U.S. Legal Preparedness and Real-time Responses: COVID-19

March 5, 2020
How to Use WebEx Q & A

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  - Emergency Legal Preparedness & Response
  - Vaccinations
  - Preemption
  - Emerging Infectious Diseases
  - Constitutional Rights and Structural Principles
COVID-19
Emergency Legal Preparedness
As of March 5, 2020

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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
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.

Vaccines, Tests & Treatment:

• No vaccines, commercial tests, or proven treatments are available.
Total Confirmed Deaths: 3,112
Total Confirmed Cases: 90,870

= Mortality Rate 3-4%

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. 30: Russia shuts border with China.

Jan. 31: Singapore closes China border.

Feb. 4: Canadian authorities elect not to impose explicit travel bans.
U.S. Legal Preparedness & Response Efforts
Total Confirmed Cases: **129**  
Total Deaths: **11**

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.
Select Congressional Responses

3/4
House introduces “Coronavirus Preparedness and Response Supplemental Appropriations Act”

3/4
Congress passes $8 bill fund for Emergency COVID-19 response

2/13
Senators urge HHS to establish guidelines for how state & local governments are reimbursed for expense of assisting federal responses

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

2/6
Senators request info. on VA health care facilities’ preparation, 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 China 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.

March 3: “I don’t think that we are going to get out of this completely unscathed . . . [T]his is going to be one of those things we look back on and say ‘Boy, that was bad.’”

Dr. Anthony Fauci, Director, National Institute of Allergy and Infectious Diseases, NIH
Emerging Legal Issues

US Emergency Legal Responses to Novel Coronavirus Balancing Public Health and Civil Liberties

Click on image to access article

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. Federal, state, and local governments have been issuing quarantine and isolation orders in response to the threat posed by COVID-19.² These orders are often issued in a piecemeal manner, with the result that there is a spectrum of restrictions across the United States, and even within jurisdictions.³

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.⁴ Additional warnings may take effect with “little or no advance notice.”⁵ Nonessential diplomatic, military, and other personnel...
March 2: Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence & Other Federal, State and Local Leaders from U.S. Public Health and Legal Experts
Emerging Legal Issues

Topics

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

The Network for Public Health Law
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**
  - Emergency or Disaster
  - Public Health Emergency

- **Local**
  - Emergency or Disaster
  - Public Health Emergency
Jan. 31: HHS Sec. Alex Azar declares national public health emergency
HHS 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)
March 2: According to NBC News:

“[FEMA] is planning for the possibility that President Donald Trump could make an emergency declaration to bring in extra funds and personnel to assist [with COVID] response. . . .”

For additional information re: scope and purposes of the Stafford Act, see ASTHO’s brief.
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.
March 2: Mayor Ron Nirenberg declares public health emergency for San Antonio for 7 days authorizing an array of public health powers as well as prohibit entry into the city of any persons currently quarantined at Lackland military base.
### Select Local Emergency Authorizations

<table>
<thead>
<tr>
<th>Locality</th>
<th>Date</th>
<th>Select Authorizations</th>
</tr>
</thead>
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| *Clackamas County* (OR) Emergency | 3/2/20 | • 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.”                                                                 |
| *County of Hawai‘i* (HI) Emergency | 2/28/20| • Sponsor and enter into mutual aid programs  
• Receive, expend & use contributions or grants; procure federal aid  
• Relieve and suspend hardships and inequities or obstructions to public health, safety or welfare                                                                 |
| *Solano County* (CA) Emergency   | 2/27/20| • Department Operations Center to bolster identification & screening  
• Collaboration with local, state, and federal agencies to implement containment efforts                                                                                                                                |
| *Orange County* (CA) Emergency   | 2/27/20| • Reimbursements from county, state & federal partners if resources are exhausted  
• Agency coordination & resource leveraging                                                                                                                                                                            |
| *San Francisco City* (CA) Emergency | 2/25/20| • Mobilization of city resources & acceleration of emergency plans  
• Streamlining staffing and coordination agencies city-wide                                                                                                                                                     |
| *San Diego County* (CA) Health Emergency | 2/19/20| • Reimbursement from state & federal governments  
• Increasing resources such as beds at local hospitals                                                                                                                                                            |
| *Santa Clara County* (CA) Emergency | 2/10/20| • 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
Steps Healthcare Facilities Can Take Now to Prepare for Coronavirus Disease 2019 (COVID-19)

Practical, Ethical, and Legal Challenges Underlying Crisis Standards of Care

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

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.
Control modes of transportation
Increase distance among workers
Restrict travel
Dismiss schools
Curfew
Restrict public gatherings
Evacuation
Isolation & quarantine
Social Distancing Measures
Travel Restrictions

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.
School Closures

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 & 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](https://www.ncsl.org/) at the National Conference of State Legislatures
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: Health officials require at home-isolation of Texas A&M student.
Jan. 26: AZ Dept. of Health Services oversee 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 8,000 Californians have been asked to self-quarantine.
Feb. 11: GA state health officials require nearly 200 Georgians to self-monitor at home for 2 weeks.
Mar. 2: In Oregon dozens of health care workers are placed on paid furlough and subjected to home quarantines.
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 to quarantine patients.

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.
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

Legal Research Digest 34

Screening & Testing

- Reporting of ill passengers
- Measures to detect communicable diseases
- Surveillance
- Non-invasive procedures
- Invasive procedures (with consent)
- Contact tracing
- Isolation & Quarantine

Click on article image to access
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.”

- Availability
- Allocation
- Costs
- Reimbursements
- Applications – voluntary, mandatory, compelled

Sources:
- https://www.medpagetoday.com/infectiousdisease/covid19/85138
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.”
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
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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The Public Health Impacts of Legalized Sports Betting
March 19, 1:00 – 2:30 p.m. EST

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