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April 2, 2020

Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Honorable Chuck Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

Honorable Chuck Grassley
Chairman, Senate Finance Committee
135 Hart Senate Office Building
Washington, DC 20510

Honorable Ron Wyden
Ranking Member, Senate Finance Committee
221 Dirksen Senate Office Building
Washington, DC 20510

Re: Request for swift enactment of S. 2379 as part of national response to COVID-19

Dear Leader McConnell, Leader Schumer, Chairman Grassley and Ranking Member Wyden:

As state attorneys general who manage our states' Medicaid Fraud Control Units (MFCU), we write to urge the Senate swiftly to pass S. 2379 as part of the national response to COVID-19. Current 'social distancing' and similar actions necessary to slow the spread of the virus are likely to increase social isolation of vulnerable populations, including Medicaid beneficiaries, who receive care at home or in other noninstitutional setting. That heightened isolation, in turn, increases the vulnerability of those individuals to abuse, neglect or exploitation. Enactment of S. 2379, which removes an arbitrary and unjustified statutory restriction on the use of MFCU assets to detect, investigate and prosecute the abuse of Medicaid patients in non-institutional settings can immediately bring to bear significantly more law-enforcement assets nationwide to combat this problem during this emergency.

The current federal, state and local emergencies in effect in response to COVID-19 present substantial challenges to the delivery of care to vulnerable populations in home health care and other noninstitutional settings. Prior academic literature has suggested emergencies could invite increased abuse, neglect and exploitation of isolated vulnerable populations such as elder persons or disabled persons.¹ One survey of

¹ See, e.g., Silvia Perel-Levin, *Abuse, Neglect and Violence against Older Persons*, UNDESA Expert Group Meeting on "Older Persons in Emergency Crises" (May 2019), available at <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/Silvia-Perel-Levin-Abuse-Neglect-and-Violence-against-Older-Persons-in-situations-of-emergencies.pdf> (last accessed March 26, 2020). See also Emily Ying Yang Chan, *Disaster Public Health and Older People* (Routledge 2020).

academic literature specifically identified financial abuse, neglect (primarily abandonment) and physical abuse (often domestic violence) of elder persons as particular concerns during disaster situations.²

In the current nationwide COVID-19 emergency, we are deeply concerned that one consequence is increasing social isolation of vulnerable populations, primarily elder or disabled persons, who live at home and in other noninstitutional settings. In ordinary times, these persons face heightened risks of abuse, neglect and exploitation because of their vulnerabilities. But during the current emergency, when social norms and service-delivery systems are disrupted, that risk is multiplied. As routine contact with these vulnerable persons is disrupted, we fear increased opportunity for abuse, neglect and exploitation to occur and go unnoticed. Consider the following:

- Ordinary social interactions that provide a sort of informal day-to-day oversight of these populations likely are suspended. For example, gatherings of “coffee groups” or “lunch groups” cannot occur because local restaurants may be closed or stay-home orders may be in effect.
- The ordinary structures of governmental oversight, such as interaction with Long-Term Care (LTC) ombudsmen, are interrupted. LTC ombudsmen typically do not go into home settings, but even in jurisdictions where LTC ombudsman home contact occurs it generally is being done only by telephone during the COVID-19 emergency. As a result, in-home visits that could notice irregularities that may indicate abuse, neglect or exploitation may not be occurring.
- The Adult Protective Services system is overtaxed and lacks sufficient personal safety equipment to safely enter homes during COVID-19.
- Many states have had to relax background checks on personal care attendants in order to recruit more persons into the field.
- Most states are now paying family members to care for loved ones. In the current situation, when no respite for family caregivers may be available because of the COVID-19 emergency, we fear a significant increase in violence. Sadly, family and other trusted caregivers often are the perpetrators of physical and financial exploitation.
- Meal delivery programs for vulnerable homebound persons may be interrupted during the current emergency, for example because of disrupted supplies, a lack of personnel, or other COVID-19 related reasons.

These are but some of the distressing circumstances arising from the COVID-19 emergency that present significantly increased risk of abuse, neglect or exploitation of vulnerable populations, including Medicaid patients who receive care in their homes or other noninstitutional settings.

Our MFCUs are powerful, existing law enforcement assets that are capable of responding to serious cases of abuse, neglect and exploitation of vulnerable persons. Indeed, they regularly do so when the abuse, neglect or exploitation occurs in a nursing home or other institutional setting. But current federal law prohibits the use of MFCUs to detect, investigate or prosecute Medicaid patient abuse that occurs in noninstitutional settings. S. 2379 would eliminate this arbitrary and unjustified restriction and enable us immediately to deploy existing MFCU assets to address reports of in-home abuse, neglect or exploitation of Medicaid patients during the current COVID-19 emergency.

² Gloria Gutman and Yongjie Yon, *Elder Abuse and Neglect in Disasters: Types, Prevalence and Research Gaps*, 10 Int'l J. of Disaster Risk Reduction, 38 (2014), abstract available at https://www.researchgate.net/publication/263737165_Elder_Abuse_and_Neglect_in_Disasters_Types_Prevalence_and_Research_Gaps (last accessed March 26, 2020).

Versions of this legislation have been thoroughly considered by Congress in recent years. Last fall, language identical to S. 2379 passed the House of Representatives 371 to 46 as part of bipartisan health-related legislation. S. 2379 now is pending in the Senate and has strong bipartisan support. This policy change has the support of the National Association of Attorneys General³ and the Inspector General for the Department of Health and Human Services.⁴ To the best of our knowledge, it is not controversial. And it can *immediately* make available existing MFCU assets to help protect the health and safety of many Medicaid patients who receive in-home services and who may, because of the extraordinary social disruption caused by the response to COVID-19, be at increased risk of abuse, neglect and exploitation.

But this important legislation can help protect vulnerable Americans during the current crisis only if it becomes law soon. We urge you to enact it swiftly as part of the Senate's coronavirus response.

Sincerely,



Derek Schmidt
Kansas Attorney General



Lawrence Wasden
Idaho Attorney General



Ellen F. Rosenblum
Oregon Attorney General



T. J. Donovan
Vermont Attorney General

Cc: Senator Marsha Blackburn
Senator Mike Crapo
Senator Ben Cardin
Senator Maggie Hassan
Senator Patrick Leahy
Senator Jeff Merkley
Senator Jerry Moran
Senator Jim Risch
Senator Pat Roberts
Senator Bernie Sanders
Senator John Thune

³ On March 28, 2018, 49 state attorneys general sent a letter in support of the House version of this legislation, which was identical to S. 2379. A copy of that letter is available at <https://www.naag.org/assets/redesign/files/sign-on-letter/Final%20NAAG%20letter%20to%20Expand%20MFCU.pdf>.

⁴ Testimony of Ann Maxwell, Assistant Inspector General, Office of Evaluation and Inspections, Office of Inspector General, Department of Health and Human Services, before United States House of Representatives Committee on Energy and Commerce: Subcommittee on Oversight and Investigations, at p. 10 (January 31, 2017), available at <https://oig.hhs.gov/testimony/docs/2017/maxwell-testimony01312017.pdf> (last accessed March 26, 2020).