



COMMITTEE ON **ENERGY & COMMERCE**

CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

May 29, 2020

To: Subcommittee on Oversight and Investigations Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “On the Front Line: How Governors are Battling the COVID-19 Pandemic”

On Tuesday, June 2, 2020, at 11:30 a.m. (EDT) via Cisco Webex online video conferencing, the Subcommittee on Oversight and Investigations will hold a hearing entitled, “On the Front Line: How Governors are Battling the COVID-19 Pandemic.” The hearing will examine states’ responses to the coronavirus disease 2019 (COVID-19) pandemic, including efforts to increase testing capacity.

I. BACKGROUND

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) announced the first reported case in the United States of a new coronavirus, an infectious disease later named coronavirus disease 2019, abbreviated as COVID-19.¹ COVID-19 can cause a range of mild to severe symptoms, with older adults and people with underlying medical conditions at higher risk of developing more severe COVID-19 complications, and people of color experiencing disproportionate effects of the disease.²

Health and Human Services (HHS) Secretary Alex Azar declared the disease a U.S. public health emergency ten days later on January 31.³ The first reported COVID-19 death in the United States was on February 28, though the death of a person known to have coronavirus

¹ Centers for Disease Control and Prevention, *First Travel-related Case of 2019 Novel Coronavirus Detected in United States* (Jan. 21, 2020) (press release).

² Centers for Disease Control and Prevention, *Symptoms of Coronavirus* (accessed May 29, 2020) (www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html); Kaiser Family Foundation, *Growing Data Underscore that Communities of Color are Being Harder Hit by COVID-19* (Apr. 21, 2020).

³ U.S. Department of Health and Human Services, *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus* (Jan. 31, 2020) (press release).

was later determined to have occurred on February 6.⁴ On March 13, two days after the World Health Organization (WHO) declared the disease a global pandemic, President Trump declared a national emergency and announced that HHS Assistant Secretary for Health Brett Giroir would oversee the coordination of U.S. COVID-19 testing efforts.⁵

As of May 28, there were 1,698,523 reported COVID-19 cases and 100,446 related deaths in the United States.⁶

II. U.S. COVID-19 TESTING AND RELATED CHALLENGES

There are two main categories of COVID-19 testing. The first category consists of viral tests, including molecular tests, and a new antigen test.⁷ Either of these can help diagnose active COVID-19 infections. The second category is comprised of antibody tests, also called serology tests, which can help determine if a person was previously exposed to the virus that causes COVID-19 by detecting antibodies found in a blood sample.⁸ A total of 15,766,114 tests in the United States had been reported to CDC as of May 28.⁹ These reported test numbers to CDC include both diagnostic tests for active infections and antibody tests; as to date, most states had not separated these two data sets.¹⁰ As noted by CDC, the positive test counts do not equal the number of positive cases, as an individual may have been tested more than once.¹¹

⁴ *1st Known U.S. COVID-19 Death Was Weeks Earlier Than Previously Thought*, NPR (Apr. 22, 2020).

⁵ *Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says*, NPR (Mar. 11, 2020); White House, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020); *Trump administration rolls out new coronavirus push, names HHS testing czar*, Politico (Mar. 13, 2020).

⁶ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Cases in the U.S.* (accessed May 29, 2020) (www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html).

⁷ Government Accountability Office, *Science and Tech Spotlight: COVID-19 Testing* (May 2020); Centers for Disease Control and Prevention, *Testing Data in the U.S.* (accessed May 29, 2020) (www.cdc.gov/coronavirus/2019-ncov/cases-updates/testing-in-us.html).

⁸ *Id.*

⁹ Centers for Disease Control and Prevention, *Testing Data in the U.S.* (accessed May 29, 2020) (www.cdc.gov/coronavirus/2019-ncov/cases-updates/testing-in-us.html).

¹⁰ *Id.*; Centers for Disease Control and Prevention, *CDC COVID Data Tracker: United States Laboratory Testing* (accessed May 29, 2020) (www.cdc.gov/covid-data-tracker/index.html)
Note: U.S. COVID-19 Testing Preliminary data disclaimer.

¹¹ Centers for Disease Control and Prevention, *Testing Data in the U.S.* (accessed May 29, 2020) (www.cdc.gov/coronavirus/2019-ncov/cases-updates/testing-in-us.html).

The first diagnostic test produced in the United States for COVID-19 was developed by CDC, which began shipping testing kits to public health laboratories on February 6 following an emergency use authorization (EUA) from the Food and Drug Administration (FDA) on February 4.¹² On February 12, CDC announced an issue with one of the reagents in the test that led to inconclusive results.¹³ CDC issued guidelines on how states could correct the previously faulty tests and the agency released a new viral test on February 28.¹⁴

While many public health laboratories initially struggled to verify the CDC test, leading to delays in testing, commercial laboratories, individual state laboratories, and test manufacturers have since developed and received FDA EUAs for additional tests, which have made up the vast majority of COVID-19 tests conducted in the United States.¹⁵ The first commercial test received authorization from FDA on March 12.¹⁶

In addition to problems related to the availability of tests, CDC's initial guidance as to who should be tested for COVID-19 was narrow, limited only to those who met specific criteria—those with a fever and other symptoms of lower respiratory illness, as well as a history of recent travel to China or contact with someone with a confirmed COVID-19 diagnosis.¹⁷ Since first issuing its initial health provider guidance on January 17, CDC has continued to revise and expand its recommended testing criteria, most recently for viral tests on May 3 and for antibody testing on May 25.¹⁸

¹² *The US decided to make its own coronavirus test, but the process was plagued by errors and delays. Here's a timeline of what went wrong*, Business Insider (Mar. 11, 2020); U.S. Food and Drug Administration, *Emergency Use Authorization* (accessed May 29, 2020) (www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization).

¹³ Centers for Disease Control and Prevention, *Transcript for CDC Telebriefing: CDC Update on Novel Coronavirus* (Feb. 12, 2020) (press briefing transcript).

¹⁴ *Amid testing concerns, US officials unveil new coronavirus test kits and streamline commercial development*, CNBC (Feb. 28, 2020).

¹⁵ *Inside America's Testing Unending Testing Snafu*, Politico (Apr. 22, 2020).

¹⁶ U.S. Food and Drug Administration, *Emergency Use Authorization* (accessed May 29, 2020) (www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization).

¹⁷ Centers for Disease Control and Prevention, *Update and Interim Guidance on Outbreak of 2019 Novel Coronavirus (2019-nCoV) in Wuhan, China*, Health Update CDCHAN-00426 (Jan. 17, 2020).

¹⁸ Centers for Disease Control and Prevention, *Update and Interim Guidance on Outbreak of 2019 Novel Coronavirus (2019-nCoV) in Wuhan, China*, Health Update CDCHAN-00428 (Feb. 28, 2020); Centers for Disease Control and Prevention, *Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19)* (accessed May 29, 2020) (www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html#otherChanges); *America Isn't Testing for the Most Alarming Coronavirus Cases*, The Atlantic (Mar. 13, 2020).

Public health officials believe that the absence of robust and earlier COVID-19 testing in the United States led to a growth in cases.¹⁹ Notably, in addition to the initial technical flaw in the CDC test and its narrow testing criteria, shortages of testing supplies—such as swabs, reagents, and personal protective equipment—further contributed to testing delays.²⁰ Governors and public health officials have stated that these challenges and public confusion continue to limit their ability to increase testing and control the spread of the virus.²¹

III. COVID-19 CONTACT TRACING CAPACITY

In coordination with testing, there is consensus among public health officials that contact tracing, a strategy that has been used to control infectious disease outbreaks for decades, is key to preventing the spread of COVID-19.²² In contact tracing, public health staff provide support to patients while working to identify contacts the patient had when they might have been infectious, encouraging the patient and their contacts to avoid exposing others to the disease.²³ Contact tracing is a specialized, labor-intensive process, and its effectiveness requires individuals who are trained to understand patient confidentiality, are equipped with crisis counseling skills, and are culturally competent for the communities they are serving.²⁴

Bipartisan public health leaders, including former Centers for Medicare & Medicaid Services (CMS) Acting Administrator Andy Slavitt and former FDA Commissioner Scott Gottlieb, have estimated that the contact tracing workforce will need to grow by 180,000 workers until an effective COVID-19 vaccine is widely deployed, an effort they estimate will require \$12 billion in funding.²⁵ These experts also recommend funding to support isolation of exposed individuals and income support for those who must miss work due to time spent in isolation.²⁶

¹⁹ *The Lost Month: How a Failure to Test Blinded the U.S. to COVID-19*, New York Times (Mar. 28, 2020).

²⁰ *Id.*; *Testing Remains Scarce as Governors Weigh Reopening States*, New York Times, (Apr. 25, 2020).

²¹ *Testing Remains Scarce as Governors Weigh Reopening States*, New York Times, (Apr. 25, 2020); *As coronavirus testing expands, a new problem arises: Not enough people to test*, Washington Post (May 17, 2020).

²² Centers for Disease Control and Prevention, *Contact Tracing: Part of a Multipronged Approach to Fight the COVID-19 Pandemic* (Apr. 29, 2020).

²³ *Id.*

²⁴ *Id.*

²⁵ *Ex-Officials Call for \$46 Billion For Tracing, Isolating in Next Coronavirus Package*, NPR News (Apr. 27, 2020).

²⁶ *Id.*

IV. COVID-19 SUPPLY NEEDS AND SHORTAGES

Beyond testing supplies, states have also experienced severe shortages in other critical medical supplies, such as ventilators, respirators, gloves, protective gowns, and other types of personal protective equipment (PPE). An April 2020 report from the HHS Office of Inspector General, which surveyed 323 hospitals around the country, found that widespread shortages of PPE were putting both health care workers' and patients' lives at risk.²⁷ The report also found that hospitals were struggling with certainty regarding the availability of medical supplies from the Federal Government.²⁸

In late March, the Administration confirmed that the Strategic National Stockpile (SNS), control of which had moved from the Assistant Secretary for Preparedness and Response to the Federal Emergency Management Administration (FEMA) earlier in the month, was nearly depleted.²⁹ A new initiative "Project Airbridge," a collaboration with six U.S. medical supply companies, was announced at the end of March.³⁰ Under this initiative, FEMA covered the cost of flying overseas medical supplies into the United States, in exchange for the companies agreeing to sell half their cargo in geographic hot spots across the country.³¹ On May 15, the Administration announced it would wind down "Project Airbridge" in the coming weeks.³² Some have cautioned this might be premature, as frontline workers continue to experience PPE shortages.³³

V. THE ADMINISTRATION'S TESTING STRATEGY

On April 27, the White House released a testing and rapid response overview blueprint entitled, "Opening Up America Again."³⁴ The blueprint indicates that states are responsible for

²⁷ U.S. Department of Health and Human Services, Office of Inspector General, *Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23–27, 2020* (OEI-06-20-00300) (April 2020).

²⁸ *Id.*

²⁹ *U.S. emergency medical stockpile nearly out of protective gear as demand rises – officials*, Reuters (Mar. 31, 2020); Office of the Assistant Secretary for Preparedness and Response, *About the Strategic National Stockpile* (accessed May 29, 2020) (www.phe.gov/about/sns/Pages/about.aspx).

³⁰ *White House's pandemic relief effort Project Airbridge is swathed in secrecy and exaggerations*, Washington Post (May 8, 2020).

³¹ *Id.*

³² *Trump administration winds down 'Project Airbridge' effort to import medical supplies*, CNN (May 15, 2020).

³³ *Jared Kushner's PPE-supply program, 'Project Airbridge,' is ending even though frontline workers across the country still experience shortages*, Business Insider (May 12, 2020).

³⁴ White House, *Statement from the Press Secretary* (Apr. 27, 2020) (press release).

the development and implementation of COVID-19 testing plans, public monitoring, and rapid response programs to include contact tracing.³⁵ According to the blueprint, the Administration will support states' access to enough tests to screen only two percent of each state's residents.³⁶ The blueprint also states that the Federal Government will provide guidance and assistance to the states, including deployment of 10 to 12 CDC staff to each state to assist with contact tracing.³⁷ However, the blueprint does not include detailed information on specific testing goals or plans to meet defined benchmarks.

On May 24, as required by the Paycheck Protection Program and Health Care Enhancement Act, HHS issued a report to Congress outlining the Administration's national testing strategy.³⁸ Like the blueprint, the Administration's testing strategy indicates that states are primarily responsible for implementing diagnostic testing, and it calls for each state to test at least two percent of its population in May and June.³⁹ According to the testing strategy, the Federal Government will acquire 100 million swabs and tubes of viral transport media to be distributed to states by request.⁴⁰ Some experts note, however, that this may force states to compete with one another for testing supplies and caution that the two-percent benchmark is too low of a testing rate to contain the outbreak.⁴¹

VI. STATES' ACTIONS AND COVID-19 IMPACTS

CDC found that during a three-week period from late February to early March, COVID-19 cases increased 1,000 times over as communities began implementing a range of mitigation interventions to try to reduce the spread of the virus and control the impact on health care systems.⁴² Forty-four states and the District of Columbia (DC), for example, implemented stay

³⁵ White House, *Opening Up America Again Testing Blueprint* (Apr. 27, 2020).

³⁶ *Id.*

³⁷ *Id.*

³⁸ P.L. 116-139; U.S. Department of Health and Human Services, *COVID-19 Strategic Testing Plan* (May 24, 2020).

³⁹ *Id.*; *Administration leaves testing responsibility to states in report to Congress*, Washington Post (May 24, 2020).

⁴⁰ U.S. Department of Health and Human Services, *COVID-19 Strategic Testing Plan* (May 24, 2020).

⁴¹ *White House unveils blueprint to expand state testing as governors weigh lifting stay-at home orders*, ABC News (Apr. 27, 2020); *'This Is Not the Hunger Games': National Testing Strategy Draws Concerns*, New York Times (May 25, 2020).

⁴² Centers for Disease Control and Prevention, *Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24–April 21, 2020*, MMWR 69(18);551–556 (May 8, 2020).

at home orders during the pandemic.⁴³ Forty-five states and DC also had non-essential business closure orders in place.⁴⁴ These social distancing measures are being eased across the country. As of May 28, 29 states have eased or lifted their stay at home orders, and among states that had closed non-essential businesses, all but Illinois and DC are allowing some or all businesses to reopen.⁴⁵ Schools, however, currently remain closed, closed for the school year, or recommended to be closed everywhere except Montana.⁴⁶

Since the spread of COVID-19 in the United States and efforts to contain it, nearly 41 million people have filed unemployment claims.⁴⁷ Experts note, however, that this number may be even higher as some people may have marginal employment or have not filed for benefits.⁴⁸ Unemployment rates have varied across the country. In Michigan, for instance, the unemployment rate reached 22 percent in April, an all-time high for the state in the post-war era.⁴⁹ While the comparable rate was lower in Arkansas, at 10.2 percent, it still indicates a seven-percentage point increase in just two months.⁵⁰

New CDC estimates show that nearly 31 million Americans did not have health insurance before the pandemic.⁵¹ In the three months since the COVID-19-related shutdowns first took place, experts estimate that an additional 27 million people have potentially lost their workplace insurance coverage.⁵² Among these, nearly six million people are likely not eligible for subsidized health coverage.⁵³ Health coverage loss and eligibility for new coverage varies by state, depending on the underlying employment industries and status of Medicaid expansion.⁵⁴

⁴³ Kaiser Family Foundation, *State Data and Policy Actions to Address Coronavirus* (May 28, 2020).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *2.1 Million New Unemployment Claims 2.1 Million New Unemployment Claims Filed Last Week, as Workers Still Struggle to Get Benefits*, Politico (May 28, 2020).

⁴⁸ Kaiser Family Foundation, *Eligibility for ACA Health Coverage Following Job Loss* (May 13, 2020).

⁴⁹ *Michigan unemployment rate tops 22%, worse than Great Recession*, The Detroit News (May 21, 2020).

⁵⁰ *'We still have work to do here in Arkansas: ' Gov. Hutchinson on high unemployment rate*, ABC 7 KATV (May 22, 2020).

⁵¹ Centers for Disease Control and Prevention, *Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, January–June 2019* (May 2020).

⁵² Kaiser Family Foundation, *Eligibility for ACA Health Coverage Following Job Loss* (May 13, 2020).

⁵³ *Id.*

⁵⁴ *Id.*

VII. WITNESSES

The following witnesses have been invited to testify:

Governor Jared Polis
State of Colorado

Governor Gretchen Whitmer
State of Michigan

Governor Asa Hutchinson
State of Arkansas