

Congress of the United States
Washington, DC 20515

August 11, 2017

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Dodaro:

We are writing to request that the Government Accountability Office (GAO) conduct a study evaluating the Trump Administration's enforcement of the Affordable Care Act's (ACA) individual mandate. The Trump Administration has sent strong signals about its intent to reduce or even eliminate enforcement of the individual mandate. We believe that these signals are contributing to higher health insurance premiums and increased instability in the Marketplaces.

The individual mandate is a critical provision of the ACA that helps to hold down consumer costs and ensure marketplace stability. The success of the individual mandate relies on robust enforcement by the Internal Revenue Service (IRS), with the aid of the Department of Health and Human Services (HHS). On January 20, 2017, President Trump issued an Executive Order designed to undermine the ACA, instructing the Secretary of HHS and all other agency heads to "exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications."¹ We are concerned that this Executive Order is being invoked to undermine enforcement of current law, including the individual mandate.

In February 2017, IRS stated that, to be consistent with the Executive Order, it would accept for processing income tax returns that do not disclose whether the individual has health insurance,² despite the fact that the agency had already put in place a system that would reject tax returns that do not provide this information.³ This reversal of how IRS processed these returns suggests a lack of commitment on the part of the Administration to effectively enforce the individual mandate as required by law.

Additionally, Secretary Price has also suggested the possibility of using his regulatory authority to waive the individual mandate entirely.⁴ Although he has not elaborated on this

¹ Exec. Order No. 13765, 82 Fed. Reg. 8351 (Jan. 20, 2017).

² Internal Revenue Service, *Individual Shared Responsibility Provision* (Feb. 15, 2017).

³ *Id.*

⁴ *Health Secretary Tom Price says waiving Obamacare's individual mandate is on the table*, Washington Times (July 30, 2017).

proposal, we remain concerned that the Administration's efforts to undermine current law will result in increasing premiums and destabilization of the individual market.

Insurers and state insurance commissioners across the country have raised concerns about the effect of the Trump Administration's non-enforcement of the individual mandate on rates for the 2018 plan year. Insurers have been forced to incorporate uncertainty about the enforcement of the individual mandate into their 2018 decision-making, which has contributed to double-digit premium increases for the 2018 plan year.⁵ Oliver Wyman Health projected that up to two-thirds of 2018 rate increases will be attributable to the uncertainty surrounding cost-sharing reductions and individual mandate enforcement.⁶

Therefore, we request that GAO begin a study to evaluate IRS and HHS' enforcement of the individual mandate, and the impact of non-enforcement of the mandate on rates and Marketplace stability. This study would address the following issues:

1. How did IRS and HHS enforce the individual mandate for the 2016 tax year?
 - a. How did IRS's enforcement of the individual mandate for the 2016 tax year compare to its enforcement of the individual mandate for the 2015 tax year?
 - b. To what extent did IRS accept income tax returns for the 2016 tax year that did not disclose whether the individual had health insurance?
 - c. What actions (if any) did IRS take, or fail to take, that reduced or weakened enforcement of the individual mandate for the 2016 tax year?
 - d. To what extent did Executive Order No. 13765 affect IRS's enforcement of the individual mandate for the 2016 tax year?
 - e. How did HHS process exemptions from the mandate for the 2016 tax year?
 - f. What actions (if any) did HHS take, or fail to take, that reduced or weakened enforcement of the individual mandate for the 2016 tax year?
 - g. To what extent did Executive Order No. 13765 affect HHS's enforcement of the individual mandate for the 2016 tax year?
2. How are IRS and HHS planning to enforce the individual mandate on tax returns for the 2017 tax year?

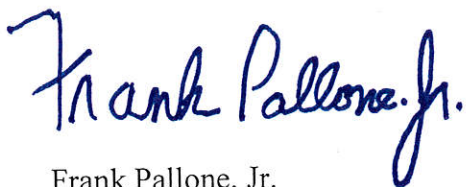
⁵ *The Trump administration is making Obamacare more expensive*, Vox (May 8, 2017); Blue Cross Blue Shield of North Carolina, *Federal Part III, Actuarial Memorandum, 2018 Individual ACA Single-Risk-Pool Rate Filing* (May 18, 2017); Pennsylvania Pressroom, *Insurance Commissioner Announces Single-Digit Aggregate 2018 Individual and Small Group Market Rate Requests, Confirming Move Toward Stability Unless Congress or the Trump Administration Act to Disrupt Individual Market* (June 1, 2017); Harvard Pilgrim Health Care, Inc., *Actuarial Memorandum and Certification* (June 2, 2017); Covered California, *Analysis of Impact to California's Individual Market If Federal Policy Changes Are Implemented: Effect on Premiums, Enrollment and Coverage in 2018* (Apr. 27, 2017).

⁶ Oliver Wyman Health, *Analysis: Market Uncertainty Driving ACA Rate Increases* (June 14, 2017).

- a. To what extent is IRS planning to accept income tax returns that do not disclose whether the individual has health insurance?
 - b. How do IRS's plans for enforcing the individual mandate on tax returns for the 2017 tax year compare to its enforcement of the individual mandate for the 2016 tax year?
 - c. To what extent is Executive Order No. 13765 preventing IRS from fully enforcing the individual mandate on tax returns for the 2017 tax year?
 - d. How does HHS plan to process exemptions from the mandate for the 2017 tax year?
 - e. How do HHS' plans for enforcing the individual mandate for the 2017 tax year compare to its enforcement of the individual mandate for the 2016 tax year?
 - f. To what extent is Executive Order No. 13765 preventing HHS from fully enforcing the individual mandate for the 2017 tax year?
3. Please examine the impact of the Administration's non-enforcement or perceived non-enforcement of the individual mandate on 2018 rates in the individual market, as well as on Marketplace stability.

We appreciate your immediate attention to this matter. Should you have any questions about our request, please contact Una Lee on the Democratic Staff of the House Energy and Commerce Committee at (202) 225-3641 or Melanie Egorin on the Democratic Staff of the House Ways and Means Committee at (202) 225-4021.

Sincerely,



Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives



Richard E. Neal
Ranking Member
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