virginia 15.8629
Washington 302.3333
West Virginia 20.8328
Wisconsin 39.0579
Wyoming 0.8000
0
200
400
600
800
1,000
1,200
Millions