

United States Senate
WASHINGTON, DC 20510

December 02, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave, S.W.
Washington, D.C. 20201

Dear Mr. Slavitt,

Thank you for your response on September 23, 2015, relating to the failure of state-based exchanges (SBM) to use federal grant money efficiently and effectively. Your letter noted that when federal funds are misused, CMS will use the “full extent of the law to get those funds back.” Further, your letter noted that CMS found that the Arkansas SBM spent approximately \$1 million in federal grant funding for unallowable activities. Although it is a positive development when misused funds are identified, it is disconcerting that millions of taxpayer dollars continue to be misused within SBMs.

Since the Affordable Care Act (ACA) became law, sixteen states and the District of Columbia have established their own marketplaces for purchasing insurance. Many of those state based marketplaces have failed, either shutting down entirely – forcing a full transition to federal marketplaces – or transitioning to the federal IT structure. The federal government supported these state based marketplaces with billions of dollars of hard-earned taxpayer money. Now, with some state marketplaces struggling to establish financial stability and others having failed, serious questions exist with respect to whether or not the federal government is taking all reasonable steps to reacquire misused funds provided to failed marketplaces.

For example, when Maryland’s SBM failed, it resulted in a lawsuit and eventual settlement with Noridian Healthcare Solutions. In settlement, Noridian agreed to pay the state of Maryland \$45 million. The federal government provided \$179 million to create the SBM in Maryland. It appears that the \$45 million Maryland received via settlement consists of federal funds. Your letter stated that “CMS is working with the Maryland SBM so that funds are returned to the Treasury,” but it is not clear what specifically the federal government is doing to recoup these federal monies. The same can be said for Oregon’s SBM which spent more than \$300 million in federal funds and failed to sign up a single person.

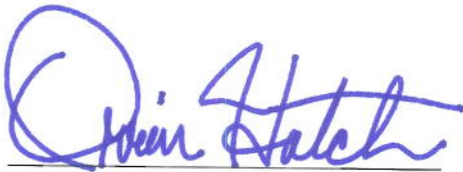
Given the continuing failure of SBMs and the use of taxpayer funds for unallowable activities, CMS has an elevated responsibility to ensure that any future funding to SBMs is appropriate and that SBMs fulfill all grant terms and conditions. With the ongoing risk that more SBMs will shut down or partially transition to the federal IT structure, and the continuing threat that SBMs will use taxpayer funds for unallowable activities, it is imperative to determine the full cost to the taxpayer of the failures thus far, and what funds the federal government has been able to recover.

Accordingly, please answer the following:

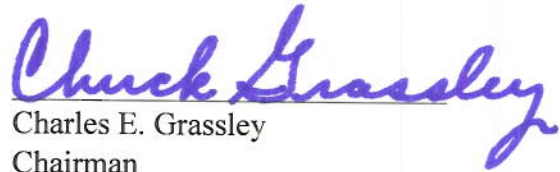
1. Please provide a breakdown of how much federal money has been sent to each SBM. In your response, please delineate between each round of funding.
2. For each SBM, please provide a breakdown of how much federal money has been identified as being misused by the state and/or contractors for unallowable activities.
3. For each SBM, please provide a breakdown of how much federal money has been recovered by the federal government for unallowable activities.
4. For each SBM that has been the subject of litigation and settlement, how much money has the federal government recovered from each state? What is CMS doing to recapture federal funds acquired by states via settlement?
5. For each SBM, how much federal money has been awarded to states for projects that were not completed after money was provided in a previous funding round?
6. Please describe in detail the steps you are taking, or have already taken, to recover taxpayer funds from failed SBMs and contractors associated with those failed exchanges.
7. Please describe in detail the legal authority you rely on to recover the taxpayer funds that supported failed SBMs.
8. Please provide in detail the CMS policy regarding the refunding of the Federal share of grants recovered from a legal judgment or settlement when a State recovers pursuant to legal action under its State False Claims Act (SFCA) or any other legal action involving a SBM vendor.
9. Has any employee of CMS engaged in activity that facilitated the appropriation to state governments of funds recouped from failed SBMs?
10. Please describe in detail the oversight mechanism(s) in place that are used to determine whether a state based exchange has the potential to fail.

Thank you for your attention to this matter. Please number your responses according to their corresponding questions and respond by December 18, 2015. If you have any questions, please do not hesitate to contact Kim Brandt with Senator Hatch's Finance Committee staff at (202) 224-4515 or Josh Flynn-Brown with Senator Grassley's Judiciary Committee staff at (202) 224-5225.

Sincerely,



Orrin G. Hatch
Chairman
Committee on Finance



Charles E. Grassley
Chairman
Committee on the Judiciary