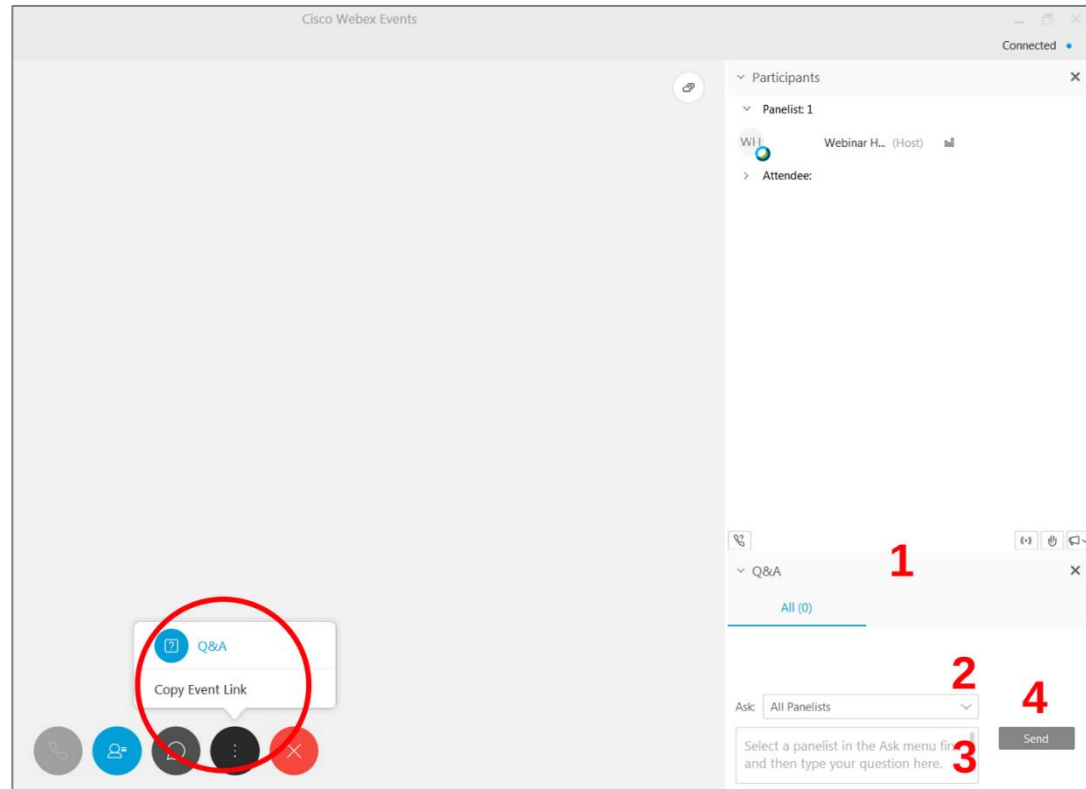


COVID-19 Real-Time Legal Responses: Local Governments on the Frontlines

March 23, 2020

How to Use WebEx Q & A

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



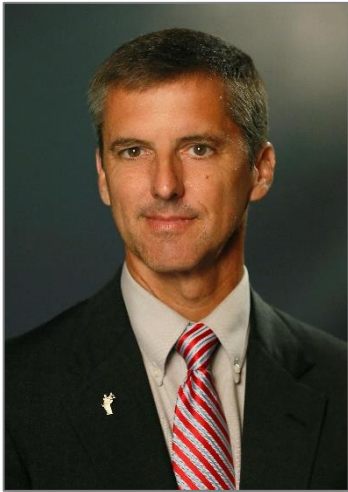
Moderator



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 Real Time Legal Responses: Local Governments on the Frontlines

March 23, 2020

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

Peter Kiewit Foundation Professor of Law

Director, Western Region Office, Network for Public Health Law

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Objectives

- ☐ **U.S. Legal Preparedness & Response**
- ☐ **Emerging Roles for Local Governments on the Frontlines**
- ☐ **Legal & Policy Challenges**
- ☐ **Public Health Powers & Constitutional Limits**
- ☐ **Additional Resources**
- ☐ **Questions & Comments**



Special thanks to Dr. Matt Cartter, State Epidemiologist & Director of Infectious Diseases, Connecticut Dept. of Public Health

NORWICH BULLETIN, THURSDAY, SEPTEMBER 26, 1918

The Henry Allen & Son Co.
FUNERAL DIRECTORS
AND EMBALMERS
LADY ASSISTANT
All Calls Answered Promptly
Day and Night
88 Main Street

Farm Wagons
Express Wagons
Team Harnesses
Express Harnesses
(FOR THE MOTOR CAR)
A Good Line of
STEAMER ROBES
THE L. L. CHAPMAN CO.
14 Bath Street, Norwich, Conn.

The Bulletin
Norwich, Thursday, Sept. 26, 1918.

THE WEATHER.
Because of high in the northwest

SCHOOLS CLOSED FOR REST OF WEEK

After a conference on Wednesday with Dr. John T. Black, Connecticut commissioner of health, Dr. E. T. Bro-
tively no cause for alarm if the disease is taken at the very beginning, and a physician called and his orders

Claims Dandruff Will Cause Baldness

If you have dandruff you must get it—it's positively dangerous—surely ruin your hair if heads mean faded, brittle, hair that finally dies—new hair will not grow a bald and nothing can re way to abolish dandruff is to destroy the germ. To do this quickly, safely, and at little expense nothing so effective as which you can get from Co. and good druggists it is guaranteed to banish itching scalp and promote a new coat, small as it is, ad. is a scientific preparation supplies all hair needs—liquid neither sticky or to apply, and delicately

“Such extreme measures will not be necessary in this city it is believed, but will be taken if the need arises through any great increase in the number of cases”

The following records, reported from The Bulletin's observation, show the changes in temperature and the barometric changes Wednesday:
Ther. Bar.
7 a. m. 40 30.10
4 p. m. 59 30.10

playhouses and to avoid all public gatherings as much as possible.
With the return of the raw, cold rainy weather people should be on the watch for the first signs of the influenza and take care not to expose themselves to the disease unnecessarily.

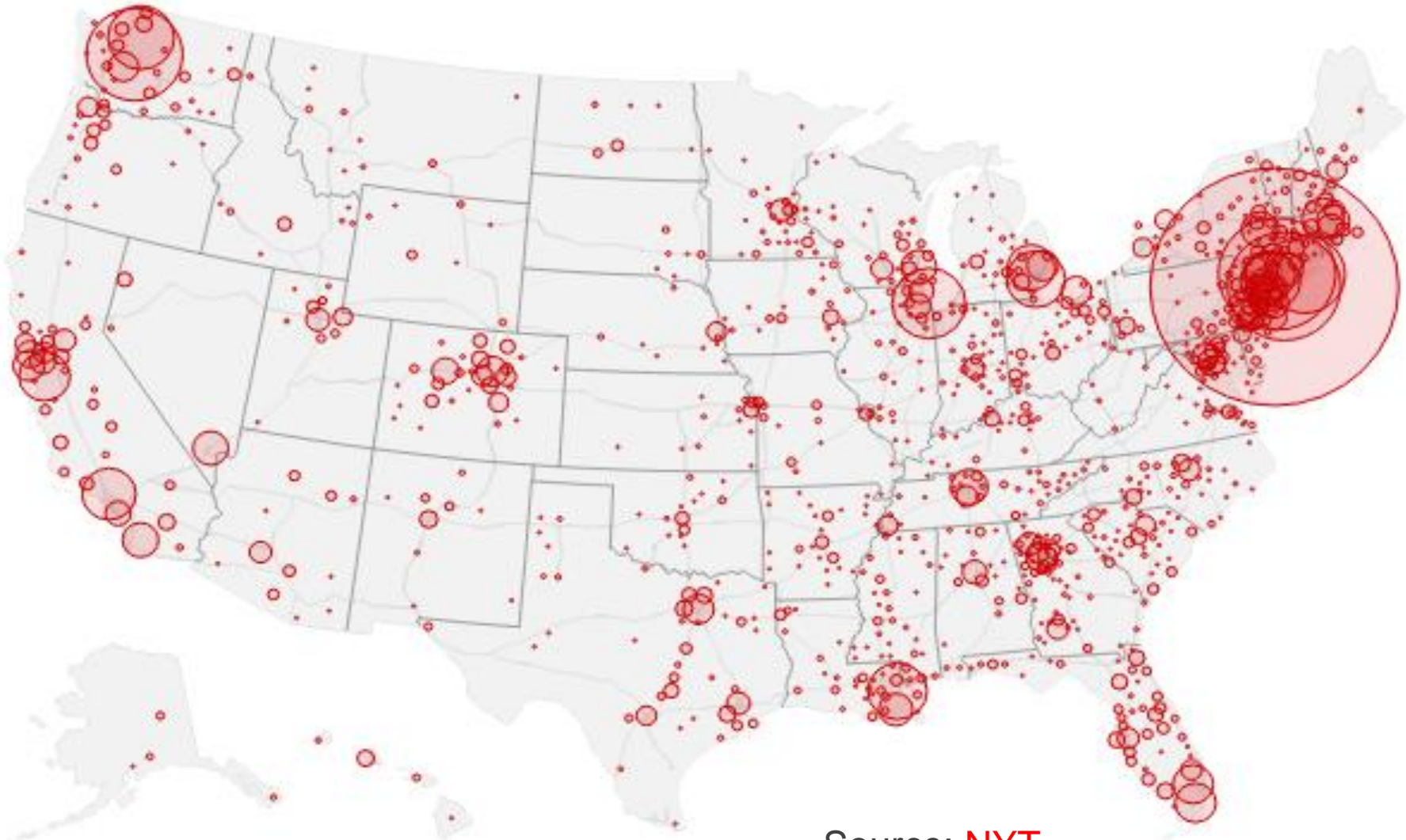
the epidemic continues to increase.
Such extreme measures will not be necessary in this city it is believed, but will be taken if the need arises through any great increase in the number of cases to anything like the New London figure.

If you want beautiful soft, thick, lustrous hair, and lots of it by all means use Parisian sage. Don't delay—begin tonight—a little attention now insures abundant hair for years to come.—Adv.

US Cases of COVID-19

Total Confirmed Cases > **35,070**

Total Deaths > **458**



Source: [NYT](#)

Orleans Parish Skyrocketing COVID-19 Rate

While other places have had more total known cases, Orleans Parish -- home to New Orleans -- appears to be outpacing other hotspots in known COVID-19 cases per capita. This analysis looked at the counties hit hardest by coronavirus but is not an exhaustive survey. And increased testing nationwide will likely lead to a surge of new cases across the board.

County	COVID-19 Cases	Per 100,000 Residents ▾
Orleans Parish (La.)	231	59
New York City (N.Y.)	2,469	29
Seattle/King County (Wa.)	569	26
Santa Clara County (Ca.)	175	9
Middlesex (Ma.)	100	6
<u>Cynthiana, KY</u>	6	95

VIEWPOINT

Lawrence O. Gostin, JD
O'Neill Institute for
National and Global
Health Law,
Georgetown University
Law Center,
Washington, DC.

**James G. Hodge Jr, JD,
LLM**
Sandra Day O'Connor
College of Law, Arizona
State University,
Phoenix.

**Lindsay F. Wiley, JD,
MPH**
Washington College of
Law, American
University,
Washington, DC.

Presidential Powers and Response to COVID-19

Click on image to access

The Centers for Disease Control and Prevention (CDC) modeling suggests that, without mitigation, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the virus that causes novel coronavirus disease 2019 (COVID-19), could infect more than 60% of the US population.¹ President Trump has declared a national emergency along with 50 governors declaring state emergencies (Figure), which are unprecedented actions. Social distancing aims to flatten the epidemic curve to moderate demand on the health system. Consequently, whether through voluntary actions or state mandates, individuals are increasingly sheltering at home, schools and universities are closing, businesses are altering operations, and mass gatherings are being canceled. On March 16, the health officers of 6 local governments in the San Francisco Bay Area issued mandatory orders to shelter in place, making it a misdemeanor offense to leave home for any nonessential purpose.

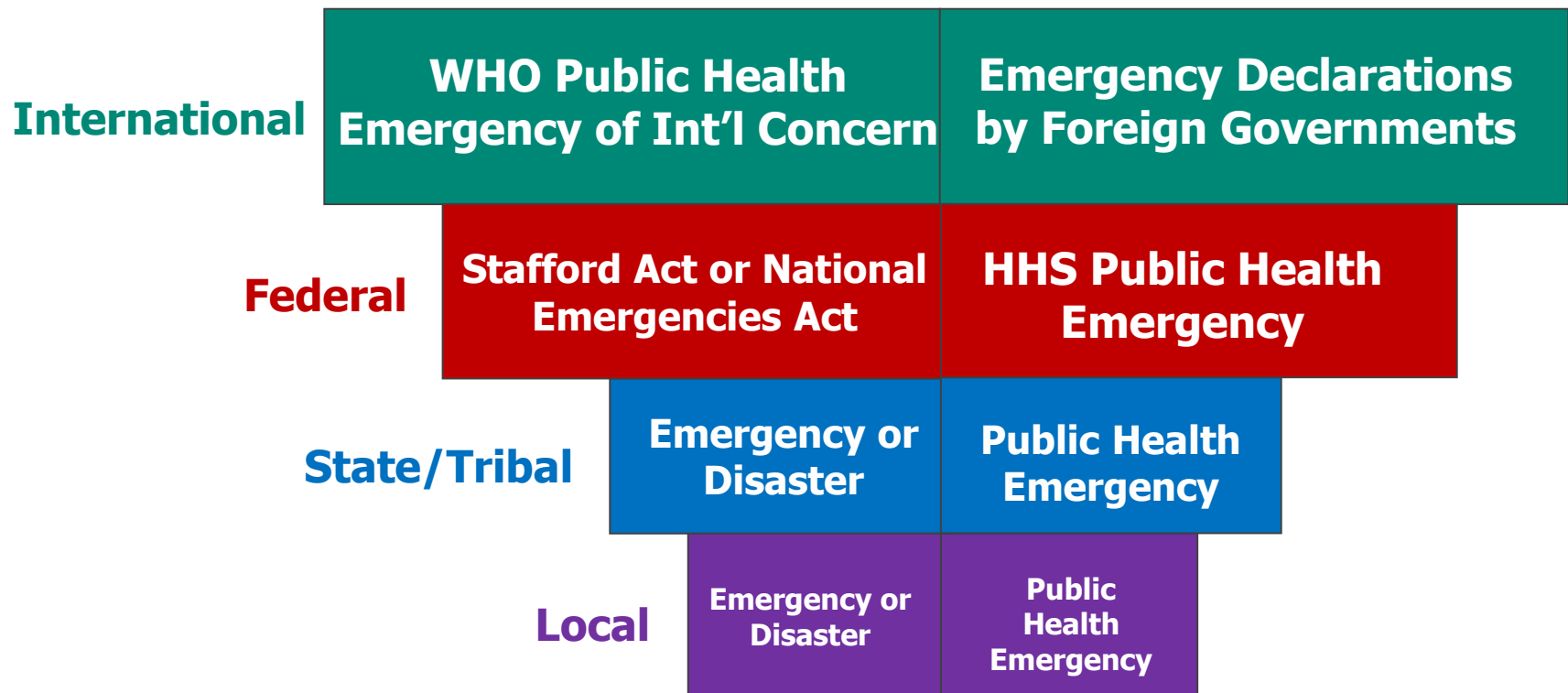
state and local responses are inadequate, but the extent of this authority has not been tested.⁵

Travel Restrictions

Recently, the president banned most non-US citizens from entry into the United States traveling from the Schengen area (an area comprising 26 European states that have officially abolished all passport and other types of border control), the United Kingdom, and Ireland, on top of existing bans from China and Iran. The CDC rarely issues advisories against travel to particular locations within the US and has not done so to date for COVID-19. The CDC last advised against domestic travel during the 2017 Zika outbreak, recommending pregnant women avoid travel to southern Florida. While the White House has policies for military and government personnel traveling to places experiencing high levels of COVID-19 cases, it has not, as of yet, restricted do-

Multi-level Emergencies

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



Federal Emergencies/ Invocations

**HHS Public
Health
Emergency**

**Jan.
31**



**National
Emergencies
Act**

**Mar.
13**



**Stafford Act
Emergency**

**Mar.
13**



**Defense
Production
Act**

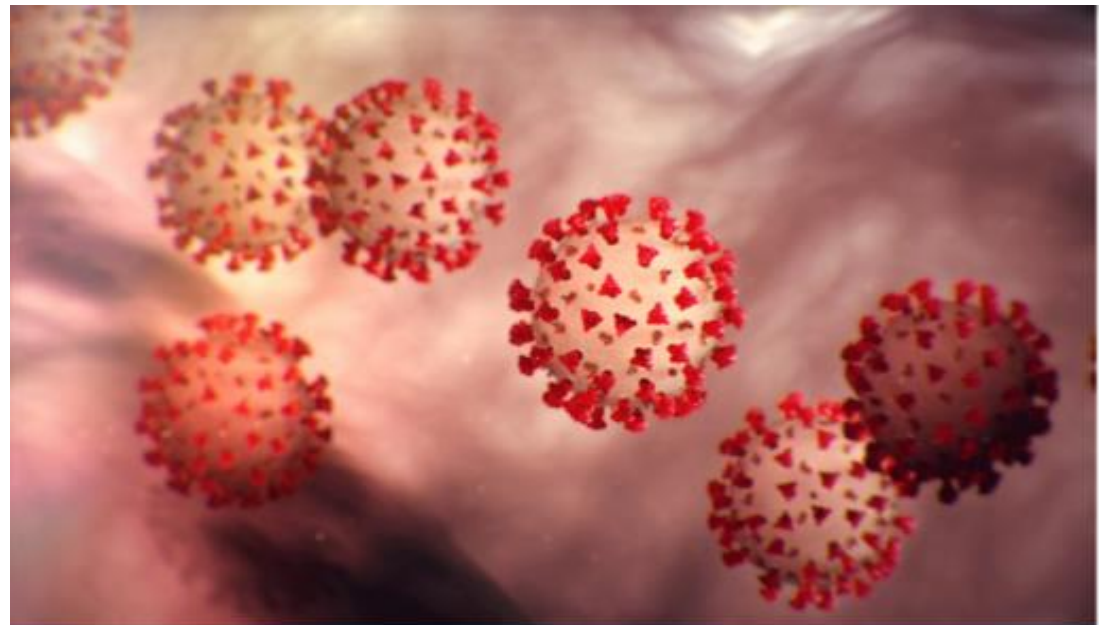
**Mar.
20**

FEMA

Mar. 13: U.S. Government COVID-19 Response Plan outlines coordinated federal activities:

- **Interagency Coordination Constructs**
- **Phase Indicators & Triggers**
- **Transition Between Phases**
- **Lines of Efforts**
- **Communications, Coordination & Oversight**

Click on image to access



PanCAP Adapted

**U.S. Government
COVID-19 Response Plan**

March 13, 2020

Federal Agency Coordination

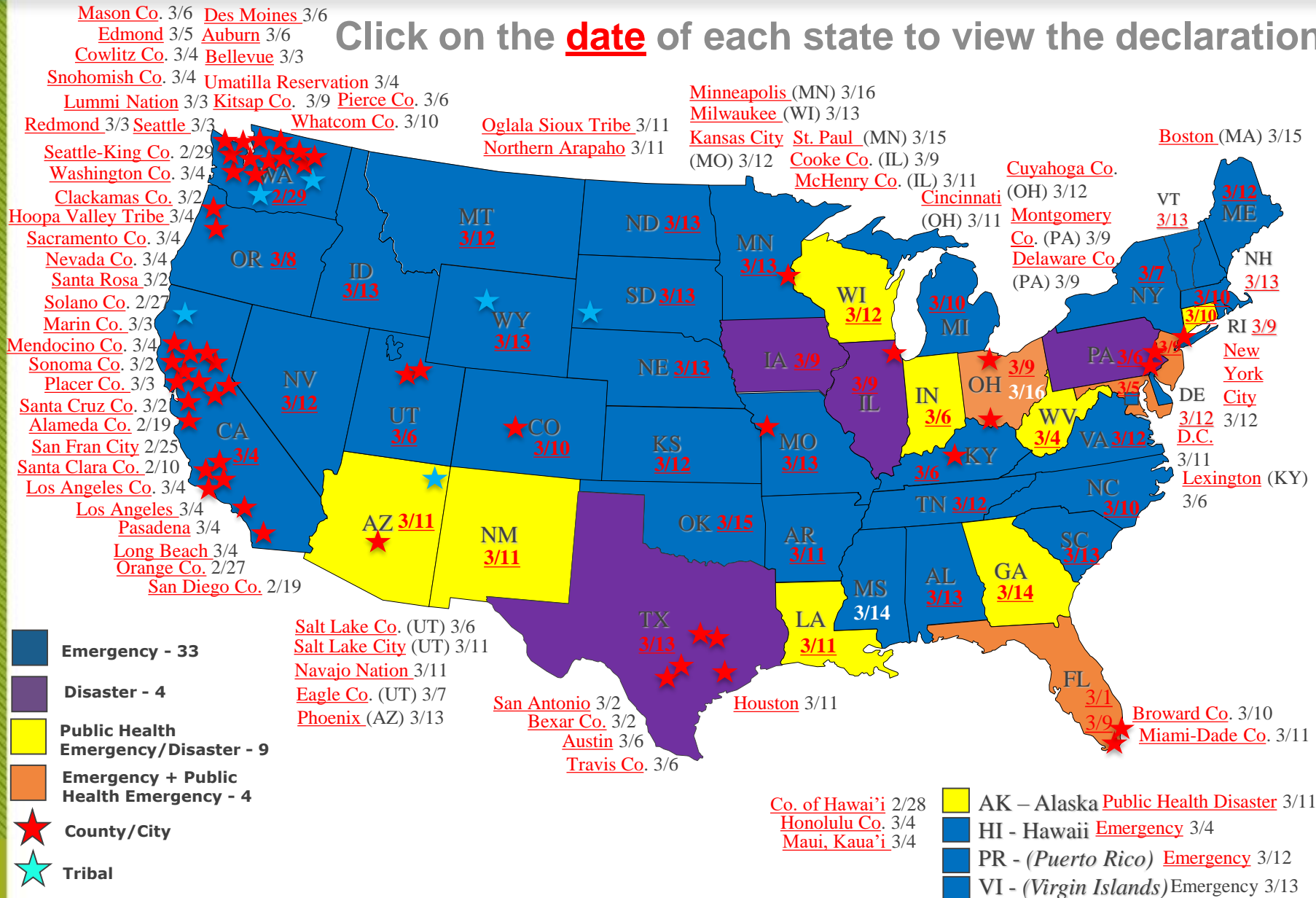




- **EMTALA** sanctions re: patient relocation
- **HIPAA Privacy Rule** regulations following implementation of hospital disaster protocol
- **Licensure requirements** for HCWs in the state where they are providing services
- **Certain conditions of participation** in Medicare, Medicaid, and SCHIP
- **Telehealth allowances** to facilitate healthcare services & payments w/visiting physical facilities

COVID State and Select Tribal/Local Declarations of Emergency

Click on the **date** of each state to view the declaration



Select State Emergency Powers Explicitly Invoked by Declarations

Note: this table tracks select, express authorities referenced via state emergency declarations ([link](#) on each state acronym for access).

Emergency Powers	A Z	A R	C A	C O	C T	F L	H I	I L	I N	K Y	L A	M E	M D	M A	M I	N J	N M	N Y	N C	O H	O R	P A	R I	T N	V A	U T	W A
Altered Contracts Procurements	■		■				■	■			■	■				■	■	■	■	■		■	■		■		
Emergency Plans ICS	■		■	■		■		■		■	■		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Funding Resource Allocation	■						■	■	■	■	■		■	■	■	■	■	■	■	■	■				■	■	■
Intrastate Coordination	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Isolation Quarantine	■	■		■	■	■					■							■									
Licensure Reciprocity	■		■				■										■	■	■					■			
Price Controls re: Gouging	■		■				■				■					■			■	■	■		■	■			
Surveillance Reporting	■		■			■													■								
Testing Screening Treatment	■			■								■			■		■	■	■	■	■			■			
Travel Restrictions		■	■		■	■					■					■			■	■							
Waivers Suspensions	■	■	■		■						■					■	■	■	■		■	■	■	■	■		

Select Local Emergency Authorizations

Locality	Date	Select Authorizations
<u>Clackamas County</u> (OR) Emergency	3/2	<ul style="list-style-type: none"> Establish emergency policies and protocols Recoup financial costs and redirect funds “Order such other measures as . . . immediately necessary for the protection of life and/or property.”
<u>County of Hawai’i</u> Emergency	2/28	<ul style="list-style-type: none"> Sponsor and enter into mutual aid programs Receive, expend & use contributions or grants Relieve and suspend hardships and inequities or obstructions to public health, safety or welfare
<u>San Francisco</u> Emergency	2/25	<ul style="list-style-type: none"> Mobilization of city resources & acceleration of emergency plans Streamlining staffing and coordination agencies city-wide
<u>San Diego County</u> Health Emergency	2/19	<ul style="list-style-type: none"> Reimbursement from state & federal governments Increasing resources such as beds at local hospitals
<u>Santa Clara County</u> Emergency	2/10	<ul style="list-style-type: none"> Leveraging state funds and mutual aid resources Increasing resources such as protective gear and training for healthcare workers



City of Phoenix

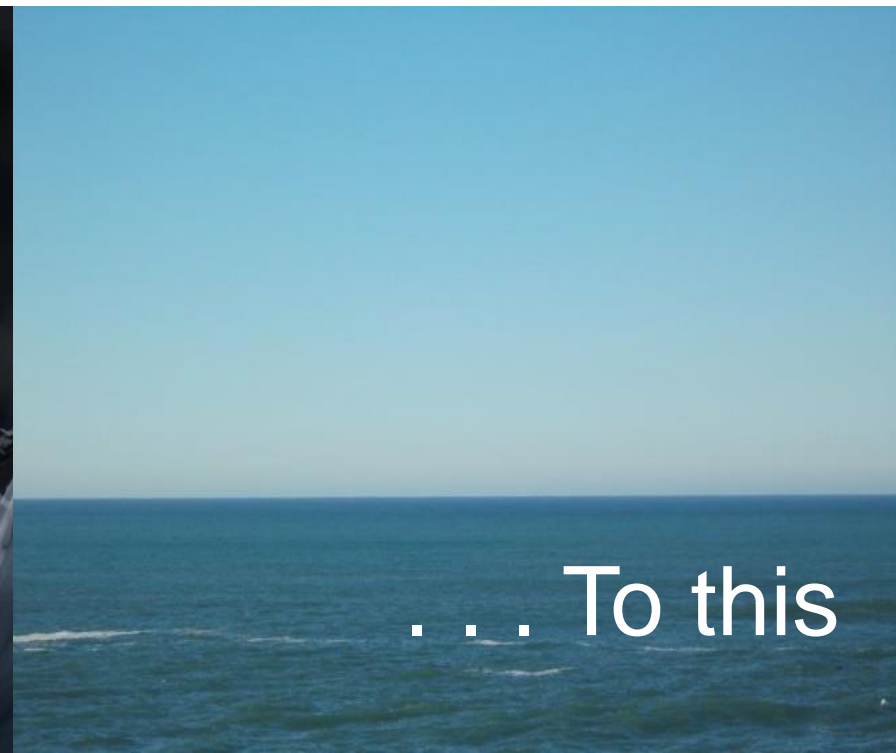
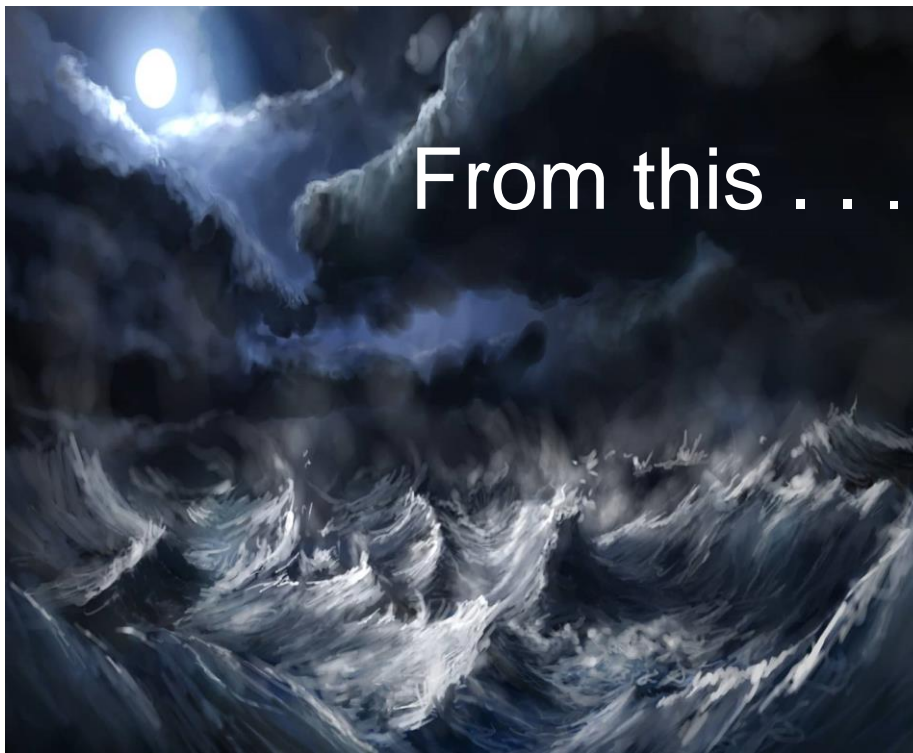


Mar. 20: Phoenix City Council met to debate Mayor Kate Gallego's emergency declaration on 3/17 closing bars and dine-in restaurants

- Multiple council members voiced concerns over “a great emergency” authorizing the Mayor to make key decisions without public input
- Council ultimately ratifies declaration after 3 hour debate

Legal Triage In Emergencies

Efforts of legal actors & others in declared emergencies to construct a legal environment that prioritizes issues & solutions facilitating legitimate public health responses



Legal Triage in Emergencies

In responding to PHEs, legal & public health actors must work together in real time to:

Assess, apply &
monitor changing
legal norms

Identify
legal
issues

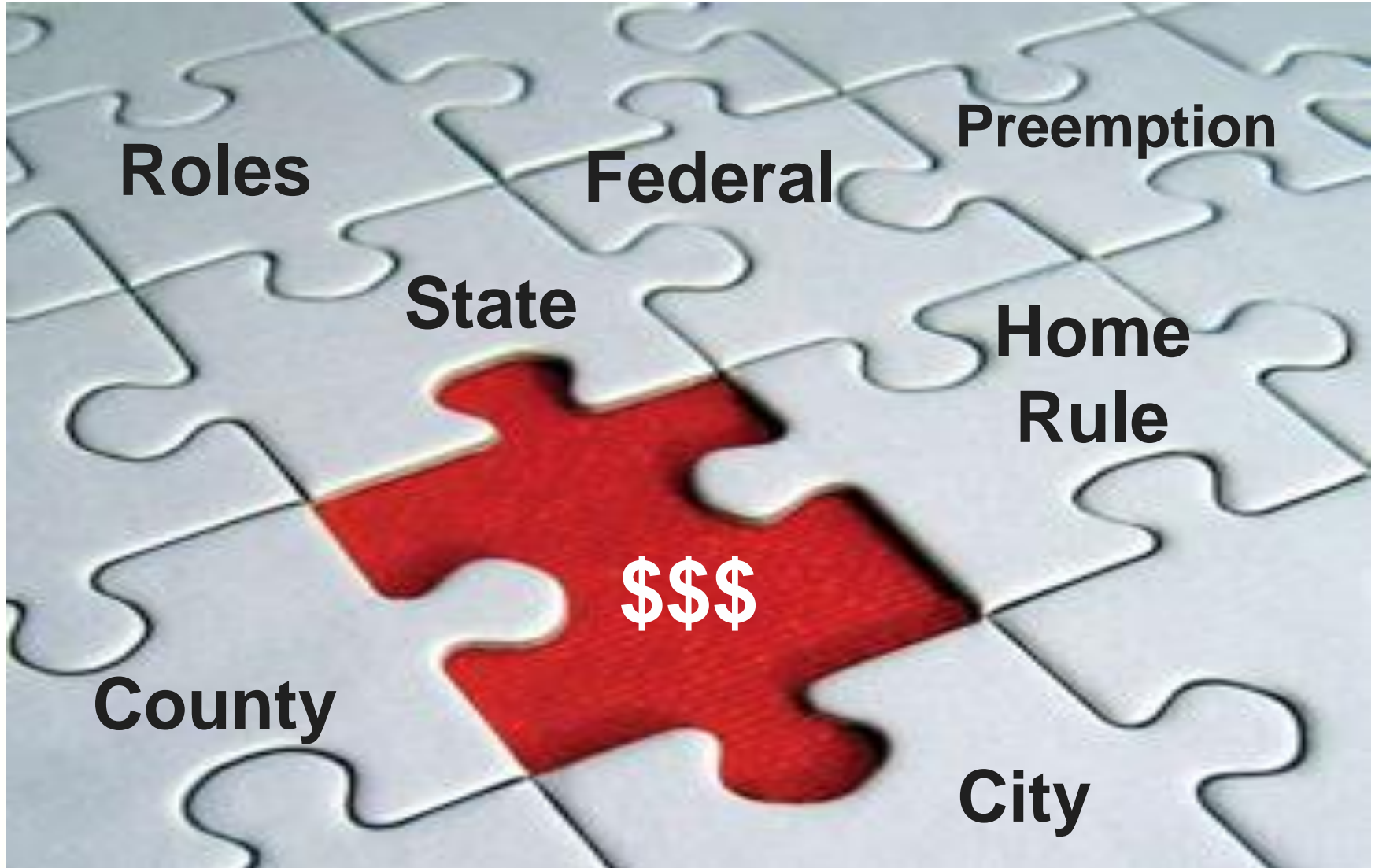
Develop legal
solutions

Explain legal
conclusions

Collaborate with
public & private
sector partners



Determining Legal Priorities





THE UNITED STATES CONFERENCE OF MAYORS

1620 FIVE STREET NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2582
URL: www.usmayors.org

Click on image to access

March 20, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives

The Honorable Mitch McConnell
Majority Leader
United States Senate

The Honorable Kevin McCarthy
Republican Leader
United States House of Representatives

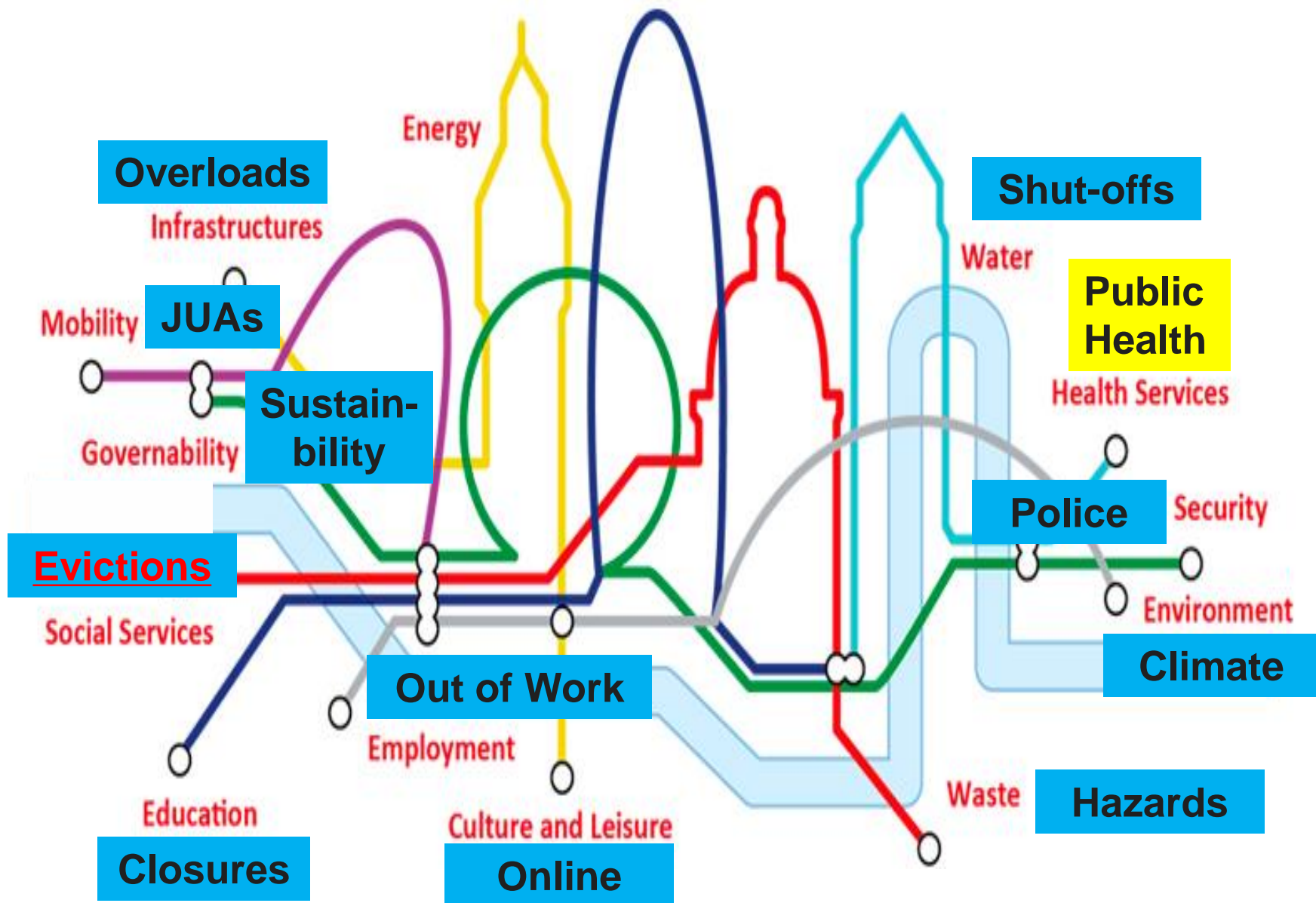
The Honorable Charles E. Schumer
Democratic Leader
United States Senate

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer:

RE: \$250 Billion Request for Direct Emergency Assistance to Cities

On behalf of The United States Conference of Mayors and the over 1,400 cities we represent, we write to thank you for passing the “Coronavirus Preparedness & Response Supplemental Appropriations Act” and moving forward the “Families First Coronavirus Response Act.” Both of these important legislative packages - along with President Trump’s National Emergency Declaration - will provide critical resources and administrative flexibilities to address the public health and economic crisis facing our nation as a result of the COVID-19 pandemic.

Array of Local Services



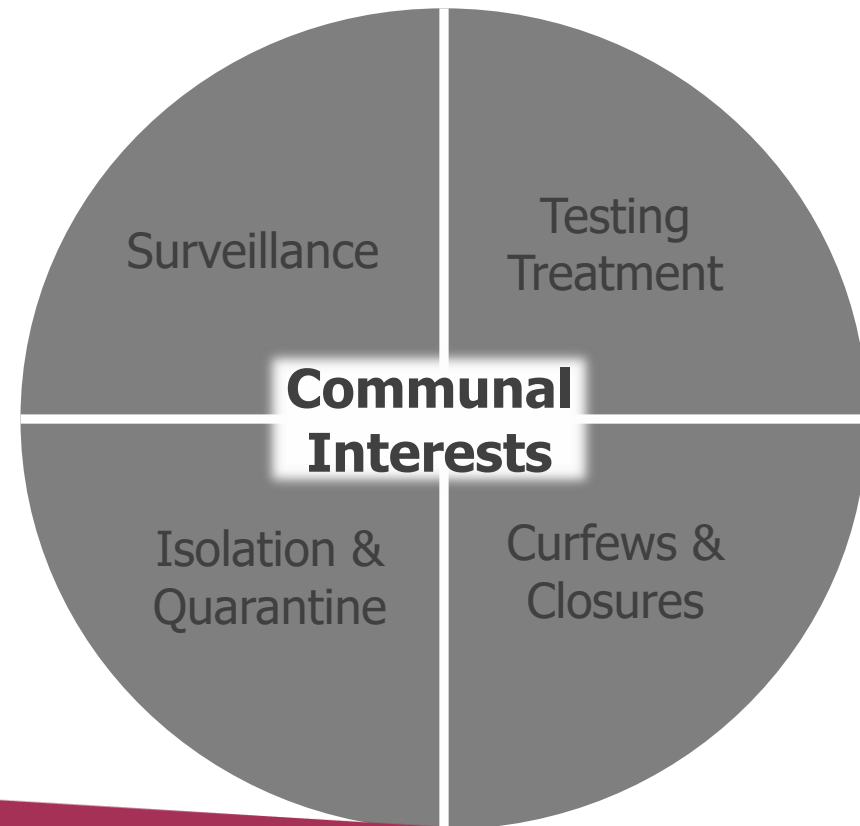


**KEEP
CALM
UNTIL THE
BREAKDOWN**

Emerging Public Health Legal Issues



Balancing Individual & Communal Interests



Emergency Preparedness and Response



Harris County
Public Health
Building a Healthy Community

Click on image to access



LINA HIDALGO

Harris County Public Guidance - March 12, 2020

These steps are recommended until March 31, 2020 or until otherwise noted.

Guidance for People at Higher Risk for Severe COVID-19 Illness

People at higher risk of severe illness should stay home and away from large groups of people as much as possible, including public places with lots of people and large gatherings where there will be close contact with others. Gatherings of seniors or other people at higher risk of severe illness should be canceled or postponed.

Those at higher risk include:

- People 60 and older.
- People with underlying health conditions (e.g. heart disease, lung disease, diabetes)
- People who have weakened immune systems.
- Pregnant women.

Caregivers of children with underlying health conditions should consult with healthcare providers about whether their children should stay home. Anyone who has questions about whether their condition puts them at increased risk for severe COVID-19 illness should consult with their healthcare provider. Those without a healthcare provider should contact Harris Health's Ask A Nurse line at: **713-634-1110**.

March 3: Vice President Pence announces massive expansion of who is eligible for COVID testing: “**Any American can be tested . . . subject to doctor’s orders.**”



The Washington Post

March 21: “Health officials in [NY, CA] and other hard-hit parts of the country are restricting coronavirus testing to health care workers and people who are hospitalized, **saying the battle to contain the virus is lost and we are moving into a new phase of the pandemic response.**”



Crisis Standards of Care

***Substantial change in usual
healthcare operations and level of
care due to a pervasive or
catastrophic disaster***

Crisis Standards of Care

A Systems Framework for
Catastrophic Disaster Response

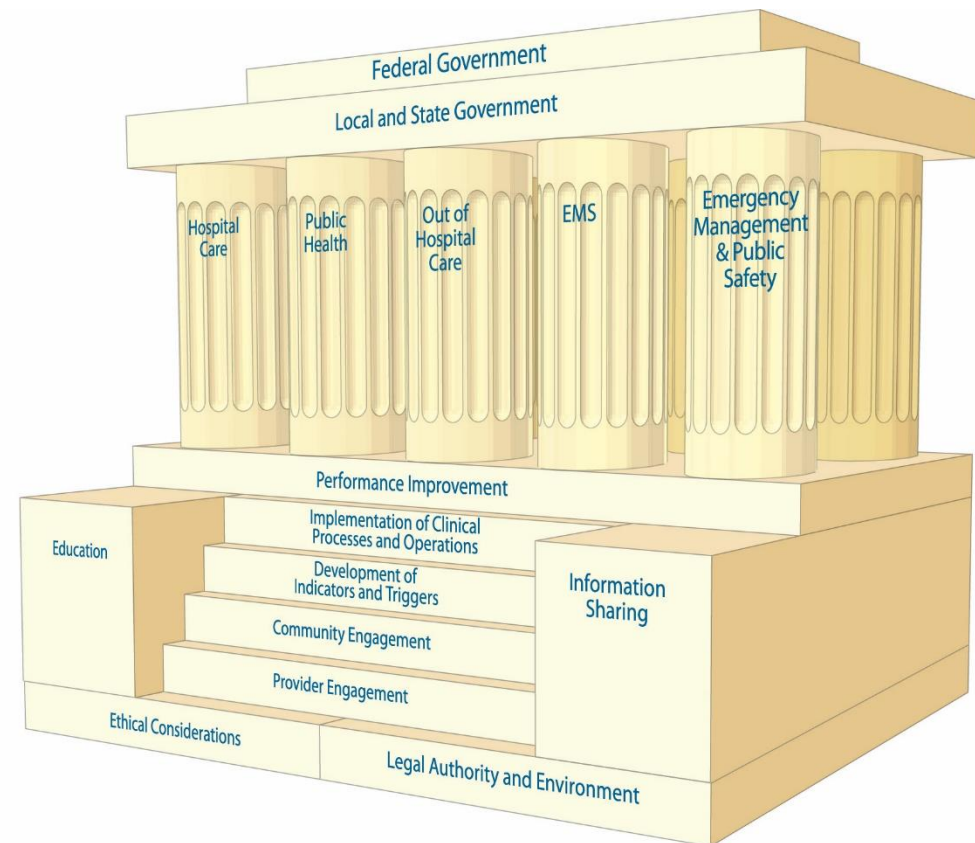


NATIONAL ACADEMY OF MEDICINE
Leadership • Innovation • Impact | for a healthier future

Practical, Ethical, and Legal Challenges Underlying Crisis Standards of Care [Click on article image to access](#)

James G. Hodge, Jr., Dan Hanfling, and Tia P. Powell

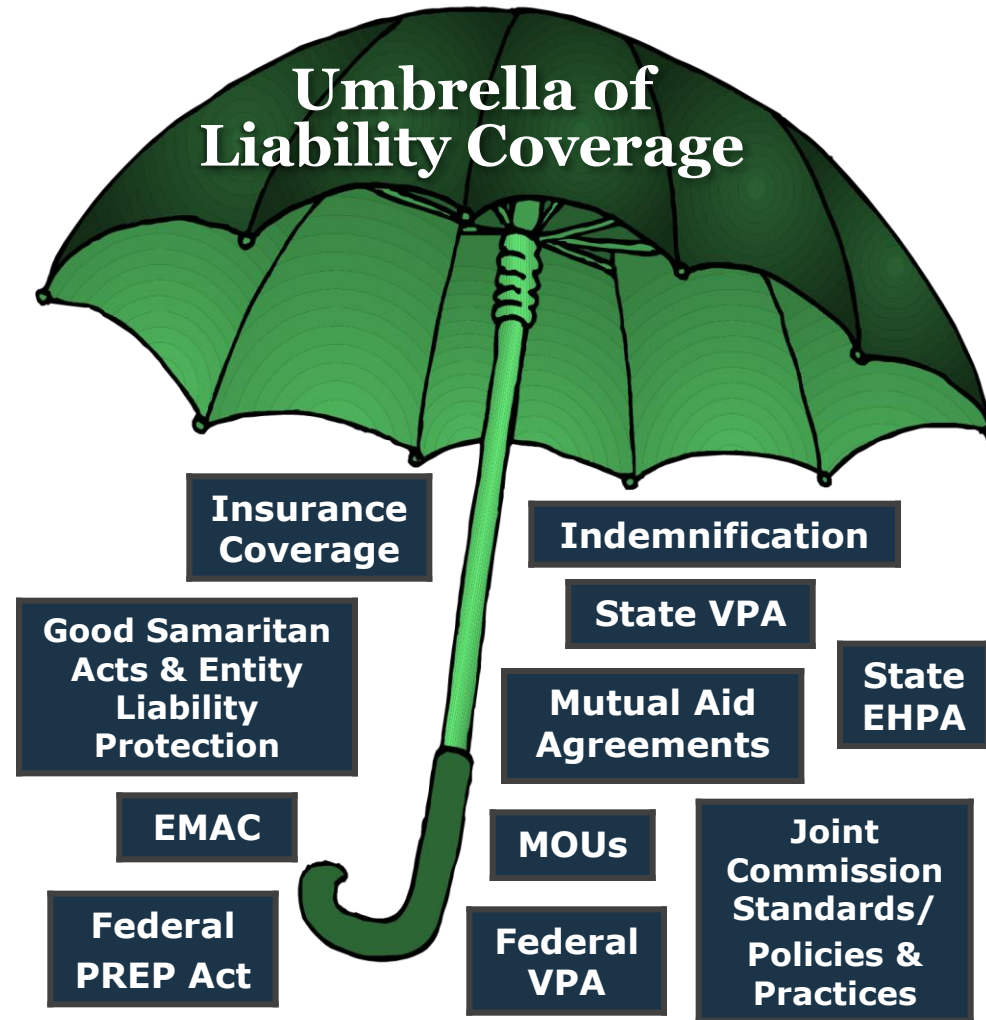
- Coordination
- Allocation
- Reimbursement
- Licensure
- Scope of Practice
- Patient's Interests
- Duty to Care
- Uniformity
- **Liability**



Emergency Liability Protections - Health Practitioners & Entities

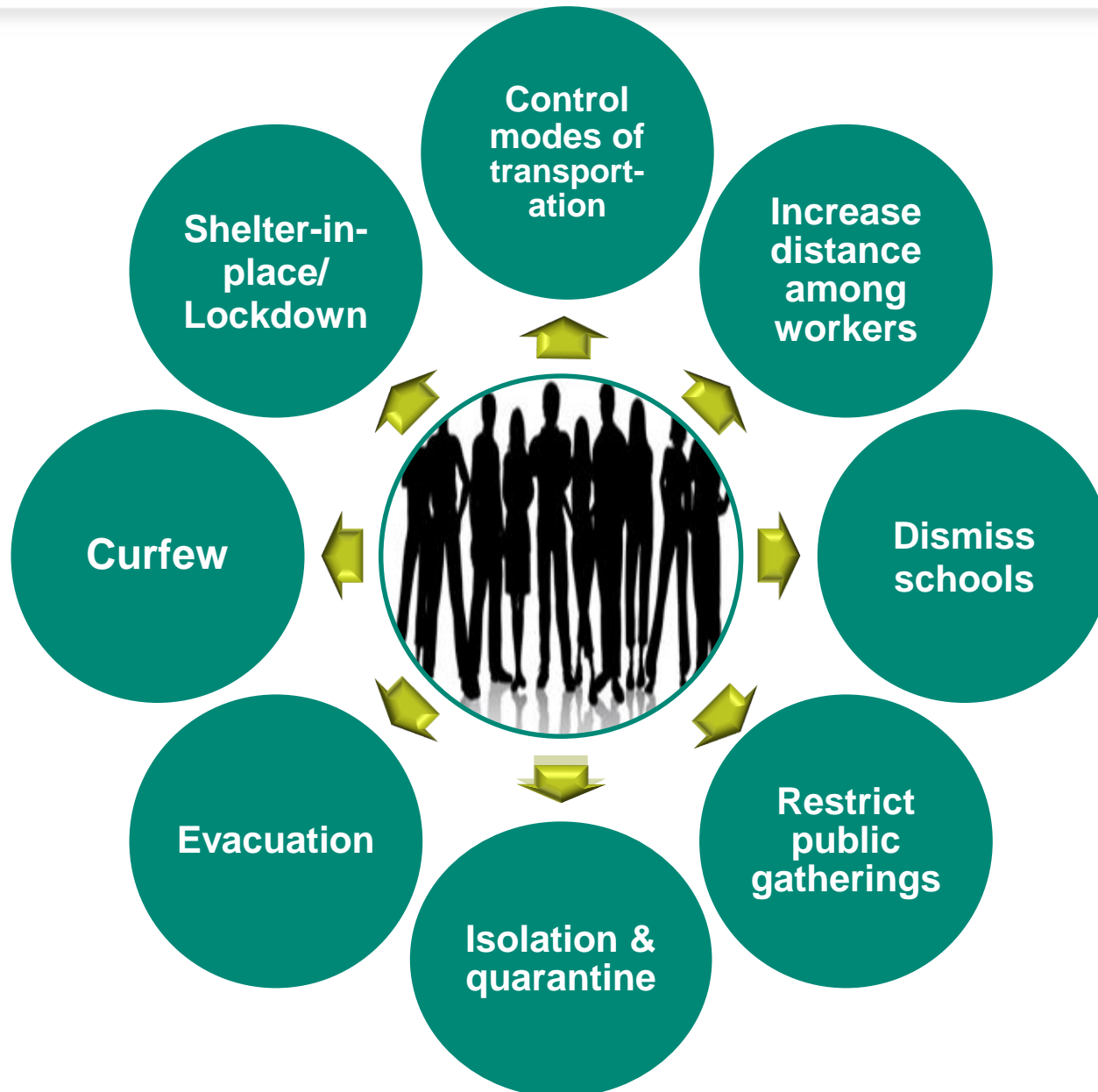


Many legal liability protections apply in routine events & declared emergencies, especially concerning health care volunteers, workers, and entities.



Link [here](#) for the Network's brief table illustrating various liability protections

Social Distancing Measures



Voluntary Closures & Cancellations



Places of Worship



Employers



Universities



Events



Sports



Festivals

Mandatory School Closures



By who?
How long?
On what
grounds?



Limitations on Assemblies

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

White House and CDC recommend no in-person events consisting of 10 or more people throughout the United States.

protecting vulnerable populations, hand hygiene, and social distancing. When feasible, organizers could modify events to be virtual.

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 Limits

- 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



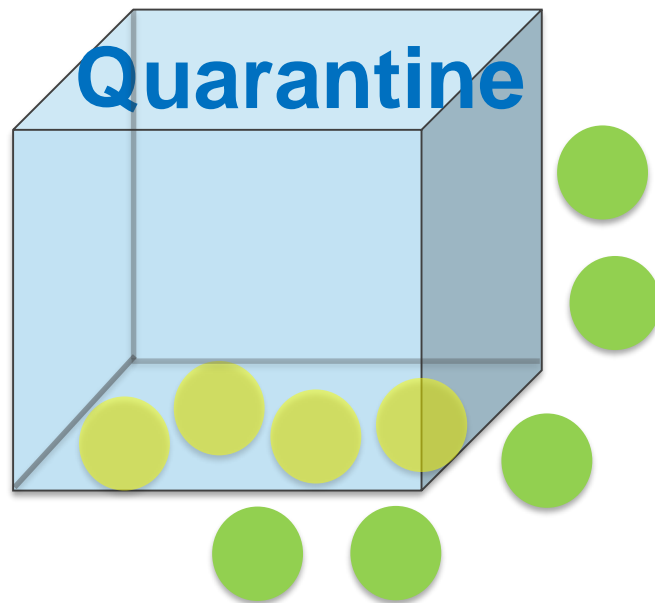
Mar. 17: Multiple persons sued to constitutionally challenge New Hampshire Governor Chris Sununu's order prohibiting statewide gatherings of 50 or more people:

- “We can choose to assemble if that is our desire. What cannot occur is one man in a position of power deciding to strip us of our rights in the name of safety and without due process.”
- Merrimack County Superior Court denied the request for a hearing

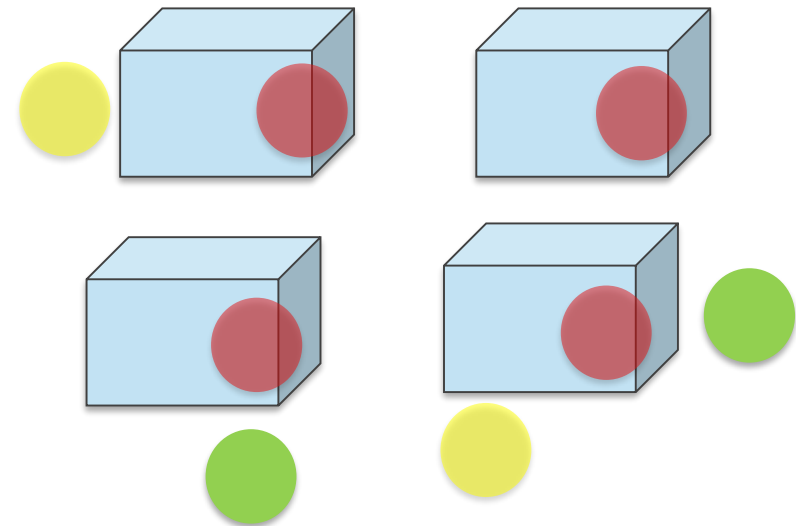
Quarantine & Isolation

Option A: Temporary Q & I w/out Judicial Notice via Written Directive

Option B: Q & I w/Judicial Notice



Isolation



Healthy individual



Individual exposed to
contagious disease



Individual known
to be infected

For a tabular listing of state-based Q & I statutes, see the
[National Conference of State Legislatures](#)

Q & I Best Practices



Safe, hygienic premises



Monitoring & care



Basic necessities



Means of communication



Least restrictive means



Termination

COVID-19 Patient Refuses Isolation



- Mar. 17:** 53-year-old COVID-19 patient in Nelson County hospital refuses isolation & checks out
- Nelson County Judge Executive Dean Watts declared a state of emergency to “force a self-isolation or quarantine.”
 - Law enforcement is stationed outside the individual's residence 24/7 for 2 weeks to enforce home isolation



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 their plans and 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 Joint Base San Antonio-Lackland. The motion was denied.

Virtual “Lock Down?”



City and County of
San Francisco

Department of Public Health
Order of the Health Officer

ORDER OF THE HEALTH OFFICER No. C19-07

**ORDER OF THE HEALTH OFFICER
OF THE CITY AND COUNTY OF SAN FRANCISCO DIRECTING
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR
ESSENTIAL BUSINESS AND GOVERNMENT SERVICES; EXEMPTING
INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE
SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER
AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL
BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-
ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE
COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF
ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF
ALL NON-ESSENTIAL TRAVEL**

(SHELTER IN PLACE)

DATE OF ORDER: March 16, 2020

Public Health & Safety Zone?

Shelterless Population Litigation

Mar. 21: PA Governor Tom Wolfe rescinded part of his order for all “non-life-sustaining” businesses to close given:

- Disdain re: economic impacts
- Legal challenges led by a law firm & gun store
- **New guidance** excepting timber industry, coal mining, hotels, accountants, laundromats & some law firms
- Allows “robust waiver process” for businesses seeking exemption
- *Will localities enforce?*



Shelterless Population Litigation



Mar. 19: Emergency hearing called by U.S. District Judge David O. Carter to address claims by the L.A. Alliance for Human Rights, Skid-Row business owners, and former shelterless individuals:

- Allegations that local officials were negligent in failing to act to protect the shelterless population from COVID-19
- Seeks training, healthcare & sheltering for homeless persons

[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](#)

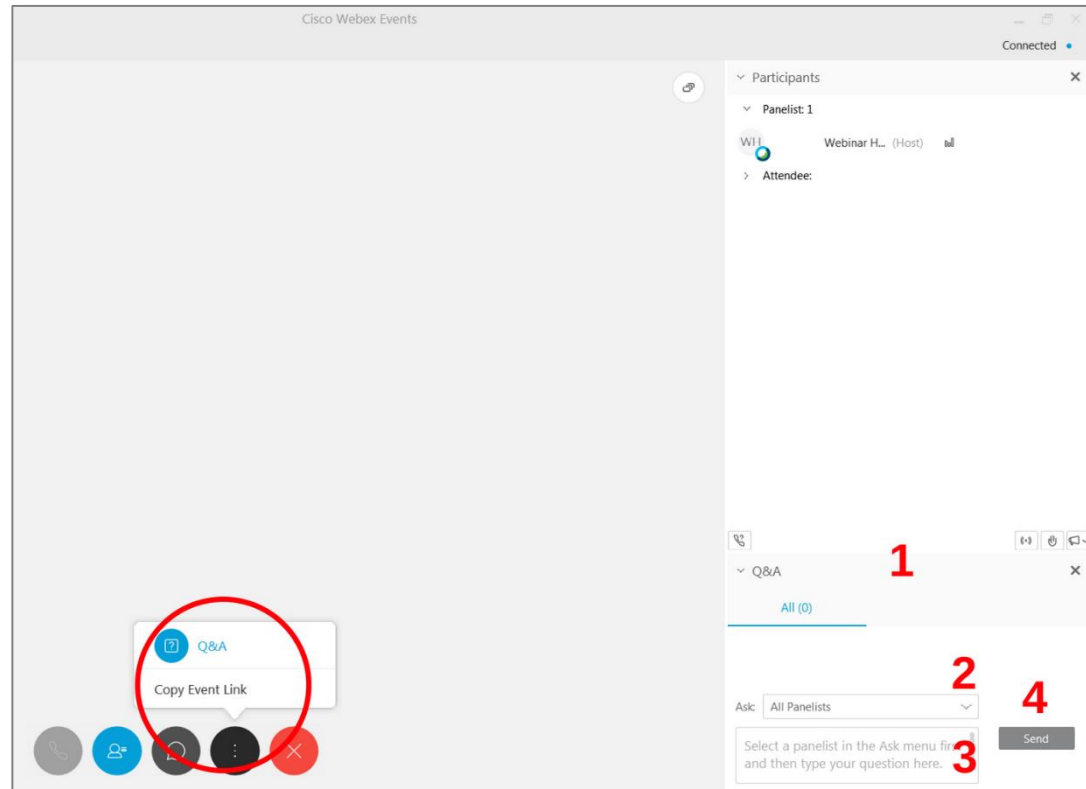
Acknowledgements

- Special thanks to **Leila Barraza, JD, MPH, Michelle Notrica, JD, MPH, PharmD, Claudia Reeves** and **Erica White** at our Network Western Region Office for their research & assistance
- **Ask the Network** re: questions/comments
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

COVID-19: Crisis Standards of Care—Guidance for Health Care Systems and Providers

1:00 – 2:00pm EST | March 26

COVID-19: Real-Time Guidance, Resources and Information

View resources & request assistance at networkforphl.org/covid19

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

