

116TH CONGRESS
2D SESSION

S. 3309

To provide for a Public Health Emergency Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2020

Mr. CASSIDY (for himself, Mr. SCHATZ, Mr. RUBIO, Mr. DURBIN, Ms. SMITH, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for a Public Health Emergency Fund, 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.**

4 This Act may be cited as the “Public Health Emer-
5 gency Response and Accountability Act”.

6 **SEC. 2. PUBLIC HEALTH EMERGENCIES.**

7 (a) IN GENERAL.—Section 319 of the Public Health
8 Service Act (42 U.S.C. 247d) is amended—

9 (1) in subsection (a), by striking “after con-
10 sultation” and inserting “in consultation with the

1 Assistant Secretary for Preparedness and Response
2 and”;

3 (2) by redesignating subsections (b) through (f)
4 as subsections (c) through (g), respectively;

5 (3) by inserting after subsection (a), the fol-
6 lowing:

7 “(b) REPORTING REQUIREMENTS.—

8 “(1) IN GENERAL.—Upon the determination of
9 a public health emergency under subsection (a) that
10 is an infectious disease outbreak, a bioterrorist at-
11 tack, or a disaster, the Secretary shall request the
12 Assistant Secretary for Preparedness and Response
13 to convene a group of Federal public health and
14 other Federal officials that shall prepare monthly re-
15 ports related to such emergency for the period de-
16 scribed in paragraph (3) and submit such reports to
17 Congress.

18 “(2) CONTENTS.—The reports prepared under
19 paragraph (1) shall include—

20 “(A) in the first monthly report, the pro-
21 posed budget of the response to the emergency,
22 and, in each subsequent report, updates to such
23 budget;

24 “(B) a description of how the Secretary
25 plans to use best practices and lessons learned

1 from previous public health emergency re-
2 sponses;

3 “(C) a description of how collaboration
4 among public health agencies and departments
5 will be achieved, strategies for public commu-
6 nication, and acquisition and distribution of
7 supplies;

8 “(D) an identification of additional au-
9 thorities needed, if any, to respond to the emer-
10 gency; and

11 “(E) in the first monthly report, the jus-
12 tification for triggering the public health emer-
13 gency response.

14 “(3) PERIOD.—The period described in this
15 paragraph is the period beginning not later than 30
16 days after the determination of a public health emer-
17 gency under subsection (a) that is an infectious dis-
18 ease outbreak, a bioterrorist attack, or a disaster,
19 and ending 30 days after the determination of such
20 emergency terminates in accordance with such sub-
21 section.”; and

22 (4) in subsection (c) (as so redesignated)—

23 (A) in paragraph (3), by striking “Com-
24 mittee on Commerce” and inserting “Com-
25 mittee on Energy and Commerce”; and

1 (B) by adding at the end the following:

2 “(6) FUNDING.—

3 “(A) DEFINITIONS.—In this paragraph:

4 “(i) PUBLIC HEALTH EMERGENCY RE-
5 LIEF.—The term ‘public health emergency
6 relief’ means the expenditures to address a
7 public health emergency determined under
8 subsection (a) that is an infectious disease
9 outbreak, a bioterrorist attack, or a dis-
10 aster from—

11 “(I) amounts made available by
12 emergency supplemental appropri-
13 ations to appropriations accounts of
14 the Department of Health and
15 Human Services to address a public
16 health emergency that is an infectious
17 disease outbreak, a bioterrorist attack,
18 or a disaster (excluding funds trans-
19 ferred to the Department from the ap-
20 propriations account for the ‘Federal
21 Emergency Management Agency, Dis-
22 aster Relief Fund’ or pursuant to the
23 Oil Pollution Act of 1990); and

1 “(II) any amounts expended from
2 the Public Health Emergency Fund
3 under this subsection.

4 “(ii) TARGET AMOUNT.—The term
5 ‘target amount’ means the amount that is
6 the rolling annual average of expenditures
7 for public health emergency relief over the
8 full 14 fiscal years immediately preceding
9 the fiscal year for which the determination
10 of a public health emergency is made
11 under subsection (a) that is an infectious
12 disease outbreak, a bioterrorist attack, or a
13 disaster, excluding the highest and lowest
14 years.

15 “(B) APPROPRIATIONS.—

16 “(i) IN GENERAL.—Subject to clause
17 (iv), upon the determination of each public
18 health emergency under subsection (a) that
19 is an infectious disease outbreak, a bioter-
20 rorist attack, or a disaster, there is appro-
21 priated to the Public Health Emergency
22 Fund, out of any money in the Treasury
23 not otherwise appropriated, for the fiscal
24 year of the determination, an amount de-
25 termined under subparagraph (C), to re-

1 main available until expended, which may
2 be used in accordance with subparagraph
3 (D).

4 “(ii) REPORTING.—The reporting re-
5 quirements contained in subsection (b)
6 shall apply with respect to amounts appro-
7 priated under clause (i).

8 “(iii) EMERGENCY DESIGNATIONS.—

9 “(I) IN GENERAL.—Amounts ap-
10 propriated under clause (i) are des-
11 ignated as an emergency requirement
12 pursuant to section 4(g) of the Statu-
13 tory Pay-As-You-Go Act of 2010 (2
14 U.S.C. 933(g)).

15 “(II) DESIGNATION IN THE SEN-
16 ATE.—In the Senate, amounts appro-
17 priated under clause (i) are des-
18 ignated as an emergency requirement
19 pursuant to section 403(a) of S. Con.
20 Res. 13 (111th Congress), the concur-
21 rent resolution on the budget for fis-
22 cal year 2010.

23 “(iv) LIMITATION.—Clause (i) shall
24 not apply if the amount available for ex-
25 penditure in the Public Health Emergency

1 Fund, as of the date of the determination
2 as a public health emergency under sub-
3 section (a) that is an infectious disease
4 outbreak, a bioterrorist attack, or a dis-
5 aster, is equal to or greater than the target
6 amount.

7 “(C) FORMULA.—

8 “(i) IN GENERAL.—Subject to clause
9 (ii), the amount determined under this
10 subparagraph shall be equal to the dif-
11 ference between the target amount and the
12 amount available for expenditure in the
13 Public Health Emergency Fund, as of the
14 date of the determination of the public
15 health emergency under subsection (a).

16 “(ii) REPORT BY OMB.—Not later
17 than 30 days after the date of enactment
18 of this paragraph, the Director of the Of-
19 fice of Management and Budget shall sub-
20 mit to the Committee on Appropriations
21 and the Committee on the Budget of the
22 Senate and the Committee on Appropria-
23 tions and the Committee on the Budget of
24 the House of Representatives, a report on

1 the rolling average calculated for purposes
2 of determining the target amount.

3 “(D) USE OF FUNDS.—

4 “(i) IN GENERAL.—Amounts appro-
5 priated to the Public Health Emergency
6 Fund under subparagraph (B) shall be
7 used by the Secretary in accordance with
8 the proposed budget described in sub-
9 section (b)(2) for any public health emer-
10 gency determined under subsection (a) that
11 is an infectious disease outbreak, a bioter-
12 rorist attack, or a disaster that has not
13 terminated under such subsection. Such
14 funds shall be used—

15 “(I) to provide assistance for im-
16 mediate Federal, State, local, or inter-
17 national response needs with respect
18 to any public health emergency deter-
19 mined under subsection (a) that is an
20 infectious disease outbreak, a bioter-
21 rorist attack, or a disaster; and

22 “(II) for activities determined ap-
23 propriate by the Secretary to improve
24 preparedness and response to protect
25 human health for all populations in

1 any public health emergency deter-
2 mined under subsection (a) that is an
3 infectious disease outbreak, a bioter-
4 rorist attack, or a disaster.

5 “(ii) AVAILABILITY.—Amounts appro-
6 priated to the Public Health Emergency
7 Fund under subparagraph (B) shall re-
8 main available for the uses described in
9 this subparagraph so long as any public
10 health emergency is determined under sub-
11 section (a) that is an infectious disease
12 outbreak, a bioterrorist attack, or a dis-
13 aster, and the determination for any such
14 emergency has not terminated under such
15 subsection.

16 “(iii) AUTHORITY.—In expending
17 funds appropriated under subparagraph
18 (B) and carrying out activities under this
19 subparagraph, the Secretary shall have the
20 authority to—

21 “(I) transfer funds and enter
22 into contracts;

23 “(II) utilize flexible hiring mech-
24 anisms, including direct hiring author-
25 ity and personal service contracts; ex-

1 emptions from certain administrative
2 restrictions (such as travel, informa-
3 tion technology, printing and sup-
4 plies); motor vehicle authority; and
5 flexible compensation for responders,
6 including overtime and danger pay;
7 and

8 “(III) utilize flexible transaction
9 mechanisms.”.

10 (b) EXEMPTION OF THE PUBLIC HEALTH EMER-
11 GENCY FUND FROM SEQUESTRATION.—

12 (1) IN GENERAL.—Section 255(g)(1)(A) of the
13 Balanced Budget and Emergency Deficit Control
14 Act of 1985 is amended by inserting “Public Health
15 Emergency Fund (009–91–9913).” after the item
16 relating to “Postal Service Fund (18–4020–0–3–
17 372).”.

18 (2) APPLICATION.—The amendment made by
19 paragraph (1) shall apply to any sequestration order
20 issued under such Act on or after the date of enact-
21 ment of this section.

22 (c) GAO REPORTS.—

23 (1) IN GENERAL.—Not later than 180 days
24 after the date of enactment of this Act, the Comp-
25 troller General of the United States, in consultation

1 with relevant Federal, State, and local government
2 entities, shall prepare and submit to the appropriate
3 committees of Congress, a report—

4 (A) reviewing the capacity of the United
5 States public health system, including the pub-
6 lic health workforce, to respond effectively to in-
7 fectionous disease outbreaks;

8 (B) identifying areas of potential improve-
9 ment in coordination between Federal, State,
10 and local government entities to respond more
11 effectively to infectious disease outbreaks;

12 (C) making recommendations on how to
13 provide or allocate most effectively resources for
14 public health emergency response, specifically
15 considering how to utilize most effectively the
16 emergency fund established under section 319
17 of the Public Health Service Act (42 U.S.C.
18 247d); and

19 (D) containing an audit of how funds for
20 public health emergencies have been expended
21 within the 2 years preceding the date of the re-
22 port.

23 (2) POST-EMERGENCY REPORT.—

24 (A) IN GENERAL.—Not later than 6
25 months after the termination of a determination

1 of a public health emergency under section 319
2 of the Public Health Service Act (42 U.S.C.
3 247d) that is an infectious disease outbreak, a
4 bioterrorist attack, or a disaster, the Comp-
5 troller General of the United States shall review
6 response efforts by Federal, State, and local
7 government entities, as well as any other rel-
8 evant entities engaged in response efforts, and
9 submit a report to the appropriate committees
10 of Congress to determine—

11 (i) the compliance of such efforts with
12 best practices identified in the report
13 under paragraph (1);

14 (ii) the effectiveness of such best prac-
15 tices;

16 (iii) the cost of such efforts;

17 (iv) the areas of potential continued
18 improvement in coordination between Fed-
19 eral, State, and local government entities
20 to respond more effectively to infectious
21 disease outbreaks; and

22 (v) how to incorporate additional best
23 practices which may be incorporated in fu-
24 ture response efforts.

1 (B) AUDIT.—The report under subpara-
2 graph (A) shall include an audit indicating how
3 funds used for public health emergencies deter-
4 mined under section 319 of the Public Health
5 Service Act have been expended during the 2
6 years preceding the submission of the report
7 under such subparagraph.

8 **SEC. 3. APPLICABILITY.**

9 Nothing in this Act, or an amendment made by this
10 Act, shall affect the applicability of the Robert T. Stafford
11 Disaster Relief and Emergency Assistance Act (42 U.S.C.
12 5121 et seq.) or the Oil Pollution Act of 1990 (33 U.S.C.
13 2701 et seq.) in the case of a public health emergency.

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