

Opening Statement of the Honorable Tim Murphy
Subcommittee on Oversight and Investigations
Hearing on “An Overdue Checkup Part II: Examining the ACA's State Insurance
Marketplaces”
December 8, 2015

(As Prepared for Delivery)

On September 29th, the Committee heard from a panel of witnesses representing six state exchanges. While attempting to paint a rosy picture, it is clear there are serious short-term and long-term problems with State exchanges. One of our main concerns we will address today is how Centers for Medicare and Medicaid Services' (CMS) is conducting oversight over the billions of taxpayer dollars invested in establishing the state exchanges. Today, we expect direct and honest answers from CMS Acting Administrator Andy Slavitt.

To date, CMS has handed out \$5.51 billion dollars to the States to help them establish insurance exchanges. Despite this whopping investment of taxpayer dollars, four states exchanges have been turned entirely over to the federal exchange while countless others are struggling to become self-sustaining. As the federal dollars run dry and enrollment numbers appear far below Administration projections, all State exchanges face significant budget shortfalls. By law, state exchanges were supposed to be self-sustaining by January 1, 2015, at which point, federal establishment grant money could not be used to operate the exchanges. Yet CMS has been issuing “No Cost Extensions” to State exchanges, allowing them to use the remainder of their federal grants through 2015 and in some cases, 2016 against intent and letter of the law. Federal funds still cannot be used for operational costs. But because of lax oversight and weak guidance, we don't know whether or not State exchanges have actually spent this federal money appropriately. We intend to get clear answers today.

In the over five years since the ACA was enacted, CMS has issued only two guidance documents to inform State exchanges on permissible ways to spend federal establishment funds. The first guidance, issued in March 2014, was less than a page. The second guidance came only after the HHS Office of Inspector General issued an alert to Acting Administrator Andy Slavitt highlighting with urgency that State exchanges may be using grant funds for operational expenses, which is not allowed. In fact, the OIG had discovered, based on budget documents, the Washington Health Benefit Exchange might have used \$10 million in establishment grant funds to support operations, such as printing, postage, and bank fees. Again, not allowed. HHS OIG urged Acting Administrator Slavitt to develop and issue clear guidance to the state exchanges on the appropriate use of establishment grant funds. What followed was a vague two-page guidance document, bereft of concrete examples. Based on these “guidances” one wonders if CMS is encouraging the State exchanges to spend federal dollars in any way possible against the stated purposes of the law to keep these State exchanges limping along.

Through the Committee's investigation, we have learned of instances where State exchanges may have used establishment grant dollars to cover operational costs or even transition costs when a State exchange shuts down and moves to the federal platform. It hasn't been always easy to discern; however, because these funds have been co-mingled and expenses and costs have been redefined. For example rent—which is an operational cost by any definition — suddenly becomes “business development costs.” The system seems to be convoluted by design.

In spite of—or perhaps because of—CMS' hands-off approach, the state exchanges are struggling to become self-sustaining. They continue to face IT problems, lower than expected enrollment numbers, and growing maintenance costs. And as the HHS OIG pointed out in its alert, State exchanges are facing uncertainties in revenue. Four state exchanges—Hawaii, Nevada, New Mexico, and Oregon—have already shut down their state exchanges. These four states alone received \$733 million in federal establishment grants. The taxpayer's return on investment appears minimal at best. Further, there is little indication that CMS has attempted to recoup any of this money. It is our hope that Acting Administrator Slavitt commits to, and lays out, a blueprint for recouping these lost federal dollars so that the American people are not footing the tab for yet another ACA failure.

To better understand the challenges these State exchanges face and to ensure more tax dollars aren't wasted, this Committee has a number of questions: Why are state exchanges struggling to become self-sustaining, especially given the extraordinary taxpayer investment? Is it a lack of CMS accountability or oversight? Is CMS encouraging fiscal restraint, or instead, taking a hands-off approach, which has allowed money to be spent uncontrollably, unwisely and maybe even impermissibly? And where an exchange has decided to shut down, has CMS sought to recoup any of the federal grant dollars? Lastly, are the exchanges doomed to fail?

In my estimation, CMS oversight has been woefully sloppy at best and willfully ignorant at worst with obvious spending abuses costing taxpayers billions and counting. We hope that CMS will be forthright in answering the Committee's many outstanding questions on its failure in overseeing the ACA state exchanges as well as provide members a blueprint on how the Administration will recoup lost taxpayer dollars moving forward. Right now, the situation is a mess and taxpayers are on the losing side and that is simply unacceptable.

This hearing comes at a time when premiums for low-cost plans are on the rise, major insurers are publicly questioning their decisions to join the exchanges, CO-OPs are failing at an alarming rate, and state exchanges are expressing doubts about their ability to exist long-term.

Mounting evidence suggests the ACA faces insurmountable problems in 2016. Today we have an opportunity to ask CMS's top official if and when the Administration will finally address these concerns in a meaningful way.

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