

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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Majority (202) 225-2927  
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October 6, 2017

The Honorable Greg Walden  
Chairman  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Michael C. Burgess  
Chairman  
Subcommittee on Health  
Committee on Energy and Commerce  
2336 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walden and Chairman Burgess:

We are writing to urge you to immediately hold a hearing to examine the Administration's readiness for the upcoming open enrollment season beginning on November 1. We are deeply concerned by a number of actions the Administration has taken that may have the effect of undermining enrollment in the Marketplaces.

We have serious concerns regarding the Administration's decision to cut funding for Navigators by 40 percent, and cut the open enrollment marketing and advertising budget by 90 percent.<sup>1</sup> Administration officials justified this cut by claiming that public awareness of the ACA and the open enrollment period is already high, and that advertising was producing "diminishing returns."<sup>2</sup> However, research previously conducted by the agency contradicts this claim, and found that advertising was responsible for about 37 percent of new enrollee sign-ups

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<sup>1</sup> Centers for Medicare & Medicaid Services, *Policies Related to the Navigator Program and Enrollment Education for the Upcoming Enrollment Period* (Aug. 31, 2017) ([cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Policies-Related-Navigator-Program-Enrollment-Education-8-31-2017pdf.pdf](https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Policies-Related-Navigator-Program-Enrollment-Education-8-31-2017pdf.pdf)).

<sup>2</sup> *Slashing advertising and outreach funds, Trump takes his sabotage of Obamacare to a new level*, Los Angeles Times ([www.latimes.com/business/hiltzik/la-fi-hiltzik-trump-obamacare-20170901-story.html](http://www.latimes.com/business/hiltzik/la-fi-hiltzik-trump-obamacare-20170901-story.html)).

for the third and fourth open enrollment seasons.<sup>3</sup> We request the opportunity to hear from the Administration on the rationale for these decisions, and whether the Administration has analyzed or considered the impact of these decisions on enrollment levels and premiums for plan year 2018.

Similarly, we are very concerned about the Administration's recent announcement that it is barring its 10 regional offices from appearing at Marketplace open enrollment events for the upcoming open enrollment season.<sup>4</sup> The Department of Health and Human Services has a responsibility to provide consumers and organizations involved in Marketplace outreach and enrollment with updates and guidance regarding the agency's policies and positions. There have been many significant policy changes in the nine months of this Administration that affect individuals' ability to enroll, including: 1) shortening of the open enrollment period to 45 days; 2) the decision to take Healthcare.gov offline for 12 hours a day for nearly every Sunday of the open enrollment season; and 3) significant changes to Special Enrollment Periods that may affect consumers' decision to enroll during the open enrollment season. Failing to provide this basic informational function is an abdication of the Agency's responsibility to the public.

We also have questions regarding the Administration's operational readiness for the upcoming open enrollment season, particularly in light of the shortened open enrollment season (and therefore higher daily traffic), reports earlier this summer regarding technical glitches involving Healthcare.gov,<sup>5</sup> and the Administration's plans to take Healthcare.gov offline for 12 hours a day almost every Sunday throughout the open enrollment season for "maintenance outages."<sup>6</sup> This appears to be an unprecedented amount of time to take the system offline, effectively cutting the already truncated open enrollment season to just 42 days.<sup>7</sup> If there are technical and operational concerns driving these planned outages, this Committee needs to hear from the Administration and understand the impact this decision will have on individuals' ability to enroll in coverage.

We remind you of the countless hearings your predecessor held on the Obama administration's readiness for open enrollment, on the administration's implementation of the

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<sup>3</sup> *Trump Administration Says Obamacare Ads Don't Work, But Federal Study Says They Do*, Huffington Post (Sept. 20, 2017).

<sup>4</sup> *The Trump Administration is Pulling Out of Obamacare Enrollment Event*, BuzzFeed News (Sept. 27, 2017).

<sup>5</sup> *Obamacare shoppers mistakenly warned that coverage at risk*, PoliticoPro (July 31, 2017).

<sup>6</sup> *HHS plans hours-long shutdowns of ObamaCare site during enrollment period*, The Hill (Sept. 22, 2017).

<sup>7</sup> *Sunday hours: Healthcare.gov to be shut down for portion of most weekends*, Kaiser Health news (Sep. 25, 2017).

Affordable Care Act, and issues pertaining to Healthcare.gov.<sup>8</sup> Indeed, as your staff noted in a recent staff report:

Since its passage in 2010, the committee has convened 31 oversight hearings on Obamacare and performed systematic and methodical oversight to examine how the administration implemented the most critical components of Obamacare. In these hearings, 107 witnesses testified before the committee, culminating in hundreds of hours of testimony. Of those witnesses, 38 have been administration officials.<sup>9</sup>

In contrast, this Committee has yet to hold a single hearing with either CMS Administrator Seema Verma, now former Secretary Tom Price, or Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight Randy Pate, although it is nine months into this Administration. As such, we have little to no visibility into the Administration's preparation for open enrollment, including whether or not the Administration continues to provide Healthcare.gov with the basic technical staff needed to operate and maintain the enrollment platform, whether it is conducting the necessary testing to ensure that the system will be functioning smoothly on November 1, and whether the agency is conducting the requisite cybersecurity checks to ensure that the personal information of millions of Americans is adequately protected.

Our Committee holds broad jurisdiction over the health care sector and as such has a leading role in examining the individual health insurance market. The Administration's conduct of open enrollment will have an undeniable and significant impact on the health and stability of the individual market, as well as premium costs borne by millions of Americans. Failure to examine the Administration's readiness for open enrollment is a failure to fulfill this Committee's responsibility to conduct effective oversight of the agencies within our jurisdiction.

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<sup>8</sup> See, e.g., House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Hearing on "Security of Healthcare.gov," Nov. 19, 2013 (113th Cong.); House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Hearing on "Two Weeks Until Open Enrollment: Questions for CCIIO," Sept. 19, 2017 (113th Cong.);

<sup>9</sup> House Committee Energy and Commerce, *Obamacare Oversight: 112<sup>th</sup> to 114<sup>th</sup> Congress* (Mar. 2017) (online at <https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/Compendium-2017.pdf>).

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We urge you to examine the issue of the Administration's preparation for the upcoming open enrollment season as soon as possible.

Sincerely,

  
Frank Pallone, Jr.  
Ranking Member

  
Gene Green  
Ranking Member  
Subcommittee on Health