Affordable Care Act provisions:

American Health Benefit Exchanges.--(b) (1) In general.-- Each State shall, not later than January 1, 2014, establish an American Health Benefit Exchange (referred to in this title as an "Exchange") for the State that--(A) facilitates the purchase of qualified health plans;(B) provides for the establishment of a Small Business Health Options Program (in this title referred to as a "SHOP Exchange") that is designed to assist qualified employers in the State who are small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market in the State; and (C) meets the requirements of subsection (d).

(c) Failure To Establish Exchange or Implement Requirements.-- (1) In general.--If--(A) a State is not an electing State under subsection (b); or(B) the Secretary determines, on or before January 1, 2013, that an electing State-- (i) will not have any required Exchange operational by January 1, 2014; [...] the Secretary shall (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State and the Secretary shall take such actions as are necessary to implement such other requirements.

The Regulations:

Rule by the Health and Human Services Department on 03/27/2012 (77 FR 18309)

This final rule will implement the new Affordable Insurance Exchanges ("Exchanges"), consistent with title I of the Patient Protection and Affordable Care Act of 2010 ... The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses.

Comment: One commenter expressed concern about consumer advocates' ability to engage in the governance and oversight of a Federally-facilitated Exchange, while other commenters requested that the Federally-facilitated Exchange's planning documents and updates should be subject to public notice and comment.

Response: Information regarding the Federally-facilitated Exchange will be provided in future guidance. (Note from Dr. Pruitt: I'm not sure that this was done, as I couldn't find the later guidance regarding oversight and planning documents. Maybe I missed it?)
**The Implementation:**

The Centers for Medicare and Medicaid Service, an agency within the Department of Health and Human Services, was responsible for the implementation of the provisions related to ACA’s private health insurance. Specifically, the Center for Consumer Information and Insurance Oversight (CCIIO) was charged with implementation of the Federally-facilitated Exchange website, (a.k.a., healthcare.gov/marketplace/exchange).

As stated in the Affordable Care Act provisions (above), if a state decided not to implement a health insurance exchange, the federal government would build one for them. As of early 2014, 16 states and DC had decided to implement some form of marketplace on their own. The remaining states’ marketplaces became the CCIIO’s responsibility.

**State Health Insurance Marketplace Decisions, 2014**

![Map of United States showing different types of marketplaces](image)

Source: State Decisions for Creating Health Insurance Marketplaces, 2014, KFF State Health Facts

In August of 2012, Gary Cohen was hired as Deputy Administrator and Director of the CCIIO to run the Federally-facilitated Exchange implementation. Prior to this role, Gary was Chief Counsel (lawyer) to the California Health Benefit Exchange Board.

According to Reuters reporting, a request for proposal (RFP) was announced in September 2011 that invited contractors to bid on the website project, [http://www.Healthcare.gov](http://www.Healthcare.gov). The RFP drew four bidders, including CGI Federal, a wholly owned subsidiary of the Canadian firm CGI Group. The contract was awarded to CGI, and they were largely responsible for building the Federally-facilitated Exchange, from a technical standpoint.

According to Reuters reporting, in March 2013, Gary Cohen acknowledged, "Everyone recognizes that day one will not be perfect."
On April 17, 2013, Senator Max Baucus said to Secretary of HHS Kathleen Sebelius at a Senate Finance Committee hearing, “I just see a huge train wreck coming down. You and I have discussed this many times, and I don't see any results yet.”

According to United States Government Accountability Office report, as of April 2013, “CMS indicated that it still needed to complete some steps to enable [exchanges] to be ready to test development of key eligibility and enrollment functions, ... [but] CMS indicated that these steps will be completed in July 2013. For one activity—the capacity to process applications and updates from applications and enrollees through all channels, including in-person, online, mail, and phone—CMS estimated that the system will be ready by October 1, 2013.”

On July 9, 2013 Marilyn Tavenner, Administrator for CMS, stated, “I want to assure you that [on] October 1, 2013, the health insurance marketplace will be open for business. Consumers will be able to log onto Healthcare.gov, fill out an application and find out what coverage and benefits they qualify for.”

On July 29, 2013 Deputy Chief Information Officer at CMS, Henry Chao, expressed doubt about the implementation via email by stating, “We are in bad shape. Perhaps worse than ever before and we are not even touching the hard stuff yet.”

On September 19, 2013 (just 2 weeks before exchange was to be launched), Gary Cohen, CMS’s Director of CCIIO, told that a House subcommittee that healthcare.gov was ready to start enrolling consumers on October 1.

The Disaster:

According to the Washington Post, when the healthcare.gov went live on October 1, 2013, it locked up shortly after midnight as about 2,000 users started applications. In the first week of operation, CNBC reported that as few as 1% of the people could be enrolled in a health plan through the Federally-facilitated Exchange.

In late October Marilyn Tavenner, the head of the CMS, told the House Ways and Means Committee, “I want to apologize to you that the website is not working as well as it should.”. Tavenner said her agency didn’t know the extent of the problems until the first week of the website’s launch.

As reported by Health News Florida, Dr. John Petrila’s undergraduate health policy class at the University of South Florida tested the Healthcare.gov website in November. HNF wrote, “About three hundred man hours later, Petrila said the website isn’t the shopping experience most of us are used to. ‘This would have been a great website in the 19th century.’”

According to Reuters reporting, Scott Amey, general counsel at a watchdog group that analyzes government contracting said, “Where was the contract oversight? Why this went from a [budget] ceiling of $93.7 million to $292 million is hard to fathom.” The CGI contract was not renewed.
Discussion Questions

Information in the Policy Implementation: Operation module can help you in this discussion.

1. What is the goal of the federally-facilitated exchange (i.e., health insurance marketplace)?

2. From the perspective of Centers for Medicare and Medicaid Service (CMS), what would have been their hypotheses on how the health insurance marketplace policies should work? In other words, did CMS think that implementing the regulations will cause the desired effect?

3. Did CMS have the managerial competencies for the federally-facilitated exchange? Did they have the know-how to manage the contractor?

4. Did CMS have the resources to implement the policy successfully, including the authority, funds, personnel, and technology?

INSTRUCTIONS:

1. Every group member must make an original posting to 2 of the 4 questions. (.75 points for each original posting as documented in CANVAS)

2. Every group member must respond to group members’ original postings for 2 different questions. In other words, the 2 questions to which you respond may not be the same questions that you answered in #1 above. (.75 points for each response as documented in CANVAS)

3. Also, to receive full credit, your original postings must be at least three days before the final deadline to allow other students time to respond.

4. You should be familiar with the major issues discussed in your group, as a question from this assignment will be included on the Exam.