2019 Novel Coronavirus: Legal Preparedness and Public Health Response Efforts

February 6, 2020

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  - Management of organizational membership programs
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  - Emergency Legal Preparedness & Response
  - Vaccinations
  - Preemption
  - Emerging Infectious Diseases
  - Constitutional Rights and Structural Principles
Brief Overview – Novel Coronavirus

International Legal Response Efforts

World Health Organization
Foreign Governments

U.S. Legal Preparedness/Response

Additional Resources
Global Confirmed Cases: >24,325 | Deaths: >490 | Mortality Rate: ~2%

Transmission:

• Initially-infected persons in Wuhan are linked epidemiologically to a large seafood/animal market.

• Transmissible person-to-person with potential infectivity rate approaching influenza. Asymptomatic persons may likely infect others (under close review).

• Reproductive number \([R^0]\) estimated at 2.2 (similar to influenza).

Symptoms:

• Respiratory symptoms, fever, cough, breathing difficulties, aches, pains.

• In severe cases (~20%), infection can cause pneumonia, respiratory issues, kidney failure and death (~2%).

Vaccines, Tests and Treatment:

• No proven vaccines, commercial tests [under development], or specific treatments are available.
2019-nCoV Longitudinally

Source: https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6
Countries with 2019-nCoV Cases

- China
- Hong Kong
- Macau
- Taiwan
- Australia
- Cambodia
- Canada
- Finland
- France
- Germany
- India
- Russia
- Nepal
- Spain
- Japan
- Malaysia
- Nepal
- Philippines
- Sri Lanka
- Singapore
- Thailand
- South Korea
- United Arab Emirates
- United States
- Vietnam
- United Kingdom
- Sweden

Source: https://www.cdc.gov/coronavirus/2019-ncov/locations-confirmed-cases.html#map
International Legal Response Efforts
China Public Health Responses

Jan. 27, 2020: Chinese authorities prohibit travel into and out of Wuhan, Huanggang, Ezhou, Chibi, Zhijiang, and other cities with populations exceeding 50 million and extends Lunar New Year holiday by multiple days.


Jan. 21, 2020: Ruling Communist Party committee temporarily posts that anyone deliberately hiding disease infection in China will be “forever nailed to history’s pillar of shame.”
**Jan. 22, 2020:** WHO convenes emergency committee meeting but postpones decision on declaring PHEIC.

**Jan. 21, 2020:** WHO confirms 1st case of 2019-nCoV in the Republic of Korea, identified as a Chinese national residing in Wuhan.

**Jan. 13, 2020:** WHO confirms 1st case of 2019-nCoV in Thailand, identified as a traveler from Wuhan.

**Jan. 9, 2020:** WHO statement on Chinese authorities making a preliminary determination of 2019-nCoV, identified in a hospitalized person with pneumonia in Wuhan.

**Dec. 31, 2019:** Outbreak of pneumonia of unknown etiology in Wuhan initially reported to WHO.
Jan. 30, 2020: WHO reconvenes emergency committee for 2\textsuperscript{nd} time and declares a public health emergency of international concern (PHEIC).
WHO PHEIC Declaration – Key Guidance

• **Organized Responses.** Engage in containment, active surveillance, early detection, isolation and case management & contact tracing.

• **Data Sharing.** Share data with WHO via IHR legal requirements.

• **Prevention.** Focus on reducing human infection & preventing secondary transmission.

• **Communication.** Engage in multi-sectoral communication, collaboration & active participation in increasing knowledge and research.

• **Restrict Movement.** Restricting movement of people/goods may be temporarily useful in settings with limited response capacities or there is high intensity of transmission in vulnerable populations.

• **Travel.** Inform WHO about any travel measures taken as required by the IHR.

• **Discrimination.** Avoid actions promoting stigma or discrimination.

• **Developing Countries.** Support low-to-middle-income countries to enable their responses & facilitate access to diagnostics, potential vaccines & therapeutics.

• **Justification.** Additional health measures significantly interfering with international traffic must be justified.
Jan. 24, 2020
19 Chinese provinces - highest level of public health emergency

Jan. 25, 2020
Hong Kong State of Emergency

Jan. 31, 2020
Italy State of Emergency

Feb. 3, 2020
Kerala State of Calamity
February 3, 2020:

**G-7 HEALTH OFFICIALS TO MEET TO COORDINATE NCOV RESPONSE:** Health ministers from the U.S., Canada, France, Britain, Germany, Japan, and Italy are meeting to discuss the ongoing 2019-nCoV outbreak. The aim of the meeting is to ensure a unified approach to responding to the outbreak. Updates forthcoming.

Jan. 29, 2020: Foreign Minister Marise Payne advises Australians to “reconsider your need to travel to China overall,” and “do not travel to Hubei Province.”

Jan. 29, 2020: Nepal closes border with China for 15 days.

Jan. 30, 2020: Russia shuts border with China.


Feb. 4, 2020: Canadian authorities elect not to impose explicit travel bans re: 2019-nCoV, aligning to WHO recommendations.
Emerging Discriminatory Sentiments

As Coronavirus Spreads, So Does Anti-Chinese Sentiment

By Motoko Rich

The New York Times

Jan. 30, 2020

Outbreaks of xenophobia in west as coronavirus spreads

Angela Giuffrida in Rome
and Kim Willsher in Paris

The Guardian

Fri 31 Jan 2020 07.28 EST

‘Stop normalizing racism’: Amid backlash, UC-Berkeley apologizes for listing xenophobia under ‘common reactions’ to coronavirus

By Allyson Chiu

The Washington Post

Jan. 31, 2020 at 5:08 a.m. MST

‘No Chinese allowed’: Racism and fear are now spreading along with the coronavirus

Published: Jan 31, 2020 1:41 a.m. ET
U.S. Legal Response Efforts
Jan. 22, 2020: “We have it totally under control. It's one person coming in from China. It’s going to be just fine.”

Jan. 27, 2020: “Our experts are extraordinary!”

Jan. 29, 2020: Announces formation of the President’s Coronavirus Task Force.

Feb. 2, 2020: “We pretty much shut [travel] down coming in from China. . . We can’t have thousands of people coming in who may have this problem.”

Feb. 4, 2020: “Protecting Americans’ health also means fighting infectious diseases. We are coordinating with the Chinese government and working closely together on the coronavirus outbreak in China. My administration will take all necessary steps to safeguard our citizens from this threat.”
Congress Calls for HHS to Declare Public Health Emergency

Jan. 24, 2020: Senator Rick Scott (R-FL)

Jan. 26, 2020: Senator Chuck Schumer (D-NY)

Jan. 28, 2020: Representative Vern Buchanan (FL-16)
Jan. 31, 2020: HHS Sec. Alex Azar declares national public health emergency
HHS Public Health Emergency Powers

- Frees up federal resources
- Encourages interjurisdictional coordination
- Allows waivers of specific federal laws
- Authorizes real-time countermeasures through emergency use authorizations
- Supports social distancing measures (e.g., travel or border limits, quarantine)
Federal Agency Responses
<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/23/20</td>
<td>Raised travel alert to highest Level 4.</td>
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<tr>
<td>1/21/20</td>
<td>Added screening to Atlanta's Hartsfield-Jackson International and Chicago's O'Hare International Airport.</td>
</tr>
<tr>
<td>1/21/20</td>
<td>Began entry screening of passengers on direct and connecting flights from Wuhan, China to 3 main ports of entry in the U.S.</td>
</tr>
<tr>
<td>1/20/20</td>
<td>Activated emergency operations center with Global Migration, Medical Care/ Countermeasures, and Epidemiology/Surveillance Task Forces.</td>
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<tr>
<td>1/17/20</td>
<td>Issued updated interim Health Alert Notice Advisory informing state/local health departments &amp; providers about the outbreak.</td>
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<tr>
<td>1/28/20</td>
<td>Offers to send response team to China to help contain virus spread.</td>
</tr>
<tr>
<td>1/31/20</td>
<td>Ordered 14-day quarantine of 195 Americans returning from Wuhan at U.S. military base in California.</td>
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</table>
Jan. 27, 2020: FDA Announces Key Actions to Advance Development of Novel Coronavirus Medical Countermeasures

Confirmed cases of the coronavirus in the United States

- Washington
  - Everett (1)
- California
  - Santa Clara County (2)
  - San Benito County (2)
  - Los Angeles County
  - Orange County
  - Maricopa County
- Arizona
- Illinois
  - Chicago
- Massachusetts
  - Boston
- U.S. Cases of 2019-nCoV
Emerging Legal Issues

Topics

- Travel Restrictions
- Social Distancing Measures
- Surveillance & Reporting
- Liability & Insurance
- Privacy
- Emergency Powers
- Testing/Screening/Treatment
Emergency Powers

**Pre 9/11**
- Existing federal and state legal infrastructures focused on general emergency or disaster responses
- Governments took an “all hazards” approach to various exigencies

**Post 9/11**
- Emergency laws at the federal and state levels are reformed to address and include “public health emergencies”
- Based in part on the Model State Emergency Health Powers Act
Public Health Emergency Powers

Government is vested with specific, expedited powers to facilitate emergency responses.

Individuals are given special protections and entitlements.

Emergency responders may be protected from civil liability.

Normal procedures and practices may be waived.
“Crisis standards of care” during declared emergencies allow for legal adaptation to changing circumstances and increased demands.
Social Distancing Measures

- Control modes of transportation
- Increase distance among workers
- Restrict travel
- Dismiss schools
- Curfew
- Restrict public gatherings
- Evacuation
- Isolation & quarantine

Increase distance among workers
Restrict public gatherings
Restrict travel
Dismiss schools
Curfew
Evacuation
Isolation & quarantine
Constitutional Issues

Freedom of Religion

Equal Protection

Freedom of Movement

Privacy

Right to Assemble
Jan. 24, 2020: Senator Josh Hawley (R-MO) issues letter to HHS seeking [incoming] travel restrictions; later notes after Congressional briefing “[health officials] don’t think that that’s necessary quite yet.”

After the briefing, NIH’s Dr. Anthony Fauci responded: “It’s not something that I think we're even considering.”

Jan. 31, 2020: Trump Administration bans foreign national travel for those who have been in China within the last 14 days and pose a risk.
Quarantine & Isolation

Quarantine
Separation from others of people who are exposed to a contagious condition prior to knowing if they may be ill or contagious.

Isolation
Separation from others of people known to be infected with a contagious condition.

Quarantine & Isolation

Quarantine

- Known, infected individual
- Individual exposed to contagious disease
- Healthy individual

Isolation

- Place of isolation or quarantine
Routine

- Due Process May Require:
  - Notice
  - Hearing
  - Right to review (Appeal)
- Equal Protection May Require:
  - Similar treatment for like individuals
  - Avoidance of discrimination for protected classes

Declared Emergency

- Expedited isolation and quarantine powers may be authorized so long as due process, equal protection, and other constitutional interests are respected to the fullest extent possible.
On January 31, 2020, CDC Director Robert Redfield ordered a 14-day quarantine of nearly 200 persons arriving at a U.S. military base in California 2 days prior on an evacuation flight from Wuhan, China.

Thousands of Americans returning from China recently are under quarantine orders or self-administering at their residences, apartments, or dormitories.
Airport Preparedness & Response: Legal Rights, Powers & Duties

- Reporting of ill passengers
- Measures to detect communicable diseases
- Surveillance
- Non-invasive procedures
- Invasive procedures (with consent)
- Contact tracing
- Isolation & Quarantine
Jan. 24, 2020: Ohio Department of Health classifies 2019-nCoV a “Class A” condition for which “confirmed or suspected cases . . . must be reported immediately to the local health district . . .”).”

Persons required to report include physicians, hospital administrators or others in charge of clinics/institutions/labs providing care or treatment, “or any individual having knowledge of a person with nCoV.”
For More Information

<table>
<thead>
<tr>
<th>Latest Resources</th>
<th>Federal Public Health Emergencies</th>
<th>Social Distancing Powers</th>
<th>Liability of Health Care Workers and Entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital Emergency Legal Preparedness</td>
<td>State and Local Preparedness</td>
<td>Emergency Declarations and Powers</td>
<td>Mental and Behavioral Health Preparedness</td>
</tr>
<tr>
<td>Model Emergency Laws</td>
<td>Emerging Threats Preparedness and Response</td>
<td>Crisis Standards of Care</td>
<td>Public Health Emergency Ethics</td>
</tr>
</tbody>
</table>
Acknowledgements

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• Ask the Network concerning questions or comments relating to this information or ongoing 2019-nCoV legal preparedness and response efforts

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The Public Charge Rule and the Threat to Public Health
February 20, 1:00 – 2:30 p.m. EST

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