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March 28, 2018

Honorable Tim Walberg
2436 Rayburn House Office Building
Washington, D.C. 20515

Honorable Peter Welch
2303 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Walberg and Welch:

As the Attorneys General of our respective states, we write in support of your legislation, H.R. 3891, that would expand the authority of Medicaid Fraud Control Units (MFCUs) to detect, investigate and prosecute Medicaid patient abuse in non-institutional settings.

On May 10, 2017, thirty-eight attorneys general wrote to then-Secretary Tom Price at the U.S. Department of Health and Human Services urging expanded authority for MFCUs to address patient abuse and neglect (“the NAAG letter”). Specifically, the NAAG letter requested HHS alter its regulations implementing the pertinent statutory provisions to broaden the permissible authority for MFCUs, and the associated use of federal financial participation (FFP), in two regards. First, it recommended “allowing the use of federally funded MFCU assets to investigate and prosecute abuse and neglect of Medicaid beneficiaries in non-institutional settings.” Second, it recommended “improving detection of abuse and neglect of Medicaid beneficiaries by broadening the permissible use of federal MFCU funds to screen complaints or reports alleging potential abuse or neglect.”

On August 7, 2017, HHS Inspector General Daniel R. Levinson responded to the NAAG letter stating “OIG believes that the law should be changed to expand MFCUs’ use of FFP to include the detection, investigation, and prosecution of abuse and neglect of Medicaid beneficiaries in non-institutional settings.” However, HHS concluded that such a change requires statutory amendment and could not be accomplished solely by regulation.

On September 28, 2017, you introduced H.R. 3891. We are informed that, in the drafting of your legislation, you were mindful of the NAAG letter and that you intended to implement the letter’s recommendations. We have reviewed H.R. 3891 and understand that, if adopted, it would enable HHS-OIG to implement all changes requested in the NAAG letter. Your legislation permits, but does not require, each MFCU to exercise the expanded authority the bill proposes, just as current law does with board and care facilities. It is our understanding that States electing to operate under the expanded authority of H.R. 3891 would be able to use their MFCUs to detect, investigate and

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prosecute cases of abuse or neglect of Medicaid patients in whatever setting abuse or neglect may occur and to do so without losing federal financial participation.¹

This change is vitally important because it eliminates the blinders current law places on MFCUs' ability to detect, investigate and prosecute cases of abuse or neglect of Medicaid patients. Since the current statute was enacted decades ago, substantial growth has occurred in home and community-based services, office-based services, transportation services, and other settings that are neither "health care facilities" nor "board and care facilities" but where services are provided and thus patient abuse or neglect may occur. H.R. 3891 proposes a common-sense change that will better protect an often-vulnerable population and will maximize the benefits and efficient use of MFCU assets.

We also note that your bill is particularly timely and important in light of the national opioid epidemic. Consider, for example, a situation in which a Medicaid beneficiary in a home or community-based setting is provided prescription opioid painkillers in an unlawful manner, resulting in death or great bodily harm to the patient. Under current law, although the patient harm caused by distribution of those opioids may have been criminal, our MFCUs would be hampered or prevented from investigating or prosecuting the case of patient abuse because it occurred in a setting other than a health care facility or a board and care facility. Under H.R. 3891, however, MFCUs could exercise clear authority to pursue that sort of investigation and, if appropriate, prosecute that patient abuse, thus bringing more criminal and civil investigation and prosecution assets to bear in the fight against the opioid epidemic.

Thank you for your leadership in proposing H.R. 3891. We hope it can become law soon so our states may have the option to use the important new tools it would make available in the fight

¹ The NAAG letter requested expanded authority for MFCUs to "detect, investigate and prosecute" a wider range of abuse and neglect cases, and Mr. Levinson's response confirms that OIG favors "use of FFP to include the detection, investigation, and prosecution" of such cases. By "detect," the NAAG letter specifically sought broader authority for MFCUs to use FFP to "screen" complaints or reports alleging potential abuse or neglect." Current HHS regulations constrain states' ability to use MFCU assets to *review* complaints in order to detect which may allege patient abuse or neglect that would warrant investigation or prosecution using MFCU assets. *See, e.g.*, 42 C.F.R. Sec. 1007.19(d)(1)(limiting FFP to "review of complaints of alleged abuse or neglect of patients *in health care facilities*")(emphasis added); *see also* 42 C.F.R. Sec. 1007.11(b)(1)(restricting authority of MFCU to "review[ing] complaints alleging abuse or neglect of patients *in health care facilities*" and to "review[ing] complaints of the misappropriation of patient's private funds *in such facilities*.")(emphasis added). For states that would choose to exercise the expanded authority in H.R. 3891, we read the bill to require elimination of these and similar regulatory barriers that restrict MFCUs authority to review complaints. Obviously, a review will necessarily precede a determination whether a complaint or report alleges Medicaid patient abuse or neglect that would fall within H.R. 3891's expanded authority to investigate or prosecute, and it would make no sense to arbitrarily limit review to complaints from patients in health care facilities if the authority to investigate and prosecute abuse and neglect is expanded to other settings.

against the abuse and neglect of *all* Medicaid patients -- wherever that may occur. If we may be of assistance in advancing this legislation, please let us know.

Sincerely,



George Jepsen
Connecticut Attorney General



Mike Hunter
Oklahoma Attorney General



Steve Marshall
Alabama Attorney General



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Arizona Attorney General



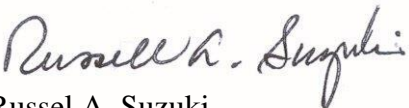
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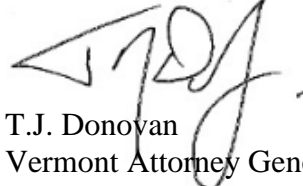
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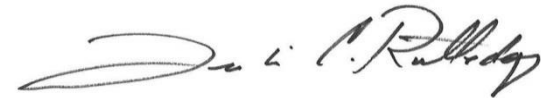
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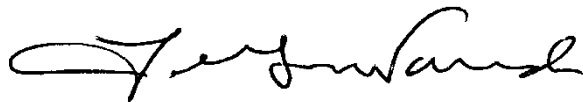
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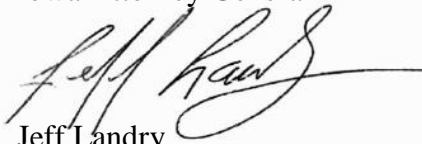
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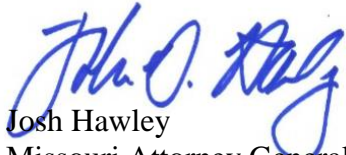
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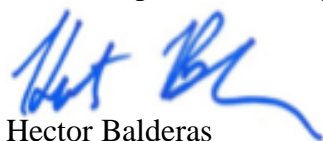
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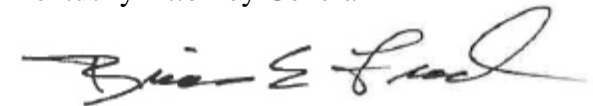
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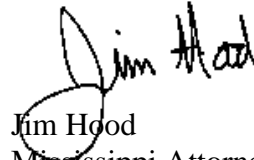
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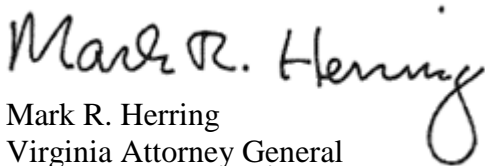
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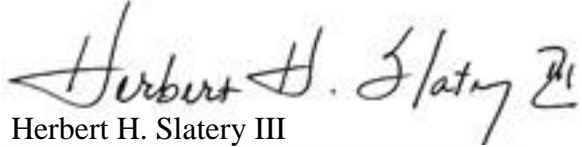
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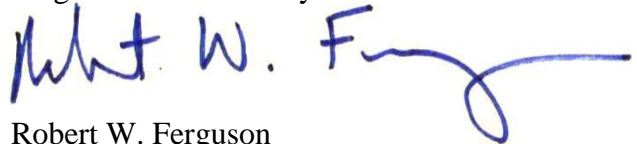
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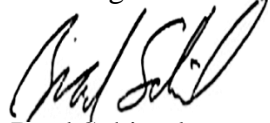
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