



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

August 13, 2020

The Honorable Alex M. Azar, II
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

Over the last two weeks, I have received from the Department of Health and Human Services (HHS) several letters in response to letters sent by the Committee beginning in March of this year. The letter sent on August 4, 2020, by Dr. Robert Redfield, Director of the Centers for Disease Control and Prevention, regarding the ban on travel to the U.S. from Europe includes an enclosure that provides links to numerous plans and procedures responsive to several of the requests enumerated in the Committee's letter of March 12, 2020.¹ Dr. Redfield's letter also directly addresses another of the Committee's requests, stating that "HHS and its operating divisions do not have a list of insurers that have waived COVID-19 treatment-related cost sharing."² I appreciate the information provided by Dr. Redfield.

Unfortunately, two of the letters sent to the Committee by HHS in recent days fail to provide any of the documents requested by the Committee more than four months ago—or to address whether there exist within the Department documents that are responsive to the Committee's requests. These responses are both wholly unacceptable and disrespectful to the Committee, and they continue to impede the Committee's oversight of the Federal response to a worsening public health crisis that has now claimed more than 160,000 lives in the United States.

HHS' refusal to provided documents requested by the Committee comes on the heels of the Department's refusal to provide a witness for the Committee's hearing entitled "Examining the National Response to the Worsening Coronavirus Pandemic: Part II" held on July 22, 2020. I note that HHS refused to send a witness to that hearing even though it was held in-person at the Administration's request and the Department received notice of the Committee's request for a Departmental witness weeks before the hearing was convened.

¹ Letter from Director Robert R. Redfield, M.D., Centers for Disease Control and Prevention, to Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 4, 2020).

² *Id.*

Below, I describe the severe deficiencies of two of the Department’s recent letters to the Committee, as well as the Committee’s expectations for the provision of documents responsive to the Committee’s previous requests.

Letter Regarding Federal PPE Distributions to Nursing Homes

On July 31, 2020, HHS transmitted via email a letter that was undated but that was electronically signed on July 31, 2020, by Dr. Robert Kadlec, the Assistant Secretary for Preparedness and Response. This letter states that it “provides the response” to the Committee’s letter of April 17, 2020, regarding the provision of Personal Protective Equipment (PPE) to nursing and long-term care facilities.³ The Committee’s letter of April 17 to HHS requested that four categories of documents be provided to the Committee by April 29, including:

1. Evaluations from any source of the extent of the need for PPE and other essential medical supplies and equipment at long-term care and nursing homes from January 1, 2020 through the present;
2. Prioritization of the distribution of supplies to long-term care and nursing homes relative to any other type of healthcare facility through any federally directed distribution network, including sales by distributors of supplies moved on flights conducted as part of Project Airbridge; and
3. Cumulative requests for PPE from long-term care and nursing homes—or from any source on their behalf—and the distribution of PPE to such facilities from January 1, 2020 through the present.⁴

In addition, the Committee’s letter requested “all documents referring or relating to plans to establish, pursuant to the Guidelines Opening Up America Again, sentinel surveillance sites in locations—including long-term care and nursing homes—that serve older individuals in order to screen for asymptomatic cases and trace contacts of COVID positive results.”⁵

The letter from Assistant Secretary Kadlec was not accompanied by any documents, and the letter makes no reference to the Committee’s document requests. I note that the letter explains that once states are approved to receive assistance—including PPE—from HHS, states are “responsible for distributing the supplies to areas in need based on established distribution plans.” The letter further indicates that “HHS does not allocate SNS [Strategic National Stockpile] assets to nursing homes or long-term care facilities; states determine the appropriate

³ Letter from Assistant Secretary for Preparedness and Response Robert P. Kadlec, M.D., Department of Health and Human Services, to Chairman Bennie G. Thompson, Committee on Homeland Security (Undated).

⁴ Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Secretary Alex M. Azar, II, Department of Health and Human Services, et. al. (April 17, 2020) (online at <https://homeland.house.gov/imo/media/doc/HHS%20FEMA%20re%20Nursing%20Home%20Supplies.pdf>).

⁵ *Id.*

allocation within their communities.”⁶ It is unclear if this statement was meant in any way to convey any type of information regarding whether the Department possesses documents responsive to the Committee’s requests.

As such, the Committee requests that on or before September 4, 2020, HHS provides all of the documents requested in the Committee’s letter of April 17, 2020. If HHS has no documents responsive to any one of the Committee’s requests, it should state that finding in written form together with an explanation of the steps taken by HHS to search for responsive documents.

Letter Regarding Contracts for PPE and Other Essential Medical Supplies

Via email on August 7, 2020, HHS transmitted a letter that the email states is “HHS’ response to the Chairman’s March 23 letter regarding the availability of PPE and other medical equipment.”⁷ The letter attached to the email, which is dated August 5, 2020, and signed by Dr. Kadlec, states that it responds to the Committee’s letter “regarding the availability of PPE and other critical medical supplies from the federal government.”⁸ The Committee’s letter of March 23 requested five categories of documents, including copies of solicitations and contracts for PPE as well as documents related to assessments of the need for and the distribution of PPE.⁹ Dr. Kadlec’s letter was not accompanied by any documents, although the letter describes several contracting efforts that would presumably have generated documents that would be responsive to the Committee’s requests—and publicly available databases indicate that HHS did indeed complete numerous contracts within the time frame set forth in the Committee’s letter.

The Committee requests that on or before September 4, 2020, HHS provides all of the documents requested in the Committee’s letter of April 17, 2020. If HHS has no documents responsive to any one of the Committee’s requests, it should state that finding in written form together with an explanation of the steps taken by HHS to search for responsive documents.

Conclusion

The Federal response to the coronavirus pandemic has obviously been wholly inadequate to the challenge we have faced. As a result, today, we now have more than 5 million cases of this disease in the U.S. and it appears to be spreading in a nearly uncontrolled manner in many areas of the country. Against this backdrop, the Committee is profoundly troubled by the continuing refusal of HHS to provide even the most basic documentation regarding the

⁶ Letter from Assistant Secretary for Preparedness and Response Robert P. Kadlec, M.D., Department of Health and Human Services, to Chairman Bennie G. Thompson, Committee on Homeland Security (Undated).

⁷ Email from Staff, Department of Health and Human Services, to Staff, Committee on Homeland Security (Aug. 7, 2020).

⁸ Letter from Assistant Secretary for Preparedness and Response Robert P. Kadlec, M.D., Department of Health and Human Services, to Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 5, 2020).

⁹ Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Acting Secretary Chad F. Wolf, Department of Homeland Security, and Secretary Alex M. Azar, II, Secretary, Department of Health and Human Services (March 23, 2020) (online at <https://homeland.house.gov/imo/media/doc/DHS%20HHS%20PPE%20Letter.pdf>).

procurement and distribution of PPE to states and to facilities with unique and urgent needs—including nursing and long-term care facilities—as well as the Department’s refusal to testify at an in-person Committee hearing. The Committee expects that HHS will comply with the requests and deadlines set forth in this letter. However, if HHS continues to impede the Committee’s investigation, the Committee is prepared to take additional steps to obtain the documents and information it requires to conduct oversight of the Federal response to the coronavirus pandemic.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive style with a large initial "B" and a long, sweeping tail.

BENNIE G. THOMPSON
Chairman