

# United States Senate

WASHINGTON, DC 20510

September 27, 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

Dear Inspector General Levinson,

We are writing today to express our concern regarding reports that the Centers for Medicare & Medicaid Services (CMS) will temporarily shut down *Healthcare.gov* for extended periods during the 2017-2018 Affordable Care Act (ACA) open enrollment period. There has been no satisfactory explanation given for why these shutdowns are necessary, and they appear to be part of a pattern by the Trump Administration to sabotage the Affordable Care Act. We are concerned that these extended maintenance outages will put a time squeeze on consumers seeking to buy health insurance from the federal *Healthcare.gov* site, especially when coupled with the Administration's decision to cut the length of open enrollment period in half.

You recently announced that the Office of the Inspector General will be conducting an assessment of "operational readiness" and other aspects of federal ACA marketplace enrollment systems. We urge you to include an analysis of the rationale for and impact of these extended shutdowns in your analysis.

Under the ACA, Americans may purchase health insurance plans during an "open enrollment" period on state and federal marketplaces. Robust enrollment, particularly among young and healthy individuals, is critical for the stability of the ACA exchanges. Consumers need time to engage with navigators, research plan options, and select their final choices. In recent years, open enrollment has spanned a period of three months. The 2016-2017 open enrollment period, for example, ran for a total of 90 days.

The Trump Administration decided to shorten this year's open enrollment period to just to 45 days – from November 1<sup>st</sup> to December 15<sup>th</sup>.<sup>1</sup> Analysts predict this decision alone could discourage numerous healthy individuals from signing up for coverage<sup>2</sup> and reduce insurance plan sales – increasing the proportion of high-risk enrollees and boosting premiums overall.<sup>3</sup>

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<sup>1</sup> Virgil Dickson, "Insurers want Trump to rethink shortening open enrollment," *Modern Healthcare* (March 7, 2017) (online at <http://www.modernhealthcare.com/article/20170307/NEWS/170309921>).

<sup>2</sup> Paul Shafer and Stacie Dusettzina, "Looking Ahead to 2018: Will A Shorter Open Enrollment Period Reduce Averse Selection In Exchange Plans?" *Health Affairs* (April 14, 2017) (online at <http://healthaffairs.org/blog/2017/04/14/looking-ahead-to-2018-will-a-shorter-open-enrollment-period-reduce-averse-selection-in-exchange-plans/>).

<sup>3</sup> Virgil Dickson, "Insurers want Trump to rethink shortening open enrollment," *Modern Healthcare* (March 7, 2017) (online at <http://www.modernhealthcare.com/article/20170307/NEWS/170309921>); Gary Claxton and Larry Levitt, "What to Look for in 2017 ACA Marketplace Premium Changes," *Kaiser Family Foundation* (March 5,

In addition, the Trump Administration announced that it is slashing its ACA advertising budget by nearly 90% and cut funding for ACA “navigators,” curtailing crucial outreach efforts designed to boost health care sign-ups.<sup>4</sup> These moves come on top of President Trump’s refusal to commit to pay Affordable Care Act cost-sharing subsidies for insurers, which experts believe has resulted in premium increases of up to 20%.<sup>5</sup>

In light of these disturbing decisions, we were glad to see oversight of “Federal Marketplace Enrollment Systems” included in the Office of the Inspector General’s (OIG) work plan. Earlier this month, your office announced that it was “developing new work focused on Federal Marketplace enrollment systems, which may include inquiries into operational readiness, internal controls, and IT security for the [2017-2018] open enrollment period.”<sup>6</sup> An assessment of the Department’s management of open enrollment will be critical to ensuring that the Trump Administration is upholding the law, and that taxpayer dollars are used effectively and rationally to boost sign-ups in the Marketplace.

Given your intention to examine management of Marketplace enrollment systems, we wanted to draw your attention to reports that CMS will shut down *Healthcare.gov* for half of the day nearly every Sunday of the open enrollment period. As noted above, the 2017-2018 sign-up period will run from November 1, 2017, through December 15, 2017.<sup>7</sup> But the website will shut down for “maintenance outages” from 12:00 a.m. ET to 12:00 p.m. ET on November 5, November 12, November 19, November 26, and December 3—every Sunday of operation except for December 10. These scheduled shutdowns will prevent East Coast enrollees from using the site on Sunday mornings before noon and will occur in prime Saturday evening hours for many potential enrollees on the West Coast and in Alaska and Hawaii. Sundays are precisely the days that many consumers have free time and many would use this time to enroll in health insurance on *Healthcare.gov*. *Healthcare.gov* will also be down overnight on November 1, the first day of open enrollment.<sup>8</sup>

While *Healthcare.gov* has been shut down for maintenance during past enrollment periods, this year’s scheduled shutdowns are particularly extensive. During 2015 and 2016 enrollment, *Healthcare.gov* was operational for 99.9% of the 90-day sign-up period—compared to just 93% of the upcoming 45 day period, effectively shortening open enrollment to a mere 42

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2016) (online at <http://www.kff.org/private-insurance/perspective/what-to-look-for-in-2017-aca-marketplace-premium-changes/>).

<sup>4</sup> Tami Luhby, “Trump slashing Obamacare advertising by 90%,” *CNN Money* (August 31, 2017) (online at <http://money.cnn.com/2017/08/31/news/economy/obamacare-trump-advertising/index.html>).

<sup>5</sup> Bertha Coombs, “Uncertainty over Trump’s health-care policies driving double-digit insurance price hikes,” *CNBC* (August 10, 2017) (online at <https://www.cnbc.com/2017/08/10/the-price-of-uncertainty-could-mean-new-double-digit-health-insurance-rate-hikes.html>).

<sup>6</sup> Office of Inspector General, U.S. Department of Health & Human Services, “Federal Marketplace Enrollment Systems” (September 2017) (online at <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000251.asp>)

<sup>7</sup> “Open Enrollment Period,” *Healthcare.gov* (online at <https://www.healthcare.gov/glossary/open-enrollment-period/>).

<sup>8</sup> Phil Galewitz, “Sunday Hours: Obamacare Website to be Shut Down for Portion of Most Weekends,” *Kaiser Health News* (September 22, 2017) (online at <http://khn.org/news/hhs-to-close-insurance-exchange-for-12-hours-on-sundays-during-enrollment/>).



days.<sup>9</sup> According to the former U.S. Department of Health and Human Services (HHS) Chief Information Officer Frank Baitman, “There are no insurmountable tech challenges that require *Healthcare.gov* to be offline.”<sup>10</sup> It is inexplicable that the system—which will now be in its fifth year of operation—would suddenly require orders of magnitude more downtime for maintenance.

Since taking office, President Trump and his Administration have made multiple policy changes that threaten to undermine the ACA marketplace—and the recent announcements of extensive shutdowns of *Healthcare.gov* for “maintenance” appear to be part of that pattern. We therefore ask that you include a review of CMS’s decisions regarding scheduled shutdowns of *Healthcare.gov* in your recently announced assessment of Federal Marketplace Enrollment Systems, including the reasons for the downtime, as well as whether the planned downtime complies with all applicable regulations, policies, and procedures. In conducting this investigation, please include a determination of:

- 1) How was the timing determined for the planned downtime during Open Enrollment 2018?
  - a. Why will *Healthcare.gov* shut down on the first night of Open Enrollment?
  - b. Why were Sundays chosen as a regularly planned downtime day?
- 2) Why is this planned downtime necessary?
  - a. Who determined the need for this planned downtime?
  - b. When did HHS learn of these technical issues requiring planned downtime?
  - c. Why does this maintenance have to be done during Open Enrollment? How did HHS determine that this was the best time to address these technical problems?
  - d. When was the *Healthcare.gov* website’s last downtime?
  - e. If there is a technical issue, did HHS consult with outside experts to address technical problems and decrease the downtime?
- 3) How does this year’s *Healthcare.gov* planned downtime compare to the planned downtime in the previous administration?
- 4) What message will display to consumers during the planned downtime?
- 5) When will HHS reassess whether the planned downtime can be lifted?
- 6) How many people normally access *Healthcare.gov* during each hour per week? How many people normally access *Healthcare.gov* during each hour per week during Open Enrollment?
- 7) How does HHS anticipate that this planned downtime will impact enrollment in exchange plans and therefore insurance coverage throughout the states that rely on *Healthcare.gov*?

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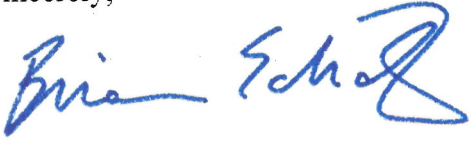
<sup>9</sup> Phil Galewitz, “Sunday Hours: Obamacare Website to be Shut Down for Portion of Most Weekends,” *Kaisher Health News* (September 22, 2017) (online at <http://khn.org/news/hhs-to-close-insurance-exchange-for-12-hours-on-sundays-during-enrollment/>).

<sup>10</sup> Frank Baitman on Twitter, @FrankBaitman, September 22, 2017, 3:52pm.

a. How will HHS mitigate the effects on enrollment from this planned downtime?

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

Sincerely,



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BRIAN SCHATZ  
U.S. Senator



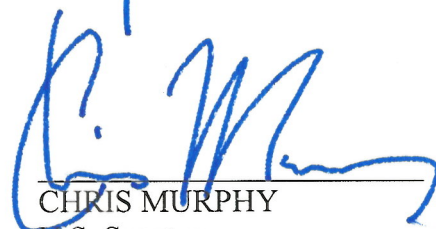
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ELIZABETH WARREN  
U.S. Senator



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CORY A. BOOKER  
U.S. Senator



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CHRIS MURPHY  
U.S. Senator