

April 24, 2020

**Via Certified Mail, RRR and Email:**

**[txgov@dir.texas.gov](mailto:txgov@dir.texas.gov)**

The Honorable Greg Abbott, Governor  
The State of Texas  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711-2428

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**Via Certified Mail, RRR and Email:**

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Mr. John William Hellerstedt, MD, Commissioner  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

Attn: HHS Commission Executive Council

[acco\\_committeefacilitation@hhsc.state.tx.us](mailto:acco_committeefacilitation@hhsc.state.tx.us)

**Re: The Immediate Necessity for Temporary and Expanded Medicaid Coverage For All Uninsured Texans, including for LGBTQ+ Texans, in the Wake of COVID-19 to Reduce the Economic Costs to the State and to Save Lives**

Dear Honorable Governor Abbott, Commissioner Hellerstedt and HHS Executive Council:

The undersigned are writing on behalf of Lambda Legal Defense and Education Fund, Inc. and its South Central Office located in Dallas, Texas (“Lambda Legal”) to request your immediate action to prevent the loss of uninsured Texans’ lives in the wake of this unprecedented COVID-19 Pandemic, and more specifically, this State’s nearly 1 million lesbian, gay, bisexual, and transgender (LGBT) Texans.

Lambda Legal is the oldest and largest national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone

living with HIV (collectively as used herein “LGBT” people) through impact litigation, education and public policy work.

### **The Purpose of this Urgent and Critical Request**

The purpose of this is to request the State to grant temporary and expanded Medicaid coverage to **all uninsured Texans**, including uninsured LGBT Texans and those uninsured Texans living with HIV, during the COVID-19 Pandemic. It is critically necessary for all Texans to seek the healthcare they need during this time, not just those Texans who have health insurance.

At a bare minimum, immediate implementation of temporary and expanded Medicaid coverage will ensure:

- (1) Reduced economic costs to the State as the COVID-19 Pandemic continues;
- (2) Less loss of Texas lives; and
- (3) Reduced economic impact on the lives of all uninsured Texans, including uninsured LGBT Texans, in the aftermath of the Pandemic.

#### **1. The Pandemic in Texas:**<sup>1</sup>

On March 19, 2020, Dr. John Hellerstedt, Commissioner of Texas DSHS, declared a public health disaster in our state, because COVID-19 “has created an immediate threat, poses a high risk of death to a large number of people, and creates a substantial risk of public exposure because of the disease’s method of transmission and evidence that there is community spread in Texas.”

On March 26 and again on March 30, 2020, Gov. Abbott issued self-quarantine edicts for travelers returning from certain locations within the United States.

Then on March 31, 2020, Gov. Abbott issued an Executive Order implementing an Essential Services and Activities Protocol, which renewed prior protocols and extended social distancing requirements until April 30, 2020. Texas schools are to remain closed to in-person classroom attendance through May 4, 2020.

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<sup>1</sup>The statements set forth in Section 1, are available at Texas Department of State Health Services, <https://www.dshs.texas.gov/coronavirus/>.

Gov. Abbott said on April 2, 2020 that the coronavirus pandemic is not expected to peak in Texas until the end of April, and one epidemiologist thinks “Texas is going to be the next hot spot.”<sup>2</sup>

Then, in an abrupt change of course, on April 17, 2020, Gov. Abbott signed an Executive Order authorizing the re-opening of retail businesses effective, **today, April 24, 2020.**

As of this morning, the day of the reopening of retail businesses, Texas had performed a total of 225,078 COVID-19 tests, 10,002 of them were performed by public labs and 215,076 of them were performed by private labs (the numbers are updated every week day at approximately 12 noon).

The sharp contrast between the number of tests performed by private labs when compared to public labs is a glaring example of just how important it is that temporary and expanded Medicaid insurance coverage be granted for all eligible Texans. Private labs have conducted **twenty-two and one-half (22 1/2) times** the number of tests that public labs have performed. And that number keeps going up every day. As of April, 23<sup>rd</sup>, 21,069 cases have been reported in our State with 561 fatalities.

The Texas Department of Health and Human Services (TDSHS) website **clearly states on the very first page:**

“People 65 years or older, and/or people with medical issues, like heart disease, diabetes, cancer, or a weakened immune system, are at a higher risk for getting very sick from COVID-19.”

As you know from our State’s response to Hurricane Harvey, Section 1115 waiver authority provides this State with the ability to obtain temporary and expanded Medicaid coverage during an emergency. Simply put, our State has seen no greater risk to our economy and risk of loss of life to our State’s residents than this Pandemic in at least 100 years, and perhaps ever. Given this immediate peril, there is no reason not to use the Section 1115 waiver to obtain temporary and expanded Medicaid coverage for all uninsured Texans.

## **2. The Risks to the Texas Economy and Texas Lives are Unacceptable**

Texas is one of 14 states that has not expanded Medicaid under the Affordable Care Act, or otherwise. Texas has the highest uninsured rate in the nation. And what is worse, this statistic is not new, Texas had has the highest uninsured rate for several years.

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<sup>2</sup> See *Could Texas be the next hot spot for coronavirus? Gov. Greg Abbott expects coronavirus to peak in Texas in April*, Click2Houston.com, available at <https://www.click2houston.com/health/2020/04/03/texas-is-going-to-be-the-next-hot-spot-for-coronavirus-epidemiologist-says/>.

**There is no doubt that our State's economy sustains significant economic losses when uninsured Texans seek health care.** As just one example, Texas paid \$6.8 billion in uncompensated health care costs in 2016 alone, according to a paper published in the Journal of the American Medical Association.<sup>3</sup>

Data compiled by the Texas Medical Association and other organizations, show “how the 5 million uninsured patients in Texas become 5 million dominoes. As they fall, so do countless others representing the health of Texas: The economy and well-being of entire communities.”<sup>4</sup>

### **3. LGBT Texans are More Likely to Experience Adverse Health Outcomes from the COVID-19 Pandemic**

LGBT Texans and their families are much more likely to experience adverse health outcomes, economic instability, and risk to their futures from the Pandemic because they are already vulnerable and economically challenged.

As of March of 2019, 4.1% of our State's population identified as LGBT, or approximately 893,350 Texans.<sup>5</sup> Of those Texans, 768,000 identify as LGB, and .66% of our population, or approximately 125,350 identify as transgender.<sup>6</sup> Prior to COVID-19, 8% of LGBT Texans were unemployed, **fully 26% had no health insurance, 27% were food insecure and 26% made less than \$24,000 a year.**<sup>7</sup> This translates into at least 260,000 LGBT Texans who have no health insurance, at least 260,000 LGBT Texans who make less than \$24,000 a year, and at least 270,000 LGBT Texans who are left to wonder where their next meal is coming from.

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<sup>3</sup> See *Texas' Dismal Health Insurance Rate: Causes and Economic Impact*, Will Maddox, Healthcare Business, October 8, 2019, available at <https://www.dmagazine.com/healthcare-business/2019/10/the-causes-and-economic-impact-of-texas-dismal-health-insurance-rate/>.

<sup>4</sup> See *Far-Reaching Implications: The Ripple Effects of Texas' Uninsured Rate*, Joey Berlin, Texas Medicine December 2019, available at <https://www.texmed.org/Template.aspx?id=52056>.

<sup>5</sup> See *LGBT Data & Demographics*, UCLA School of Law, The Williams Institute, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>. See also *Adult LGBT Population in the United States*, UCLA School of Law, The Williams Institute, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Mar-2019.pdf>.

<sup>6</sup> See *Adult LGBT Population*, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Mar-2019.pdf>. Forty percent of LGBT Texans are White, 39% are Latino/a, 11% are Black, and 6% identify as “other.” See *LGBT Data*, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>.

<sup>7</sup> See *LGBT Data*, available at: <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>

For Transgender Texans and Transgender Texans of Color, who are often by far the most discriminated against and marginalized of all Texans, the situation is far worse, fully 17% of Transgender Texans are unemployed, 34% are living in poverty, and 77% do not have identity documents that match their gender.<sup>8</sup> In the last five years, more transgender people have been killed in our state than in any other state. And yet again in 2019, Texas led the nation in the number of transgender people murdered with more than one-half of such deaths occurring in Dallas, where Lambda Legal’s South Central Office is located.<sup>9</sup>

To put this in further context, as of October 2019, over 28% of LGBT Texans lived in poverty.<sup>10</sup> By December 2019, less than three months later--that number had increased:

“35% of LGBT Texans aged 18–44 were living in poverty, and 29% of those aged 45 or older were living in poverty. Moreover, for LGBT Texans of Color, fully 39% live in poverty.”<sup>11</sup>

In 2017, 26% of LGBT adults in Texas reported not having enough money to meet their health care needs.<sup>12</sup>

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<sup>8</sup> See *Texas leads the nation in transgender murders. After the latest attack, the Dallas trans community asks why. Nearly half the deaths have occurred in Dallas, with many pointing to politics as an underlying problem*, The Dallas Morning News, available at <https://www.dallasnews.com/news/2019/09/30/texas-leads-nation-transgender-murders-according-national-lgbtq-organization/>. See also *Impact*, Mallory, Brown, Russell & Sears, available at <https://williamsinstitute.law.ucla.edu/publications/impact-lgbt-discrimination-tx/>.

<sup>9</sup> See *Texas leads the nation*, available at <https://www.dallasnews.com/news/2019/09/30/texas-leads-nation-transgender-murders-according-national-lgbtq-organization/>

<sup>10</sup> See *LGBT Poverty in the United States*, M. V. Lee Badgett, Soon Kyu Choi & Bianca D.M., Wilson, UCLA School of Law, The Williams Institute, Oct. 2019, available at <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-in-the-united-states/>, p. 10-11.

<sup>11</sup> See *State Profiles of LGBT Poverty in the United States*, M. V. Lee Badgett, Soon Kyu Choi & Bianca D.M., Wilson, UCLA School of Law, The Williams Institute, Dec. 2019, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/State-LGBT-Poverty-Dec-2019.pdf>.

<sup>12</sup> See *Impact*, Mallory, Brown, Russell & Sears, April 2017, available at <https://williamsinstitute.law.ucla.edu/publications/impact-lgbt-discrimination-tx/>.

#### 4. Texans Who Are the Most At Risk from COVID-19

According to the Centers for Disease Control, people of all ages who are at a higher risk for severe COVID-19 illness include people with:<sup>13</sup>

- chronic lung disease or moderate to severe asthma;
- serious heart conditions;
- conditions that can cause a person to be immunocompromised, including cancer treatment;
- smoking;<sup>14</sup>
- immune deficiencies;
- poorly controlled HIV or AIDS;
- severe obesity, diabetes, and those with chronic kidney disease.

According to the National LGBT Health and Aging Center,<sup>15</sup> studies suggest that LGBT adults **have many--if not all** of the underlying conditions which the CDC states puts people at risk for complications and death from COVID-19. These include higher rates of asthma, diabetes, HIV/AIDS, obesity, rheumatoid arthritis, cardiovascular disease and cancer.<sup>16</sup>

In addition, the National Institutes of Health (NIH) states that people who live in poverty are less healthy than those who are financially better off, regardless of whether the benchmark is mortality, the prevalence of acute or chronic diseases, or mental health. Not only does poverty

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<sup>13</sup> See *People Who Are at Higher Risk for Severe Illness*, Centers for Disease Control, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

<sup>14</sup> See *The Lives and Livelihoods of Many in the LGBTQ Community are at Risk Amidst COVID-19 Crisis*, Human Rights Campaign, available at <https://www.hrc.org/resources/the-lives-and-livelihoods-of-many-in-the-lgbtq-community-are-at-risk-amidst>.

<sup>15</sup> The National Resource Center on LGBT Aging is the country's was established in 2010 through a federal grant from the U.S. Department of Health and Human Services. The Center provides training, technical assistance and educational resources to aging providers, LGBT organizations and LGBT older adults. See <https://www.lgbtagingcenter.org/about/background.cfm>

<sup>16</sup> See *LGBT Older Adults and Health Disparities*, Sept. 2010 available at <https://www.sageusa.org/wp-content/uploads/2018/06/2010-lgbt-older-adults-and-health-disparities.pdf>. See also *The Aging and Health Report Disparities and Resilience among Lesbian, Gay, Bisexual, and Transgender Older Adults Key Findings and Fact Sheet*, National Resource Center on LGBT Aging, available at <https://age-pride.org/wp-content/uploads/2019/10/factsheet-keyfindings10-25-12.pdf>. See generally also *LGBT Aging: A Review of Research Findings, Needs, and Policy Implications*, S.K. Choi & I.H. Meyer, UCLA School of Law, The Williams Institute, Aug. 2016, available at <https://www.lgbtagingcenter.org/resources/pdfs/LGBT-Aging-A-Review.pdf>

significantly impact LGBT people as set forth above, but it also disproportionately harms LGBT Seniors, who fare much worse than their Non-LGBT counterparts. More specifically, in a national, non-representative sample of LGB older adults (ages 50 and older), Karen Fredriksen-Goldsen and her colleagues found nearly 33 1/3% of the LGB older adults in the study lived at, or below 200% of the federal poverty level, while about 26 percent of Non-LGBT adults ages 65 and older live at, or below 200 percent of the federal poverty level.<sup>17</sup>

Making matters worse, research clearly shows that people who are uninsured wait longer to seek medical attention when they are sick. Therefore, the 26% of LGBT Texans who do not have health insurance and who are more likely to suffer an adverse outcome from COVID-19, will **put their families, their communities and ALL Texans at risk if they delay seeking health care because they are uninsured.**<sup>18</sup>

If Texas is sincere in its efforts to battle the public health risk created by COVID-19, it must ensure that all Texans have insurance coverage so that uninsured Texans, not just LGBT Texans, can be promptly diagnosed, treated and the virus contained. The way to do this is to provide temporary and expanded Medicaid coverage for all uninsured Texans.

Regardless of the source consulted, whether it is the NIH, the CDC or federally funded programs such as the National LGBT Aging Center study, LGBT Adults and Seniors face significant and unique hardships when compared to their Non-LGBT counterparts. This illustrates why there is an immediate, crucial and growing need for temporary Medicaid coverage and expanded Medicaid coverage for all uninsured Texans, including LGBT Texans.

### **Conclusion – Please Heed the Call for Temporary and Expanded Medicaid Coverage for All Uninsured Texans because it Benefits the Texas Economy and Saves Texas Lives**

In the wake of the devastation created by COVID-19, all uninsured Texans will suffer, not just uninsured LGBT Texans. If Texas does not provide temporary and expanded Medicaid coverage for all uninsured Texans, the economic costs to the State will significantly increase as uninsured Texans seek treatment for COVID-19; (2) uninsured Texans who wait to seek health

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<sup>17</sup> See *Social, Economic, and Health Disparities Among LGBT Older Adults*, Charles A. Emlet, Ph.D., M.S.W. available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5373809/> See also generally, *The Lives and Livelihoods of Many in the LGBTQ Community are at Risk Amidst COVID-19 Crisis*, Human Rights Campaign, available at <https://www.hrc.org/resources/the-lives-and-livelihoods-of-many-in-the-lgbtq-community-are-at-risk-amidst>.

<sup>18</sup>*What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?* Jennifer Tolbert Published: Mar 16, 2020, available at <https://www.kff.org/uninsured/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/> (“Studies repeatedly demonstrate that uninsured people are less likely than those with insurance to receive services for major health conditions and chronic diseases”).

care will more likely lose their lives; and (3) these consequences will likely affect the ability of the Texas economy to recover after the Pandemic.

**There is simply no downside to agreeing to accept additional Medicaid funds at this precarious time in our State's history.** Even without considering the overwhelming evidence presented in this request, the State is keenly aware of the exact risk factors to uninsured Texans given the statements on the TDSHS website and Gov. Abbott's own statements to the press on April 2, 2020. University of Texas researchers expect that **Texas will not reach the peak for another two weeks.**<sup>19</sup> Therefore, Lambda Legal respectfully asks you to heed this call to action on behalf of all uninsured Texans and all uninsured LGBT Texans.

If you have any questions, please do not hesitate to contact Senior Staff Attorney, Shelly L. Skeen, at (214) 219-8585, ext. 228, or [sskeen@lambdalegal.org](mailto:sskeen@lambdalegal.org).

Sincerely,

Lambda Legal Defense and Education Fund,  
Inc., South Central Office, Dallas, Texas

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<sup>19</sup> See *Texas' peak in COVID-19 deaths most likely a couple weeks away, UT research shows*, Apr. 21, KVUE ABC, <https://www.kvue.com/article/news/health/coronavirus/coronavirus-texas-ut-austin-covid-19-deaths/269-2e52bfc8-5d21-4ade-bfb8-b9e8da4ff9a4>