

Congress of the United States
Washington, DC 20515

March 16, 2020

The Honorable Alex Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

Dear Secretary Azar:

We write to share concerns we have heard from hospitals and health care providers in New Hampshire about the lack of availability of critical medical supplies during the Coronavirus outbreak and the need for additional flexibilities in Medicare rules. Our health care workforce can only effectively respond to and combat the Coronavirus pandemic if they have the personal protective equipment (PPE), ventilators and other essential supplies they need. More guidance from your Department on these issues will help health care providers in New Hampshire and across the country plan their response efforts in an informed and targeted fashion. As our hospitals prepare for a surge of patients in the weeks to come, this guidance will be all the more critical.

We have heard from health care providers across the state, who have informed us that their commercial vendors will be unable to accept immediate orders for PPE, including respirators, gowns, surgical masks and other supplies. In following current protocols, health care providers have turned to the New Hampshire Department of Health and Human Services (DHHS) to seek supplies from the state's stockpile. With the state's stockpile running low, New Hampshire recently requested the federal Health and Human Services (HHS) Assistant Secretary for Preparedness and Response (ASPR) provide access to the Strategic National Stockpile. Emergency action to preserve resources, such as delaying elective surgeries at New Hampshire's hospitals, is not a long-term solution. Our health care providers will need support as soon as possible in acquiring more PPE so that health care workers can perform their duties without risking their health or exacerbating the spread of Coronavirus.

We know that the next major obstacle that is likely to face our frontline health care providers is an insufficient supply of ventilators for patients who have developed severe cases of Coronavirus. A recent report from Johns Hopkins University suggests there are a total of 160,000 ventilators in the United States' supply for patients experiencing severe acute respiratory failure.¹ This report warns that a severe pandemic would likely overwhelm this supply. We have already seen the lack of ventilator supply produce deadly results during this outbreak in other countries. In an interview with CNN on March 13th, Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma explained that there are between 12,000 and 13,000 ventilators in

¹ Johns Hopkins Center for Health Security, "Ventilator Stockpiling and Availability in the US," February 14, 2020. Available at: <http://www.centerforhealthsecurity.org/resources/COVID-19/200214-VentilatorAvailability-factsheet.pdf>

the Strategic National Stockpile,² which raises concerns about the process for distribution of ventilators from the stockpile. To date, the Department has provided mixed messages on how it is going to process requests for more ventilators from hospitals across the country.

To ensure that hospitals have capacity for those most in need of treatment and to avoid community spread among seniors, more flexibility may be needed for Medicare rules regarding discharge of patients with intravenous (IV) antibiotics. Additional clarity on Medicare coverage rules for nebulizers and home oxygen may also be needed. Hospitals in New Hampshire have expressed concern that current Medicare guidance has created obstacles preventing hospitals from discharging Medicare patients to their homes with IV antibiotics. This limitation has forced hospitals to consider whether it is appropriate to keep patients in the hospital for extended stays or discharge these patients to a skilled nursing facility (SNF) where they can receive IV antibiotics during recovery. Given the significant risks associated with nursing facility care during the Coronavirus outbreak, we believe that the Department and CMS should do everything possible to ensure that patients can return home after a hospital stay, when appropriate. In addition, we have heard concerns about the lack of flexibility to discharge a patient to home with a nebulizer or home oxygen, in lieu of an extended hospital stay or a discharge to a nursing facility. These situations present concerns regarding the availability hospital beds to those who need them most.

Clarity from the Department on the following questions will be helpful for health care providers in New Hampshire and across the country as they continue to refine their Coronavirus response and prepare for a potential surge of patients.

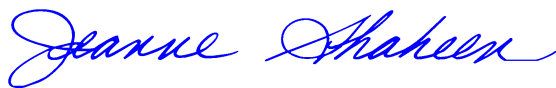
1. For states like New Hampshire that have officially requested access to the Strategic National Stockpile, will ASPR provide those states with a timeframe of when the state can expect to receive PPE or other requested equipment and supplies? Hospitals and other health care providers need a clear timeframe in order to plan efforts to bridge their current supply levels until help can be provided.
2. You recently announced plans to acquire 500 million N95 respirators over the next 18 months. Can the Department share additional details on the schedule for acquisition at each stage over the next 18 months and how that acquisition process will impact decisions on the release of supplies from the Strategic National Stockpile?
3. The “Coronavirus Preparedness and Response Supplemental Appropriations Act” provided \$500 million for acquisition of pharmaceuticals, PPE and other supplies that health care providers need for response to the Coronavirus. How will the provision of these additional dollars impact the schedule of the Department’s effort to secure more PPE?
4. Can you provide additional details on how the Department is planning to process requests for access to ventilators? Will the Department take into account additional factors beyond the Coronavirus case rate for each locality?

² CNN, “Interview on New Day with John Berman” Transcript. March 13, 2020. Available at: <http://edition.cnn.com/TRANSCRIPTS/2003/13/nday.05.html>

5. Has the Department consulted with the White House and the Department of Defense about using powers under the “Defense Production Act of 1950” to begin mass production of PPE and other supplies that health care providers need to respond to this crisis?
6. In order to help hospitals with the expected surge of Coronavirus patients while still ensuring quality patient care, are there regulatory flexibilities that the Department could provide to hospitals to allow for expeditious discharge of Medicare patients to their homes with appropriate equipment or supplies, such as IV antibiotics, nebulizers and home oxygen? If regulatory flexibilities and clarifications are unavailable, should Congress provide the Department with this authority via legislation?

We appreciate your attention to these issues. It will be vital for Congress, your administration and state and local governments to work together to combat this crisis.

Sincerely,



Jeanne Shaheen
United States Senator



Margaret Wood Hassan
United States Senator



Ann McLane Kuster
Member of Congress



Chris Pappas
Member of Congress