

**Congress of the United States**  
Washington, DC 20510

November 1, 2017

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

Scott S. Dahl  
Inspector General  
Office of the Inspector General  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, D.C. 20210

Eric Thorson  
Inspector General  
Office of the Inspector General  
Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, D.C. 20220

Dear Inspectors General Levinson, Dahl, and Thorson:

We are writing today to express our concerns about the impact of President Trump's October 12, 2017, Affordable Care Act Executive Order on the availability, quality, and cost of health insurance for millions of Americans, and about the extent to which the requirements of the executive order can be implemented under current law. Given these concerns, we ask that your offices thoroughly review the implementation and impact of this Executive Order.

The Executive Order states that “[i]t shall be the policy of the executive branch ... to facilitate ... the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people.”<sup>1</sup> But the order signed by President Trump (1) appears to call for many policy changes that would require novel legal interpretations of the Affordable Care Act (ACA) and other existing laws; and (2) contains policies that would make health insurance more expensive and less effective, particularly for individuals with preexisting conditions.

The President's Executive Order asks the Secretaries of the Treasury Department, the Labor Department, and the Department of Health and Human Services to take a series of actions that would affect a number of different parts of the health care system. As these Departments

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<sup>1</sup> The White House, Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States (Oct. 12, 2017) (<https://www.whitehouse.gov/the-press-office/2017/10/12/presidential-executive-order-promoting-healthcare-choice-and-competition>).

develop and enact regulations and guidance in response to the Executive Order, we ask that your offices conduct a careful review of the Order's implementation, and the impacts it may have on the ACA and other laws within your respective jurisdictions.

The order asks that the Secretary of Labor, within 60 days, "consider proposing regulations or revising guidance ... to ... allo[w] more employers to form [Association Health Plans]." It also asks the Secretaries of Treasury, Labor, and HHS to "consider proposing regulations or revising guidance ... to expand the availability of [Short-Term Limited-Duration Insurance]," and "to increase the usability of [Health Reimbursement Arrangements] (HRAs), to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage."<sup>2</sup>

Experts have identified the most likely outcome of this executive order: that it will cause healthy individuals to leave the ACA exchanges for plans that offer inferior coverage. The effect of this shift will be increased costs and premiums for the older individuals and individuals with preexisting conditions who are left behind in the exchanges. Furthermore, healthy individuals who exit the exchanges to take up association health plans or short-term coverage will be left without the coverage they need when they become ill or have an accident:

Their apparent intent is to siphon healthy people out of the ACA-compliant market, causing the risk pool to become even less healthy and more costly, possibly leading to collapse in some states. These measures could also leave a significant number of participants in the small group and individual market without the protections Congress intended to give consumers when it adopted the ACA.<sup>3</sup>

These two outcomes – higher costs and lack of insurance options for Americans with preexisting conditions, and insurance coverage that fails to cover important medical care when it is needed most - would be the exact opposite of what Congress intended when it passed the ACA. This would be reason enough for your offices to conduct an investigation.

But in addition to these concerns, I am concerned about the legality of the actions ordered by President Trump. Association Health Plans are governed by the Employee Retirement Income Security Act of 1974 (ERISA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the ACA, and by insurance regulators in every state. Similarly, a complex series of federal and state laws and rules regulate the use of Short-Term Limited Duration Insurance and Health Reimbursement Arrangements. The actions required under the October 2017 Executive Order would require novel interpretations of these laws, or require agencies to toss aside years of established precedents regarding how these laws and rules are interpreted - placing Administration officials at risk of violating both the letter and the spirit of the laws that they have pledged to uphold.

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<sup>2</sup> The White House, Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States (Oct. 12, 2017) (<https://www.whitehouse.gov/the-press-office/2017/10/12/presidential-executive-order-promoting-healthcare-choice-and-competition>).

<sup>3</sup> Timothy Jost, Trump Executive Order Expands Opportunities for Healthier People to Exit ACA, Health Affairs Blog (Oct. 12, 2017).


Since taking office, President Trump and his Administration have made multiple policy changes that are designed to undermine the ACA marketplace: ending cost-sharing reductions that help limit premium increases; reducing the length of the open enrollment period; eliminating funding for ACA enrollment outreach and education, and more. The new executive order raises more questions about the intent of the Administration and the potential impacts on affordable health care coverage of Administration action.

As you review the actions taken by the Departments of Labor, Health and Human Services, and the Treasury to implement this Executive Order, we ask that you assess and analyze:

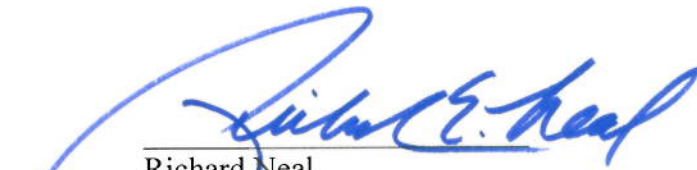
- (1) The legal basis for any actions taken by the Department of Labor, Treasury Department, or Department of Health and Human Services under the Executive Order.
- (2) The procedures used to justify actions under this Executive Order, including an analysis of the legal and policy rationale for any actions, the extent to which actions taken under the Executive Order are consistent with past precedent and prior agency actions; the role of key decision makers within each agency, and whether agencies are in compliance with the Administrative Procedures Act and other procedural rules and regulations.
- (3) Whether or not, in advance of taking action, the Department of Labor, Treasury Department, or Department of Health and Human Services conduct assessments to determine the extent to which their actions would reduce the number of individuals covered under plans that include ACA-compliant consumer protections and increase the cost of health insurance premiums. The impact of actions taken under the Executive Order on health care coverage, cost, and affordability.

Please do not hesitate to reach out to our offices with any questions or concerns.

Sincerely,



Elizabeth Warren  
United States Senator



Richard Neal  
Member of Congress