

June 14, 2017

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Comptroller Dodaro:

We write concerning the legality of the use of the Department of Health and Human Services' ("Department") communications channels to promote health care legislation currently pending before Congress.

In recent months, at least two of the Department's official Twitter accounts have promoted the American Health Care Act ("AHCA") – legislation that is now pending before the Congress.¹ These actions appear to violate restrictions on the use of the Department's appropriations for supporting the enactment of legislation pending before Congress, in this case, a legislative proposal that would repeal the Affordable Care Act ("ACA") and leave 23 million Americans without health insurance.²

Our committees share jurisdiction over the Department and oversight responsibilities for implementation of the ACA. The Government Accountability Office's ("GAO") responsibilities with regards to the oversight of appropriations laws includes providing opinions to Members and Committees of Congress concerning the use of and accountability for public funds (31 U.S.C. § 3526, 3529) and rendering decisions regarding agency uses of such funds (31 U.S.C. § 3527, 3528).³ GAO recently addressed similar issues arising within the U.S. Environmental Protection Agency.⁴

The @HHSgov and @HHSmedia accounts have repeatedly called for passage of the pending Republican healthcare legislation, explicitly using its acronym, AHCA. The accounts also use a popular Republican moniker, "#RepealAndReplace," in tweets that echo the Administration's call to repeal the ACA. In turn, the "RepealAndReplace" hashtag links to a number of trending tweets associated with the same hashtag, which include tweets urging people to, for example, "Call Congress at 202-234-3121 and demand full repeal of ObamaCare."⁵ By using the hashtag

¹ The American Health Care Act, H.R. 1628, was introduced in the House of Representatives on March 20, 2017; passed by the House on May 20, 2017. The AHCA received in the Senate on June 7, 2017, where it has since been placed on the Senate Legislative Calendar under General Orders (Calendar No. 120).

² On May 24, 2017, the Congressional Budget Office released estimates showing that the AHCA would increase the number of uninsured Americans by 23 million relative to current law.

³ Office of the General Counsel, GAO, "Procedures and Practices for Legal Decisions and Opinions," (GAO-06-1064SP), September 2006.

⁴ GAO, "Environmental Protection Agency – Application of Publicity or Propaganda and Anti-Lobbying Provisions," B-326944; December 14, 2005; available at <http://www.gao.gov/mobile/products/B-326944>.

⁵ <https://twitter.com/americasliberty/status/855096156791201792>

“RepealandReplace,” the Department appears to be appealing to the public to contact Congress in favor of pending legislation in violation of the grassroots lobbying prohibition.⁶

The accounts also have posted video testimonies of people speaking out against the ACA, which appears to be designed to increase opposition to current law while building support for pending Republican legislation. These videos, which appear to have been produced by the Department, bear no information identifying the Department as the source of the videos. If individuals took these clips, and reposted or otherwise rebroadcasted the videos separate from the initial tweet, this would appear to be a violation of the prohibition on agency engaging in covert propaganda.⁷

In addition, the accounts have reposted a series of tweets and videos produced by third parties that advocate for passage of the AHCA and/or repeal of the ACA. In one case, the HHSMedia account retweeted a Fox & Friends post on March 24th that said “.@SecPriceMD urges the House to pass American Health Care Act,” and links to a video in which Secretary Price makes direct appeals to Congress, saying “[i]t’s time to put up your vote. We need to pass this again so we can move forward with the entire plan . . . We need to do this to fulfill the President’s promise to the American people on the campaign to repeal and replace Obamacare.”⁸ In another instance, the HHSMedia account retweeted a tweet sent by Secretary Price that links to a video in which Secretary Price promoted the Republican health care bill and urges “every single senator to engage” in the legislative process related to it.⁹

We are especially concerned by these actions because they appear to continue a pattern of behavior by the Department of using federal resources to advance partisan legislation. The *LA Times* recently reported that CMS Administrator Verma told insurance executives that the Administration would make cost-sharing reduction payments if the insurance industry offered its support for the AHCA.¹⁰ We raised concerns about this episode in a letter to Administrator Verma on May 19, 2017, but have not yet received a response.¹¹

Section 503(a) of the Consolidated Appropriations Act (P.L. 115-13) bans using federal funds to publish electronic communications that support legislation before Congress:

No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the

⁶ *Id.*

⁷ *Id.*

⁸ <https://twitter.com/foxandfriends/status/845251358265528321>

⁹ <https://twitter.com/secpricemd/status/860512231099957249>

¹⁰ *Health Insurers plan big Obamacare rate hikes—and they blame Trump*, Los Angeles Times (May 19, 2017).

¹¹ Letter from Sen. Wyden, et al., to Seema Verma, May 19, 2017.

executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

In addition to potential violations of the Consolidated Appropriations Act, the tweets and their ancillary content may have violated federal statute, in particular, the Anti-Lobbying Act (18 U.S.C. § 1913). It seems likely that government employees produced the tweets, and the video content may have been developed at government facilities using government equipment. The Anti-Lobbying Act explicitly prohibits the use of appropriations to directly or indirectly pay for material designed “to influence in any matter a Member of Congress ... to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation.”¹²

We therefore request that the GAO review these matters for compliance with the appropriations laws that ban certain electronic communications, covert propaganda and grass roots lobbying, specifically Section 503(a) of the Consolidated Appropriations Act (P.L. 115-13) and the Anti-Lobbying Act (18 U.S.C. § 1913) and other applicable laws and regulations. In order to assist in your review, we have attached examples of social media posts that we believe may violate restrictions on the use of appropriated funds by the Department.

Thank you for your attention to this importance matter.

Sincerely,

Ron Wyden
Ranking Member
Senate Finance Committee

Patty Murray
Ranking Member
Senate HELP Committee

Richard Neal
Ranking Member
House Committee on Ways and Means

Frank Pallone, Jr.
Ranking Member
House Committee on Energy and Commerce

Enclosure

¹² 18 U.S.C. § 1913

Examples of Department of Health and Human Services supporting the enactment of legislation pending before Congress

HHS Media @HHSMedia

TWEETS 2,597 FOLLOWING 170 FOLLOWERS 10.3K LIKES 8 LISTS 1

HHS Media Retweeted

Tom Price, M.D. @SecPriceMD · May 5
Great to join @foxandfriends this morning to talk about next steps for #AHCA. Engagement is key as this process moves forward.

FOX & friends @foxandfriends
What's next for #AHCA? @SecPriceMD breaks it down



192 59 142

HHS.gov Retweeted

Tom Price, M.D. @SecPriceMD · Jun 5
We will continue to work to create a #healthcare system that is truly responsive to the needs of #patients & #smallbiz. #RepealAndReplace



55 169 477

HHS Media @HHSMedia

TWEETS 2,597 FOLLOWING 170 FOLLOWERS 10.3K LIKES 8 LISTS 1

HHS Media Retweeted

FOX & friends @foxandfriends · Mar 24

@SecPriceMD urges the House to pass American Health Care Act

42 85 251

HHS Media @HHSMedia · May 23

New #HHSReport sobering reminder of #Obamacare fail & need for #AHCA:

Individual Market Premium Changes: 2013 – 2017

This ASPE Data Point analyzes premium increases from two data series, comparing premium costs in individual market plans purchased by consumers in 2013 to ex...

aspe.hhs.gov

7 9 9

HHS Media Retweeted

CMS Administrator @SeemaCMS · May 22

#AHCA is going to increase choice, lower premiums and put patients first. Joined @TeamCavuto @FoxBusiness today to discuss.

16 10 17

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
Pharmacist & Co-Owner
Hoskins Drug Store
Clinton, TN

are not there

0:04 | ...

Mollie Hoskins Scarbrough: Clinton, TN

15 59 121

HHS Secretary Tom Price, M.D.

June 6 at 5:55pm · 🌐

#Obamacare has had a detrimental impact on #smallbiz and their employees. Stories from small-business owners like Sandy, Gina, Kelly and Tracie bring this to life. Skyrocketing premiums and lack of choice have caused so many small businesses to make hard decisions since the law went into effect. Last year, Kelly had to make the agonizing decision to cancel her employee's insurance. When Obamacare kicked in, Tracie's business faced double-digit premium increases. They no longer offer coverage, and Tracie says it stunted their businesses growth. They're not alone. At The White House yesterday, we heard from more women-owned small businesses about the burdens they have felt under this law. We're here to fix this. We will continue to listen as we work to #RepealAndReplace. Learn more about the immediate steps we're taking to provide relief to small businesses → <https://go.usa.gov/xNmxw>



Kelly Moore
Co-Owner & Vice President
GKM Auto Parts
Ohio

by the Affordable Care Act.

3K Views

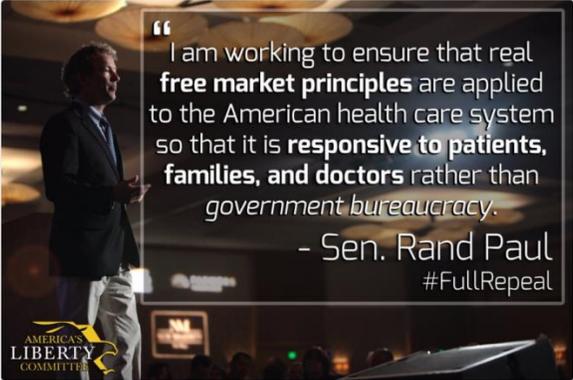
Like Comment Share

👍👎👉 23 Chronological

Examples of third-party groups using the “RepealAndReplace” hashtag urging citizens to lobby Congress on Republican healthcare legislation

America's LibertyCom
@americasliberty

Call Congress at 202-224-3121 and demand full repeal of ObamaCare #FullRepeal #RepealAndReplace #KeepYourPromise #StandWithRand

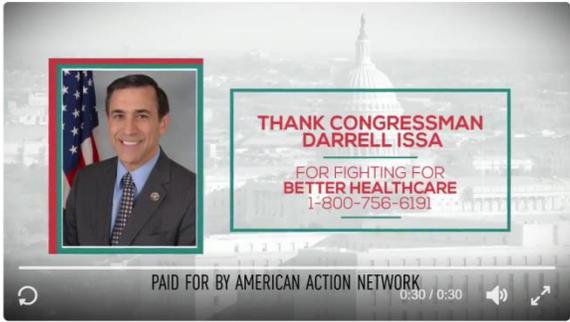


RETWEETS 3 LIKES 4

6:26 PM - 31 May 2017

AAW AmericanActionNetwrk
@AAN

Obamacare is doing real harm to families, that's why @DarrellIssa voted to #repealandreplace it with a plan for more choices & better care



PAID FOR BY AMERICAN ACTION NETWORK

RETWEET 1 LIKES 3

5:30 PM - 28 May 2017