Senator Max Baucus (D-MT) chaired the committee, looking none too pleased in his conversation with Gary Cohen, director of the Center for Consumer Information and Insurance Oversight (CCIIO, pronounced "see-CY-o"), a division of the U.S. Department of Health and Human Services. This transcript is a partial transcript, but it has a few completely transcribed dialogues under several topics of particular interest - topic labels were added by the transcriber.

**EXCHANGE I. T. CONNECTIONS**

Max Baucus:
Give me the list of the various agencies where information has to be coordinated. You know… HHS, CMS, IRS. Just give me a list of all the agencies where the box has to be checked.

Cohen:
"Social Security, IRS, Homeland Security, and there may be others..." I may have to get back to you with the complete list but those are the major ones.
Baucus:
I'm a little surprised you don't know that - you [can't] just rattle those off bing, bing, bing, bing, bing because that's going to be key to the efficiency of these marketplaces. You can't think of the others?

Cohen:
Those are the main ones that I can th -- at -- at this moment - but I'm happy to get you that list.

Baucus:
How can you be assured these computers in all these different agencies are speaking the same language and are up and running? I can tell you off the top. One of these agencies you list, two of those agencies you've already listed I know have archaic computer systems today.

Cohen:
So, I -- I'm -- I'm encouraged by the fact that we have already begun testing with Social Security, with Homeland Security, and with IRS -- and exactly what you are raising Senator -- the -- the -- the flow of data back and forth, and so we're well along that process and expect to be able to complete that testing by this Spring. So I -- I --don't think we're going to experience problems there.
Baucus:
When you say -- what do you mean by "well along"? What does that mean?

Cohen:
We've begun that testing and we have a process where that will continue testing from -- continuing from now until the spring when it will be completed.

Baucus:
How much information to you intend to share with this Congress as to as to how well this is progressing? That is, what happens if in a month or two you think "oh my gosh we got a huge major problem here." Is that information going to be shared with anybody? You just going to keep it to yourself?

Cohen:
We're happy to work with you and provide you with the -- um -- information that you request from us.

Baucus:
And um, so at this point are there any "oh, oh" revelations?

Cohen:
No, we are very much on-track with a plan that will get us to open enrollment beginning October 1.

Baucus:
What about those [inaudible] computer systems I asked about. Isn't it true that almost all those agencies have different computer systems? And speak different languages?

Cohen:
Well I think that's why we're building this data hub. It's designed in a way that it can accept data from these different agencies and it can verify information coming into the data hub that will be entered as part of the application process.
**CO-OPS**

**Senator Maria Cantwell (D-Washington) […]**
The agency is taking I don't know how many pages out of 900 and saying that's the health plan. It's the health plan of the Exchange. Where's the health plan of coops? Where's the health plan of the basic health plan? Where's the health plan -- As far as I'm concerned, I think the president signed all 900 pages. I don't think he said it's just this one page. And what I'm very concerned about is that the agency seems to be thinking that the technology of the Exchange is somehow the Holy Grail and you are trying to lure states out of pursuing these coop or basic health plan options and lure them unto the Exchange because you think it's some sort of magic...You're supposed to do it in 2014 and not spend your time luring people into the exchange."

[…]

**CHOICE OF PLANS IN FED EXCHANGE**

**Senator Johnny Isakson (R-Georgia): […]**

_Cohen:_ "The products that will be sold on the Federal Exchange will be sold within each state and will be approved by the insurance departments of each state. There is a provision in the law for a multi-state plan that the OPM will be offering and they've issued some proposed regulations on that but that's not my program."

_Isakson:_ Have you tested healthcare.gov with consumers?

_Cohen:_ yes…

_Isakson:_ …how many will be able to use and how many will need assistance?

_Cohen:_ We are preparing to make available assistance to everyone and anyone who may need it… navigators, local community. … Call center - "national thing" […]

Navigators will be "grantees of CMS" […]

…The availability of the online center, the call center will help insurance companies cut their costs.

_Isakson:_ […] "You better make sure you get it right the first time, because if it crashes and burns on October 1, you've got a huge problem and when you talk about something affecting every American, it's tremendous."

**Don’t Use a computer at all, per Isakson:**

- 40% of adults with income less than $30,000
- 60% of adults without a high school diploma
PRE-EXISTING CONDITION PROGRAM

Pre-existing Condition Program: Less enrollment and higher costs.

Cohen:
- Have made changes to the benefits offered
- Doing everything we can to avoid running out of money before end of the year
- Will transition people onto the exchanges

FEDERAL DATA HUB

Senator Orrin Hatch (R-Utah): We're less than 9 months away from open enrollment. With five crucial regulations yet to be finalized and no details on the data and the data hub that will facilitate all eligibility determinations, it is hard to believe that the exchanges will be ready by October 1st. You can see my skepticism there. And I'm concerned about it. A critical piece to eligibility determinations is the sharing of information between federal agencies. Has CMS signed service-level agreements with IRS, SSA, Homeland Security and all the other agencies that will be providing information to the data hub?

Cohen: We have.

Hatch: Will each federal agency be able to provide accurate data in real-time to the federal data services hub by October 1st?

Cohen: They will.

[…]

Baucus: […] Record open for 48 hours.

Baucus to Cohen: […] it would be really wise to answer these questions very quickly.

PREMIUM COSTS

Senator Charles Grassley (R-Iowa): A day is coming when we're going to find out who was right and who was wrong about premiums sold in the exchanges under the affordable care act. Some of us think there's going to be a real significant rate shock coming. The rate bands in Affordable Care are too aggressive; the taxes and fees in the Affordable Care Act are too inflationary, and the timetable for readiness very compressed. There have been actuarial studies in various states that suggest the rate shock will be severe." In Indiana - up 95%, Maine - 89%, Ohio - 85%. Now I know others would strongly disagree. They say everything's going to work out okay, and of course soon we will know who was right. […] Individuals are supposed to receive coverage, including even members of Congress and many staff going to be covered under these exchanges by January 1, 2014. (Paraphrased)

"Once everything is finalized, only then can states ask insurers if they intend to participate and what the rates they decide to charge for coverage ...But that day is coming when insurers turn in their homework. When insurers say, 'these are the rates that we will charge,' assuming they do choose to participate. Now here's my question. Mr. Cohen. While I won't hold you to a specific date, to the best of your knowledge, when will we know what premiums will be in the exchanges?"
Cohen: In the federal marketplace, insurers will begin submitting their plans to us, including rates, on March 28th. That opportunity will be open until April 30. We will then review those and make determinations as to which plans will be sold in the federal marketplace by July.

Grassley: So then you're saying by July that's the time that leaves the administration and Congress to react if it's obvious that premium rate shocks are so severe in the exchange pool of some states that the market will go into some sort of fatal death spiral at that time?

Cohen: We'll know by July what the bids are.

TAILORING PLANS TO STATES IN FEDERAL EXCHANGE

Senator Bob Casey (D-PA): We have to make sure this works even though we still have great divisions about health care in this country in terms of the approach to it. Those of us who supported it have to be determined to get it right. ... I want to ask you about my state of Pennsylvania, where they've defaulted to a federally-facilitated exchange, if that's the right terminology, or federally-facilitated marketplace." [...] tailor exchange to Pennsylvania...

Cohen: Starting in March, we will begin [...] in each of the states where CMS will be operating a federally -facilitated marketplace. This is obviously an important opportunity for us to hear directly from individuals and organizations in each state.

Casey: Stakeholder. What's that…

Cohen: Conversations provider community; consumer advocate community... to get the information we need to operate state to state. Differences. (Paraphrased)

Casey: Your intention is to make sure it's tailored?

Cohen: providing a marketplace that is "suitable to each state."

Cohen: Media campaign to increase awareness of the law, the benefits and what it means to them. The purpose is to drive them to healthcare.gov. Give them the info they need to come back in October. Navigators will play a crucial role... The funding activity for navigator grants June.

OUTREACH TO “GET IN THE DOOR”

Casey: A great concern that so many of us have is making sure with regard to Medicaid and the Children Insurance Program that every eligible child gets enrolled and there's no problem with that.

Cohen: When people come to the website or sit across the table from someone in there. They can go through a single process that will determine whether they're eligible for Medicaid or CHIP or whether they're eligible for subsidies through the exchange. It's what we call 'no wrong door.' So all of the outreach and education that we'll be doing will be geared toward getting everybody in to the door and where they end up through the process, you know, of measuring their -- what they're eligible for. It won't be. So, we'll be looking at the entire community that we're trying to reach and the entire population that we're trying to coverage, and then they'll be sorted out through the process of applying.
DETAILS DEMANDED BY BAUCUS

**Baucus:** What benchmarks, data, dates, that you have in mind, as you proceed and begin to implement the statute. How much in terms of numbers by what date and what subject. And I'd like you to break it out in a good faith way. *I'd like them to me and the committee by Tuesday* (Paraphrased) when we get back after this break. I want it quantified. We want to help you. We can't just talk here. It's deeds, not words.

**Cohen:** Thank you Mr. Chairman.

**NO-MAN- LAND SPOUSES**

**Senator Ron Wyden (D-OR):** Recently, We're going to have millions of spouses and dependents in a regulatory no-man's land. And during the health care debate, this issue was looked at. The whole question of affordability for families and a provision was added that would have allowed an employee to take their employer's contribution, either individual or family and then be able to shop for a policy that best fit their need at a price that they can afford. Now this is no longer available. As of now this is no longer available.

So come January of 2014, we're going to have millions of families -- not my characterization, it's been in the New York Times, all kinds of other places— millions of families really pinched. They're really in this kind of no man's land where they are unable to afford the family coverage offered through their employers and ineligible for subsidies that could be used by dependents on the exchange. What I'd like to know is what you all are open to doing in terms of helping these people. This is not an abstract question. These people are going to get pounded here. Middle class you know families, here, in a relatively short period of time, and it seems to me at a minimum, what you all ought to be doing now is looking at ways to give the states through the exchanges some flexibility to help people. Are you willing to do that?

**Cohen:** Yes, we are.

**Wyden:** I'd like you to get back to me in writing with respect to specific ways in which you'd like to work with states to help people. Especially interested in ways in which the state would allow an employee to take the employer's contribution to the exchange and be in a position to get more value for themselves and their family. [...] How long would it take? Within a month?

**Cohen:** Yes
RULEMAKING CONCERNS

Senator Patrick Roberts (R-KS): On many regulations implementing the PPACA statute, stakeholders are being given the minimum amount of time -- minimum, not maximum -- amount of time to respond, thirty days, to the sometimes hundreds of pages of regulations often with many of these regulations being issued in the same week. I can't go to a stakeholder, comprised of all of our providers, without somebody picking up a piece of paper and saying "Senator, what about this?" Then I don't know about it. They don't know about it. They have to ask and then we get into some real problems.

In these instances administration has had months, if not years, to draft and review and OMB is given months to review as well. Will future regulations give stakeholders more than a minimal amount of time to review? It has been suggested that other nominees before the Finance Committee that 60 days would be a more reasonable timeframe. It used to be 30/30 or even 60 days and then 90 if thousands of comments came in to say that this regulation doesn't work well for us. We can tweak it. We can do that. Some would oppose it. But at least there was a time frame that you could then work the regulations to fit all of the stakeholders and the providers.

In addition, we're getting feedback that many of the stakeholder groups do not believe the administration will take into account their comments when issuing the final regulation. I'm talking about the final regulations now that is the subject of this hearing. And I thank the Chair and the ranking member for doing -- for holding this hearing.

I'd like to point out a letter I along with many of my colleagues sent to the Department of Health and Human Services, the Department of Treasury and the Department of Labor outlining our concerns. In your response dated February 12th, the Department noted that they are reviewing these comments and will finalize the rules soon. I will also note that the submissions to these rules to OMB showed them as admitted and received by OMB on February 8th. Now that tells me that you have in fact completed your review of the rules and are not still considering them. That careful consideration of thousands of comments was given at the most a little over 40 days to complete and I can see why stakeholders are very skeptical about who you are listening to and what you have to say. I would remind you that the traditional regulatory process as described in those statutes and in the executive order called for notice, comment, review, and consideration of comments and issuing of a final rule.

What is being done to address this very troubling concern?

Cohen: Thank you Senator. I would make two points. I think first of all, our process with respect to the policy that is being set forth in these rules has been to provide guidance, bulletins ahead of time so that before we even put out the proposed rules we've gotten a tremendous amount of input from the stakeholder community with respect to them. So as an example, the essential health benefits rule, we put out a bulletin well ahead of time. We got comments on the bulletin and we incorporated those comments in what then became the proposed rule.

In addition, I would say that in all of the rulemakings that I've been involved with since I've been as CCIIO, we have very carefully considered comments we've gotten and in many cases have incorporated and made changes with respect to input we've gotten from the stakeholder communities. So I'm disappointed that people are skeptical that we read them. We absolutely do and we do take them into consideration and we have and will with respect to the rules that are coming final now.
Roberts: This, I think, raises an important question. Departments implementing PPACA have often referred to the sub-regulatory guidance documents, such as you have described — the bulletins, the guidances and the postings on the website, the faxes, etc. — to demonstrate stakeholder participation in the regulatory process. Here we have a question -- and then -- are you coming back with all of these bulletins and guidances and postings.

I don't know who can keep up with all of that, but at any rate, you're making the effort. But it raises several concerns, as sub-regulatory guidance does not hold the force of law. It is generally, does not reach through the notification and other means, the same amount of stakeholder participants and is outside the traditional regulatory process. And that really can confound stakeholders with limited resources, both time and money. The rural health care system doesn't have folks out there to go through all the bulletins, the guidances and the postings to the websites and the faxes. Basically, we just have a situation where they just can't focus on what they need to focus on in regards to the regulatory mandates that they face.

So the traditional regulatory process, as described in both statute and executive order, calls for notice, comment, review and consideration of comments and issuing of a final rule. I think the administration is deviating severely from the normal rulemaking process and it's a real problem with regard to the stakeholders.

Now, I've made my speech and I think you've responded. I'm not sure we need to go any farther, but this is a problem. Just in the State of the Union address the president indicated that, basically if we have a situation where the obstreperous Congress -- all of us combined -- that we don't buy his agenda and do it in a specific amount of time or a reasonable amount of time, he will simply issue executive orders and more regulations. Now, I tell you what, that sent a chill in the entire health care industry because we are drowning in regulations now. And to my way of thinking, when you go into the sub-regulatory guidance documents as opposed to following the review and consideration of comments that is called for by executive order and statute, I know that that's convenient. I know that the regulations are so many and they are important and very comprehensive. That's the problem, and so I would hope that we could get back to a more -- (long pause shaking head) --- just follow the law. Just follow the executive order and the statute.
Cohen: Senator, I would just say, in my experience, stakeholders have welcomed and are grateful for the guidance that we put out. But frequently they ask questions, etc that are intended to clarify that we are not making law in those documents. And we are very careful to use the regulatory process when it's called for and necessary.

COMPUTER SYSTEMS

Senator Tom Carper (D-Delaware): [...] the 80/20 rule [...] Will be holding forums up and down the state. [...].

Have to make sure we have regulations and systems, computer systems, that make it possible to understand what's available here and to be sure we seize the opportunity. What are you doing to better ensure that [businesses] comply. Not just dumbfounded by it, confused by it, but can actually comply?

Cohen: I think what you'll see, beginning now and through the rest of the year, through October, is a real outreach and education campaign to make sure that the Affordable Care Act and what it provides and what it requires is known out there in the communities so people will understand what their obligations are and will be able to comply with it.

Carper: How are you planning to test the computer systems for the exchanges to make sure that they work properly and second, do you have a contingency plan to back up these computer systems when they run into glitches and they probably will?

Cohen: So the answer to the first question is: there are a number of different data systems being established to determine eligibility and enrollment, the data hub to verify information that's provided by people when they're applying, the system that will enable us to accept issuer's plans and review those to make sure they comply with the law and are able to be sold in the marketplace. And we have -- testing has already begun on a number of those and will continue throughout the spring and into the summer and we'll have all of that completed in time to operate by October 1. We are looking at contingency plans for every eventuality.

Carper: [...]