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To: Governor Steve Bullock and Governor-Elect Greg Gianforte
Cc: Erica Johnston, Acting Director, Department of Public Health and Human Services

As you are clearly aware, the COVID-19 pandemic has disproportionately harmed certain vulnerable communities. In particular, we have seen significantly higher rates of infection, serious illness, and death among people incarcerated in prisons and jails; those living in congregate care settings (such as nursing homes, psychiatric hospitals, developmental disability centers, intermediate care facilities, and large group homes); and tribal communities and other communities of color. We have reviewed the Montana COVID-19 Vaccination Plan (OCTOBER V.1.2-10.16.2020). We were encouraged to see that the plan suggests that these populations, alongside healthcare workers, are among those that "will likely" be prioritized for initial vaccination and urge that this commitment be carried through.

We recognize that vaccine allocation and distribution will present a tremendous challenge to state officials, who must balance a number of different public-health, practical, and political considerations with the fact that the immediate supply of available vaccines will be limited. But a vaccine-distribution plan cannot be considered fair or equitable if it does not attempt to redress the disproportionate impact the pandemic has had on these at-risk people and communities. Moreover, we hope that decisions about which populations to prioritize will continue to be made via a transparent, evidence-based, and impartial process that includes input from these impacted communities.

Prisons and jails

The disproportionate impact that COVID-19 has had in prisons and jails is troubling. People held in these facilities, who are disproportionately people of color and people with disabilities, should be prioritized for vaccine access, as should staff who are in close contact with incarcerated people.

Individuals living in carceral settings have higher rates of disability and chronic health issues due, in part, to the physical stress and strain imposed by imprisonment. They also often lack adequate nutrition, health care, access to fresh air, and proper hygiene measures. They have very little to no control over their exposure to COVID-19 and, as a result, are in greater danger of contracting and dying from the disease. Recent studies have found that the rate of COVID-19 cases in federal and

state prisons is more than four times the national rate and that the mortality rate in federal prisons is twice that of the general population.[1]

In Montana, numerous carceral facilities have seen shockingly high rates of COVID-19. As of December 14th, more than 475 people incarcerated at Montana State Prison and nearly 300 people incarcerated at Crossroads Correctional Center have been infected with COVID-19. More than 1,000 incarcerated people and 200 staff in DOC and DOC contract facilities have been infected.[2] Five people, none of whom were sentenced to death, have died from COVID-19 while under state custody.[3] Montana has a legal obligation to take care of the people it chooses to incarcerate. That is especially true here because our state's prison and jail population, about 25 percent of which is Indigenous,[4] reflects historic racism at all levels of our criminal legal system.

Montana also has a moral and ethical obligation to provide robust care for incarcerated and detained people. Doctors work under a professional ethical obligation to treat every human being as possessing equal dignity, worth, and value, and the American Medical Association has emphasized medical professionals' ethical obligation to treat patients without discriminating based on any "personal or social characteristics that are not clinically relevant,"[5] including whether they are rich or poor, friend or foe, incarcerated or free, disable or non-disabled, or citizen or non-citizen. As Montana's top decision-makers regarding vaccine allocation and distribution, you have a similar ethical duty: You must ensure that Montana does not discriminate against incarcerated people and that officials base vaccine priorities on the clear public-health evidence that—like people in congregate and long-term care settings—people held in prisons and jails are in grave danger and have a heightened need for vaccine access.

Congregate care facilities

People who live or work in congregate, long-term, and institutional care settings should also be among the populations who receive priority access to COVID-19 vaccines. While COVID-19 infections and deaths in nursing homes have rightfully garnered publicity and intervention, vaccines should be prioritized for staff and residents at a variety of facilities, including nursing homes, psychiatric hospitals, developmental disability centers, intermediate care facilities, and

[1] Cid Standifer & Frances Stead Sellers, *Prisons and Jails Have Become a "Public Health Threat" During the Pandemic, Advocates Say*, Washington Post, Nov. 11, 2020, https://www.washingtonpost.com/national/coronavirus-outbreaks-prisons/2020/11/11/b8c3a90c-d8d6-11ea-930e-d88518c57dcc_story.html.
[2] https://cor.mt.gov/COVID-19
[3] https://www.kpax.com/news/coronavirus/montana-dept-of-corrections-reports-5th-covid-19-related-inmate-death
[4] https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-montana.pdf
[5] AMA Code of Medical Ethics, American Medical Association, https://www.ama-assn.org/system/files/2019-01/code-of-medical-ethics-chapter-1_0.pdf ("Physicians must also uphold ethical responsibilities not to discriminate against a prospective patient on the basis of race, gender, sexual orientation or gender identity, or other personal or social characteristics that are not clinically relevant to the individual's care."). See also Edmund F. Howe, When, If Ever, Should Military Physicians Violate a Military Order to Give Medical Obligations Higher Priority?, The Society of Federal Health Professionals (Nov. 1, 2015), https://academic.oup.com/milmed/article/180/11/1118/4160612 (reporting a consensus among doctors that an American battlefield surgeon had a professional ethical obligation to disobey orders and treat a wounded Iraqi solider even though it could have delayed the care given to a similarly injured American soldier); see also The Physician's Pledge, World Medical Association Declaration of Geneva (July 9, 2018), https://www.wma.net/policies-post/wma-declaration-of-geneva/.

large group homes. The individuals who live in these facilities are overwhelmingly people with disabilities and are at high risk of COVID-19 complications or death. In addition, those who work in these facilities are disproportionately low-income people, women of color, and immigrants—all populations disproportionately affected, infected, and killed by the virus.[6]

Long-term care facilities are home to less than one percent of the nation's population, but residents and staff account for 40 percent of those who have died from COVID-19 nationwide.[7] People with disabilities and older adults who live in these facilities are more likely to have conditions that preclude them from receiving a vaccine, leaving them to rely on the immunity of those around them for protection. They are also more likely to die or suffer serious complications if infected by COVID-19 and are typically less able to limit their exposure because of the congregate settings in which they live. In Montana, as of Oct. 7, at least 52 percent of long-term care facilities and 28 percent of assisted living facilities have reported COVID-19 cases. About 12 percent of long-term care facilities and 18 percent of assisted living facilities have had COVID-19 deaths.[8] Montana's COVID-19 nursing home death rate ranks second in the entire nation.[9] Across the country, these infections and deaths have been marked by troubling racial disparities.[10]

Indigenous communities and other communities of color

Indigenous communities and people of color are already disproportionately affected by COVID-19 within the congregate care and carceral settings, as discussed above. But the virus has disproportionately harmed Indigenous communities and other communities of color on a much broader scale even beyond those contexts, and vaccine distribution plans must address the disparate harm suffered by these communities.

Nationally, Black, Latinx, and Indigenous people are approximately four times more likely than the general population to be hospitalized due to COVID-19 and approximately three times more likely to die.[11] In Montana, Indigenous people are dying from COVID-19 at more than 8 times the

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[6] Wyatt Koma et al., *Low-Income and Communities of Color at Higher Risk of Serious Illness if Infected with Coronavirus*, Kaiser Family Foundation (May 7, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/low-income-and-communities-of-color-at-higher-risk-of-serious-illness-if-infected-with-coronavirus/; Lucy Erickson, PhD, *The Disproportionate Impact of COVID-19 on Women of Color*, Society for Women's Health Research (April 30, 2020), https://swhr.org/the-disproportionate-impact-of-covid-19-on-women-of-color/; Jorge Loweree, *The Impact of COVID-19 on Noncitizens and Across the U.S. Immigration System*, American Immigration Council (Sept. 30, 2020), https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system.

[7] Priya Chidambaram et al., *COVID-19 Has Claimed the Lives of 100,000 Long-Term Care Residents and Staff*, Kaiser Family Foundation (Nov. 25, 2020), https://www.kff.org/policy-watch/covid-19-has-claimed-the-lives-of-100000-long-term-care-residents-and-staff/.

[8] https://billingsgazette.com/news/state-and-regional/montana-s-care-homes-struggle-with-staffing-and-ever-changing-regulations-as-covid-19-cases/article_3d8aa0e7-9144-5391-a6f8-9cd996e2332d.html

[9] https://www.mtpr.org/post/montana-covid-19-nursing-home-death-rate-ranks-second-nation

[10] Priya Chidambaram et al., *Racial and Ethnic Disparities in COVID-19 Cases and Deaths in Nursing Homes*, Kaiser Family Foundation (Oct. 27, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/racial-and-ethnic-disparities-in-covid-19-cases-and-deaths-in-nursing-homes/?utm_campaign=KFF-2020-Coronavirus&utm_medium=email&_hsmi=2&_hsenc=p2ANqtz--w7cH71_TA9szizWXkzhF3Op6PWdeh9dAk3_T1ywabR0Zc8nh2.

[11] *COVID-19 Hospitalization and Death by Race/Ethnicity*, Centers for Disease Control and Prevention (Nov. 30, 2020), https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html.

rate of white people.[12] These alarming disparities are rooted in generations of discrimination and racism against Indigenous people, which has manifested in reduced access to quality and timely health care and services (thus compounding health inequities that make COVID-19 more deadly).

This history—and our present reality—must be considered as vaccine distribution decisions are made. It is imperative that communities of color do not get short shrift when it comes to vaccine access. For example, any costs associated with obtaining a vaccine will disproportionately affect these vulnerable communities and hinder access. Thus, it is vital that vaccines are available to all—regardless of immigration status—at no cost.[13]

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Decisions regarding the allocation and distribution of COVID-19 vaccines will no doubt be difficult and complex. Montana must, however, heed its moral and legal obligations and trust responsibilities to make these decisions based on the public-health evidence, prioritizing access for those communities that have been disproportionately affected by the disease.

Sincerely,

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[12] https://www.usnews.com/news/healthiest-communities/articles/2020-10-07/a-state-by-state-analysis-of-the-impact-of-covid-19-on-native-americans

[13] Katie Conner, *Vaccine for COVID-19 may be free, but you could still see a bill. Here's what we know*, CNET (Dec. 2, 2020), https://www.cnet.com/personal-finance/vaccine-for-covid-19-may-be-free-but-you-could-still-see-a-bill-heres-what-we-know/ (describing how some providers may charge administrative or other fees for administering a vaccine even though the federal government is shouldering the cost of the vaccines themselves).