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ONE HUNDRED SIXTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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May 13, 2020

The Honorable Anna Eshoo
Chairwoman
Subcommittee on Health
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Eshoo:

The majority is proceeding with a Health Subcommittee hearing without any input from the minority. In the hope of forging a different path, I am again suggesting that we work together to address critical issues during one of the most complex and challenging periods in our Nation's recent history.

I have previously written to you regarding critical work that needs to take place to oversee the [Strategic National Stockpile](#), to examine the toll the pandemic is having on Americans' mental health, to improve access to [mental health care](#), to identify and address the disproportionate impacts that COVID-19 has had on [communities of color](#), and to access testing capacity and the availability of [personal protective equipment \(PPE\)](#). I now write to request that the Health Subcommittee hold a legislative hearing to review the methodology and distribution of the "Provider Relief Fund" at the Department of Health and Human Services (HHS).

As you know, Congress has taken unprecedented action in recent weeks to support our nation's health care system and our health care providers, who are on the frontlines of the COVID-19 epidemic. On March 27, 2020, President Trump signed into law the bipartisan *Coronavirus Aid, Relief, and Economic Security (CARES) Act*.¹ The CARES Act invested \$100 billion in the Public Health and Social Services Emergency Fund (PHSSEF) to assist health care providers. Congress directed HHS to use these funds to "reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus." On April 24, 2020, President Trump signed into

¹ P.L. 116-136

law the *Paycheck Protection Program and Health Care Enhancement Act*,² which allotted another \$75 billion for health care providers via the PHSSEF. Anticipating additional need, Congress provided this funding before the majority of the initial \$100 billion was distributed. Congress appropriated these dollars to HHS without much detail as to how those funds should be distributed. The agency has been tasked with a challenge, and our subcommittee should work with HHS to ensure that hospitals, physicians, and other providers are getting the relief they need.

The funding “(Provider Relief Fund) was intended to provide a much-needed cash infusion for health care providers, many of whom are facing serious economic strain and will be forced, if they have not already, to consider measures like short-term layoffs or potential closure. Providers in COVID-19 hotspots have been inundated with patients seeking testing and treatment and have new responsibilities that must be quickly fulfilled, like adding bed capacity, setting up testing tents, and establishing procedures and capability to separate patients infected with COVID-19 from those who are not. Other health care providers have experienced significant revenue loss as Americans have cancelled, delayed, and foregone medical care during the pandemic due to the prohibition on elected procedures.

In most instances, Congress provides substantial direction to federal agencies when authorizing or appropriating funding. Given the urgency of responding to the pandemic, however, Congress agreed on a bipartisan basis to give HHS broad discretion over the new funding in order to ensure that it could be distributed to providers as quickly as possible. HHS has leeway to determine which health care providers should receive aid, the timing and amount of such aid, and to establish any terms or conditions related to acceptance of the funds.

The discretion given to HHS makes it even more critical that the Subcommittee examine whether the Provider Relief Fund is serving its intended purpose and providing funds to the entities that need it most. While the Administration has been transparent in how it has allocated the funds to health care providers, Congress would benefit from a deeper understanding of the methodologies employed to distribute these funds, as well as details on the amount of funding that remains and HHS’s plans for future allocations. The Subcommittee is well-equipped to explore these questions. The Subcommittee should also examine whether rural practitioners, children’s hospitals, and other health care provider groups who rely more on Medicaid, the Children’s Health Insurance Program, or commercial payors for their revenue are receiving the optimal proportion of support through the Fund.

The Subcommittee should also consider how direct aid through the Provider Relief Fund interacts with other forms of financial assistance that Congress enacted to help health care providers during the pandemic, like the expansion of Medicare’s Advanced and Accelerated Payments Program, suspension of the two percent Medicare sequestration, and loans available to certain hospitals with less than 500 employees, that could be forgiven if the hospital continued to employ their health care workers.³

² P.L. 116-139

³ P.L. 116-136

The Health Subcommittee must take the lead in reviewing initial distributions made under the Fund and using any lessons learned to ensure subsequent allocations get the right help to our frontline medical providers as effectively and efficiently as possible. This oversight will ensure our nation is better equipped to respond to needs of our communities and health care providers amidst this pandemic. Thank you for your consideration and we look forward to working with you on this important issue.

Sincerely,

A handwritten signature in blue ink, reading "Michael C. Burgess". The signature is written in a cursive style with a horizontal line underneath the name.

Michael C. Burgess, M.D.
Republican Leader
Subcommittee on Health