

United States Senate

WASHINGTON, DC 20510

June 1, 2023

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Ave., SW
Washington, D.C., 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Becerra and Administrator Brooks-LaSure:

We are writing to urge the Biden-Harris Administration to strengthen its efforts to support state initiatives to automate the enrollment of eligible, uninsured families into health programs for which they qualify.

Such initiatives address a serious problem: America’s enrollment gap. Roughly two-thirds of our country’s uninsured residents – more than 18 million people -- qualify for but are not enrolled in Medicaid, the Children’s Health Insurance Program (CHIP), or low-cost Marketplace plans bought with advance premium tax credits (APTCs).ⁱ Thanks to the *Inflation Reduction Act*, most people in the enrollment gap qualify for zero-premium insurance but are not enrolled,ⁱⁱ often because of administrative barriers or because they do not know about available health programs.ⁱⁱⁱ People of color and workers without college degrees make up a disproportionate share of uninsured families caught in the enrollment gap.

To close that gap, ten states that, together, include one-third of America’s Medicaid-eligible uninsured^{iv} population—California, Colorado, Illinois, Maine, Maryland, Massachusetts, New Jersey, New Mexico, Pennsylvania, and Virginia—have enacted “Easy Enrollment” programs that let families use state income tax returns to jumpstart health care enrollment. Uninsured tax filers can check a box asking to have their return information forwarded to state health agencies to see if their families qualify for free or low-cost insurance. Easy Enrollment efforts ultimately aim to let uninsured tax filers request automatic enrollment in Medicaid, CHIP, or zero-premium Marketplace coverage, but these initiatives are facing unnecessary bureaucratic obstacles. To reach as many eligible uninsured as possible, these states seek to limit the need for people who have already filed their tax returns to complete further paperwork before obtaining health care coverage.

President Biden signed an Executive Order on his first day in office calling on federal agencies to overcome “potential barriers that underserved communities and individuals may face to enrollment.”^v In its effort to implement this executive order, the Office of Management and Budget (OMB) highlighted the importance of lightening the administrative burdens families face. OMB also reported that “administrative burdens...do not fall equally on all..., leading to

disproportionate underutilization of critical services...often by the people and communities who need them the most.”^{vi} The President thus signed an additional Executive Order calling on federal agencies “to the maximum extent permitted by law... to ensure eligible individuals are automatically enrolled in...critical benefit programs.”^{vii}

By leveraging income-tax filing to streamline and automate enrollment, Easy Enrollment programs could reach most of America’s uninsured families. In 2021, 94% of uninsured adults filed federal income tax returns, including 90% of uninsured adults with incomes below 150% of the federal poverty level, 93% of uninsured people of color, and 93% of uninsured adults who never graduated high school.^{viii}

The Administration has compiled a remarkable track record bringing health insurance to an ever-widening circle of families in America. To build on that record, we urge the Centers for Medicare & Medicaid Services (CMS) and the Treasury Department to issue guidance allowing three flexibilities for state Easy Enrollment programs, all of which are well within current statutory and regulatory authority:

- **States should be allowed to verify citizenship through electronic records, without requiring families to submit redundant paperwork.** Applicants for health programs must complete forms attesting, under penalty of perjury, to U.S. citizenship or satisfactory immigration status. To facilitate auto-enrollment efforts, CMS should waive that requirement under Social Security Act §1115 and Affordable Care Act §1411(c)(4) (B) when a state has already confirmed that an uninsured applicant is a U.S. citizen, based on matches between identifying information on the tax return and federally approved sources of citizenship data.^{ix}
- **States should be allowed to base financial eligibility for Medicaid on state income tax records.** Financial eligibility for Medicaid reflects current income. A state implementing the option for “Express Lane Eligibility,” or ELE, can qualify children as financially eligible based entirely on information from other income-based programs or the family’s state income tax return.^x CMS should make clear that it is willing to grant §1115 waivers permitting states to use ELE’s tax return option to establish financial eligibility, not just for children, but for adults as well.^{xi}
- **States should be allowed to have tax reconciliation penalties waived for consumers they automatically enroll into zero-premium Marketplace plans.** Someone enrolled into a zero-premium plan may owe federal tax reconciliation payments if their annual income turns out to exceed expected levels. For states to reliably promise that zero-premium plans will truly cost enrollees nothing, CMS and the Treasury Department should make clear that ACA §1332 allows waivers of tax reconciliation for people the state auto-enrolls into such plans.^{xii}

With these three flexibilities, States could strengthen Easy Enrollment programs so that numerous uninsured people who are already known to be U.S. citizens could be enrolled

automatically into Medicaid, CHIP, and Marketplace plans, based on qualifying income shown on state income tax returns.

Given the large and growing number of states pursuing Easy Enrollment initiatives, we recommend that CMS develop one or more templates making it easy for states to obtain federal approvals needed to maximize coverage gains from this promising approach. In the meantime, we urge the Administration to work proactively with states and to quickly approve state proposals to take the above steps. Easy Enrollment requires coordinating policy and operations between state health and tax agencies, so planning for 2024 Easy Enrollment has already begun. Clear and early guidance showing federal support for automating enrollment, as outlined in this letter, would give our states and others the confidence to innovate boldly and effectively in closing America's large, persistent, and inequitable enrollment gap.

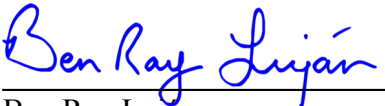
Sincerely,



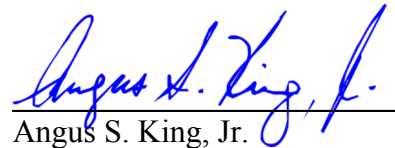
Chris Van Hollen
United States Senator



Martin Heinrich
United States Senator



Ben Ray Lujan
United States Senator



Angus S. King, Jr.
United States Senator



Mark R. Warner
United States Senator



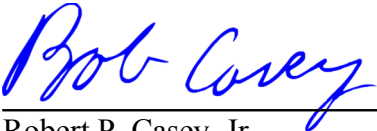
Tim Kaine
United States Senator



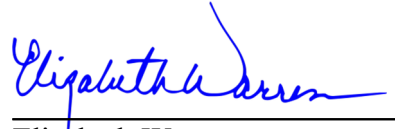
Cory A. Booker
United States Senator



Benjamin L. Cardin
United States Senator



Robert P. Casey, Jr.
United States Senator



Elizabeth Warren
United States Senator



Michael F. Bennet
United States Senator



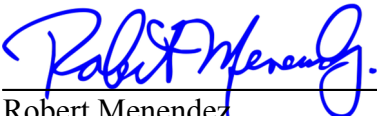
Alex Padilla
United States Senator



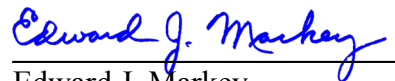
John Hickenlooper
United States Senator



John Fetterman
United States Senator



Robert Menendez
United States Senator



Edward J. Markey
United States Senator

CC: The Honorable Neera Tanden, Assistant to the President & Domestic Policy Advisor,
Domestic Policy Council, The White House

The Honorable Daniel Tsai, Deputy Administrator and Director of the Center for
Medicaid and CHIP Services

The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the
Treasury

ⁱ Kaiser Family Foundation (KFF), “Distribution of Eligibility for ACA Health Coverage Among the Remaining Uninsured: 2021” *State Health Facts*, <https://www.kff.org/health-reform/state-indicator/distribution-of-eligibility-for-aca-coverage-among-the-remaining-uninsured/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

ⁱⁱ Matthew Rae, et al., How the American Rescue Plan Act Affects Subsidies for Marketplace Shoppers and People Who Are Uninsured, KFF, March 25, 2021, <https://www.kff.org/health-reform/issue-brief/how-the-american-rescue-plan-act-affects-subsidies-for-marketplace-shoppers-and-people-who-are-uninsured/>.

ⁱⁱⁱ Jennifer M. Haley and Eric Wengle, Uninsured Adults’ Marketplace Knowledge Gaps Persisted in April 2021, Urban Institute, September 28, 2021, https://www.urban.org/sites/default/files/publication/104860/uninsured-adults-marketplace-knowledge-gaps-persisted-in-april-2021_0.pdf; Karen Pollitz, et al., Consumer Assistance in Health Insurance: Evidence of Impact and Unmet Need, KFF, August 7, 2020, <https://www.kff.org/report-section/consumer-assistance-in-health-insurance-evidence-of-impact-and-unmet-need-issue-brief/>.

^{iv} KFF, Distribution of Eligibility for ACA Health Coverage Among the Remaining Uninsured.

^v President Joseph R. Biden, Jr., Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” January 20, 2020, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

^{vi} Office of Management and Budget, Study to Identify Methods to Assess Equity: Report to the President, July 2021, https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-Report-on-E013985-Implementation_508-Compliant-Secure-v1.1.pdf.

^{vii} President Joseph R. Biden, Jr., Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, December 13, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/>.

^{viii} UnidosUS analysis of data from the 2022 Current Population Survey-Annual Social and Economic Supplement, accessed through IPUMS-CPS, University of Minnesota, www.ipums.org.

^{ix} Under Social Security Act §1115, CMS could waive §1902(a)(46)(A)’s attestation requirement for applicants whose identifying information from the tax return has been used to verify citizenship through matches with data sources approved by CMS regulations, such as Social Security Administration citizenship records, birth records maintained by state vital statistics agencies, or data from the Department of Homeland Security Systematic Alien Verification for Entitlements Program. Under ACA §1411(c)(4)(B), HHS may modify verification procedures normally used for APTC applications if the Department finds that “such modifications would reduce the administrative costs and burdens on the applicant.” 42 CFR §155.315(h) implements that provision by authorizing HHS “to modify the methods to be used for collection of information and verification of information ... provided that HHS finds that such modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay....”

^x Social Security Act §1902(e)(13)(G) allows a state to use ELE to base children’s financial eligibility for Medicaid and CHIP on “gross income or adjusted gross income shown by State income tax records or returns.” The broader list of need-based programs with findings that can establish Medicaid and CHIP eligibility through ELE includes the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families, Head Start, School Nutrition programs, housing programs, and more. Social Security Act §1902(e)(13)(F)(ii).

^{xi} CMS has already approved similar 1115 waivers for Massachusetts and Alabama. Both states are implementing the statutory ELE option to qualify children based on SNAP income findings. The 1115 waivers let states make adults financially eligible for Medicaid based on SNAP findings, extending ELE from children to adults. Because Alabama has not expanded Medicaid to all low-income adults, as permitted by the Affordable Care Act, Alabama’s waiver authorizes the use of ELE in qualifying adults for the state’s Medicaid Family Planning benefit. See letter from CMS to Daniel Tsai, Assistant Secretary for MassHealth, September 25, 2019, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ma/MassHealth/ma-masshealth-cms-apprvd-demo-period-final-2014-2017-09252019.pdf>; CMS, Waiver Authority for MassHealth Medicaid and CHIP Section 1115 Demonstration, Approval Period October 1, 2022, through December 31, 2027, <https://www.mass.gov/doc/waiver-and-expenditure-authorities/download>; Letter from CMS to Stephanie Azar, Commissioner, Alabama Medicaid Agency, December 29, 2014, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/al/alabama-plan-first/al-family-planning-appvl-2014-ext-122914.pdf>.

^{xii} Section 1332 permits waivers of Internal Revenue Code 36B(f), which requires reconciliation of differences between APTCs, determined based on household circumstances at the time of enrollment, and final PTC amounts determined when income tax returns are filed the following calendar year. Waiving this requirement could be accomplished without significant changes to Internal Revenue Service processes. To comply with Section 1332(b)(1)(D)’s prohibition of waivers that increase the Federal deficit, other portions of a state waiver proposal would likely need to generate offsetting federal savings or revenue increases.