



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

April 17, 2020

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

The Honorable Peter T. Gaynor
Administrator
Federal Emergency Management Agency
500 C Street S.W.
Washington, D.C. 20024-2523

Dear Secretary Azar and Administrator Gaynor:

I write today to inquire about the provision of personal protective equipment (PPE) and other essential medical supplies and equipment to long-term care and nursing homes. The residents of these facilities are at particular risk from COVID-19—and these facilities have been the sites of some of the most severe infection clusters in the country. Unfortunately, like other healthcare facilities, long-term care and nursing homes appear to be experiencing severe shortages of PPE and other essential medical supplies (including testing kits), putting both residents and staff at risk.

I have received numerous inquiries and expressions of concern from constituents who are deeply worried about loved ones facing the unique risks of contracting COVID-19 in long-term care and nursing homes. Like so many aspects of the Administration's approach to acquiring and distributing PPE and other medical supplies and equipment, the specific processes for distributing PPE to long-term care and nursing homes remains a mystery shrouded in confusion.

According to the National Center for Health Statistics, in 2016, there were approximately 15,600 nursing homes in the United States providing approximately 1.7 million licensed beds.¹ The Centers for Disease Control and Prevention (CDC) has warned that "once COVID-19 has been introduced into a long-term care facility, it has the potential to result in high attack rates among

¹ Centers for Disease Control and Prevention—National Center for Health Statistics, Nursing Home Care (March 11, 2016) (online at <https://www.cdc.gov/nchs/fastats/nursing-home-care.htm>).

residents, staff members, and visitors.”² The *New York Times* reports it “has identified more than 2,500 nursing homes and other long-term care facilities across the United States with coronavirus cases” and that “[m]ore than 21,000 residents and staff members at those facilities have contracted the virus, and more than 3,800 have died.” The *Times* warns that “those figures are an undercount.”³

Looking just at the Commonwealth of Virginia, according to data released by the Virginia Department of Health examining outbreaks by setting, more than half of all the outbreaks of COVID-19 in that state have occurred in long-term care facilities.⁴ A public health official in Virginia has also warned that, “What we’re seeing in congregate care facilities is that asymptomatic spread is an even more significant part of transmission than we realized.”⁵

The residents of long-term care and nursing homes are usually elderly, and they often have serious underlying health conditions that place them in the highest risk categories for both morbidity and mortality. An expert in geriatric care with the Johns Hopkins University has warned:

“Older people and people with multiple co-morbidities tend to have more severe symptoms if they contract COVID-19. Residents of nursing homes tend to be more frail, have more functional limitations, and have more chronic and complex conditions than other older adults. Based on the data that we have about COVID-19, that puts nursing home residents at highest risk for serious illness as a result of exposure.”⁶

The employees of long-term care and nursing homes—like all healthcare workers—are at significantly higher risk of acquiring COVID-19, but because of unique factors, they may also be at increased risk of transmitting the disease. As one article warns:

“people working in long-term care facilities often have lower incomes, may be taking public transportation to work, may live in more densely populated homes and may live with people who have jobs such as grocery store clerks and delivery drivers that expose them to a lot of people. That means health care workers may spread infections in the

² Centers for Disease Control and Prevention, *COVID-19 in a Long-Term Care Facility — King County, Washington, February 27–March 9, 2020* (March 27, 2020) (online at www.cdc.gov/mmwr/volumes/69/wr/mm6912e1.htm).

³ New York Times, *Coronavirus Outbreak at Virginia Nursing Home Spirals Out of Control as 45 Die* (April 14, 2020) (online at www.nytimes.com/2020/04/14/us/coronavirus-nursing-homes.html).

⁴ Virginia Department of Health, *COVID-19 in Virginia* (April 16, 2020) (online at www.vdh.virginia.gov/coronavirus/).

⁵ National Public Radio, *Half Of Virginia's Coronavirus Outbreaks Are In Long-Term Care Facilities* (April 14, 2020) (online at www.npr.org/sections/coronavirus-live-updates/2020/04/14/834453156/half-of-virginias-coronavirus-outbreaks-are-in-long-term-care-facilities).

⁶ Johns Hopkins University Hub, “COVID-19 Poses Particular Challenges for Nursing Homes” (April 1, 2020) (online at <https://hub.jhu.edu/2020/04/01/alice-bonner-coronavirus-nursing-homes/>).

community, and they may bring infections from the community into the nursing home, particularly if they don't have paid sick leave.”⁷

In recent guidance, the Centers for Medicare & Medicaid Services (CMS) urges that **“because of the ease of spread in long-term care facilities and the severity of illness that occurs in residents with COVID-19,”** state and local leaders should **“consider the needs of long-term care facilities with respect to supplies of PPE and COVID-19 tests.”** The CMS guidance also instructs that nursing homes **“should ensure all staff are using appropriate PPE when they are interacting with patients and residents, to the extent PPE is available and per CDC guidance on conservation of PPE.”** CMS guidance states that “all long-term care facility personnel should wear a facemask while they are in the facility” and “[f]ull PPE should be worn per CDC guidelines for the care of any resident with known or suspected COVID-19 per CDC guidance on conservation of PPE.”⁸

However, as documented in numerous media reports, long-term care and nursing homes are facing the same shortages of PPE that all healthcare facilities are facing.⁹ According to U.S. News & World Report, the American Health Care Association/National Center for Assisted Living has stated, “We desperately need more PPE in nursing homes and assisted living communities, priority testing for our health care workers and residents, and the ability to quickly recruit and hire more staff.”¹⁰

In late March, FEMA announced the creation of a “Supply Chain Stabilization Task Force.” This Task Force’s “primary effort is to increase the flow of medical supplies and equipment to healthcare workers on the front line” and to “increase the overall level of surge support to ‘hot spots’ as they arise.” One prong of the strategy employed by the Task Force is “expediting movement of critical supplies from the global market to medical distributors in various locations across the U.S.,” including through Project Airbridge. Through the Airbridge, FEMA is paying for flights to move shipments of PPE from overseas to the U.S. According to FEMA, it has agreements with distributors whose PPE and other supplies are moved on the flights under which “50 percent of the supplies on each plane are targeted by the distributors to customers in areas of greatest need.” The remaining supplies are “infused into the broader U.S. supply chain” and “[p]rioritization is given to hospitals, health care facilities, and nursing homes around the country.”¹¹

⁷ U.S. News & World Report, *Coronavirus Has Killed Thousands at U.S. Nursing Homes* (April 14, 2020) (online at www.usnews.com/news/health-news/articles/2020-04-14/coronavirus-has-killed-thousands-at-us-nursing-homes).

⁸ Centers for Medicare & Medicaid Services, *COVID-19 Long-Term Care Facility Guidance* (April 2, 2020) (online at www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf).

⁹ See e.g. NBC News, *Nursing homes overwhelmed by coronavirus: ‘It is impossible for us to stop the spread’* (April 2, 2020) (online at www.nbcnews.com/news/us-news/nursing-homes-overwhelmed-coronavirus-it-impossible-us-stop-spread-n1174171).

¹⁰ U.S. News & World Report, *Coronavirus Has Killed Thousands at U.S. Nursing Homes* (April 14, 2020) (online at www.usnews.com/news/health-news/articles/2020-04-14/coronavirus-has-killed-thousands-at-us-nursing-homes).

To enable the Committee to understand the need for PPE among long-term care and nursing homes and how PPE is prioritized and distributed to such facilities—as well as to enable us to begin to answer the many questions we have received from our constituents—I write to request that FEMA provide no later than April 29, 2020, all documents referring or relating to:

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.

Finally, I note that the “Guidelines Opening Up America Again” issued by the Trump Administration identify among the “Core State Preparedness Responsibilities” the need to “Ensure sentinel surveillance sites are screening for asymptomatic cases and contacts for COVID+ results are traced” at a variety of locations, including “locations that serve older individuals.”¹² Given this instruction, I request that you also provide by April 29, 2020, 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.

Thank you for your attention to this matter.

Sincerely,



BENNIE G. THOMPSON
Chairman

¹¹ Federal Emergency Management Agency, Coronavirus (COVID-19) Pandemic: Supply Chain Stabilization Task Force (March 30, 2020) (online at www.fema.gov/fema-supply-chain-stabilization-task-force).

¹² White House, Guidelines Opening Up America Again (accessed on April 17, 2020) (online at www.whitehouse.gov/openingamerica/#criteria).

Responding to Requests for Documents from the Committee on Homeland Security

Produce all documents responsive to the Committee's request that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.

In the event that compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by the specified return date. Together with any partial production, include (1) an explanation of why full compliance by the specified date was not possible and (2) identification of the date by which full compliance will be achieved.

In addition:

1. The fact that any other person or entity also possesses non-identical or identical copies of the same documents requested by the Committee shall not be a basis to withhold any information.
2. The pendency of or potential for litigation shall not be a basis to withhold any information.
3. In accordance with 5 U.S.C. §552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
4. Pursuant to 5 U.S.C. §552a(b)(9), the Privacy Act shall not be a basis for withholding any information.
5. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control. If known, identify the party that currently possesses or has custody or control of the document.
6. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read to include that alternative identification.
7. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise

apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

8. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.

Means of Production

1. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
2. Each production should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
3. All documents shall be Bates-stamped sequentially and produced sequentially.
4. Documents produced in response to this request shall be produced together with copies of file labels, dividers, and identifying markers with which they were associated when the request was served.
5. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Privilege Log

In the event that a document is withheld from the Committee, provide a privilege log containing the following information concerning any such document:

1. every privilege asserted;
2. the basis for the privilege(s) asserted;
3. the type of document;
4. the general subject matter;
5. the date, author, addressee, and any other recipient(s); and
6. the relationship of the author and addressee to each other.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.

6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.