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

March 16, 2020
How to Use WebEx Q & A

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2. Select “All Panelists”
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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
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- 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

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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.
US Cases of COVID-19

Total Confirmed Cases > 3600
Total Deaths > 61

Source: NYT
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.
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)
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-CHEP, 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

Emergency - 34
Disaster - 4
Public Health
Emergency/Disaster - 9
Emergency + Public Health Emergency - 3
County/City
Tribal

State and Tribal/Local Declarations of Emergency:

- CA: San Diego Co. 2/19
- OR: Clackamas Co. 3/2
- WA: Seattle-King Co. 2/29
- ID: Boise Co. 2/27
- MT: Custer Co. 2/27
- TX: Travis Co. 3/3
- SD: Minnehaha Co. 3/2
- WY: Jeff Co. 3/2
- AK: Anchorage 3/6
- HI: Honolulu Co. 3/10
- PR: San Juan Co. 3/2
- VI: St. Thomas 3/2

Emergency - 34

- AK - Alaska
- HI - Hawaii
- HI - Hawaii Emergency 3/4
- PR - (Puerto Rico) Emergency 3/12
- VI - (Virgin Islands) Emergency 3/13

Public Health

- Munson Co. 3/6
- Des Moines 3/6
- Edmond 3/5
- Auburn 3/6
- Cowlitz Co. 3/4
- Bellevue 3/3
- Snohomish Co. 3/4
- Umatilla Reservation 3/4
- Lummi Nation 3/3
- Kitsap Co. 3/9
- Pierce Co. 3/6
- Redmond 3/3
- Seattle 3/3
- Santa Clara Co. 3/2
- San Diego Co. 3/2
- Sacramento Co. 3/4
- Nevada Co. 3/4
- Santa Rosa 3/2
- Solano Co. 3/2
- Marin Co. 3/3
- Mendocino Co. 3/4
- Santa Cruz Co. 3/2
- Placer Co. 3/3
- Alameda Co. 2/19
- San Francisco 2/25
- Santa Clara Co. 2/10
- Los Angeles Co. 3/4
- Long Beach 3/4
- Orange Co. 2/27
- San Diego Co. 3/4

Emergency/Disaster - 9

- Salt Lake Co. (UT) 3/6
- San Antonio 3/2
- Bexar Co. 3/2
- Travis Co. 3/6
- Austin 3/6
- Salt Lake City (UT) 3/11
- Navajo Nation 3/11
- Eagle Co. (UT) 3/7
- Cooke Co. (IL) 3/9
- McHenry Co. (IL) 3/11
- Cincinnati (OH) 3/11
- Cuyahoga Co. (OH) 3/12
- Montgomery Co. (PA) 3/9
- Delaware Co. (PA) 3/9
- Co. of Hawai'i 2/28
- Honolulu Co. 3/4
- Maui, Kaua'i 3/4
- Miami-Dade Co. 3/10
- Broward Co. 3/10

Emergency + Public Health Emergency - 3

- Kansas City (MO) 3/12
- Cooke Co. (IL) 3/9
- McHenry Co. (IL) 3/11
- Kansas City (MO) 3/12
- Cooke Co. 3/9
- McHenry Co. 3/11
- Clear Lake (IA) 3/12
- Cuyahoga Co. (OH) 3/12
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- Honolulu Co. 3/4
- Maui, Kaua'i 3/4
- Miami-Dade Co. 3/10
- Broward Co. 3/10

County/City

- Santa Clara Co. 2/10
- Sonoma Co. 3/2
- Alameda Co. 2/19
- San Francisco 2/25
- Santa Clara Co. 2/10
- Los Angeles Co. 3/4
- Long Beach 3/4
- Orange Co. 2/27
- San Diego Co. 3/4

Tribal

- Lummi Nation 3/3
- Hoopa Valley Tribe 3/4
- Whatcom Co. 3/10
- Co. of Hawai'i 3/2
- Honolulu Co. 3/4
- Maui, Kaua'i 3/4
- Lummi Nation 3/3
- Hoopa Valley Tribe 3/4
- Sacramento Co. 3/4
- Nevada Co. 3/4
- Santa Rosa 3/2
- Solano Co. 3/2
- Marin Co. 3/3
- Mendocino Co. 3/4
- Alameda Co. 2/19
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- Co. of Hawai'i 2/28
- Honolulu Co. 3/4
- Maui, Kaua'i 3/4
- County/City
- Tribal
Efforts of legal actors & others during declared emergencies to build a favorable legal environment by prioritizing issues & solutions that facilitate legitimate public health responses.
Emerging Legal Issues

Topics

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

Emerging Legal Issues

The Network for Public Health Law
Social Distancing Measures

- Control modes of transportation
- Increase distance among workers
- Dismiss schools
- Restrict public gatherings
- Isolation & quarantine
- Evacuation
- Curfew
- Cordon sanitaire/Lockdown
Constitutional Balancing

Social Distancing Measures

Individual Interests
- Religious Freedoms
- Right to Assemble
- Due Process
- Equal Protection

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

School Decision Tree

All Schools Regardless of Community Spread

Confimed person with COVID-19 in building?

Assess Risk

Short (potential 2-5 Day) Building Dismissal to Clean/Disinfect/Contact Trace in consultation with local health officials

No Community Spread

- Prepare
- Teach and reinforce healthy hygiene
- Develop information sharing systems
- Intensify cleaning and disinfection
- Monitor for absenteeism
- Assess group gatherings and events – consider postponing non-critical gatherings and events
- Require sick students and staff stay home
- Establish procedures for someone becoming sick at school

Monitor changes in community spread

Minimal to Moderate OR Substantial Community Spread

Is community spread Minimal to Moderate or Substantial?

M/M

- Coordinate with local health officials.
- Implement multiple social distancing strategies for gatherings, classrooms, and movement through the building.
- Consider ways to accommodate needs of children and families at high risk.

S

- Coordinate with local health officials.
- Implement multiple social distancing strategies for gatherings, classrooms, and movement through the building WITH EXTENDED SCHOOL DISMISSALS.
- Consider ways to accommodate needs of children and families at high risk.

Click on image to access
School Closure – Legality

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

BACK TO SCHOOL
Social Distancing

- Closures
- Assembly limitations
- Travel restrictions
- Quarantine & Isolation
Orders to Limit Assemblies

County of Santa Clara
Public Health Department

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

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:
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

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 assemblies. The Centers for Disease Control and Prevention (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
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)
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

- Place of isolation or quarantine
- Known, infected individual
- Individual exposed to contagious disease
- Healthy individual

Isolation

- Place of isolation or quarantine
- Known, infected individual
- Individual exposed to contagious disease
- Healthy individual
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
Federal Quarantine - Airports

CDC QUARANTINE STATIONS AT PORTS OF ENTRY

- Anchorage, AK
- Seattle, WA
- Minneapolis, MN
- Chicago, IL
- Detroit, MI
- New York City, NY
- Boston, MA
- Newark, NJ
- Philadelphia, PA
- Washington D.C., DC
- Honolulu, HI
- San Francisco, CA
- Los Angeles, CA
- San Diego, CA
- El Paso, TX
- Houston, TX
- Miami, FL

PACIFIC OCEAN
ATLANTIC OCEAN
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.

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. 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.
**Q & I Initiation**

**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
Q & I Best Practices

• 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.
Enforcement

Voluntary Measures

Encourage Compliance

Court Orders to Enforce Health Official’s Order

Penalties
Costs and Reimbursements

- **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**
  - 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 $
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
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

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How to Use WebEx Q & A

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4. Click “Send”
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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