

United States Senate

July 21, 2017

The Honorable Tom Price
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Secretary Price,

We write to request information about the apparent use of taxpayer dollars by the Department of Health and Human Services (HHS) to produce advertisements on social media that promote opposition to the *Affordable Care Act* (ACA) (P.L. 111-148). We are concerned that the use of appropriated funds to promote legislation pending before Congress violate both HHS's constitutional responsibility to implement existing law, and legal prohibitions against using taxpayer dollars to lobby in favor of pending legislation. The ACA is the law of the land, and HHS officials have an obligation to uphold and implement it.

HHS maintains several official social media accounts that have published anti-ACA content in recent months, including on Twitter (@HHSGov, @SecPriceMD, and @HHSMedia) and on the official HHS Facebook account (www.Facebook.com/HHS). These accounts have posted and reposted content that promotes repealing the ACA and have repeatedly used the partisan political slogan of #RepealAndReplace (Appendix 1), which represents a partisan legislative strategy in opposition to the ACA.¹ Indeed, throughout the period of time that HHS has posted this content, the House and Senate majority parties have been pursuing specific legislation to repeal the ACA.

These official HHS accounts have also shared videos of testimonials by individuals who oppose the ACA (Appendix 2). For example, the @SecPriceMD account posted multiple video testimonials through ten tweets regarding the ACA on June 6-9, 2017. These ads have been retweeted over 2,700 times, including by the @HHSGov Twitter handle. Some of these tweets and videos include references to the partisan #RepealAndReplace strategy.

Other graphics posted on HHS' social media accounts include an official "HHS.gov" or "CMSGov" logo accompanying anti-ACA propaganda (Appendix 3). Some of these posts explicitly state that they used taxpayer funds. For example, on June 21, 2017, the @SecPriceMD account posted multiple videos noting that they were "Produced at U.S. taxpayer expense" (Appendix 4).

¹ <https://www.speaker.gov/general/three-phases-repeal-and-replace>

Other images using the HHS.gov logo are linked to conservative political organizations that directly urge the public to contact members of Congress in support of pending legislation. The @HHSMedia Twitter handle, which describes itself as the “official account of the public affairs office at the U.S. Department of Health and Human Services,” retweeted a tweet by the American Action Network (@AAN) (Appendix 5). The American Action Network advertises on its website that it paid for \$2 million in advertisements in support of the House’s ACA repeal-and-replace bill, *The American Health Care Act* (Appendix 6). Additionally, the American Action Network has several prominent links on its website that direct people to contact Congress (Appendix 7).

These uses of social media raise questions about who produced the videos, where the production took place, and what government resources were used to produce them.

Under the Constitution, the president—by way of the executive branch—is required to “take care that the laws be faithfully executed.”² The obligation to faithfully execute the laws passed by Congress precludes executive branch officials from using public resources to lobby for pending legislation or partisan political purposes. There are several laws that aim to prevent this kind of misuse of public funds. Specifically, the Anti-Lobbying Act (18 USC 1913) states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation . . .

The Anti-Lobbying Act precludes federal employees from participating in “substantial grass roots” lobbying campaigns designed to encourage the public to contact members of Congress and pressure them on legislative matters.³ The Hatch Act prohibits executive branch employees from using federal resources to advocate or distribute content that advocates for a partisan political party, candidate, or political group.⁴

Furthermore, Section 503(a) of the Consolidated Appropriations Act (P.L. 115-13) bans the use of federal funds to publish electronic communications that support pending legislation. Given Congress’s constitutional authority over appropriations, we are concerned that taxpayer dollars went toward the creation of these videos, in violation of the law. To the extent that the origin of the videos is unclear or misleading, such as the videos posted on June 6-9, the videos could also violate the prohibition on agencies engaging in “covert propaganda.”⁵

² U.S. Constitution, Article II, Section 3.

³ OLC, Guidelines on 18 U.S.C. 1913 (September 1989).

⁴ 5 U.S.C. §7321 et seq.

⁵ GAO, B-302710, May 19, 2004, Department of Health and Human Services, Centers for Medicare & Medicaid Services Video News Releases, at 11, citing to B-223098, October 10, 1986, and B-229069, September 30, 1987.

We therefore request the following information about these advertising and public relations activities so that we can assess the agency's compliance with the law, specifically the Anti-Lobbying Act, the Hatch Act, Section 503(a) of the Consolidated Appropriations Act, and other applicable laws and regulations. Please provide the answers to the questions below by August 18, 2017:

1. What was your fiscal year 2017 advertising and public relations budget, and what activities and expenditures in HHS fall under this definition?
 - a. What account does HHS' social media activities fall into?
 - b. Which employees have advertising or public relations responsibilities?
2. Please provide the total amount of spending on advertising and public relations by your agency from the day you took office, including for social media, video development and promotion, and graphic design. Please provide information on how those funds were spent, including whether the funds were awarded to outside contracts or spent in-house. Please also provide an accounting of HHS employee time devoted to these activities.
3. What appropriations request did you make to Congress for fiscal year 2018 for the purposes of advertising and public relations?
4. From June 6-9, 2017, @SecPriceMD and @HHS.gov tweeted videos of individuals discussing the negative impacts of the ACA.
 - a. How was this campaign funded? How much did it cost and what was the source of those funds?
 - b. Who approved the making of these videos?
 - c. How much oversight did you have in their content and creation?
 - d. Who created the videos and where were they created?
 - e. Were any HHS funds used to promote or disseminate these videos? If so, please provide a complete breakdown of all such expenditures.
 - f. Under what authority did HHS create these advertisements?
5. In addition to statutory prohibitions against such activities, HHS's ethics rules state that "*[a]n employee shall not, either directly or indirectly, use appropriated funds to influence, or attempt to influence, a Member of Congress to favor or oppose legislation.*" What are the consequences for violating HHS's ethics rules?
6. What actions will be taken to ensure that all HHS spending follows the law and is consistent the agency's appropriations?

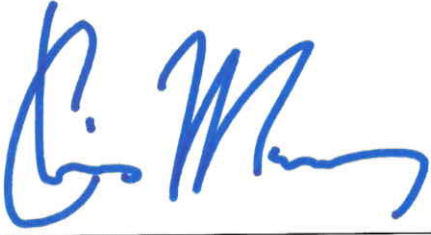
Sincerely,



BRIAN SCHATZ
U.S. Senator



CORY A. BOOKER
U.S. Senator



CHRIS MURPHY
U.S. Senator

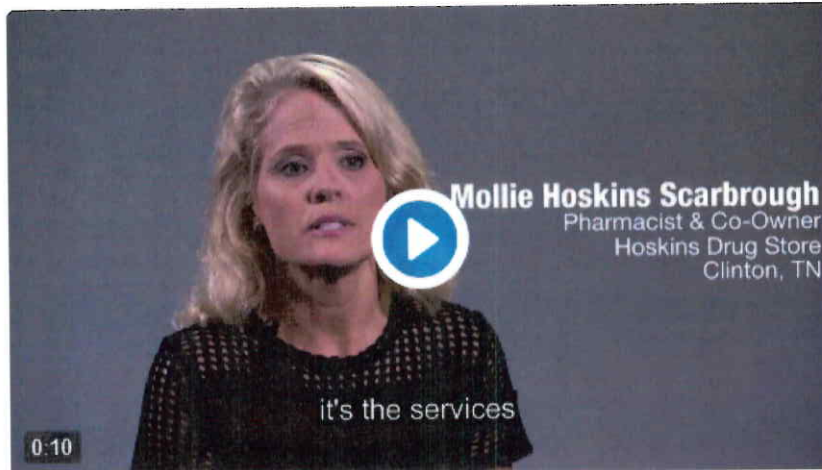
Copy: U.S. Government Accountability Office

Appendix 1: Use of #RepealAndReplace



Tom Price, M.D. • @SecPriceMD · Jun 7

Under Obamacare, coverage ≠ care. Another broken promise...one that's hitting Mollie's #smallbiz & others like it. Time to #RepealAndReplace.



Mollie Hoskins Scarbrough: Clinton, TN

17 71 130



Tom Price, M.D. • @SecPriceMD · Jun 6

Replying to @SecPriceMD @DrMannyHT

#RepealAndReplace will empower the American people to build a patient-centered, community driven #healthcare system.

13 27 39

Appendix 2: Videos of testimonials

HHS.gov Retweeted



Tom Price, M.D. @SecPriceMD · Jun 6

#Obamacare has been detrimental for Kelly's #smallbiz and her employees. Learn what we're doing to provide relief → [go usa.gov/xNmxw](https://go.usa.gov/xNmxw)



Kelly Moore: OH

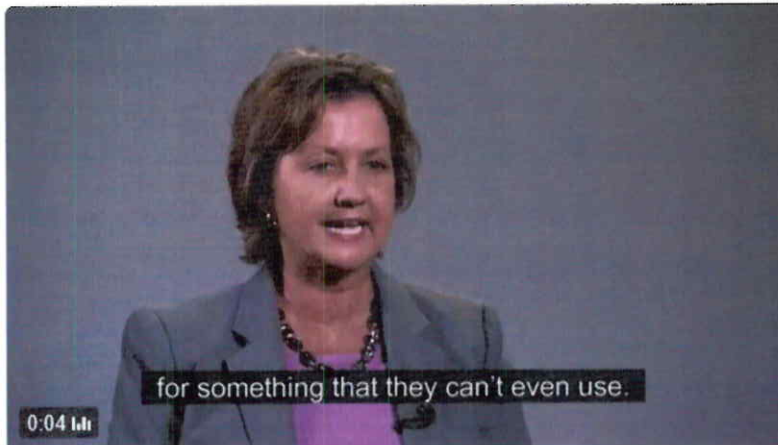
10 61 112

HHS.gov Retweeted



Tom Price, M.D. @SecPriceMD · Jun 6

Tracie's #smallbiz employs a young workforce. Rising premiums under #Obamacare have hit them really hard.



Tracie Sanchez: Lima, OH

18 48 76

HHS.gov Retweeted



Tom Price, M.D. @SecPriceMD · Jun 6

Too many of America's #smallbiz share Sandy's story. Skyrocketing premiums and lack of choice under #Obamacare have hit her business hard.



Sandra Dozier Hill: Richmond, KY

815 2.1K 6.5K

HHS.gov Retweeted



Tom Price, M.D. @SecPriceMD · Jun 6

"There is an access issue."

Dudley: We are committed to #healthcare reforms that improve access for your #smallbiz and more.



Dudley Hoskins Bostic: Clinton, TN

21 63 145

HHS.gov Retweeted



Tom Price, M.D. @SecPriceMD · Jun 6

#Obamacare has been an UNaffordable burden for #smallbiz. Just ask Gina Martin. We're working on reforms that provide immediate relief.



Gina Martin: Little Rock, AR

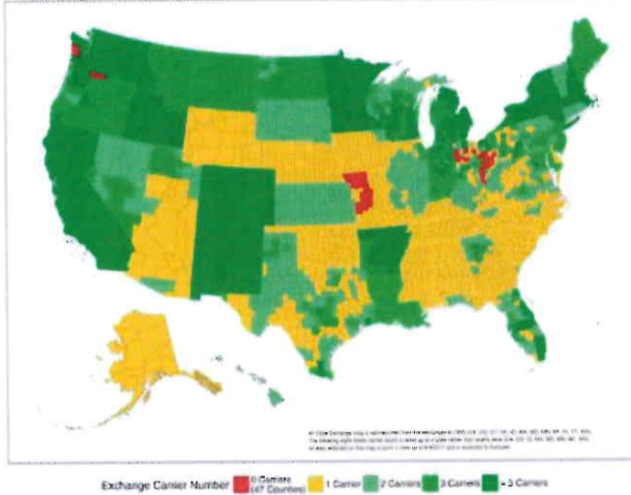
50 70 159

Appendix 3: Images with HHS.gov logo against the ACA



Tom Price, M.D. @SecPriceMD · Jun 13
 As @VP noted, right now 1/3 of American counties, including 5 states, only have 1 choice of insurance co – aka no choice. #ObamacareFacts

County by County Analysis of Current Projected Insurer Participation in Health Insurance Exchanges



CMSGov

237 99 166



Tom Price, M.D. @SecPriceMD · May 24
 #CBO was wrong when they analyzed #Obamacare effect on cost and coverage. And now they're wrong again:

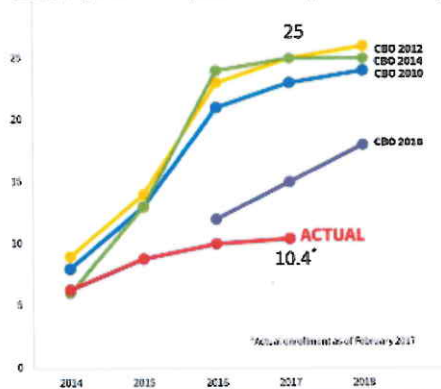
CBO'S FAILED OBAMACARE ENROLLMENT PROJECTIONS

CBO Myth:
 25 million covered by Obamacare in 2017

CBO Reality:
 Only 10.4 million currently covered

What's Next?
 Higher Costs.
 Fewer Choices.

CBO Exchange Enrollment Projections Over Time (Millions of Enrollees)



HHS.gov

67 136 171

Appendix 4: Video posted with “*Produced at U.S. taxpayer expense”



Tom Price, M.D. 
@SecPriceMD

Follow 

#Obamacare has created a healthcare crisis in our country. This is a rescue mission.



Retweets **68** Likes **118**



6:32 AM - 21 Jun 2017

 43  68  118

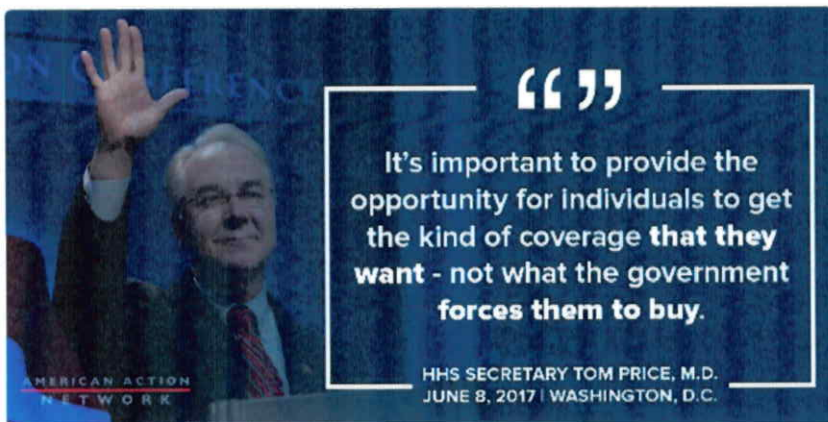
Appendix 5: @HHSMedia retweets the American Action Network

HHS Media Retweeted

AmericanActionNetwrk @AAN · Jun 10



This week, @SecPriceMD continued to build the case for patient-centered health care that offers more choices and better care.



Appendix 6: American Action Network donates \$2 million in pro AHCA ads

**AMERICAN ACTION
NETWORK**



Appendix 7: American Action Network directing people to call Congress



HEALTH CARE

\$1.2
TRILLION COST TO TAXPAYERS FOR 10 YEARS OF OBAMACARE

Providing Affordable Health Care Solutions

Health care should be a physician-patient decision, not a government decision. Yet Obamacare has exponentially grown the reach of government into our health care while delivering little more than broken promises with higher costs and fewer choices. We believe in patient-centered health care solutions that provide Americans access to quality, affordable health care of their choice.

LEARN HEALTH CARE

Why Care? - Medicare Advantage Cuts

ADD YOUR NAME
I support patient-centered health care solutions that provide Americans access to quality, affordable health care of their choice.

Email

CONNECT
Urge your friends to support affordable health care solutions.

[f](#) [t](#) [e](#) [+](#) [i](#)

TELL CONGRESS
Provide affordable health care solutions.

TELL CONGRESS!

AAN presents AAF President Doug Holtz-Eakin on Corporate Tax Reform



- ✓ PERMANENT LOWER RATE
- ✓ HIGHER WAGES
- ✓ HIGHER PRODUCTIVITY
- ✓ HIGHER STANDARD OF LIVING

Speaker Ryan Keeps His Promise on Delivering Affordable Care



More Choices

