Congress of the United States
House of Representatives
Washington, DC 20515

December 8, 2015

Mr. Andrew Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Mr. Slavitt:

Pursuant to Rule X of the U.S. House of Representatives, the Committee on Ways and Means and the Committee on Energy and Commerce are continuing our oversight of the Administration's implementation of the Patient Protection and Affordable Care Act (ACA). We write to request information related to the Centers for Medicare and Medicaid Services' (CMS) oversight of state exchanges, particularly those that have transitioned to the federally-facilitated marketplace (HealthCare.gov or FFM).

To date, four states (Hawaii, Nevada, New Mexico, and Oregon) that cumulatively received more than $700 million in exchange establishment grants[1] have opted to abandon their own state exchanges and use the HealthCare.gov platform. Most Qualified Health Plans (QHPs) using the FFM system pay a 3.5 percent user fee on plans sold on the exchange to offset the administrative costs of the FFM. However, CMS appears to allow the state exchanges using the FFM system flexibility to set and collect user fees sold in their respective states.[2] CMS has apparently allowed at least two of these states (Oregon and Nevada), to retain 100 percent of the fees they collected.[3] Essentially, this allows Oregon, Nevada, and any other state with this particular arrangement, to use the FFM for free while pocketing user fees charged to QHPs in their state for their own use.

Pursuant to Office of Management and Budget guidance, user fees should be "sufficient to recover the full cost to the Federal Government…of providing the service."[4] User fees are to ensure that those who benefit from a particular service are also the ones who pay for it, and not American taxpayer generally. Presumably, the cost of these foregone fees will be paid for by all taxpayers, including those not using services related to HealthCare.gov, as part of a $629 million appropriation requested by CMS for FY 2016 to cover the FFM's expected user fee shortfall.[5] Notwithstanding CMS's inability to control its own spending on the FFM, it is deeply troubling

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[1] Annie L. Mach and C. Stephen Redhead, Congressional Research Service, Federal Funding for Health Insurance Exchanges (Oct. 29 2014).
[2] Austin Bordelon, Supported State-Based Marketplaces Forge New Option for States, Leavitt Partners (Nov. 11, 2014).
[3] *Id.*
[4] Office of Management and Budget, Circular No. A-25 Revised.
[5] Centers for Medicare and Medicaid Services, Fiscal Year 2016 Justification of Estimates for Appropriations Committees (2015).

that CMS would opt to reward states with failed exchanges that cost taxpayers hundreds of millions of dollars in wasted establishment funding by allowing them to keep fees designed to fund FFM operations.

Recently, CMS outlined a proposal for assessing a three percent fee on state exchanges using HealthCare.gov.[6] CMS explained that the three percent fee would be "reflective of HHS's actual costs [of running the exchange]."[7] However, this proposed fee will not go into effect until 2017, allowing these states to continue using the FFM for free for a year or more. Additionally, CMS is considering reducing the fee assessed by as much as 50 percent to 1.5 percent, to ease the "administrative burdens" for these states.[8] For 2016 and possibly beyond, these proposals will continue to allow states like Oregon, which wasted more than $300 million building a failed exchange, to collect fees from plans sold on the federal exchange while contributing nothing to the administrative costs of running HealthCare.gov. Ultimately, taxpayers will likely be required to bear the cost.

To better understand CMS' actions, please provide the following documents and information no later than December 22, 2015:

1. All agreements between CMS and Hawaii, Nevada, New Mexico, and Oregon related to the use of the federal exchange system including any agreements on the assessment of user fees.
2. The total amount collected in fees assessed to issuers to support the exchanges in Hawaii, Nevada, New Mexico, and Oregon in calendar years 2014 and 2015.
3. The expected amount of fees assessed to issuers to support the exchanges in Hawaii, Nevada, New Mexico, and Oregon in calendar years 2016 and 2017.
4. How much in exchange establishment grants awarded to Oregon, Nevada, New Mexico, and Hawaii have been returned to taxpayers as a result of the failure of these exchanges and the states' decisions to utilize the FFM platform instead?

If you have any questions about this matter, please contact Meinan Goto of the Committee on Ways and Means staff at (202) 225-5522 and Emily Felder of the Committee on Energy and Commerce staff at (202) 225-5074.

Sincerely,

Kevin Brady
Chairman
Committee on Ways and Means

Fred Upton
Chairman
Committee on Energy and Commerce

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[6] Centers for Medicare and Medicaid Services, HHS Notice of Benefit and Payment Parameters for 2017 (Nov. 27, 2015).
[7] *Id.*
[8] *Id.*

Peter J. Roskam
Chairman
Subcommittee on Oversight
Committee on Ways and Means

Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce

cc: The Honorable Sander Levin, Ranking Member, Committee on Ways and Means

The Honorable Frank Pallone, Jr., Ranking Member, Committee on Energy and Commerce

The Honorable John Lewis, Ranking Member, Subcommittee on Oversight, Committee on Ways and Means

The Honorable Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce