

March 1, 2021

Secretary Designate Xavier Becerra
200 Independence Avenue S.W.
Washington, D.C., 20201

Dear Mr. Becerra:

As the Senate continues to consider your nomination to be the next Secretary of the Department of Health and Human Services (HHS), I would like to take the opportunity to address a few areas, if you are confirmed, where we could work together. Today the country faces an unprecedented global pandemic, which has worsened our ongoing drug epidemic. The challenges that face the health and wellbeing of our country are enormous, and addressing these issues will take commonsense proposals and solutions.

The Department of Health and Human Services employs over 80,000 employees and is responsible for over \$1 trillion in annual spending. It is also the central agency in responding to our current public health emergency. We have now lost over 500,000 Americans to COVID-19, and responding to the pandemic will be paramount to the next Secretary. Rural health providers have been particularly hard hit as result of this pandemic. In West Virginia, we had three hospitals shut down last year alone. I was glad to hear your commit in your Senate HELP hearing to work on getting resources to rural health providers. I introduced the bipartisan Save Our Rural Health Providers Act to establish a 20 percent set-aside in the Provider Relief Fund. Nearly 20 percent of Americans live in rural communities, making a 20 percent set-aside only fair. So far, only about 6 percent of the Provider Relief Fund has been targeted directly at rural. I look forward to working with you to ensure our rural providers have the support they need to continue serving their communities.

Of course, any rural health support must include telehealth services. The CARES Act established several telehealth flexibilities to ensure access to health care during the pandemic. We have seen the importance these flexibilities have played to improving access to care in rural areas. However, for instances where a patient has no home access to internet, broadband or other cell phone services, physicians and other providers are furnishing these medical consultations through audio-only formats, such as telephone calls. Access to audio-only telephone-based services during this pandemic has not only been important for Medicare beneficiaries with limited means, but is also vital for Medicare patients who live in communities that lack sufficient broadband and internet connectivity. Any expansion of telehealth must include adequate support for broadband and internet connectivity.

With record high rates of unemployment, access to affordable health care has continued to be a priority. I applaud your efforts in defending the Patient Protection and Affordable Care Act

(ACA) in the *California v Texas (nee Texas v U.S)* lawsuit. The ACA has played a critical role in protecting the 800,000 West Virginians living with a pre-existing condition and the 150,000 West Virginians who gained coverage under Medicaid expansion. Prior to the ACA, state efforts to require insurers to cover people with preexisting conditions resulted in large premium spikes and, in some cases, caused insurers to exit the market. The ACA's premium subsidies have had a critical stabilizing effect. However, I have never said the ACA is perfect. That's why I introduced the *Premium Reduction Act of 2019*. This legislation would increase the affordability of health insurance in the individual market by supporting and expanding state-based reinsurance programs that have been proven to lower premiums and save consumers money. This is a common-sense bipartisan proposal that would continue all of the ACA's existing protections, continue federal subsidies to West Virginia, and lower premiums. Your leadership in defending the ACA shows your commitment to protecting Americans with pre-existing conditions. While I understand as a Representative you supported Medicare for All proposals, I would hope as Secretary you would continue to defend the current law of the land.

As we continue to address affordable health coverage and the COVID-19 pandemic, we cannot forget the ongoing drug epidemic. Last year we had over 81,000 drug overdose deaths, the highest number ever in a single 12-month period. As AG of California you took on opioid manufacturers and distributors, holding them accountable for their role in this epidemic. I applaud your efforts to investigate companies for unlawful practices in the marketing, sale, and distribution of opioids. This epidemic has lost too many lives, and hurt our families and communities. These companies need to be held accountable, and the settlements you reached will help fund needed behavioral health and substance use disorder treatment. The only way we can address the epidemic, is if we get the resources to our communities. To help improve coordination of care for our behavioral health providers, Congress passed the Jessica Grubbs Legacy Act last year, which will help allow the sharing of substance use disorder records if the patient consents, as well as eliminate redisclosure requirements that have truly exasperated the coordination of care for these patients. I want to thank you for your support as AG of California on passing these changes.

I would also like to thank you for your efforts in defending the safety net providers and the 340B drug discount program. Your December 12, 2020 letter with 27 other attorneys general, urging former HHS Secretary to protect the 340B program represents your understanding of its importance. As you know, the 340B program ensures affordable access to medicines for safety net hospitals and low-income patients. Pharmaceutical companies are required to offer discounts to certain public and non-profit health care organizations, such as Federally Qualified Health Centers and rural hospitals. Recently pharmaceutical companies have begun to announce a range of actions to avoid honoring these 340B discounts. One hospital in West Virginia, Thomas Health, who are still trying to recover from bankruptcy, have estimated that the contract pharmacy prohibitions alone are costing them nearly \$0.5 million a month. HHS has reviewed manufacturers' refusals to provide 340B discounts to health providers and found them unlawful. With your knowledge of health care law, I hope you will work to enforce the 340B statute, and stop manufacturers from continuing to disobey the law.

While we agree on many areas, I would like to address a few areas of concern and get your commitment to work with me. As an Attorney General, you understand health care law and the importance of enforcing the law. If confirmed:

- **Will you follow rules set forth through the Hyde Amendment and ensure no Federal taxpayer dollars are used to fund abortions?**
- **Will you work to implement the full authority of the Defense Production Act, including securing our domestic supply chain? Will you work with states to identify closed or closing domestic manufacturing plants to increase the domestic supply of medicines and medical supplies?**
- **Will you enforce the 340B statute and require drug manufacturers to provide 340B discounts to covered entities, including those that are dispensed through contract pharmacies?**
- **Will you continue to defend the ACA and the 133 million Americans with pre-existing conditions?**
- **Do you plan to meet the March 29 deadline of implementing the Jessica Grubbs Legacy Act as required by the CARES Act?**

Thank you for your attention to ensuring the health and well-being Americans. I welcome the opportunity to discuss your efforts and how we can work together.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Manchin III". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joe Manchin III
United States Senator