



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETTITIA JAMES
ATTORNEY GENERAL

December 3, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Minority Leader
U.S. Senate
Washington, DC 20510

Dear Speaker Pelosi, Majority Leader McConnell, Minority Leader McCarthy, and Minority Leader Schumer:

As the Chief Law Enforcement Officers of the undersigned 13 states, we are writing to ensure that every person in the country has free and fast access to a COVID-19 vaccine. As a matter of public health policy and health equity it is critical that Congress specifically allocate funding to guarantee that Americans covered under Medicare, Medicaid, and the uninsured are able to obtain COVID-19 vaccines at no cost when they become available.

Operation Warp Speed's goal is to deliver 300 million doses of safe and effective vaccines with initial doses available as early as mid-December 2020. We all support the expeditious development of safe and effective vaccines. However, it is critical that we do not allow financial or other barriers to deter people from receiving an effective vaccine and stopping the spread of the virus.

According to a recent report from the nonprofit, nonpartisan consumer health advocacy organization, Families USA, the COVID-19 pandemic and the resulting economic instability have caused the greatest health insurance losses in American history.¹ The report estimated that as of May 2020 following three months of COVID-driven unemployment, more than one in seven adults (16%) in American is now uninsured. Further, the U.S. Supreme Court is expected

¹ Stan Dorn, *The COVID-19 Pandemic and Resulting Economic Crash Have Caused the Greatest Health Insurance Losses in American History*, National Center for Coverage Innovation at Families USA (July 17, 2020), <https://www.familiesusa.org/resources/the-covid-19-pandemic-and-resulting-economic-crash-have-caused-the-greatest-health-insurance-losses-in-american-history/>.

to decide validity of the entire Affordable Care Act (“ACA”) in the midst of the pandemic. Should the ACA be struck down tens of millions more will become uninsured.

The federal Medicare and Medicaid programs play a critical role for health care coverage. Sixty-two million people or 19% of the U.S. population are insured under Medicare. In the past, Medicare has not covered the cost of drugs approved under an emergency-use designation.² We are pleased that the Centers for Medicare & Medicaid Services (“CMS”) recently issued an Interim Final Rule with Comment Period providing that any vaccine authorized by the Food and Drug Administration (“FDA”) through an Emergency Use Authorization or licensed under a Biologics License Application will be covered at no cost to Medicare beneficiaries.³ However, particularly given that the vast majority of those insured under Medicare are seniors, a high-priority group for receiving the vaccine, the best practice would be to codify this Rule.

Nationwide, with the rise in unemployment due to the pandemic, Medicaid has proven to be an essential safety-net with growing enrollment.⁴ Ensuring Medicaid beneficiaries have access to a COVID-19 vaccine is particularly important for communities of color, who are disproportionately impacted by COVID-19, including children. Black Americans experienced a significantly greater COVID-19 infection rate and three times higher mortality rate than Whites.⁵ Similarly, Latinos have had nearly three times as many COVID cases as Whites, a hospitalization rate more than four times higher and are three times more likely to be uninsured.⁶ And the uninsured rate for Latino children is rising nationwide.⁷ Medicaid is also an important

² Stephanie Armour, *Medicare Wouldn't Cover Costs of Administering Coronavirus Vaccine Approved Under Emergency Use Authorization*, *The Wall Street Journal* (Sept. 23, 2020), <https://www.wsj.com/articles/medicare-wouldnt-cover-costs-of-administering-coronavirus-vaccine-approved-under-emergency-use-authorization>.

³ Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), Internal Revenue Service, Department of the Treasury, Employee Benefits Security Administration, Department of Labor. Additional policy and regulatory revisions in response to the COVID-19 public health emergency. Interim final rule with comment period. Federal Register 2020; 85 (216):71142-71205.

⁴ Bradley Corallo and Robin Rudowitz, *Analysis of Recent National Trends in Medicaid and CHIP Enrollment*, Kaiser Family Foundation (Nov. 5, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/analysis-of-recent-national-trends-in-medicare-and-chip-enrollment/>.

⁵ Centers for Disease Control and Prevention (CDC), *Hospitalization and Death by Race/Ethnicity*, (Nov. 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>; Rashawn Ray, *Why are Blacks dying at higher rates from COVID-19?*, Brookings, (Apr. 9, 2020), <https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-covid-19/>.

⁶ Ariel Gelrud Shiro and Richard V. Reeves, *Latinos often lack access to healthcare and have poor health outcomes. Here's how we can change that*, Brookings (Sept. 25, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/09/25/latinos-often-lack-access-to-healthcare-and-have-poor-health-outcomes-heres-how-we-can-change-that/>.

⁷ Kelly Whitener, Steven Lopez, Matthew Snider, *Decade of Success for Latino Children's Health Now in Jeopardy*, Georgetown University Health Policy Institute Center for Children and Families and Unidos US, (March 10, 2020), <https://ccf.georgetown.edu/2020/03/10/decade-of-success-for-latino-childrens-health-now-in-jeopardy/>. The gap between health coverage rates for Latino children and all children widened in 2018 for the first time in a decade. Progress in reducing inequities in coverage for Latino

program for American Indians and Alaska Natives, who are also disproportionately impacted and have the highest infection rate of any racial or ethnic group.⁸ Significantly, vaccination rates for children insured under Medicaid are also lower than for children with private health insurance.⁹

Under the Families First Coronavirus Response Act (“FFCRA”), state Medicaid programs are eligible to receive an increase in federal funding during the current public health emergency provided that the state agrees to provide coverage of COVID-19 vaccines and vaccine administration, among other things, at no cost sharing to most Medicaid beneficiaries. States, already struggling financially, may need additional financial assistance from the federal government to supplement the funding provided under FFCRA. This will ensure that payment rates to providers, which are set at the state level, are sufficient to allow Medicaid recipients to access the vaccine at no cost and providers to perform outreach to vulnerable communities.¹⁰

Federal officials plan to make funds available for administration of the vaccine for uninsured individuals from the Provider Relief Fund (the “Provider Fund”) created by the Coronavirus Aid Relief and Economic Security Act (the “CARES Act”), which was signed into law by President Trump on March 27, 2020. In addition, monies from the Provider Fund would also be used to cover costs associated with administering and storing the vaccine known as “administrative fees.” We are encouraged to hear that the Administration’s goal is for the vaccine to be widely distributed at no cost and especially to uninsured individuals. However, billions from the Provider Fund have already been distributed to providers and we are concerned that there will not be sufficient resources remaining to cover vaccine administration fees as well as costs for outreach to uninsured communities particularly if the Supreme Court strikes down the ACA.

A co-pay or out of pocket fee may deter many Americans already struggling financially due to the pandemic from getting immunized which would be a significant barrier to stopping COVID-19 infections particularly in low-income and minority communities. Tragically, these communities are already disproportionately impacted by COVID-19.

children is unraveling. The uninsured rate for Latino children rose to 8.1 percent compared to 5.2 percent for all children and 4.2 percent for non-Latino children in 2018.

⁸ CDC, *supra* note 5; Samantha Artiga, Peter Ubri & Julia Foutz, *Medicaid and American Indians and Alaska Natives*, Kaiser Family Foundation (Sept. 7, 2017), <https://www.kff.org/medicaid/issue-brief/medicaid-and-american-indians-and-alaska-natives/>; Deidre McPhillips, *COVID-19’s Tragic Effect on American Indians: A State-by-State Analysis*, *U.S. News* (Oct. 7, 2020), <https://www.usnews.com/news/healthiest-communities/articles/2020-10-07/a-state-by-state-analysis-of-the-impact-of-covid-19-on-native-americans>; Hatcher SM, Agnew-Brune C, Anderson M, et al. COVID-19 Among American Indian and Alaska Native Persons — 23 States, January 31–July 3, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:1166–1169. DOI: <http://dx.doi.org/10.15585/mmwr.mm6934e1external> icon.

⁹ *State of the ImmUnion Special Supplement: COVID-19 Vaccination, Vaccinate Your Family*. (April 8, 2020), https://vaccinateyourfamily.org/wp-content/uploads/2020/06/SOTI-COVID19-Report_FINAL-1.pdf.

¹⁰ Elizabeth Buchwald, *Older People, Black and Hispanic Americans say they would be hesitant about getting a coronavirus vaccine*, *Market Watch on MSN.com*, (Dec. 1, 2020), <https://www.msn.com/en-us/health/medical/older-people-black-and-latinx-americans-say-they-would-be-hesitant-about-getting-a-coronavirus-vaccine/ar-BB1bk6LV>.

For these reasons, we request that Congress, without delay, take all necessary steps. Specifically, this requires allocating funding for vaccine administration and outreach as well as appropriate legislative changes that may be needed to safeguard the uninsured as well as ensure that those insured under Medicare and Medicaid are able to obtain a COVID-19 vaccine at no cost.

Sincerely,



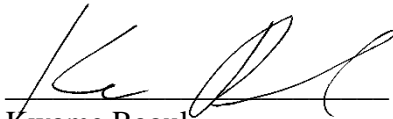
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New York Attorney General



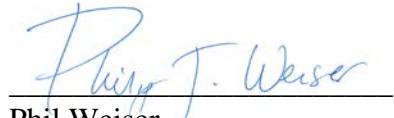
Clare E. Connors
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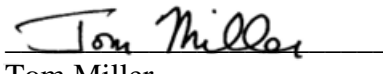
Xavier Becerra
California Attorney General



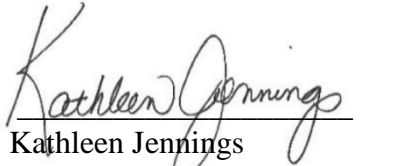
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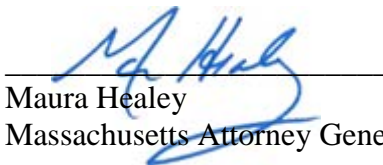
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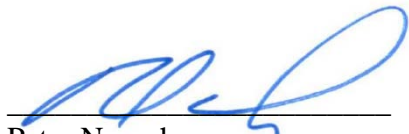
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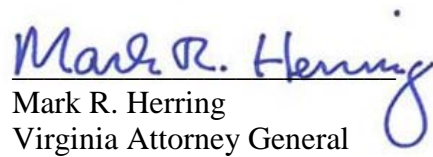
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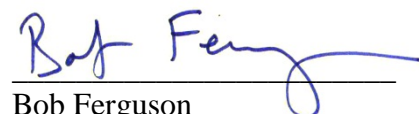
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Cc: Sen. Lamar Alexander, Chair, Senate Committee on Health, Education, Labor & Pensions
Sen. Patty Murray, Ranking Member, Senate Committee on Health, Education, Labor & Pensions
Sen. Chuck Grassley, Chair, Senate Committee on Finance
Sen. Ron Wyden, Ranking Member, Senate Committee on Finance
Rep. Frank Pallone, Chair, House Committee on Energy and Commerce
Rep. Greg Walden, Ranking Member, House Committee on Energy and Commerce
Rep. Richard Neal, Chair, House Ways & Means Committee
Rep. Kevin Brady, Ranking Member, House Ways & Means Committee