

United States Senate

WASHINGTON, DC 20510-1304

September 14, 2020

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

Dear Secretary Azar:

I write today to raise concerns about COVID-19 testing capacity challenges at our nation’s schools, colleges, and universities, and how the Administration’s lack of planning—coupled with recent supply chain interventions—have contributed to ongoing testing shortfalls.

Since the outset of the pandemic, our nation’s testing infrastructure has hindered our response to this public health crisis. With limited access points for patients and asymptomatic individuals, supply chain bottlenecks, lengthy turnaround times, confusing and conflicting guidance out of our public health agencies, and a lack of a national strategy, our country’s response has faced many obstacles in expanding testing to meet the sheer number of cases and transmission across the United States. Among others, our schools, colleges, and universities have faced some of the highest burden of this problem, with limited resources amid ample opportunity for the virus to spread.

To prepare for the 2020-2021 academic year, our nation’s educational institutions have undertaken substantial efforts to re-think their teaching environments, implement physical alterations to classrooms and campuses, develop detailed protocols for safety, and stand up thorough testing regimens—often on their own with minimal or non-existent support from this Administration. Particularly for residential colleges, a robust testing program is an integral part of a successful school year. Unfortunately, this Administration has been unable to meet the needs of these educational institutions.

I recently became aware of troubling incidents from Loyola University Chicago and Illinois State University in which their confirmed purchase orders of COVID-19 testing kits and analyzers from the manufacturer Quidel were commandeered by the Department of Health and Human Services (HHS). The sudden and haphazard intervention by HHS to cut in front of these universities and acquire the testing supplies they had previously ordered from Quidel—fueled by the fact that this Administration has inadequately assisted entities nationwide in accessing needed testing supplies—has unacceptably left these universities with substantial delays and gaps in their testing plans.

It is my understanding that on August 20, the Administration exercised its authority under the Defense Production Act (DPA) to apply priority rated orders for contracts with Quidel, to preempt the company’s supply of tests for their customers and instead send them to other needy settings as determined by HHS. It is troubling that the decision to commandeer these testing

supplies occurred the day after White House Coronavirus Task Force leader Dr. Deborah Birx recommended on August 19 that universities establish “entrance testing” and “surge” testing, and President Trump that same day urged universities to reopen, stating, “instead of saving lives, the decision to close universities could cost lives” and “there’s nothing like campus there’s nothing like being with a teacher as opposed to being on a computer board.”

While there are certainly other entities that are also in dire need of testing supplies, I am concerned that this action has diverted tests that schools had expected to arrive in time for the beginning of the school year, harming their efforts to keep their students, staff, and communities safe. And I am troubled that this entire situation reflects a broader lack of planning and failure of the Administration to bolster our supply chain, coordinate allocations of scarce resources, and boost domestic production. While the federal government should have been helping these universities—as well as all other needy entities—to meet their testing needs, the failure to plan and disorganized actions by HHS have actually harmed their testing capacity.

To assist these two Illinois universities, and the rest of our schools and colleges, in meeting their testing needs for this academic year, I request an explanation from HHS on:

1. Whether the Administration evaluated the impact on schools, colleges, and universities when determining to utilize the DPA in this situation;
2. How the Department will backfill or otherwise rectify the shortfall in testing supplies it has created by redirecting them away from schools; and,
3. How the Department plans to further support the ongoing testing needs of schools throughout the remainder of the academic year. On August 27, HHS announced it had acquired 150 million rapid Abbott BinaxNOW COVID-19 diagnostic tests to be “potentially deployed to schools.” How, and when, will these tests be distributed to schools, colleges, and universities?

Thank you for your attention to this matter and your efforts to augment our nation’s testing capacity as part of our response to the COVID-19 pandemic. I look forward to your timely response.

Sincerely,



Richard J. Durbin
United States Senator