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JOSH STEIN  
ATTORNEY GENERAL

April 3, 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

RE: Opening Health Insurance Exchanges

Dear Secretary Azar and Administrator Verma:

The undersigned State Attorneys General of North Carolina, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington urge the federal government to reconsider its shortsighted decision to deny a special enrollment period on HealthCare.Gov during the current international health crisis. The COVID-19 pandemic is killing people, causing economic upheaval, and stretching our nation’s medical resources. Americans continue to experience the economic effects of the virus. Millions of individuals have lost their jobs—and with their jobs, their ability to pay for healthcare. We should not allow the virus to prevent sick people from obtaining treatment because they lack healthcare coverage or to face financial ruin if they seek care. People who lack health insurance are suffering the brunt of the pandemic. They work in grocery stores and food service, they drive trucks and sanitize buildings, and their jobs often do not provide sick leave.<sup>1</sup> Because they are uninsured, they are less likely to have a regular place to obtain healthcare and are more likely to delay obtaining care due to fears of the cost.<sup>2</sup> The administration has long touted choice and “informed healthcare decisions” to purportedly inform

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<sup>1</sup> Jennifer Tolbert, “What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?” Kaiser Family Foundation, Mar. 16, 2020, <https://www.kff.org/uninsured/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/>.

<sup>2</sup> *Id.*

its healthcare policies,<sup>3</sup> but is now denying many Americans the option of obtaining comprehensive healthcare coverage to combat this unprecedented healthcare care crisis.

While tests for the disease are free, treatment may not be.<sup>4</sup> And medical bills for uninsured individuals can be in the tens of thousands of dollars.<sup>5</sup> Therefore, the COVID-19 pandemic threatens to amplify our national problem of high medical bills, a problem the Affordable Care Act sought to address. But legal and policy solutions are easily at hand by extending the availability of healthcare coverage options through the federal exchange. Indeed, America's Health Insurance Plans (AHIP) has endorsed a special enrollment period as a measure to address the current healthcare crisis because it would give Americans the "opportunity to get the security and peace of mind that health care coverage provides."<sup>6</sup>

A national solution to the problem demands decisive and reasoned federal action. Some states run their own health insurance exchanges and may independently extend enrollment. For example, on March 20, 2020, Covered California announced that enrollment would be extended through the end of June to ensure that all Californians have an opportunity to obtain healthcare coverage.<sup>7</sup> But 38 states, including North Carolina, rely on HealthCare.Gov to run their exchanges.<sup>8</sup> The federal government should take similar action to make it possible for people in those states to obtain the healthcare they need during this critical time.

Under "exceptional circumstances"—a health crisis unlike any seen in the past hundred years and an economic downturn on pace to exceed the Great Recession—HealthCare.Gov is empowered to provide for a special enrollment period. 45 C.F.R. § 155.420(d)(9). We urge the

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<sup>3</sup> See, e.g., Executive Order 13813, "Promoting Healthcare Choice and Competition Across the United States," 82 Fed. Reg. 48,385 (Oct. 2, 2017).

<sup>4</sup> Megan Leonhardt, "Uninsured Americans could be facing nearly \$75,000 in medical bills if hospitalized for coronavirus," *CNBC*, Apr. 1, 2020, <https://www.cnn.com/2020/04/01/covid-19-hospital-bills-could-cost-uninsured-americans-up-to-75000.html>; Reed Abelson, "Now That Coronavirus Tests Are Free, Some Insurers Are Waiving Costs for Treatment," *New York Times*, updated Mar. 31, 2020, <https://www.nytimes.com/2020/03/19/health/coronavirus-tests-bills.html>.

<sup>5</sup> Abigail Abrams, "Total Cost of Her COVID-19 Treatment: \$34,927.43," *Time*, Mar. 19, 2020, <https://time.com/5806312/coronavirus-treatment-cost/>.

<sup>6</sup> Bruce Japsen, "Calls Grow to Open Special Obamacare Sign-Up As Coronavirus Spreads," *Forbes*, Mar. 21, 2020, <https://www.forbes.com/sites/brucejapsen/2020/03/21/calls-grow-to-open-special-obamacare-sign-up-as-coronavirus-spreads/#fedbb4842c8f>.

<sup>7</sup> "California Responds to COVID-19 Emergency by Providing Path to Coverage for Millions of Californians," Covered California, Mar. 20, 2020, <https://www.coveredca.com/newsroom/news-releases/2020/03/20/california-responds-to-covid-19-emergency-by-providing-path-to-coverage-for-millions-of-californians/>.

<sup>8</sup> See Kaiser Family Foundation, "State Health Insurance Marketplace Types," 2020, <https://www.kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

federal government to thoughtfully acknowledge the current dire circumstances by creating a special enrollment period. We must not allow a lack of insurance to prevent sick people from getting treatment or to bankrupt those who do receive care during these unprecedented times.

Sincerely,



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Xavier Becerra  
California Attorney General




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Josh Stein  
North Carolina Attorney General



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Phil Weiser  
Colorado Attorney General



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William Tong  
Connecticut Attorney General



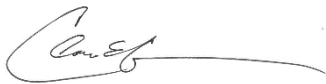
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Kathleen Jennings  
Delaware Attorney General



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Karl A. Racine  
Attorney General for the District of Columbia



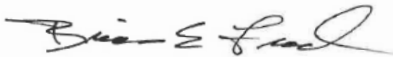
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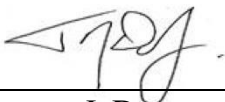
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Josh Shapiro  
Pennsylvania Attorney General



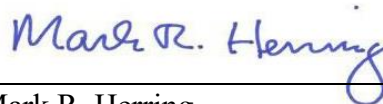
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Peter F. Neronha  
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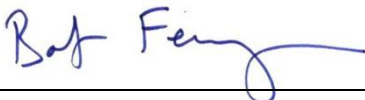
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