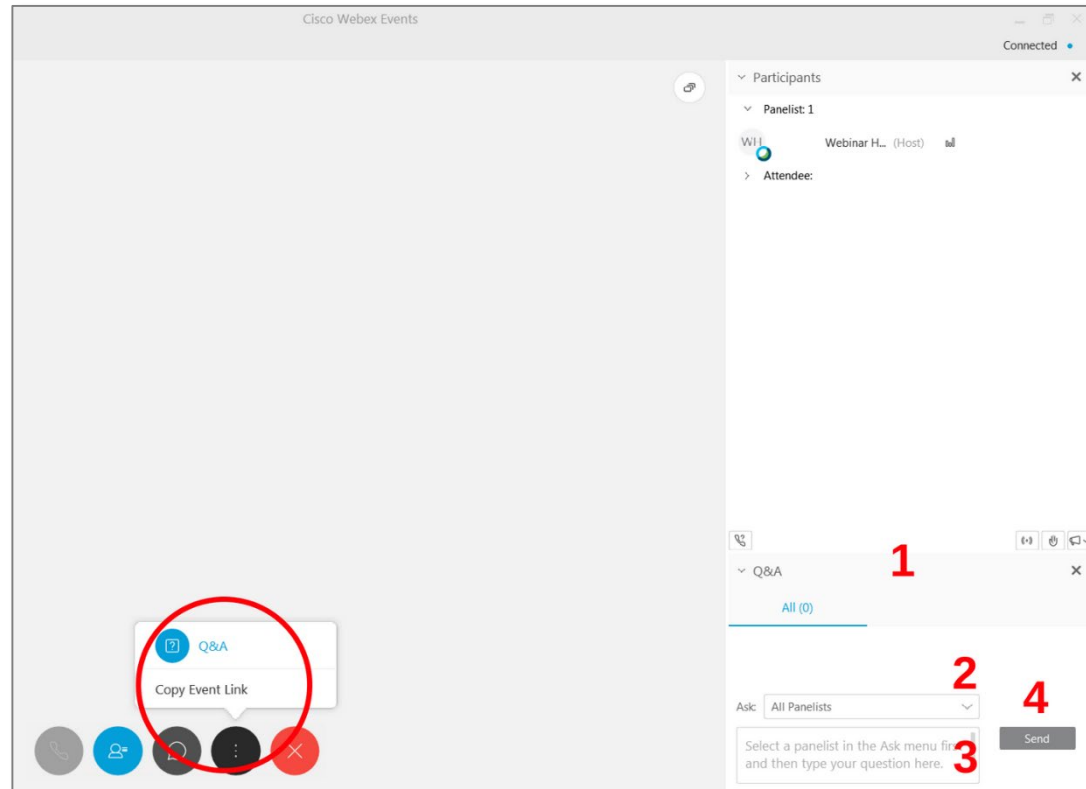


COVID-19 Real-Time Legal Response: Focus on Quarantine, Isolation, and Other Social Distancing Powers

March 16, 2020

How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



Moderator



Kayleen Klarich, Marketing and Membership Manager, the Network for Public Health Law – National Office

- Areas of expertise:
 - Development and execution of marketing strategies
 - Management of organizational membership programs

Presenter



James G. Hodge, Jr., Director, Network for Public Health Law - Western Region; the Peter Kiewit Foundation Professor of Law and Director, Center for Public Health Law and Policy, ASU Sandra Day O'Connor College of Law

- J.D., Salmon P. Chase College of Law (KY)
- LL.M., Georgetown University Law Center
- Research interests/areas of expertise:
 - Emergency Legal Preparedness & Response
 - Vaccinations
 - Preemption
 - Emerging Infectious Diseases
 - Constitutional Rights and Structural Principles

COVID-19: Focus on Quarantine, Isolation & Other Social Distancing Measures

James G. Hodge, Jr., J.D., L.L.M.

Peter Kiewit Foundation Professor of Law

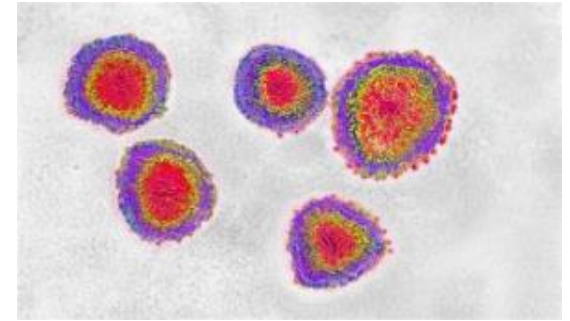
Director, Western Region Office, Network for Public Health Law

ASU Sandra Day O'Connor College of Law

james.hodge.1@asu.edu

Primary Objectives

- **COVID-19 “Epi Snapshot”**
- **Emergency Declarations**
- **Emerging Legal and Policy Issues**
- **Social Distancing Measures**
 - Closures
 - Assembly Limitations
 - Travel Restrictions
 - Quarantine & Isolation
- **Questions & Comments**



Transmission:

- Transmissible person-to-person with potential infectivity rate exceeding annual influenza.
- Asymptomatic persons may infect others.
- Reproductive number [R^0] estimated at 2.2.

Symptoms:

- Respiratory symptoms, fever, cough, breathing difficulties, aches, pains.
- In severe cases (~20%), infection can cause pneumonia, respiratory issues, kidney failure and death.

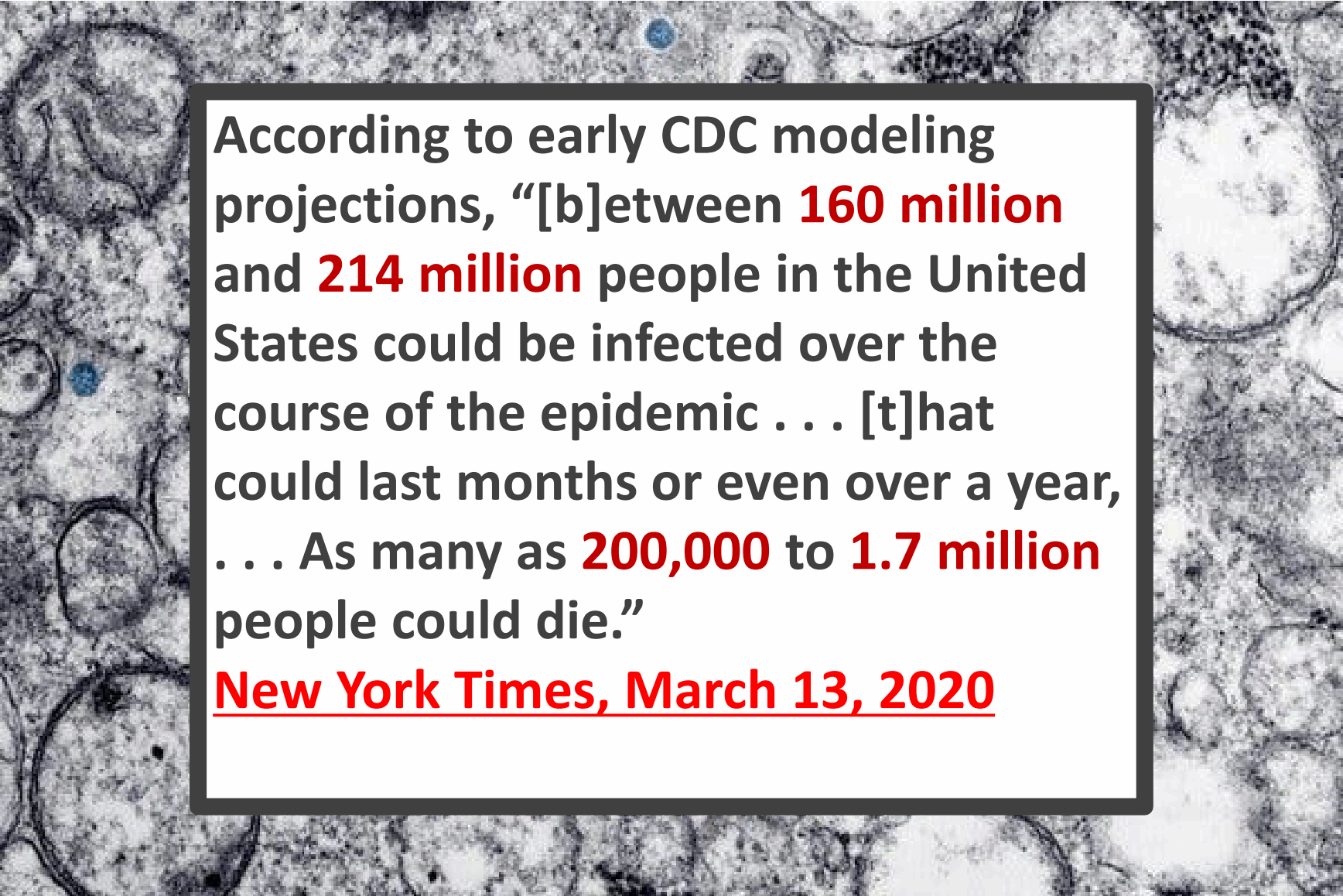
Vaccines & Treatment:

- No vaccines or proven treatments are available.

Total Deaths > 61



U.S. COVID Projections

A grayscale electron micrograph showing various cellular structures, including mitochondria with internal folds (cristae) and several blue-stained spherical particles, likely viruses, scattered throughout the cytoplasm.

According to early CDC modeling projections, “[b]etween **160 million** and **214 million** people in the United States could be infected over the course of the epidemic . . . [t]hat could last months or even over a year, . . . As many as **200,000** to **1.7 million** people could die.”

New York Times, March 13, 2020

Multi-level Emergencies

Public health authorities, powers, liabilities & immunities vary depending on the type of emergency declared at each level of government

International	WHO Public Health Emergency of Int'l Concern	Emergency Declarations by Foreign Governments
Federal	Stafford Act or National Emergencies Act	HHS Public Health Emergency
State/Tribal	Emergency or Disaster	Public Health Emergency
Local	Emergency or Disaster	Public Health Emergency

Jan. 30, 2020: WHO declares
a public health emergency of
international concern (PHEIC).





Jan. 31: HHS Sec. Alex Azar declares national public health emergency

- 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)





FEMA

Mar. 13: President Trump declares dual emergencies via the National Emergencies Act and § 501(b) of the Stafford Act authorizing:

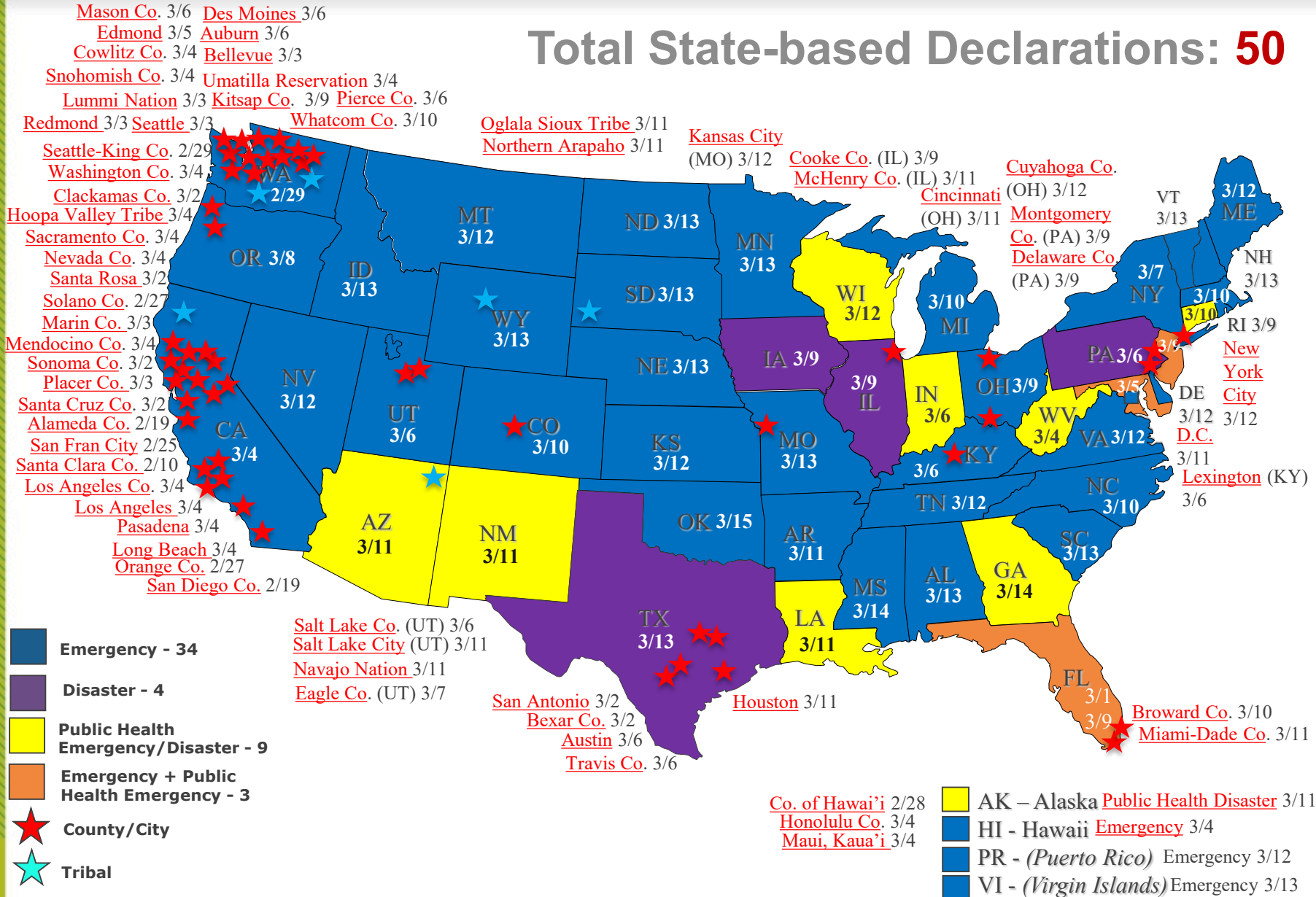
- Access to FEMA's \$50+ billion Disaster Relief Fund and reimbursement for eligible emergency protective response measures.
- Waivers under SSA § 1135 of select Medicare, Medicaid, S-CHIP, HIPAA Privacy Rule
- Additional federal assistance to states & localities

Federal Agency Coordination

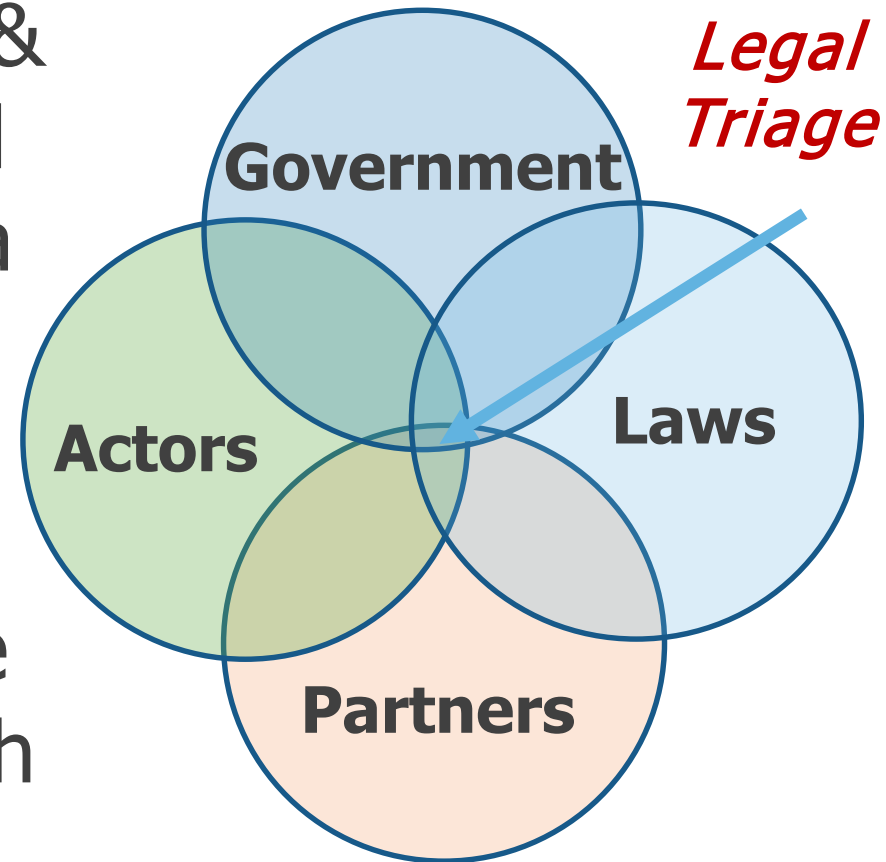


COVID State and Select Tribal/Local Declarations of Emergency

Total State-based Declarations: **50**

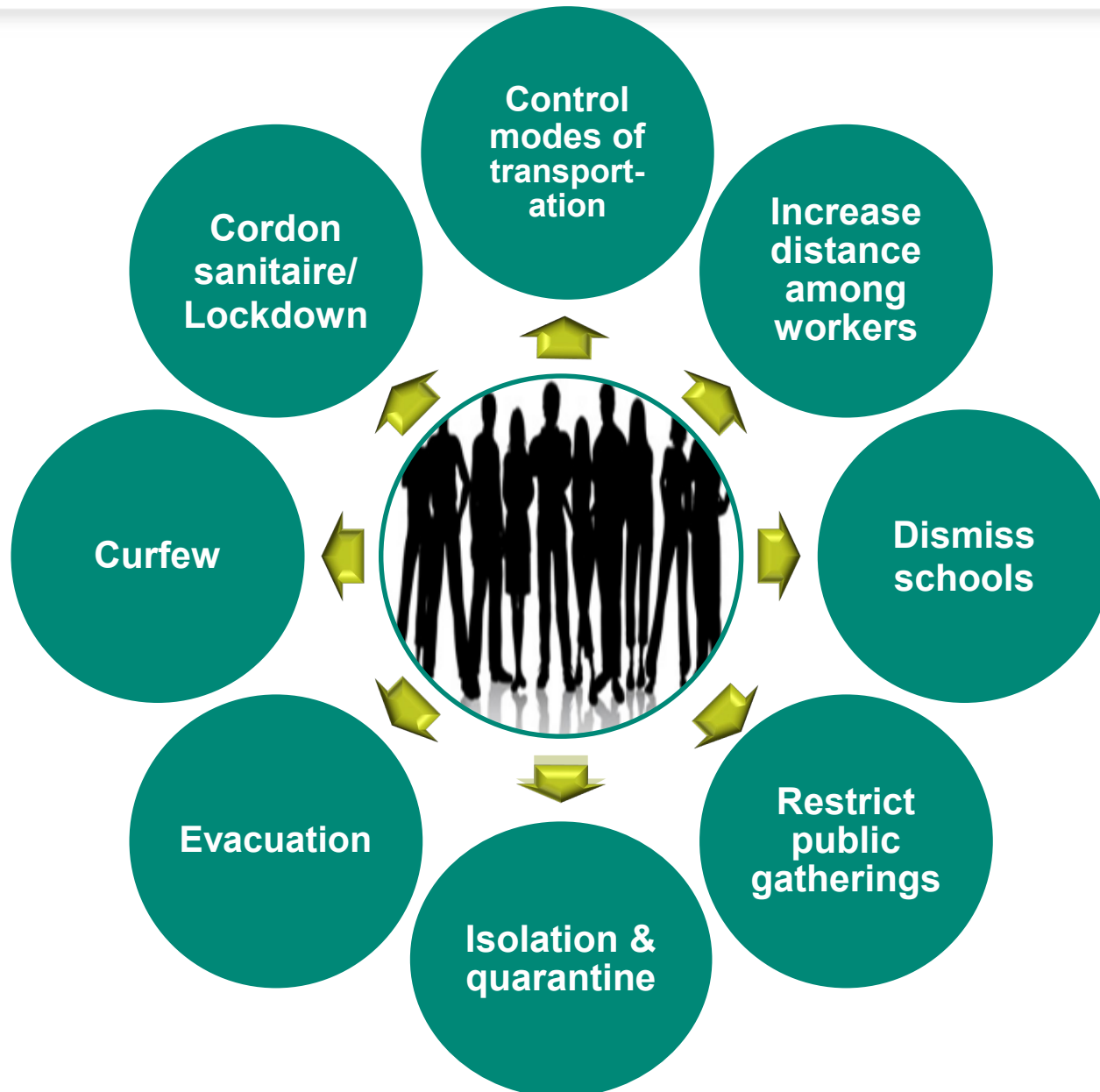


Efforts of legal actors & others during declared emergencies to build a favorable legal environment by prioritizing issues & solutions that facilitate legitimate public health responses

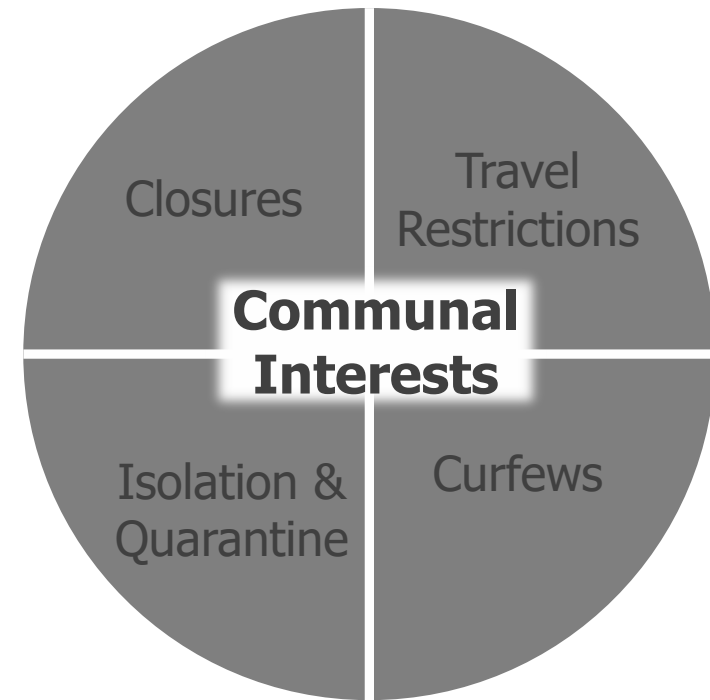
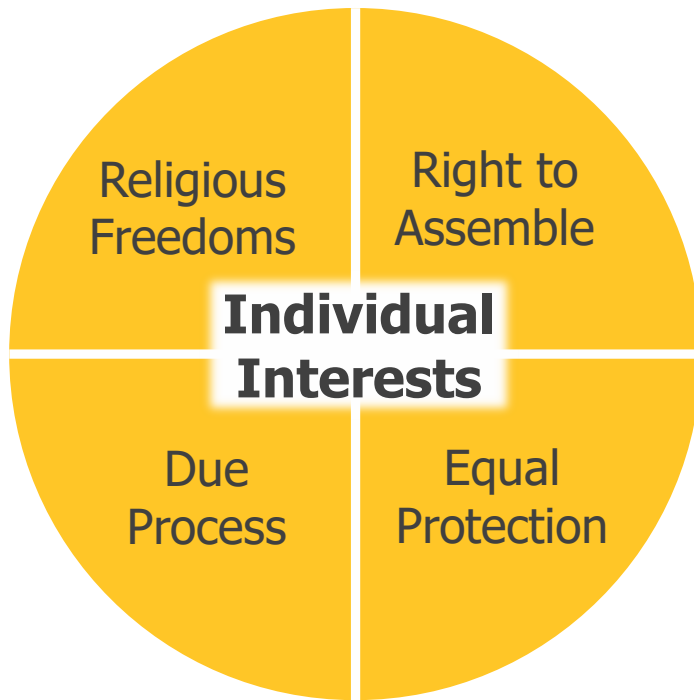




Social Distancing Measures



Constitutional Balancing



Social Distancing Measures

Constitutionality of Potential COVID Emergency Responses

Constitutional	Unconstitutional
Quarantine of individuals or groups suspected or known to be exposed to COVID	“Cordon sanitaire” or lockdown of groups or communities within or outside “hot zones”
Isolation of individuals who are known to be infected with COVID	Separation of persons based on mere suspicion of COVID infection without real-time confirmation
Travel recommendations to avoid specific U.S. jurisdictions based on known risks of infection	State or local travel bans or border closures that directly inhibit ingress or egress of U.S. citizens
Limited waivers of federal/state/local statutory/regulatory laws impeding effective public health responses	Complete waiver of constitutionally-required due process, equal protection, or other rights
Accurate, real-time sharing of identifiable patient health information between medical & public health entities for social distancing purposes	Mass publication of identifiable patient health information absent compelling circumstances

Social Distancing

Closures

**Assembly
limitations**

**Travel
restrictions**

**Quarantine
&
Isolation**

Select Closures & Cancellations



3/3: Young Israel of New Rochelle Synagogue (NY) closes



3/5: Amazon staff working from home (WA)



3/6: University of Washington suspends in-person class meetings



3/4: Ultra Music Festival (Miami) cancelled



3/12: Division I NCAA games/tournament cancelled



3/9: Boston's St. Patrick's Day Parade cancelled

Closures & Cancellations



- **Who is authorized to close?**
- **At what level of government?**
- **Based on what standard?**

School Closures



Feb. 16: CDC issues initial guidance intimating school mitigation could include possible closures

Mar. 4: Northshore School District outside of Seattle announces plans to close for 2 weeks

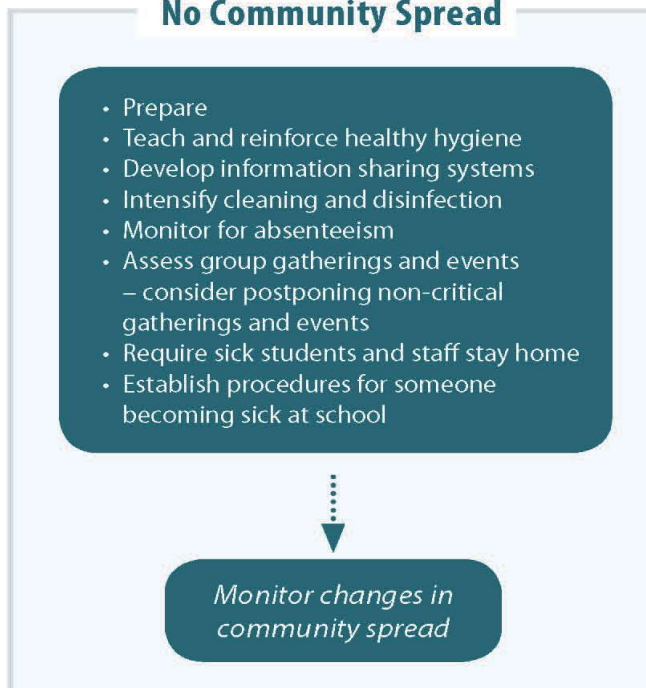
Mar. 13: Multiple states (e.g., OR, IL, MD, NM) close schools for select periods of time

School Decision Tree

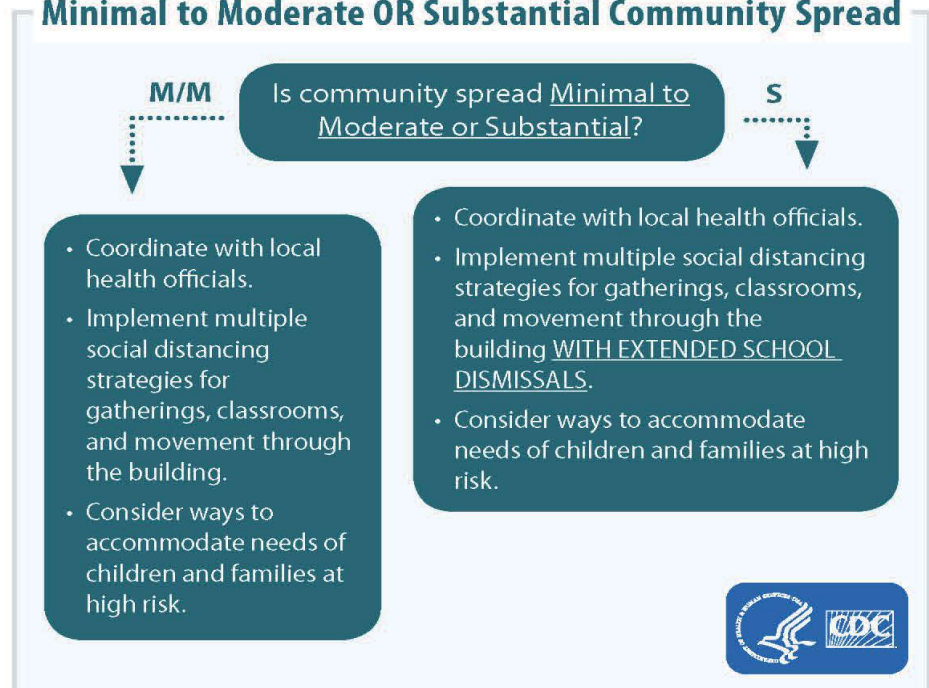
All Schools Regardless of Community Spread



No Community Spread



Minimal to Moderate OR Substantial Community Spread



Click on image to access

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

James G. Hodge, Jr.

[Click here to access article](#)

- **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**
- **Assessment criteria on the timing & appropriateness of school closure is largely absent**

School Openings



Social Distancing

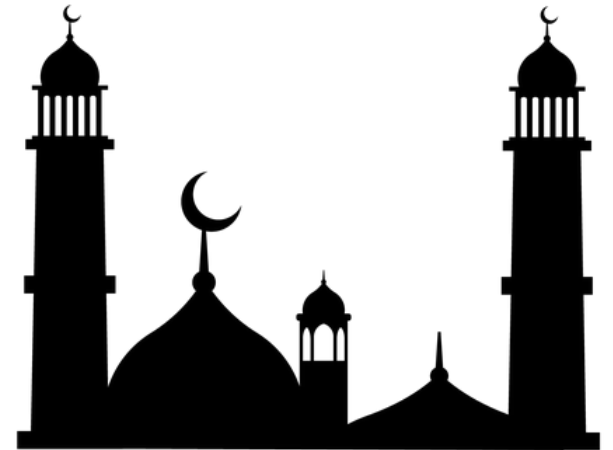
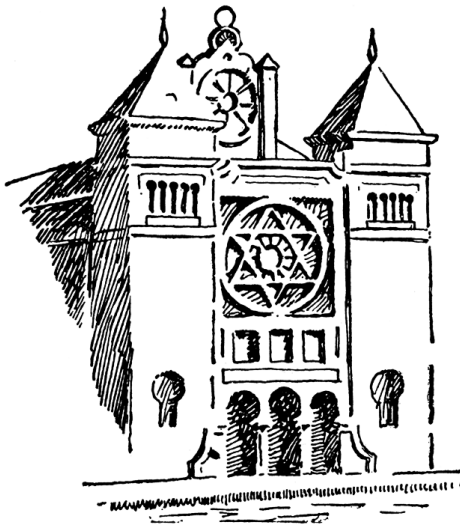
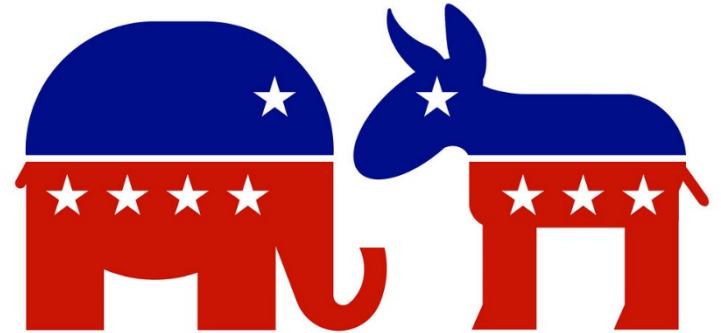
Closures

**Assembly
limitations**

**Travel
restrictions**

**Quarantine
&
Isolation**

Assembly Limitations



County of Santa Clara Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.3798



Click on image to access

**ORDER OF THE HEALTH OFFICER
OF THE COUNTY OF SANTA CLARA
IMPOSING A MANDATORY COUNTYWIDE MORATORIUM
ON GATHERINGS OF MORE THAN 100 PERSONS,
AND A CONDITIONAL COUNTYWIDE MORATORIUM
ON GATHERINGS OF BETWEEN 35 AND 100 PERSONS,
TO MITIGATE THE SPREAD OF COVID-19**

DATE OF ORDER: MARCH 13, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Ordinance Code § A1-28.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, AND SANTA CLARA COUNTY ORDINANCE CODE SECTION A18-33, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA ("HEALTH OFFICER") ORDERS:

Center for American Progress

State and Local Governments Must Take Much More Aggressive Action Immediately To Slow Spread of the Coronavirus – March 14, 2020

- Ban all gatherings > 50 people
- For at-risk seniors or others, ban all gatherings > 10 people
- Places of worship cancel services > 25 people
- Ban all concerts, conferences, and sporting events
- Employers should require employees to work remotely where possible
- Anywhere with community spread (1 new infection of unknown source)
 - Close all schools, public colleges, gyms, bars, movie theaters, libraries, and community centers
 - Limit restaurants to ½ their legal capacity

Guidance as of 3/15/2020

Click on image to access

Large events and mass gatherings can contribute to the spread of COVID-19 in the United States via travelers who attend these events and introduce the virus to new communities. Examples of large events and mass gatherings include conferences, festivals, parades, concerts, sporting events, weddings, and other types of

CDC recommends for “the **next 8 weeks, organizers (whether groups or individuals) cancel or postpone in-person events that consist of **50 people** or more throughout the United States.”**

This recommendation does not apply to the day to day operation of organizations such as [schools, institutes of higher learning, or businesses](#). This recommendation is made in an attempt to reduce introduction of the virus into new communities and to slow the spread of infection in communities already affected by the virus. This recommendation is not intended to supersede the advice of local public health officials.

Assembly Limitations

- On what authority?
- By who specifically?
- At what level of government?
- In what specific setting or capacity?
- For how long?
- Consistent with 1st Amendment rights?
 - Free speech
 - Freedom to assemble
 - Freedom of religion
 - Reasonable limitations

THE FIRST AMENDMENT
CONGRESS SHALL MAKE NO LAW RESPECT-
ING AN ESTABLISHMENT OF RELIGION, OR
PROHIBITING THE FREE EXERCISE THEREOF;
OR ABRIDGING THE FREEDOM OF SPEECH, OR
OF THE PRESS; OR THE RIGHT OF THE PEOPLE
PEACEABLY TO ASSEMBLE, AND TO PETITION THE
GOVERNMENT FOR A REDRESS OF GRIEVANCES.
PROTECT THE FIRST AMENDMENT, SUPPORT THE CBLDF

Social Distancing

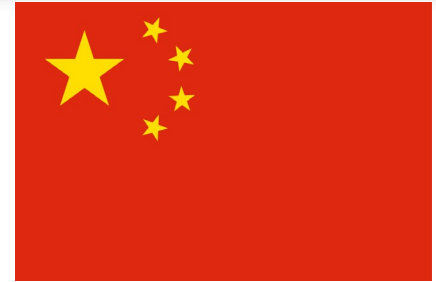
Closures

**Assembly
limitations**

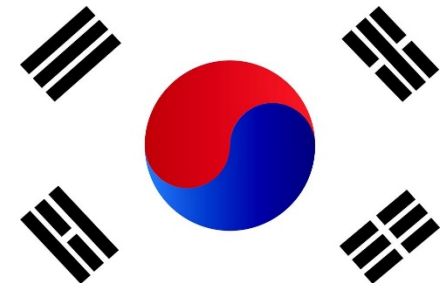
**Travel
restrictions**

**Quarantine
&
Isolation**

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, Japan & South Korea.



Mar. 11: President Trump institutes 30 day comprehensive travel ban for non-Americans arriving from EU (now including the U.K. and Ireland)



U.S. Domestic Travel Restrictions

March 8: Dr. Fauci suggests the possibility for regional lockdowns and recommends those at greatest risk (e.g., elderly, persons with chronic conditions) abstain completely from travel.



U.S. Domestic “Lock downs”

- Substantive due process and equal protection rights have negated prior attempts to seal off areas
- State border closures highly limited (even in emergencies)
- Municipal border closures subject to state interventions
- Lock downs actually place persons at greater risk of harm
- Less restrictive alternatives include:
 - Strong incentives/messaging to avoid travel
 - Closures of schools and public places
 - Private entity decisions to temporarily close
 - Screening of persons in public places
 - Quarantine or isolation measures.

Virtual “Lock Down”

Public Health & Safety Zone

Social Distancing

Closures

**Assembly
limitations**

**Travel
restrictions**

**Quarantine
&
Isolation**

Quarantine & Isolation

Quarantine

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



Isolation

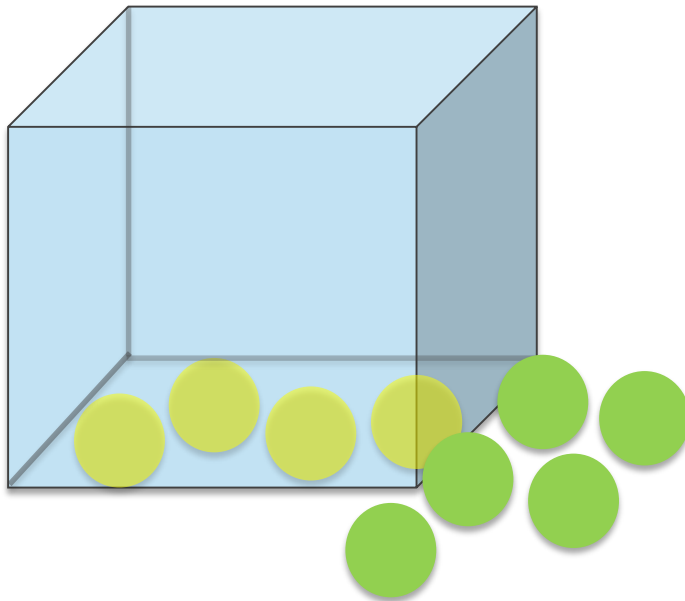
Separation from others of people who are known to be infected, or capable of infecting others, with a contagious condition






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

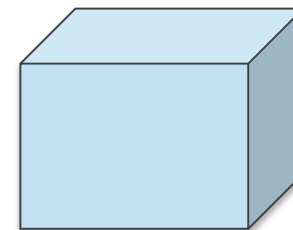
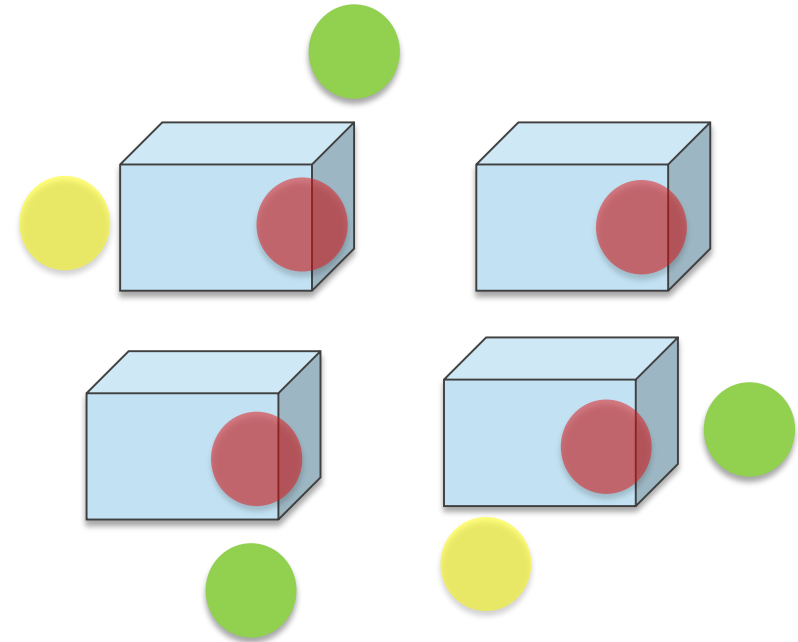
Quarantine & Isolation - Illustrated

Quarantine



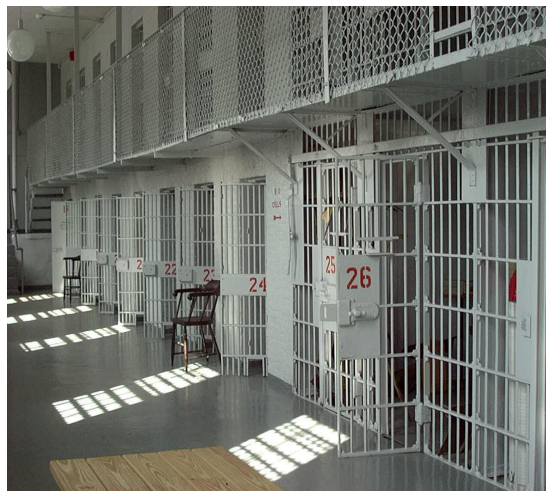
-  **Known, infected individual**
-  **Individual exposed to contagious disease**
-  **Healthy individual**

Isolation



**Place of isolation
or quarantine**

Where?



Under What Authority?

Federal

- Control of Communicable Diseases, 81 Fed. Reg. 157, § 70.1 *et seq* (January 26, 2017).
 - Apprehension
 - Testing
 - Medical Exam
 - Quarantine
 - Isolation

State/Tribal/Local

- Routine quarantine and isolation laws
- Emergency social distancing powers on expedited bases
 - Investigate
 - Assess
 - Quarantine
 - Isolate

CDC QUARANTINE STATIONS AT PORTS OF ENTRY



Federal Quarantine



Source: <https://www.pbs.org/newshour/health/cdc-issues-quarantine-orders-to-prevent-spread-of-novel-coronavirus>

Jan. 31: CDC 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.

Feb. 10: 4 additional flights amassing more than 800 Americans quarantined at 4 military bases.



Source: <https://news.sky.com/story/coronavirus-why-did-542-people-fall-ill-during-the-diamond-princess-quarantine-11937541>

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

Feb. 19: U.S. Daegu Army Base in South Korea imposes a self-quarantine of U.S. troop members attending a local church linked to COVID-19 infections.

Quarantine & Isolation Litigation



Source: <https://www.ocregister.com/2020/02/22/why-here-costa-mesa-oc-officials-question-feds-plan-for-coronavirus-quarantine-site/>



Source: <https://www.expressnews.com/news/local/article/San-Antonio-to-feds-Keep-coronavirus-evacuees-in-15098761.php?/>

Feb. 28: After obtaining temporary restraining order to block the transfer of individuals exposed to or infected with COVID-19 to Costa Mesa, CA, feds drop plans; case is dismissed.

March 2: City of San Antonio sues in federal district court to attempt to block CDC from releasing 120+ COVID evacuees from quarantine at Lackland AFB. The motion was denied.

Option A: Temporary Quarantine or Isolation w/out Judicial Notice via Written Directive

Option B: Quarantine or Isolation w/Judicial Notice

Agency petitions court for an order authorizing Q or I of an individual or group specifying:

- identity of the individual(s) or groups;
- premises subject to Q or I;
- date and time at which Q or I commences;
- suspected contagious disease;
- statement of compliance with conditions and principles; and
- statement of the basis upon which such intervention is justified.
- **Notice**
- **Hearing:** held in proximity of petition, absent extraordinary circumstances.
- **Order:** if, by clear and convincing evidence, Q or I shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others.

Q & I Best Practices



Safe, hygienic premises



Competent medical care



Means of communication



Adequate food, clothing, medication

- **Least restrictive means** necessary to prevent the spread of a contagious disease
- Isolated individuals must be **confined separately** from quarantined individuals
- **Health status** must be monitored regularly to determine if continued distancing is warranted
- **Cultural and religious beliefs** shall be respected to the extent.
- Q & I must be immediately **terminated** when an individual poses no substantial risk of transmitting disease to others.



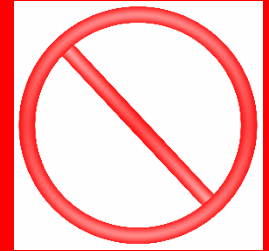
**Voluntary
Measures**



**Encourage
Compliance**



**Court
Orders to
Enforce
Health
Official's
Order**



Penalties

- **Public Health Services**

- Significant \$ authorized via state/local appropriations, including emergency set-asides
- Potential for use of federal funds or direct reimbursements via national emergencies

- **Affected Individuals**

- H.R. 6201. Families First Coronavirus Response Act
- CMS: Q & I procedures outside the home may be considered essential health benefits
- State or local paid sick and safe time protections
- Provisions of care may be provided w/out \$

February 2020

Office for Civil Rights, U.S. Department of Health and Human Services

BULLETIN: HIPAA Privacy and Novel Coronavirus



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.

For additional expert analyses and guidance, contact Denise Chrysler, JD, and colleagues in our Network – Mid-States Region at dchrysler@networkforphl.org

[Latest Resources](#)

[Federal Public Health Emergencies](#)

[Social Distancing Powers](#)

[Liability of Health Care Workers and Entities](#)

[Hospital Emergency Legal Preparedness](#)

[State and Local Preparedness](#)

[Emergency Declarations and Powers](#)

[Mental and Behavioral Health Preparedness](#)

[Model Emergency Laws](#)

[Emerging Threats Preparedness and Response](#)

[Crisis Standards of Care](#)

[Public Health Emergency Ethics](#)

Access these Network materials [here](#)

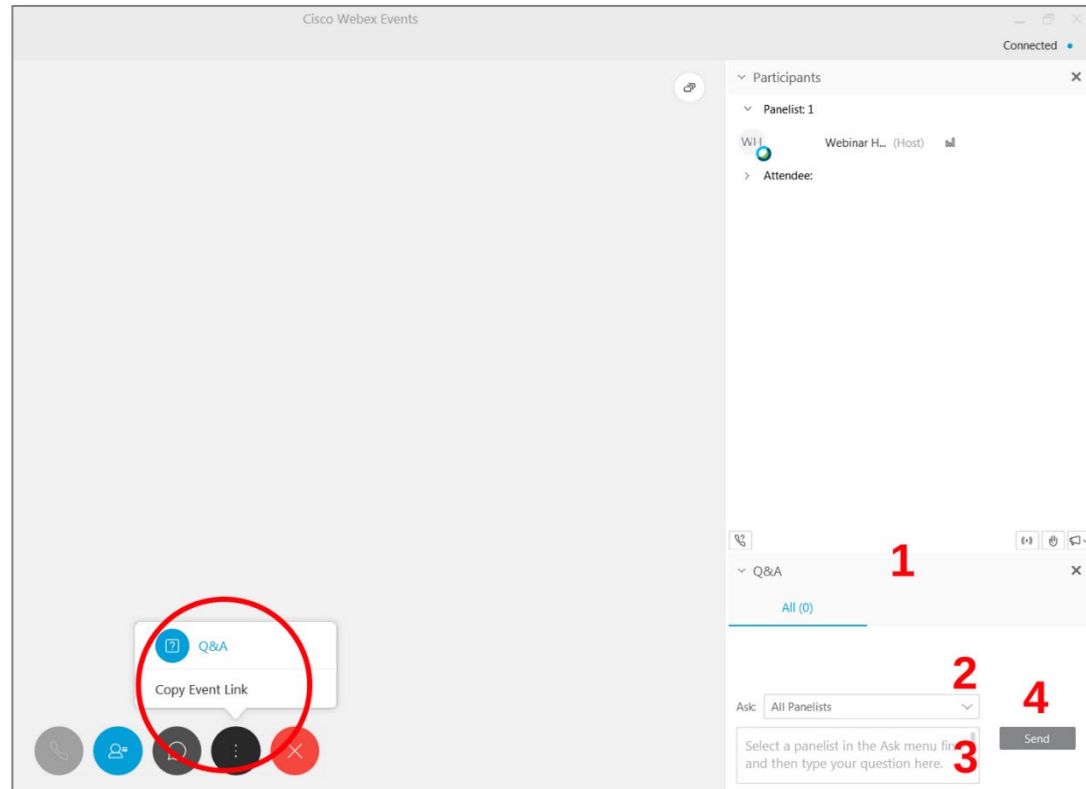
Acknowledgements

- Special thanks to **Leila Barraza, JD, MPH, Sarah Wetter, JD, MPH, Claudia Reeves and Erica White** at our Western Region Office for their research and assistance
- james.hodge.1@asu.edu | @jghodgejr



How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



Thank you for attending

For a recording of this webinar and information about future webinars, please visit networkforphl.org/webinars

The Public Health Impacts of Legalized Sports Betting

March 19, 1:00 – 2:30 p.m. EST



2020 Public Health Law Conference

Building and Supporting Healthy Communities for All
September 16 – 18, 2020 | Baltimore, MD

