



The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20006

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

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

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

March 12, 2020

Dear Mr. President, Madam Speaker, and Leaders McConnell, McCarthy, and Schumer:

The recent outbreak of the novel coronavirus (COVID-19) in the United States has exposed many deficiencies within our public health and health care systems. The disease's spread has been made worse because of inadequate testing, poor coordination, non-interoperable health information technology, and inconsistent, non-scientific information coming from key leaders. In a health care system in which 28 million people (and growing) are uninsured and millions more (and growing) face significant financial obstacles to accessing care, including unaffordable deductibles, it is unsurprising that this disease appears to be on the path toward a nationwide epidemic. The prompt detection of disease requires patients who promptly seek necessary care, which in turn requires health coverage that makes care affordable and accessible.

On behalf of Families USA, a leading national consumer health care organization dedicated to building a nation where the best health and health care are equally accessible and affordable to all, we offer recommendations in two categories. These two categories reflect our most urgent and time-sensitive problems stemming from the pandemic: first, lowering barriers to access to health care both by reducing the number of people without health insurance and by reducing out of pocket costs for people with health insurance; and, second, mitigating the economic impact of looming recession due to the massive disruption caused by the pandemic. Some of these recommendations are already included in legislation moving through Congress. We urge you to advance these as soon as possible and to include our other recommendations in this package or in a near future effort.

Immediate Actions to Support Seamless Access to Health Care

Private Insurance Guarantees

- **Coverage of Testing:** Congress should mandate that all diagnostic testing for COVID-19 be covered by all private health insurance plans (including short-term limited duration plans and employer-sponsored insurance). Covered tests should include not just the specific test for COVID-19, but any other diagnostic tests for infectious diseases used as part of a panel to rule out other pathogens. These tests should be offered without any out-of-pocket cost-sharing, whenever they are recommended by a licensed medical professional.
- **Coverage of Treatment:** Congress should mandate that all private health insurance plans (including short-term limited duration plans and employer-sponsored insurance) cover all necessary treatment for possible COVID-19 as a pre-deductible service. This guarantee should include any treatment offered from the time a medical professional determines a patient may have contracted COVID-19, before final test results are available, through final recovery or a firm diagnosis that the patient does not have COVID-19. Patients ultimately found not to have contracted the illness should be fully protected from any financial liability for treatment provided until that point.
- **Prohibition on Balance Billing:** Congress should immediately pass pending legislation to ban balance billing, ensuring that all patients, including those who may be suffering from COVID-19, can access care at any facility with the capacity to provide care. This is particularly critical during a time when capacity at in-network facilities may be stretched to the breaking point. During this national public health emergency, when it is critically important to detect illness as soon as possible, no patient should be deterred from seeking prompt medical attention by fears of enormous medical bills if care turns out to come from a non-network provider.

Using Medicaid and the Marketplaces to Cover the Uninsured

- **Use Section 1115 Emergency Waiver Authority:** The Federal Emergency Management Administration (FEMA) should *immediately* declare a national emergency. Following that declaration, the Centers for Medicare and Medicaid Services (CMS) should *immediately* notify all state and territorial Medicaid officials that they can apply for 1115 waivers under emergency authority. Such waivers would allow states to use presumptive eligibility to expedite enrollment, and allow for changes to enrollment, redetermination, and cost-sharing policies that promote patients' immediate access to care, promoting early detection of disease. Emergency 1115 waivers are also exempt from normal 1115 waiver budget neutrality requirements.
- **Use Section 1135 Emergency Waiver Authority:** The President should *immediately* declare a national emergency, and the Secretary of Health and Human Services (HHS) should *immediately* declare a public health emergency. These dual declarations would then allow the HHS Secretary to invoke Section 1135 of the Social Security Act to waive certain requirements to ensure sufficient health care items and services are available to Medicaid enrollees. Under Section

1135, CMS could waive requirements that physicians and health care providers hold licenses in the state in which they provide services, enabling the efficient provision of cross-border care.

- **100% FMAP for COVID Screening and Treatment:** Congress should authorize 100% federal match for any state Medicaid expenditure related to screening for COVID-19 or for direct treatment of the illness.
- **Facilitate Easy Enrollment in Health Insurance Marketplaces:** To ensure that people who lose employment retain health coverage, the federal government should fund health navigators and other trained community groups to participate in state and federal workforce efforts targeted at laid-off workers. This assistance would help workers and their families immediately sign up for health insurance, including both Medicaid and private coverage offered through health insurance exchanges, often with the aid of premium tax credits. Such coverage options are typically much more affordable for laid-off workers than COBRA coverage. Congress should also update COBRA rules to ensure that, in terminating employees, employers provide notice of available health insurance options, including information about federal financial assistance, in addition to information about COBRA.
- **Mandate Special Enrollment Period:** Congress should require health insurance exchanges to provide a special enrollment period so uninsured consumers can respond to this new and unexpected epidemic by quickly signing up for health coverage. Millions of people who qualify for premium tax credits in the individual market remain uninsured. During this public health emergency, affordable health care coverage ensures consumers are more likely to seek care when they need it.
- **Automatic Enrollment of Children When Parents Lose Employer Coverage:** Congress should require states to automatically enroll children in Medicaid or the Children's Health Insurance Program, with 12 months of continuous and guaranteed eligibility, when their parents lose employer-sponsored health care coverage.

Additional Protections

- **Fund Community Health Centers and Safety Net Hospitals:** Congress should immediately pass pending legislation to fund federally qualified health centers and stop cuts to Medicaid Disproportionate Share Hospital (DSH). Congress should also be prepared to provide supplemental funding to these and other critical entities to care for uninsured COVID-19 patients.
- **Stop Price Gouging:** Congress should ban clinical labs, pharmaceutical manufacturers, and health care providers from substantially raising prices for any services related to diagnosis and treatment of COVID-19.
- **Leverage Medicare and Medicaid Home Health Services:** With public health experts encouraging older and vulnerable people to remain at home, Congress should temporarily liberalize eligibility rules for necessary Medicare home health services for people who need

Medicare coverable home health services, as defined in Title 18 of the Social Security Act, to remain safely at home, without regard to whether they meet the “confined to home” or skilled care requirements. Congress should also liberalize rules for Medicaid LTSS services in congregate settings. Congress should direct CMS to create simple, expedited physician approval and plans of care for home health services for people who need Medicare coverable home health services to remain safely at home, or for Medicaid LTSS in congregate settings that now pose a serious infection risk.

- **Transparent Reporting:** With mixed and unreliable information coming from the Administration, Congress should require the federal government and state governments to provide clear information regarding at least the following on a daily basis:
 - the number of available COVID-19 tests
 - the number of people tested for COVID-19
 - the number of confirmed cases for COVID-19
 - the number of COVID-19 fatalities
 - the number of people who have recovered from COVID-19

Congress should also forbid the use of national-security classification to hide from public view information about COVID-19.

Measures that Simultaneously Limit the Epidemic’s Medical and Economic Harm

Federal policymakers are rightly considering significant measures to limit the economic damage caused by the COVID-19 pandemic. In this effort, we encourage Congress to prioritize proposals that both increase economic activity *and* help the health care system deal with the ongoing epidemic. To that end, we offer the following recommendations:

Bolster Medicaid Funding for States

- **Increase Federal Medicaid Match:** Congress should approve an emergency FMAP increase for Medicaid as soon as possible. This is critical to ensuring states don’t cut eligibility when people need coverage and gives states the flexibility they need to respond to the public health emergency. See more in next recommendation.
- **Automatically Increase Federal Medicaid Match in Response to Economic Downturn:** Enrollment in Medicaid is highly cyclical. During economic downturns, more individuals qualify for Medicaid, swelling its rolls at the exact time that states are least able to afford their share of program costs. Unless the federal government provides fiscal relief that lets states provide health care to those who qualify, state balanced budget requirements force states facing economic downturn to raise taxes, to cut Medicaid at precisely the time when residents and the economy most needs the help, or reduce funding for other priorities, including education and public health. All of these steps can further exacerbate the economic downturn.

One of the most effective and administratively straightforward ways for the federal government to provide economic stimulus while protecting patient access to care is to increase federal Medicaid matching rates. We urge Congress to act now, before the full force of recession hits, to build on the excellent work done by the GAO and the Brookings Institution to define FMAP increases that automatically become effective when state economies falter and that automatically end when economic conditions improve. Basic fiscal relief on objective economic conditions targets federal investments for maximum impact and efficiency, not political expediency. To ensure that these dollars are used to support the economy and the continued provision of health care, it is essential, as during past recessions, to include state requirements, as a precondition of accessing federal fiscal relief, to meet minimum requirements for Medicaid eligibility. Those requirements include full maintenance of prior eligibility, assuring that federal dollars can accomplish their objectives.

- **Stop Administrative Cuts to State Medicaid Funding:** The Administration should withdraw or Congress should mandate the withdrawal of pending federal rules – the Medicaid Financial Accountability Regulation – that limit state flexibility in defining the non-federal share of Medicaid spending. With states entering this emergency, they need maximum flexibility to manage Medicaid funding in the face of what could be skyrocketing public needs.

Congress cannot afford to wait to take action. Public health experts both within and outside of the federal government warn that the virus outbreak is likely to substantially worsen in the coming days and weeks. The downstream economic effects are only beginning to be felt. We implore Congress to take these recommended actions to protect vulnerable individuals and families, strained health care providers, state governments, and the economy at large.

Sincerely,

Eliot Fishman
Senior Director of Health Policy