AMERICAN CIVIL LIBERTIES UNION
Maine

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April 21, 2020

Sent via email

Dr. Jeanne M. Lambrew
Commissioner
Maine Department of Health and Human Services
Dr. Nirav D. Shah
Director
Maine Center for Disease Control and Prevention

Re: Racial equity in Maine's response to the pandemic

Dear Commissioner Lambrew and Director Shah,

On behalf of the American Civil Liberties Union of Maine, we write with two requests aimed at reducing the disparate racial impact of COVID-19.

First, we urge your office to collect and release race, ethnicity and other demographic data of COVID-19 infections and deaths to the extent consistent with medical and health privacy laws. Second, we urge you to disclose plans for keeping racial and ethnic minorities, who are disproportionately vulnerable, safe from COVID-19. Specifically, we ask that you release plans regarding distribution of protective personal equipment, test kits, food and medicine, and other public health protective measures. If you do not have such a plan, we urge you to develop one.

Ensuring an equitable response in Maine

At least 34 states and Washington D.C. have begun releasing racial breakdowns of COVID-19 in their jurisdictions.[1] The data released so far show that Black people are dying at disturbingly disproportionate rates. For example, Black people represent 43 percent of COVID-19 related deaths in Illinois, but make up only 14 percent of the state's population.[2] In Louisiana, Black

[1] *See Racial Data Transparency: States that have released breakdowns of Covid-19 data by race*, Coronavirus Resource Center, Johns Hopkins University & Medicine, https://coronavirus.jhu.edu/data/racial-data-transparency (last accessed April 20, 2020).

[2] *See* Kat Stafford, Meghan Hoyer & Aaron Morrison, *Outcry Over Racial Data Grows As Virus Slams Black Americans*, AP (April 8, 2020), https://apnews.com/71d952faad4a2a5d14441534f7230c7c; *COVID-19 Statistics, Illinois Department of Public Health*, www.dph.illinois.gov/covid19/covid19-statistics (last accessed April 9, 2020).

people make up 32 percent of the state but represent over 70 percent of COVID-19-related deaths.[3] In Mississippi, Black people make up 38 percent of the population but represent 52 percent of COVID-19 cases and 71 percent of reported deaths.[4] Cities with larger Black and Latinx communities, especially, are seeing inequalities in COVID-19 cases and deaths.[5]

Similarly alarming, available data show that Native Americans are particularly vulnerable to COVID-19. For example, the rate of COVID-19 infection in the Navajo Nation is higher than the overall rate in every state except New York and New Jersey.[6] In New Mexico, 36 percent of COVID-19 cases are of Native Americans, even though Native Americans make up less than 11 percent of the state's population.[7] There is every reason to believe that if the virus reaches tribal territory in Maine, it will be similarly devastating. Our country's long standing, systematic mistreatment of Indigenous peoples has produced rates of poverty and poor health outcomes in Wabanaki communities that are similar to those of other tribal nations across the country. Moreover, COVID-19 deaths have been predominantly among older patients. Given that elders in Wabanaki communities are the keepers of cultural and traditional wisdom, high Indigenous mortality could deal an especially acute blow to Wabanaki communities.

We were heartened to hear Dr. Shah say, during his April 8, 2020 press briefing, that Maine is working to avoid "stark racial differences" in the effects of COVID-19 and "we're not just waiting for bad data to appear."[8] We applaud Dr. Shah's attention to this important issue. But because of the limited nature of a press briefing, it was not clear how Maine is tracking and acting on data related to race, ethnicity, and national origin, and how the people of Maine might access this information easily.

It's crucial that our state government does everything in its power to ensure equitable access to testing and treatment during this pandemic. **If the CDC has not yet begun to comprehensively collect data related to race, ethnicity, and national origin and the state's COVID-19**

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[3] *See* Kat Stafford, et al., *Outcry Over Racial Data Grows As Virus Slams Black Americans*, AP (April 8, 2020), https://apnews.com/71d952faad4a2a5d14441534f7230c7c, Louisiana Department of Public Health, ldh.la.gov/coronavirus/ (last accessed April 9, 2020).

[4] *See* Emily W. Pettus, *African Americans more than half of Mississippi virus deaths*, AP (April 7, 2020), https://apnews.com/c45118f1f0e98e35a3d89742c751a7f2; *Coronavirus Disease 2019*, Mississippi State Department of Health (April 9, 2020), https://msdh.ms.gov/msdhsite/_static/14,0,420.html

[5] *Milwaukee County COVID-19 Dashboard,* Milwaukee County, https://county.milwaukee.gov/EN/COVID-19 (last accessed April 10, 2020); *Milwaukee city, Wisconsin,* United States Census Bureau, https://www.census.gov/quickfacts/milwaukeecitywisconsin (last accessed April 10, 2020).

[6] Hayley Miller, *Navajo Nation Reports More Coronavirus Cases Per Capita Than All But 2 U.S. States*, Huffington Post (April 14, 2020), www.huffpost.com/entry/navajo-nation-coronavirus-per-capita_n_5e94b532c5b6a50d4ae6d7e7

[7] Nathan O'Neal, *Statewide data reveals Native Americans are disproportionately impacted by COVID-19*, KOB4, (April 15, 2020), https://www.kob.com/albuquerque-news/statewide-data-reveals-native-americans-are-disproportionately-impacted-by-covid-19-/5701649/

[8] Dan Neumann, *Shah: Maine working to avoid 'stark racial differences' in COVID-19 impact*, Beacon (April 8, 2020), https://mainebeacon.com/shah-maine-working-to-avoid-stark-racial-differences-in-covid-19-impact/

response, we ask that you take steps immediately to do so. If you have already started collecting this data, we request that you publish it on the CDC website, which currently parses COVID-19 demographic data only by age and sex.[9] Race and ethnicity data regarding who is and is not getting tested, in particular, is a key measure of an equitable response. As Dr. Shah has stated, transparency is key to an adequate public health response, and we believe that race and ethnicity data must be part of the transparency efforts that you have already started.

Distribution of equipment and other necessities

Another key equity issue pertains to the distribution of personal protective equipment, ventilators and other necessary supplies across the state. We are aware that our state was ahead of other New England states in requesting medical equipment from the federal stockpile. And we understand the limitations and frustrations attendant with obtaining this equipment from the federal government. Still, it is crucial for the administration to focus on equity when determining which hospitals and communities obtain equipment and tests.

Maine can learn from the mistakes of other states around the country that have not prioritized safety for Black, Latinx, and Indigenous communities despite their systemic vulnerabilities to this disease. We know that you have carefully considered Maine's large share of elderly residents in your pandemic response planning. Thank you. We ask that you give similarly careful consideration to communities that are especially vulnerable to the ravages of COVID-19 because of racial or ethnic inequities.

Distribution of supplies must be based on regional need determined by a consistent, fair, and transparent process, and must take into account the ability of people with limited English proficiency to advocate for themselves. To the extent that regional need will be determined by testing, the administration must ensure that test kits are equitably distributed. People across the country have watched in horror as the wealthy and well connected have accessed testing in places where even our frontline medical workers have been unable to obtain tests. Maine must ensure that public health concerns come first in the distribution of limited quantities of life-saving equipment.

Moreover, an equitable response to the pandemic must include community-specific planning. It is crucial that we distribute medical equipment and other supplies in a manner that accounts for higher COVID-19 infection and death rates among Black, brown, and Native American communities.

[9] Maine Center for Disease Control and Prevention, Department of Health and Human Services, Novel Coronavirus 2019 (COVID-19), https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus.shtml#situation

Patient privacy and public health needs

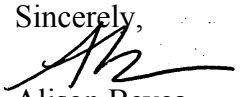
Finally, we have read press reports of certain Maine communities requesting the ability to share addresses of those who test positive for COVID-19 with first responders and law enforcement, and we understand that the administration has not agreed to this. We commend your response and strongly urge you not to authorize the sharing of COVID-19 patient addresses with first responders and law enforcement going forward. Because sharing this information is not effective at minimizing harm and gives first responders a false sense of security, such an invasion of privacy by the government is not justified.

Conclusion

Thank you for your public service and for your assistance in helping us and the public better understand the Department's response to this crisis. To help strengthen our state's response to the pandemic, we urge you to follow other states' lead and collect and publish COVID-19 infection and mortality data by race and ethnicity, and to develop and share plans to protect people of color in Maine from COVID-19.

We look forward to your response and are ready to assist you in any way though this process. Once again, we thank you for all of your efforts in this trying time to keep all Mainers safe.

Sincerely,



Alison Beyea
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