

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
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MEMORANDUM

September 9, 2013

To: Committee on Energy and Commerce Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Hearing on “PPACA Pulse Check: Part 2.”

On Tuesday, September 10, 2013, at 10:15 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Health will hold a hearing titled, ““PPACA Pulse Check: Part 2.”

I WITNESSES

Lynn Spellecy
Corporate Counsel
Equifax Workforce Solutions

John Lau
Program Director
Serco

Cheryl Campbell
Senior Vice President
CGI Federal

Michael Finkel
Executive Vice President of Program Delivery
QSSI

Brett Graham
Partner
Leavitt Partners

Edward A. Lenz
Senior Counsel
American Staffing Association
on Behalf of the Employers for Flexibility in Health Care Coalition

Antionette Kraus
Director
Pennsylvania Health Access

II. ACA CONTRACTORS

Consistent with longstanding practice across the federal government, the Department of Health and Human Services (HHS) has entered into contracts with private entities to help implement portions of the Affordable Care Act (ACA). The four contractors testifying at Tuesday's hearing are each responsible for building and or operating important pieces of the infrastructure necessary to make the new health insurance marketplaces function correctly. Each was awarded its contract after a competitive bidding process, in which career HHS staff evaluated applications and selected the company which they believed could provide the best value to the government.¹

Quality Services SL International (QSSI) was awarded a contract to construct the "Data Hub." The Hub is an information technology platform, which allows for health insurance marketplaces to immediately validate information provided by applicants against information maintained in existing federal databases including the Social Security Administration, Department of Homeland Security, Department of Defense, Department of Veterans Affairs, the Internal Revenue Service, the Center of Medicare and Medicaid Services, and the Office of Personnel Management. The Hub is not a new database that will compile or store the citizenship, income, health insurance information, and other relevant information provided by the applicant or already present in discrete federal databases in one place. Rather, the Hub is a technology which will allow the health insurance marketplaces to validate the information provided against the existing databases and report back to the applicant whether their attested information matches with existing government data.²

Serco was awarded a contract to support the sorting and processing of applications submitted to the federally facilitated marketplaces. Serco will manage a mailroom to process the applications on paper. Serco may also assist CMS in managing submitted information, requesting additional documentation from applicants, and resolving eligibility questions. Given

¹ Briefing from CGI Federal to House Energy and Commerce Committee Majority and Minority Staff (Aug. 14, 2013); and Briefing from Equifax to House Energy and Commerce Committee Majority and Minority Staff (Aug. 18, 2013); and Briefing from Serco to House Energy and Commerce Committee Majority and Minority Staff (Aug. 22, 2013); and Briefing from QSSI to House Energy and Commerce Committee Majority and Minority Staff (Sept. 04, 2013).

² Centers for Medicare and Medicaid Services, *Federal Marketplace Progress Fact Sheet* (online at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/ffe.html>).

the inherent uncertainty of the number of applications submitted electronically versus on paper, Serco is prepared to handle a large volume of paper applications.³

CGI Federal was awarded a contract to build the federally facilitated health insurance marketplace. The company has constructed the consumer facing website healthcare.gov and the back-end information technology required for the marketplace to intake bids from insurance companies, post plan information online, and take in applications for health insurance and premium tax credits.⁴

Equifax was awarded a contract to provide additional support for the income verification processes applicants must go through before receiving premium tax credits through the marketplaces. As detailed extensively in CMS Frequently Asked Questions and a letter to the Committee, the marketplaces will have rigorous income verification procedures in place before individuals can receive financial assistance to purchase health insurance.⁵ If applicants' current wage data is not available in IRS databases, the marketplaces will check the information provided against Equifax's database of current wage information on 54 million Americans. Equifax's database is generated through reports from 3000 employers and the company already performs similar income verification functions for 30 state governments.⁶

III. ADDITIONAL WITNESSES

In addition to the contractors, three additional witnesses will offer testimony. Brett Graham from Leavitt Partners is expected to offer a perspective on the progress of implementation in states around the country. Edward Lenz from the American Staffing Association will be testifying on behalf of the Employer for Flexibility in Health Care Coalition. The Coalition has provided comments on a number of regulations implementing the Affordable Care Act and was in favor of the recently announced transitional relief, which delayed enforcement of the law's employer responsibility provisions until 2015. Antoinette Kraus from Pennsylvania Health Access will offer testimony about the impact of the ACA on the citizens of Pennsylvania and the negative effects of state government opposition to expanding Medicaid and operating a state based marketplace.

³ Briefing from Serco to House Energy and Commerce Committee Majority and Minority Staff (Aug. 22, 2013).

⁴ Briefing from CGI Federal to House Energy and Commerce Committee Majority and Minority Staff (Aug. 14, 2013).

⁵ Letter from Jim R. Esquea, Assistant Secretary, Legislation, U.S. Department of Health and Human Services, to Chairman Fred Upton (Aug. 22, 2013); and Department of Health and Human Services, *Frequently Asked Questions on Health Insurance Marketplace and Income Verification* (online at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/income-verification-8-5-2013.pdf>).

⁶ Briefing from Equifax to House Energy and Commerce Committee Majority and Minority Staff (Aug. 18, 2013).

IV. POTENTIAL TOPICS OF DISCUSSION

a. Readiness for October 1 Open Enrollment

The health insurance marketplaces appear to be on schedule for open enrollment to begin on October 1. Secretary Sebelius and Administrator Tavenner have both testified before the Committee that they expect the marketplaces to open on time.⁷

The Administration has always made clear, however, that implementation is unlikely to proceed exactly on schedule or without any glitches. As the President said “that's not to say that everything's going to go perfectly right away. When you're implementing a program this large, there will be some glitches. There are going to be some hiccups. But no matter what, every single consumer will be covered by the new benefits and protections under this law permanently.”⁸

In her testimony before the Committee on August 1, Administrator Tavenner made clear that CMS has contingency plans for states that may not be fully prepared to interface with CMS on October 1.⁹ GAO, the HHS IG, and some public reports have indicated that some system tests and deadlines have been delayed in recent months.¹⁰ CMS has stated that these minor adjustments are not unexpected and are unlikely to delay the start of open enrollment on October 1.¹¹ Additionally, in briefings with Committee staff, each of the four contractors testifying at Tuesdays hearing have confirmed that testing has proceeded well and they are on track for an on-time launch on October 1.¹²

⁷ House Committee on Energy and Commerce, Testimony of Department of Health and Human Services Secretary Kathleen Sebelius and Centers for Medicare and Medicaid Services Administrator Marilyn Tavenner, *Hearing on Health and Human Services Budget*, 113th Cong. (Apr. 18, 2013); and House Committee on Energy and Commerce, Testimony of Department of Health and Human Services Secretary Kathleen Sebelius and Centers for Medicare and Medicaid Services Administrator Marilyn Tavenner, *PPACA Pulse Check*, 113th Cong. (Aug. 1, 2013).

⁸ The White House, *Statement by the President* (online at <http://www.whitehouse.gov/the-press-office/2013/06/07/statement-president>).

⁹ House Committee on Energy and Commerce, Testimony of Department of Health and Human Services Secretary Kathleen Sebelius and Centers for Medicare and Medicaid Services Administrator Marilyn Tavenner, *PPACA Pulse Check*, 113th Cong. (Aug. 1, 2013).

¹⁰ Department of Health and Human Services, *Observations Noted During the OIG Review of CMS's Implementation of the Health Insurance Exchange-Data Services Hub* (online at <http://oig.hhs.gov/oas/reports/region1/181330070.pdf>); and United States Government Accountability Office, *Patient Protection and Affordable Care Act* (online at <http://www.gao.gov/assets/660/655905.pdf>); Reuters, *Exclusive: U.S. delays deadline for finalizing Obamacare health plans* (online at <http://www.reuters.com/article/2013/08/28/us-usa-healthcare-obamacare-idUSBRE97R04X20130828>).

¹¹ *Id.*

¹² Briefing from CGI Federal to House Energy and Commerce Committee Majority and Minority Staff (Aug. 14, 2013); and Briefing from Equifax to House Energy and Commerce Committee Majority and Minority Staff (Aug. 18, 2013); and Briefing from Serco to House Energy and Commerce Committee Majority and Minority Staff (Aug. 22, 2013); and Briefing

b. Privacy and Data Security

Critics of the law have raised frequent concerns that the systems and consumer assistance personnel through which applicants will enroll in coverage will put the privacy of personal information, including protected health information, at risk.¹³ As an initial matter, it is important to note that the Affordable Care Act significantly limits the risk that an individual's protected health information could be disclosed when applying for coverage. In contrast to applications for health coverage in prior years where individuals were required to submit a detailed medical history to insurance companies before receiving coverage, coverage offered through the marketplaces can no longer be priced based on an applicant's medical history and can no longer discriminate against applicants based on pre-existing conditions. Therefore, marketplace applicants will not be submitting any protected health information when applying for coverage.

With respect to personally identifiable information such as Social Security numbers and addresses which will be submitted through the marketplaces, the technical infrastructure through which this information will pass is highly secure. CMS has outlined its intensive privacy and security standards known as the "Minimum Acceptable Risk Standards for Marketplaces (MARS-E)."¹⁴ These standards apply to marketplaces as well as those assisting consumers – Navigators, consumer assistance personnel, and agents and brokers. The standards also apply to all information an applicant submits and not just to personally identifiable information.¹⁵ Each of the contractors testifying at Tuesday's hearing has informed the Committee of their significant privacy and security protocols.¹⁶

Navigators and other consumer assistance personnel are subject to strict certification and training requirements before they can assist individuals in signing up for coverage.¹⁷ Navigators have to certify that they will abide by CMS privacy standards and face stiff penalties under CMS regulations and existing federal laws if they improperly handle or disclose private information.

from QSSI to House Energy and Commerce Committee Majority and Minority Staff (Sept. 04, 2013).

¹³ See eg: The Hill, *States raise privacy concerns over health*, (Aug. 17, 2013) (online at <http://thehill.com/blogs/healthwatch/health-reform-implementation/317513-state-attorneys-general-raise-privacy-concerns-over-obamacare-navigators>).

¹⁴ Centers for Medicare and Medicaid Services, *Minimum Acceptable Risk Standards for Exchanges-Exchange Reference Architecture Supplement: Version 1.0* (online at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Minimum-Acceptable-Risk-Standards-for-Exchanges-ERA-Supp-v-1-0-08012012-a.pdf>).

¹⁵ National Archives and Records Administration, *Federal Register: Department of Health and Human Services* (online at <http://www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21338.pdf>)

¹⁶ *Id.*

¹⁷ National Archives and Records Administration, *Federal Register: Department of Health and Human Services* (online at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-17/pdf/2013-17125.pdf>).

States are also permitted to require additional licensing and background check requirements on navigators, and many have elected to do so.¹⁸

c. Income Verification

Eligibility for the advanced premium tax credits made available through the marketplaces depends upon the applicant's income. Additionally, the size of the tax credits and the availability of cost-sharing reductions vary along with the applicant's income. When applying for tax credits or cost-sharing reductions, applicants will be required to input their projected annual household income so that the marketplace can determine the amount of financial assistance, if any, they are eligible for.¹⁹

There are numerous protections in place to ensure that individuals only receive financial assistance for which they are eligible. If the individual's actual income makes them ineligible for the assistance they received, the IRS will recoup excess payments when the individual files his or her taxes. Additionally, when applicants provide information in their applications, they attest under penalty of perjury that they are not providing false or fraudulent information. The Affordable Care Act also sets out additional financial penalties if individuals negligently or deliberately provides false or fraudulent information on their application.²⁰

In addition to these robust safeguards on the back-end, CMS also takes significant steps to verify accuracy of the individual's projected annual income during the application process. When applicants submit projected annual household income to the marketplace, that information is compared with IRS and Social Security data as well as current wage data in Equifax's database. If the information in these databases do not match up with the information provided by the applicant, the Marketplace will request an explanation or additional documentation.²¹

If Equifax data is not available for a given applicant, and the applicant's attested income is more than 10% below IRS or SSA data, and the individual cannot provide a reasonable explanation of the discrepancy, the Marketplace will request additional documentation from the applicant. CMS has said that while it will allow state marketplaces to request this additional documentation from a statistically representative sample of applicants, the federal marketplace will request additional documentation from 100% of applicants meeting this criteria.²²

¹⁸ *Id.*

¹⁹ Centers for Medicare and Medicaid Services, *Frequently Asked Questions on Health Insurance Marketplaces and Income Verification* (online at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/income-verification-8-5-2013.pdf>).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

d. Republican Opposition to Implementation

On August 1, the Democratic staff released a memorandum listing the ten ways Republicans have undermined and obstructed the implementation of the Affordable Care Act.²³ Building upon these efforts, this past week, Chairman Upton and other Republican members of the Committee launched a groundless investigation into civic organizations working to help sign up uninsured Americans for coverage. The investigation has no legitimate predicate and appears designed simply to intimidate these groups and divert resources they could otherwise be using to help make health reform a success.²⁴

In addition, this month Republicans are promising to add to their tally of 40 votes to repeal or undermine the Affordable Care Act. In states around the country many Republican leaders are still refusing to accept the Medicaid expansion. Some officials are spreading misinformation about the privacy of individual health information in the health insurance marketplaces and passing laws to obstruct the ability of government workers to assist individuals seeking information about the law.²⁵ The Georgia insurance Commissioner put his goals plainly: “Let me tell you what we’re doing (about Obamacare). Everything in our power to be an obstructionist.”²⁶

These sabotage efforts have come under increasing criticism from impartial observers.²⁷ Tuesday’s hearing offers an opportunity to discuss the impact of these efforts on individuals and families living in states whose leadership continues to obstruct the implementation of the law. Ms. Kraus of Pennsylvania Health Access will offer a unique, on-the-ground perspective on the impact of her state’s rejection of the Medicaid expansion and its deferral to a federally facilitated marketplace.

²³ Memorandum from Committee on Energy and Commerce Democratic Staff, *Ten Ways Republicans Have Acted to Undermine the Affordable Care Act* (Aug. 1, 2013).

²⁴ Letter from Ranking Member Henry A. Waxman to Chairman Fred Upton (Aug. 30, 2013)

²⁵ *13 State AGs say Obamacare Fails to Protect Consumers’ Private Information*, The Washington Times (Aug. 14, 2013) and *State Laws Hinder Obamacare Effort to Enroll Uninsured*, Bloomberg (Aug. 23, 2013).

²⁶ *GA Insurance Chief Brags About Sabotage of Obamacare*, Atlanta Journal Constitution (Aug. 29, 2013).

²⁷ See eg: *Republicans Should Get Out of the Way of Obamacare*, Washington Post (Sep. 2, 2013).