# THE SABOTAGE OF YOUR HEALTH CARE

## PART III: THE TRUMP ADMINISTRATION'S SECRET ROADMAP TO SABOTAGING THE AFFORDABLE CARE ACT

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U.S. SENATOR BOB CASEY

FIGHTING *for a* FAIR SHOT *for* FAMILIES, KIDS *and* SENIORS

# INTRODUCTION

Since President Trump's first days in office, the Administration's statements and actions clearly established its goal to sabotage the Affordable Care Act (ACA). While Congressional Republicans and the Administration have thus far failed in their efforts to repeal the ACA, the Trump Administration remains determined to sabotage the law in any way it can.

An internal U.S. Department of Health and Human Services' (HHS) document obtained by U.S. Senator Bob Casey details how the Administration plotted secretly behind closed doors with Congressional Republicans on regulatory changes to undermine the ACA. Indeed, as Republicans worked to repeal the ACA legislatively, reportedly "phase I," the Administration made promises – potentially in return for votes – of a "phase II" in which administrative actions would be taken to further undercut the law. The internal document obtained by Senator Casey is at least part of the "phase II" plan, an internal roadmap to undermine affordable health care. Then-Secretary of Health and Human Services Tom Price, Director of the Office of Management and Budget Mick Mulvaney, and top White House officials presented this document to House Speaker Paul Ryan and certain Congressional Republicans on March 23. It was intended to be a quid pro quo: if Congressional Republicans voted to repeal key provisions of the ACA, the Administration would take further action to weaken the law by restricting access to affordable health care.

This report details the promises the Administration made to Congressional Republicans on that day in exchange for their support of the Republican repeal scheme. The Administration has largely followed this blueprint – deliberately sabotaging health care coverage that millions of Americans rely upon – which, taken together, will have a compounding negative effect on the affordability and quality of health insurance for individuals and families.[1]

# RESTRICTING ENROLLMENT FOR KEY POPULATIONS

*Special Enrollment Periods (SEP) are a period of time outside the yearly Open Enrollment Period when individuals and families that have experienced certain life events, such as a loss of health coverage, a move, marriage, or birth of a child can enroll in coverage through HealthCare.gov.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by forcing every consumer seeking affordable care on HealthCare.gov during a SEP to provide documentation proving their eligibility.**[2] This action, which went into effect in June, makes it more burdensome to enroll in coverage at the same time as a person is undergoing a complicated, life-changing event. Experts predict this move will result in fewer people signing up for coverage when they would otherwise qualify, with young, healthy people choosing

[1] The information explained in this report only outlines certain aspects of the Administration's "secret roadmap." To review the internal HHS document obtained by U.S. Senator Bob Casey, please refer to this link: https://www.aging.senate.gov/imo/media/doc/HHS%20Document.pdf.

[2] Rule Change Issued on April 18, 2017. The rule change increased pre-enrollment verification from 50% of new customers to 100%. https://www.gpo.gov/fdsys/pkg/FR-2017-04-18/pdf/2017-07712.pdf.

to wait for the Open Enrollment Period, thereby decreasing the number of healthy Americans in the Marketplace and pushing premiums higher.[3]

## CANCELLING COVERAGE FOR THOSE IN GREATEAST NEED

*Grace periods are the three-month period after a monthly health insurance premium is due in which a consumer can still pay the outstanding premium and not lose coverage.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by removing key protections that prevent states and insurance company executives from being allowed to cancel policies due to lack of payment or prevent re-enrollment in health care coverage.**[4] Regardless of whether a consumer faces catastrophic hardship due to the loss of a job, death in the family, or even a natural disaster, if they want to enroll in a new plan with the same insurance company, they will be held hostage until those past premiums are made. Even if a clerical error on the part of the insurance company incorrectly charged a consumer, the Administration's actions put that consumer at risk of being denied coverage until the error is resolved. This move also puts people at risk of not maintaining continuous coverage if they are unable to immediately pay their unpaid premiums in full – without any recourse.

## SLASHING OPEN ENROLLMENT SEASON IN HALF

*The ACA Open Enrollment Period is the annual period – this year between November 1 and December 15 – when individuals and families can enroll in a new plan or change their existing health insurance plan.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by shortening the Open Enrollment Period from three months to only six weeks.**[5] The Administration's move drastically restricted the time frame in which Americans can learn about new coverage options and enroll. Restricting millions of new enrollees into a six-week window has put an enormous burden on those responsible for helping Americans navigate the Marketplace and understand their coverage options. Experts expect that this has resulted in longer wait times for assistance, diminished understanding of important coverage options, and ultimately fewer people securing affordable coverage.[6] Young and healthy people, groups that historically wait to sign up for coverage until the last possible chance, will be the ones most likely to choose not to enroll in coverage, leaving the insurance pool with increasingly older and sicker individuals, driving up costs for everyone.

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[3] Center on Budget and Policy Priorities. https://www.cbpp.org/health/insurers-push-to-restrict-special-enrollment-periods-would-block-uninsured-people.

[4] Rule Change Issued on April 18, 2017. Outstanding premium payments will be added onto the first premium payments of the New Year if the consumer chooses a plan from the same insurer. https://www.gpo.gov/fdsys/pkg/FR-2017-04-18/pdf/2017-07712.pdf.

[5] Rule Change Issued on April 18, 2017. The change decreased the Open Enrollment Period from three months to six weeks. The new Open Enrollment period runs from November 1 until December 15. The prior Open Enrollment Period ran from November 1 until January 31. https://www.gpo.gov/fdsys/pkg/FR-2017-04-18/pdf/2017-07712.pdf.

[6] Center on Budget and Policy Priorities. https://www.cbpp.org/research/health/the-outlook-for-marketplace-open-enrollment.

## UNDERMING ACCESS TO HEALTH CARE

*Network adequacy standards measure the number of in-network doctors and services available to an individual. Individuals and families can typically receive care through an in-network provider at lower out-of-pocket cost than those out-of-network. The ACA includes protections to ensure that individuals and families have access to providers for the services required.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by eliminating nationwide protections ensuring network adequacy.**[7] The Administration eliminated nationwide protections that upheld network adequacy standards and ensured Americans have access to health care providers and services. These changes will allow states and potentially insurance company executives to offer plans that provide severely limited options for accessing health care services, forcing Americans to travel farther, restricting their ability to find the health care providers and services that work best for them, and requiring many to pay higher costs for out-of-network care.

## LIMITING COVERAGE FOR KEY SERVICES

*The ACA requires that most health insurance plans cover 10 categories of service, known as Essential Health Benefits (EHB). The 10 categories guaranteed under the ACA are ambulatory services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, prescription drugs, rehabilitative services, laboratory services, preventive and wellness care and chronic disease management, and pediatric services.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by allowing health insurance company executives to self-police and determine EHB requirements.**[8] This change removed protections that ensure every single health insurance plan sold on HealthCare.gov contains the required EHBs, forcing consumers to pay more for less. Under this action, states would be able to ignore previously agreed upon EHB standards by adopting an EHB benchmark from any other state and potentially letting insurers themselves pick and choose which benefits in what categories to cover.[9] This would start a nationwide race to the bottom, with the state offering the least comprehensive plan as the new national standard bearer.

[7] Rule Change Issued on April 18, 2017. The rule retains network adequacy standard adopted by the Obama Administration, but, HHS will rely largely on states to assess whether insurers meet that standard. If a state lacks the means to conduct sufficient reviews, HHS will rely on the insurer's accreditation status. https://www.gpo.gov/fdsys/pkg/FR-2017-04-18/pdf/2017-07712.pdf.

[8] Notice of Proposed Rule Change issued on November 2, 2017. https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23599.pdf.

[9] Center on Budget and Policy Priorities. https://www.cbpp.org/research/health/administrations-proposed-changes-to-essential-health-benefits-seriously-threaten.

## GIVING SWEETHEAT DEALS IN EXCHANGE FOR VOTES

*Section 1332 waivers, otherwise known as State Innovation Waivers, permitted states to apply for a waiver from HHS from certain ACA requirements, providing that state created and followed a new plan or program that would provide the same level of quality and coverage.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by signaling it would approve plans submitted by states to undermine the tenets of the ACA or plans requesting sweetheart deals.** In March 2017, former Secretary of HHS Tom Price sent a letter to every state indicating that the Administration would be providing technical assistance and expedited review for 1332 waivers that mirrored Alaska-style reinsurance programs.[10] Alaska's 1332 waiver – approved in July, just before key Senate votes on repealing the ACA – helped enact the state's reinsurance program and shielded consumers from extreme increases in premiums. Yet, the Administration did not approve a very similar waiver for Oklahoma, suggesting that this is more about politics than policy.[11]

## ELIMINATE ENROLLMENT OVERSIGHT OF THIRD PARTIES

*The ACA allows consumers to purchase coverage through HealthCare.gov with the assistance of third parties, like agents and brokers. These third parties are able to operate their own websites to begin the enrollment process, but consumers are redirected to HealthCare.gov in order to finalize enrollment. These third parties must follow certain guidelines, such as regular audits by HHS-approved auditors.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by allowing third parties to direct individuals and families to potentially more skimpy or costly coverage.**[12] By allowing third parties to enroll individuals and families in health insurance coverage directly – without being re-directed to HealthCare.gov – consumers may be enrolling in plans outside of the Marketplace. Agents and brokers could get higher commissions by first marketing sub-standard plans like short-term limited duration plans that allow for annual limits and cover few benefits. Additionally, individuals and families may be missing out on financial assistance for premiums and copayments that is only provided through the Marketplace.

[10] Letter from Secretary Price sent on March 13, 2017. https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter_508.pdf.

[11] Joel Ario, *Health Affairs,* September 30, 2017. https://www.healthaffairs.org/do/10.1377/hblog20170930.062255/full/.

[12] Notice of Proposed Rule Changes issued on November 2, 2017. https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23599.pdf.

## UNDERCUTTING ONE-STOP-SHOPPING FOR HEALTH CARE

*The ACA requires that the Marketplaces function as a one-stop-shop for Americans seeking health coverage. Through this "no wrong door" approach, individuals are assured information on all of their health insurance options (in and out of the Marketplaces) and the assistance that may be available to help them afford coverage. In addition, people shopping for insurance have the confidence of knowing their privacy is protected and that the information they receive from the Marketplace is both unbiased and complete.*

**In exchange for votes to repeal key provisions of the ACA, the Trump Administration told Congressional Republicans in a closed-door meeting that it intended to further undermine access to affordable health care by urging states to adopt so-called "skinny exchanges."** There's nothing "skinny" about it. This new concept would introduce middlemen and bureaucracy into the private insurance market. Today, Americans can count on a one-stop-shop that includes a centralized website, unbiased counseling support as well as complete information about what insurance options are available and where to find help affording coverage. "Skinny exchanges" could undo this successful model by handing these important functions over to contractors with profit-driven motivations. Instead of "no wrong door," American families would be on their own, unsure of where to turn for high quality information and support.