



April 16, 2020

Commissioner Lori Shibinette
Director Lisa Morris
Department of Health and Human Services
129 Pleasant St.
Concord, NH 03301

Dear Commissioner Shibinette and Director Morris,

On behalf of the ACLU of New Hampshire and the NAACP New England Area Conference, we wish you and your family health and wellness as you grapple with the COVID-19 virus firsthand. Thank you for all the work you are doing to protect Granite Staters during this unprecedented public health crisis.

We write to lift up key concerns regarding equity in the state's response to COVID-19, particularly as it pertains to the distribution of limited testing and life-saving equipment. As you know, and as the Center for Disease Control (CDC) has reported, there have been widespread shortages of medical resources deemed critical in combatting COVID-19, including testing, ventilators, and personal protective equipment (PPE).¹ Similarly, there has been substantial reporting about how COVID-19 has disproportionately impacted Black communities.²

It is crucial that New Hampshire do everything in its power to ensure equitable distribution of limited quantities of life-saving equipment. Distribution of resources must be based on need determined by a consistent, fair, and transparent process, not economic or any other social status. To the extent that need will be determined by testing, the state must ensure that test kits are equitably distributed.

To ensure an equitable response to this crisis, New Hampshire must prioritize data collection. Only through data, including race and ethnicity data, is it possible to discern whether there are racial disparities in access to COVID-19 testing and life-saving medical equipment. Given New Hampshire's struggles with data collection prior to this crisis, it is particularly critical that our leaders put a premium on data collection at this time, while protecting individual privacy.

¹ "PPE shortages are currently posing a tremendous challenge to the US healthcare system because of the COVID-19 pandemic. Healthcare facilities are having difficulty accessing the needed PPE and are having to identify alternate ways to provide patient care." <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>

² "Experts like Spencer Overton, president of the Joint Center for Political and Economic Studies and a professor at George Washington University Law School, say providing racial data on coronavirus is the first step to stopping the spread in communities that are most overwhelmed by cases — and beyond." <https://abcnews.go.com/Politics/cdc-releases-data-debate-grows-racial-disparities-coronavirus/story?id=70041803>

We are writing with four specific questions regarding these issues:

1. What criteria is DHHS currently using to determine the distribution across the state of limited life-saving equipment and testing? We would welcome copies of any directives, guidance, or other records pertaining to how the Department is making determinations about which hospitals, regions, or people are receiving PPE, ventilators, and testing equipment.
2. What is the Department's current capacity to collect data related to the COVID-19 crisis, including race and ethnicity data, and specific data on the distribution of ventilators, testing, and PPE?
3. What data is currently being collected regarding COVID-19, including the distribution of limited resources? And which entity is in charge of data collection and storage? What policies are in place to protect individual privacy with regards to data that is collection?
4. What is the Department's policy for releasing COVID-19 data to the public?

The ACLU-NH is committed to protecting personal privacy. Data collection carries the real risk of infringing upon privacy, abuse of data, and stigmatization. It is therefore critical that data collection is only undertaken with clear and transparent guidelines about the use, access to, and distribution of such data. Moreover, any collection of individualized data (that which can be used to identify a specific individual) should be temporary, restricted to public health agencies, and should make the greatest possible use of available techniques that allow for privacy and anonymity to be protected, even as data is used.

If necessary, please consider this a public records request under 91-A.

If you have questions or seek to discuss these matters, please contact us at Devon@aclu-nh.org and jmcofield@aol.com.

Thank you for your courageous public service and for your assistance in helping us and the public better understand the state's response to this crisis. We look forward to your response.

Sincerely,

Devon Chaffee
Executive Director, ACLU of New Hampshire

Juan M. Cofield, President
NAACP, New England Area Conference