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“Protecting America from COVID-19 Scams”

**Presented to the U.S. Senate Committee on Commerce, Science and Transportation
Subcommittee on Manufacturing, Trade and Consumer Protection**

By Kansas Attorney General Derek Schmidt

July 21, 2020

Chairman Moran, Ranking Minority Member Blumenthal, and Members of the Committee:

Thank you for the opportunity to present this testimony as the committee discusses the unfortunate reality that scam artists are exploiting this global pandemic in attempts to profit unlawfully. I appreciate the invitation to offer the perspective of a state attorney general’s office and share the types of scams that are being reported to our office, the ways our office is responding and the cooperative work we have engaged in with federal partners.

Expectations and Preparations

While none of us has experienced a global pandemic on the scale of COVID-19, our office has had plenty of experience dealing with more localized disasters, such as tornadoes and floods. We know from that experience that scam artists often take advantage of those situations to prey on people during a time of distress and disruption. We expected COVID-19 would be no different. On March 12, our office issued the first consumer alert advising Kansans to keep up their guard and watch out for COVID-19-related scams, such as bogus products advertised as coronavirus prevention measures or treatments as well as bogus charities purporting to raise money for coronavirus research or to support coronavirus patients.

Later that same day, the governor of Kansas declared a state of emergency related to COVID-19, which triggered the Kansas price-gouging statute within the Kansas Consumer Protection Act. This statute prohibits “profiteer[ing] from a disaster” by forbidding suppliers from “unjustifiably increasing during a time of disaster the price at which any necessary property or service is offered for sale to consumers.” The statute prohibits increases of more than 25% in the price of necessary products compared with the business day before the disaster was declared, unless the supplier can show that the additional cost was justified such as by additional costs incurred by the supplier.

To respond to the expected influx of complaints regarding both COVID-19 scams and price gouging, we immediately created a new complaint form on our website specifically to report these activities. We also launched a temporary COVID-19 resources homepage, which contained a link to the complaint form and information related to our COVID-19 response, including the consumer alerts mentioned in my testimony. As our office moved to dispersed operations, we prioritized keeping our Consumer Protection Division functional to be able to timely respond to these complaints.

State v. Parcels

The complaints we have received related to COVID-19 scams have resulted in numerous investigations, many of which remain underway. To date, the most significant enforcement action our office has taken was in relation to a case that was already pending against an individual who offered to provide private autopsies, tissue recovery and forensic services, although he was not a licensed physician or pathologist qualified under Kansas law to perform such services. We previously had sued this defendant for those sorts of activities not related to COVID-19 and he was under a temporary court order not to perform such services in Kansas while our lawsuit is pending. Once the pandemic began, we learned that the defendant had formed new businesses and websites, including social media, that offered consulting services for coronavirus and COVID-19. Specifically, he was offering to enter homes and businesses, perform swabs for purported coronavirus testing and examine deceased persons to determine if they were positive for COVID-19. The defendant was quoted in media reports stating he had contact with two families in New York for COVID-19 testing on deceased family.

In May, we sought and obtained from the judge in our pending lawsuit an amended temporary restraining order prohibiting the defendant from advertising, soliciting, accepting payment for, contracting, performing, or in any manner conducting business or consumer transactions in epidemiology and infectious disease, including coronavirus and COVID-19. In addition, he was prohibited from traveling outside of Kansas or the Kansas City metro area without the approval of the court.

The case, *State v. Parcels*, remains pending in Shawnee County District Court, Case No. 2019-CV-000233.

Contact Tracing

Scams related to contact tracing were among the first to emerge. We received reports from local emergency management officials of text messages circulating claiming that “Someone who came in contact with you tested positive or has shown symptoms of COVID-19 and recommends you self-isolate/get tested.” The message then has a link to click for more information. The link went to a bogus website that collected personal information. Our office issued a consumer alert on this particular scam, warning Kansans that the text message was not legitimate and not to click on the link.

As part of a COVID-19 response bill passed by the Kansas Legislature and signed into law by the governor last month, we recommended inclusion of language to further protect Kansans from invasions of privacy through contact tracing. We are hopeful that in addition to protecting civil liberties, these restrictions in the state’s Contact Tracing Privacy Act will allow Kansans to more

easily know when alleged contact tracing is in fact a scam, because it does not adhere to the requirements placed on legitimate contact tracers being employed by the state or a local health department.

The new legislation, which applies to both the state and to local government authorities, contains the following provisions to protect citizens' civil liberties and the privacy of information collected through contact tracing:

- Participation in contact tracing must be voluntary. No person may be required to participate, nor forbidden from participating.
- Contact tracing may not collect information through cellphone tracking and may not use any information collected through cellphone tracking.
- Information collected through contact tracing must be used only for contact tracing, kept confidential and not disclosed. The information must be safely and securely destroyed when no longer needed for contact tracing.
- Only specified information may be collected by contact tracers. The list of information that may be collected must be established by the Secretary of Health and Environment through the open and transparent process of adopting formal rules and regulations.
- The government may not require any third party to collect contact data. Information voluntarily collected by third parties may only be obtained by the government with the consent of both the third party and the person the information relates to, or with a judicially supervised warrant.
- People working as contact tracers must receive training and must affirm that they are familiar with the privacy and civil liberties protections in the legislation.

We believe these were sensible solutions to put guardrails in place so Kansans would have the necessary confidence in contact tracing programs to be willing to participate voluntarily, knowing that their personal information would be protected. We believe passage of this bill made Kansas the first state to pass COVID-specific protections on contact tracing, and we are aware that other states are currently considering similar legislation. I am also aware that both Chairman Moran and Ranking Member Blumenthal are interested in this topic and have introduced federal legislation seeking to protect the privacy of information collected via contact tracing apps.

I have attached to my testimony an op-ed I wrote that was published by National Review Online regarding our contact tracing bill (Attachment 1), as well as an editorial from the Kansas City Star that called our bill a "pragmatic and deeply American approach." (Attachment 2).

In a related action, a bipartisan group of state and territory attorneys general joined together in a letter to the chief executive officers of Apple and Google asking them to strengthen efforts to monitor the contact tracing apps available through their respective platforms and to remove those that are not associated with a lawful government purpose. A copy of our letter is attached. (Attachment 3).

Other Types of Scams

In addition to the issues described above, our office has initiated a number of investigations related to scam reports we have received. While I cannot discuss these pending investigations in detail, let me describe common categories of scam reports that we have received:

- **COVID-19 prevention.** These scams involve the offering for sale of a product purported to help prevent the consumer from contracting COVID-19.
- **Personal protective equipment.** These scams involved the sale of masks purported to be N95 and other personal protective equipment. In some cases, these masks were not N95 and others involved the sale of PPE that we believe the supplier never possessed. Some legitimate merchandise offered in third-party marketplaces was likely stolen and diverted for resale.
- **Stimulus checks.** Following passage of the CARES Act, we suspected that the direct cash payments to individuals would spur scam artists, and issued another consumer alert. As expected, we received reports of Kansans who received text messages or emails offering assistance to the consumer to claim their stimulus payment.
- **Government imposters.** This always-popular scam reemerged with COVID-19 variations. We have reports of scam artists posing as the Small Business Administration offering assistance with SBA loan programs and Kansas Department of Labor officials offering assistance with unemployment benefits.
- **Fraudulent unemployment claims.** The unprecedented number of unemployment claims flooding our state system offered scammers using stolen identities the opportunity to file claims and receive the temporarily increased benefits.

Federal and Private Sector Cooperation

Throughout the pandemic, we have been working closely with multiple federal partners sharing information about scams that are being reported. Examples include:

- We have worked with the Food and Drug Administration on cases involving advertisement of COVID-19 prevention or treatment products.
- We are working with the Kansas Department of Labor, U.S. Department of Labor Office of Inspector General, Small Business Administration and the Secret Service on the government imposter scams and fraudulent unemployment filings.
- We have referred cases to several other federal agencies, including the Federal Trade Commission, Federal Bureau of Investigation and the U.S. Attorney's Office for the District of Kansas. The U.S. Attorney's Office has also formed a COVID-19 Fraud Task Force, bringing together many of these agencies, including our office.

We have also worked closely with private-sector partners to combat fraud. The largest example of this has been working with the large online platforms for resellers – Amazon, eBay and Facebook Marketplace – to have listings taken down that were clear cases of price gouging or products that likely did not exist at all. For example, in three cases, consumers reported to us Facebook Marketplace ads showing toilet paper advertised for as much as \$11 per roll. In each case, we contacted Facebook and the listing was removed. In another case, eBay removed 57 listings and suspended sellers of N95 masks based on a complaint we provided.

Scams and Frauds that Victimize Medicaid patients -- S. 2379

We know the volume of COVID-19 related scams will stretch law enforcement resources at every level. One specific action we have advocated to make further resources promptly available is swift enactment as part of the COVID-19 response of S. 2379, which would repeal an outdated and seemingly arbitrary federal statutory restriction on states' ability to use their Medicaid Fraud Control Units (MFCUs) to detect, investigate and prosecute abuse of Medicaid patients in non-institutional settings. The expanded jurisdiction would include financial abuses in the form of COVID-19 related scams and frauds targeting Medicaid beneficiaries who do not reside in institutions. Under current law, states have authority to use their MFCU assets to address fraud against the Medicaid program itself anywhere it may be found but may address the abuse of Medicaid patients – including financial abuse through COVID-19 scams – only if it occurs in an institutional setting.

With a growing number of Medicaid beneficiaries receiving services in home-care settings, and with the increasing isolation at home of many Americans, including Medicaid beneficiaries, because of COVID-19 related restrictions, eliminating this federal restriction could immediately bring more enforcement resources to the fight. Attached is a bipartisan letter I sent, along with three other state attorneys general, supporting inclusion of this legislation in COVID-19 relief legislation (Attachment 4). It would be tremendously helpful if S. 2379 could become law soon.

Conclusion

I sincerely appreciate the cooperative work being done at all levels to protect Kansans and all Americans from becoming scam victims during this time when we are already faced with challenges we have never before experienced. Thank you for conducting this hearing today to shine a light on the good work that is being done and to discuss ways that we can further improve our efforts.

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POLITICS & POLICY

How to Fight Coronavirus and Protect Civil Liberties

By DEREK SCHMIDT | June 18, 2020 6:30 AM



LISTEN TO THIS ARTICLE



A sign warns of coronavirus during Memorial Day weekend at the Lincoln Memorial in Washington, D.C., May 24, 2020. (Joshua Roberts/Reuters)

Our laws have not caught up with the scope and digital-age intrusiveness of COVID-19 contact tracing.

SINCE the plague ravaged Europe in the Middle Ages, fighting contagious and infectious disease has involved identifying those who come in close contact with

S infected persons, warning them of potential exposure, and advising they take precautions, such as monitoring for symptoms or self-isolation. To this day, many insist this process of “contact tracing” remains key to safely reopening America.

But COVID-19 is America’s first pandemic wholly of the digital age. When Swine flu began sweeping the globe a little over a decade ago, the iPhone was scarcely two years on the market and touch-screen Androids were unknown, the post-9/11 surveillance of Americans’ phone records was not yet revealed, and few had harnessed the tremendous power of personal data in marketing everything from consumer products to candidates.

Our thinking about the ancient practice of contact tracing needs to change with the times. Modern contact tracing presents more and different privacy and civil liberties concerns from, say, its pencil-and-paper ancestor during the 1918-19 Spanish Flu — and not only because of electronic tracking. Even data gathered the old-fashioned way by people making phone calls or knocking on doors to ask questions still present new digital-age challenges when compiled and potentially shared, manipulated, cross-referenced, and analyzed.

The scale of COVID-19 contact tracing further compounds each of these concerns. **One report** concluded that combating this virus may require 100,000 contact tracers to gather information about Americans’ health status, movements, and associations. Many thousands already are busily at work.

Despite this, the government’s use of contact tracing — and the personal information it gathers — remains largely unregulated. COVID-19 requires a new 21st-century mindset: How do we stop the spread of the disease *and* protect privacy and civil liberties?

Unfortunately, public health’s natural laser focus on stopping the virus can blind it to other legitimate concerns. For example, when I recently raised some of

these privacy and civil liberties issues in our state, a senior public-health official dismissively advised the public to “relax about that” and declared to our citizens that “I hope we won’t be muzzled by those who don’t share our concern for you.”

But concern for Americans’ well-being must include both our health *and* our liberties. Bland government assurances akin to “trust us, we’re here to help” provide little comfort.

All this understandably troubles many Americans. A survey released last month found that 84 percent were concerned about government misuse of personal information collected through contact tracing. Addressing those concerns is not only the right thing to do but also critical to obtaining sufficient public participation to contain the disease.

The root of the problem is that our laws have not caught up with the scope and digital-age intrusiveness of COVID-19 contact tracing. Few states have statutes regulating the practice. That changed recently in Kansas.

Earlier this month, the COVID-19 Contact Tracing Privacy Act was enacted with bipartisan support, placing Kansas at the vanguard in this area. I recommended our new law, which imposes important protections for civil liberties and privacy on both state and local governments, have the following provisions:

- Participation in contact tracing must be voluntary. No person may be required to participate, or prohibited from participating.
- Information may not be collected through cellphone tracking. While perhaps promising from a public-health standpoint, this seems to us disturbingly Orwellian and at least deserves pause for further study before government may undertake it.

- Collected information must be used only for contact tracing and kept strictly confidential and not disclosed. The information must be safely and securely destroyed when the task is finished. Bureaucratic mission creep is forbidden.
- Only specified information may be collected. Through an open and transparent process, the state health department must establish what may be gathered.
- The government may not use third parties to elude these protections. Government may not require businesses, for example, to collect contact-tracing information and may obtain voluntarily gathered information only with the consent of both the third party and the person the information pertains to, or with a judicially supervised warrant.
- People working as contact tracers must receive proper training and must affirm they are familiar with the law's privacy and civil-liberties protections.
- Contact tracers or governments are held accountable to these safeguards. Those who violate the Contact Tracing Privacy Act may face civil or criminal penalties, and any person may seek an injunction to enforce protections in the Act.

This legal framework is designed to protect privacy and civil liberties while public-health officials do their jobs. Rather than lecture and scold Kansans, our approach is to persuade, empower, and reassure. Kansans themselves bear the personal responsibility to choose our path forward by freely participating, or not, in ongoing efforts to track and contain the virus. We value both science *and* freedom, trusting in individuals more than government.



Coronavirus Signs

Sign, sign, everywhere a sign ... A look at signs and billboards around the world informing people of coronavirus-related restrictions, social distancing requirements, and other measures meant to address the ongoing pandemic.

Pictured: A *Phantom of the Opera* sign asks people to wear a masks in public as the COVID-19 coronavirus outbreak continues in New York City, June 29, 2020.

Carlo Allegri/Reuters



DEREK SCHMIDT is the attorney general of Kansas.



Worried about COVID-19 contact tracing and privacy - Kansas City Star, The (MO) - June 11, 2020

June 11, 2020 | Kansas City Star, The (MO) | The Kansas City Star Editorial Board, The Kansas City Star

They tried mandatory contact tracing for coronavirus in one county in America — in Linn County, Kansas, just south of Kansas City — for all of two weeks. Epic fail. A losing proposition in both the courts and the court of public opinion.

Now, with a bill signed into law on Monday, Kansas is suddenly in the forefront of the nation in carefully regulated voluntary virus tracing.

That's huge. People need to be comfortable with contact tracing, which is as old as our knowledge of infectious disease. There is simply no way to reopen the economy safely, and for people to go back to work and school without fear or peril, other than minimizing the spread of COVID-19. The best way to do that is for all of us to get on board with contact tracing — not because the government says we have to, but because we want to stay safe and keep our neighbors safe.

Wisely, after the failed Linn County experiment in mandatory tracing, and following a script largely written by Attorney General Derek Schmidt's office, the Kansas Legislature and Gov. Laura Kelly agreed on a statewide contact-tracing regimen that is completely voluntary and unmenacing. Visitors and customers are not required, but are definitely strongly urged, to leave their contact information when they shop, eat and transact business. And businesses are implored to take it down so that cases of COVID-19 can be traced and those who are exposed contacted.

Interestingly enough, Schmidt believes a voluntary contact-tracing program is more likely to succeed than a mandatory one.

"There'd be a revolt if the government tried to really compel each person to do" contact tracing, Schmidt told The Star. "The way you get the participation is to assure people that they're not being ordered by the government to divulge this data, but they're doing it voluntarily for a good cause.

"I think the only way contact tracing can work is if it's voluntary. And I think the way you get people to participate in a voluntary system is to give them confidence that they can participate safely, securely and privately."

Thus, Kansas law requires contact-tracing information be limited, confidential, made available to the government only through agreement of all parties or through a judicial warrant, and destroyed when no longer needed. In addition, to make certain Kansas really has thought this through, the program expires a year from now, to ensure it's reviewed next legislative session.

That gives lawmakers added time to consider whether to also allow contact tracing via cellphone apps, which is expressly forbidden under the new law and frankly borders on Orwellian creepy.

It's a pragmatic and deeply American approach that we hope Kansans embrace. Schmidt says that in his office's research, it appears there are only one or two states that have anything close to Kansas' new citizen-centric structure for contact tracing. But expect other states to follow.

One key will be the contact tracers — the people who track down cases before they become outbreaks and warn those who've been exposed so they can take care of themselves and stay away from others. The Kansas Department of Health and Environment now has 300 contact tracing volunteers who are either being trained or who are awaiting assignment.

Thankfully, compliance with KDHE will be voluntary.

Linn County found out just how dicey mandatory contact tracing can be. One plaintiff in the lawsuit that brought down the mandatory tracing was a restaurateur who realized that some customers were refusing to dine out if their personal information was going to be forcibly handed over to the government.

Objection noted. With Kansas' new law making it voluntary statewide, there's nothing to fear from participating in contact tracing. The real fear needs to be transmission of the virus.

Voluntary contact tracing, as it turns out, may even be vastly superior to mandatory. But only if people pitch in and actually do it.

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June 16, 2020

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Dear Mr. Pichai and Mr. Cook:

The undersigned Attorneys General (“State Attorneys General”) write to express our strong concerns regarding the proliferation of contact tracing apps on your platforms that do not sufficiently protect consumers’ personal information. Digital contact tracing may provide a valuable tool to understand the spread of COVID-19 and assist the public health response to the pandemic. However, such technology also poses a risk to consumers’ personally identifiable information, including sensitive health information, that could continue long after the present public health emergency ends.

We are aware of your companies’ joint development of application programming interfaces (APIs) that may be used to build decentralized exposure notification and contact tracing apps that utilize Bluetooth. Additionally, we understand from press reports and online materials that those APIs will only be available to public health authorities and that use of the APIs will be contingent on the inclusion of certain features to protect consumer privacy.

While we welcome your stated focus on a privacy-centered notification and tracing tool for future use, several COVID-19 related contact tracing apps are already available on Google Play and the App Store. Some of those apps may endanger consumers’ personal information. We are particularly concerned about purportedly “free” apps that utilize GPS tracking, contain advertisements and/or in-app purchases, and are not affiliated with any public health authority or legitimate research institution.¹

Moreover, as public health authorities release apps built with your APIs, there is likely to be increased media and consumer attention on exposure notification and contact tracing apps. Other developers may take advantage of the situation by placing new contact tracing apps on your platforms that do not adequately safeguard consumers’ personal information

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¹ For instance, as recently as early May, the first result when a consumer searches “contract tracing” on both platforms was an app called “Contact Tracing” developed by Piusworks, LLC, a California company with a suspended registration. According to the app information previously disclosed on Google Play, Contact Tracing uses geolocation tracking, contains ads, and offers in-app purchase, and it has been installed over 50,000 times. The app has since been removed from Google Play but is still available on the App Store.

in compliance with our states' laws. Therefore, we urge Google and Apple to take the following actions with respect to exposure notification and contact tracing apps available to U.S. consumers on Google Play and the App Store:

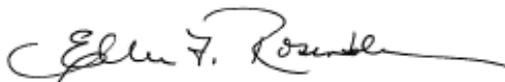
1. Verify that every app labeled or marketed as related to contact tracing, COVID-19 contact tracing, or coronavirus contact tracing or exposure notification is affiliated with a municipal, county, state or federal public health authority, or a hospital or university in the U.S. that is working with such public health authorities;
2. Remove any app that cannot be verified consistent with the above; and
3. Pledge to remove all COVID-19 / coronavirus related exposure notification and contact tracing apps, including those that utilize your new APIs, from Google Play and the App Store once the COVID-19 national emergency ends.² In addition, provide written confirmation to our offices that the apps have been removed or an explanation why removal of a particular app or apps would impair the public health authorities affiliated with each app.

Implementing these limited measures could help protect the personally identifiable information and sensitive health data of millions of consumers during this crisis.

Sincerely,



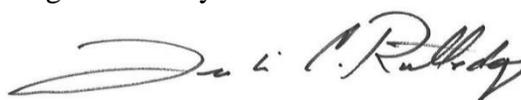
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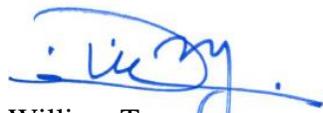
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Xavier Becerra
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Phil Weiser
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William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General

² This refers to the expiration of the emergency declared by the Secretary of Health and Human Services on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), and any renewals thereof.

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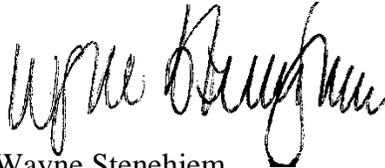
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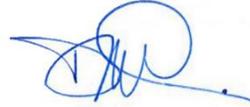
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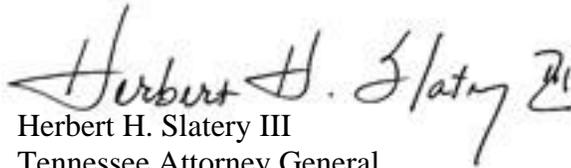
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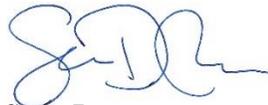
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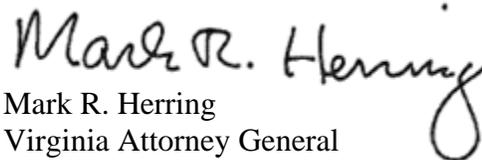
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April 2, 2020

Honorable Mitch McConnell
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Honorable Chuck Grassley
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Honorable Ron Wyden
Ranking Member, Senate Finance Committee
221 Dirksen Senate Office Building
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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,



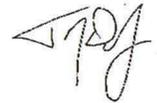
Derek Schmidt
Kansas Attorney General



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).