



XAVIER BECERRA
ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL



JOSH STEIN
ATTORNEY GENERAL

April 14, 2020

Secretary Alex M. Azar II
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
Via Email and U.S. Mail

Administrator Seema Verma
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Via Email and U.S. Mail

Dear Secretary Azar and Administrator Verma:

The undersigned State Attorneys General of California, Michigan, North Carolina, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington urge the Centers for Medicare & Medicaid Services (CMS) to develop and implement immediately an outreach plan to inform the millions of Americans who have already or will lose their employer-sponsored health insurance coverage of the Special Enrollment Period that is available to them through Healthcare.gov and state-based marketplaces.¹ In the midst of this unprecedented international healthcare crisis, millions of Americans are suffering or will suffer the dual loss of their livelihood and their family's healthcare coverage. It is incumbent upon the U.S. Department of Health and Human Services (HHS) to provide those Americans the information and tools needed to navigate their healthcare options. The Affordable Care Act (ACA) specifically contemplates the need for adaptability to help people in these circumstances maintain coverage. 42 U.S.C. § 18031(c)(6)(B).

The ACA requires the HHS Secretary to provide for yearly open enrollment periods on the Exchanges. 42 U.S.C. § 18031(c)(6)(B). Outside of this period, individuals may enroll in coverage through the exchange only if they qualify for a special enrollment period due to certain

¹ This letter is a follow up to the multi-state letter sent on April 3, 2020, that urged HHS to open a special enrollment period to allow all uninsured individuals to obtain coverage due to the unprecedented circumstances of the COVID-19 pandemic. *See* <https://www.oag.ca.gov/system/files/attachments/press-docs/CA%20NC%20COVID-19%20healthcare%20exchange%20letter%20plus%20IA.pdf>.

life events such as loss of employment for individuals whose employers provided healthcare coverage. *See id.* § 18031(c)(6); 26 U.S. Code § 9801(f). Informing individuals of the potential for replacing the coverage they have lost through Healthcare.gov and state-based marketplaces is vital, as most Americans obtain their healthcare coverage through their employer. In 2018, for example, over half, or 55.1%, of individuals under age 65 had insurance through an employer.²

The importance of this outreach will only increase as the economic upheaval caused by this crisis continues to expand. A new study by the Health Management Associates estimates that the number of people receiving coverage from an employer could decline by up to 35 million, including both workers and covered family members, due to layoffs caused by the COVID-19 pandemic.³ This same study estimates that the economic impact to the labor market could disproportionately impact the roughly 58 million non-elderly individuals who have employer-sponsored coverage and earn less than \$50,000 per year.⁴ This heavily hit population would greatly benefit from learning that they qualify for subsidies to help pay for healthcare coverage.

Recent polling indicates that awareness of coverage options even during the regular open enrollment period remains low among marketplace-insured and eligible uninsured. It is therefore likely that awareness about this Special Enrollment Period for the recent laid-off is even lower.⁵ Concerns about a lack of awareness are heavily fueled by the administration's cuts to marketplace advertising and consumer assistance budgets.⁶ But the evidence indicates that marketplace advertising and consumer assistance works in increasing enrollment numbers and stabilizing markets. It is for this reason that states that run their own Exchanges, like California, continue to invest heavily in such activities to support their state-based marketplaces. Indeed, one report indicates that if the federal government conducted marketing and outreach at a level

² Edward R. Berchick, et al., "Health Insurance Coverage in the United States: 2018," U.S. Census Bureau, Nov. 2019, 2018, at 2, <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf>.

³ <https://www.healthmanagement.com/wp-content/uploads/HMA-Estimates-of-COVID-Impact-on-Coverage-public-version-for-April-3-830-CT.pdf>.

⁴ *Id.*

⁵ Katie Keith, "CMS Could Do More In Light Of The Coronavirus Crisis," Health Affairs, March 25, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200325.501048/full/>; *See also* Hart Research Associates, "New Polling among ACA Marketplace Insured and Eligible Uninsured, Oct. 23, 2019, <https://drive.google.com/file/d/0BwWzJPQpHwx9VXdIX2hSUIR0VW1UZjBmMklqSIZtZ0Ffd2d3/view>.

⁶ Sabrina Corlette, et al., "States Lean in as the Federal Government Cuts Back on Navigator and Advertising Funding for the ACA's Sixth Open Enrollment," The Commonwealth Fund, Oct. 26, 2018, <https://www.commonwealthfund.org/blog/2018/states-lean-federal-government-cuts-back-navigator-and-advertising-funding>.

similar to Covered California, it could result in lower premiums and 2.1 million more enrollees.⁷ HHS, as the operator of Healthcare.gov, must step in to get the word out to those impacted in 38 States that rely on the federal exchange and to fill in gaps for state-based exchanges that do not have budgeted funds for this unexpected campaign. *See, e.g.*, 42 U.S.C. § 18031(b)(1)(a); *see also* 45 C.F.R. § 155.205(e) (directing that the exchange must conduct outreach and education activities to educate consumers about the exchange and insurance affordability programs to encourage participation). HHS should also ensure that outreach materials are translated into the same range of languages as other HHS vital documents, in order to ensure meaningful access to information about the Special Enrollment Period.

We must empower individuals and working families across the country to pursue the best coverage option for them, whether it is Exchange coverage, COBRA, Medicare, Medicaid, or the Children’s Health Insurance Program. The federal government’s promise to reimburse for testing and treatment of COVID-19 for the uninsured⁸ is a step forward but it will not help provide recently unemployed Americans the comprehensive healthcare they may so desperately need to avoid large hospital and insurance bills in the long-run.

It is imperative that HHS actively and immediately implement outreach and education for consumers as directed under the Affordable Care Act. This will ensure that people across the country are informed and empowered to make the best decision about their healthcare options.

Sincerely,



Xavier Becerra
California Attorney General



Dana Nessel
Michigan Attorney General



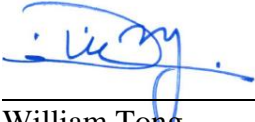
Josh Stein
North Carolina Attorney General



Phil Weiser
Colorado Attorney General

⁷ Peter V. Lee, et al., “Marketing Matters: Lessons from California to Promote Stability and Lower Costs in the National and State Individual Insurance Markets,” Covered California, Sept. 2017, https://hbex.coveredca.com/data-research/library/CoveredCA_Marketing_Matters_9-17.pdf.

⁸ *See* <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-18/>.



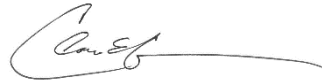
William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General




Karl A. Racine
Attorney General for the District of Columbia



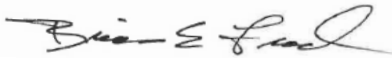
Claire E. Connors
Hawai'i Attorney General



Kwame Raoul
Illinois Attorney General



Tom Miller
Iowa Attorney General



Brian E. Frosh
Maryland Attorney General



Maura T. Healey
Massachusetts Attorney General



Keith Ellison
Minnesota Attorney General



Aaron D. Ford
Nevada Attorney General



Hector Balderas
New Mexico Attorney General



Letitia James
New York Attorney General



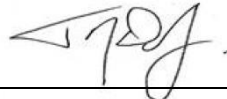
Ellen F. Rosenblum
Oregon Attorney General



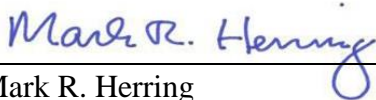
Josh Shapiro
Pennsylvania Attorney General



Peter F. Neronha
Rhode Island Attorney General



Thomas J. Donovan, Jr.
Vermont Attorney General



Mark R. Herring
Virginia Attorney General



Bob Ferguson
Washington Attorney General