

United States Senate
WASHINGTON, DC 20510

June 6, 2017

Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue S.W.
Washington, D.C. 20201

Dear Mr. Levinson,

We are writing today to request an investigation of the Trump Administration and the U.S. Department of Health and Human Services' ("HHS") actions to undermine the ongoing implementation of the Affordable Care Act (ACA) and the stability of the individual and small group insurance markets. We ask that you determine the extent to which the Administration's actions have increased uncertainty, increased insurance costs for individuals or the government, reduced individuals' insurance choices in some parts of the country, increased the number of uninsured, or otherwise undermined the goals, implementation, and enforcement of the Affordable Care Act.¹

Trump Administration officials have made no secret of their agenda of undermining the Affordable Care Act. On January 26, 2017, HHS officials "halt[ed] all advertising and other outreach activities" aimed at reminding and encouraging Americans to sign up for healthcare through the ACA marketplaces.² Weeks later, President Trump sought to undermine the intent of the law by threatening to end payments on subsidies paid to insurers to help cover the cost of insuring low-income Americans. With regard to whether he would approve the payments, President Trump stated that "Obamacare is dead next month if it doesn't get that money. I haven't made my viewpoint clear yet."³ One month later President Trump said he intended to stop the payments: "there is no Obamacare, it's dead. Plus we're subsidizing it and we don't have to subsidize it. You know if I ever stop wanting to pay the subsidies, which I will. Anytime

¹ Paul Demko, "Trump White House abruptly halts Obamacare ads," *Politico* (January 26, 2017) (<http://www.politico.com/story/2017/01/trump-white-house-obamacare-ads-234245>); Jonathan Cohn, "Trump Acts to Sabotage Obamacare Enrollment, Days Before Deadline," *Huffington Post* (January 26, 2017) (http://www.huffingtonpost.com/entry/trump-obamacare-enrollment_us_588a9451e4b0230ce61b0b40?vetgfi0iwyl92j4i).

² Amy Goldstein, "Trump orders advertising halt during final days to sign up for Obamacare," *Chicago Tribune* (January 26, 2017) (<http://www.chicagotribune.com/news/nationworld/ct-trump-obamacare-advertising-20170126-story.html>).

³ ABC News, "Trump Threatens to Undermine Obamacare to Get Democrats to Negotiate" (Apr. 12, 2017) (<http://abcnews.go.com/Politics/trump-threatens-undermine-obamacare-democrats-negotiate/story?id=46764709>).

Even worse, these actions to weaken the individual and small group markets appear to be deliberate. President Trump has indicated that his goal was to threaten to create a market collapse in order to force “Democrats [to] start calling me and negotiating.”¹¹ Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma reportedly “stunned insurance industry officials by suggesting a bargain” in which the Trump Administration would fund the low-income subsidy payments to insurers in exchange for industry support of the House health care bill that would force more than 20 million Americans to lose coverage.¹²

The full effects of these ongoing efforts to undermine working families access to health insurance are yet to be seen, but it is clear that the Trump Administration has – either deliberately or through stunning incompetence – undermined the Affordable Care Act in some parts of the country, potentially resulting in significantly increased insurance costs for individuals and the government, and reducing insurance choices for millions of Americans.

We therefore ask that you conduct an investigation of the following questions:

1. Have the following actions taken by the Trump Administration, beginning on January 20, 2017, had an impact on the implementation of the Affordable Care Act or of the individual and small group insurance markets?
 - a. Actions related to advertising and promotion of Affordable Care Act coverage in 2017 and beyond.
 - b. Actions related to payments of ACA low-income subsidies, known as cost-sharing reductions, and the pending court action regarding these subsidies.
 - c. Actions relating to ACA guidance and regulations for plans and for enrollees in 2018 and beyond.
 - d. Actions related to timing and strategy for passage of the American Health Care Act (AHCA) and other legislation to repeal or modify the Affordable Care Act or the regulation of the individual and small group insurance markets.
2. What was the timeline for these actions, and which individuals at HHS, the Office of Management and Budget, the White House, or elsewhere in the Administration were responsible for making decisions and implementing them?
3. What was the rationale and motivation for these actions? Did HHS conduct analyses of the possible consequences of these actions? Did these analyses show the impact of HHS action (or inaction) on the Department’s obligation to implement the Affordable Care Act or on premiums and out-of-pocket costs, the number of enrollees, and the federal budget?

¹¹ Wall Street Journal, Trump Threatens to Withhold Payments to Insurers to Press Democrats on Health Bill (Apr. 12, 2017) (<https://www.wsj.com/articles/trump-threatens-to-withhold-payments-to-insurers-to-press-democrats-on-health-bill-1492029844>).

¹² Los Angeles Times, Health Insurers Plan Big Obamacare Rate Hikes – and they Blame Trump (May 22, 2017) (<http://www.latimes.com/politics/la-na-pol-obamacare-trump-mismanagement-20170518-story.html>).

I want.”⁴ Following these comments by President Trump and members of his cabinet, his administration and the House of Representatives requested another three-month delay in their lawsuit over the payment of these subsidies. That delay could result in premiums that are 20 percent higher by guaranteeing that the lawsuit will not be resolved until all state rate filing deadlines have passed.⁵

Republicans in the House passed legislation that would eliminate Affordable Care Act insurance coverage for 23 million Americans, sending the bill to the Senate, where a group of 13 Republicans, all male, have been negotiating a replacement behind closed doors⁶ – all while insurers are preparing rate filings and making important decisions about market participation in 2018.⁷

The report last month from the non-partisan Congressional Budget Office (CBO) on the House-passed Trumpcare bill underscored the risks posed by introducing instability to the marketplace through these regulatory and legislative actions. CBO concluded that “substantial uncertainty about enforcement of the individual mandate and about future payments of the cost-sharing subsidies” are among the main factors that would lead insurers to withdraw from the market in some parts of the country.⁸ Under the House-passed bill, according to CBO, “one-sixth of the population resides in areas in which the nongroup market would start to become unstable beginning in 2020,” concluding that “instability would cause some people who would have been insured in the nongroup market under current law to be uninsured.”⁹

Indeed, the actions by the Trump Administration are already undermining the nongroup insurance market, threatening Americans’ access to health insurance. The Los Angeles Times described the situation:

Health insurers across the country are making plans to dramatically raise Obamacare premiums or exit marketplaces amid growing exasperation with the Trump administration’s erratic management of the program and its conflicting signals about the fate of aid for low-income consumers and other key issues.

At the same time, state insurance regulators – both Democrat and Republican – have increasingly concluded they cannot count on the Trump administration to help them ensure that consumers will have access to a health plan next year.¹⁰

⁴ The Hill, “Trump Threatens to Stop ObamaCare payments (May 11, 2017) (<http://thehill.com/policy/healthcare/332953-trump-threatens-to-stop-obamacare-payments>).

⁵ CNBC, Obamacare Rates Could be Nearly 20 Percent Higher Next Year Just from Trump Administration Delay on Subsidy Case (May 22, 2017) (<http://www.cnbc.com/2017/05/22/this-trump-delay-may-push-obamacare-rates-20-percent-higher-next-year.html>).

⁶ NPR, Secret Republican Senate Talks Are Shaping Healthcare Legislation (May 15, 2017) (<http://www.npr.org/2017/05/15/528449558/secret-republican-senate-talks-shaping-health-care-legislation>)

⁷ Larry Levitt (May 21, 2017) (https://twitter.com/larry_levitt/status/866672422719827972).

⁸ Congressional Budget Office, Cost Estimate for H.R. 1628, American Health Care Act of 2017 (May 24, 2017), at 4 (<https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1628aspassed.pdf>)

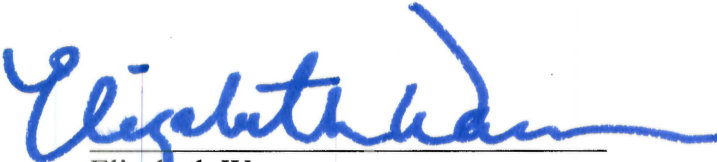
⁹ *Id.*, at 5.

¹⁰ Los Angeles Times, Health Insurers Plan Big Obamacare Rate Hikes – and they Blame Trump (May 22, 2017) (<http://www.latimes.com/politics/la-na-pol-obamacare-trump-mismanagement-20170518-story.html>).

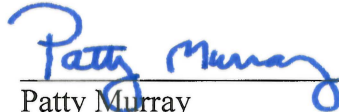
4. Did the Administration consult with industry, stakeholders, experts, and affected individuals in the course of the decision-making process? Which organizations or individuals were able to provide input?
5. Was the media report of a quid quo pro offered by the Administration to insurers – in which the Trump Administration would fund the low-income subsidy payments to insurers in exchange for industry support of the House health care bill – accurate? Were there any similar offers by CMS or Administration officials to health care industry representatives or to legislators? Were administrative decisions about ACA implementation in any way governed by strategies designed to pass alternative legislation or to force “Democrats [to] start calling [President Trump] and negotiating”?
6. Overall, what impact did the actions taken by Trump Administration officials have on key ACA indicators, including insurance premiums, out-of-pocket costs, the number of enrollees, and the federal budget?

I appreciate your prompt and complete investigation of these issues. If you have any questions, please do not hesitate to contact our staff.

Sincerely,



Elizabeth Warren
United States Senator



Patty Murray
United States Senator