Purposes of the Network Primer

• Provide real-time information and select, objective guidance (not legal advice) on emerging issues of law and policy
• Serve as a quick briefing on core legal preparedness and response issues
• Connect users to available documents and materials via hyperlinks
• Create a template for presentations or legal assessments in your jurisdiction
• Invite further your questions or comments
Primer Contents

Brief Overview – COVID-19

International Legal Response Efforts

  World Health Organization
  Foreign Governments

U.S. Legal Preparedness/Response

Additional Resources

Questions, comments, follow-up
COVID-19 Epi Snapshot

Transmission:

• Initially-infected persons in Wuhan, China 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.

• 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 & Treatment:

• No vaccines, commercial tests, or proven treatments are available.
Global Mortality Rate Among Known Cases: ~ 2%

COVID-19 Longitudinally

Total Confirmed Cases
(>87,440)

Total Deaths (>2,990)

Data source: https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#bda7594740fd40299423467b48e9ecf6
International Legal Response Efforts
WHO Emergency Declaration

Organized Responses | Engage in containment, active surveillance, early detection, isolation & contact tracing

Data Sharing | Share data with WHO via IHR legal requirements

Prevention | Focus on reducing human infection/secondary transmission

Communication | Engage in multi-sectoral communication re: knowledge & research

Restrict Movement | Restricting movement of people/goods may be temporarily useful under limited response capacities or intense cases

Travel | Inform WHO about travel measures as required by the IHR

Discrimination | Avoid actions promoting stigma or discrimination

Developing Countries | Support LMICs to enable their responses & facilitate access to diagnostics, vaccines & therapeutics

Justification | Justify health measures significantly interfering with international traffic
Select International Emergency Declarations

Jan. 24
19 Chinese provinces - highest level of public health emergency

Jan. 25
Hong Kong State of Emergency

Jan. 31
Italy State of Emergency

Feb. 10
COVID-19 a “serious and imminent threat to public health”

Feb. 13
Invokes emergency COVID-19 plan

Feb. 23
South Korea on highest Level 4 alert

Feb. 24
Afghanistan State of Emergency

Feb. 26
Lithuania State of Emergency
Jan. 28: Mongolia closes Chinese border.

Jan. 29: Foreign Minister Marise Payne advises Australians to “reconsider your need to travel to China overall.”

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

Jan. 30: Russia shuts border with China.

Jan. 31: Singapore closes Chinese border.

Feb. 4: Canadian authorities elect not to impose explicit travel bans re: COVID-19.
U.S. Legal Preparedness & Response Efforts
U.S. Cases of COVID-19

Total Confirmed Cases: 85

Source: https://www.nbcnews.com/health/health-news/coronavirus-u-s-map-where-virus-has-been-confirmed-across-n1124546
Jan. 22: “We have it totally under control. It's one person coming in from China. It’s going to be just fine.”

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

Feb. 4: “Protecting Americans’ health also means fighting infectious diseases. . . . My administration will take all necessary steps to safeguard our citizens from this threat.”

Feb. 26: “[W]e’re ready to adapt and we’re ready to do whatever we have to as the disease spreads, if it spreads. . . .” Appoints Vice President Mike Pence to lead national COVID-19 response efforts.
Jan. 31: 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)
1/25 Senator Elizabeth Warren releases a plan calling for investments in government's health agencies, hospitals, and health care providers.

2/13 17 Senators urge HHS to establish clear guidelines for how state/local governments are reimbursed for costs incurred assisting federal responses.

2/6 2 Senators ask FDA to whether it has the “necessary tools to guarantee the safety and supply of pharmaceuticals, food and medical supplies being imported from China.”

2/16 Sen. Tom Cotton (R. AR) states that China is lying re: the source of COVID infection, suggesting the possibility that it originated in a high-security biochemical lab in Wuhan.

2/6 7 Senators request info on steps to “ensure that veterans and staff can count on VA health care facilities to be fully prepared for prevention, diagnosis, & response efforts.”
Federal Agency Coordination

CDC director: “At some point in time it is highly probable that we’ll have to transition to mitigation” as a public health strategy.

Orders quarantine of 4 additional flights.

Orders 14-day quarantine of 195 Americans returning from Wuhan at U.S. military base in California.

Raised travel alert to highest Level 4.

Began entry screening of passengers on direct and connecting flights from Wuhan, China to 3 main ports of entry in the U.S.

Activated emergency operations center with Global Migration, Medical Care/Countermeasures, and Epidemiology/Surveillance Task Forces.
Jan. 27: FDA announces key actions to advance development of COVID medical countermeasures

Feb. 4: FDA grants EUA for CDC’s COVID-19 Real-Time PCR Diagnostic Panel.

With increasing numbers of cases of coronavirus disease 2019 (COVID-19) globally and in the United States, Health and Human Services (HHS) Secretary Alex Azar declared a national public health emergency on January 31.¹ The emergency declaration of the HHS authorizes additional resources, enhanced federal powers, interjurisdictional coordination, and waivers of specific regulations. State and local public health emergency declarations are also likely. During crises, government has a special responsibility to thoughtfully balance public health protections and civil liberties.

Public Health Risk Assessment
While epidemiological data are evolving, human-to-human transmission of COVID-19 has been documented. The Administration has the authority to declare a national emergency in response to COVID-19 beyond those used for previous health emergencies such as SARS, H1N1 influenza, and Ebola. The administration premised the exercise of federal powers on the need to avert “cascading public health, economic, national security, and societal consequences.”⁴

Travel Warnings and Recall of Nonessential Personnel
Immediately following the emergency declaration of the HHS, federal agencies implemented travel warnings, entry bans, and border protections. On January 31, the State Department issued its strongest warning (“do not travel”) applying to mainland China.⁵ Additional warnings may take effect with “little or no advance notice.”⁵ Nonessential diplomatic, military, and other personnel
Emerging Legal Issues

Topics

- Testing/Screening/Treatment
- Crisis Standards of Care
- Social Distancing Measures
- Privacy
- Liability & Insurance
- Surveillance & Reporting
- Emergency Powers - Triage
Multi-level Emergencies

Public health authorities, powers, liabilities & immunities vary depending on the type of emergency declared at each level of government.
COVID State/Local Emergencies

- **Washington State** – Emergency 2/29/20
- **Solano County** – Emergency 2/27/20
- **San Francisco City** – Emergency 2/25/20
- **Santa Clara County** – Emergency 2/10/20
- **Orange County** – Emergency 2/27/20
- **San Diego County** – Emergency 2/19/20
- **Florida** – Public Health Emergency 3/1/20

**County of Hawai‘i** – Emergency 2/28/20

- AK – Alaska
- HI - Hawaii
- PR - (Puerto Rico)
- VI - (U.S. Virgin Islands)
Feb. 29: Governor Jay Inslee declares a state of emergency authorizing:

- implementation of plans and procedures of the Washington State Comprehensive Emergency Management Plan;
- utilization of state resources and “to do everything reasonably possible” to assist local responses;
- activation of the organized militia (e.g., National Guard); and
- Directs departments of health, emergency management, and other agencies to coordinate incident management.
March 1: Via Exec. Order 20-51, Governor Ron DeSantis directs state Health Commissioner/Surgeon General to issue a **public health emergency** authorizing:

- “any action necessary to protect the public health;”
- lead role for the Florida Department of Health;
- discretion for the Department re: quarantine and isolation;
- full cooperation by all state agencies with the Department;
- following CDC guidelines re: protocols to limit spread.
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<th>Locality</th>
<th>Date</th>
<th>Declaration</th>
<th>Authorizes</th>
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| County of Hawai‘i      | 2/28/20  | Local Emergency            | • Sponsor and enter into mutual aid programs  
• Receive, expend and use contributions or grants and procure federal aid  
• Relieve and suspend hardships and inequities or obstructions to public health, safety or welfare |
| Solano County          | 2/27/20  | Local Emergency            | • Department Operations Center to bolster identification and screening  
• Collaboration with local, state, and federal agencies to implement containment efforts |
| Orange County          | 2/27/20  | Local Emergency            | • Reimbursements from county, state & federal partners if resources are exhausted  
• Agency coordination & resource leveraging |
| San Francisco City    | 2/25/20  | Local Emergency            | • Mobilization of city resources  
• Acceleration of emergency planning  
• Streamlining staffing and coordination agencies city-wide |
| San Diego County       | 2/19/20  | Local Health Emergency     | • Reimbursement from state & federal governments  
• Increasing resources such as beds at local hospitals |
| Santa Clara County     | 2/10/20  | Local Emergency            | • Leveraging state funds and mutual aid resources  
• Increasing resources such as protective gear and training for healthcare workers |
**Defined**: those efforts of legal actors & others to build a favorable legal environment in emergencies by prioritizing issues & solutions facilitating legitimate public health responses.
Balancing Individual and Communal Interests

Declared States of Emergency

Individual Interests
- Privacy
- Religious Freedoms
- Due Process
- Equal Protection

Communal Interests
- Surveillance
- Vaccination
- Isolation & Quarantine
- Curfews & Closures
Addressing critical questions is complicated by changing legal dynamics during crises. Emergency powers depend on the type and duration of governmental declarations, which, in turn, may advance or impede CSC implementation.
Social Distancing Measures

- Control modes of transportation
- Increase distance among workers
- Restrict travel
- Evacuation
- Dismiss schools
- Restrict public gatherings
- Isolation & quarantine
Jan. 31: Trump Administration bans foreign national travel for those who have been in China within the last 14 days and who pose a risk.

Feb. 29: Administration bans foreign national travel for those who have been in Iran, as well as travel warnings re: Italy & South Korea.
Feb. 16: CDC issues initial guidance intimating school mitigation, including possible closures, may be warranted

THE LEGAL LANDSCAPE FOR SCHOOL CLOSURES IN RESPONSE TO PANDEMIC FLU OR OTHER PUBLIC HEALTH THREATS

James G. Hodge, Jr.

- Explicit authority to close schools in non-emergencies is lacking in many states;
- Significant variations exist regarding which levels of government and specific departments are authorized to close schools;
- Authority to close schools shifts dramatically once a state of emergency is declared; and
- Assessment criteria on the timing and appropriateness of school closure is largely absent
Quarantine

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

For a listing of state-based quarantine and isolation statutes, see the [link](#) at the National Conference of State Legislatures

Isolation

Separation from others of people who are known to be infected, or capable of infecting others, with a contagious condition
Jan. 31: CDC Director Robert Redfield orders 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.

As of February 10, 4 additional flights amassing more than 800 Americans are under quarantine at 4 military bases.

Feb. 17: CDC quarantines 2 flights of over 300 Americans returning from the Diamond Princess cruise ship (in Yokohama, Japan) at Travis and Lackland Airforce Bases.

Jan. 23: Texas health officials require at home-isolation of Texas A&M student.  
Jan. 26: AZ Dept. of Health Services requires home isolation of ASU student.  
Feb. 4: VA Dept. of Health requires 4 students to self-monitor at home for 14 days with daily check-ins.  
Feb. 14: According to the CA Dept. of Health, more than 5,400 Californians have been asked to self-quarantine.  
Feb. 11: GA state health officials require nearly 200 Georgia residents to self-monitor at home for 2 weeks.  
Feb. 24: Federal District Court Judge Josephine L. Staton retains temporary restraining order to block the transfer of individuals exposed to, or infected with, COVID-19 to the City of Costa Mesa, CA

Prospective Civil Liability Claims

- Negligence/Malpractice
- Intentional Torts
- Privacy Infringements
- Misrepresentation
Despite liability risks, many legal liability protections apply in routine events & declared emergencies, especially concerning health care workers, volunteers, and entities.
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

Screening and Testing
Jan. 24: Ohio Department of Health classifies COVID-19 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.”
In light of the Novel Coronavirus (2019-nCoV) outbreak, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is providing this bulletin to ensure that HIPAA covered entities and their business associates are aware of the ways that patient information may be shared under the HIPAA Privacy Rule in an outbreak of infectious disease or other emergency situation, and to serve as a reminder that the protections of the Privacy Rule are not set aside during an emergency.
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Access these Network materials by linking [here](#).
Acknowledgements

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• Ask the Network concerning questions or comments relating to this information or ongoing COVID-19 legal preparedness and response efforts

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