

Congress of the United States
Washington, DC 20515

May 1, 2018

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

Dear Secretary Azar,

We write in response to recent reports that the Centers for Medicare and Medicaid Services (CMS) plans to subject American Indian and Alaska Native (AIAN) communities to state-imposed work requirements in the Medicaid program, a legally dubious decision that, if implemented, threatens our most fundamental trust responsibilities to tribes.

Additionally, we are extremely concerned that such a decision was made without full transparency and tribal consultation. The CMS Tribal Consultation Policy clearly outlines the substantial and meaningful consultation principles and processes between CMS and tribes on issues that have a significant and direct effect on tribes. It also clearly states:

“This [government-to-government] relationship is derived from the political and legal relationship that Indian tribes have with the federal government and is not based upon race.”

The trust relationship between the federal government and Native American communities was established in the hundreds of treaties signed between the federal government and tribes between 1787 and 1871. The Supreme Court has consistently held that these treaties create a unique relationship between the federal government and tribes - a principle known as the trust doctrine. The trust doctrine was very clearly explained by the 1977 Senate report of the American Indian Policy Review Commission:

“The purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance tribal lands, resources, and self-government, and also includes those economic and social programs which are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.”

As you know, tribes are currently exempt from certain coverage requirements under the Affordable Care Act. Not only would refusal to exempt tribes from work requirements sought by some states ignore legal and administrative precedent and violate our trust obligations, it would erect significant barriers to care for vulnerable communities. While imposing these types of requirements in the overall Medicaid population would have serious effects on health and financial stability for millions of Americans, the implications for tribal communities are

alarming. As you know, the average unemployment rate in Indian Country was 12 percent in 2016, almost three times higher than the national average. Some communities face unemployment rates well above 50 percent. Drug overdose rates are well above the national average. Diabetes rates are almost twice the national average. Reducing access to health care among economically stressed communities with high rates of chronic disease would undermine important progress made in recent years to expand coverage and treatment options.

As Members of Congress committed to ensuring the federal government upholds its treaty obligations and works to reduce the glaring health disparities facing tribal communities, we request written responses to the following:

1. Please provide any reports, documents, memos, or reviews used by HHS as part of its process for this decision;
2. Please provide a full list of all consultations with tribal stakeholders held prior to HHS's decision;
3. Please provide an explanation for cancelling your appearance at HHS's annual budget consultation meeting with tribal representatives in Washington, D.C. last month;
4. Please provide an estimate of litigation costs to HHS if the agency moves forward with implementing this decision.

The unique relationship between the federal government and tribes is enshrined clearly in the Constitution. Any actions to undermine this fundamental relationship is a broken promise to Indian Country. Instead of breaking our promises, we ought to be committed and united in improving access to quality health care for all tribal communities.

We look forward to your prompt response on this critical issue.

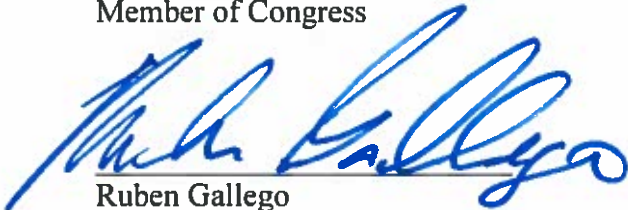
Sincerely,



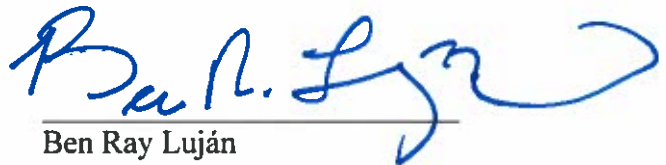
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Member of Congress



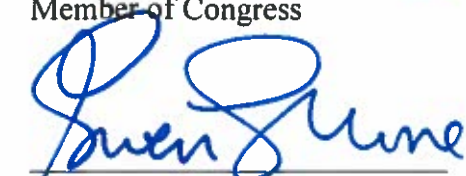
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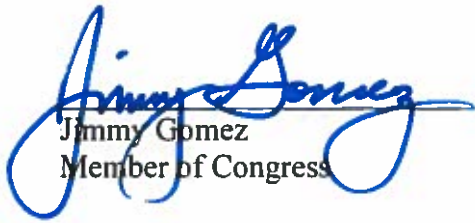
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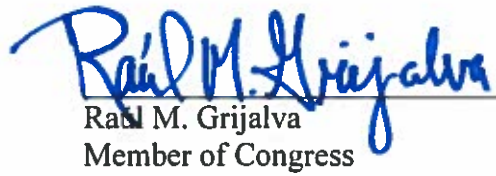


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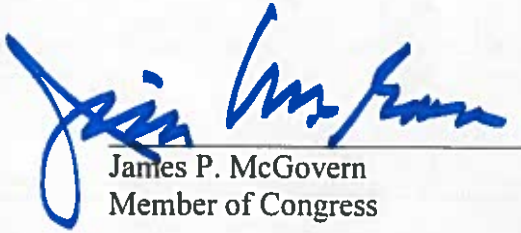

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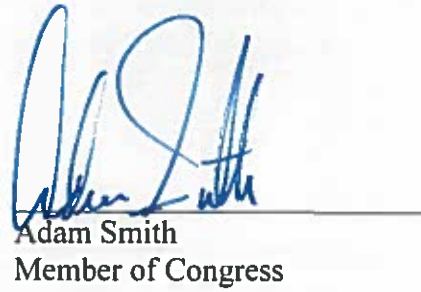

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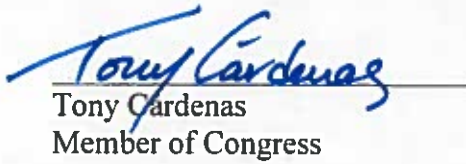

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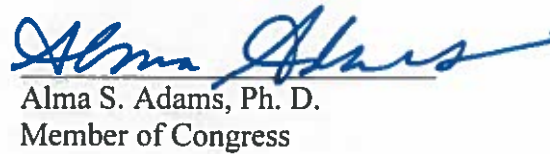
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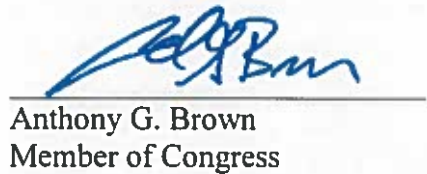
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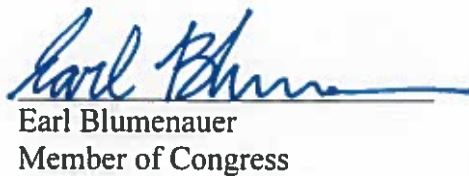
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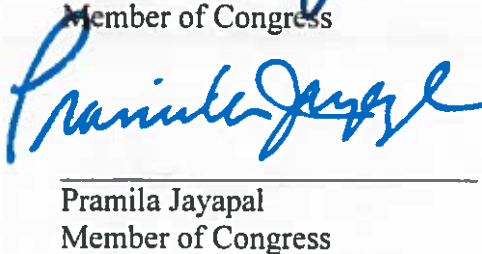
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