ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MEMORANDUM

November 12, 2013

To: **Democratic Members of the Committee on Oversight and Government Reform**

Fr: **Democratic Staff**

Re: **Hearing on "ObamaCare Implementation: The Rollout of Healthcare.gov."**

On Wednesday, November 13, 2013, at 9:30 a.m. in room 2154 of the Rayburn House Office Building, the Committee will hold a hearing to examine the launch of Healthcare.gov. This will be the seventh congressional hearing on issues relating to the website in the past three weeks, including four House and Senate hearings with the Secretary of Health and Human Services or the Administrator of the Centers for Medicare and Medicaid Services (CMS). In contrast, House Republicans did not hold a hearing on the flawed rollout of the Medicare Part D drug benefit until four months after the program opened for enrollment.[1]

I. BACKGROUND ON CHALLENGES WITH HEALTHCARE.GOV ROLLOUT

Pursuant to the Patient Protection and Affordable Care Act (ACA), CMS launched Healthcare.gov on October 1, 2013, in order to allow consumers to compare and purchase health insurance coverage in the federally-facilitated marketplace (FFM). Although the website is only one of several ways in which consumers may obtain insurance, press accounts over the past month have described multiple technical problems with the website's functioning. In response, Administration officials have established an interagency team to address these challenges and have indicated that they expect to have the majority of issues resolved by November 30.

Based on the Committee's investigation, it appears that significant progress has been made on several fronts:

- The Data Services Hub, which was widely expected to be the most complicated, novel, and difficult ACA information technology project, is reportedly working well and

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[1] *See* House Committee on Energy and Commerce, Democratic Staff, *Issues with Implementation of Medicare Part D* (Oct. 23, 2013) (online at http://democrats.energycommerce.house.gov/sites/default/files/documents/Supplemental-Memo-OI-Medicare-Part-D-2013-10-23.pdf).

securely provides real-time and accurate eligibility determinations to the marketplace in less than 1.2 seconds.[2]

- Initial capacity problems with the account registration process, the Enterprise Identity Management (EIDM) system, reportedly were resolved in the first few days after the website's launch. This system was overwhelmed by the volume of traffic on the website, which was designed to handle between 50,000 and 60,000 concurrent users but experienced nearly 250,000.[3] After adding more server capacity, the website now processes registration accounts at 17,000 per hour, or five per second, and account registrations have a near-zero error rate. [4]

- Waiting times for pages to load reportedly have been reduced to less than a second, down from an average of eight seconds from the first two weeks.[5] Waiting times for viewing and filtering health plans also have been decreased, reducing server timeouts.[6]

- Hardware has been upgraded to improve system stability and reduce the risk of outages.[7]

- Nearly 700,000 people reportedly have filled out applications from the federal and state marketplaces, with more than half of those from the federal marketplace.[8]

- At least 2 million people reportedly have dialed into the call center with average wait times of less than 30 seconds.[9]

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[2] Department of Health and Human Services, *What's Working in the Marketplace: The Data Services Hub* (Oct. 26, 2013) (online at www.hhs.gov/digitalstrategy/blog/2013/10/marketplace-data-services-hub.html).

[3] *Software, Design Defects Cripple Health-Care Website*, Wall Street Journal (Oct. 6, 2013) (online at http://online.wsj.com/news/articles/SB10001424052702304441404579119740283413018).

[4] Department of Health and Human Services, *HealthCare.gov: Improving the Account Registration Process* (Oct. 29, 2013) (online at www.hhs.gov/digitalstrategy/blog/2013/10/improving-account-registration-process.html).

[5] Senate Committee on Health, Education, Labor, and Pensions, *Hearing on the Online Federal Health Insurance Marketplace: Enrollment Challenges and the Path Forward* (Nov. 5, 2013).

[6] Senate Committee on Finance, *Hearing on Health Insurance Exchanges: An Update from the Administration* (Nov. 6, 2013).

[7] Department of Health and Human Services, *A Weekend of Work Brings System Progress* (Nov. 4, 2013) (online at www.hhs.gov/digitalstrategy/blog/2013/11/weekend-of-work-brings-system-progress.html).

[8] Department of Health and Human Services, *A Clear Path Forward for HealthCare.gov* (Oct. 25, 2013) (online at www.hhs.gov/healthcare/facts/blog/2013/10/marketplace-path-forward.html).

Although progress has been made to address many of these issues, significant challenges remain. HHS has reported that approximately 200 fixes have been identified on a "punch list" they are working to address by the end of November.[10] For example, although wait times for the website are down, software bugs continue to make it difficult for users to complete the registration and enrollment process.[11]

In addition, HHS has identified problems with incorrectly coded 834 transmissions, which are the data packets sent to insurers with enrollment information from the exchanges. Press accounts have reported that some of these transmissions include incorrect coding of spouses and dependents,[12] missing data fields,[13] exchanges producing multiple 834s enrolling and unenrolling the same user, and 834s without appropriate time stamps.[14] HHS reports that it has fixed 834 notices so they contain the correct date and time stamps, qualified health plan identification numbers, and consumer information.[15] The administration continues to work closely with issuers to identify and resolve any outstanding issues.[16]

II. FISMA AND SECURITY TESTING

The Federal Information Security Management Act (FISMA) requires federal agencies to provide protections for agency information systems and information collected or maintained by agencies "commensurate with the risk and magnitude of the harm" that could result from

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[9] Senate Committee on Finance, *Hearing on Health Insurance Exchanges: An Update from the Administration* (Nov. 6, 2013).

[10] *Id.*

[11] *More O-Care Site Problems 'Downstream,'* The Hill (Nov. 7, 2013) (online at http://thehill.com/blogs/healthwatch/health-reform-implementation/189615-more-o-care-site-problems-further-downstream).

[12] *Obamacare's Most Important Number: 834*, Washington Post (Oct. 23, 2013) (online at www.washingtonpost.com/blogs/wonkblog/wp/2013/10/23/the-health-care-laws-most-important-number-834/).

[13] *Health Website Woes Widen as Insurers Get Wrong Data*, Wall Street Journal (Oct. 17, 2013) (online at http://online.wsj.com/news/articles/SB10001424052702304410204579142141827109638).

[14] *ObamaCare's Black Box*, Wall Street Journal (Oct. 17, 2013) (online at http://online.wsj.com/news/articles/SB10001424052702304106704579137501568384292).

[15] Department of Health and Human Services, *A Weekend of Work Brings System Progress* (Nov. 4, 2013) (online at www.hhs.gov/digitalstrategy/blog/2013/11/weekend-of-work-brings-system-progress.html).

[16] Senate Committee on Health, Education, Labor, and Pensions, *Hearing on the Online Federal Health Insurance Marketplace: Enrollment Challenges and the Path Forward* (Nov. 5, 2013).

unauthorized access or disruption.[17] Each agency is required to implement an information security program that includes periodic assessments of the risk to the agency's information and information systems, ensures that information security is addressed throughout the life cycle of the information system, and ensures compliance with policies issued by the Office of Management and Budget (OMB) and standards issued by the National Institute of Standards and Technology (NIST).

NIST has issued a Risk Management Framework that requires agencies to conduct a Security Control Assessment (SCA) to determine whether the security controls are operating as intended, and the head of an agency or other authorized official must use this information to determine whether to authorize the operation of the system. The NIST guidance explains that the authorizing official must weigh the risks presented against the mission of the agency and the need for the system in order to determine whether to accept the risks. According the NIST: "Balancing security considerations with mission and operational needs is paramount to achieving an acceptable authorization decision."[18]

The NIST guidance also states:

[A]ll tasks are completed prior to placing the information system into operation or continuing its operation to ensure that: (i) information system-related security risks are being adequately addressed on an ongoing basis; and (ii) the authorizing official explicitly understands and accepts the risk to organizational operations and assets, individuals, other organizations, and the Nation based on the implementation of a defined set of security controls and the current security state of the information system.[19]

With respect to the Healthcare.gov website, an independent contractor, MITRE Corporation, performed security testing on components of the FFM, including the main portions that would become operational on October 1, the data hub, and the health insurance exchange. CMS Administrator Marilyn Tavenner has acknowledged that although components of the FFM were tested, the contractor was unable to conduct a full end-to-end Security Control Assessment of the FFM prior to launch.[20] Pursuant to the NIST guidance, Administrator Tavenner signed a short-term Authority to Operate (ATO) on September 27, 2013, that acknowledged the business risks associated with issuing an ATO without a full SCA, and recommended a mitigation plan to address these risks. The document stated:

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[17] 44 U.S.C. § 3544.

[18] *Id.*

[19] National Institute of Standards and Technology, *Guide for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach* (Feb. 2010) (online at http://csrc.nist.gov/publications/nistpubs/800-37-rev1/sp800-37-rev1-final.pdf).

[20] Senate Committee on Health, Education, Labor and Pensions, *Hearing on the Online Federal Health Insurance Marketplace: Enrollment Challenges and the Path Forward* (Nov. 5, 2013).

From a security perspective, the aspects of the system that were not tested due to the ongoing development, exposed a level of uncertainty that can be deemed as a high risk for FFM. Although throughout the three rounds of SCA testing all of the security controls have been tested on different versions of the system, the security contractor has not been able to test all of the security controls in one complete version of the system.[21]

In order to mitigate these risks, CMS included in the ATO a plan for an independent contractor to conduct a full, integrated SCA after each separate FFM module is tested again, within 60-90 days of the site going live, as required by the remediation plan.[22] All strategies from the mitigation plan are currently being implemented, including penetration testing, continuous monitoring for suspicious activity, and the creation of a dedicated security team.[23]

In addition to the internal penetration testing, HHS brought in a "white hat hacker" from the Computer Security Incident Response Center to attempt to identify additional security weaknesses and recommend appropriate remediation efforts.[24]

III. GAO BEST PRACTICES

The Government Accountability Office (GAO) will testify at the hearing on best practices used to develop and deploy federal IT projects. In 2011, GAO issued a report identifying nine factors that are critical to the success of federal IT projects.[25] Those factors are:

- program officials were actively engaged with stakeholders;
- program staff had the necessary knowledge and skills;
- senior department and agency executives supported the programs;
- end users and stakeholders were involved in the development of requirements;
- end users participated in testing of system functionality prior to formal end user acceptance testing;
- government and contractor staff were stable and consistent;
- program staff prioritized requirements;
- program officials maintained regular communication with the prime contractor; and
- programs received sufficient funding.

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[21] Memorandum from James Kerr, Consortium Administrator for Medicare Health Plans Operations, and Henry Chao, Deputy Chief Information Officer, to Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services (Sept. 27, 2013).

[22] *Id.*

[23] Briefing by Tony Trenkle, Chief Information Officer, Centers for Medicare and Medicaid, to House Oversight and Government Reform Committee Staff (Nov. 5, 2013).

[24] Briefing by Frank Baitman, Chief Information Officer, Department of Health and Human Services, to House Oversight and Government Reform Committee Staff (Nov. 5, 2013).

[25] Government Accountability Office, *Information Technology: Critical Factors Underlying Successful Major Acquisitions* (Oct. 2011) (GAO-12-7).

It is clear that, despite being a top priority for HHS and the Administration, the deployment of the Healthcare.gov website was not adequately tested or implemented, and it appears that some of these best practices were not followed. For instance, CMS officials have acknowledged that they did not do adequate performance testing prior to the October 1 launch.[26] In addition, since House Republicans refused the Administration's requests to fully fund ACA implementation requests, HHS and other agencies were forced to redirect funds from existing programs, including developing and launching the Healthcare.gov website.[27]

In addition, because HHS is a highly "federated" agency, many of its component bureaus, such as CMS, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the National Institutes of Health, operate with a great deal of autonomy within the Department.[28] They also have their own Chief Information Officers (CIOs) who are not directly supervised by, and do not report to, the HHS CIO.[29] On this issue, on March 20, 2013, the Committee reported out on a bipartisan basis H.R. 1232, the Federal Information Technology Acquisition Reform Act (FITARA). Among other things, FITARA would increase the authority of agency CIOs by limiting each agency to having only one CIO and requiring most to be presidential appointees. The bill also would provide CIOs with budget authority over federal IT programs, including hiring authority for IT personnel.

IV.   NO GOVERNMENT OFFICIALS OR CONTRACTORS SOUGHT DELAY

The Committee's investigation into the implementation of Healthcare.gov has identified no government officials or contractors who requested a delay of the October 1 launch date. Instead, officials interviewed by the Committee expressed confidence that the website would function properly and expressed surprise at the magnitude of the website's problems after October 1.

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[26] House Committee on Ways and Means, *Hearing on The 2010 Health Care Law Enrollment Challenges*, 113th Cong. (Oct. 30, 2013)

[27] Congressional Research Service, *Legislative Actions to Repeal, Defund, or Delay the Affordable Care Act* (Oct. 30, 2013) (R43289); *How Much Did Healthcare.gov Cost?* Washington Post (Oct. 24, 2013) (online at www.washingtonpost.com/blogs/fact-checker/wp/2013/10/24/how-much-did-healthcare-gov-cost/); Government Accountability Office, *Patient Protection and Affordable Care Act: Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges* (June 2013) (GAO-13-601).

[28] Briefing by Brian Sivak, Chief Technology Officer, Department of Health and Human Services, to House Oversight and Government Reform Committee Staff (Nov. 6, 2013); Briefing by Frank Baitman, Chief Information Officer, Department of Health and Human Services, to House Oversight and Government Reform Committee Staff (Nov. 6, 2013); Briefing by Tony Trenkle, Chief Information Officer, Centers for Medicare and Medicaid, to House Oversight and Government Reform Committee Staff (Nov. 6, 2013).

[29] *Id.*

For example, Henry Chao, the Deputy CIO of CMS who was largely responsible for overseeing the contractors developing Healthcare.gov, stated during his transcribed interview on November 1, 2013, that he was "confident" that the major functions of the website were ready to go on October 1st, and that he "expected it to perform better" than it did.[30]

According to Mr. Chao, the contractors assured him that the core functionalities would be ready for October 1:

> Q: So were you confident that these major functions were ready to go on October 1?
>
> A: Yes.
>
> Q: And why?
>
> A: Looking at a combination of, you know, interviews with the key developers, I was actually onsite in Herndon starting on—where CGI's location was as of September 10, and I basically lived there. And spending, you know, day in and day out talking with the teams, you know, getting a feel of, you know, is this going to work, is this going to work, right, kind of walking the floor 18 hours a day, making sure that they are focused on the most critical functions that were needed for day one.
>
> Q: Did any of the contractors that you were working with recommend that you push back the October 1st date?
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> A: No.
>
> Q: Or say that they needed more time?
>
> A: No. No. …
>
> Q: So given that you believe that the core functionalities were ready to go on October 1st and that the contractors you worked with were making these representations that they were ready, is it fair to say you were surprised at the magnitude of the problems that the site experienced on October 1st?
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> A: Yes.

Mr. Chao explained that he worked with the contractors to prioritize the core requirements of the website and ensure that they would be ready on October 1. He did this by delaying the launch of some modules that were not necessary for the initial launch, such as the

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[30] House Committee on Oversight and Government Reform, Transcribed Interview of Henry Chao, Deputy Chief Information Officer, Centers for Medicare and Medicaid Services (Nov. 1, 2013).

Spanish language version of the website, and focusing on functions required for individuals to successfully apply online, determine eligibility, and enroll in a plan.[31]

Similarly, during a briefing with Committee staff on November 6, 2013, Tony Trenkle, the CIO of CMS, stated that he did not request that the date of launch be delayed.[32]

In another briefing with Committee staff on November 6, 2013, Brian Sivak, the Chief Technology Officer at HHS, stated that he also did not request a delay of the launch because meetings with contractors and government officials prior to October 1 indicated that the launch was "on track."[33]

In another briefing with Committee staff on November 4, 2013, Steven VanRoekel, the U.S. Chief Information Officer, stated that he did not request a delay of the launch and indicated that he was both surprised and disappointed with how the system performed after October 1.[34]

Similarly, in public testimony before the House Committee on Energy and Commerce, the two major contractors involved in Healthcare.gov, CGI Federal and QSSI, acknowledged that they had not requested or advised a delay in the launch date.[35]

V.   WITNESSES

Panel I

Mr. Steven VanRoekel
Chief Information Officer
Administrator, Office of Electronic Government
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Mr. Todd Park
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[31] House Committee on Oversight and Government Reform, Transcribed Interview of Henry Chao, Deputy Chief Information Officer, Centers for Medicare and Medicaid Services (Nov. 1, 2013).

[32] Briefing by Tony Trenkle, Chief Information Officer, Centers for Medicare and Medicaid, to House Oversight and Government Reform Committee Staff (Nov. 6, 2013).

[33] Briefing by Brian Sivak, Chief Technology Officer, Department of Health and Human Services, to House Oversight and Government Reform Committee Staff (Nov. 6, 2013).

[34] Briefing by Steven VanRoekel, U.S. Chief Information Officer, to House Committee on Oversight and Government Reform Committee Staff (Nov. 4, 2013).

[35] House Committee on Energy and Commerce, *Hearing on Affordable Care Act Implementation,* 113th Cong. (Oct. 24, 2013).

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