March 17, 2021

Anne Marie Costello
Acting Deputy Administrator and Center Director
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Baltimore, MD 21244

CC: Karen Shields, Judith Cash, Sarah DeLone, Amy Lutzky, Alissa Deboy, Melissa Harris, Carrie Smith, Sarah Spector, Elizabeth Garbarczyk, Kirsten Jensen, and Rachel Dressel, Centers for Medicare & Medicaid Services, HHS; Marcella Nunez-Smith, COVID Equity Task Force, HHS; and Jessica Schubel, Domestic Policy Counsel, White House.

Re: Clarification that COVID-19 is an "emergency medical condition"

Dear Deputy Administrator Costello:

The undersigned organizations are writing to ask you to clarify that (1) COVID-19 is an "emergency medical condition," and, therefore, federal Medicaid funds can be used to pay for COVID-19 testing, treatment, and related services for immigrants ineligible for full-scope Medicaid because of their immigration status, and (2) the American Rescue Plan Act mandates coverage of vaccines and vaccine administration for all individuals eligible for limited benefits or services, including emergency Medicaid. The Protecting Immigrant Families Coalition's mission is to unite to advance, protect and defend access to health care, nutrition programs, public services and economic support for immigrants and their families at the local, state and federal levels.

We urge the Biden-Harris Administration, and the Centers for Medicare & Medicaid Services (CMS), to provide this clarification to ensure that immigrants and their families have access to COVID-related health care during and beyond the pandemic and for any future outbreaks. This access is critical because immigrants make up nearly 14 percent of the U.S. population, comprising nearly one in five essential workers; one in five health care workers; and one in four long term care workers.

COVID-19 is having a harmful, disproportionate impact on communities of color.

Immigrants also make up a substantial segment of the country's communities of color. According to the Pew Research Center, nearly one-in-ten Black people, two-thirds of Asian Americans, one-quarter of Native Hawaiians and Pacific Islanders, and one-third of Hispanics are foreign born. As you know, people of color are disproportionately harmed by COVID-19, with higher infection, hospitalization, and death rates than non-Hispanic whites. Older immigrants and immigrants with disabilities face greater disparities during the pandemic, due to systemic inequities at the intersection of race, ethnicity, age, and disability. This harm is compounded by the fact that immigrants disproportationately lack health insurance; 23 percent of lawfully present immigrants and 45 percent of people who are undocumented are uninsured, compared to nine percent of U.S. citizens. Providing clarity to states about the availability of federal emergency Medicaid funding for COVID-related care would help fill this gap.

The Biden-Harris administration and many states are aligned in prioritizing efforts to defeat COVID-19. To ensure a robust and inclusive response to the pandemic, states and providers must be able to rely on Medicaid, which can help cover uninsured residents with low incomes, including immigrants and their family members.

Medicaid could help address inequitable access to testing and treatment.

Medicaid offers a critical means of financing the delivery of services in a crisis like the pandemic. Previous COVID-19 relief bills have expanded Medicaid coverage for COVID-19 services for the uninsured, but immigrants who are ineligible for full-scope Medicaid were not included in this state option. The American Rescue Plan Act of 2021 further expands access to COVID-19 services for this uninsured group by broadening coverage to include COVID-19 treatment and vaccines and lengthening the duration of coverage to more than a year beyond the end of the public health emergency. Clarification that these services are also available to immigrants through emergency Medicaid is now more important than ever, and can be done in concert with guidance to implement this expanded state option.

Immigrants and their family members are avoiding COVID-19 testing, treatment, and vaccination based on concerns about the cost of care, and fears related to their immigration status. In a survey of immigrant households in Massachusetts, nearly 42 percent of respondents said that no one in the household had been tested or treated for COVID-19; instead, if someone fell ill they would take care of them at home on their own. On a follow up question, one out of six people responded that they did not get tested because they are uninsured and were worried about the cost. A survey of immigrant households in Washington similarly showed that while

50% of respondents reported having at least one COVID-19 symptom, only 37% had been tested. The top reason for not seeking care was lack of health coverage and concerns about cost. In addition, Kaiser Family Foundation research, based on the 2019 National Health Interview Survey, found that 32 percent of uninsured people postponed seeking care due to cost, regardless of where they were born.

COVID-19 is an emergency medical condition.

We are asking CMS to issue written guidance clarifying that COVID-19 is an "emergency medical condition" under 42 U.S.C. § 1396b(v)(3), that states can allow providers to bill emergency Medicaid for COVID testing, treatment, vaccination, and related services and that states can receive FMAP for those claims. COVID-19 is a complex disease, and providers are facing uncertainty about whether they can provide and bill for different types of care. For example:

- According to the CDC, people can present with a wide variety of COVID symptoms--from a cough or headache to shortness of breath or difficulty breathing--and need treatment quickly, often before test results come back.
- People often experience unpredictable acute episodes with COVID-19. A recent article in Academic Emergency Medicine found that nearly 5 percent of COVID-19 patients returned to the hospital within 72 hours of release needing to be readmitted, and 3.5 percent needed to be readmitted within 1 week. Some people present at the hospital with a fever and shortness of breath. These clear up in a few days and they are sent home, only to be readmitted to the hospital when the high fever and breathing problems return. The article showed that readmissions for COVID-19 patients may be five-times higher than for Emergency Department patients overall.
- Some people also require longer term oxygen or other support to prevent them from needing to return to the hospital. And there are still many unknowns regarding the prevalence, severity, and timing of conditions that stem from a COVID-19 infection.

COVID-19 easily satisfies the statutory definition of an emergency medical condition.[1] With more than a half million known fatalities, it jeopardizes patients' health. In cases that do not result in death, it often impairs breathing severely, and causes serious dysfunction of the heart, kidneys, lungs, bronchial tubes, and other organs. COVID-19 also is characterized by a sudden onset of symptoms, with patients becoming seriously ill just hours after being asymptomatic.

[1] 42 U.S.C. 1396b(v)(3) ("a medical condition . . . manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient's health in serious jeopardy,
(B) serious impairment to bodily functions, or
(C) serious dysfunction of any bodily organ or part.")

Accordingly, several states already issued guidance to providers and the public clarifying that COVID-19 is an "emergency medical condition" and specifying that various testing and treatment services can be covered through the state's emergency Medicaid program. This has enabled these states to provide robust public messaging to immigrant communities that comprehensive testing and treatment are available regardless of immigration status.

Our organizations have heard that other states, including Medicaid expansion states with substantial immigrant populations, are interested in issuing similar guidance, but need additional clarity from CMS in order to do so.

Moreover, Section 9811(a)(2)(F) of the American Rescue Plan Act requires states to cover vaccines for *all* individuals eligible under the state plan, even if they are only eligible for a limited type of benefits or services. This includes emergency Medicaid. CMS's guidance should, therefore, clearly state that under the ARPA states are required to provide reimbursement for vaccines and vaccine administration provided to individuals eligible for coverage of treatment for an emergency medical condition.

CMS should encourage states to use emergency Medicaid to reach immigrant communities.

Clear guidance from CMS would enable these states to utilize their existing emergency Medicaid infrastructure to deliver critical COVID-19 services to immigrant communities and facilitate more efficient and equitable access to COVID-19 testing, treatment, and vaccination. For instance, some states pre-enroll eligible immigrants in their emergency Medicaid program, and others certify eligibility for emergency Medicaid for several months at a time. With CMS guidance in hand, those states could conduct outreach to their immigrant communities regarding the availability of COVID-19 services. Moreover, providers and hospitals already know how to submit claims for reimbursement for treatment of emergency medical conditions to their Medicaid agencies, making this an easy way to expand access to services.

Leveraging Medicaid coverage will also help reach groups that are currently afraid to seek care. Some other sources of funding have created obstacles for immigrant families. Asking for a Social Security number or state-issued identity document, for example, has deterred immigrants from seeking testing and treatment that would be reimbursed through the Health Resources and Services Administration (HRSA) portal.[2] By contrast, applicants for emergency

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[2] Modern Health Care, Federal COVID-19 uninsured reimbursement program sparks data Privacy concerns," (June 19, 2020) https://www.modernhealthcare.com/community-health-centers/federal-covid-19-uninsured-reimbursement-program-sparks-data-privacy.

Medicaid are not asked for a Social Security number and do not need to declare or provide proof of their immigration status.

Finally, utilizing emergency Medicaid will ensure stable and sustainable access to COVID-19 services for immigrants ineligible for full-scope Medicaid. Services provided through emergency Medicaid are jointly funded by the states and federal government. In contrast, the HRSA provider funds are discretionary and limited and it is optional for providers to participate.

Although we are asking for written guidance, we understand that, given the transition in leadership, producing this may take some time. In the meantime, we urge CMS to begin discussing this option with states individually, regionally, or on all-state calls. We would also like to identify a person at CMS who would be available to answer technical questions regarding FMAP for treatment of emergency medical conditions.

We would be happy to meet with you to discuss further. Please contact Sarah Grusin, National Health Law Program, grusin@healthlaw.org and Sonya Schwartz, Protecting Immigrant Families Campaign, sonya@sonyaandpartners.com.

Sincerely,

ACCESS REPRODUCTIVE JUSTICE
AIDS Alliance for Women, Infants, Children, Youth & Families
American Lung Association
American Medical Student Association
American Muslim Health Professionals
Anxiety and Depression Association of America (ADAA)
Asian Health Services
Asian Pacific Institute on Gender-Based Violence
Asian Resources, Inc
Aspire For Humanity Initiatives
Association of Asian Pacific Community Health Organizations
Association of Maternal & Child Health Programs
Bienestar Human Services
California Association of Food Banks
California Immigrant Policy Center

California Latinas for Reproductive Justice

California Nurse-Midwives Association

California Primary Care Association

California WIC Association

Cambodian Community Association of Maine

Capital Area New Mainers Project

Center for Civil Justice

Center for Elder Law & Justice

Center for Law and Social Policy

Center for Public Representation

Charlotte Center for Legal Advocacy

Children's Defense Fund-Texas

Chinese-American Planning Council (CPC)

CHIRLA

Citizens For Choice

Community Catalyst

Community Clinic Association of Los Angeles County

Community Clinic Consortium of Contra Costa & Solano Counties

Community Health Councils

County Welfare Directors Association of California

Empowering Pacific Islander Communities (EPIC)

Every Texan (formerly CPPP)

Families USA

Farmworker Justice

Florida Chapter of the American Academy of Pediatrics

Florida Health Justice Project

Florida Policy Institute

Gateway Community Services Maine

Georgetown University Center for Children and Families

Georgians for a Healthy Future

Health Access California

Health Care Justice--NC

Health Law Advocates

Healthy House Within A MATCH Coalition

Hope Acts

If/When/How: Lawyering for Reproductive Justice

Immigrant Legal Advocacy Project

Ipas

Jewish Family Service of Los Angeles

Justice in Aging

Korean Community Center of the East Bay

Legal Action Center

Legal Council for Health Justice

Legal Services Advocacy Project

Legal Voice

Little Tokyo Service Center

Los Angeles LGBT Center

Maine Association for New Americans (MANA)

Maine Immigrants' Rights Coalition

Make the Road New York

Michigan Immigrant Rights Center

Michigan Poverty Law Program

Mid Coast New Mainers Group

Minnesota Budget Project

NACBHDD

NARMH

NASTAD

National Asian Pacific American Women's Forum (NAPAWF)

National Association for Children's Behavioral Health

National Association of Pediatric Nurse Practitioners

National Council of Jewish Women

National Council on Alcoholism and Drug Dependence- Maryland Chapter

National Family Planning & Reproductive Health Association

National Health Care for the Homeless Council

National Health Law Program

National Homelessness Law Center

National Immigration Law Center

National Organization for Women

National WIC Association

Nebraska Appleseed

New Mexico Center on Law and Poverty

New Mexico Immigrant Law Center

New York Legal Assistance Group

Niskanen Center

NM Center on Law and Poverty

North Carolina Justice Center

Northwest Health Law Advocates

Oasis Legal Services

Physicians for Reproductive Health

Pisgah Legal Services

Planned Parenthood Federation of America

Prevention Institute

Reproductive Rights Coalition

RESULTS

San Francisco AIDS Foundation

San Francisco Hepatitis C Task Force

Shriver Center on Poverty Law

South Carolina Appleseed Legal Justice Center

Southwest Women's Law Center

TakeAction Minnesota

Tennessee Justice Center

The AIDS Institute

The Children's Partnership

The Coelho Center for Disability Law, Policy and Innovation

The Commonwealth Institute for Fiscal Analysis

The Fresno Center

The Workers Circle

Treatment Action Group

UnidosUS

Union for Reform Judaism

United Way Worldwide

URGE: Unite for Reproductive & Gender Equity

Voices for Racial Justice

Venice Family Clinic

Virginia Poverty Law Center

Vital Immigrant Defense Advocacy and Services

Welcoming Immigrant Neighbors- Bangor

Welcoming the Stranger

Western Center on Law & Poverty

William E. Morris Institute for Justice (Arizona)

The Protecting Immigrant Families coalition brings together more than 500 organizations representing health, economic security, child welfare, civil and immigrant rights, food security, faith and social justice, and other sectors united to protect and defend access to health care, nutrition programs, public services and economic supports for immigrants and their families at the local, state, and federal level.