

116TH CONGRESS
2D SESSION

S. _____

To provide Federal support for COVID–19 testing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To provide Federal support for COVID–19 testing, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Expanding COVID–19 Testing Capacity Act of 2020”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 the Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Federal manufacturing of COVID–19 diagnostic tests.
- Sec. 4. COVID–19 testing for covered Federal employees.
- Sec. 5. Federal distribution of COVID–19 tests to qualified entities.
- Sec. 6. Supplemental grants for COVID–19 testing.
- Sec. 7. Reports and guidance on COVID–19 diagnostic testing.
- Sec. 8. Demographic and geographic data collection.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ASSOCIATED MEDICAL SUPPLIES.—The
4 term “associated medical supplies” means any prod-
5 uct necessary for the development and administra-
6 tion of COVID–19 diagnostic tests, including chem-
7 ical reagents, test swabs, and personal protective
8 equipment (including surgical masks, surgical
9 gowns, face shields, gloves, and N95 masks).

10 (2) COVID–19 DIAGNOSTIC TEST.—The term
11 “COVID–19 diagnostic test” means a test—

12 (A) that is an in vitro diagnostic product
13 (as defined in section 809.3 of title 21, Code of
14 Federal Regulations, or any successor thereto)
15 for the detection of SARS–CoV–2 or the diag-
16 nosis of COVID–19; and

17 (B) the administration of which—

18 (i) is approved, cleared, or authorized
19 under section 510(k), 513, 515, or 564 of
20 the Federal Food, Drug, and Cosmetic Act
21 (21 U.S.C. 360(k), 360c, 360e, 360bbb–3);
22 or

23 (ii) the developer has received an
24 emergency use authorization under section
25 564 of the Federal Food, Drug, and Cos-
26 metic Act (21 U.S.C. 360bbb–3), unless

1 and until the emergency use authorization
2 request under such section 564.

3 (3) COVID–19 PANDEMIC.—The term
4 “COVID–19 pandemic” means the period beginning
5 on the date that the public health emergency with
6 respect to COVID–19 took effect, and ending on the
7 date that is 6 months after the date on which the
8 public health emergency declaration with respect to
9 COVID–19 terminates.

10 (4) INDIAN TRIBE.—Except as otherwise pro-
11 vided, the term “Indian Tribe” has the meaning
12 given the term “Indian tribe” in section 4 of the In-
13 dian Self-Determination and Education Assistance
14 Act (25 U.S.C. 5304).

15 (5) PUBLIC HEALTH EMERGENCY WITH RE-
16 SPECT TO COVID–19.—The term “public health
17 emergency with respect to COVID–19” means the
18 public health emergency declared by the Secretary
19 under section 319 of the Public Health Service Act
20 (21 U.S.C. 247d) on January 31, 2020, with respect
21 to COVID–19.

22 (6) SECRETARY.—The term “Secretary” means
23 the Secretary of Health and Human Services.

24 (7) TRIBAL ORGANIZATION.—Except as other-
25 wise provided, the term “Tribal organization” has

1 the meaning given the term “tribal organization” in
2 section 4 of the Indian Self-Determination and Edu-
3 cation Assistance Act (25 U.S.C. 5304).

4 (8) URBAN INDIAN ORGANIZATION.—The term
5 “urban Indian organization” has the meaning given
6 the term in section 4 of the Indian Health Care Im-
7 provement Act (25 U.S.C. 1603).

8 **SEC. 3. FEDERAL MANUFACTURING OF COVID-19 DIAG-**
9 **NOSTIC TESTS.**

10 (a) IN GENERAL.—As soon as practicable after the
11 date of enactment of this Act, but no later than 15 days
12 after such date of enactment, the Secretary shall begin
13 the process of manufacturing, or contracting with entities
14 for the manufacture of, COVID-19 diagnostic tests and
15 associated medical supplies, with a particular focus on ex-
16 traction-free highly sensitive molecular tests, pooled highly
17 sensitive molecular tests, low-cost rapid antigen test, low-
18 cost highly sensitive molecular tests, assays that can use
19 a variety of reagents, and other products as determined
20 by the Secretary. The Secretary shall continue such proc-
21 ess until the end of the COVID-19 pandemic.

22 (b) SUBMISSION OF APPLICATIONS.—For each
23 COVID-19 diagnostic test and associated drug or device
24 that the Secretary intends to market, or contract with an-
25 other entity for the marketing of, the Secretary shall—

1 (1) submit an application under subsection (b)
2 or (j) of section 505 or section 515 of the Federal
3 Food, Drug, and Cosmetic Act (21 U.S.C. 355,
4 360e) or subsection (a) or (j) of section 351 of the
5 Public Health Service Act (42 U.S.C. 262), submit
6 a notification under section 510(k) of the Federal
7 Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)),
8 or submit a request for classification under section
9 513(f)(2) of the Federal Food, Drug, and Cosmetic
10 Act (21 U.S.C. 360c(f)(2)) (or enter into a contract
11 with another entity to submit such an application,
12 notification, or request);

13 (2) request an emergency use authorization of
14 the product under section 564 of the Federal Food,
15 Drug, and Cosmetic Act (21 U.S.C. 360bbb-3) (or
16 enter into a contract with another entity to submit
17 an application for such use); or

18 (3) obtain from the holder of an application ap-
19 proved under subsection (c) or (j) of section 505 or
20 section 515 of the Federal Food, Drug, and Cos-
21 metic Act or subsection (a) or (k) of section 351 of
22 the Public Health Service Act, or cleared under sec-
23 tion 510(k) of the Federal Food, Drug, and Cos-
24 metic Act, rights to manufacture such product.

1 (c) PROVISION OF PRODUCTS.—With respect to
2 COVID–19 diagnostic tests and associated drugs and de-
3 vices manufactured pursuant to subsection (a), the Sec-
4 retary shall—

5 (1) provide such COVID–19 diagnostic tests
6 and associated medical supplies at no cost to Fed-
7 eral, State, local, territorial, and Native health pro-
8 grams, and other domestic health care providers, in-
9 cluding domestic commercial health care providers,
10 as determined by the Secretary; and

11 (2) sell additional tests and associated drugs
12 and devices, at-cost, to other commercial entities and
13 international entities not described in paragraph (1).

14 (d) OBTAINING RIGHTS TO MANUFACTURE AND
15 MARKET .—

16 (1) IN GENERAL.—When necessary to fulfill the
17 Secretary’s duties under this section, the Secretary
18 shall acquire the rights to manufacture and market
19 COVID–19 diagnostic tests and associated drugs
20 and devices as authorized under this section.

21 (2) LICENSING AUTHORITY.—

22 (A) IN GENERAL.—Notwithstanding any
23 other provision of law, the Secretary may issue
24 licenses, as useful for fulfilling the duties under
25 this Act, allowing the Department of Health

1 and Human Services to practice or have prac-
2 ticed (which may include licensure of retroactive
3 practice) any invention in the United States or
4 territories of the United States, including mak-
5 ing, using, offering to sell or selling, importing,
6 or exporting such invention, to reference or rely
7 upon clinical trial data submitted to a regu-
8 latory authority or the grant of marketing ap-
9 proval, and to access and use otherwise con-
10 fidential information, including know-how, re-
11 lated to the manufacture of COVID-19 diag-
12 nostic tests and associated medical supplies.

13 (B) NON-VOLUNTARY LICENSING.—For
14 any license that involves a non-voluntary au-
15 thorization to use patented inventions, regu-
16 latory test data, data, know-how or other intel-
17 lectual property rights, the license shall provide
18 for reasonable remuneration to rights holders
19 such as a reasonable royalty on the sales of
20 product, a 1-time payment, or some combina-
21 tion, provided that the combined royalty pay-
22 ments to all rights holders shall not exceed the
23 percentage of sales that is the average percent
24 of all royalty payments reported to the Internal
25 Revenue Service by companies in the pharma-

1 ceutical and medicines sector, North American
2 Industry Classification System code 325410,
3 provided that when products are distributed for
4 free, the royalty shall be based upon the cost of
5 goods. When there are multiple rights holders,
6 the allocation of the total royalty payments
7 shall be determined by—

8 (i) agreement among the rights hold-
9 ers;

10 (ii) allocation by arbitration among
11 the rights holders; or

12 (iii) if neither clause (i) nor (ii) ap-
13 plies, by the Secretary.

14 (3) **TRANSPARENCY.**—Subject to paragraph (4),
15 the Secretary shall post any contract agreement
16 under subsection (a) or license issued under para-
17 graph (2)(A) on the public internet website of the
18 Department of Health and Human Services, on the
19 date on which such agreement or license takes ef-
20 fect.

21 (4) **PROTECTED INFORMATION.**—In carrying
22 out this section, the Secretary shall enforce applica-
23 ble law concerning the protection of confidential
24 commercial information and trade secrets.

25 (e) **PRICING DETERMINATIONS.**—

1 (1) AT-COST PRICE.—In determining an at-cost
2 price for COVID–19 diagnostic tests and associated
3 medical supplies for purposes of subsection (c)(2),
4 the Secretary shall consider—

5 (A) the cost to the Federal Government of
6 manufacturing the applicable COVID–19 diag-
7 nostic test or associated drug or device; and

8 (B) the cost to acquire or manufacture
9 under subparagraph (A) the applicable COVID–
10 19 diagnostic test or associated drug or device.

11 (2) TRANSPARENCY.—All prices charged
12 COVID–19 diagnostic tests and associated medical
13 supplies shall be made publicly available by the Sec-
14 retary.

15 (f) AWARDING CONTRACTS.—

16 (1) PRIORITY.—In awarding contracts under
17 this section, the Secretary shall prioritize entities
18 manufacturing COVID–19 diagnostic tests or associ-
19 ated medical supplies using components originating
20 from, and manufactured in, the United States.

21 (2) CONTRACT REQUIREMENTS.—All contracts
22 issued under this section shall include a requirement
23 that the contract recipients reasonably price prod-
24 ucts produced under the contract.

1 (g) REPORT TO THE PRESIDENT AND CONGRESS.—

2 The Secretary shall prepare and submit to the President,
3 the Committee on Health, Education, Labor, and Pen-
4 sions of the Senate, and the Committee on Energy and
5 Commerce of the House of Representatives, a monthly re-
6 port during the COVID–19 pandemic, and a final report
7 3 months after such pandemic has concluded, that in-
8 cludes—

9 (1) an assessment of the major supply chain
10 challenges facing health care facilities, medical pro-
11 viders, the Federal government, State, local, terri-
12 torial, and Tribal governments, and the private sec-
13 tor in COVID–19 diagnostic tests and associated
14 medical supplies; and

15 (2) a description of the authorization or ap-
16 proval status and available supply of all COVID–19
17 diagnostic tests and associated medical supplies for
18 which manufacturing has been authorized under this
19 section, including products for which the Secretary
20 has submitted an application for approval, a notifi-
21 cation for clearance, or a request for classification to
22 the Food and Drug Administration but has not yet
23 received approval, clearance, or classification, and
24 products for which the Secretary has received ap-
25 proval, clearance, or classification, from the Food

1 and Drug Administration but are not being manu-
2 factured.

3 (h) PROCEEDS FROM SALES.—There are authorized
4 to be appropriated to the Secretary for each fiscal year,
5 for purposes of carrying out this section, an amount equal
6 to the proceeds from the sale of COVID–19 diagnostic
7 tests and associated medical supplies described in sub-
8 section (c)(2) in the previous fiscal year.

9 **SEC. 4. COVID–19 TESTING FOR COVERED FEDERAL EM-**
10 **PLOYEES.**

11 (a) DEFINITIONS.—In this section:

12 (1) AGENCY.—The term “agency”—

13 (A) means—

14 (i) each agency, office, or other estab-
15 lishment in the executive, legislative, or ju-
16 dicial branch of the Federal Government,
17 including—

18 (I) an Executive agency, as that
19 term is defined in section 105 of title
20 5, United States Code;

21 (II) a military department, as
22 that term is defined in section 102 of
23 title 5, United States Code;

24 (III) the Federal Aviation Ad-
25 ministration;

1 (IV) the Transportation Security
2 Administration;

3 (V) the Department of Veterans
4 Affairs;

5 (VI) the Government Account-
6 ability Office;

7 (VII) the Library of Congress;

8 (VIII) the Postal Service;

9 (IX) the House of Representa-
10 tives;

11 (X) the Senate; and

12 (XI) the Architect of the Capitol;

13 (ii) the District of Columbia courts
14 and the District of Columbia Public De-
15 fender Service; or

16 (iii) an—

17 (I) Indian Tribe or Tribal organi-
18 zation carrying out a contract or com-
19 pact under the Indian Self-Determina-
20 tion and Education Assistance Act
21 (25 U.S.C. 5301 et seq.);

22 (II) Indian Tribe or Tribal orga-
23 nization that receives a grant under
24 the Tribally Controlled Schools Act of
25 1988 (25 U.S.C. 2501 et seq.);

1 (III) Indian Tribe or Tribal orga-
2 nization (as defined in section 5212 of
3 the Tribally Controlled Schools Act of
4 1988 (25 U.S.C. 2511)) that receives
5 a grant under that Act (25 U.S.C.
6 2501 et seq.); and

7 (B) does not include a nonappropriated
8 fund instrumentality under the jurisdiction of
9 the Armed Forces.

10 (2) COVERED DUTY.—The term “covered duty”
11 means all work performed by a Federal employee,
12 except duties that a Federal employee performs
13 while teleworking from a residence.

14 (3) FEDERAL EMPLOYEE.—The term “Federal
15 employee” means—

16 (A) an individual who engages in covered
17 duties on behalf of an agency at any time dur-
18 ing the COVID–19 pandemic, or an individual
19 classified as an independent contractor by the
20 agency who engages in covered duties during
21 such period;

22 (B) includes—

23 (i) any person performing work for an
24 agency who engages in covered duties dur-
25 ing the COVID–19 pandemic, regardless of

1 whether such person is classified as an
2 independent contractor by the agency; and

3 (ii) any paid or unpaid intern, fellow,
4 trainee, or other person performing work
5 for an agency who engages in covered du-
6 ties during the COVID–19 pandemic; and

7 (C) does not include any employee of a
8 Federal contractor.

9 (4) **TIMELY MANNER.**—The term “timely man-
10 ner”, with respect to the administration of a
11 COVID–19 diagnostic test, means within 24 hours
12 of the administration of such test.

13 (b) **FEDERAL EMPLOYEE COVID–19 TESTING.**—

14 (1) **IN GENERAL.**—Not later than 30 days after
15 the date of enactment of this Act, each agency shall
16 begin to—

17 (A) conduct or contract with entities to
18 conduct COVID–19 diagnostic tests for Federal
19 employees employed by the agency at no cost to
20 the employee, regardless of whether such em-
21 ployees exhibit symptoms of COVID–19, pro-
22 vided at locations accessible to the Federal em-
23 ployees;

24 (B) provide each Federal employee em-
25 ployed by the agency with the results of the di-

1 agnostic tests, regardless of the results, includ-
2 ing an interpretation of what the test means in
3 the employee's preferred language, in a timely
4 manner;

5 (C) submit the results of such tests to rel-
6 evant Federal, State, local, territorial, and
7 Tribal public health officials; and

8 (D) publish the aggregate results of such
9 diagnostic tests in accordance with section 8.

10 (2) TIME PERIOD.—Each agency shall continue
11 the activities described in subparagraphs (A), (B),
12 and (C) of paragraph (1) throughout the duration of
13 the COVID–19 pandemic.

14 (3) MINIMUM WAGE AND OVERTIME.—Notwith-
15 standing any other provision of law, for any indi-
16 vidual employed by a contractor or subcontractor,
17 and who performs work assisted in whole or in part
18 by funding under this section, with respect to such
19 employment, such individual shall—

20 (A) be paid a wage of not less than \$15
21 per hour; and

22 (B) if such individual is paid at a rate that
23 is the full-time equivalent of less than \$51,000
24 per year, receive overtime pay of one-and-one-
25 half times the individual's regular rate of pay

1 for all hours worked in excess of 40 hours per
2 workweek.

3 (c) **FREQUENCY AND LOCATION OF COVID–19 DI-**
4 **AGNOSTIC TESTING.**—In administering COVID–19 tests
5 pursuant to subsection (b), each agency shall provide
6 COVID–19 diagnostic tests at frequencies and locations
7 recommended by the State, local, territorial or Tribal pub-
8 lic health officials with jurisdiction over the geographic
9 areas in which the applicable Federal employees work, or,
10 if a national testing strategy is developed by Federal offi-
11 cials, in compliance with the national testing strategy.

12 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There is
13 authorized to be appropriated to each Federal agency such
14 sums as may be necessary to procure and administer the
15 COVID–19 diagnostic tests required under this section.

16 **SEC. 5. FEDERAL DISTRIBUTION OF COVID–19 TESTS TO**
17 **QUALIFIED ENTITIES.**

18 (a) **DEFINITIONS.**—In this section:

19 (1) **COVID–19 TESTING.**—The term “COVID–
20 19 testing” has the meaning given such term in in-
21 terim final rules promulgated by the Secretary with-
22 in 15 days of the date of enactment of this Act.

23 (2) **ESSENTIAL WORK.**—The term “essential
24 work” means any work that—

1 (A) is performed during the period of the
2 COVID–19 pandemic;

3 (B) cannot be performed while teleworking
4 from a residence; and

5 (C)(i) involves—

6 (I) regular in-person interactions with
7 patients, the public, or coworkers of the in-
8 dividual performing the work; or

9 (II) regular physical handling of items
10 that were handled by, or are to be handled
11 by patients, the public, or coworkers of the
12 individual performing the work; and

13 (ii) is in the area of—

14 (I) first responder work, in the public
15 sector or private sector, including services
16 in response to emergencies that have the
17 potential to cause death or serious bodily
18 injury, such as police, fire, emergency med-
19 ical, protective, child maltreatment, domes-
20 tic violence, and correctional services (in-
21 cluding activities carried out by employees
22 in fire protection activities, as defined in
23 section 3(y) of the Fair Labor Standards
24 Act of 1938 (29 U.S.C. 203(y)) and activi-
25 ties of law enforcement officers, as defined

1 in section 1204(6) of the Omnibus Crime
2 Control and Safe Streets Act of 1968 (34
3 U.S.C. 10284(6));

4 (II) health care work physically pro-
5 vided in inpatient settings (including hos-
6 pitals and other inpatient post-acute care
7 settings such as nursing homes, inpatient
8 rehabilitation facilities, and other related
9 settings) and other work physically per-
10 formed in such inpatient settings that sup-
11 ports or is in furtherance of such health
12 care work physically provided in inpatient
13 settings;

14 (III) health care work physically pro-
15 vided in outpatient settings (including at
16 physician offices, community health cen-
17 ters, Tribal clinics, rural health clinics and
18 other clinics, hospital outpatient depart-
19 ments, freestanding emergency depart-
20 ments, health centers, ambulatory surgical
21 centers, dialysis centers, dental offices, and
22 other related settings), and other work
23 physically performed in such outpatient
24 settings that supports or is in furtherance

1 of such health care work physically pro-
2 vided in outpatient settings;

3 (IV) pharmacy work, physically per-
4 formed in pharmacies, drug stores, or
5 other retail facilities specializing in medical
6 goods and supplies;

7 (V) any work physically performed in
8 a facility that performs medical testing and
9 diagnostic services, including laboratory
10 processing, medical testing services, imag-
11 ing services, or related activities;

12 (VI) home- and community-based
13 health care work, including home health
14 care, residential care, assistance with ac-
15 tivities of daily living, and any services
16 provided by direct care workers (as defined
17 in section 799B of the Public Health Serv-
18 ice Act (42 U.S.C. 295p)), personal care
19 aides, community health aides and commu-
20 nity health aides participating in the Com-
21 munity Health Representative Program or
22 the Community Health Aide Program
23 under the Indian Health Care Improve-
24 ment Act (25 U.S.C. 1601 et seq.), job
25 coaches, or supported employment pro-

1 viders, and any other provision of care to
2 individuals in their homes by direct service
3 providers, personal care attendants, and
4 home health aides;

5 (VII) biomedical research;

6 (VIII) behavioral health work requir-
7 ing physical interaction with individuals,
8 including mental health services and sub-
9 stance use disorder prevention, treatment,
10 and recovery services;

11 (IX) nursing care and residential
12 work physically provided in a facility;

13 (X) family care, including child care
14 services, in-home child care services such
15 as nanny services, and care services pro-
16 vided by family members to other family
17 members;

18 (XI) social services work, including
19 social work, case management, social and
20 human services, child welfare, family serv-
21 ices, shelter and services for people who
22 have experienced intimate partner violence
23 or sexual assault, services for individuals
24 who are homeless, child services, commu-

1 nity food and housing services, and other
2 emergency social services;

3 (XII) public health work conducted at
4 a State, local, territorial, or Tribal govern-
5 ment public health agency, including epide-
6 miological activities, surveillance, contact
7 tracing, data analysis, statistical research,
8 health education, and other disease detec-
9 tion, prevention, and response methods;

10 (XIII) work conducted at a hospital,
11 clinic, triage center, or other permanent or
12 temporary health facility operated by the
13 Indian Health Service, an Indian Tribe,
14 Tribal organization, or urban Indian orga-
15 nization;

16 (XIV) grocery work physically per-
17 formed at grocery stores, supermarkets,
18 convenience stores, corner stores, drug
19 stores, retail facilities specializing in med-
20 ical goods and supplies, bodegas, or an-
21 other location where individuals purchase
22 non-prepared food items;

23 (XV) restaurant work, including
24 carry-out, drive-thru, or food delivery

1 work, requiring physical interaction with
2 individuals or food products;

3 (XVI) food production work involving
4 the physical interaction with food products,
5 including all agricultural work, farming,
6 harvesting, fishing, forestry, ranching,
7 processing, canning, slaughtering, pack-
8 aging, baking, butchering, and other food
9 production work, such as any service or ac-
10 tivity described in section 3(f) of the Fair
11 Labor Standards Act of 1938 (29 U.S.C.
12 203(f)) or section 3121(g) of the Internal
13 Revenue Code of 1986, and the handling,
14 planting, drying, packing, packaging, pro-
15 cessing, freezing, or grading prior to deliv-
16 ery for storage of any agricultural or horti-
17 cultural commodity in its unmanufactured
18 state;

19 (XVII) transportation work, includ-
20 ing—

21 (aa) any services in public trans-
22 portation, as defined in section
23 5302(14) of title 49, United States
24 Code;

1 (bb) any private transportation of
2 people, such as transportation pro-
3 vided by air, rail, bus, taxicab, per-
4 sonal car or truck, non-motorized ve-
5 hicle, or otherwise, including all serv-
6 ices performed by individuals working
7 in or on such vehicles, vehicle depots,
8 or transit facilities;

9 (cc) any services in passenger rail
10 transportation, including commuter
11 rail, intercity passenger rail, or Am-
12 trak, including services performed by
13 employees of contractors of such enti-
14 ties;

15 (dd) any services in the transpor-
16 tation of persons, property, or mail by
17 an aircraft of an air carrier con-
18 ducting operations under part 121 of
19 title 14, Code of Federal Regulations
20 (or successor regulations), or a for-
21 eign air carrier within, to, or from the
22 United States, either on board an air-
23 craft or on the ground at an airport,
24 including services performed by em-
25 ployees of contractors of air carriers,

1 or foreign air carriers, as described in
2 section 4111(3) of the CARES Act
3 (15 U.S.C. 9071(3));

4 (ee) any services as an aircraft
5 mechanic or technician who performs
6 maintenance, repair, or overhaul work
7 on an aircraft of an air carrier con-
8 ducting operations under such part
9 121 or foreign air carrier within the
10 United States;

11 (ff) services as maritime workers
12 who qualify as seamen under section
13 10101(3) of title 46, United States
14 Code, and other maritime employees
15 including—

16 (AA) longshoremen, harbor
17 workers and shipbuilders covered
18 under section 2(3) of the
19 Longshore and Harbor Workers'
20 Compensation Act (33 U.S.C.
21 902(3)) involved in the transpor-
22 tation of merchandise or pas-
23 sengers by water; and

24 (BB) shipbuilders and ship
25 repairers who are working for an

1 employer performing shipbuilding
2 or ship repair work under con-
3 tract or subcontract to the De-
4 partments of Defense, Energy or
5 Homeland Security for military
6 or other national security pur-
7 poses;

8 (gg) services as maritime trans-
9 portation workers supporting or ena-
10 bling transportation functions, includ-
11 ing such services as—

12 (AA) barge workers, tug op-
13 erators, and port and facility se-
14 curity personnel;

15 (BB) marine dispatchers;
16 and

17 (CC) workers who repair
18 and maintain marine vessels (in-
19 cluding the equipment and infra-
20 structure that enables operations
21 that encompass movement of
22 cargo and passengers); and

23 (hh) work physically performed
24 in a warehouse or other facility in
25 warehousing (including all services

1 performed by individuals picking, sort-
2 ing, packing, and shipping in ware-
3 houses), storage, distribution, or call
4 center support facilities, and other es-
5 sential operational support functions
6 that are necessary to accept, store,
7 and process goods, and that facilitate
8 the goods' transportation and delivery;
9 (XVIII) cleaning work and building
10 maintenance work physically performed on
11 the grounds of a facility, including all cus-
12 todial or janitorial services, security serv-
13 ices, and repair and maintenance services;
14 (XIX) work in the collection, removal,
15 transport, storage, or disposal of residen-
16 tial, industrial, or commercial solid waste
17 and recycling, including services provided
18 by individuals who drive waste or recycling
19 trucks, who pick up waste or recycling
20 from residential or commercial locations,
21 or who work at waste or recycling centers
22 or landfills;
23 (XX) work in the gathering, proc-
24 essing, disseminating, and delivery of news
25 and information that serves the public in-

1 terest to the public through mass media,
2 including television, radio, and newspapers;

3 (XXI) any work performed by an em-
4 ployee of a State, locality, or Tribal gov-
5 ernment, that is determined to be essential
6 work by the highest authority of such
7 State, locality, or Tribal government;

8 (XXII) educational work, school nutri-
9 tion work, and other work required to op-
10 erate a school facility, including early
11 childhood and after-school enrichment pro-
12 grams, preschool programs, elementary
13 and secondary education, and higher edu-
14 cation;

15 (XXIII) laundry work, including work
16 in laundromats, laundry service companies,
17 and dry cleaners;

18 (XXIV) elections work physically per-
19 formed at polling places or otherwise
20 amongst the public, including public-sector
21 elections personnel and private-sector elec-
22 tions personnel;

23 (XXV) hazardous materials manage-
24 ment, response, and cleanup work associ-
25 ated with any other essential work covered

1 under this paragraph, including health
2 care waste (including medical, pharma-
3 ceuticals, and medical material produc-
4 tion), and testing operations (including
5 laboratories processing test kits);

6 (XXVI) disinfection work for all facili-
7 ties and modes of transportation involved
8 in other essential work covered under this
9 paragraph;

10 (XXVII) work in critical clinical re-
11 search, development, and testing necessary
12 for COVID–19 response that involves
13 physical interaction with hazardous mate-
14 rials, such as samples of COVID–19;

15 (XXVIII) work in mortuary, funeral,
16 cremation, burial, cemetery, and related
17 services;

18 (XXIX) work requiring physical inter-
19 actions with patients in physical therapy,
20 occupational therapy, speech-language pa-
21 thology, and respiratory therapy and other
22 therapy services;

23 (XXX) dental care work requiring
24 physical interaction with patients;

1 (XXXI) work performed by employees
2 of the United States Postal Service;

3 (XXXII) work at hotel and commer-
4 cial lodging facilities that are used for
5 COVID–19 mitigation and containment
6 measures; and

7 (XXXIII) work installing or repairing
8 a telecommunications line or equipment.

9 (3) ESSENTIAL WORKER.—The term “essential
10 worker” means an individual whose work and duties
11 include essential work, including individuals that are
12 employees of employers and individuals performing
13 any services or labor for remuneration, regardless of
14 whether such individual is classified as an inde-
15 pendent contractor by the employer.

16 (4) QUALIFIED ENTITY.—The term “qualified
17 entity” means—

18 (A) a congregate care setting, including
19 any skilled nursing facilities, assisted living fa-
20 cilities, prisons and jails, residential behavioral
21 health care and psychiatric facilities, and facili-
22 ties providing services for aging adults and peo-
23 ple with disabilities;

24 (B) an education center, including any
25 childcare facilities, elementary and secondary

1 schools that have resumed (or plan to resume
2 within 30 days of receipt of items under sub-
3 section (b)) any form of in-person instruction,
4 and colleges and universities that have resumed
5 (or plan to resume within 30 days of receipt of
6 items under subsection (b)) any form of in-per-
7 son instruction or on campus housing;

8 (C) a community center, such as State and
9 local government buildings, religious centers,
10 and nonprofit service organizations;

11 (D) a prison, jail, or youth detention facil-
12 ity;

13 (E) a hospital, community health center,
14 Tribal or Indian Health Service clinic or hos-
15 pital, or other medical facility;

16 (F) a small business;

17 (G) a business that employs essential
18 workers;

19 (H) a homeless shelter or entity supporting
20 individuals living in housing funded with sup-
21 port from the Department of Housing and
22 Urban Development, including housing provided
23 under the supportive housing for the elderly
24 program under section 202 of the Housing Act
25 of 1959 (12 U.S.C. 1701q); or

1 (I) another entity, as determined by the
2 Secretary, that could serve as a COVID–19 di-
3 agnostic testing site.

4 (5) TIMELY MANNER.—The term “timely man-
5 ner”, with respect to the administration of a
6 COVID–19 diagnostic test, means within 24 hours
7 of the administration of such test.

8 (b) DISTRIBUTION OF COVID–19 DIAGNOSTIC
9 TESTS.—

10 (1) IN GENERAL.—Within 40 days of the date
11 of enactment of this Act, the Secretary shall—

12 (A) begin distributing COVID–19 diag-
13 nostic tests and associated medical supplies, in-
14 cluding tests and medical supplies manufac-
15 tured under section 3, to qualified entities via
16 State, local, territorial, and Tribal governments
17 for the purpose—

18 (i) providing COVID–19 diagnostic
19 testing to essential workers and individuals
20 served by qualified entities, at no cost to
21 the essential workers and individuals, re-
22 gardless of whether such workers and indi-
23 viduals exhibit symptoms of COVID–19, at
24 locations accessible to the essential workers
25 and individuals in the course of their work;

1 (ii) providing essential workers and
2 individuals served by qualified entities with
3 the results of the diagnostic tests, regard-
4 less of the results, including an interpreta-
5 tion of what the test means in the employ-
6 ee's preferred language, in a timely man-
7 ner;

8 (iii) submitting the results of such
9 tests to relevant Federal, State, local, ter-
10 ritorial, and Tribal public health officials;
11 and

12 (iv) publishing the aggregate results
13 of such diagnostic tests in accordance with
14 section 8;

15 (B) hire and deploy employees, or contract
16 with outside entities to hire and deploy employ-
17 ees, as necessary to assist in the distribution,
18 provision, administration of, and data collection
19 regarding COVID-19 diagnostic tests as de-
20 scribed in subparagraph (A).

21 (2) EMPLOYEES.—In hiring employees, or con-
22 tracting with outside entities to hire employees, to
23 carry out this subsection, the Secretary shall
24 prioritize, or require contractors to prioritize, hiring

1 individuals from within the communities served by
2 the applicable qualified entity.

3 (3) MINIMUM WAGE AND OVERTIME.—Notwith-
4 standing any other provision of law, for any indi-
5 vidual employed by a contractor or subcontractor,
6 and who performs work assisted in whole or in part
7 by funding under this section, with respect to such
8 employment, such individual shall—

9 (A) be paid a wage of not less than \$15
10 per hour; and

11 (B) if such individual is paid at a rate that
12 is the full-time equivalent of less than \$51,000
13 per year, receive overtime pay of one-and-one-
14 half times the individual's regular rate of pay
15 for all hours worked in excess of 40 hours per
16 workweek.

17 (c) COORDINATION WITH STATE, LOCAL, TERRI-
18 TORIAL, AND TRIBAL GOVERNMENTS.—Within 30 days of
19 the date of enactment of this Act, a representative of each
20 State, local, territorial, and Tribal government shall sub-
21 mit to the Secretary a list of qualified entities in their
22 jurisdiction and a description of employee, resource, and
23 other infrastructure needs necessary for the distribution
24 of COVID–19 diagnostic tests and associated drugs and
25 devices under subsection (b).

1 (d) FREQUENCY AND LOCATION OF COVID–19 DI-
2 AGNOSTIC TESTING.—In distributing COVID–19 tests
3 under (b), the Secretary shall provide COVID–19 diag-
4 nostic tests at frequencies and locations recommended by
5 the State, local, territorial, or Tribal public health officials
6 with jurisdiction over the geographic areas in which quali-
7 fied entities are located, or, if a national testing strategy
8 is developed by Federal officials, in compliance with the
9 national testing strategy.

10 (e) PUBLIC REPORTING.—Beginning 30 days after
11 the date of enactment of this Act and for the duration
12 of the COVID–19 pandemic, the Secretary shall publish
13 weekly, in a machine readable format, the total number
14 of tests distributed to, and the total number of tests ad-
15 ministered in, each State, county, territory, and Tribe
16 under subsection (b).

17 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
18 authorized to be appropriated such sums as may be nec-
19 essary to carry out this section.

20 **SEC. 6. SUPPLEMENTAL GRANTS FOR COVID–19 TESTING.**

21 (a) IN GENERAL.—No later than 30 days after the
22 date of enactment of this Act, the Secretary, acting
23 through the Director of the Centers for Disease Control
24 and Prevention shall—

1 (1) issue competitive grants to State, local, and
2 territorial governments for the purpose of increasing
3 access to COVID–19 diagnostic testing; and

4 (2) issue noncompetitive and formula-based
5 awards to Indian Tribes and Tribal organizations.

6 (b) PRIORITY AREAS AND POPULATIONS.—In issuing
7 grants under subsection (a), the Secretary shall—

8 (1) prioritize areas and populations that have
9 been disproportionately affected by COVID–19, and
10 areas where operationalizing testing programs is not
11 possible with existing resources; and

12 (2) consider the capacity that States, localities,
13 territories, and Tribes already have at the time of
14 application to conduct widespread COVID–19 diag-
15 nostic testing.

16 (c) USE OF FUNDS.—Grants awarded under sub-
17 section (a) may be used to—

18 (1) establish new COVID–19 diagnostic testing
19 sites at community centers, such as State, local, ter-
20 ritorial, and Tribal government buildings, churches,
21 health centers, clinics, and public parks, subject to
22 Federal quality control standards for laboratory test-
23 ing;

24 (2) hire State, local, territorial, and Tribal gov-
25 ernment employees, or contract with outside entities,

1 to assist in the development, distribution, and provi-
2 sion of COVID–19 diagnostic tests within the State,
3 locality, territory, or Tribe;

4 (3) purchase COVID–19 diagnostic tests and
5 the medical supplies necessary to conduct such tests;

6 (4) increase the number of COVID–19 diag-
7 nostic tests provided at congregate settings, such
8 as—

9 (A) skilled nursing facilities;

10 (B) assisted living facilities;

11 (C) childcare facilities;

12 (D) elementary and secondary schools that
13 have resumed, or plan to resume within 30
14 days, in-person instruction;

15 (E) colleges and universities that have re-
16 sumed, or plan to resume within 30 days, in-
17 person instruction or on campus housing;

18 (F) prisons, jails, and youth detention fa-
19 cilities;

20 (G) residential behavioral health care and
21 psychiatric facilities;

22 (H) institutions providing services for
23 aging adults and people with intellectual and
24 developmental disabilities, rehabilitation facili-
25 ties, and group homes; and

1 (I) homeless shelters;

2 (5) educate the public about the availability of
3 COVID–19 diagnostic tests in their communities
4 and what to do if a positive result is received;

5 (6) issue subgrants, cooperative agreements, or
6 contracts to labs, hospitals, and other test providers
7 to reduce test processing time; submit the results to
8 State, local, territorial, and Tribal public health offi-
9 cials; and prevent delays in the distribution of test-
10 ing results, such as through transferring research
11 lab capacity to COVID–19 testing capacity and
12 building new labs to reduce test processing turn-
13 around time;

14 (7) enable the State, locality, territory, or Tribe
15 to detect and identify trends in COVID–19 and de-
16 velop guidance for communities on how to develop
17 testing programs and expand test capacity;

18 (8) reduce disparities in access to COVID–19
19 diagnostic testing among the communities hardest
20 hit by COVID–19; and

21 (9) additional uses, as determined by the Sec-
22 retary, in accordance with subsection (e).

23 (d) REQUIREMENT.—Any COVID–19 diagnostic test
24 conducted with the support of a grant awarded under this
25 section shall be provided to patients free of charge and

1 without regard for immigration status. The results shall
2 be submitted to relevant State, local, territorial, and Trib-
3 al public health officials.

4 (e) MINIMUM WAGE AND OVERTIME.—Notwith-
5 standing any other provision of law, for any individual em-
6 ployed by a contractor or subcontractor, and who performs
7 work assisted in whole or in part by funding under this
8 section, with respect to such employment, such individual
9 shall—

10 (1) be paid a wage of not less than \$15 per
11 hour; and

12 (2) if such individual is paid at a rate that is
13 the full-time equivalent of less than \$51,000 per
14 year, receive overtime pay of one-and-one-half times
15 the individual's regular rate of pay for all hours
16 worked in excess of 40 hours per workweek.

17 (f) ADDITIONAL USES OF FUNDS.—In determining
18 appropriate uses of funds under subsection (c)(9), the Sec-
19 retary shall consider the incidence of COVID-19 in
20 States, localities, territories, and Tribes, the availability
21 and uptake of vaccines for COVID-19 in States, localities,
22 territories, and Tribes, and advancements in COVID-19
23 diagnostic test technologies.

24 (g) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There is authorized to be
2 appropriated \$25,000,000,000 for fiscal year 2021
3 for purposes of awarding grants under this section.

4 (2) TRIBAL SET-ASIDE.—Not less than 10 per-
5 cent of the total amount appropriated under para-
6 graph (1) for a fiscal year shall be reserved for non-
7 competitive awards to—

8 (A) Indian Tribes or Tribal organizations
9 carrying out a contract or compact under the
10 Indian Self-Determination and Education As-
11 sistance Act (25 U.S.C. 5301 et seq.);

12 (B) Indian Tribes or Tribal organizations
13 receiving a grant under the Tribally Controlled
14 Schools Act of 1988 (25 U.S.C. 2501 et seq.);
15 and

16 (C) Indian Tribes or tribal organizations
17 (as defined in section 5212 of the Tribally Con-
18 trolled Schools Act of 1988 (25 U.S.C. 2511))
19 receiving grants under that Act (25 U.S.C.
20 2501 et seq.).

21 (3) LOCAL GOVERNMENT SET ASIDE.—Not less
22 than 30 percent of the total amount appropriated
23 under paragraph (1) for a fiscal year shall be re-
24 served for grants awarded directly to local govern-
25 ments.

1 **SEC. 7. REPORTS AND GUIDANCE ON COVID-19 DIAG-**
2 **NOSTIC TESTING.**

3 (a) **UPDATED GUIDANCE ON COVID-19 RAPID DI-**
4 **AGNOSTIC TESTS.—**

5 (1) **IN GENERAL.—**Not later than 30 days after
6 the date of enactment of this Act, the Secretary, act-
7 ing through the Commissioner of Food and Drugs,
8 shall issue updated guidance on the development of
9 rapid COVID-19 diagnostic tests, the provision of
10 such tests, including in nonclinical environments,
11 and the appropriate collection and electronic report-
12 ing of results (including geographic and demo-
13 graphic data, including with respect to race and eth-
14 nicity) and data regarding such tests to Federal,
15 State, local, and Tribal public health officials.

16 (2) **RAPID COVID-19 DIAGNOSTIC TEST.—**For
17 purposes of paragraph (1), the term “rapid COVID-
18 19 diagnostic test” means a COVID-19 diagnostic
19 test that can be performed by a user, with or with-
20 out the need of a medical professional or medical su-
21 pervisor, and that can produce results within 1 hour
22 of application.

23 (b) **UPDATED SURVEILLANCE TESTING GUID-**
24 **ANCE.—**

25 (1) **IN GENERAL.—**Not later than 30 days after
26 the date of enactment of this Act, the Secretary, act-

1 ing through the Commissioner of Food and Drugs
2 and in consultation with the Director of the Centers
3 for Disease Control and Prevention, shall issue guid-
4 ance on COVID–19 surveillance testing best prac-
5 tices. Such guidance shall address how COVID–19
6 surveillance testing can be used to keep qualified en-
7 tities, as defined in section 5(a), open to the public,
8 and how tests with differing accuracy standards, in-
9 cluding rapid point of care antigen tests and pooled
10 molecular tests, can each be used in COVID–19 sur-
11 veillance testing at qualified entities among children
12 and adult.

13 (2) COVID–19 SURVEILLANCE TESTING.—For
14 purposes of paragraph (1), the term “COVID-19
15 surveillance testing” means the ongoing, systematic
16 collection, analysis, and interpretation of COVID–19
17 diagnostic test results for the purpose of monitoring
18 for a community- or population-level infection and
19 disease, or to characterize the incidence and preva-
20 lence of disease.

21 (c) REPORT ON NATIONAL DAILY TESTING BENCH-
22 MARK.—Not later than 30 days after the date of enact-
23 ment of this Act, the Secretary, acting through the
24 through the Commissioner of Food and Drugs and in con-
25 sultation with the Director of the Centers for Disease Con-

1 trol and Prevention, shall issue recommendations on the
2 total number of COVID–19 diagnostic tests that should
3 be conducted in the United States per day to control the
4 spread of COVID–19, with a focus on the number of tests
5 necessary to protect essential workers, as defined in sec-
6 tion 5(a), from COVID–19 infection.

7 (d) COMPARISON OF COVID–19 DIAGNOSTIC TEST
8 PERFORMANCE.—Not later than 30 days after the date
9 of enactment of this Act, the Secretary, acting through
10 the Commissioner of Food and Drugs, shall issue report
11 comparing the performance of COVID–19 diagnostic tests
12 on the market, including a comparison of the differing
13 sensitivity and accuracy of such tests in asymptomatic and
14 symptomatic populations and children and adults.

15 (e) REVIEW OF COVID–19 DIAGNOSTIC TEST AP-
16 PROVAL PATHWAYS.—Not later than 30 days after the
17 date of enactment of this Act, the Secretary, acting
18 through the Commissioner of Food and Drugs, shall re-
19 view the process for approving COVID–19 diagnostic tests
20 for market, with a particular focus on extraction-free high-
21 ly sensitive molecular tests, pooled highly sensitive molec-
22 ular tests, low-cost rapid antigen test, low-cost highly sen-
23 sitive molecular tests, assays that can use a variety of re-
24 agents, and other products as determined by the Sec-

1 retary, and take steps as necessary to expedite such proc-
2 ess, as appropriate.

3 **SEC. 8. DEMOGRAPHIC AND GEOGRAPHIC DATA COLLEC-**
4 **TION.**

5 (a) COVID–19 DATA COLLECTION.—The Secretary,
6 acting through the Director of the Centers for Disease
7 Control and Prevention and in consultation with the Ad-
8 ministrator of the Centers for Medicare & Medicaid Serv-
9 ices and the Director of the Indian Health Service, shall
10 make publicly available on the website of the Centers for
11 Disease Control and Prevention data collected relating to
12 COVID–19 testing from entities receiving Federal funding
13 under this Act, including data disaggregated by race, eth-
14 nicity, sex (including sexual orientation and gender iden-
15 tity), age, primary language, socioeconomic status, dis-
16 ability status, pregnancy status, occupation, county, and
17 zip code.

18 (b) APPLICATION OF STANDARDS.—To the extent
19 practicable, data collection under this section shall follow
20 standards developed by the Office of Minority Health of
21 the Department of Health and Human Services and the
22 Centers for Disease Control and Prevention, and shall be
23 collected, analyzed, and reported in accordance with the
24 standards promulgated under section 3101 of the Public
25 Health Service Act (42 U.S.C. 300kk).

1 (c) **TIMELINE.**—The data made available under this
2 section shall be updated on a weekly basis throughout the
3 COVID–19 pandemic.

4 (d) **PRIVACY.**—In publishing data under this section,
5 the Secretary shall take all necessary steps to protect the
6 privacy of individuals whose information is included in
7 such data, including—

8 (1) complying with privacy protections provided
9 under the regulations promulgated under section
10 264(c) of the Health Insurance Portability and Ac-
11 countability Act of 1996 (42 U.S.C. 1320d–2 note)
12 and State law; and

13 (2) protections from all inappropriate internal
14 use by an entity that collects, stores, or receives the
15 data, including use of such data in determinations of
16 eligibility (or continued eligibility) in health plans,
17 and from inappropriate uses.

18 (e) **DATA USE.**—Neither the Secretary, nor any other
19 officer or employee of the Federal Government, or local
20 government liaison, may use the information furnished
21 under this legislation for any purpose other than the sta-
22 tistical and public health purposes for which such informa-
23 tion is supplied, or make any publication whereby the data
24 furnished by any particular establishment or individual
25 under this Act can be identified, or permit anyone other

1 than the sworn officers and employees of the Department
2 of Health and Human Services to examine the individual
3 reports.