



**COMMONWEALTH of VIRGINIA**  
**Office of the Attorney General**

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July 31, 2024

The Honorable Xavier Becerra  
Secretary of the Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

**Via Email and U.S. Mail**

**Re: Centers for Medicare and Medicaid Services Solicitation No. 75FCMC24R0010**

Dear Secretary Becerra and Administrator Brooks-LaSure:

Millions of Americans, including more than one million Virginians, rely on Medicare or the federal Health Insurance Marketplace to meet their healthcare needs. Those Americans have paid for Medicare with their tax dollars throughout their working lives, and many continue to pay for Medicare or Marketplace services through premiums. They justifiably expect their Medicare coverage to work when and how they need it. The announcement by the Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) that it would prematurely reopen the contract process for Medicare and Marketplace call centers as a favor to union organizations will compromise the healthcare services that Americans rely on and deserve. We the undersigned Attorneys General, as the chief legal officers of our respective States, urge you to reconsider putting politics above the well-being of our citizens. The federal government should not be injecting uncertainty into Americans' healthcare, especially when doing so would renege on a contract fairly awarded to a business that creates over 10,000 jobs around the country.

Private call center contractor Maximus has run 1-800-MEDICARE and the Affordable Care Act support services since 2018, receiving high customer satisfaction scores.<sup>1</sup> Accordingly, CMS understandably awarded a nine-year call center contract to Maximus after a competitive bidding process in September 2022.<sup>2</sup> Under the contract, calls about crucial Medicare and Health Insurance Marketplace information are fielded by Maximus call center workers in more than eight states, including 1,000 workers in Virginia. In May of this year, however, HHS decided to put big unions above Americans who need healthcare services by soliciting a new call center contract with a requirement that the solicitations include a “labor harmony agreement”—a pledge that the bidding company would work with labor unions to avoid labor stoppages—despite no evidence of any work stoppages at Maximus facilities.<sup>3</sup> Oddly, the final request for proposals required both that bidders already have agreements in place with unions in case they won the contract and that bidders entertain negotiations after the contract is awarded, an ambiguity that has been described as “show[ing] a level of sloppiness and hurriedness in this submission that does not bode well either for contract[s] in general or for this particular contract.”<sup>4</sup>

Unfortunately, HHS’s decision to jeopardize call center service for Americans on Medicare and Americans who use the Health Insurance Marketplace comes as no surprise, given that the Biden-Harris Administration repeatedly puts the interests of union bosses above the needs of ordinary Americans. President Biden has made clear that he “intend[s] to be the most pro-union President leading the most pro-union administration in American history”<sup>5</sup>; indeed, in his “make or break” press conference on July 11, he touted that he was the “most pro-union labor president in history.”<sup>6</sup> In attempting to achieve that goal, President Biden has implemented a whole-of-government approach, conscripting agencies like HHS in his quest to push big labor unions on Americans.<sup>7</sup> And the Biden-Harris Administration has continued this pro-union policy despite significant pushback from Americans and their elected representatives. For example, after a 23-State coalition opposed a Biden-Harris Administration proposed rule that would push unionization for temporary foreign farm workers, at the expense of U.S. citizen workers and the nation’s agricultural industry,<sup>8</sup> the Administration dug in, necessitating many of those same States to sue in federal court to stop the rule.<sup>9</sup>

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<sup>1</sup> Dan Diamond, *It was a \$6.6B deal for 9 years. Then the feds reneged. Did politics play a role?*, Wash. Post (June 28, 2024), <https://tinyurl.com/2s3k585f>.

<sup>2</sup> The Editorial Board, *Pushing Unions on a Federal Contractor*, Wall St. J. (June 16, 2024), <https://tinyurl.com/5n6vvnkx>.

<sup>3</sup> Diamond, *supra* n.1.

<sup>4</sup> Tom Temin, *New HHS Request for Proposals Has Industry Up in Arms*, Federal News Network (May 29, 2024), <https://tinyurl.com/3mx2t6sx> (quoting interview with David Berteau, President and CEO of the Professional Services Council).

<sup>5</sup> Remarks by President Biden in Honor of Labor Unions (Sept. 8, 2021), <https://tinyurl.com/4zb6jtf4>.

<sup>6</sup> Josh Boak & Nicholas Riccardi, *Key takeaways from Biden’s news conference: Insistence on staying in the race and flubbed names*, AP News (Jul. 12, 2024), <https://tinyurl.com/26269awc>.

<sup>7</sup> The Biden Administration’s “Whole of Government” Approach to Promoting Labor Unions, U.S. Chamber of Commerce at 5 (Oct. 24, 2023), <https://tinyurl.com/3havcz8y>.

<sup>8</sup> Attorney General Miyares Demanding Biden Administration Drop Rule That Prioritizes Migrant Workers Over American Workers (Nov. 14, 2023), <https://tinyurl.com/yy59kx56>.

<sup>9</sup> Kansas Attorney General, *Kansas leads 17-state coalition in lawsuit over Biden’s temporary farm worker rule* (June 11, 2024), <https://tinyurl.com/2rw8tah3>.

It is the job of Congress to set federal labor policy, and HHS's actions, like these other actions of the Biden-Harris Administration, contravene federal labor law as established by Congress. "Congress struck a balance of protection, prohibition, and laissez-faire in respect to union organization, collective bargaining, and labor disputes." *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Wisconsin Emp. Rels. Comm'n*, 427 U.S. 132, 140 n.4 (1976) (quoting Archibald Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1352 (1972)). Because Congress set federal labor policy, the Administration and federal agencies under its direction may only "direct that a congressional policy be executed in a manner prescribed by Congress"; they may not "direct[] that a presidential policy be executed in a manner prescribed by the President." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588 (1952).

Congress endorsed a policy that employees generally have "the right to refrain from any or all [unionization] activities." 29 U.S.C. § 157. And many of our States, as right-to-work States, vigorously defend our policies "that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization." Va. Code § 40.1-58. HHS's contract process essentially aims to force Virginians and other employees of Medicare call centers to join a union, contrary to policies set by Congress and many States, compromising essential healthcare services for all Americans in the process and nullifying the contract that currently employs thousands of workers around the country. Americans require healthcare services that run smoothly and efficiently, and American businesses deserve good-faith contract negotiations that are not revoked due to mere policy preferences of the federal government. Your department and the Biden-Harris Administration should not put big unions ahead of the needs of the rest of America.

Sincerely,



Jason S. Miyares  
Attorney General of Virginia

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