



PIONEER INSTITUTE

PUBLIC POLICY RESEARCH

Board of Directors

Steven Akin
Nancy Coolidge
Andrew Davis
Stephen Fantone
Douglas Foy
Kerry Healey
Charles C. Hewitt III
Lucile Hicks
Keith Hylton
C. Bruce Johnstone
John Kingston
Nicole Manseau
Preston McSwain
Mark V. Rickabaugh
Diane Schmalensee
Kristin Servison
Brian Shortsleeve
Patrick Wilmerding

October 28, 2014

Mr. James Comey
Office of the Director
FBI Headquarters
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Chairman Darrell Issa
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Chairman Emeritus
William B. Tyler

Mr. Daniel Levinson
Office of Inspector General
U.S. Department of Health & Human Services
330 Independence Avenue, SW

Honorary Directors
Emmy Lou Hewitt
Edna Shamie
Phyllis Stearns

Officers

Room 5250
Washington, DC 20201

Chairman
Stephen Fantone

Vice-Chairs
Lucile Hicks
C. Bruce Johnstone

Mr. Joel Willemsen
U.S. Government Accountability Office
441 G St. N.W.
Washington, DC 20548

Executive Director
Jim Stergios

Treasurer
Nancy Anthony

Dear Messrs Comey, Issa, Levinson and Willemsen:

Clerk
Assistant Treasurer
Mary Connaughton

Pioneer Institute is an independent research organization committed to the protection of core political freedoms and greater prosperity for all Massachusetts residents. Our work focuses on strategic policy areas that enhance freedom and prosperity, including world-class education and health care, effective government, and robust job creation.

Academic Advisors

Charles D. Baker, Sr.
Northeastern University

Brigitte Berger
Boston University

Edwin J. Delattre
Boston University

Keith Hylton
Boston University

Jonathan B. Imber
Wellesley College

Laurence J. Kotlikoff
Boston University

Marc Landy
Boston College

Harvey C. Mansfield, Jr.
Harvard University

R. Shep Melnick
Boston College

The Institute has reason to believe that the Commonwealth of Massachusetts likely misled the Centers for Medicaid and Medicare Services (CMS) about the readiness of the Massachusetts Health Insurance Exchange and Integrated Eligibility System (hereafter "HIX") project in advance of the October 1, 2013 launch date required under the Affordable Care Act.

We have come to this view after speaking to multiple former contractors to the Commonwealth (particularly with the University of Massachusetts Medical School) who were working on the Massachusetts HIX project, and after reviewing hundreds of pages of documents including independent third-party audit reports.

More specifically, we believe the state knew that the primary vendor CGI Technologies and Solution Inc. (CGI) was much further behind schedule than the Commonwealth represented to CMS during a May 2013 Final Detailed Design Review (FDDR) presentation.ⁱ Further, we believe that the Commonwealth concealed its lack of readiness in a March 2013 connectivity test with the Federal Data Services Hub, by failing to conduct the test as required.

In doing so, we believe that Commonwealth HIX officials may have violated federal laws, including the Criminal False Claims Act — 18 USC 287 & 1001; the Program Fraud and Civil Remedies Act of 1986 — 31 USC 3801; and the Civil False Claims Act 31 USC 3729(a).

These two incidents, taken together, caused CMS to have undue confidence in the Commonwealth to complete development of the HIX website in time for the October 1, 2013 launch date. The on-time launch of a deficient website has had numerous deleterious effects on state and federal taxpayers, as well as Commonwealth residents seeking timely enrollment in ACA-compliant health plans.

One key impact has been the placement of 316,000+ residents on “transitional” Medicaid plans in January 2014, even though these residents were never accurately determined to be eligible for Medicaid.ⁱⁱ Another negative impact has been that the vendor, CGI, may have been paid illegally for work it never completed, including \$15 million in payments in advance of the October 1, 2013 launch date, and an additional \$35 million during a transition period post-launch, after the Commonwealth decided to sever its contract with CGI.

In its May FDDR presentation to CMS, the Massachusetts HIX project team, led by UMass Medical School contractor and HIX Project Manager Janice Baker, made claims about the HIX project that we believe vastly overstated the amount of work successfully completed.

Commonwealth Appears to Lie About Progress on Project to Keep Funds

Our conclusions are based on conversations with contractors on the job at the time, and concurrent reports by Independent Verification and Validation (IV&V) vendor Berry Dunn. For example, in the May presentation the following update of project progress was given:

1. Requirements and high-level design: 99 percent complete

In fact, the monthly Berry Dunn report for April 2013, in advance of this May presentation, highlights several important and significant gaps in the requirements and design of the site.

Berry Dunn identified as a “barrier” to success that there is no list of interface requirements for the October 1 deadline. “There is little visibility into CGI’s design and development of key interfaces required for 10/1 go-live. There is little confidence that interaction between CGI and the Commonwealth business leads is occurring to define the interfaces required and specifications for the interfaces,” the report states.

Berry Dunn also identified as a barrier to success in the April report, the “fragmented vision” of the site’s architecture design, with the state insisting that the site would be compliant with Service Oriented Architecture requirements, while significant confusion persisted at CGI about

what type of architecture the site would conform to. CGI later in April acknowledged that the site would likely not be SOA-compliant, Berry Dunn reported, with a CGI developer saying, “the services aren’t there”.

Thirdly, Berry Dunn noted in the April monthly report that there is no configuration management plan in place. Berry Dunn had recommended that CGI submit this plan on April 7, but CGI failed to do so.ⁱⁱⁱ

2. Design and Build: 60 percent complete

Based on information gleaned from reports and from interviews with whistleblowers, it is highly infeasible that 60 percent of the design and build activities were contained in code that the Commonwealth had received by May 2013, and that HIX leaders were aware (or should have been aware) of this fact.

The original contract entered into by the Commonwealth and CGI stipulated that there would be four Code Drops, with the following dates: Code Drop 1, 10/26/2012; Code Drop 2, 1/4/2013; Code Drop 3, 4/26/2013; Code Drop 4, 7/29/2013. However, in January 2013, Code Drop 1 had yet to be delivered, and the project was so far behind that the schedule was amended to include only two Code Drops, with all of the code initially scheduled for Code Drops 2, 3, and 4 collapsed into Code Drop 2. A new due date of July 1 – 90 days before the October 1, 2013 - was eventually agreed upon for the delivery of Code Drop 2.

It’s important to note that according to the contract, a Code Drop milestone is reached only when all testing, including User Acceptance Testing, has been completed and when all major defects have been repaired.

This was not the case for Code Drop 1 at the time of the presentation. Code Drop 1 appears to have been delivered in February, but was still awaiting User Acceptance Testing as of the May 6 presentation.

Whistleblowers say, and Berry Dunn reports confirm, that Code Drop 1 contained little code aside from four “shared services.” Berry Dunn reported in April that, “of the 93 Functions described in the MA HIX/IES Contingency Plan, 18 are deferred. Of the remaining 75, 10 have a status of ‘Completed’.” Berry Dunn went on to explain that 61 of the 65 functions that were not completed were part of the “CMS Core 70” list, meaning they were requirements for launching the site on October 1. Berry Dunn wrote that none of the unfinished 65 functions had been completed during April.

The Commonwealth told CMS in the presentation that while delivery of content from Code Drop 2 was behind schedule, 29 percent of that code had been delivered.

We believe this estimate strains credulity.

First, Berry Dunn reports show, and the Commonwealth acknowledged, that some of the functions initially scheduled to be part of Code Drop 2 would be deferred until after the October

1 launch. In April, 40 such functions were under consideration for deferral past the October launch date, according to Berry Dunn.

Second, Berry Dunn wrote that zero code from Code Drop 2 had been checked into the central servers, as of the end of April. Berry Dunn said CGI told them the code was being kept on individual developers' computers. This prevented Berry Dunn analysts from validating the testing of the code. A software expert we consulted said this is often a tactic employed to conceal unfinished work.

3. Testing: 46 percent complete

We believe that the Commonwealth misrepresented the amount of testing completed ahead of the May presentation to CMS. While Berry Dunn reports confirm that the code associated with Code Drop 1 had gone through Integrated System Testing, and was set to enter User Acceptance Testing, this represented a small fraction of the code that needed to be tested.

No test plan was in place for the majority of the code, to be delivered as part of Code Drop 2, as of the May 6 presentation. This plan was due on April 30 and was not delivered by CGI, according to Berry Dunn.

The plan, once delivered in May after the presentation, was so sub-standard that it prompted Berry Dunn to issue a warning to the Commonwealth in its May 17th weekly report, which reads in part, "we cannot recommend that this approach be adopted. Simply put, we believe the likely outcome is not worth the effort expended nor the risks incurred." Berry Dunn went on to advise that the test plan for Code Drop 2 increases the risk of non-compliance of the system turned over for production on October 1, 2013.

Over the next few months, Berry Dunn reports would go on to document in detail the failures of CGI's test strategy, which the Commonwealth agreed to adopt on May 31st.

Highlights include:

1. Only about 10 percent of Java source code was routinely tested. Berry Dunn reports that 76 percent testing of Java source code is the industry standard.
2. Site development and testing were conducted concurrently, raising the risk of new defects being introduced following testing.
3. Testing delays were caused by the decision to defer the conversion of legacy enrollee data, required for use in testing, until after the October 1 launch.
4. Test exit/entrance criteria did not conform to industry standards
5. Testing delays were caused by the chronic instability of both the Integrated System Testing and User Acceptance Testing environments, or "dummy sites."

By July, just 120 out of 3129 Component Test Scripts had passed, according to Berry Dunn, while 274 had failed and 185 weren't executed. Berry Dunn said 935 of the test scripts had been put on hold "for various reasons including that the functionality is not available and blocking defects exists".

Most damning is the fact that by the October 1 launch, zero User Acceptance Testing had been performed on the Code Drop 2 content, which made up the bulk of the site. Given the multitude of quality control problems and delays that plagued the testing of the Massachusetts HIX site up until the October 1, 2013 launch date, it is difficult to imagine that 46 percent of testing could have been completed by May 6, 2013. After all, the majority of the site's functions, including eligibility determination and health plan enrollment interfaces, had not even been built at that time.

We are asking the FBI to investigate discrepancies between the Commonwealth's portrayal of its progress on the Massachusetts HIX site in the May 6 FDDR presentation to CMS, and information reported both by whistleblowers working as part of the UMass Medical School team, and the Berry Dunn reports.

The Commonwealth Used Open Source Software Instead of Developed Software in Federal Test, and Mised on Extend of Backend Functions, Similar to Charges in Oregon

We are also requesting the FBI to probe another incident which allegedly occurred in March 2013 during connectivity testing with the Federal Services Data Hub. Whistleblowers say the Commonwealth misrepresented its readiness and concealed the lack of progress on the Massachusetts HIX by sidestepping requirements of the test.

Massachusetts was required to use its own HIX site to connect with the federal site by requesting information, receiving it and confirming the receipt of information to federal authorities. Instead, because state servers, website code, firewalls and other essential parts of the project were absent or incomplete, the state and its vendor CGI used newly-minted HIX URLs backed by free open source software to conduct the test, concealing the fact that there was no content on the state website behind the URLs.

Whistleblowers allege that the Massachusetts HIX interface manager informed CGI that the test could not be performed this way because it was "cheating" and instead advised CGI to "come clean" to federal authorities that the servers were not ready to support the test. Whistleblowers claim the interface manager was removed from his position the day before the test was scheduled to take place.

This incident, described by whistleblowers, mirrors allegations made about a misleading connectivity test conducted by Oregon officials in support of its state HIX. The FBI opened a probe in May of 2014 to look into whether the state intentionally misled federal authorities in order to draw down federal funds.^{iv} It appears to be a similar situation in the Commonwealth.

The impact of the misrepresentations was that the federal government was unaware of the depth of the Massachusetts HIX site troubles. This led the Centers for Medicare and Medicaid Services to extend later deadlines in July and August to allow Massachusetts to launch its website on October 1, without having full knowledge of the degree of dysfunction that still beset the project.

The alleged misrepresentations, up to six months before the launch of the site, show that the state was well aware early on that the website project was off-track and unlikely to be completed on

time. But the state failed to adequately inform federal authorities, the Health Connector Board, or the public of website failures that would threaten to bump hundreds of thousands of people off health insurance. In fact, public officials were traveling the state and speaking to the media praising the vision and innovation behind the HIX, while at the same time being listed on internal memos and attending meetings in which the grave state of the project was being discussed, and contracts between the state and CGI were being renegotiated.^v

The website debacle has led to hundreds of thousands of residents being placed on temporary taxpayer-funded Medicaid since January 2014, with little eligibility verification. Many of these beneficiaries may be found ineligible for Medicaid, or are prohibited by federal law from receiving these benefits.

Thank you for your timely consideration of this important matter. We stand ready to cooperate with the FBI or any other federal or state agency that launches an investigation into this very important matter, by providing access to documents in our possession and access to whistleblowers.



James Stergios

cc:

Rep. Elijah Cummings
Governor Deval Patrick
Special Agent Vincent Lisi, Boston FBI
Sen. Cynthia Creem
Rep. David Linsky

ⁱ Massachusetts HIX/IES, Final Detailed Design Review, CMS/CCIIO, May 7, 2013. Available at:

<https://www.dropbox.com/s/ip29ecot13qvs06/HIXIESPresentation%20May%202013%20to%20CMS.pptx?dl=0>

ⁱⁱ This group not only includes those ineligible for Medicaid due to income, but also those prohibited by federal law from receiving Medicaid benefits such as legal immigrants here less than five years, who do not otherwise qualify for eligibility. Enrollment numbers taken from CHIA, "Massachusetts Health Care Coverage: Enrollment Trends (October 2014 Edition)," October 2014, available at: <http://www.mass.gov/chia/docs/r/pubs/14/enrollment-trends-brief-oct-2014.pdf>

ⁱⁱⁱ IV&V reports from late 2012 to the end of 2013 can be accessed here:

https://www.dropbox.com/sh/43wu79lsxlgvsw/AAAER16Ar_MHleL16wTfGIPna?dl=0

^{iv} Nick Budnick, "FBI, Inspector General Investigators Probing Cover Oregon Health Insurance Exchange Debacle," *The Oregonian*, May 2, 2014, Available at:

http://www.oregonlive.com/health/index.ssf/2014/05/fbi_inspector_general_investig.html

^v See Ed Lyons, "The Health Connector Autopsy Report," Available at: <https://medium.com/@mysteriousrook/the-whole-story-of-the-massachusetts-health-connector-888dd16c4366>