



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

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March 19, 2020

Chad Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
2707 Martin Luther King Jr. Ave., SE  
Washington, DC 20528

Kenneth T. Cuccinelli  
Senior Official Performing the Duties of the Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave., NW  
Washington, DC 20001

Dear Acting Secretary Wolf and Senior Official Cuccinelli:

On March 6, 2020, a coalition of 18 State Attorneys General and over 50 elected officials from the State of Washington, wrote to you urging the Department of Homeland Security (DHS) to immediately halt implementation of the *Inadmissibility on Public Charge Grounds* Rule (“Public Charge Rule”) in the wake of the COVID-19 coronavirus. We have not received a response, but on March 13 you posted an “Alert” on the U.S. Customs and Immigration Service (USCIS) website that confirmed DHS would not consider any form of testing or care related to COVID-19 in immigrants’ public charge assessment, “even if such treatment is provided or paid for by one or more public benefits, as defined in the rule (e.g. federally funded Medicaid).”<sup>1</sup> Nevertheless, the Alert fails to mitigate the overall harm of the Public Charge Rule, as it emphasizes that DHS will still consider receipt of Medicaid benefits “including those that may be used to obtain testing or treatment for COVID-19” in the public charge determination.

If DHS is attempting to ensure noncitizens in our communities remain enrolled in Medicaid so they can use Medicaid services should they have symptoms of COVID-19, the Alert fails to achieve this. And likewise, if DHS is attempting to ensure that noncitizens seek testing and treatment for COVID-19 without fear of public charge consequences, the Alert also utterly fails to achieve this.

It is not enough to exempt the use of certain Medicaid-paid services from the public charge analysis if enrollment in Medicaid still is considered. While professing to encourage everyone to seek the testing and treatment they need, the Alert provides that Medicaid coverage used to access those services may be counted against noncitizens in the public charge analysis. The Alert fails to recognize that in order to receive adequate health services, our residents need adequate

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<sup>1</sup> <https://www.uscis.gov/greencard/public-charge>.

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health insurance benefits. To achieve DHS's stated goal of encouraging noncitizens to seek testing and treatment for COVID-19, noncitizens must be encouraged to enroll or remain enrolled in health insurance programs, including Medicaid, and they must be assured that such enrollment during this dire national health emergency will not be considered in any future public charge determination.

Since we wrote you 13 days ago, the number of deaths from COVID-19 in Washington has increased dramatically—from 11 to 66. Likewise, the number of reported cases has increased nearly twelvefold—from approximately 100 to 1187.<sup>2</sup> In Massachusetts, the number of confirmed cases has increased from 1 to 328.<sup>3</sup> Testing in the United States still lags far behind other countries, however, and the total number of cases likely far eclipses the current numbers of confirmed positives. For example, scientists currently estimate there are likely 5 to 10 undetected cases for every confirmed one.<sup>4</sup> The World Health Organization has declared a global pandemic, and the President has declared a national emergency. Every day, tighter restrictions are placed on travel, schools, restaurants, and bars, with the CDC now formally advising against gatherings of 10 or more people.

Given the grave danger facing our nation's health and economy, it is imperative that DHS not chill immigrants from enrolling in Medicaid or using Medicaid benefits for *any* purpose until the COVID-19 crisis is over. Under the Alert, however, noncitizens who remain enrolled in Medicaid continue to risk their green cards and visas. As DHS previously conceded, this will prompt immigrants to disenroll from Medicaid and lead to an "increased prevalence of communicable diseases,"<sup>5</sup> as the nation is now experiencing at a horrifying rate.

To protect the residents of our states and the rest of the country, we ask that DHS immediately announce that the Rule is stayed pending successful containment of COVID-19. Short of that, however, it is imperative that DHS at least make clear that enrollment in Medicaid and the use of Medicaid benefits for any reason will not be considered in the public charge assessment. Given that these benefits were not considered in the public charge assessment for many years prior to DHS's recent change of policy, it is inexplicably harmful for the agency to begin counting them now, during the outbreak of a lethal global pandemic.

Sincerely,



Bob Ferguson  
Washington State Attorney General



Xavier Becerra  
California Attorney General

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<sup>2</sup> <https://www.doh.wa.gov/Emergencies/Coronavirus>.

<sup>3</sup> <https://www.mass.gov/info-details/covid-19-cases-quarantine-and-monitoring>

<sup>4</sup> <https://www.nytimes.com/2020/03/16/world/live-coronavirus-news-updates.html#link-71630faa> (citing <https://science.sciencemag.org/content/early/2020/03/13/science.abb3221>).

<sup>5</sup> 83 Fed. Reg. at 51,270.

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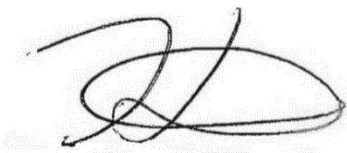
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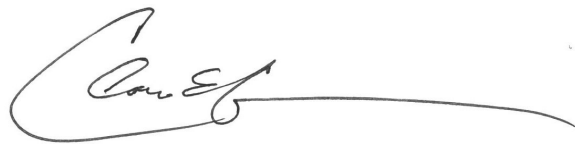
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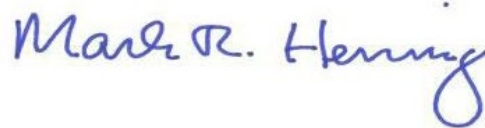
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CC: Vice President Mike Pence  
Secretary Alex Azar, U.S. Department of Health and Human Services