

MEMORANDUM

NOW Government Relations

TO: National NOW Board Members

FROM: Gilda Yazzie, Vice President, and Jan Erickson, Government Relations Director

DATE: Oct. 13, 2017

WOMEN'S HEALTH CARE

BREAKING: Trump Stops ACA Subsidy Payments – Could “Crater” ACA

On Thursday, Oct. 12, **Donald Trump** issued an Executive Order (EO) that is intended to blow up the **Affordable Care Act (ACA)**. He directed that the \$7 billion in **cost-sharing reductions (CSRs)** that are owed to insurers to support premium payments for low-income ACA-insured persons and all future payments not to be paid, effective this November. Observers call this a malicious and harmful act that will wreak extreme havoc on health care for millions of families. These CSR payments cover insurers' cost of lowering deductibles and other out-of-pocket costs for almost six million marketplace enrollees in low-wage working families.

According to a **Families USA** analysis, the consequences of ending CSR payment will affect many other families: Premium rates will rise for middle-income consumers, and insurers may have to stop offering plans in many areas of the country, harming people of all income levels who purchase individual and family coverage. The Congressional Budget Office (CBO) predicted this havoc in a report issued in August, <https://www.cbo.gov/publication/53009>

Among the likely actions:

Premiums for **silver plans** will rise 20 percent from the elimination of cost-sharing reductions along, plus increases are already scheduled to the rising cost of health care – making those premium costs unaffordable for many.

A number of insurers that are offering coverage this year or contracted to offer coverage in 2018 will likely pull out of those contacts -- leaving many marketplaces and some entire states with no marketplace insurer. Contrary to the Republicans' assertion, only a few counties were at risk of having no insurers next year.

The **federal deficit** will increase by \$194 billion over 10 years.

When you combine these changes with Trump's restrictions for the upcoming ACA enrollment period (described below) and the new EO establishing "**junk insurance**" plans that may be cheaper would attract younger and healthier people (but would have less coverage and fewer protections like the ACA has), the consequence will be that only older and sicker people with higher health costs would be left in the ACA marketplace plans and charged unaffordably high rates. Most marketplace plans would collapse; insurers would quickly pull out and that will be the demise of the Affordable Care Act.

Essentially, what would happen is a return to the "bad old days" when poorer and sicker people could not obtain insurance – and if they could, it was costly. Persons with catastrophic health experiences that result in six and seven figure hospital bills will face bankruptcy. We could see a return to the situation prior to the Affordable Care Act when it was estimated that 45,000 persons died unnecessarily because of a lack of access to affordable health care, according to a **Harvard University** study.

During an emergency conference call Friday afternoon, health care policy experts predicted that multiple lawsuits would be filed against the administration and that insurance companies have a strong legal argument to be paid. And because the amounts owed are significant, insurers would be highly motivated to sue.

Another question is whether Congress will appropriate the money to pay for the cost-sharing premiums. Certainly, the Democrats will be pushing for that.

This Order has to go through a rule-making procedure and word is that the process of drafting regulations is underway. The proposed regulations have to be published and open for public comment. But the comment period could be less than 30 days, and once comments are reviewed, new regulations could go into effect as soon as 30 days. Many organizations and individuals will likely submit comments, but it remains an open question as to whether these will have an effect. **NOW** will send suggested comments to the Leadership list so that we can help build the number of organizations and persons who object to this sabotage of the Affordable Care Act.

Trump Acts to Limit with Enrollment in the ACA

Donald Trump took action earlier this week to shoot a few big holes in the financial foundation of the Affordable Care Act. He issued an **Executive Order** that would allow insurance companies to sell cheap, junk insurance that would appeal to healthy consumers and lure them out of the comprehensive plans that are protected under the Affordable Care Act. The junk insurance plans could lack minimum benefits, limits on deductibles and co-pays, any obligation to pay catastrophic medical expenses (so you can be sure they will not). Consumers would not be able to quickly switch back to the ACA, having to wait until the next enrollment period. The EO would let insurance companies deny coverage to anyone, decline coverage to persons with

pre-existing health conditions, hurt small companies that have older or sicker workers and would disadvantage people who buy their own individual insurance coverage.

The EO would also let insurers sell across state lines and a handful of states currently allow their insurers to sell policies in other states in their group. But many insurance companies are finding it a challenge to organize health care provider networks among multiple states.

Also, Trump and his allies are talking action to sabotage ACA marketplaces to undermine enrollments and further inflate premiums. They have **cut the open enrollment period in half** and scheduled it to overlap with the busy holiday season. They have seriously reduced funding for in-person assistance to help persons in enrolling, limiting public information about types of coverage and **shutting down the healthcare.gov website** on Sunday when working people are most likely to try to sign up online. Further, the Administration is encouraging provisions in state waivers that would discourage and limit consumers' enrollments, make it hard for low-income persons to enroll at an affordable premium amount and include such harmful provisions as denying coverage to persons with substance use disorders.

To keep things straight on efforts to repeal and replace the Affordable Care Act, **Families USA** maintains a tracker, <http://familiesusa.org/product/affordable-care-act-attack-tracker> and their website provides informative analysis and updates developments in Congress and with the administration regarding our health care.

Remember, health care is a **fundamental human right!**

Amazingly, Affordable Care Act Survives in Congress – For Now

Much to our relief, the last and what we recall was the fourth (or was it the fifth?) attempt (**Graham-Cassidy**) to repeal the Affordable Care Act failed. The Senate just could not get to 50 votes (plus then having Vice President cast the deciding vote) to pass their horrendous replacement for the ACA. Their bill would have decimated the **Medicaid** program and instead given grants to states to decide who gets health insurance coverage, what health care services they would receive and what the costs would be. Those federal funds would be reduced over time, leaving poorer states no choice but to drop coverage, and all states to determine who was “worthy” enough to be covered which health services could be covered. Persons with pre-existing health conditions would either have to pay huge, unaffordable premiums or not have health insurance at all. It would have also taken billions out of the Medicare program jeopardizing seniors' future health coverage. Additionally, Graham-Cassidy, contained a nearly \$1 trillion tax cut primarily for the wealthy and large corporations, thus denying affordable health insurance from tens of millions of persons.

All major health insurance associations, hospital and provider associations, the American Medical Association, all patient advocacy organizations and many other major national organizations have opposed the Republican bills. The real heroes in this effort were **Sens.**

Susan Collins (R-Maine) and **Lisa Murkowski** (R-Ak.) who were solidly opposed, despite having their arms twisted. But the activists who showed up at the Town Halls and demanded that lawmakers face the truth about these terrible bills – and especially persons with disabilities who blocked the halls of Congress and were arrested – deserve the most credit.

But, the Republicans are not giving up. Already the Senate is debating a budget bill that would establish new ground rules for later legislation that would get expedited consideration requiring just 51 votes from one party. Normally, the process requires 60 votes from both parties. So the Republicans are stacking the deck in their favor.

The Senate will return to this effort at some point, perhaps sooner rather than later – perhaps wrapped into a major tax reform bill.

House Speaker Paul Ryan (R – Wis.) is dedicated to privatizing Medicare and block granting Medicaid, so they will continue to do major damage to our health care system. The **House Republican Budget Resolution**, passed earlier this month, begins that process, though many doubt it will get Senate approval. Budget insiders believe that no bipartisan agreement on the budget will be reached and that Congress will again pass a Continuing Resolution (CR) to maintain funding for federal programs. According to an earlier agreement on the debt ceiling, these questions will have to be taken up again by late December.

Finally, it's nearly two weeks since the **Child Health Insurance Program (CHIP)** authority and funding expired and Congress still has not extended this crucial program that serves nine million children who otherwise would not have insurance and little access to health care. The House Budget Resolution takes millions out of Medicare to fund CHIP, unfortunately. **Call members of your Congressional delegation and urge them to take quick action in extending the Child Health Insurance Program.**

REPRODUCTIVE RIGHTS

Trump Repeals Contraceptive Insurance Coverage Mandate

On Oct. 6, Donald Trump issued an interim rule would eliminate the **Affordable Care Act's** (ACA) mandate that all insurance plans must include coverage for birth control without a co-pay or otherwise provide a means for women to access coverage for birth control if their employers or schools are able to legally decline providing that coverage. As a result, accessible and affordable contraception insurance coverage for many of the 62 million women might no longer be available.

The interim rule would allow any employer – non-profit, small business, large corporation, (private or publicly-held), school, or other entity to opt out of providing coverage for their employees for religious or moral reasons. The rule would also revoke the guarantee that women

will continue to receive coverage through a voluntary accommodation if their employer or school objects for religious reasons to coverage.

Because the language is vague about the reasons that companies may cite for refusing insurance coverage, any employer or school could just claim a moral objection and stop providing coverage. Recent **Freedom of Information Act** (FOIA) requests have found that over half of the groups applying for a waiver from the ACA's BC mandate are not even religious organizations; about half are for-profit companies and corporations.

The interim rule is an enormous step backwards that may mean millions of women will no longer have what is important preventive care – as the Affordable Care Act assured. The ability to control whether and when to have children is essential to all women; nine in ten women will use birth control at some point in their lives. Those who will be harmed most seriously are those with limited incomes and who obtained coverage with the help of the ACA.

The attack on contraceptive insurance coverage follows other harmful Trump Administration initiatives, such as eliminating programs that help women with low incomes access birth control, and attempting to prohibit health care providers from even giving information to women about birth control or abortion.

NOW President Toni Van Pelt issued a statement, “Donald Trump’s hypocrisy and cruelty know no bounds.... Women’s health will suffer as a result, and lives could even be lost.”

Van Pelt also pointed out that “Unintended pregnancy is highly associated with infant and maternal mortality. Unintended pregnancy is also a significant risk factor for domestic violence.” <https://now.org/media-center/press-release/donald-trumps-denial-of-contraceptive-coverage-harms-women/>

Catholics for Choice (CFC) called the move correctly when they stated that “The Trump Administration handed a big political win to Catholic bishops and religious ultraconservatives by carving out sweeping exemptions to the birth control requirement in the Affordable Care Act.” CFC continued, “These regulations are a cheaply calculated move by President Trump to pander to his ultra-right base. This purely political decision is not about protecting religious freedom, but about privileging one set of special interests at the expense of women nationwide.”

Poll show that 86 percent of the public (91 percent of Democrats, 83 percent of Republicans) support policies that make it easier to get the full range of birth control methods, according to **Planned Parenthood**. CFC reports that 79 percent of Catholics believe that contraceptive coverage should be a required in insurance plans and 99 percent of sexually-active Catholic women use contraception.

ACLU Files Lawsuit Against Trump’s Birth Control Rule

The **American Civil Liberties Union** (ACLU) filed a lawsuit on Oct. 6 challenging the Trump Administration's interim rule issued by the **Department of Health and Human Services** that would allow nearly all employers to deny their employees insurance coverage for contraception if the employer has a moral or religious objection. The suit is being filed on behalf of the Service Employees International Union-United health Care Workers West who are at risk of losing their contraceptive coverage because of where they work or where they go to school.

ACLU argues that the interim rules violate the **Establishment Clause** and the **Equal Protection Clause** of the Constitution by authorizing and promoting religiously-motivated and other discrimination against women seeking reproductive health care.

A senior ACLU staff member said, "The Trump Administration is forcing women to pay for their boss's religious beliefs. We're filing this lawsuit because the federal government cannot authorize discrimination against women in the name of religion or otherwise."

House Votes Again for Unconstitutional Abortion Ban

Fully displaying a right-wing, anti-woman bent, House Republicans approved on Oct. 3 an unconstitutional ban on abortion at 20 weeks with the passage of H.R. 36, the so called **Pain-Capable Unborn Child Protection Act** by 237-188, sponsored by Rep. Trent Franks (Ariz.) Three Dems voted for this terrible bill, **Colin Peterson** (Minn.), **Daniel Lipinski** (Ill.) and **Henry Cuellar** (Tex.).

The measure is patently unconstitutional as it does not contain an exception to preserve the health of the woman as **Roe v. Wade** requires and as **Whole Women's Health v. Hellerstedt** (2016) reaffirmed. There are only narrow exceptions for survivors of rape and incest and the bill prohibits doctors from caring for women who seek abortions after 20 weeks of gestation. Physicians who do provide abortion care could face five years in prison. Twenty weeks of fetal development is not sufficient for the fetus to survive outside the womb and sometimes serious fetal abnormalities are not known until later in pregnancy. It should be noted that there is no valid scientific evidence that fetuses feel pain.

Further, H.R. 36 requires a 48-hour waiting period for rape survivors by mandating that adult patients obtain medical care or counseling from a state-licensed counselor or victims' rights advocate for their assault at least two days prior to receiving abortion services. Minors who have become pregnant after rape or incest must report the crime to law enforcement or child protective services before receiving an abortion. All are intrusive, unnecessary and even dangerous requirements.

A version of this legislation passed the House in 2015, but was blocked in the Senate. While some observers do not think that the Senate will take up H.R. 36 as they may not be able to overcome a threatened filibuster, others point out that with a president now in the White House

who will likely sign such legislation and a highly-contested election year coming up, the Senate may attempt a vote.

Similar bans in **North Dakota, Arkansas** and **Arizona** have been refused a court review, or struck down and declared unconstitutional. Every federal court that has reached a decision on a pre-viability ban has blocked the rule from taking effect.

Launch of “Free the Pill” Campaign – An Important Advance for Women

An exciting new campaign to gain wide support and ultimately **Food and Drug Administration** approval for oral contraceptives to be sold over-the-counter (without prescription) was launched on Tuesday, Sept. 26, **World Contraception Day**. Availability of the safe and effective progestin-only oral contraception without a doctor’s prescription could be the most important advance since the **Roe** decision.

One hundred countries around the world already have over-the-counter, no prescription access to birth control. It’s just that the United States -- the richest and supposedly most advanced country – is behind the curve. Members of the OCs OTC (**Oral Contraceptives Over the Counter <http://ocsotc.org/>**) **Working Group** who have been at work on this important initiative since 2004 point out that OCsOTC once approved will help remove many of the barriers that now confront rural, low-income, immigrant, young and women of color.

The **OCsOTC Working Group** has joined with a pharmaceutical partner, **HRA Pharma**, to submit an OTC application to the FDA. They are also investigating several possibilities that would assure insurance coverage.

Initially, an extensive public education effort to take an oral contraceptive pill to over-the-counter status will depend on organizations like NOW to energize with their grassroots. The **Free the Pill** campaign will also seek to spread awareness about progestin-only pills or POPs that is the type of contraceptive that will be proposed for OTC. Progestin only pills (POPs) have been found very safe and effective for most women; a series of screening questions will be asked prior to the provision of the contraceptive. Pharmacists or para-professionals will administer the screening; women can also self-screen for contraindications using an OC checklist.

The **American College of Obstetricians and Gynecologists** (ACOG twice affirmed a statement, “Weighing the risks versus the benefits based on currently available data, OCs should be available over-the-counter.” **Ibis Reproductive Health** which works internationally as well as in the U.S. is a major partner in this effort, <https://ibisreproductivehealth.org/research-areas/contraception>

NOW attended a day-long presentation by the OCs OTC Working Group which highlighted areas of concern needing pro-active attention: making sure that the contraceptives are available to any woman, regardless of age, and overcoming what could be intense opposition. Activists

will recall the big fight that we had with the **George W. Bush Administration** which refused to allow **Plan B – Emergency Contraception (EC)** for women under the age of 17. The FDA dragged its feet. It took ten years, the lawsuits and the intervention of **Sens. Patty Murray** (D-Wa.), and then **Hillary Clinton** (D-NY.), and finally a federal judge to force the Administration to remove the age limit.

<https://www.gutmacher.org/gpr/2015/11/moving-oral-contraceptives-over-counter-status-policy-versus-politics>

In addition, there is the concern that birth control opponents will organize pharmacists to refuse to stock OCs and to provide them over-the-counter – as was the experience with EC.

How the Trump Administration with its many opponents of abortion rights and contraception will respond to the call for OCs OTC is a crucial question. Recent attacks on birth control suggest that it will be a pitched battle. Fortunately, former HHS Secretary **Tom Price** is gone. He once has said that he “welcomed the change to roll back birth control coverage under Affordable Care Act, <https://thinkprogress.org/tom-price-birth-control-coverage-a87009b7b418/> and has a long history of trying to restrict women’s access to contraception, <http://www.motherjones.com/politics/2016/12/trumps-new-hhs-secretary-tried-curb-contraceptive-access/> His replacement is expected to be as bad as Price is on women’s reproductive health issues. Eric Hargan, Deputy HHS Secretary, was appointed to be Acting Secretary.

The Deputy Assistant Secretary for Population Affairs, **Teresa Manning**, has worked for the **National Right to Life** and the anti-LGBTQIA organization, Family Research Council. She has made her opposition well-known to Title X, the primary program by which federal grant funds are made to providers to ensure that low-income and uninsured women and men can access family planning and preventive health services. Trump also signed a bill in April giving states the authority to withhold Title X money from health care providers that also provide abortion services.

Post-script: Because of **Donald Trump’s** issuance of an interim rule that will allow any employer or school to decline insurance coverage for contraceptives for their employees because of a moral or religious objection we really have our work cut out for us. But ultimately, having prescription-free, over-the-counter BC, providing the insurance part can be worked out, will really help.

ENDING VIOLENCE AGAINST WOMEN

Betsy DeVos Withdraws 2011 Sexual Assault Guidance

In late September, Department of Education Secretary **Betsy DeVos**, withdrew a key **2011 Dear Colleague** letter and a **2014 Questions and Answers** document that the department issued providing advice to schools on how to deal with sexual assault, as Title IX requires. In their place, a less clear Q and A document has been issued, and clearly this is a serious rollback of

important civil rights for students. – especially for young women who are at higher risk of sexual assault. One in four women on campus will experience attempted or completed sexual assault.

Opponents says that the Obama Administration guidelines protected victims at the expensive of the accused. Others, like NOW, believe that the Title IX process was fair. Supporters of Title IX say that DeVos’s new interim guidance will have a devastating impact on students, it will discourage students from reporting assaults, create uncertainty for schools on how to follow the law, and make campuses less safe.

The new guidance (<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>) is the result of activism by aggrieved persons – mostly young men – who had say that they were falsely accused of sexual assault and believe that their due process rights were violated under the recommended Title IX process that most schools rely on. Additionally, a well-funded organization, Foundation for Individual Rights in Education (FIRE, <https://www.thefire.org/?s=campus+sexual+assault>) has been organizing against the 2011 Guidance. Reportedly, funding to promote withdrawal of the Obama Administration guidance came from the Koch brothers and the also very right-wing Lynde and Harry Bradley Foundation, according to SourceWatch, https://www.sourcewatch.org/index.php/Foundation_for_Individual_Rights_in_Education

NOW submitted comments to the Department of Education as did thousands of other organizations and individuals, urging that the Department retain the 2011 Dear Colleague letter. We further urged that the Department maintain other strong protections for students against sexual harassment and racial- and disability-based harassment, among other recommendations.

A letter from the **National Coalition of Women and Girls in Education**, a coalition that NOW founded in the 1970s to oversee Title IX implementation, was sent to Secretary DeVos and which outlined the importance of Title IX. It can be read here: <http://stopsexualassaultinschools.org/wp-content/uploads/2017/09/NCWGE-ED-Regulations-Review-letter-2.pdf> The letter is a comprehensive review of how Title IX works, the protections that it offers for both women and men students, and it should be downloaded and kept in every activist’s files. The Obama Administration 2011 Guidance is archived at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

The new interim guidance will have to go through the regulatory process, with proposed regulations, a comment period followed by a review, and then issuance of the final regulations. NOW will be prepared to submit our comments and share with NOW activists on this critical issue.

Good News: Legislation Introduced to Counter DeVos Action

In mid-September, **Sen. Tim Kaine** (D-Va.) and **Rep. Susan David** (D-Calif.) introduced the SOS Act, or **Survivor Outreach and Support Campus Act** (S. 1801/H.R. 3734)

The SOS Campus Act would require colleges and universities that receive federal funding to designate an “advocate for campus sexual assault prevention and response” The advocate would be charged with “represent[ing] the interests of the student victim [of sexual assault].” The bill would also require the advocate to provide information to a student survivor about how to report a sexual assault to law enforcement, how to obtain emergency medical care, and information on other assistance services such as counseling and legal services.

Activists will need to call their members of Congress and urge them to co-sponsor the legislation and to call for hearings.

Gillibrand’s Independent Prosecutor for Military Fails, but Other Gains Approved

In late September, **Sen. Kirsten Gillibrand** (D-Ny.) tried for the fourth time to get senators to approve her independent prosecutor for military sexual assault, but lacked four votes to bring the **Military Justice Improvement Act** (MJIA) (offered as an amendment) to a vote on the merits. But the very committed senator was able to obtain Senate approval for four amendments to the **National Defense Authorization Act** (NDAA – 2018) that takes steps towards improving the process and better protecting survivors of sexual assault in the military. Those include:

Cyber Exploitation - Following the discovery of the network of United States Marines, former Marines, other service members and civilians who circulated illicit images of female service members and veterans, Gillibrand secured a provision in the NDAA that would ensure that the sharing of sexually explicit conduct is a crime under the Uniform Code of Military Justice (UCMJ). Currently, there are no specific military or federal statutes that address the electronic sharing of intimate images without consent, general cyberbullying, or cyber exploitation that has the potential to affect our national security. Gillibrand’s provision would help close this gap and make it easier to hold these perpetrators accountable.

Litigation Track for JAGs/Military Justice Professionalization - Gillibrand put forward bipartisan legislation with Senator Joni Ernst (R-IA) to create a career track for lawyers in each armed service in order to improve expertise within the military justice system. This bipartisan legislation would improve the quality of litigation expertise by requiring each branch of our military to implement a career litigation track that allows a portion of its attorneys to specialize in the foundation of U.S. military law and the UCMJ for the bulk of their careers — an approach the Navy successfully adopted in 2007.

E-STOP Act - Gillibrand introduced the bipartisan Educating Service Members in Training on Prevention (E-STOP) Act with Senator Joni Ernst (R-IA), which would implement new educational steps to thwart military sexual assault by mandating in-person, comprehensive

sexual assault prevention training to newly enlisted service members before they depart for basic training, including proper use of social media.

Appellate Rights for Victims - Gillibrand introduced legislation that would pave the way for equal access to military appellate courts regarding victims' rights. The Court of Appeals for the Armed Forces has declined to hear petitions on victims' rights issues, citing congressional intent, despite the fact that the FY2016 National Defense Authorization Act provided for enforcement of certain crime victims' rights by all courts of criminal appeals, including the Court of Appeals for the Armed Forces. Limiting access to appellate courts goes against the long-standing legal principle of due process. This bill corrects this injustice and allows both the accused and survivors a path for relief in the appellate court system.

Additionally, the senator was able to get **Title IX** protections extended to students at the **U.S. Merchant Marine Academy** where a survey found that a shocking 19.5 percent of female midshipmen say they were sexually assaulted. Sexual harassment was reported to be a serious problem as well.

Prior to the vote on Sen. Gillibrand's MJIA amendment being brought up, **Donald Trump** made a public statement critical of the legislation. Gillibrand is widely rumored to be running for president in 2020.

NOW president Toni Van Pelt spoke out about the insidious nature of men protecting other men who are sexual predators in an article carried by **U.S. News and World Report**, "How the Military Shields Sexual Predators," <https://www.usnews.com/opinion/civil-wars/articles/2017-10-06/our-military-hierarchy-fails-women-and-victims-of-sexual-assault>

Constitutional Equality –The Intersectional Amendment

Freshman House member, **Rep. Pramila Jayapal** (D-Wash.), is planning to introduce an **Amendment for Constitutional Equality** on Oct. 24 that contains language calling attention to systemic and layered forms of race, sex, and other types of subordination that perpetuate discrimination and unequal treatment. Reportedly, **Rep. Jackie Speier** (D-Calif.) has agreed to co-sponsor, but other co-sponsors have not yet been confirmed.

At a recent meeting of the **ERA Coalition**, some attendees expressed a concern about the process by the legislation is being advanced (so few co-sponsors, little or no courtesy notification to senior House and Senate sponsors of long-standing equal rights bills). Additionally, concerns were shared about certain aspects of the language and errors in a two-page backgrounder. The legislation is not expected to gain passage in Congress, but is seen more as a "messaging" piece to call attention to the intersectional nature of discrimination.