July 28, 2020

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Lamar Alexander  
Chairman  
Committee on Health, Education, Labor & Pensions  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Committee on Health,  
Education, Labor & Pensions  
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chairman Alexander, and Ranking Member Murray,

As you begin negotiations on another coronavirus stimulus package, we write to urge inclusion of commonsense privacy protections for COVID health data. Building public trust in COVID screening tools will be essential to ensuring meaningful participation in such efforts. With research consistently showing that Americans are reluctant to adopt COVID screening and tracing apps due to privacy concerns, the lack of health privacy protections could significantly undermine efforts to contain this virus and begin to safely re-open – particularly with many screening tools requiring a critical mass in order to provide meaningful benefits. According to one survey, 84% of Americans “fear that data collection efforts aimed at helping to contain the coronavirus cost too much in the way of privacy.”

Public health experts have consistently pointed to health screening and contact tracing as essential elements of a comprehensive strategy to contain and eradicate COVID. Since the onset of the pandemic, employers, public venue operators, and consumer service providers have introduced a range of tools and resources to engage in symptom monitoring, contact tracing, exposure notification, temperature checks, and location tracking. Increasingly, we have seen

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higher education institutions mandate the use of these applications for incoming students⁴ and employers mandate participation in these programs among employees.⁵

Health data is among the most sensitive data imaginable and even before this public health emergency, there has been increasing bipartisan concern with gaps in our nation’s health privacy laws. While a comprehensive update of health privacy protections is unrealistic at this time, targeted reforms to protect health data – particularly with clear evidence that a lack of privacy protections has inhibited public participation in screening activities – is both appropriate and necessary.

Our legislation does not prohibit or otherwise prevent employers, service providers, or any other entity from introducing COVID screening tools. Rather, it provides commonsense and widely understood rules related to the collection, retention, and usage of that information – most notably, stipulating that sensitive data collected under the auspices of efforts to contain COVID should not be used for unrelated purposes. As a litany of investigative reports, Congressional hearings, and studies have increasingly demonstrated, the widespread secondary use of Americans’ data – including sensitive health and geolocation data – has become a significant public concern. The legislation also ensures that Americans cannot be discriminated against on the basis of COVID health data – something particularly important given the disproportionate impact of this pandemic on communities of color.

Efforts by public health agencies to combat COVID-19, such as manual contract tracing, health screenings, interviews, and case investigations, are not restricted by our bill. And the legislation would allow for the collection, use, and sharing of data for public health research purposes and makes clear that it does not restrict use of health information for public health or other scientific research associated with a public health emergency.

Our urgent and forceful response to COVID-19 can coexist with protecting and even bolstering our health privacy. If not appropriately addressed, these issues could lead to a breakdown in public trust that could ultimately thwart successful public health surveillance initiatives. Privacy experts, patient advocates, civil rights leaders, and public interest organizations have resoundingly called for strong privacy protections to govern technological measures offered in

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response to the COVID-19 crisis. In the absence of a federal privacy framework, experts and enforcers – including the Director of the Bureau of Consumer Protection of Federal Trade Commission – have encouraged targeted rules on this sensitive health data. The Public Health Emergency Privacy Act meets the needs raised by privacy and public health communities, and has been resoundingly endorsed by experts and civil society groups.

Providing Americans with assurance that their sensitive health data will not be misused will give Americans more confidence to participate in COVID screening efforts, strengthening our common mission in containing and eradicating COVID-19. For this reason, we urge you to include the privacy protections contained in the Public Health Emergency Privacy Act in any forthcoming stimulus package.

Thank you for your attention to this important matter.

Sincerely,

/s/ Mark R. Warner
Mark R. Warner
United States Senate

/s/ Richard Blumenthal
Richard Blumenthal
United States Senate

/s/ Michael F. Bennet
Michael F. Bennet
United States Senate

/s/ Mazie K. Hirono
Mazie K. Hirono
United States Senate

/s/ Angus S. King, Jr.
Angus S. King, Jr.
United States Senate

/s/ Robert Menendez
Robert Menendez
United States Senate

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/s/ Kamala D. Harris  
Kamala D. Harris  
United States Senate  

/s/ Edward J. Markey  
Edward J. Markey  
United States Senate  

/s/ Cory Booker  
Cory Booker  
United States Senate  

/s/ Tammy Baldwin  
Tammy Baldwin  
United States Senate  

/s/ Elizabeth Warren  
Elizabeth Warren  
United States Senate  

/s/ Amy Klobuchar  
Amy Klobuchar  
United States Senate  

/s/ Dick Durbin  
Richard J. Durbin  
United States Senate