United States Senate

WASHINGTON, DC 20510

September 15, 2021

The Honorable Xavier Becerra
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington D.C., 20201

Rochelle P. Walensky, M.D.
Director of the Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

Dear Secretary Becerra and Director Walensky:

Thank you for all that you are doing to rebuild our nation's public health system. We write to follow up on a previous letter dated March 24, 2021 regarding your agencies' implementation of *the American Rescue Plan Act of 2021's Title II, Subtitle F, Section 2501 – funding for public health workforce (Section 2501),* and the integral role the Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) will play in using "$7,660,000,000… to carry out activities related to establishing, expanding, and sustaining a public health workforce…" Additionally, *Title XI, Section 11001(a)(1)(G) – Indian Health Service, public health workforce* (*Section 11001*) provides $240,000,000 for the Indian Health Service (IHS) to conduct similar activities in indigenous communities.

Specifically, we write to: (1) reiterate that the legislative intent, as indicated in Section 2501's predecessor legislation, S.32, was to rebuild our public health system with good, stable jobs by (a) requiring that jobs funded under Section 2501 pay no less than prevailing industry wages and benefits (as defined by the Service Contract Act), and in no event less than $15 an hour plus benefits, and (b) that disadvantaged workers receive priority for such jobs through targeted hiring; (2) make clear that Section 2501's plain language authorizes HHS to adopt such standards; and (3) urge the agency to adopt these crucial standards as requirements for Section 2501 awardees.

Moreover, the fact that several billion of the Section 2501 funds have already been allocated through CDC and HRSA without these crucial standards, making it all the more vital to include them when the agencies distribute the remaining approximately $3 billion in funding.

1. Legislative Intent

We were proud to work with Congressional leadership to ensure that Sections 2501 and 11001 were aligned as closely as possible with its predecessor legislation, *S. 32 of the 117th Congress – Health Force, Resilience Force, and Jobs to Fight COVID-19 Act (Health Force),* but we recognize that restrictions in the Budget Reconciliation process did not afford the precision and detail required of a legislative and programmatic endeavor on this scale. Therefore, as you implement such sections of the *American Rescue Plan Act of 2021* and work to deliver on the public health jobs promise made by President Biden, we seek to make clear the legislative intent behind *Health Force* and Section 2501 – and respectfully request that it guide your implementation of the program.

The overall goals of *Health Force* and Section 2501 are to rebuild the nation's public health infrastructure with a commitment to health equity, sustainability, and the creation of new careers in health for underserved communities. And to achieve those goals, two key policies that are integral to the *Health Force* and Section 2501 program are: (1) labor standards to ensure that the jobs created are sustainable, and (2) targeted hiring to ensure the creation of new careers in health for jobseekers from underserved communities.

a. **Labor Standards**

Regarding labor standards, our express intent was that the jobs created should pay no less than prevailing wages and benefits. *Health Force* contained provisions making clear that Service Contract Act prevailing wages and benefits standards should apply to public health jobs subsidized under the program:

> (6) FORCE MEMBER COMPENSATION.—
> (A) IN GENERAL.—Members of the Force shall be full-time employees paid directly by Funded Entities (and subawardees under paragraph (9)) using funds provided by the Centers for Disease Control and Prevention under grants, contracts, or cooperative agreements under this section.
> (B) COMPENSATION.—Notwithstanding any other provision of law, for fiscal year 2021 and each fiscal year thereafter, <u>all Force members, including supervisors, shall be paid a wage and fringe benefits not less than the minimum wage and fringe benefits established in accordance with chapter 67 of title 41, United States Code (commonly known as the "Service Contract Act")</u>.
> (C) AUTHORITY.—With respect to subparagraph (B), the Secretary of Labor, or the Secretary's authorized representative, shall have the authority and functions set forth in chapter 67 of title 41, United States Code.
> (D) METHODOLOGY.—With respect to subparagraph (B), the Secretary of Labor, or the Secretary's authorized representative, shall issue a nonstandard wage determination, subject to periodic revision, establishing minimum wages and fringe benefits for each class of Force members in accordance with the prevailing rates for those positions or, where a collective-bargaining agreement is in effect, in accordance with the rates

> provided for in the agreement, including prospective wage and fringe benefit increases provided under the agreement.
> (E) SENSE OF CONGRESS.—It is the sense of Congress that Force member compensation shall include health, retirement, and paid family and medical leave benefits.

Health Force, Section 2(e)(6) (emphasis added).

b. **Targeted Hiring**

Similarly, regarding targeted hiring, our intent as legislative sponsors was to ensure that workers from disadvantaged communities should be prioritized for public health workforce jobs financed under Section 2501. We expressly mandated in *Health Force* targeted hiring of workers residing in "focal communities" – which we defined as communities meeting criteria such as high poverty, unemployment, or CDC high social vulnerability scores – as well as other categories of disadvantaged workers and job seekers:

> (2) RECRUITMENT.—With respect to the employment of Force members, Funded Entities shall support recruitment efforts for Force personnel who are from or reside in the locality in which they will serve, including efforts to recruit Force members among focal communities as described in subsection (h), as well as dislocated workers, individuals with barriers to employment, veterans, new entrants in the workforce, underemployed or furloughed workers, graduates and students from Historically Black Colleges and Universities, Tribal Colleges and Universities, Hispanic Serving Institutions and historically marginalized populations. As practicable, State labor offices shall share information about Force opportunities with those individuals applying for or receiving unemployment benefits.
>
> (3) PREFERENCE.—Notwithstanding any other provision of law, preference in the hiring of Force members shall be given to individuals who are dislocated workers, individuals with barriers to employment, veterans, new entrants in the workforce, underemployed or furloughed workers, or community-based nonprofit or public health or health care professionals, from focal communities as described in subsection (h), or unemployed or underemployed individuals. First priority in such hiring shall be given to individuals who are previous employees of Funded Entities (or subawardees under paragraph (9)) who were, within the 2020 or 2021 calendar year, furloughed, laid off, subject to a reduction in force, placed or went on leave, or have recall rights subject to collective bargaining agreement or applicable personnel policies.

S.32, Section 2(e)(2) & (3).

2. Agency Authority Under Section 2501

During the reconciliation process *Health Force* was condensed into what became Section 2501. In the place of a detailed statute that specified criteria for using the money and labor standards

and hiring priorities for the jobs created, in Section 2501 Congress appropriated $7.66 billion to HHS with the following instructions:

> ARP § 2501 – FUNDING FOR PUBLIC HEALTH WORKFORCE
>
> (a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $7,660,000,000, to remain available until expended, to carry out activities related to establishing, expanding, and sustaining a public health workforce, including by making awards to State, local, and territorial public health departments.
>
> (b) USE OF FUNDS FOR PUBLIC HEALTH DEPARTMENTS.—Amounts made available to an awardee pursuant to subsection (a) shall be used for the following:
>
> (1) Costs, including wages and benefits, related to the recruiting, hiring, and training of individuals—
>
> (A) to serve as case investigators, contact tracers, social support specialists, community health workers, public health nurses, disease intervention specialists, epidemiologists, program managers, laboratory personnel, informaticians, communication and policy experts, and any other positions as may be required to prevent, prepare for, and respond to COVID–19; and
>
> (B) who are employed by—
>
> (i) the State, territorial, or local public health department involved; or
>
> (ii) a nonprofit private or public organization with demonstrated expertise in implementing public health programs and established relationships with such State, territorial, or local public health departments, particularly in medically underserved areas.
>
> (2) Personal protective equipment, data management and other technology, or other necessary supplies.
>
> (3) Administrative costs and activities necessary for awardees to implement activities funded under this section.
>
> (4) Subawards from recipients of awards under subsection (a) to local health departments for the purposes of the activities funded under this section.

(Emphasis added)

While Section 2501's language is condensed, review of the provision's text indicates that it vests HHS with authority to implement the Section 2501 program with labor standards and targeted hiring, consistent with the sponsors' original legislative intent.

a. **Labor Standards**

Regarding labor standards, Congress's mandate to HHS to "sustain a public health workforce" indicates that HHS is authorized and expected to design the Section 2501 program in a fashion that will ensure a stable, sustainable public health workforce. That instruction taken together with the Section 2501's express reference to using the appropriated funds for "costs, including wages and benefits, related to the recruiting, hiring, and training of individual" indicates that

HHS is authorized to adopt standards for the program – including standards relating to wage and benefits – that are reasonably necessary for recruiting and retaining a stable workforce to deliver public health services.

It is widely recognized that competitive wage and benefits standards help ensure quality services by maintaining a stable and skilled workforce. Without such standards for the public health workforce positions financed under Section 2501, government and non-profit awardees will likely find it difficult to recruit and retain workers for these positions. Extensive evidence links low pay with high turnover -- and conversely documents the productivity benefits of higher wages and benefits. *See* Sarah J. Newman et al., Workforce Turnover at Local Health Departments: Nature, Characteristics, and Implications, 47 Am. J. Prev. Med. S337 (2014), ("Several studies in the public health, healthcare, and government workforce fields have identified organizational infrastructure characteristics that influence turnover... [f]or instance, the use of competitive pay as a recruitment and retention strategy."); Karla Walter & Anastasia Christman, "Service Contract Workers Deserve Good Jobs," Center for American Progress & National Employment Law Project, April 2021, fn. 26 (gathering sources). On the recruitment side, because many of the positions the ARP provides for—community health workers, public health nurses, laboratory personnel, and others—demand specialized skills, public health departments and nonprofit organizations are likely to experience difficulty filling these jobs without adequate pay and benefits. In light of Congress's direction to HHS to "sustain" a public health workforce, it is therefore crucial that the program be structured to reduce turnover and promote stable, long-term employment in for these positions.

Similarly, other labor standards – such as requiring that awardees rehire laid off public health workers and ensure that the health force jobs do not displace permanent public health staff – would also promote economy and efficiency in delivery of public services. For example, President Obama in Executive Order 13,495—Nondisplacement of Qualified Workers Under Service Contracts (Jan. 30, 2009), found that ensuring retention and rehiring of workers on federal service contracts "provides the … Government the benefits of an experienced and trained work force that is familiar with the … Government's personnel, facilities, and requirements."

b. **Targeted Hiring**

Congress's mandate to HHS in Section 2501 also encompasses authority to require awardees to use targeted hiring for filling some of the positions funded. The Section 2501 language begins by instructing HHS to "expand[] . . . a public health workforce" by "recruiting, hiring, and training of individuals." It goes on to call for prioritizing provision of services "particularly in medically underserved areas." Section 2501(b)(1(B)(2).

That plain language suggests that HHS is authorized to require awardees to use hiring strategies that will be effective at delivering services, especially in medically underserved areas. Targeted hiring policies – such as the "community health worker" model under which public health workers are recruited from the disadvantaged communities they are intended to serve – have been shown to be a key strategy for ensuring effective service delivery to such communities. For example, evidence-based academic research on the community health worker model shows that it results in improvements in hospital admissions, chronic disease control, and mental health for patients with chronic health conditions. See Univ. of Penn Center for Community Health Workers, Published Research.

The statutory language of Section 2501 thus suggests that HHS has authority to adopt labor standards and targeted hiring requirements for awardees.

3. Recommended Agency Standards

In light of the above, we respectfully urge that HHS and CDC implement Section 2501 in accord with our legislative intent and statutory authorization by requiring grantees to meet labor standards and targeted hiring requirements. Specifically, we recommend the following standards:

1. Labor Standards
    a. Prevailing Wages and Benefits -- Requiring that jobs funded under Section 2501 pay no less than prevailing industry wages and benefits for each job title (as defined by the Service Contract Act), and in no event less than $15 an hour plus benefits. Prevailing benefits under the Service Contract Act are currently $4.54/hour.
    b. Workforce Stability -- Requiring that awardees:
        i. Rehire laid off public health workers, and
        ii. Ensure that the health force jobs do not displace permanent public health staff
2. Targeted Hiring – Requiring that disadvantaged workers receive priority for Section 2501 jobs through strategies including:
    a. Community Health Workers – Including earmarked funding for Community Health Worker Programs and Public Health Workforce Partnerships as a key strategy for ensuring both inclusive hiring and improving delivery of services to disadvantaged communities. An extensive body of research highlights the key role that Community Health Workers recruited from health-challenged communities can play in enabling residents to access vital health services.
    b. Recruiting from HBCUs/HSIs/TCUs – For jobs that require some degree of education or credentials, requiring grantees to include recruiting through Historically Black Colleges and Universities / Hispanic Serving Institutions / Tribal Colleges and Universities.

We recognize that you, the CDC, and your partners are tasked with the unprecedented challenge of "…establishing, expanding, and sustaining a public health workforce" for which the United States is long overdue. Our Congressional coalition stands ready to collaborate with you and your team. We will work tirelessly to provide the resources and support necessary to accomplish this ambitious, necessary goal of a public health workforce to end this pandemic and prepare us for all future health challenges. We are grateful for all that you and the CDC have already done, and we look forward to working together to establish, expand, and sustain a Health Force.

Sincerely,

Kirsten Gillibrand
United States Senator

Michael F. Bennet
United States Senator

Tina Smith
United States Senator

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