

Summary of Trump Administration Attempts to Sabotage the ACA

September 30, 2018

After the defeat of the 2017 attempt to repeal the whole ACA, the Trump administration switched to a **“death by 1000 cuts” strategy** (also described metaphorically as nibbling it way with termites) aimed at undermining or sabotaging the ACA until it becomes unsustainable. **There are at least three general thrusts of their current strategy.**

1. **Drive up ACA premiums by trying an end run around consumer protections in the ACA**, which will result in sicker people buying ACA plans (“adverse selection”). This would force insurers to raise premiums a lot, at which point they would blame the ACA itself and say, “See, we told you the ACA was terrible. Now you can see why we have to repeal it.” Strategies to drive up premiums include:

- Zeroing out the individual mandate tax penalty in the 2017 tax bill. When fewer healthy young people buy ACA insurance, the ACA risk pool will have a higher percentage of sick people (adverse selection), requiring that premiums increase.
- Remove restrictions on short term health plans to allow denial of coverage for pre-existing conditions (mostly maternity, mental health, substance abuse, and prescription drugs). They would also allow the duration of “short term” plans to increase from 3 months to a year, with annual renewal allowed, making them continuous coverage. These “junk plans” would be cheaper because they would cover less. Many people would not understand the limitations of these plans, and would buy them, again causing adverse selection in the ACA risk pool and higher premiums.
- Changing the rules for plans issued by trade and professional associations to allow denial of pre-existing conditions. These association plans would also be allowed to drive higher risk (i.e., higher cost) people into ACA plans by charging more for gender, occupation or age.
- Delay 2017 risk adjustment payments. These payments are a transfer of funds from insurers who end up with low risk pools to insurers with high risk pools. The latter then have to increase premiums to meet their higher costs.

2. **Reduce enrollment outreach so fewer people sign up for ACA policies.**

- In September 2018, DHHS announced that in 2019, it will fund only 39 navigator groups in the 34 states where the federal government runs the marketplace
- Navigators are encouraged to tell applicants about skimpy short term and association plans
- Navigator funding was reduced 42% from 2017 to 2018
- ACA advertising was slashed: 2017 = \$100 million, 2018 = \$10 million

3. **Litigation.** In *Texas vs. United States*, 20 state attorneys general are asserting that the entire ACA must be struck down because the Supreme Court’s 2012 decision in *National Federation of Independent Business v. Sebelius* upheld the ACA coverage requirement under Congress’s taxing power and the 2017 tax law zeroed out that tax penalty. Early on, the Trump Administration announced that it would not defend the government against this suit. The DOJ apparently stops short of saying the entire law must be overturned, but the Trump Administration is asking the court to strike down two critical consumer protections: the provision that bars insurers from denying coverage to people with pre-existing conditions (guaranteed issue) and the prohibition on charging higher premiums to people because of their health status (community rating). If these two consumer protections are struck down, it would in effect remove the rest of the essential foundations of the ACA, causing it to collapse from a “death spiral” of rising premiums and decreasing enrollment. Sixteen other states attorneys general, plus DC’s, are intervening in defense of the ACA in this suit.

