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August 24, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Azar, Secretary Scalia, and Secretary Mnuchin:

I write today with grave concerns regarding guidance jointly published by your departments on June 23, 2020 on implementation of the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹ This guidance is being relied upon by private insurance companies, including several of the largest regional health plans in Western New York providing coverage to my constituents, to avoid covering COVID-19 testing done for purposes of public health surveillance or return to employment.

As you know, this past March Congress passed both the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act. FFCRA required that private insurers “shall provide coverage, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements” for “[i]n vitro diagnostic products...for the detection of SARS-CoV-2 or the

¹ United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. “FAQs About the Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 43. (June 23, 2020). Online at: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf>.

diagnosis of the virus that causes COVID-19.”² The CARES Act further clarified that such tests and their administration are to be covered by payers without cost-sharing on the part of patients.³

In the guidance jointly issued by the United States Departments of Labor, Health and Human Services, and Treasury on June 23, 2020, this administration subsequently tapered the definition of what must be covered with regards to COVID-19 testing. This guidance specifically exempted payers from being required to cover COVID-19 testing done for purposes of surveillance or employment. Leaders in Congress have already expressed to you that this is contrary to Congressional intent and the language contained in statute.⁴ Unfortunately, this has not prevented numerous private insurance companies from taking advantage of this manufactured loophole to avoid covering COVID-19 testing for individuals who should and must be tested in order to safely go back to work or attend school.

It is absolutely imperative that access to COVID-19 testing continue to be expanded across the United States. The lack of a national testing plan from this administration has meant that states and localities have been largely left to develop testing protocols on their own and scramble for what testing supplies they can get in the absence of national leadership. Insurance companies are currently sitting on billions of dollars in profits as a result of their members delaying or foregoing elective procedures and other regular care.⁵ It is unconscionable for your departments to now also allow private insurance companies to abdicate their fair share of responsibility to their members and our communities by explicitly declaring that coverage of COVID-19 testing is not required under certain circumstances.

Testing cannot be limited just to those that show symptoms. The Centers for Disease Control and Prevention estimate that 40 percent of people with COVID-19 are asymptomatic.⁶ These individuals are still able to spread the virus, and the only way to identify them is with testing as part of screening and surveillance efforts. Nor can testing be limited to only those who can afford it. In the absence of insurance coverage for testing, COVID-19 tests can cost anywhere from \$100 to upwards of thousands of dollars.^{7,8} And for too many Americans, even a \$100 out-of-pocket expense is unaffordable. These types of barriers will discourage individuals from getting

² Families First Coronavirus Response Act. (March 18, 2020). Online at: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.

³ Coronavirus Aid, Relief, and Economic Security Act. (March 27, 2020). Online at: <https://www.congress.gov/116/bills/hr/748/BILLS-116hr748enr.pdf>.

⁴ Letter to Secretary Azar, Secretary Scalia, and Secretary Mnuchin. (July 7, 2020). https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.DOL_DOT_2020.7.7.pdf.

⁵ Reed Abelson, *The New York Times*. “Major U.S. Health Insurers Report Big Profits, Benefiting From the Pandemic.” (August 5, 2020). Online at: <https://www.nytimes.com/2020/08/05/health/covid-insurance-profits.html>. Centers for Disease Control and Prevention. “Pandemic Planning Scenarios.” (July 10, 2020). Online at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

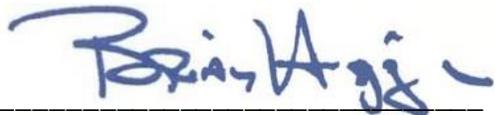
⁷ Sarah Kliff, *The New York Times*. “Most Coronavirus Tests Cost About \$100. Why Did One Cost \$2,315?” (June 16, 2020). Online at: <https://www.nytimes.com/2020/06/16/upshot/coronavirus-test-cost-varies-widely.html>.

⁸ Susannah Luthi, *Politico*. “The \$7,000 Covid Test: Why states are stepping in to shield consumers.” (June 8, 2020). Online at: <https://www.politico.com/news/2020/06/08/coronavirus-test-costs-304058>

tested at a time when we need more testing, not less, particularly as schools across the nation attempt to reopen safely.

I urge you to immediately reconsider and revise the June 23rd guidance to remove this loophole, bring the guidance into line with Congressional intent and the statutory language of both the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act, and make clear to insurers their responsibility to cover COVID-19 testing in all cases.

Sincerely,

A handwritten signature in blue ink that reads "Brian Higgins". The signature is written in a cursive style and is positioned above a horizontal line.

Brian Higgins
Member of Congress