H. R. ______

To provide additional appropriations for the public health and social services emergency fund, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. ______ introduced the following bill; which was referred to the Committee on ____________________

A BILL

To provide additional appropriations for the public health and social services emergency fund, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020:
DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF THE SECRETARY

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Public Health and Social Services Emergency Fund”, $29,000,000,000, to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally, including the development of necessary countermeasures and vaccines, prioritizing platform-based technologies with United States-based manufacturing capabilities, the purchase of vaccines, therapeutics, diagnostics, necessary medical supplies, as well as medical surge capacity, addressing blood supply chain, workforce modernization, telehealth access and infrastructure, initial advanced manufacturing, novel dispensing, enhancements to the United States Commissioned Corps, and other preparedness and response activities: Provided, That funds appropriated under this paragraph in this Act may be used to develop and demonstrate innovations and enhancements to manufacturing platforms to support such capabilities: Provided further, That the Secretary of Health and Human Services shall purchase vaccines developed
using funds made available under this paragraph in this Act to respond to an outbreak or pandemic related to coronavirus in quantities determined by the Secretary to be adequate to address the public health need: *Provided further*, That products purchased by the Federal government with funds made available under this paragraph in this Act, including vaccines, therapeutics, and diagnostics, shall be purchased in accordance with Federal Acquisition Regulation guidance on fair and reasonable pricing: *Provided further*, That the Secretary may take such measures authorized under current law to ensure that vaccines, therapeutics, and diagnostics developed from funds provided in this Act will be affordable in the commercial market: *Provided further*, That in carrying out the previous proviso, the Secretary shall not take actions that delay the development of such products: *Provided further*, That the Secretary shall ensure that protections remain for individuals enrolled in group or individual health care coverage with pre-existing conditions, including those linked to coronavirus: *Provided further*, That products purchased with funds appropriated under this paragraph in this Act may, at the discretion of the Secretary of Health and Human Services, be deposited in the Strategic National Stockpile under section 319F–2 of the Public Health Service Act (42 U.S.C. 247d–6b): *Provided further*, That of
the amount appropriated under this paragraph in this Act,
not more than $2,000,000,000 shall be for the Strategic
National Stockpile under section 319F–2(a) of such Act:

Provided further, That funds appropriated under this
paragraph in this Act may be transferred to, and merged
with, the fund authorized by the Covered Counter Measure
Process Fund under section 319F–4 of the Public Health
Service Act (42 U.S.C. 247d–6e):

Provided further, That of the amount appropriated under this paragraph in this
Act, $20,000,000,000 shall be available to the Biomedical
Advanced Research and Development Authority for nec-
essary expenses of manufacturing, production, and pur-
chase, at the discretion of the Secretary, of vaccines,
therapeutics, diagnostics, and small molecule active phar-
maceutical ingredients, including the development, trans-
lation, and demonstration at scale of innovations in manu-
facturing platforms: Provided further, That funds in the
previous proviso may be used for the construction or ren-
ovation of United States-based next generation manufac-
turing facilities, other than facilities owned by the United
States Government: Provided further, That of the amount
provided under this heading in this Act, $6,000,000,000
shall be for activities to plan, prepare for, promote, dist-
ribute, administer, monitor, and track coronavirus vac-
cines to ensure broad-based distribution, access, and vac-
cine coverage: Provided further, That the Secretary shall coordinate funding and activities outlined in the previous proviso through the Director of Centers for Disease Control and Prevention: Provided further, That the Secretary, through the Director of Centers for Disease Control and Prevention, shall report to the Committees on Appropriations of the House of Representatives and the Senate within 60 days of enactment of this Act on a comprehensive coronavirus vaccine distribution strategy and spend plan that includes how existing infrastructure will be leveraged, enhancements or new infrastructure that may be built, considerations for moving and storing vaccines, guidance for how States and health care providers should prepare for, store, and administer vaccines, nationwide vaccination targets, funding that will be distributed to States, how an informational campaign to both the public and health care providers will be executed, and how the vaccine distribution plan will focus efforts on high risk, underserved, and minority populations: Provided further, That such plan shall be updated and provided to the Committees on Appropriations of the House of Representatives and the Senate 90 days after submission of the first plan: Provided further, That the Secretary shall notify the Committees on Appropriations of the House of Representatives and the Senate 2 days in advance of any obligation in excess of
$50,000,000, including but not limited to contracts and interagency agreements, from funds provided in this paragraph in this Act: Provided further, That funds appropriated under this paragraph in this Act may be used for the construction, alteration, or renovation of non-federally owned facilities for the production of vaccines, therapeutics, diagnostics, and medical supplies where the Secretary determines that such a contract is necessary to secure sufficient amounts of such supplies: Provided further, That the not later than 30 days after enactment of this Act, and every 30 days thereafter until funds are expended, the Secretary shall report to the Committees on Appropriations of the House of Representatives and the Senate on uses of funding for Operation Warp Speed, detailing current obligations by Department or Agency, or component thereof broken out by the coronavirus supplemental appropriations Act that provided the source of funds: Provided further, That the plan outlined in the previous proviso shall include funding by contract, grant, or other transaction in excess of $20,000,000 with a notation of which Department or Agency, and component thereof is managing the contract: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section
251(b)(2)(A)(i) of the Balanced Budget and Emergency

For an additional amount for “Public Health and So-
cial Services Emergency Fund”, $8,085,000,000, to re-
main available until September 30, 2022, to prevent, pre-
pare for, and respond to coronavirus, domestically or
internationally: Provided, That $7,600,000,000 of the
funds appropriated under this paragraph in this Act shall
be transferred to “Health Resources and Services Admin-
istration—Primary Health Care” for grants, cooperative
agreements, and other necessary expenses under the
Health Centers Program, as defined by section 330 of the
Public Health Service Act (42 U.S.C. 254b), including
funding for alteration, renovation, construction, equip-
ment, and other capital improvement costs, and including
funding to support, maintain, or increase health center ca-
pacity and staffing levels, as necessary, to meet the needs
of areas affected by coronavirus: Provided further, That
sections 330(r)(2)(B), 330(e)(3), 330(e)(6)(A)(iii), and
330(e)(6)(B)(iii) of such Act shall not apply to funds in
the preceding proviso: Provided further, That funding
made available under this paragraph in this Act shall not
be subject to requirements under the National Environ-
mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or
the National Historic Preservation Act of 1966: Provided
further, That for the purposes of any funding provided for fiscal year 2020 for the Health Centers Program pursuant to section 330 of the Public Health Service Act (42 U.S.C. 254b), maintaining current health center capacity and staffing levels during a public health emergency as a result of the coronavirus and any renewal of such declaration pursuant to such section 319 of this Act shall be deemed a cost of prevention, diagnosis, and treatment of coronavirus: Provided further, That $250,000,000 of the funds appropriated under this paragraph in this Act shall be transferred to “Health Resources and Services Administration—Bureau of Health Workforce”, to remain available until September 30, 2022, for supplements to existing payments under subsections 340E(a) and (h)(1) notwithstanding the cap imposed by subsection (h)(1) and notwithstanding subsection (h)(6), for Children’s Hospitals Graduate Medical Education, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided further, That $5,000,000 of the funds appropriated under this paragraph in this Act shall be transferred to “Health Resources and Services Administration—Health Care Systems”, to remain available until September 30, 2022, for activities under sections 1271 and 1273 of the this Act to improve the capacity of poison control centers to respond to increased calls: Provided fur-
That of the amount appropriated under this paragraph in this Act, $225,000,000 shall be for grants or other mechanisms, to rural health clinics as defined in section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)) with such funds also available to such entities for building or construction of temporary structures, leasing of properties, and retrofitting facilities as necessary to support COVID–19 testing: Provided further, that such funds shall be distributed using the procedures developed for the Provider Relief Fund authorized under the third paragraph under this heading in division B of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136); may be distributed using contracts or agreements established for such program; and shall be subject to the process requirements applicable to such program: Provided further, that the Secretary may specify a minimum amount for each eligible entity accepting assistance under the two previous provisos: Provided further, that of the amount made available under this heading in this Act to prevent, prepare for, and respond to coronavirus, $5,000,000, shall be available to implement section 747A of the PHS Act and section 747A(c) shall not apply to these funds: Provided further, that such amount is designated by the Congress as being for an emergency requirement pursuant to section
251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)). For an additional amount for “Public Health and Social Services Emergency Fund”, $16,000,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally, which shall be for necessary expenses for testing, contact tracing, surveillance, containment, and mitigation to monitor and suppress COVID–19, including tests for both active infection and prior exposure, including molecular, antigen, and serological tests, the manufacturing, procurement and distribution of tests, testing equipment and testing supplies, including personal protective equipment needed for administering tests, the development and validation of rapid, molecular point-of-care tests, and other tests, support for workforce, epidemiology, to scale up academic, commercial, public health, and hospital laboratories, to conduct surveillance and contact tracing, support development of COVID–19 testing plans, and other related activities related to COVID–19 testing: Provided, That of the amount appropriated under this paragraph in this Act, not less than $15,000,000,000 shall be for States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes for necessary expenses for testing, contact
tracing, surveillance, containment, and mitigation, including support for workforce, epidemiology, use by employers, elementary and secondary schools, child care facilities, institutions of higher education, long-term care facilities, or in other settings, scale up of testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, health care facilities, and other entities engaged in COVID–19 testing, and other related activities related to COVID–19 testing, contact tracing, surveillance, containment, and mitigation: Provided further, That the amount identified in the preceding proviso shall be allocated to States, localities, and territories according to the formula that applied to the Public Health Emergency Preparedness cooperative agreement in fiscal year 2019: Provided further, That not less than $500,000,000 shall be allocated in coordination with the Director of the Indian Health Service, to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes: Provided further, That the Secretary of Health and Human Services (referred to in this paragraph as the “Secretary”) may satisfy the funding thresholds outlined in the first and third provisos under this paragraph in this Act by making awards through other grant or cooperative agreement mechanisms: Provided further, That the Governor or designee of each State,
locality, territory, tribe, or tribal organization receiving funds pursuant to this Act shall update their plans, as applicable, for COVID–19 testing and contact tracing submitted to the Secretary pursuant to the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116–139) and submit such updates to the Secretary not later than 60 days after funds appropriated in this paragraph in this Act have been awarded to such recipient:

Provided further, That funds an entity receives from amounts described in the first proviso in this paragraph may also be used for the rent, lease, purchase, acquisition, construction, alteration, renovation, or equipping of non-federally owned facilities to improve coronavirus preparedness and response capability at the State and local level:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

For an additional amount for “Public Health and Social Services Emergency Fund”, $25,000,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally, which shall be for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues
that are attributable to coronavirus: \textit{Provided}, That these funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse: \textit{Provided further},

That recipients of payments under this paragraph shall submit reports and maintain documentation as the Secretary determines are needed to ensure compliance with conditions that are imposed by this paragraph for such payments, and such reports and documentation shall be in such form, with such content, and in such time as the Secretary may prescribe for such purpose: \textit{Provided further}, That “eligible health care providers” means public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described in this proviso as the Secretary may specify, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID–19: \textit{Provided further}, That the Secretary of Health and Human Services shall, on a rolling basis, review applications and make payments under this paragraph in this Act: \textit{Provided further}, That funds appropriated under this paragraph in this Act shall be available for building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equip-
ment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity: Provided further, That, in this paragraph, the term “payment” means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary: Provided further, That payments under this paragraph shall be made in consideration of the most efficient payment systems practicable to provide emergency payment: Provided further, That to be eligible for a payment under this paragraph, an eligible health care provider shall submit to the Secretary of Health and Human Services an application that includes a statement justifying the need of the provider for the payment and the eligible health care provider shall have a valid tax identification number: Provided further, That, not later than 3 years after final payments are made under this paragraph, the Office of Inspector General of the Department of Health and Human Services shall transmit a final report on audit findings with respect to this program to the Committees on Appropriations of the House of Representatives and the Senate: Provided further, That nothing in this section limits the authority of the Inspector General or the Comptroller General to conduct audits of interim payments at an earlier date: Provided further, That not later than 60 days after the date...
of enactment of this Act, the Secretary of Health and Human Services shall provide a report to the Committees on Appropriations of the House of Representatives and the Senate on obligation of funds, including obligations to such eligible health care providers summarized by State of the payment receipt: Provided further, That such reports shall be updated and submitted to such Committees every 60 days until funds are expended: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)).

GENERAL PROVISIONS—THIS ACT

(INCLUDING TRANSFER OF FUNDS)

SEC. 2. Funds appropriated by this Act may be used by the Secretary of the Department of Health and Human Services to appoint, without regard to the provisions of sections 3309 through 3319 of title 5 of the United States Code, candidates needed for positions to perform critical work relating to coronavirus for which—

(1) public notice has been given; and

(2) the Secretary of Health and Human Services has determined that such a public health threat exists.
SEC. 3. Funds made available by this Act may be used to enter into contracts with individuals for the provision of personal services (as described in section 104 of part 37 of title 48, Code of Federal Regulations (48 CFR 37.104)) to support the prevention of, preparation for, or response to coronavirus, domestically and internationally, subject to prior notification to the Committees on Appropriations of the House of Representatives and the Senate: Provided, That such individuals may not be deemed employees of the United States for the purpose of any law administered by the Office of Personnel Management: Provided further, That the authority made available pursuant to this section shall expire on September 30, 2024.

SEC. 4. (a) If services performed by an employee during 2020 are determined by the head of the agency to be primarily related to preparation, prevention, or response to coronavirus, any premium pay for such services shall be disregarded in calculating the aggregate of such employee’s basic pay and premium pay for purposes of a limitation under section 5547(a) of title 5, United States Code, or under any other provision of law, whether such employee’s pay is paid on a biweekly or calendar year basis.
(b) Any overtime pay for such services shall be disregarded in calculating any annual limit on the amount of overtime pay payable in a calendar or fiscal year.

c) With regard to such services, any pay that is disregarded under either subsection (a) or (b) shall be disregarded in calculating such employee's aggregate pay for purposes of the limitation in section 5307 of such title 5.

d)(1) Pay that is disregarded under subsection (a) or (b) shall not cause the aggregate of the employee's basic pay and premium pay for the applicable calendar year to exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code, as in effect at the end of such calendar year.

(2) For purposes of applying this subsection to an employee who would otherwise be subject to the premium pay limits established under section 5547 of title 5, United States Code, "premium pay" means the premium pay paid under the provisions of law cited in section 5547(a).

(3) For purposes of applying this subsection to an employee under a premium pay limit established under an authority other than section 5547 of title 5, United States Code, the agency responsible for administering such limit shall determine what payments are considered premium pay.
(e) This section shall take effect as if enacted on February 2, 2020.

(f) If application of this section results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

1. be considered to be basic pay of the covered employee for any purpose; or

2. be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code.

SEC. 5. The paragraph codified at 42 U.S.C. 231 shall be applied in this and all other fiscal years as though the phrase “central services” referred to central services for any Federal agency, and this section shall be effective as if enacted on the date of the enactment of such paragraph.

SEC. 6. Funds appropriated by this Act under the heading “Department of Health and Human Services”, except for the amounts specified in the third and fourth paragraphs under the heading “Public Health and Social Services Emergency Fund”, may be transferred to, and merged with, other appropriation accounts under the headings “Centers for Disease Control and Prevention”,...
“Public Health and Social Services Emergency Fund”, “Administration for Children and Families”, “Administration for Community Living”, and “National Institutes of Health” to prevent, prepare for, and respond to coronavirus following consultation with the Office of Management and Budget: Provided, That the Committees on Appropriations of the House of Representatives and the Senate shall be notified 10 days in advance of any such transfer: Provided further, That, upon a determination that all or part of the funds transferred from an appropriation by this Act are not necessary, such amounts may be transferred back to that appropriation: Provided further, That none of the funds made available by this Act may be transferred pursuant to the authority in section 205 of division A of Public Law 116–94 or section 241(a) of the Public Health Service Act (42 U.S.C. 238j(a)).

SEC. 7. Of the funds appropriated by this Act under the heading “Public Health and Social Services Emergency Fund”, up to $6,000,000 shall be transferred to, and merged with, funds made available under the heading “Office of the Secretary, Office of Inspector General”, and shall remain available until expended, for oversight of activities supported with funds appropriated to the Department of Health and Human Services to prevent, prepare for, and respond to coronavirus, domestically or inter-
nationally: Provided, That the Inspector General of the Department of Health and Human Services shall consult with the Committees on Appropriations of the House of Representatives and the Senate prior to obligating such funds: Provided further, That the transfer authority provided by this section is in addition to any other transfer authority provided by law.

SEC. 8. Funds made available in Public Law 113–235 to the accounts of the National Institutes of Health that were available for obligation through fiscal year 2015 shall be made available through fiscal year 2021 for the liquidation of valid obligations incurred in fiscal year 2015: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)) is amended.

SEC. 9. Section 675B(b)(3) of the Community Services Block Grant Act (42 U.S.C. 9906(b)(3)) shall not apply with respect to funds appropriated by the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136) to carry out the Community Services Block Grant Act (42 U.S.C. 9901 et seq.): Provided, That the amounts repurposed in this section that were previously are designated by the Congress as an emergency

Section 10. (a) Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

(b) Any amount appropriated by this Act, designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 and subsequently so designated by the President, and transferred pursuant to transfer authorities provided by this Act shall retain such designation.