

United States Senate
WASHINGTON, DC 20510

August 3, 2015

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

Dear Mr. Slavitt,

We are writing to inquire about the Centers for Medicare and Medicaid Services' (CMS) position on taxpayer dollars used to implement state-based exchanges (SBE) under the Patient Protection and Affordable Care Act (PPACA). The Administration allocated over \$1 billion in federal grants to SBE websites, and did so without exercising adequate oversight of SBE use of those funds. Instances of mismanagement or economic unsustainability, and a general lack of usability have caused a number of states to abandon their earlier efforts, with some opting to join the HealthCare.gov federal exchange. The failure of these SBEs to use federal grant money efficiently and effectively has led to the waste of more than a billion in taxpayer dollars.

These wasted dollars originally flowed from the federal treasury, which is where they should return when they are recouped from contractors. As a number of states are in the process of recouping funds from SBE contractors, we seek a clear statement of the Administration's position regarding these recouped funds. In the latest example, the principal contractor behind Maryland's failed online health exchange has agreed to pay \$45 million to avoid litigation over its performance. Whether this and similarly recouped money will be returned to the federal treasury or simply become a windfall to states, rewarding them for failure, should not be an open question.

Your predecessor stated that the recoupment of these funds is a state matter, regardless of the fact that it was federal dollars that were wasted. This reversed an earlier position taken by Secretary Burwell, who said during her confirmation hearing 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." We agree with Secretary Burwell's position. Unfortunately, the Administration has failed to follow these words with actions.

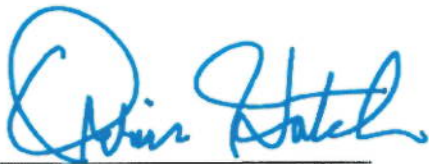
With so much federal money at stake, we seek clarity of the Administration's position. Accordingly, please answer the following questions:

1. Will the federal government award states with recouped grant windfalls after the failure of their SBEs? Or will recouped SBE grants be returned to the federal treasury?

2. Does CMS 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? Or will your agency rely on states?
3. Several states, including Maryland, Massachusetts, Nevada, and Oregon, 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?
4. What is the estimated cost in additional federal funds that will be needed to either move failed state exchanges to the federal marketplace or transition failed exchanges to other technology platforms?
5. 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 August 21, 2015. If you have any questions regarding this request please contact [REDACTED]


Sincerely,



Senator Orrin G. Hatch



Senator Charles E. Grassley



Senator John A. Barrasso