

SECURING HEALTHCARE AND RESPONSE
EQUIPMENT ACT OF 2020

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4210

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO AUTHOR-
IZE THE TRANSFER OF CERTAIN EQUIPMENT DURING A PUBLIC
HEALTH EMERGENCY, AND FOR OTHER PURPOSES



DECEMBER 14, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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Calendar No. 624

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-321

SECURING HEALTHCARE AND RESPONSE EQUIPMENT ACT OF 2020

DECEMBER 14, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4210]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4210) to amend the Homeland Security Act of 2002 to authorize the transfer of certain equipment during a public health emergency, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 4210, the Securing Healthcare and Response Equipment (SHARE) Act, is to provide the Secretary of the Department of Homeland Security (DHS or Department) with explicit authority to transfer excess personal protective equipment (PPE) or other supplies, on a reimbursable basis, to the Department of Health and Human Services (HHS) in the event the Secretary of HHS declares a public health emergency and initiates a transfer request. In addition, this bill authorizes the Secretary of HHS, in

coordination with the DHS Secretary, to sell medical supplies that meet specific criteria from the Strategic National Stockpile (SNS).

II. BACKGROUND AND THE NEED FOR LEGISLATION

On January 31, 2020, the Secretary of HHS declared a public health emergency in response to the growing threat posed by COVID-19. By March 2020, the rapid increase in the number of cases of COVID-19 in the United States quickly depleted the inventory of personal protective equipment (or PPE) in hospitals and health centers throughout the country.¹

In response, the HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) initiated a nation-wide effort to deliver PPE from SNS by population, prioritizing delivery to areas most impacted by COVID-19.² However, the overwhelming demand for PPE from states was far greater than the available supply on hand.³ Complicating matters, global suppliers of PPE faced limitations exporting supplies and equipment that could otherwise be used in-country to address COVID-19.⁴ Amid a stressed global supply chain and an exhausted SNS, HHS ASPR faced difficulties in fulfilling PPE order requests from states and territories and replenishing the SNS inventory.⁵

To alleviate the PPE shortage, DHS utilized an interagency agreement to help HHS.⁶ Moreover, DHS and HHS launched an initiative to provide PPE “for federal employees, making deliveries to agencies providing mission-critical work to support public facing missions during the novel coronavirus outbreak.”⁷

S. 4210 would provide HHS with an additional source of PPE in the event of any future public health emergency. This bill explicitly authorizes DHS to share excess PPE on a reimbursable basis from within its inventory with HHS, following a formal request from the Secretary of HHS. As amended, it will also provide DHS, if the Secretary chooses, with the authority to create a PPE stockpile solely for use by first responders in the U.S. In addition, S. 4210 provides that the Secretary of HHS, in consultation with DHS, can sell supplies within the SNS to outside parties so long as the items meet specific criteria.

¹Jacobs, Andrew, Richtel, Matt, and Mike Baker. ‘At War With No Ammo’: Doctors Say Shortage of Protective Gear Is Dire. *New York Times*. (March 19, 2020) available at <https://www.nytimes.com/2020/03/19/health/coronavirus-masks-shortage.html>.

²Deploying PPE and Other Medical Supplies and Equipment from the Strategic National Stockpile, Office of the Assistant Secretary for Preparedness and Response, Pub. Health Emergency, available at <https://www.phe.gov/emergency/events/COVID19/SNS/Pages/deploy.aspx> (reviewed July 30, 2020).

³Olivia Rubin, et. al., *Despite Trump claim, 13 states say some orders for coronavirus supplies still unfilled*, ABC News. (July 23, 2020), available at <https://abcnews.go.com/Health/trump-claim-12-states-orders-coronavirus-supplies-unfilled/story?id=71946598>.

⁴Department of Global Communications, *Supply Chain and COVID-19: UN rushes to move vital equipment to frontlines*, United Nations. (May 15, 2020), available at <https://www.un.org/en/coronavirus/supply-chain-and-covid-19-un-rushes-move-vital-equipment-frontlines>.

⁵Beth Reinhard and Emma Brown, *Face masks in national stockpile have not been substantially replenished since 2009*, The Washington Post. (March 10, 2020), available at https://www.washingtonpost.com/investigations/face-masks-in-national-stockpile-have-not-been-substantially-replenished-since-2009/2020/03/10/57e57316-60c9-11ea-8baf-519cedb6ccd9_story.html.

⁶Eric Katz, *FEMA to Begin Distributing PPE to Federal Employees This Week*, Government Executive (May 4, 2020), available at <https://www.govexec.com/management/2020/05/fema-begin-distributing-ppe-federal-employees-week/165114/>.

⁷*Id.*

III. LEGISLATIVE HISTORY

Chairman Ron Johnson (R–WI) and Ranking Member Gary Peters (D–MI) introduced S. 4210 on July 2, 2020. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 4210 at a business meeting on July 22, 2020. During the business meeting, Chairman Johnson and Ranking Member Peters offered a substitute amendment as modified that authorizes the sale of supplies from the SNS that have outlasted its usefulness. The amendment was adopted by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

Senator Rick Scott offered an amendment as twice modified that permits the establishment of a PPE stockpile within the SNS that is solely for use by first responders. The amendment was adopted by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

The bill as amended, was reported favorably by voice vote *en bloc*. Senators present for were: Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill’s short title, the “Securing Healthcare and Response Equipment Act”, or “SHARE Act”.

Section 2. Transfer of equipment during a public health emergency

This section amends the Homeland Security Act of 2002 to authorize the DHS Secretary to transfer to HHS excess supplies and equipment in DHS inventory upon receiving a formal request from the HHS Secretary. In addition, this section requires DHS to evaluate the availability of excess supplies and ensure the transfer of supplies will not affect the health of DHS personnel. The Secretaries of HHS and the DHS must inform Congress of any effort to transfer excess material. This section also authorizes the Secretary of HHS, in consultation with the Secretary of Homeland Security, to sell supplies from the SNS that are approaching their expiration date or deemed dispensable.

Section 3. National strategic stockpile of Personal Protective Equipment for first responders

This section provides the Secretary of Homeland Security with the authority if he or she chooses to create a stockpile of PPE to ensure first responder agencies are adequately equipped and have the means to address an emergency following an emergency declaration under the Stafford Act.

Further, this section specifies that any PPE provided to first responder agencies will be on a reimbursable basis. Finally, this section requires the Secretary of Homeland Security to submit a report to Congress one year from the date of enactment of this bill with information on the development, if any, of a PPE stockpile

and any pertinent data related to the procurement of supplies and maintenance of the stockpile's contents.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CBO failed to provide the Committee with a cost estimate in time for the final reporting deadline of the 116th Congress.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 504 as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

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TITLE 6—NATIONAL EMERGENCY MANAGEMENT

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SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

* * * * *

Sec. 529. Transfer of Equipment During a Public Health Emergency.

Sec. 530. National strategic stockpile of personal protective equipment for first responders.

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SEC. 529. TRANSFER OF EQUIPMENT DURING A PUBLIC HEALTH EMERGENCY.

(a) *AUTHORIZATION OF TRANSFER OF EQUIPMENT.*—During a public health emergency declared by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary, at the request of the Secretary of Health and Human Services, may transfer to the Department of Health and Human Services, on a reimbursable basis, ex-

cess personal protective equipment or medically necessary equipment in the possession of the Department.

(b) **DETERMINATION OF SECRETARIES.**—

(1) **IN GENERAL.**—In carrying out this section—

(A) before requesting a transfer under subsection (a), the Secretary of Health and Human Services shall determine whether the personal protective equipment or medically necessary equipment is otherwise available; and

(B) before initiating a transfer under subsection (a), the Secretary, in consultation with the heads of each component within the Department, shall—

(i) determine whether the personal protective equipment or medically necessary equipment requested to be transferred under subsection (a) is excess equipment; and

(ii) certify that the transfer of the personal protective equipment or medically necessary equipment will not adversely impact the health or safety of officers, employees, or contractors of the Department.

(2) **NOTIFICATION.**—The Secretary of Health and Human Services and the Secretary shall each submit to Congress a notification explaining the determination made under subparagraphs (A) and (B), respectively, of paragraph (1).

(3) **REQUIRED INVENTORY.**—

(A) **IN GENERAL.**—The Secretary shall—

(i) acting through the Chief Medical Officer of the Department, maintain an inventory of all personal protective equipment and medically necessary equipment in the possession of the Department; and

(ii) make the inventory required under clause (i) available, on a continual basis, to—

(I) the Secretary of Health and Human Services; and

(II) the Committee on Appropriations and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Appropriations and the Committee on Homeland Security of the House of Representatives.

(B) **FORM.**—Each inventory required to be made available under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

SEC. 530. NATIONAL STRATEGIC STOCKPILE OF PERSONAL PROTECTIVE EQUIPMENT FOR FIRST RESPONDERS.

(a) **DEFINITIONS.**—In this section—

(1) the term “first responder” means a “public safety officer” as defined in section 1204 of title 1 of Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284); and

(2) the term “personal protective equipment” includes protective clothing, helmets, gloves, face shields, goggles, face masks, and other supplies or equipment designed to protect the wearer from injury or the spread of infection or illness, as the Secretary determines appropriate.

(b) **AUTHORIZATION.**—

(1) **IN GENERAL.**—The Secretary may—

(A) establish and maintain a stockpile of personal protective equipment for use by first responders during an emergency declared under section 501 (b) of Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191 (b)) or under the National Emergencies Act (50 U.S.C. 1601 et seq.); and

(B) make such personal protective equipment available, on a reimbursable basis, to first responder agencies.

(2) DETERMINATION OF SECRETARY.—The Secretary shall, in consultation with the Secretary of Health and Human Services, determine what quantities or equipment shall be appropriate to maintain the stockpile authorized under paragraph (1).

(c) REIMBURSEMENT.—In lieu of reimbursement from a first responder agency under subsection (b), the Secretary may accept reimbursement from the State, or political subdivision thereof, in which the first responder agency is located.

(d) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to Congress a report on the progress made on establishing a stockpile under this section, including the quantity of materials that have been obtained and a description of the plans of the Department to maintain the stockpile.

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UNITED STATES CODE

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CHAPTER 6A—PUBLIC HEALTH SERVICE

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Subchapter II—General Powers and Duties

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PART B—FEDERAL STATE COOPERATION

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SEC. 247D-6B. STRATEGIC NATIONAL STOCKPILE AND SECURITY COUNTERMEASURE PROCUREMENTS.

(a) * * *
(1) * * *

* * * * *

(6) TRANSFERS OF ITEMS.—The Secretary, in coordination with the Secretary of Homeland Security, may sell drugs, vaccines and other biological products, medical devices, or other supplies maintained in the stockpile under paragraph (1) to a Federal agency or private, nonprofit, State, local, tribal, or territorial entity for immediate use and distribution, provided that any such items being sold are—

(A) within 1 year of their expiration date; or

(B) determined by the Secretary to no longer be needed in the stockpile due to advances in medical or technical capabilities.

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