IDENTITY AND STATEMENT OF INTEREST OF *AMICI CURIAE*

The Colorado Center on Law and Policy ("CCLP"), established in 1998, is a non-profit organization dedicated to eradicating poverty across Colorado through research, legislation, and legal advocacy. To do so, CCLP focuses on four main areas: food, housing, income, and health. As relevant here, CCLP is one of a few organizations in the state that holds a particular expertise in public benefits, including Medicaid. CCLP regularly appears before the Medicaid Services Board to testify and provide analysis on changes to the state Medicaid rules, including on income eligibility rules and requirements for immigrants and children. In doing so, CCLP works to ensure that Colorado's state Medicaid rules comport with the federal statutory and regulatory framework. New, but equally important, to CCLP is legal advocacy in the litigation space. Such advocacy is a necessary addition to the organization to enforce rights to federal and state public benefits when administrative advocacy is unsuccessful.

The National Health Law Program ("NHeLP"), founded in 1969, protects and advances health rights of low-income and underserved individuals and families. NHeLP advocates, educates, and litigates at the federal and state levels to advance health and civil rights in the U.S. NHeLP has worked with the Medicaid

program since its inception and has decades of experience and in-depth expertise on Medicaid eligibility, administration, and due process.

SUMMARY OF THE ARGUMENT

Respectfully, the Court overlooked crucial legal issues surrounding Medicaid, including federal law and regulations and the case law interpreting them. A detailed statutory and regulatory scheme governs the Medicaid program and sets forth beneficiary rights, eligibility and service coverage, and financial and administrative requirements. This robust framework is intended to ensure that eligible individuals receive the services they need and to safeguard expenditure of public funds. Federal law recognizes that individuals have the right to a fair hearing to challenge Medicaid denials of eligibility or services. It is thus well settled that Medicaid beneficiaries seeking coverage of services have a protected property interest in those services.

For these reasons, individuals who meet the criteria for eligibility are entitled to Medicaid benefits, even if information is missing or factual discrepancies are included in their applications. Eligibility is complex. Medicaid contains more than sixty distinct eligibility categories – some mandatory and others optional – and all rest on complex financial and nonfinancial criteria. Congress recognized the chaos that often surrounds the lives of Medicaid beneficiaries, such

as unreliable income streams, inconsistent household makeup, and homelessness. The law therefore accounts for these circumstances and allows for flexibility on applications. The Court's decision in this case ignores those realities and criminalizes individuals who are entitled to Medicaid benefits. As a policy matter, the dissent was correct in surmising that the decision will "cause draconian consequences for individuals charged with public benefits theft." [redacted] Amici therefore support [redacted] petition for rehearing and respectfully asks the Court to revisit its opinion and reject the total value approach.

ARGUMENT

I. The Court Overlooked Federal Law and State Implementing Statutes and Regulations That Establish an Entitlement to Medicaid

Understandably, the focus of this case has almost entirely been on criminal law. It was, after all, a criminal prosecution. However, Medicaid plays a critical role in the outcome of this case. A deeper dive into the complex legal world of Medicaid is warranted to reach the correct – and just – conclusion that eligible individuals are entitled to Medicaid benefits despite discrepancies on applications.

A. States Participating in the Medicaid Program Must Provide Coverage to Eligible Individuals

Medicaid is a joint federal-state program established by Title XIX of the Social Security Act ("Act"), to provide medical services to low-income adults, pregnant women, and children. *See* 42 U.S.C. § 1396-1 (2018). The Act imposes certain obligations on states participating in the program, including designating a single state agency to administer the program, making medical assistance available to eligible individuals, providing due process to individuals denied enrollment or services, and promptly investigating information that may impact benefits to which an individual is entitled. 42 U.S.C. § 1396a (a)(3), (5), and (10) (2020); 42 C.F.R. § 435.952(a) (2016); *see also* 10 CCR 2505-10 § 8.100.3.P.2.a (2021). States that accept federal dollars must abide by the Act's requirements. Those that do not either forfeit their Medicaid funding, 42 U.S.C. § 1396c (1965), or, alternatively, must develop a corrective action plan, 42 C.F.R. § 431.992 (2017).

As relevant here, the Act requires states to make medical assistance available to "all individuals . . . who are qualified pregnant women or children." § 1396a(a)(10)(A)(i)(III); *see also* 42 CFR § 435.118(b) (2012) ("The agency *must* provide Medicaid to children under age 19 whose household income is at or below the income standard established by the agency . . . ." (emphasis added)). States may also expand child health assistance to low-income children whose household

income is above Medicaid income levels through the Children's Health Insurance Program ("CHIP"). *See* 42 U.S.C. § 1397aa (1997). States that elect to provide CHIP coverage receive federal matching funds. 42 U.S.C. § 1397ee (2020); *see also* 10 CCR 2505-10 § 8.100.1 (defining Child Health Plan Plus (CHP+) – Colorado's CHIP program).

B. The Court Overlooked Federal Law and State Regulations in Concluding That Eligible Individuals Do Not Have a Possessory Interest in Medicaid Benefits

Individuals who are eligible for Medicaid are entitled to, and hold a protected property interest in, Medicaid benefits. A person's interest in a government benefit is a protected property interest "if there are such rules or mutually explicit understandings that support [her] claim of entitlement to the benefit and that [she] may invoke at a hearing." *Perry v. Sindermann*, 408 U.S. 593, 601 (1972). In the public benefit context, a person has a protected property interest if the state or county must provide the benefit when all enumerated criteria is met. *See Weston v. Cassata*, 37 P.3d 469, 476 (Colo. App. 2001) (noting that "the less discretion the state official has to determine a benefit, the more likely the

benefit is a 'property right'");[1] *Kapps v. Wing*, 404 F.3d 105, 112 (2d Cir. 2015) (concluding that applicants had a property interest in home heating benefits because the "award of [such] benefits to qualified applicants" was non-discretionary); *cf. Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972) (noting that a "legitimate claim of entitlement," as opposed to an "abstract need or desire" for a benefit is what forms the basis for a protected property interest).

It is well settled that there is no discretionary decision to grant or deny Medicaid benefits to an individual who meets the eligibility requirements. *See, e.g.*, *Schweiker v. Gray Panthers*, 453 U.S. 34, 36-37 (1981) ("An individual is entitled to Medicaid if [s]he fulfills criteria established by the state in which [s]he lives."); *Newton-Nations v. Betlach*, 660 F.3d 370, 374 (9th Cir. 2011) (noting that eligible pregnant women and children are *entitled* to poverty-related coverage). As discussed above, *supra* Section I(A), states must comply with numerous

[1] While the Court relies on *Weston v. Cassata*, 37 P.3d 469, 475-77 (Colo. App. 2001), for the proposition that "federal welfare legislation created a 'conditional property right' in certain public benefits," it is important to note that public benefits differ. The Temporary Assistance for Needy Families program (TANF) was restructured in 1996 to give states broad discretion in how limited block grant dollars were used and is no longer an entitlement program. *See State of Kansas v. United States*, 24 F. Supp. 2d 1192, 1194 (D. Kan. 1998). In contrast, Medicaid must be provided to all eligible applicants, and federal funding is countercyclical, expanding in years of greater need along with rising enrollment and shrinking when fewer people qualify for the program.

requirements to receive federal dollars, including providing medical assistance to eligible individuals in mandatory categories. Because individuals who meet the eligibility requirements for Medicaid may not be denied covered benefits, those individuals, including applicants, are consistently afforded constitutional due process protection. *See Mathews v. Eldridge*, 424 U.S. 319, 332, 336 (1976) (holding that Social Security disability benefits constitute a protected property interest); *Kapps*, 404 F.3d at 112-13 (affording due process protection to applicants of a social welfare program).

Taking a closer look at the federal statutory framework demonstrates why courts consistently reach the conclusion that benefits are an entitlement for qualified individuals. As one example, children who are born to a woman eligible for and receiving medical assistance, are "deemed eligible" for medical assistance for one year. 42 U.S.C. § 1396a(e)(2)(A). In this context, while the statute uses the word "eligible," states are required to provide coverage to such children and those children are entitled to Medicaid benefits immediately upon birth. *See Lewis v. Thompson*, 252 F.3d 567, 588 (2d Cir. 2001) (noting that "automatic eligibility is important because it *assures* immediate care" and equating automatic eligibility to entitlement of automatic coverage (emphasis added)). Likewise, the mandate to provide medical assistance to qualified pregnant women has been interpreted as an

entitlement to prenatal and other medical care. *Lewis v. Grinker*, 794 F. Supp. 1193, 1200 (E.D.N.Y. 1999); *see also Doxzon v. Dep't of Human Servs.*, No. 20-cv-00236, 2020WL3989651, at *5 (M.D. Penn. July 15, 2020) (defining 42 U.S.C. § 1396a(a)(10) as the "entitlement mandate").

Given all this, relying on other statutory schemes to conclude that Medicaid eligible individuals have no possessory interest in Medicaid benefits is inapposite. *Compare, e.g.*, § 17-22.5-403, C.R.S. (2020) (providing avenues for parole *eligible* incarcerated individuals to apply for parole to decisionmakers who *may* grant or deny the application), *and Thompson v. Riveland*, 714 P.2d 1338, 1340 (Colo. App. 1986) (concluding that "no entitlement to or liberty interest in parole is created" with statutory language allowing for the parole board to exercise its discretion), *with* 42 U.S.C. § 1396a(a)(10) (*requiring* states to provide medical assistance to *eligible* individuals), *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (holding that welfare "benefits are a matter of statutory entitlement for persons qualified to receive them"), *and Weaver v. Colo. Dep't of Social Servs.*, 791 P.2d 1230, 1232 (Colo. App. 1990) (noting that after an initial determination of eligibility for social

service benefits, an individual's right to continued receipt of such benefits is similar to a property right).

In the asylum context, for example, an immigrant may be eligible for asylum, but the decision of whether to grant asylum is a discretionary one. *See, e.g.*, *Huang v. I.N.S.*, 436 F.3d 89, 94 (2d Cir. 2006) (explaining an applicant may be eligible for asylum, but the decision to grant the application is within the discretion of the Attorney General; applicants satisfying a higher burden have *entitlement* to withholding of removal); *see also* 8 C.F.R. § 208.14(a) (2011) (providing that "an immigration judge *may* grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee" (emphasis added)).

Similarly, the Colorado state parole eligibility statute provides the parameters for parole eligibility, but ultimately leaves it up to the state board of parole to "determine whether or not to grant parole." § 17-22.5-403(5) and (7)(a); § 17-22.5-404(4), C.R.S. (2016) (outlining the factors for the parole board to consider in granting parole); *see also Bd. of Pardons v. Allen*, 482 U.S. 369, 374-75 (1987) (distinguishing mandatory and discretionary parole and noting a liberty interest exists in the former but not the latter). By the terms of Colorado's statutory scheme, a parole eligible individual is not entitled to release. Medicaid eligible individuals stand in stark contrast to asylum seekers, parole eligible prisoners, and

other people seeking relief from discretionary programs. *Cf. Weston*, 37 P.3d at 476 ("[I]f the statutory scheme comprehensively sets forth the conditions under which claims of entitlement attach, and the individual recipient meets those conditions, the official decisionmaker merely acts as a conduit for distribution of welfare benefits.").

Because eligible individuals are entitled to Medicaid benefits, those who meet the conditions set forth in the law and regulations have a possessory interest in such benefits.

II. The Court Failed to Consider Challenges for Medicaid Enrollees and How Provisions of Federal and State Law Aim to Address Those Challenges

The import of the Court's decision will have far-reaching and chilling consequences on those seeking Medicaid benefits because the complexity of the application process can easily result in inaccurate reporting.

Medicaid is arguably one of the most complicated parts of U.S. law, yet those most likely to meet eligibility requirements are perhaps the least equipped to navigate the program. *See Friedman v. Berger*, 547 F.2d 724, 727 n.7 (2d Cir. 1976) (explaining that the Act is "almost unintelligible to the uninitiated" and that "[s]uch unintelligibility is doubly unfortunate in the case of a statute dealing with the rights of poor people"). Even advocates who regularly represent Medicaid

beneficiaries have difficulty navigating and staying current with the complex legal and regulatory framework that governs the program. Many Medicaid recipients have more than one job, fluctuating income, little time, unstable households, and responsibilities that they simply do not have the leisure of delegating to others. Like [redacted] many eligible individuals also lack a secondary education and may not read or speak English fluently.

Despite federal requirements that state agency "procedures must ensure that eligibility is determined in a manner consistent with simplicity of administration and in the best interests of the applicant or beneficiary," 42 C.F.R. § 435.902 (1994), applying for Colorado Medicaid requires an applicant to fill out up to forty pages of material. *See Application for Health Insurance & Help Paying Costs*, Connect for Health Colorado, https://hcpf.colorado.gov/sites/hcpf/files/Health%20First%20Colorado%20and%20Child%20Health%20Plan%20Plus%20Application%20-%20English.pdf. Even that lengthy application, which applicants typically fill out unassisted, has no provision for information that affects MAGI eligibility, such as income deductions that should be taken for business expenses and losses and contributions to certain retirement programs. While Colorado has implemented an online portal for Medicaid recipients in an effort to streamline the process, it is inaccessible for

many in the community that must use it. Many low-income beneficiaries do not have access to smartphones, computers, or Wi-Fi, barring them from using this resource. Others have been unable to submit documentation through the portal or never receive confirmation of receipt.

This leaves applicants to rely on phone or in-person communication, which inevitably results in extraordinarily long wait times and missed work, if the applicant is able to get through at all. Oftentimes, clients and advocates call Department of Human Services only to hear an automated message instructing them to call back later. Some beneficiaries resort to going in person to turn in paperwork – an option that is no longer available due to COVID-19.

A. County Administration Further Complicates the Application Process

The complexity of the application process is compounded when states decentralize administration of the program, as Colorado has. Of a similarly county-administered system, a federal report wrote, "variation in training and staffing across the 100 counties led to difficulties in implementing a uniform, streamlined Medicaid application and determination processes." State Health Access Data Assistance Center, *Assessment and synthesis of selected Medicaid Eligibility, Enrollment, and Renewal Processes and Systems in Six States* 7 (Oct. 19, 2018), https://www.macpac.gov/wp-content/uploads/2018/11/Assessment-and-Synthesis-

of-Selected-Medicaid-Eligibility-Enrollment-and-Renewal-Processes-and-Systems-in-Six-States.pdf.

Even the state recognizes the inconsistencies in county practices and has recently launched a county audit program to assess whether counties are processing applications accurately and in a timely manner, collecting appropriate documentation, training staff, providing interpretation, and more. Colo. Dep't of Health Care Pol'y & Fin., Operational Memorandum 21-005, 1-2 (Jan. 12, 2021) [hereinafter HCPF OM 21-005], https://hcpf.colorado.gov/sites/hcpf/files/HCPF%20OM%2021-005%20%20HCPF%20Management%20Evaluation%20Review%20Program.pdf.

B. Reporting Fluctuating Circumstances is Challenging

Reporting income for a single individual with steady salaried income is relatively easy. But the reality is that many low-income workers are not so fortunate. Some are seasonal workers who may earn income throughout the summer but earn virtually no income during the remainder of the year. Laurie T. Martin et al., RAND Corp., *Barriers to Enrollment in Health Coverage in Colorado* 22 (2014), https://www.rand.org/content/dam/rand/pubs/research_reports/RR700/RR782/RAND_RR782.pdf. For this reason, "filling out enrollment applications is difficult for

many seasonal workers." *Id.* The same can be said for gig workers, shift workers whose hours fluctuate unexpectedly, and self-employed workers.

Another complication arises with household changes and varying criteria for separate benefit schemes. A second adult in the household who joins the household but is not legally responsible for a child would not be included in the child's MAGI household or have her income considered. Confusion about household composition is compounded because other benefit programs, such as the Supplemental Nutrition Assistance Program ("SNAP") define household composition differently.

C. Language Access Creates Additional Barriers for Non-English Speakers

Limited English proficient speakers, like [redacted] run into additional roadblocks in applying for Medicaid. While counties are required to provide interpreters to assist with the application process and applicants should receive applications in Spanish, that does not always happen. *See* 42 C.F.R. § 435.905(b) (2016); § 435.907(g) (2013); Martin, *supra*, at 20, 32. Many Spanish-speaking applicants report "a lack of culturally competent and bilingual staff to assist them with enrollment." Martin, *supra*, at 20. These barriers are compounded with the "requisites and documentation needed to verify eligibility" and "often le[a]d to confusion about the process." *Id.* at 32. What may look like an intentional

misrepresentation on an application from a non-English speaker may in fact be something lost in translation.

These challenges, which have been simplified for the sake of brevity, may result in inaccurate reporting of income and household composition. Given that courts have permitted a showing of intent by simply showing that an applicant signed an application, [redacted] (noting that [redacted] attestation to the accuracy of her applications could lead a reasonable juror to find intent),[2] this Court's opinion effectively criminalizes impoverished people navigating these challenges, even if misrepresentations are inadvertent.

D. As a Result of Medicaid's Complexities, the Federal Scheme Accounts for Changes in Circumstances and Discrepancies in Application Information and Places the Burden on States to Navigate the Program

The Center for Medicare and Medicaid Services, the federal agency responsible for administering Medicaid, recognizes the difficulty of navigating the Medicaid system and the chaos that often surrounds the lives of eligible

[2] Anecdotally, Administrative Law Judges who hear benefits overpayment cases routinely rely on nothing more than a signed application to infer intent. This, in combination with the state's failure to timely investigate these claims, will result in harsh punishments for people simply trying to provide their families with healthcare coverage.

individuals. The rules have therefore been designed to allow for fluctuations and put the burden on state agencies to navigate its complexities.

First, any information on an application that appears to disqualify the applicant from one program or eligibility category does not preclude them from eligibility in another. An individual who is found "ineligible for the Medical Assistance Program in one category shall be evaluated under all other categories of eligibility." 10 CCR 2505-10 § 8.100.3.A.1; *see also* 42 C.F.R. § 435.916(f) (2012). Similarly, ineligible children in one category "shall be reviewed for all other Medical Assistance eligibility programs, the [CHP+] program and premium and cost-sharing assistance for purchasing private health insurance through the state insurance marketplace." 10 CCR 2505-10 § 8.100.3.A.2. Further, if a change that may impact eligibility is detected, an agency must give the beneficiary an opportunity to dispute the change and provide documentation of ongoing eligibility if necessary. 42 C.F.R. § 435.916(d). So even if a Medicaid beneficiary's income is determined to be different from initially reported, the beneficiary may still be eligible for the Medicaid program.

Second, because Medicaid policies allow for some flexibility, there are scenarios in which an applicant may be entitled to coverage even if her income is above the income threshold. The Affordable Care Act ("ACA") requires states to

apply a 5% "income disregard" as the last step to determine eligibility. 42 U.S.C. § 1396a(e)(14)(I)(i); 42 C.F.R. § 435.603(d)(4) (2016); 10 CCR 2505-10 § 8.100.4.D.1. An income disregard expands income eligibility above posted MAGI thresholds. 42 U.S.C. § 1396a(e)(14)(I)(i). The ACA regulations also implemented the "reasonable compatibility" policy, which reduces the need to collect additional documentation from an applicant by permitting states to accept attested income that differs substantially from the amount determined by an electronic data source, so long as total income meets requirements. 42 C.F.R. § 435.952(c)(1). Policymakers recognized that the greater the documentation burden on beneficiaries, the more likely it was that eligible people would be erroneously denied coverage. *See* Jennifer Wagner, *Reasonable Compatibility Policy Presents an Opportunity to Streamline Medicaid Determinations*, Center on Budget and Policy Priorities 1, 9 (Aug. 16, 2016), https://www.cbpp.org/sites/default/files/atoms/files/8-16-16health.pdf. Colorado has adopted a "reasonable compatibility threshold percentage of 20%." 10 CCR § 8.100.4.C.2.a.

Take a hypothetical example of an individual who applies for Medicaid and indicates she works two jobs for a total of sixty hours a month. In fact, the hypothetical applicant worked seventy-five hours one month, which the agency

discovers as it reviews her application and compares it to electronic data sources. This discrepancy does not necessarily disqualify the individual. If both the attested to income and the data source income are at or below the applicable FPL level (including the 5% income disregard under the ACA), the individual is eligible for (or entitled to) benefits. If the attested income is at or below the applicable FPL level (including the 5% income disregard under the ACA) and the data source income is within 20% of the attested to income, then the individual is eligible for (or entitled to) benefits without the need for additional documentation from the applicant.

All of this is to say that the information on an individual's application is merely a starting point for the state agency to determine eligibility. The burden is on the state agency to determine which Medicaid category, if any, the applicant qualifies for and to consider fluctuating circumstances in doing so. Through this process, there may be instances in which the application contains discrepancies, but that does not change an eligible individual's entitlement to Medicaid benefits.

III. The Court Overlooked the Realities of the County's Administration of the Medicaid Program

A. The Low Burden of Proof Will Result in Harsh Penalties for Eligible Individuals

The Court notes that placing the burden on the prosecution to determine eligibility may be unreasonable given the fraud investigator's testimony at [redacted] trial about the difficulty in doing so. [redacted] This conclusion rests on the faulty premise that counties are unable to accurately assess eligibility or surmise the value of Medicaid services rendered. It also contradicts federal requirements to make accurate determinations, as well as the state's recent actions clarifying the availability of corrective action plans and sanctions if counties do not comply with eligibility processing and other requirements. Colo. Dep't of Health Care Pol'y & Fin., Operational Memorandum 21-004 (Jan. 12, 2021), https://hcpf.colorado.gov/sites/hcpf/files/HCPF%20OM%2021-004%20Improvement%20Action%20and%20Corrective%20Action%20Plans_0.pdf; HCPF OM 21-005. However, central to a fraud investigator's role in the administrative context is determining whether applicants are eligible for benefits they apply for. And counties routinely provide evidence of paid claims and capitations to verify the Medicaid overpayments. Some Medicaid overpayment cases have even been dismissed for the county's failure to supply documentation

about the value of the benefits used, even with the lower evidentiary threshold. *See* § 24-4-105(7), C.R.S. (2019) (noting that burden of proof rests on the "proponent of the order" and requirements of proof conform with those in civil nonjury cases).[3]

Criminal prosecutions demand the strictest burden of proof in our justice system, and yet the Court's opinion appears to hold a criminal prosecutor to a lower standard than the government in an administrative case. *See Johnson v. People*, 2019 CO 17, ¶ 10 (noting that the prosecution must prove every element beyond a reasonable doubt and emphasizing the importance of the standard in the United States' criminal justice system). This low burden of proof for the prosecution to establish value will result in loss of liberty for individuals utilizing benefits for which they were entitled.

B. Untimely Investigations Drastically Increase the Value of Benefits Disbursed

It is routine practice for counties to fail to investigate overpayment claims in a timely fashion, which can cause the value of any overpayment to compound over

[3] To the dissent's point, [redacted] should have, at the bare minimum, been entitled to the benefits she received from May 2008 through May 2009. [redacted] Though the prosecution only offered evidence of the total benefits [redacted] received each *calendar* year, it was perfectly capable of itemizing the claims just as the counties do in the administrative context.

time. In this case, for example, [redacted] County waited two years to investigate this alleged fraud. (People's Opening Brief, p. 5 & n.4). In another case, the County waited four years to send an administrative notice and another ten years to enforce the notice. *See Arapahoe Cnty. Dep't of Human Servs. v. Velarde*, 2021 COA 25, ¶ 3. These are just two published appellate decisions, but it is a regular occurrence for counties to sit on information and investigate years after receiving such information despite their legal obligation to promptly investigate. 42 C.F.R. § 435.952(a); *see also Velarde*, ¶ 9 n.2 (noting that "[e]ven if a statute does not prescribe a period of limitations, agencies are expected to institute enforcement proceedings promptly"). The Court's total amount approach risks lengthy prison sentences for poor individuals who sign applications with inaccurate information, in part because of the county's failure to act on information it receives.

IV. The Court's Opinion Creates a Chilling Effect on Eligible Individuals

Because the Court's opinion will inevitably deter enrollment in Medicaid benefits, eligible individuals will avoid the program despite its sweeping positive effects on children's health. The program not only improves access to healthcare, but it also has long-term positive impacts on children's educational attainment and economic security.

Almost half of American children live in poverty or near poverty, and Medicaid and CHIP entitle low-income children to services that will ensure both early detection of their health problems and timely care to treat them. David Brown et al., *Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood*, 87 Review of Econ. Studies 792, 794-95 (Mar. 2020), https://academic.oup.com/restud/article/87/2/792/5538992. The impact of that care extends far into adulthood. Medicaid eligibility during childhood correlates with higher rates of high school graduation, college enrollment, and college graduation. *Id.* All of this leads to increased earning potential as children enter adulthood. For each year a child is enrolled in Medicaid, they see increased earning power as adults and pay more in federal taxes. *Id.*

Despite these favorable outcomes, the benefit may not outweigh the risk of a felony charge that families could face because of inaccurate information on the forty-page application or confusing redetermination forms. That deterrent effect is likely to be still greater in immigrant communities, as was seen after introduction of the now-invalidated federal public charge rule. Jennifer M. Haley et al., *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefits Receipt in 2019*, Urban Inst. 2-3 (June 2020), https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-

immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019_1.pdf. Close to ten percent of families with eligible children avoided Medicaid coverage in the wake of the introduction of the draft rule because of the potential that it might impact their legal status. *Id.* at 2.

The criminalization of inaccuracies and omissions deters enrollment and prevents families, and Colorado as a whole, from reaping the benefits of the Medicaid and CHIP programs.

CONCLUSION

Because the Court overlooked federal and state law critical to the accurate and just outcome in this case, amici support [redacted] petition for rehearing. People who are eligible for Medicaid are entitled to benefits and therefore have a possessory interest in such benefits. They should not be punished for utilizing services for which they were legally entitled. Accordingly, amici respectfully ask the Court to revisit its opinion and reject the total value approach.

Respectfully submitted,
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