

March 18, 2020

Dr. Robert R. Redfield  
Director  
Centers for Disease Control and Prevention  
1600 Clifton Road  
Atlanta, Georgia 30329

Dear Dr. Redfield,

I write to you today to request information about the U.S. Centers for Disease Control and Prevention's (CDC) plans to use its full legal authority to ensure the health and safety of all Americans. As state and local public health professionals race to combat the proliferation of coronavirus disease 2019 (COVID-19), the federal government has a responsibility to ensure that all Americans have access to COVID-19 testing, treatments, and medical care. Accordingly, I request information on the CDC's existing authorities to cover costs associated with treating and preventing COVID-19, as well as its plans to use those authorities as the COVID-19 pandemic continues.

Since the initial outbreak began in late 2019, COVID-19 has been declared a global pandemic by the World Health Organization.<sup>1</sup> Over 185,000 cases have been confirmed across the globe, including several thousand in the United States, with many more suspected cases that have not been revealed because of lack of testing.<sup>2</sup> This pandemic comes a few months after U.S. Census Bureau reported that the number of uninsured Americans increased by nearly two million from 2017 to 2018, bringing the total to 27.5 million.<sup>3</sup> Millions more are under-insured because they are enrolled in short-term, limited duration insurance or "junk plans." Despite this accelerating public health emergency, COVID-19 testing is unaffordable for those who are uninsured.<sup>4</sup> Congress is taking steps, to provide free COVID-19 diagnostic tests to the American public, including under- and uninsured Americans. H.R. 6201, the *Families First Coronavirus Response*

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<sup>1</sup> World Health Organization, "COVID-19, Situation Report – 51," March 11, 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57\\_10](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10).

<sup>2</sup> World Health Organization, "COVID-19, Situation Report – 52," March 11, 2020, [https://www.who.int/docs/default-source/coronaviruse/20200312-sitrep-52-covid-19.pdf?sfvrsn=e2bfc9c0\\_2](https://www.who.int/docs/default-source/coronaviruse/20200312-sitrep-52-covid-19.pdf?sfvrsn=e2bfc9c0_2).

<sup>3</sup> United States Census Bureau, "Health Insurance Coverage in the United States: 2018," Edward R. Berchick, Jessica C. Barnett, Rachel D. Upton, November 2019, <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf>.

<sup>4</sup> Healthline, "What Is the Cost of Getting Tested and Treated for the Coronavirus," March 9, 2020, <https://www.healthline.com/health-news/if-you-get-the-coronavirus-what-will-it-cost-you>.

Act, would require public and private insurers to cover COVID-19 testing, as well as the provider visits necessary to acquire the testing, with no cost sharing.<sup>5</sup>

As COVID-19 continues to spread, diagnostic testing will remain critically important—but so will caring for and treating individuals with the virus. The treatment of COVID-19-infected individuals will be expensive, creating significant financial barriers for Americans seeking care. But the CDC has the authority to address this concern and ensure that all Americans can receive testing and treatment for COVID-19. Under the *Public Health Service Act*, the CDC Director has significant authority to take federal action to “prevent the spread of any...communicable disease.”<sup>6</sup> In particular the CDC Director may, at their “sole discretion,” “authorize payment for the care, and treatment of individuals subject to medical examination, quarantine, [and] isolation.”<sup>7</sup> This authority allows payment to be authorized for any “individual is reasonably believed to be infected with a quarantinable communicable disease ... [that] constitutes a probable source of infection” if that individual constitutes a probable source of interstate contamination.<sup>8</sup> Given the infectious nature of COVID-19, this provision would appear to apply to any individual who has or may be at risk of contracting the virus.

This means at any time, the CDC could, if these costs are not covered by any other insurance,<sup>9</sup> pay all costs for testing and treatment of COVID-19 for any American who has or may have coronavirus—including “costs for providing ambulance or other medical transportation.”<sup>10</sup> Using this authority would complement legislative actions taken by Congress to cover the costs of diagnostic testing. If utilized by CDC, this authority could be an invaluable tool for millions of Americans who may not be able to afford testing and treatment, and it could help prevent the spread of COVID-19.

Last week you had an extensive exchange with Representative Katie Porter during a House Committee on Oversight and Reform Hearing on Coronavirus Preparedness and Response in which you indicated that you would use this authority:<sup>11</sup>

Rep Porter: Do you want to know who has coronavirus and who doesn't?  
Dr. Redfield: Yes  
Rep: Porter: Not just rich people, but everybody who might have the virus?  
Dr. Redfield: All of America.  
Rep. Porter: Are you familiar with ...the Code of Federal Regulations that applies to CDC ... 42 CFR § 71.30?....  
Dr. Redfield: That, I know about....

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<sup>5</sup> H.R. 6201, Families First Coronavirus Response Act, <https://www.congress.gov/bill/116th-congress/house-bill/6201/all-info>.

<sup>6</sup> 42 CFR § 70.2.

<sup>7</sup> 42 CFR § 70.13.

<sup>8</sup> 42 CFR § 70.6(a).

<sup>9</sup> 42 CFR § 70.13(c) states that “[p]ayment shall be secondary to the obligation of the United States or any third-party... and shall be paid by the Director only after all third-party payers have made payment in satisfaction of their obligations.”

<sup>10</sup> *Id.*

<sup>11</sup> House Committee on Oversight and Reform, Hearing on Coronavirus Preparedness and Response, March 12, 2020, <https://oversight.house.gov/legislation/hearings/coronavirus-preparedness-and-response>.

Rep. Porter: Great, so you're familiar. Dr. Redfield, will you commit to the CDC, right now, using that existing authority to pay for diagnostic testing, free to every American, regardless of insurance?

Dr. Redfield: Well, I can say that we're going to do everything to make sure everybody can get the care they need --

Rep. Porter: Nope, not good enough ...yes or no?

Dr. Redfield: What I'm going to say is, I'm going to review it in detail with CDC and the department --

Rep. Porter: ...Will you commit to invoking your existing authority under 42 CFR § 71.30 ...?

Dr. Redfield: What I was trying to say is that CDC is working with HHS now to see how we operationalize that.

Rep. Porter: Dr. Redfield, I hope that that answer weighs heavily on you, because it is going to weigh very heavily on me and on every American family.

Dr. Redfield: Our intent is to make sure that every American gets the care and treatment they need at this time in this major epidemic and I am currently working with HHS to see how to best operationalize it.

Rep. Porter: Dr. Redfield, you don't need to do any work to operationalize. You need to make a commitment to the American people so they come in to get tested. You can operationalize the payment structure tomorrow.

Dr. Redfield: I think you're an excellent questioner, so my answer is yes.... It's a very important public health [principle] that those individuals that are in the shadows can get the health care they need during this time of us responding to this outbreak.

This appeared to be a clear answer with no ambiguity. But then in your closing statement, you appeared to walk back this commitment, saying that:

In my comments today I want to just clarify that we're currently examining all avenues to try to ensure that uninsureds have access to testing and treatment. And we're encouraging the use of the Federally Qualified Health Centers that can do this at reduced or free and we will continue to update both the Congress and the public on all available resources for this population.<sup>12</sup>

It is critical that you clarify your response and your plans to use this existing CDC authority in order to ensure all Americans who have or fear that they may have COVID-19 can afford testing and treatment. I therefore request answers to the following questions no later than March 31, 2020.

1. Please clarify whether you will use CDC's authority under 42 CFR Part 70.13 to "authorize payment for the care, and treatment of individuals subject to medical examination, quarantine, [and] isolation" to cover all costs (with the exception of those not already covered by insurance) for testing and treatment for COVID-19.

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<sup>12</sup> House Committee on Oversight and Reform, Hearing on Coronavirus Preparedness and Response, March 12, 2020, <https://oversight.house.gov/legislation/hearings/coronavirus-preparedness-and-response>.

- a. Specifically, for what aspects of COVID-19 testing, treatment, and care does the CDC believe it has the authority to authorize payment? Which of these aspects does the CDC anticipate, or is the CDC considering, utilizing?
  - b. For what aspects of COVID-19 testing, treatment, and care does the CDC believe it does *not* have the authority to authorize payment? Why does the CDC believe this?
  - c. If the CDC is not planning on utilizing this authority, please explain why not.
2. If the CDC plans to use this authority, does the agency have an anticipated timeline for when the authority will go into effect?
  3. How will you “operationalize” the CDC’s use of its authority under 42 CRR part 70.13 to cover the cost of testing and treatment for patients?

I appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", with a long horizontal flourish extending to the right.

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Elizabeth Warren  
United States Senate