

United States Senate

WASHINGTON, DC 20510

November 6, 2017

Eric D. Hargan
Acting Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Secretary Hargan,

We are attaching a new report by the Department of Health and Human Services (HHS) Inspector General (IG) about the Trump Administration's decision to cancel key portions of the HHS federal marketplace outreach campaign during the final days of 2016-2017 open enrollment. According to the IG, the decision wasted \$1.1 million of taxpayer funds, and senior HHS officials ignored warnings about the impact of cutting off ads on marketplace enrollment — yet key details on the decision-making process remain unclear.¹

We are requesting additional information from you to help us understand why the Trump Administration, within days of taking office, wasted over \$1 million taxpayer dollars in an effort to sabotage the nation's healthcare system—and to determine if the individuals who ordered these wasteful actions are playing a role in overseeing the current open enrollment period.

Within Days of Taking Office, President Trump Halted Key ACA Outreach Efforts

On January 26, 2017, reports surfaced that HHS officials had canceled advertisements and other outreach activities promoting healthcare sign-ups through the marketplaces.² The final week of open enrollment has historically attracted large numbers of young, healthy individuals whose presence in the marketplaces helps reduce premium costs. Thus, blocking advertisements and other outreach efforts just five days before the January 31st deadline for enrollment threatened to increase insurance prices and undermine the individual insurance market.³

¹ Department of Health and Human Services Office of the Inspector General, *Review of The Department of Health and Human Services (HHS) Cancellation of Marketplace Enrollment Outreach Efforts*, OEI-12-17-00290 (October 25, 2017) (online at <https://oig.hhs.gov/oei/reports/oei-12-17-00290.pdf>).

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

³ Amy Goldstein, "Trump orders advertising halt during final days to sign up for Obamacare," *Washington Post* (January 26, 2017) (online at <http://www.chicagotribune.com/news/nationworld/ct-trump-obamacare-advertising-20170126-story.html>); Pete Weber, "Trump reportedly cancels paid-for Obamacare ads during final enrollment push," *The Week* (January 27, 2017) (online at <http://theweek.com/speedreads/676232/trump-reportedly-cancels-paidfor-obamacare-ads-during-final-enrollment-push>).

At the time, little was known about the specific actions taken by HHS to halt ACA outreach efforts. On January 31st, we requested that the HHS IG conduct an investigation of the Department's decision.⁴

HHS IG Report Shows Ad Cancellation Decision Wasted \$1.1 Million, Unable to Determine the Impact on Marketplace Enrollment

On October 25, 2017, the HHS IG released a detailed review of HHS' decision to cancel advertising and outreach efforts for the Federal insurance marketplace. Their report paints a disturbing picture of a decision-making process riddled with confusion, disregard for the nation's healthcare system, and, ultimately, wasted taxpayer dollars.

According to the IG, Timothy Clark, the White House Liaison for the HHS "beachhead team," ordered career HHS officials "to cancel Marketplace enrollment outreach for the remainder of the fourth open enrollment period" on the morning of January 26, 2017.⁵ In response, a contracting officer at the Center for Medicare and Medicaid Services (CMS) e-mailed the federal contractors running open enrollment outreach for the Department, informing them that "all paid advertising..., earned media..., social media, and low-cost activities" should be cancelled. The contractors began implementing the cancellation order.⁶

The beachhead team altered its instructions later that evening, ordering career officials to "cancel only paid outreach that would result in cost savings" and "continue any paid advertising which was not refundable or had penalties exceeding potential savings." But as a result of the initial order to cancel all ads, HHS canceled outreach efforts worth \$1.1 million in unrecoverable costs for HHS.⁷

In addition to wasting \$1.1 million in taxpayer dollars, the decision to halt outreach efforts appears to have been made with little analysis of information about its impact on the stability of the individual insurance market. According to the IG, the materials upon which the decision was based "did not contain a full analysis of the potential impact that canceling outreach might have on enrollment." And while one career official raised concerns that "canceling all outreach would have detrimental effects on the risk pool for the individual market," it is unclear whether "his doing so had influenced the [beachhead team's] decision to reinstate certain outreach activities."⁸

⁴ See Senator Elizabeth Warren, "Senators ask Inspector General to investigate HHS suspension of Affordable Care Act outreach efforts at enrollment deadline" (January 31, 2017) (online at https://www.warren.senate.gov/?p=press_release&id=1413).

⁵ Department of Health and Human Services Office of the Inspector General, *Review of The Department of Health and Human Services (HHS) Cancellation of Marketplace Enrollment Outreach Efforts, OEI-12-17-00290* (October 25, 2017) (online at <https://oig.hhs.gov/oei/reports/oei-12-17-00290.pdf>); Letter from Robin Brooks, Director, Freedom of Information, at the Department of Health and Human Services Office of the Inspector General, to Senators Warren and Murray, October 25, 2017.

⁶ Department of Health and Human Services Office of the Inspector General, *Review of The Department of Health and Human Services (HHS) Cancellation of Marketplace Enrollment Outreach Efforts, OEI-12-17-00290* (October 25, 2017) (online at <https://oig.hhs.gov/oei/reports/oei-12-17-00290.pdf>).

⁷ Ibid.

⁸ Ibid.

Ultimately, HHS' decision to halt advertisements and outreach—along with other policy decisions casting doubt on the solvency of the ACA marketplaces—appears to have contributed to reductions in marketplace enrollment in 2017. Projections in late 2016 and early 2017 suggested that ACA “sign-ups were on track to overtake [2016] enrollment.”⁹ However, in the final two weeks of enrollment—as President Trump issued an executive order sabotaging the insurance markets and HHS canceled millions of dollars-worth of outreach—the “numbers dropped.”¹⁰ Ultimately, the marketplace saw a reduction in enrollment of at least half a million people from 2016 levels.¹¹

Key Questions Remain As Open Enrollment Approaches

Although we have learned that Mr. Clark gave the order to cancel the outreach ads, it remains unclear which other Trump Administration officials were responsible for the decision and precisely how the decision was made. Mr. Clark, for example, informed the IG that he “did not recall whether he made the decision by himself, or whether he conveyed a decision made by someone else.” Other beachhead team members “reported...that they were not involved in the decision-making.”¹²

This is an ongoing concern about how decisions are being made for this year's open enrollment period, given the ad cancellation decision-making process detailed in the IG's report. To help us better understand how the Department arrived at its wasteful decision to end outreach advertisements during last year's open enrollment, please respond to the following questions no later than November 20, 2017:

1. Did the beachhead team White House Liaison, identified by HHS as Timothy Clark, make the original decision to halt all open enrollment outreach activities? Were there any other officials within HHS or the White House, or individuals who had been nominated for roles in the Administration, involved in this decision? If so, please identify these individuals and their role in the decision.
2. Did the beachhead team White House Liaison, Timothy Clark, make the subsequent decision to halt only those outreach efforts with costs that could be recouped for the Department? Were any other officials within HHS or the White House, or individuals

⁹ Margot Sanger-Katz, “Drop in Late Obamacare Enrollment Appears to Be a Trump Effect,” *New York Times* (February 3, 2017) (online at <https://www.nytimes.com/2017/02/03/upshot/drop-in-late-obamacare-enrollment-appears-to-be-a-trump-effect.html>).

¹⁰ Margot Sanger-Katz, “Drop in Late Obamacare Enrollment Appears to Be a Trump Effect,” *New York Times* (February 3, 2017) (online at <https://www.nytimes.com/2017/02/03/upshot/drop-in-late-obamacare-enrollment-appears-to-be-a-trump-effect.html>).

¹¹ Tami Luhby, “Obamacare enrollment slides to 10.3 million,” *CNN Money* (June 12, 2017) (online at <http://money.cnn.com/2017/06/12/news/economy/obamacare-enrollment/index.html>); Centers for Medicare & Medicaid Services, “2017 Effectuated Enrollment Snapshot” (June 12, 2017) (online at <https://downloads.cms.gov/files/effectuated-enrollment-snapshot-report-06-12-17.pdf>).

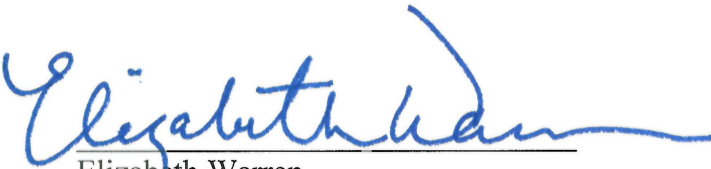
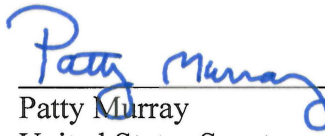
¹² Department of Health and Human Services Office of the Inspector General, *Review of The Department of Health and Human Services (HHS) Cancellation of Marketplace Enrollment Outreach Efforts*, OEI-12-17-00290 (October 25, 2017) (online at <https://oig.hhs.gov/oei/reports/oei-12-17-00290.pdf>).

who had been nominated for roles in the Administration, involved in the decision? If so, please identify those individuals and their role in the decision.

3. It is not clear where in the formal HHS chain of command Mr. Clark stood when he gave the order to HHS officials to cancel the advertisements. What was the legal basis for Mr. Clark's order? Where in the agency chain of command was Mr. Clark when he gave the order, and was he legally authorized to do so?
4. The decision to end the ACA ads resulted in a loss of \$1.1 million for American taxpayers. Has the Department put in place any new procedures, rules, or safeguards for decision making during open enrollment to prevent similar losses from occurring in the future? If so, please provide written copies or descriptions of these new procedures, rules, and safeguards.
5. Since January, has HHS changed its decision-making process regarding how it plans for outreach and education efforts, coordinates within the Department and relevant sub-agencies, including CMS and CCIIO, and coordinates with contractors? Has HHS made changes in how it manages payments to contracts or how decisions are communicated to contractors?
6. Are any members of the beachhead team that were in place during the outreach cancelations currently employed by HHS and responsible for managing the current open enrollment process? If so, please provide a list of the responsibilities of each former beachhead team member during the current open enrollment period.

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

Sincerely,


Elizabeth Warren
United States Senator
Patty Murray
United States Senator

Enclosure



Review of The Department of Health and Human Services (HHS) Cancellation of Marketplace Enrollment Outreach Efforts, OEI-12-17-00290

In response to a congressional request, the Office of Inspector General (OIG) conducted a descriptive, fact-finding review of HHS's cancellation of certain Marketplace enrollment outreach activities (outreach) before the January 31 end of the fourth open enrollment period.¹

Scope of Review and Limitations

Our review focused on the timeline of events surrounding HHS's cancellation of certain outreach activities before the end of the fourth open enrollment period. Our review included collecting information on the decisionmaking process and factors considered by HHS, including any analyses of implications for enrollment and/or expected cost savings. OIG did not independently assess the expected or actual costs or savings, impacts of the cancellation on Marketplace enrollment, or whether HHS's actions to implement the cancellations complied with policies or protocols.

Data Sources

Interviews. We interviewed HHS officials whom we identified as having been involved or potentially involved in the Marketplace enrollment outreach cancellations that are the subject of this review. These officials fell into two categories: (1) officials known as the HHS Beachhead Team, which included individuals appointed by the Administration to serve temporarily in the HHS Office of the Secretary on or shortly after January 20, 2017; and (2) career HHS officials in the Centers for Medicare & Medicare Services (CMS) and the Office of the Assistant Secretary for Public Affairs (ASPA).

At CMS, we interviewed relevant officials from the following offices:

- Office of Communications (OC)—responsible for developing, implementing, and executing outreach to help individuals understand their health insurance options and enroll in plans;

¹ The Affordable Care Act (ACA) requires the Secretary of HHS to establish a Federal health insurance exchange (i.e., Marketplace) in States that did not establish their own Marketplaces and to specify annually an open enrollment period during which individuals may enroll in health plans in a Marketplace. The first open enrollment period was for 2014 coverage. The fourth open enrollment period allowed individuals to enroll in coverage for 2017, and open enrollment season began November 1, 2016, and ended January 31, 2017. P.L. No. 111-148 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (Mar. 30, 2010), collectively referred to as the ACA.

- Office of Acquisition and Grants Management (OAGM)—houses CMS’s contracting officers, including the contracting officer assigned to Weber Shandwick and Elevation, the two contractors that conducted Marketplace outreach advertising for the fourth open enrollment period.²
- Center for Consumer Information and Insurance Oversight (CCIIO)—serves as the lead Center within CMS for overseeing and managing the implementation of the provisions of the ACA related to private health insurance.³

Documentation Review. We reviewed documentation provided by HHS officials that included CMS’s plan for outreach for the final week of the fourth open enrollment period, as well as a limited number of email communications between officials from the HHS Beachhead Team, ASPA, and CMS pertaining to the cancellations of Marketplace outreach.⁴ We used this documentation to verify aspects of the timeline of events presented by HHS officials in interviews. We also reviewed documentation regarding CMS’s contracts with Weber Shandwick and Elevation.⁵ These documents include contracts, statements of work, and required deliverable documents, such as paid media plans, monthly expense reports, and completed project reports.

From these interviews and documentation we developed a timeline of events and summaries addressing the decisionmaking process, factors that HHS considered, HHS assessments of impacts, and costs and savings reported by HHS contractors related to the cancellation of outreach, as described below.

We conducted this review in accordance with the *Council of the Inspectors General on Integrity and Efficiency’s Quality Standards for Inspection and Evaluation*.

Timeline of Events of HHS’s Cancellation of Outreach

Wednesday, January 25, 2017

- **In the evening, ASPA officials emailed materials to officials on the HHS Beachhead Team summarizing the outreach planned for the remainder of the fourth open enrollment period.** As part of the transition process to brief new officials on departmental activities, ASPA emailed officials on the HHS Beachhead Team these materials in advance of a staff meeting scheduled for the next morning.

² The contracting officer is responsible for ensuring performance of all contract actions and compliance with contract terms, HHS policy, the HHS Acquisition Regulation (HHSAR), and the Federal Acquisition Regulation (FAR). Contracting officers are the only individuals authorized to enter into or terminate contracts. The FAR codifies general policies and procedures for acquisition by all Federal agencies, 48 C.F.R. Part 1. The HHSAR established uniform HHS acquisition policies and procedures that implement and supplement the FAR. 48 C.F.R. Chapter 3.

³ The official from CCIIO provided responses to our questions in writing rather than by interview.

⁴ The email communications were dated from January 25 to 27, 2017.

⁵ The contractors were responsible for conducting outreach, including broadcast advertising (i.e., television and radio); digital advertising (i.e., search engine marketing; social media, including Facebook and YouTube; and display advertising on webpages); earned media (i.e., interviews on radio and satellite media tours), and supporting CMS’s outreach efforts with social media, email, text message, and/or outbound call marketing. Weber Shandwick conducted the majority of outreach, while Elevation targeted its outreach to reach the Hispanic uninsured population.

Thursday, January 26, 2017

- **In the morning, following the staff meeting, an official on the HHS Beachhead Team orally instructed ASPA officials to cancel Marketplace enrollment outreach for the remainder of the fourth open enrollment period.** An ASPA official and an official on the HHS Beachhead Team reported that they understood these initial instructions to apply to all Marketplace outreach being conducted under the Weber Shandwick and Elevation contracts. However, the HHS Beachhead Team official who provided the instructions indicated to OIG that he intended the instructions to apply only to a subset of Marketplace outreach activities; other HHS Beachhead Team officials could not definitively recall the scope of these instructions.
- **Officials from ASPA, OC, and OAGM coordinated to implement what they understood to be the HHS Beachhead Team's instructions.** Upon receiving the cancellation instruction from the official on the HHS Beachhead Team, an ASPA official informed OC of the instruction, and OC relayed the instruction to CMS's Office of the Administrator and CCIIO. To ensure that CMS and HHS's Office of General Counsel (OGC) coordinated, the ASPA official also informed OGC that CMS was tasked with canceling planned outreach activities. Officials within OAGM reported that they consulted with OGC about canceling planned outreach activities for the Weber Shandwick and Elevation contracts pursuant to the terms of the contracts and the requirements of the FAR. In addition, an official from CCIIO reported that he contacted an official on the HHS Beachhead Team with concerns that the cancellation of outreach could have potential negative effects on the risk pool for the individual market, and suggested that the HHS Beachhead Team official raise this issue with others in HHS.
- **According to ASPA and CMS officials, an official on the HHS Beachhead Team orally informed ASPA and CMS in the late afternoon to cancel only certain outreach activities and indicated that the goal was to save money.** An official from OC reported having several discussions with ASPA officials and officials on the HHS Beachhead Team, beginning in the late afternoon and continuing into the evening, to confirm the updated instructions from the HHS Beachhead Team, which were to cancel only those activities for which payments could be recouped.
- **In the evening, a CMS contracting officer emailed letters of partial termination to Weber Shandwick and Elevation that instructed the contractors to immediately cancel all outreach related to the fourth open enrollment period.** This outreach included all paid advertising (including broadcast advertising and digital advertising), earned media (i.e., interviews on radio and satellite media tours), social media, and low-cost activities⁶ that would support CMS's outreach efforts. These letters of partial termination reflected ASPA officials' understanding of the initial instructions from Thursday morning that was relayed to OC, OAGM, and OGC earlier in the day.

⁶ Low-cost activities include emails, text messages, and outbound call marketing, which were inexpensive and coordinated in-house by CMS career employees. Contractors provided additional staff and expertise to administer these activities.

- **In the late evening—after CMS sent the letters of partial termination to Weber Shandwick and Elevation—officials on the HHS Beachhead Team confirmed their updated instructions with CMS officials.** According to our interviews and review of emails, officials on the HHS Beachhead Team directed CMS officials both orally and by email to do the following: (1) resume certain outreach, such as low-cost activities; (2) cancel only paid outreach that would result in cost savings; and (3) continue any paid advertising which was not refundable or had penalties exceeding potential savings. A CMS official then relayed this set of instructions from the HHS Beachhead Team to an ASPA official. Officials from ASPA and CMS reported that they coordinated to implement the HHS Beachhead Team’s updated instructions in accordance with contract terms and regulations.

Friday, January 27, 2017

- **In the afternoon, a CMS contracting officer emailed letters to Weber Shandwick and Elevation to update the scope of the initial letters of partial termination to reflect the HHS Beachhead Team’s updated instructions.** In its completed project report, Weber Shandwick reported that it reinstated certain outreach activities that it was unable to cancel without a penalty.⁷

Decisionmaking and Factors Considered

ASPA and CMS officials reported that although they implemented the HHS Beachhead Team’s instructions to cancel outreach, they were not involved in or privy to any deliberations about the decision to cancel outreach. The materials that ASPA provided to officials on the HHS Beachhead Team as part of the transition process included a preliminary analysis of recoverable and unrecoverable costs associated with canceling remaining outreach for the fourth open enrollment period; however, these materials did not make any recommendations.

After a CCIIO official learned from OC that all outreach would be canceled on January 26, 2017, for the remainder of the fourth open enrollment period, this CCIIO official informed an official on the HHS Beachhead Team of his concerns that canceling all outreach would have detrimental effects on the risk pool for the individual market, and suggested that the official raise the issue with others in HHS. The HHS Beachhead Team official reported to us that he raised this concern with other officials on the Beachhead Team, but that he did not know whether his doing so had influenced the decision to reinstate certain outreach activities.

An official on the HHS Beachhead Team orally instructed ASPA officials to cancel Marketplace outreach, and that same official later provided updated instructions about which outreach should remain canceled and which should resume. However, we were unable to determine conclusively whether that individual on the HHS Beachhead Team was also the person who made the decision to cancel outreach. The official did not recall whether he made the decision by himself, or whether he conveyed a decision made by someone else. Other officials on the HHS Beachhead

⁷ In its completed project report, Elevation did not report whether it reinstated any outreach after receiving the updated instructions.

Team provided information regarding their knowledge of the cancellations but reported to us that they were not involved in the decisionmaking. With this being the case, we also are unable to determine conclusively what factors were considered in making the decision. However, HHS Beachhead Team officials did discuss, with officials in ASPA and OC, the costs and potential savings associated with canceling Marketplace outreach.

HHS's Assessments of the Effects of Canceling Outreach

Before the cancellation, the briefing materials that ASPA provided to officials on the HHS Beachhead Team as part of the transition process included a preliminary analysis estimating that canceling all remaining outreach for the fourth open enrollment period would result in roughly \$5 million in unrecoverable costs and \$4 million in costs recoverable without penalty. Additionally, although the materials mention that outreach close to the deadline would be critical to enrolling young and healthy consumers, the materials did not contain a full analysis of the potential impact that canceling outreach might have on enrollment.

CMS and ASPA reported that since the cancellations, they have not analyzed how the cancellations affected Marketplace enrollment.

Contractor Reported Costs and Savings for Canceled Outreach

CMS's contractors, Weber Shandwick and Elevation, estimated the costs of canceled outreach in their completed project reports, which OIG reviewed. CMS reports that it has worked with Weber Shandwick and Elevation to reconcile the amount spent on outreach and to determine the dollar amount of recoverable funds.⁸

Weber Shandwick reported that it initiated the cancellation of all outreach after receiving CMS's partial termination letter on January 26, 2017. After receiving CMS's updated instructions on January 27, 2017, Weber Shandwick reinstated certain aspects of outreach that it was unable to cancel without HHS paying a penalty. However, Weber Shandwick estimated that the dollar value of outreach that it had already canceled, before receiving the updated instructions, was approximately \$1.1 million in costs that could not be recovered for HHS. Weber Shandwick also estimated that the dollar value of canceled outreach that could be recovered for HHS was approximately \$5.2 million. In its completed project report, Elevation estimated that the dollar value of outreach it canceled was approximately \$400,000, which CMS reports could be recovered for HHS.

⁸ The periods of performance have ended for these contracts, and CMS reports that unspent funding for these contracts will go back to the Treasury after the final reconciliation at contract closeout.