

United States Senate
WASHINGTON, DC 20510

November 18, 2014

The Honorable Sylvia M. Burwell
Secretary
U.S. Department of Health & Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell:

We are writing to inquire about the Department of Health and Human Services' (HHS) position on taxpayers' dollars used to implement state-based exchanges (SBE) under the Patient Protection and Affordable Care Act (PPACA). Over \$1 billion was allocated to build successful websites for SBEs, but that sum was not provided with effective oversight parameters. Website development issues and a general lack of usability have caused many states to seek a different avenue for website technology for the 2015 open enrollment period. With states scrambling to prepare for the November 15 start date, some have even opted to join the federal exchange via HealthCare.gov because of their broken systems. This equates to hundreds of millions of dollars in government waste, and this issue needs to be addressed swiftly.

During your confirmation hearing this past May with the Senate Finance Committee, Ranking Member Hatch asked you specifically about this issue. To protect the taxpayers from improper expenditures, he asked whether you **"...believe that these states that have so negligently managed their funds should be required to reimburse taxpayers for their incredible failures? If you could say yes or no, I'd appreciate it."** In response to this, you replied that **"...where the federal government and the taxpayer have had funds misused, we need to use the full extent of the law to get those funds back for the taxpayer."** This initially placated our concern for oversight of misspent funds, but there has not yet been any federal action to recoup those funds back to the taxpayers.

More recently, Marilyn Tavenner, Administrator of the Centers for Medicare and Medicaid Services (CMS), testified at a House Oversight and Government Relations hearing on September 18 that the recoupment of funds is a state matter. For example, when asked about Oregon's spending over \$200 million on their website before abandoning it in favor of the federal infrastructure from HealthCare.gov, Administrator Tavenner stated **"I think Oregon has very actively gone after their contractor and I think that's been in the press. But I'm happy to get you more details."** Pressed further, she did not elaborate on the role of the federal government, instead arguing that **"...these were actually grants awarded to states, and so the contract is between the state and the contractor, so the states were working that initially."** This response varies drastically from yours in May, as it reflects an administrative position that the recoupment of funds is now a state matter rather than one of federal jurisdiction and import.

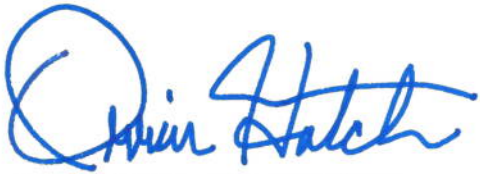
Over the past several months, members have sought additional clarification from you regarding this topic. Accordingly, please answer the following questions:

1. Who bears responsibility to the taxpayers for the distribution of federal taxpayer dollars to build websites that were abandoned just months after the first open enrollment period?

1. Who bears responsibility to the taxpayers for the distribution of federal taxpayer dollars to build websites that were abandoned just months after the first open enrollment period?
2. What is the perspective of Administrator Tavenner and CMS in regards to recovering misspent federal taxpayer dollars spent on SBE websites, and does it align with yours? If not, please explain why.
3. Does HHS plan to take any action to recoup the federal taxpayer dollars provided to the states that abandoned the SBE model for the Federally-Facilitated Marketplace model? If yes, please describe those actions. If no, please explain why not.
4. Several states, including Oregon, Nevada, Massachusetts, and Maryland, received grants from the federal government to create state exchanges. These states have all abandoned their original exchanges and are now either moving to the federal exchange or using technology from other states. Did CMS conduct a cost/benefit analysis to determine what would be the most cost effective way to address failed state exchanges?
5. What is the estimated cost in additional federal funds will be needed to either move failed state exchanges to the federal marketplace or transition failed exchanges to other technology platforms?
6. During your confirmation hearing in the Senate Finance Committee, members of this committee inquired as to where the federal taxpayer dollars went, why some were misused, and how contracts allow for such lax oversight standards. What oversight methods can you commit to developing to ensure that no taxpayer dollars are abused and wasted on expensive systems that are never utilized?
7. What steps will you take to increase the transparency of CMS contractor allocation systems in the future? If none, please explain why not.

We would appreciate responses to these questions no later than Friday, December 12, 2014.

Sincerely,



Senator Orrin G. Hatch



Senator Charles E. Grassley



Senator John A. Barrasso