

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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March 14, 2016

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

Dear Mr. Slavitt,

The Committee on Science, Space, and Technology is continuing its oversight of the data warehouse system that supports HealthCare.gov, otherwise known as the Multidimensional Insurance Data Analytics System (MIDAS). The Committee previously wrote to you on June 18, 2015, and July 21, 2015, requesting documents and information concerning allegations that personal information is being stored for all individuals who open an account on the HealthCare.gov website, regardless of whether they sign up for coverage.¹ Given that the Centers for Medicare and Medicaid Services (CMS) has enjoyed over eight months of additional time to produce the requested information and numerous additional opportunities to provide a full and complete production, the Committee is now compelling production of the requested documents.

Although the Committee initially wrote to CMS on June 18, 2015, the agency did not produce an initial response until over four weeks after the deadline. The agency's response, however, was cursory, at best. The response largely consisted of publically available information printed out and called "a document production."² After nearly three months of non-responsiveness from the agency following its first production, Committee staff reached out to CMS and attempted to prioritize the document requests in an attempt to expedite production.³ One month later, CMS provided a second production to the Committee containing general descriptions of the MIDAS program, but no communications or substantive documents requested by the Committee.⁴ Weeks later, Committee staff discovered during a phone call with your staff

¹ Letter from Hon. Lamar Smith & Hon. Barry Loudermilk, H. Comm. on Science, Space, & Tech., to Mr. Andy Slavitt, Acting Administrator, Centers for Medicare & Medicaid Serv. (Jun. 18, 2015); Letter from Hon. Lamar Smith & Hon. Barry Loudermilk, H. Comm. on Science, Space, & Tech., to Mr. Andy Slavitt, Acting Administrator, Centers for Medicare & Medicaid Serv. (Jul. 21, 2015).

² CMS Production, Jul. 31, 2015.

³ E-mail from H. Comm. on Science, Space, & Tech. Staff to CMS Legislative Affairs Staff (Oct. 13, 2015, 5:28 p.m.).

⁴ CMS Production, Nov. 13, 2015.

that CMS self-limited the scope of requested documents that were produced to the Committee in its second production, with no intention of informing the Committee that certain documents were purposefully not included.

After several phone calls with your staff and an additional effort by the Committee to further narrow and prioritize the request, Committee staff informed your staff on February 10, 2016, that the Committee expected weekly productions going forward until CMS could certify that all responsive documents have been produced to the Committee.⁵ Committee staff informed your staff that if the Committee did not receive weekly productions that included requested communications, the Committee would compel production.⁶ Despite producing three sets of documents following this communication to your staff, CMS' productions have not, in whole, amounted to a good-faith effort to fully comply with the Committee's outstanding request. Further, CMS failed to meet its commitment to make weekly productions to the Committee without providing notice of its intent to forego the deadline.

Although CMS continues to slow roll its production of documents to the Committee, new information continues to come to light about the MIDAS program. In September 2015, the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services released an audit regarding the \$110 million data warehouse system.⁷ The audit highlighted a number of technical deficiencies, including software bugs, some of which were classified as high risk, failure to conduct automated vulnerability scans, failure to disable generic accounts used for maintenance or testing, and using a shared read-only account for access to the database, making it difficult to tell which individuals have access to the information and when individuals access the database.⁸ In fact, cyber security experts testified before the Committee that a necessary component of mitigating the security risk to MIDAS includes not storing excessive information.⁹ Also troubling is the fact that according to information produced to the Committee, at least 327 individuals have access to the MIDAS database, including 111 users with access to personally identifiable information.¹⁰ Additionally, a case study released by the OIG in February 2016, appears to show that White House staff caused delays in finalizing HealthCare.gov by closely scrutinizing career employees at CMS.¹¹ This information, coupled with the findings in the OIG

⁵ E-mail from H. Comm. on Science, Space, & Tech. Staff, to CMS Legislative Affairs Staff (Feb. 10, 2016, 10:28 a.m.).

⁶ *Id.*

⁷ U.S. Dep't of Health & Human Serv., Office of Inspector Gen., *The Centers for Medicare & Medicaid Services' Implementation of Security Controls Over the Multidimensional Insurance Data Analytics System Needs Improvement* (Sept. 2015) (A-06-14-00067), available at <http://oig.hhs.gov/oas/reports/region6/61400067.pdf> (last visited Mar. 14, 2016).

⁸ *Id.*; Ricardo Alonso-Zaldivar, *Audit Finds Slipshod Cybersecurity at HealthCare.gov*, ASSOC. PRESS, Sept. 24, 2015, available at <http://bigstory.ap.org/article/eb4d9491cba24136bae922897b2ade80/audit-finds-slipshod-cyber-security-healthcaregov> (last visited Mar. 14, 2016).

⁹ H. Comm. on Science, Space, & Tech., *Hearing on Cybersecurity: What the Federal Government Can Learn from the Private Sector*, 114th Cong. (Jan. 8, 2016).

¹⁰ CMS Production, Feb. 9, 2016.

¹¹ U.S. Dep't of Health & Human Serv., Office of Inspector Gen., *CMS Management of the Federal Marketplace*, (Feb. 2016) (OEI-06-14-00350), available at <http://oig.hhs.gov/oei/reports/oei-06-14-00350.pdf> (last visited Mar. 14, 2016).


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audit, raise serious questions about whether CMS has the necessary controls in place to ensure that information stored within MIDAS is not compromised.

In total, CMS has provided only a fraction of the requested documents. The agency's failure to produce a significant response is unacceptable and impedes the Committee's ability to conduct necessary oversight. It is imperative that the Committee obtain the information as soon as possible in order to facilitate its ongoing investigation, including preparation for a Committee hearing. Enclosed, please find a subpoena compelling production of the requested documents. Please provide all of the subpoenaed materials to the Committee as soon as possible, but by no later than March 28, 2016.

If you have any questions about this request, please contact Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member

Enclosure