

Response to Questions and Member Requests for the Record

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Hearing on PPACA Pulse Check: Part 2

**United States House of Representatives Committee on Energy and Commerce
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Additional Questions for the Record

The Honorable Gus Bilirakis

- 1. One of the things that I have been concerned about is the difficulty in integrating Exchange systems, either federal or state run, with outside systems. One challenge is Medicaid eligibility check. To enroll in the Exchanges there is supposed to be a Medicaid eligibility check. However, many states may not have their systems online to make eligibility determinations under the new Medicaid eligibility formula. How will the system deal with a lack of information on these eligibility checks? What happens to the consumer or the state?**

Integration between the exchange and state Medicaid systems is one of the most complex technological challenges associated with implementation of an exchange. Not only is it difficult to connect two large processing systems, but the challenge is exacerbated by the fact that some states are currently in the process of implementing a comprehensive Medicaid modernization project—which means they have to test and integrate two new systems—while other states are dealing with the connectivity and integration challenges associated with older legacy systems.

To work around these challenges, some states are developing contingency plans that include performing these determinations manually and relying on self-attestation to make initial Medicaid or subsidy determinations (e.g., requiring consumers to provide documented proof of their income, residency, etc., rather than verifying it through the Federal Data Services Hub or other electronic verification systems). Processing Medicaid and subsidy determinations manually and relying on self-attestation will delay enrollment—increasing the potential that consumers won't receive coverage by January 1, 2014—as well as increase the possibility of unintentional errors, fraud, and abuse.

2. What type of security standard are the states using that create their Exchange and/or use their own data portals? How does it compare to the FISMA standard that the federal exchange is using? Should CMS require a higher standard? Is CMS implementing this trillion dollar law on the cheap?

The guidance outlined in the Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchanges requires the following of states with respect to the security and privacy standards of exchanges.

- Per National Institute of Standards and Technology (NIST) publications, the design and implementation must take into account security standards and controls. (For details on NIST publications, see: <http://csrc.nist.gov/publications/PubsSPs.html>)
- HIPAA: The HIPAA Privacy and Security Rules provide Federal protections for personal health information held by covered entities and give patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.
- Security: The applicant shall address the Security requirements in Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers found in 45 CFR § 155.260, and other applicable Security requirements.
- Federal Information Processing Standards (FIPS): Under the Information Technology Management Reform Act (ITMRA), Division E, National Defense Authorization Act for FY 1996 (P. L. 104-106), the Secretary of Commerce approves standards and guidelines that are developed by the National Institute of Standards and Technology (NIST) for Federal computer systems. These standards and guidelines are issued by NIST as Federal Information Processing Standards (FIPS) for use government-wide. NIST develops FIPS when there are compelling Federal government requirements such as for security and interoperability and there are no acceptable industry standards or solutions. See Recommendation 5.3 in Section 1561 recommendations for more details: <http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=3161>

With respect to Federal Information Security Management Act (*FISMA*) (which applies to both federal and state-based exchanges), the [Minimum Acceptable Risk Standards for Exchanges](#) (MARS-E) requires health insurance exchanges and common program enrollment systems to meet certain federal legislation and regulations. The most significant federal laws to be met are FISMA and HIPAA.

These requirements and standards are proven and, we believe, do provide a sufficient level of security and privacy (it is important to note that Leavitt Partners does not have direct expertise in information security, but can speak to it from a high level). If these standards are thoroughly tested and met during the implementation phases, requiring a higher standard of security is not necessary. The concern is that states simply have not had enough time to perform comprehensive testing to guarantee an adequate level of performance for the initial enrollment period. So, while CMS is ensuring the necessary security standards are used, it may not have provided sufficient time for states to test processes and policies in order to adequately meet FISMA and other standards.

Member Requests for the Record

The Honorable Leonard Lance

- 1. Has there been sufficient testing with the States, and if not, what are some of the financial risks to the States? If there are to be any delays, do you believe they would be longer than 90 days? Which States have done a good job so far in this regard and which States need to do a better job?**

Due to markedly short timelines for implementation, very few states have had sufficient time to conduct comprehensive system testing. In fact, many states were simultaneously testing and building systems leading up to the October 1 go-live date—a less than ideal process for testing overall system effectiveness. For many states, exchange testing is expected to continue during the initial enrollment period, with much of the remaining testing to take place around the development of back-end systems for carrier interaction and the dispatch of enrollment information.

The lack of testing and short timelines increases the probability of exchanges experiencing unexpected problems that will need to be fixed during, rather than prior to implementation (which generally requires additional resources and costs). It is also expected that once exchanges get past the challenges associated with website functionality and the user-interface, they will move on to the next set of problems. For example, during the first week of the open enrollment period, state and federal exchanges experienced some significant challenges that impacted a consumer's ability to enroll. The concern is that if something as fundamental as creating a user account is causing problems, then what issues are consumers going to encounter when they start the more complicated enrollment and eligibility process for premium subsidies? Overcoming these challenges will require additional time and resources and may create a backlog of consumers waiting to complete the enrollment and eligibility process. Until these issues are fixed, many states are using inefficient manual workarounds, potentially resulting in unexpected costs and increasing the exchange's operating costs over time.

There is no precedence for determining a reasonable timeframe in which these manual determinations can or will be made. However, we do know that many of the state exchanges are attempting to process these issues in less than 90 days of receiving the consumer's application or dispute. Still, if the current exchange problems persist or the systems cannot achieve the desired functionality, it could be possible that an increased volume of manual determinations may force longer timelines for consumer enrollment and create delays past 90 days.

While every state would have preferred to implement additional capabilities if they had more time and resources, all state-based exchanges had to de-scope their plans in order to meet the October 1 launch. Still, during these first few days of operation, some states have offered a higher degree of functionality than others. If we were to develop two categories around state-based exchange readiness—those that had minor delays, but are capable of facilitating enrollment, and those that had significant delays and may need to delay enrollment—the number of states falling in each category would nearly be an even split.

While this underscores the lack of preparedness, there is a widely held expectation that exchange enrollment will be ramping up as we approach the coming 2014 benefit year. As a result, a major priority for exchanges over the next few weeks will be making necessary system refinements to allow consumers sufficient time to shop and enroll by the end of the year.