

CCHF TRANSCRIPT (Partial)
MN Legislative Advisory Commission (LAC)
October 23, 2012

RE: Federal grant request for MMB/Dept of Commerce: Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges, ACA
State Office Building, Room 10

Sen. Claire Robling (R), the chair of the Minnesota Finance Committee, said to MMB Commissioner Jim Schowalter at the very beginning of the hearing:

"We realize the [\$42.5 million federal exchange] grant can be accepted without legislative approval."

The members of the MN Legislative Advisory Commission said there's nothing they can do to stop the Governor from taking and using \$42.5 to build Obama's exchange (federal takeover center). Furthermore, the administration admitted that no matter what happens with the ACA, they'll look at moving forward, perhaps using Medicaid dollars, according to **Chuck Johnson**, CFO of the Department of Human Services.

The following are some limited but key statements from the hearing:

Businesses "Freaking Out"

Rep. Steve Gottwalt (R): "I have talked to numerous businesses in this state that are frankly freaking out over what this might do to them. Are they going to pay a big penalty if one of their employees qualified for a subsidy. Are they going to pay a big penalty for everyone? There are employer hiring lawyers to figure out how to break themselves up into small enough chunks to escape this...We don't know because of the unilateralism of this...We don't know what we're being committed to...Minnesotans deserve to know what this is going to do to them"

Unilateral Obamacare Implementation

Gottwalt: said the Governor is "unilaterally obtaining federal funds with no legislative authorization or direction to build an infrastructure - both staffing and IT -- to implement Obamacare in Minnesota, a virtual government takeover of health..."

Gottwalt also said "We've never moved forward in any way, shape or form like this in Minnesota at any time in our history It's crazy to think that a Governor can take federal dollars with no legislative authorization and simply spend them to commit Minnesota to a path that is literally going to impact 1.2 million Minnesotans and perhaps more and not explain to them what it's going to do to them."

Legislative Authority Questioned

Sen. Tony Lourey (D): Is it true that there's no legislative authorization?

MMB Commissioner Jim Schowalter: It's just not true. The statutory framework for this still has to be developed. There's a governance structure; there's a financing structure that we're actually asking, have asked in previous sessions to have debate on. But at this point there are federal fund requests that have been put before the legislature. There is a statutory appropriation for those funds. It went through the process that's prescribed by law as this one is. And there's an executive order that basically directs the executive branch to start developing this option; to start developing this exchange. And so the notion that we're freelancing is just not true. Is there more work to be done? Absolutely, and that's what the Governor's been asking to do. And that's what we are trying to set up. We're trying to get the information out there so you see as much information as possible so that we can have a good debate in the upcoming session.

Gottwalt: There has been no official authorization from the legislature to do what you're doing; to retain Maximus, to hire over 70 employees, to head us on the road to creating this thing without telling us what it's going to do to us....

You're before us now using an emergency process, which basically negates anything that this LAC might do. There's a reason for that. You want to continue down a path without the legislature having any control or connection on that; any the ability to slow it down...

So our discussion this morning... is **rendered moot on behalf of Minnesotans because because you've now decided there's an emergency** and I understand you can do that with future grants because the timeline is so tight. ...

...You're well on the way to building something.

Every meeting I'm in with you...and we ask over and over again specific questions about the impact of what you're doing with the money and all we get is budgets and spreadsheets. That doesn't tell Minnesota what this is doing to them. We've never done this before...

Schowalter – In the 2011 laws, there's language in the bill that says that the federal funds are to develop and operate a health exchange. **[NOTE: CCHF cannot find any such law and will investigate further]** So to say that the legislature hasn't even authorized anything is just – the language is there. Beyond that this is a state of laws, so we are following the processes that are in the laws. Your allegation that future federal funds are also going to be going through the emergency process is also just not correct. If you look at the LAC process, it is only for periods when the legislature is not in session. Any plain reading of the calendar will see that the November, any kind of future grant requests of the federal government will come in on a timeline that any approved federal authority will be reported to the legislature and that we have to one way or another wrap this up by April of 2013. There's just no other option, and so comments about secret processes just isn't constructive. And I think we've talked about trying to keep it to a bound of what we know because there are uncertainties. There's absolutely

are uncertainties but just pointing out the uncertainties isn't going to help this debate move forward.

Federal Exchange Being Created

Gottwalt: "...How can you do this with so few details?"

Schwalter: ...There's a great opportunity here. (58.00)

Gottwalt: I have a reputation of being thoughtful on this issue. I've talked about a Minnesota exchange and a Minnesota path and some people have criticized me for this. My point is this. ***The path that you've put us on unilaterally is to comply with federal rules, not a state-run exchange but a federal exchange, dictated, created, governed by federal law...*** We don't know the options. I know right now that if I ask you or Ms. Malmlov what the federal option is, you can't tell me. CMS can't tell us. We don't know what it's going to be. So what's the choice. We don't know what the choice is.

And if we build the so-called Minnesota Exchange, it will simply be the Obamacare exchange. It will be what the ACA tells us it will be.

MN Already Has Online Insurance Shopping

And right now, Minnesota has online shopping tools, and many Minnesotans may not know that. We have online shopping tools for all of the health care coverages here in Minnesota. You can apply online. You can shop. You can check out what premium you want, what deductible you want, what benefits you want. You can do all that online right now. And again, we have so many positive, so many things going well in Minnesota, why are we capitulating to build this thing under terms that may indeed change and we don't know all the details of in the new few months. A reasonable person can ask, why are we doing this and what is it going to do to us.

Who Will Decide?

Sen. Gerlach: "...Who or what gets to decide what? ...I know that the administration would love for the legislature to make some decisions about these things, but if the legislature doesn't, then is the administration prepared just to do it? I mean, if it doesn't happen, for example, things on the governance structure. If the legislature in this coming year doesn't pass a bill saying this is what the governance structure should be –and it's agreed upon and signed into law by the Governor – if that doesn't happen, then is the administration just prepared to go forward and say "this is the governance structure." Things about what products will be offered in the exchange, you know what are their mandates would be what the legislature doesn't dictate that, will this entity or will the administration do that? What about the role of agents in the private sector currently? What role do they play? Is that something that if the legislature doesn't decide, will the administration do that. Or the fees and what people pay for what services? All of those things I know you would like the legislature to decide those things but if the legislature doesn't, ***does that mean you stop and can't do it or does that mean you're just going to go ahead and do it?***

Schowalter: I've been trying to get a handle on what are the key issues we need to resolve and you just named off some of the big ones. Really, the legislature's going to have the choice of how many it wants to decide and how many it doesn't want to decide. Whether it gives some of that authority over to a governing body that might run the exchange; whether there is some default just going to some federal standard. Those are some of the questions that we may not want to create a law that answers all of those questions but to the extent that we can narrow, to the extent that we can take advantage of things that only law can do, that would be a very important step in solving and resolving some of the questions that Rep. Gottwalt has been posing, because there's endless permutations of what can happen, but I think the first thing that we all know is that the Governor's been very clear about asking for a public-private partnership based on the task force recommendations. That's something only that can only really be happening through an act of the legislature. What kind of governance structure would be there. What kind of authority you'd want to invest in that body.

Gerlach: Is there any of these items, these big question items that you think must be decided by the legislature? That you can't proceed unless the legislature says? Is there anything that the legislature must decide in your mind?

Schowalter: I hesitate to answer, because the question is, is there a fallback? And the obvious fallback is we would just go to a federal exchange or basically plea that we want more time or something of that nature. Whether there's any options for executive orders or interagency agreements is not something that exists and it is not something that we're investing time and energy into because frankly that's a third or fourth best option. So right now, what we're trying to do is figure out what are the recommendations of the administration based upon the input of the task forces and then talk with the legislators; talk with stakeholders to deal with things upfront. You know, with all the conversation of things being uncertain and secretive, the last thing we're trying to do is create a secret answer is to actually have this out in front. That's why we're here today. That's why we're putting federal funds out for legislative consideration next session. ***That's why we're going to be bringing together a bill and working with you in the coming months to get that bill together.***

Why the Switch of Departments?

Gerlach: "...What was the process in deciding MMB was the right place. This is a program. MMB is about managing the state budget. This is a specific policy program and specific, you know, insurance, health care. It's not about tracking the cash flow of the state, and paying the bills and writing the checks and keeping the books. This puts you into a very different roll that what MMB is, I think. Maybe there's other historical examples, but why MMB and why is that a better fit than the other agencies – we know obviously the conflict of commerce— but why it that the choice. It almost tells me that this is the type of thing that state government is pursuing, or federal government is pursuing, that really has no good fit in government; that this whole thing, along the lines that Rep. Gottwalt was saying, a private sector mechanism but yet it looks like government is trying to intercede; it seems like we're trying to wedge it in; we're trying to find the right department, the right governmental structures that doesn't have a good fit. And so it sort of defaulted to MMB. That's how it looks to me but maybe you could responde to that.

Schwalter: A couple of things. One, Just to give you a little background on Minnesota Management and Budget, it is the agency that was created a number of years ago from a merger of the Department of Employee Relations and the Department of Finance and adding in a consulting practice from the Department of Administration. So first of all, it's just more than budgets. So I came up through the budget side and that's probably what we get the most attention on. There are plenty of activities dealing with the state's workforce, dealing with labor, dealing with accounting and internal controls. And really its about management utilizing resources better. And that's our mission statement. And that is what we try to integrate, both the numbers and the human resources and the information that we need for management into a packet that we can help state agencies deliver better services. So first of all, it's a lot more than just managing the cash flow.

Why it came to MMB is partly because of that conflict as you said. It wasn't really so much of an issue initially with Commerce helping develop the policy, helping develop the conversations and really being an incubator for this idea. But ultimately we're getting to a place where we're asking for 50-odd people to come work on this exchange. We're creating an entity that the department of commerce is going to have to regulate. Now, it's no longer an idea, it's becoming an entity. That's really not a tenable thing for a regulator to be creating an entity that it's going to be regulating. ***Why MMB? You know, part of it is because it's a way station.*** It is not a permanent home for the health exchange. We – you're right – it's not a perfect fit. It certainly fits to some of our experiences and our skills. You look at our work with ARRA, the stimulus bill. We try to manage interagency work responding to certain federal requirement in an environment that the legislature wanted a lot of answers, and put together something that worked, met the state's needs. We had some experience with that. If you want to look at the Swift project, where again, we are working with multiple agencies unique needs trying to integrate a significant process change, and IT process and install it into the state. Yeah, we've got some experience in that, so there's certainly relevant experience with the agency. But bottomline is the Governor has said that this should be a public-private entity. IT's not going to be part of MMB. We don't really want it to be part of MMB long term. We want to help it grow, help deal with the issues that are here before you right now, help with the decision-making process so that we can get some clarity about what we're trying to do and then ***hopefully the legislation will authorize whatever it's going to authorize. Hopefully a public-private marketplace that will establish a real marketplace for people to buy insurance; for small employers and individuals and it'll go and do that. And we would be fine.***

What's in the next Budget?

Robling: Are you including money for the state portion of the exchange? How much will you be requesting form the legislature in the next budget?

Chuck Johnson, DHS: "The Medicaid portion of the development work is a combination of federal and state dollars" [85% federal].Going forward, it depends...

[...] – many minutes not transcribed here

BLUE PRINT: What Does Administration Need From Legislature?

Rep. Mary Liz Holberg (R): ...Some feel there's been very little collaboration on this issue...***I have not heard you ever say that there's anything that you can't do without legislative approval.*** And so as you're preparing that November 16 document to prove that the state can meet these criteria for initial certification, is there anything in those requirements that you need legislative approval for.

April Todd-Malmlov: "The November 16th application is the blueprint application that states must submit to essentially prove – request that the state get certified to operate a state-based exchange. In order to get that certification you must meet certain requirements that are a combination of infrastructure and policy and functionality. ***States can request conditional certification, but in order to get conditional certification, they have to prove they're far enough along at least on the infrastructure and functionality so that when policy decisions are made that the ability is there to implement them in time for open enrollment.*** And so for this particular request, much of the funding that is included in here is for infrastructure, software and hardware and the implementation of that infrastructure to allow development of the exchange application to work. If we cannot prove to the federal government that we have that infrastructure and functionality in place, it'll be hard to prove to them that we have enough --- essentially, infrastructure there as a base to be able to build policy options onto early next session and so that, that is kind of the base that's there.

What if Legislature Refuses?

Holberg: ...You have no legislative approval to fund the exchange out 2014, 2015, 2016. So, that's obviously not going to stop the application. Specifically is there anything either policy or money that you need from the legislature in order to move forward with this beyond January. If the legislature says we can't agree on this. We don't agree with the governor. We think his choice You could have a situation where you spend this 70 million and hire all these people and the infrastructure decisions are counter to implementing the policies that the legislature supports. You could literally waste this in that you've done it the wrong way. ***At what point are you so far down the line that the legislature becomes immaterial to the process?***

Schwalter: There are certainly questions in the implementation process that we're trying to sort out that will help shape and guide how this works....We're really trying to make sure we can meet the that we can meet the technical needs of the federal government, that we can create this kind of architecture. That we can support this kind of system and that ***there are very significant policy decisions that we're not close to resolving until the legislature meets. And those are around the governance questions, about how we deal with brokers and navigators, how do we deal with market regulation, basic health plan. There are a handful of issues that will need attention by the legislature.*** Part of your question is whether there's a go-it-alone option that's available. Not being a lawyer, not really knowing, I'm not going to testify one way or the other. But I can say that there's clearly a need to set these policies forth and that the governor has very clearly indicated that the path he wants to take is by working with legislators to get something that works for everybody. And so that's what we're seeking and that is also why...the go-it-alone path would have asked for more federal

funds in this request because it could have gone to the urgency requirement. We very specifically made sure that we did not do that so that there are federal funds will be debated and will be under the legislative session coming up in January.

What "Cooperation"?

Holberg: I've heard all along that we want cooperation, we want the legislature to be involved. But I'm just concerned that as of yet, ***I have never heard from this administration at what point they stop without legislative involvement.*** It seems to me this thing is really wired. Action are basically louder than words and now we're going to charge ahead with another major step. You say that this grant process was announced in June, but somebody had to be well aware of the fact that this was building and cumulative and growing process during the last legislative session. Somebody had to know when there was going to be a series of federal loans and processes and procedures, because you are well on your way to framing up what's happening in June, July, August, September, October, November, December. So had there been a really big effort in April, May to do this -- I'm just really concerned and I'm not -- I don't think it's a good idea. I'm curious if you've plugged in any number, if you've started your budget process, you've asked your agencies to submit some of their numbers. What have you plugged in for numbers for state costs relative to this exchange and running it in 2014 and 2015?

Schwalter (dismissing the question): We're at the very start of the budget process. ***I think the more significant questions are going to be coming up beyond any operational questions.*** What are the eligibility levels? What are the coverage levels we're going to be determining for Medicaid, for MinnesotaCare and how those work through this process? So an issue for future discussion is how do we take advantage of or not take advantage of what the federal government will allow us to do in those interactions where we've been doing state-only coverage or expanded coverage.

Who will Pay?

Malmlov: As I mentioned previously, there's federal funding available through the first year of 2014. Under the law, states are required to have a sustainable funding source starting in 2015. The options for funding are pretty vast in terms of what a state can do in 2015. And really that is dependent on what policy decisions are made around governance. There may not be any request for state funds at all, depending on how the governance is set up and how the revenue ___ is incurred and so really, ***that is a policy question in terms of going forward in really how do you want the governance structure set up.*** What are those funding mechanisms and how is that revenue raised? So there may or may not be going forward a request to the legislature for funding. It really is dependent on what mechanism or mechanisms are chosen for financing.

Robling: Could it be fee-based?

Malmlov: It could be fee-based. Yes.

Robling: And who would the fees be assessed to? The individual users, the business users? Have you gone through that at all?

Malmlov:The finance work group...has been looking at a variety of funding mechanisms. One of them is a user fee. A user fee for example could be assessed on individuals, on small businesses, on carriers, on brokers, kind of anyone that's interacting with the exchange. There's also a variety of different funding options including withholding a portion of the premium that comes through the exchange, having market-based assessment, having some general fund appropriation, even other funding sources such as advertising.

Bureaucrats Disagree about "Savings"

Holberg: ...What savings have you booked for an upgraded more streamlined MA eligibility system?

April: "We don't have explicit numbers yet and we're still trying to work through what the transition is and how those systems are replaced. I think what you can say is there will be significant efficiencies that can be had going forward. I know that both MN.IT and DHS are working on estimating what those savings are but **there are assumed to be efficiencies and savings annually in the millions of dollars**. I don't know if - - "

Holberg: If I might then, when we see the governor's budgetary recommendations, we should see a line item of savings attributed to these investments and upgrades.

Tom Baden: (CIO of DHS and at MN.IT responsible for DHS, and just came on with responsibility for the technology for this application). As far as mapping out the savings to the eligibility, first off the functions for the non-MAGI eligibility population that will be part of the insurance exchange currently don't exist in any systems. And for us to invest in those older systems, I think would be a kind of irresponsible use of taxpayer money. We'd really prefer to put them in a newer technology and actually put the eligibility for the non-MAGI, which would be outside the exchange in this new technology as well. From there, we're going to want to translate - - transfer all the eligibility for the rest of our programs over to those technologies and replace and retire the old ones. So in that initial period while you're running the new system and the old systems, it costs a little more, and then as you retire out the older systems – **We think the technologies are going to be probably a wash as far as costs go**. However the efficiencies for county worker and the efficiencies for people that use them -- This really provides us with a cornerstone and a starting point for really starting down that modernization path. It'll be a lot more efficient for citizens coming in to get these services, as well as county workers and assistants and navigators that are helping provide this.

[...]

Can Governor Dayton "Go it Alone"?

Holberg: If I might, just on a practical matter, if there's not agreement between the legislature and the governor about governance, revenue-raisers, fees, etcetera and how to implement this, what stops the governor from the go-it-alone?

Schwalter: If I could rephrase the question, what are the decisions that need to be

made and ***I think the first one would be a legal interpretation on whether there's authorities in existence that would allow the Governor thorough executive order to go it alone*** and then if that is the case, whether he would choose to do so. And if he chose to do so, whether the federal government would believe that that is sufficient to meet their criteria that the state meets the test that they put before us. So you know, there are several conditions that would have to be met and that's really the scenario that is beneficial to Minnesota and is not what we're looking for. It adds a lot of risk. It adds a lot of questions to the process.

Holberg: But for someone who's as cynical and negative as I am, ***I still have not heard you say that this can be stopped if the Governor decides he wants to charge full speed ahead.*** I have not heard you say one thing that tells me as a legislator that if we don't like this, if we don't like the direction this is going that we have any ability whatsoever to stop it."

Schwalter: You're right. You haven't heard me say that. In fact, ***I've been advised by some legislators that there is no way for the legislators to stop it so I'm not going to contradict some of your colleagues.*** And, I don't know. And I think the point right now is, rather than going to the hypothetical which we've done at other times, where it's like - - it's a question of negotiations and trust. You know, I think what we're trying to do with this discussion today, with our actions in the future, is to continue a dialogue so you know what the real options are, but the policies, choices we can take advantage of or choose not to and go to the Federal Exchange. But bottomline, so we can have some of that conversation. Like I said, there's several decision points. If we can't make that negotiation work, there's several more decision points, none of which are certain and I don't think necessarily even if they were certain would change the direction that we want to go.

Feds Setting Up National Exchange for Medicaid Expansion

Robling: Since this is a federal law and it's been upheld by the courts. You're basically saying we're going to have this, either we're going to have this or it's going to default to the federal government. If that's going to happen, would the technology be compatible. Could it be made compatible, you think? How would the federal system actually come in here and set up a system? How would we have to work with them to set up their system in our state? I've very puzzled by that whole aspect of it.

Malmlov: What we do know about the federal exchange is they are establishing their own IT system. ***They are going to be setting up actually their own process for doing Medicaid eligibility in all the states that default to the federal exchange.*** What we know about that process is that they will essentially be doing a "screen and refer." So they will be doing an initial assessment of eligibility and then giving that over to the states. And so the states will need to then process that at that level. How that will interact between the two, you know, we don't assess to be an easy process, and so us working with the federal exchange, one of the key concerns we have there is given how they will process eligibility since it's the lowest common denominator so it will work with all states, is that it will probably require more processing and more administrative costs on our end to interact with the federal exchange to do Medicaid eligibility than to develop that system and be able to do that within Minnesota.

So if it were to happen, our system that we're developing might not be worth anything because it might not tie in with the federal system at all. Because you said they're developing their own and we don't know if they could be easily linked or not.

[...]

Malmlov: They are developing their own system. We would need to be able to interact with their system to be able to receive information from them. But the way in which they're doing it as a 'screen and refer,' really is a more complicated in-depth process than how you can do it much more simply through the IT system that we're working through.

Robling: With the fiscal cliff...there's so much unknown right now...elections.... What do you think the next step would be if there would be no more federal funds for this? Because I think it's a possible scenario.

What if Federal Funding Dried Up?

Schwalter: ...If the federal government were to say there's no more federal funds to develop state-based exchanges, I'm assuming they would also roll back the state-based exchanges. That there would be policy changes and requirements that would go with it. Because right now what we're doing is one of the options of **implementing a federal structure in which all the states will create exchanges**. If there's no more funding for that, I would assume there would be other policy changes that would go with it....I'm assuming that if there's no federal money to do this then the government is going to consolidate or not responsibility for exchanges so that we no longer would have any debate for how we would customize it for our market —**or there would just be no exchanges and the federal law would be repealed**. So I'm not - - depending on the circumstances, I think the answer would vary.

Robling: But then it would be up to the states. But I'm just wondering, the money that they've already given, should it never be recalled right? I mean we wouldn't expect to ever have to pay that back. Is that your understanding?

Schwalter: Um-hum (for yes)

Robling: But if we didn't get it any more and the exchange mandate was repealed, we would make that decision as to whether we would go ahead and form our own without their oversight. Is that what you would understand too?

Schwalter: Yes, that would be my understanding. I would just point out though that this is also a project and so while there are tangible things being purchased in terms of off-the-shelf software and business plans and things that are valuable and enduring, part of it is just the effort and the team that's together to build this and to move forward so if there's a cessation; if we try to pick it up 6 months or a year afterwards, clearly there's some significant restarting or shutting down and restarting costs in terms of learning, in terms of the understanding of the people who are involved in the project. So that would be the caveat that I would put on that. Because I'm hearing your scenario, well, we'd stop it for awhile but the state might want to do an exchange on its own at

another point in time, on its own nickel. And if we were to do that, that's great if we had some resources to do that but it wouldn't unless the timing is perfect there would certainly be some impacts.

[...]

Robling: There are so many scenarios out there right now, so many unknowns...so how would we make the best of it if things change if it comes in anyway. Because quite frankly, this advisory commission, we can't stop it from coming in. I'm assuming it's coming in. We can't stop the process. We know that the governor has the authority at this point to accept that grant. And so we're just trying to gather information, make sure that we exercise some fiduciary responsibility on the behalf of the legislature and make sure that this money is going to be put to the best use possible if it is going to come in which it is. And so I want to make sure you're looking at every angle for how things could be shifted if the plan as is currently laid out doesn't come to be. And I don't know if you have a Plan B or if you are trying to develop a way as you go along that we would still have some benefit from all this money.

Malmlov: ...There is re-use there, I'm just uncertain what that would be.

Schowalter: ...it's modular approach...more flexibility built into the architecture...

Unilateral Action Toward Preconceived Conclusion

Gottwalt: ...We are moving, with everyone of these grants we are moving further and further toward a preconceived conclusion. With all due respect about we can make lots of policy decisions. When you look through these documents and you look at whose being hired to do what, its' very clear that this moves us further and further and further towards implementation of a specific model and approach that will absolutely have a night and day difference over how health care is delivered and received and covered and received in Minnesota.

And that policy decision has been made by one body, the executive body. And every one of these grants moves us further down that path with as we've already heard in testimony today Madam Chair, we don't have answers. Minnesotans don't know what this is going to do to us but we're moving well down the road toward spending money to hire people to do specific things to Minnesota with no idea what that end result is going to be. It's irresponsible. It reflects a lack of transparency. We don't do things this way. We propose legislation, we hear it if it's chosen to be heard and we put it through a process of analysis for cost impact ...and then we put it before the governor if it passes the legislature and we say, governor sign this. We work with the governor to do things that way. Instead what we've done is we've said, because the legislature decided not to hear this bill or not to act on this at this time, we're just going to do it for you. And we're going to get federal dollars and we're going to commit Minnesota to things that frankly we can't undo. There are portions of this that are bells that can't be unrung. ...

Sen. Mike Parry: [...]

Malmlov: Starting off, we do anticipate \$30 to \$40 million in 2015 but it would be based

on what the enrollment level is. In terms of sustainability going forward there are a variety of different options for how that can be financed whether that is through user fees, through advertising through assessments, and those types of things. It's really a policy decision that is open for the legislature so the sustainability option that's there really is something that has yet to be determined.

[...]

CCHF President Testifies

Sen. Claire Robling: We had one person who asked to testify. ...

Twila Brase: Thank you Madam Chair and members of the committee. My name is Twila Brase. I'm president of Citizens' Council for Health Freedom. We have long opposed the health insurance exchange. And I just want to make sure that some of the questions that you asked, I don't know that it was a really clear response that you got, and I'm just going to say several things I know from being at the hearings of the exchange committee. So when they send in their application for the November 16th there are several things that they cannot attest to and they have said that they can't. They can't attest to having a law. They can't attest to governance, and clearly with what was said today, they are going to need the legislature to actually have funding to go forward. When you asked about the fees, they said that would be up to the legislature to decide. Clearly it means that they can't and it can't be done by executive order.

I also want you to know that there are 37 states according to PriceWaterhouseCooper that have not chosen to go forward with the state-based exchange and that report said moving toward a state-based exchange would cause an irreversible shift in how health care is paid for in this country. Also we're so concerned about this law 3.003 or 3.0035 [actually M.S. 3.3005] that says that the governor can go forward and do this without the legislature. And we believe that that law should be undone and that the next legislature should make sure that that happens because it's really - - no longer do we have a divided government making decisions. Now we just have the executive officer whether it's a Republican or Democrat who is able to supercede everyone else including the citizens because it's really - - after all you only are our representatives. The governor is there but if we don't have you as our representatives and you aren't able to do anything then what good is it.

I'd also like to say that 72 staff members means a brand new bureaucracy. I have heard from the exchange folks that their plan is to prepopulate the exchange and if you haven't looked at Exhibit D in the Maximus contract, I would encourage you to do so. It says that public data, private data, confidential data, non-public data, health records, individually-identifiable health data, tax records, chemical health information, all of this will be shared with Maximus as part of creating this entire system.

And when you think about pre-populating, the exchange is not a marketplace as it's been sold – that was the term used by Herndon Alliance which is a liberal group to try to convince everybody that it was actually a marketplace when it isn't. What you have to understand is that this is a national registration of health insurance. The federal data services hub – all the information that goes into the exchange goes straight to the IRS.

The IRS then knows, especially because it's a prepopulated database exactly who has insurance and who does not so it also becomes an enforcement tool for the IRS.

And I just want to note that one thing that was stated here, but not stated quite so well was the fact that the data – I think it might have been Schowalter or I'm not sure – who said that we have health data here. We do have health data here as a result of a very controversial peer provider grouping requirement of 2008. And there is going to be health data that is given to the exchange to try and say who's a good doctor and who's not a good doctor according to what the government determines is a good doctors. And we already found out last session that the health department didn't have a very good methodology at all and was so controversial.

So what we're talking about here with the exchange is actually a very large database. A large database for tracking insurance status – it is where you will register your exemption to the mandate. It is where you have fulfilled it by either you or your employer signing up for health insurance. And it is a place where eventually it will be the only place where you can purchase health insurance in this state. So we are very concerned about the fact that we are moving forward here.

The other thing I want to say, at one of the exchange committee, Tom Barden, the IT Director, talked about the fact that this type of project should take four to six years and that it was scary how fast they've worked on it – they've only worked on it one year. They don't even really know if it's going to work, right?

So what we're really talking about here is pushing a process and what we're talking about is not asking for that extra money. They didn't ask for it so they could come to the legislature, right? This is all about pressuring the legislature. Building the system and then pressuring the legislature to keep it going. So we don't want this system to keep going. We know what it is. It's the arm of the federal government within the state. Every exchange is a federal exchange. Every exchange can do only what the federal government does [says]. For all we know they are helping to build the exchange that every other state in this country could use if they're the first ones done with it. So I'm here to ask you to do whatever you can to actually stop the exchange, whether it is now, whether it is legally, or whether it is in the next legislative session. Thank you.

Robling: At this I don't believe this body actually has the power to stop it. We are an advisory commission. We did try and change that balance of power in the last legislative session. Rep. Holberg and I had a bill that would have been able to have the legislature put a hold on - - in fact, this body, put a temporary halt – federal grants coming into the state till the legislature was in session and had time to act on it if that was the vote of the LAC. But the governor vetoed the bill, so we're here where we are and we don't have the option of stopping that federal grant money from coming in. We can say we don't like it.....I don't know that this commission will vote today on any action because we would like to get those responses I think.

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