

# COVID-19 Emergency Legal Preparedness Primer

**As of March 19, 2020**

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

**Peter Kiewit Foundation Professor of Law**

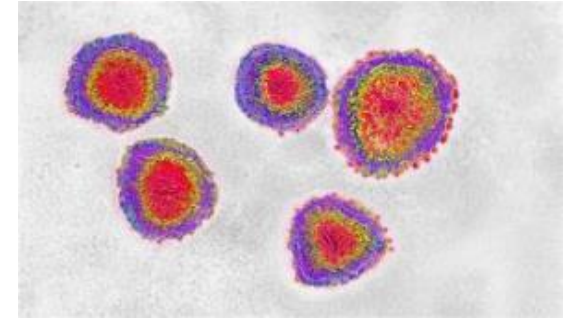
**Director, Western Region Office, Network for Public Health Law**

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- **Provide real-time information & 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 questions or comments***

**Epi “Snapshot” – COVID-19**



**International Response Efforts**

**U.S. Legal Preparedness/Response**

Federal | State | Tribal | Local

**Additional Resources**

**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:

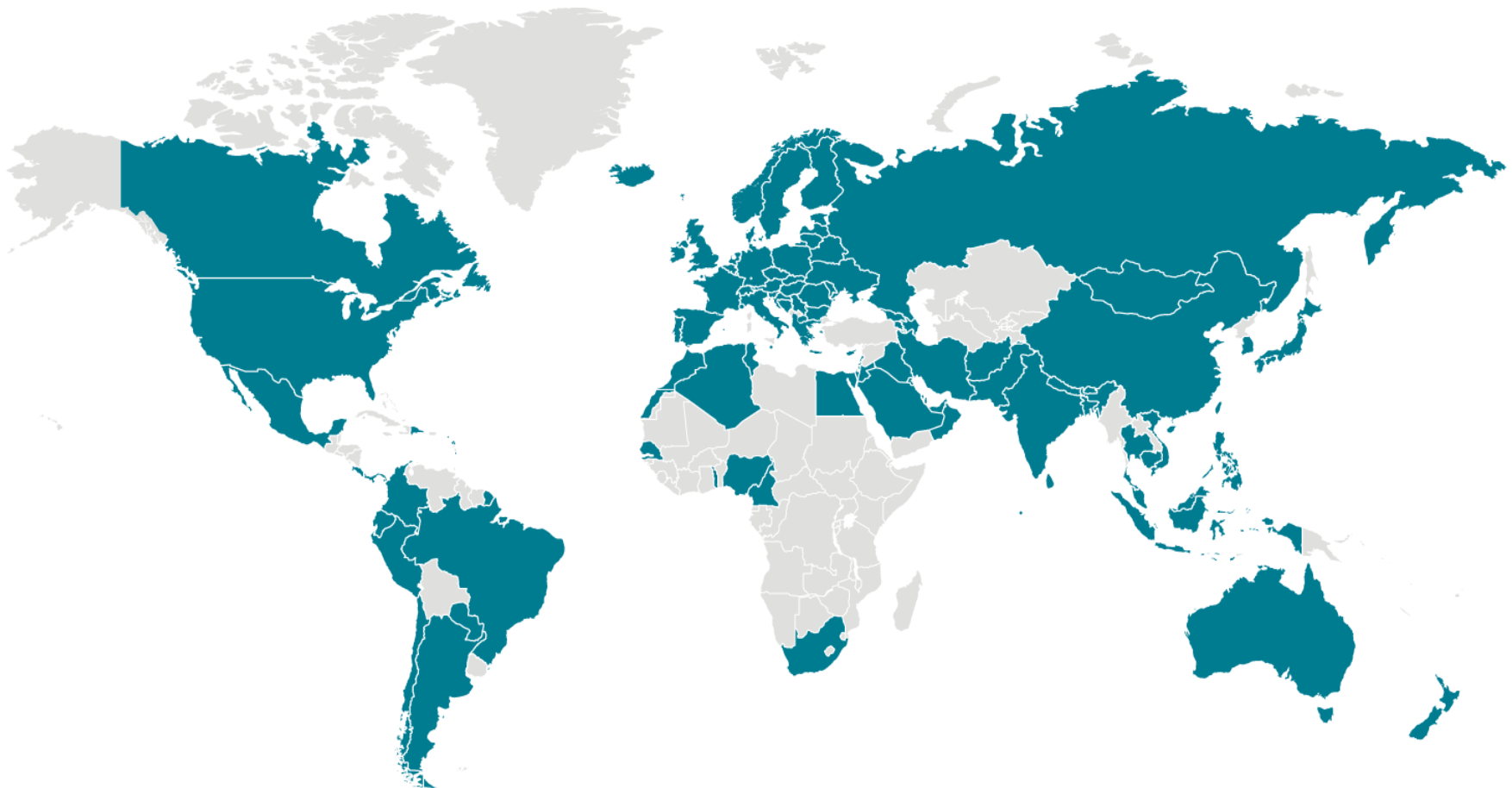
- Respiratory symptoms, fever, cough, breathing difficulties, aches, pains.
- In severe cases (~20%), infection can cause pneumonia, respiratory issues, kidney failure and death.

## Vaccines & Treatment:

- No vaccines or proven treatments are available.

**Total Confirmed Deaths >: 7,425**

## Total Confirmed Cases: > 170,000



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



**Mar. 11**: WHO formally classifies COVID-19 as a pandemic



Guidance	Objectives
<b>Organized Responses</b>	Engage in containment, active surveillance, early detection, isolation & contact tracing
<b>Data Sharing</b>	Share data with WHO via IHR legal requirements
<b>Prevention</b>	Focus on reducing human infection/ secondary transmission
<b>Communication</b>	Engage in multi-sectoral communication re: knowledge & research
<b>Restrict Movement</b>	Restricting movement of people/goods may be temporarily useful under limited response capacities or intense cases
<b>Travel</b>	Inform WHO about travel measures as required by the IHR
<b>Discrimination</b>	Avoid actions promoting stigma or discrimination
<b>Developing Countries</b>	Support LMICs to enable their responses & facilitate access to diagnostics, vaccines & therapeutics
<b>Justification</b>	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



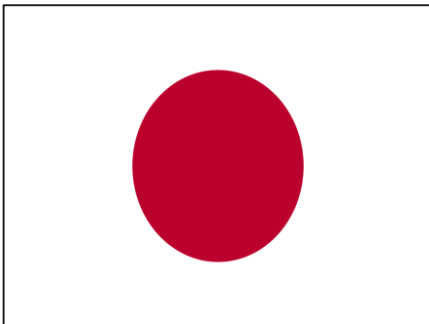
**Jan. 31**

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



**Mar. 7**

Philippines State of  
Emergency



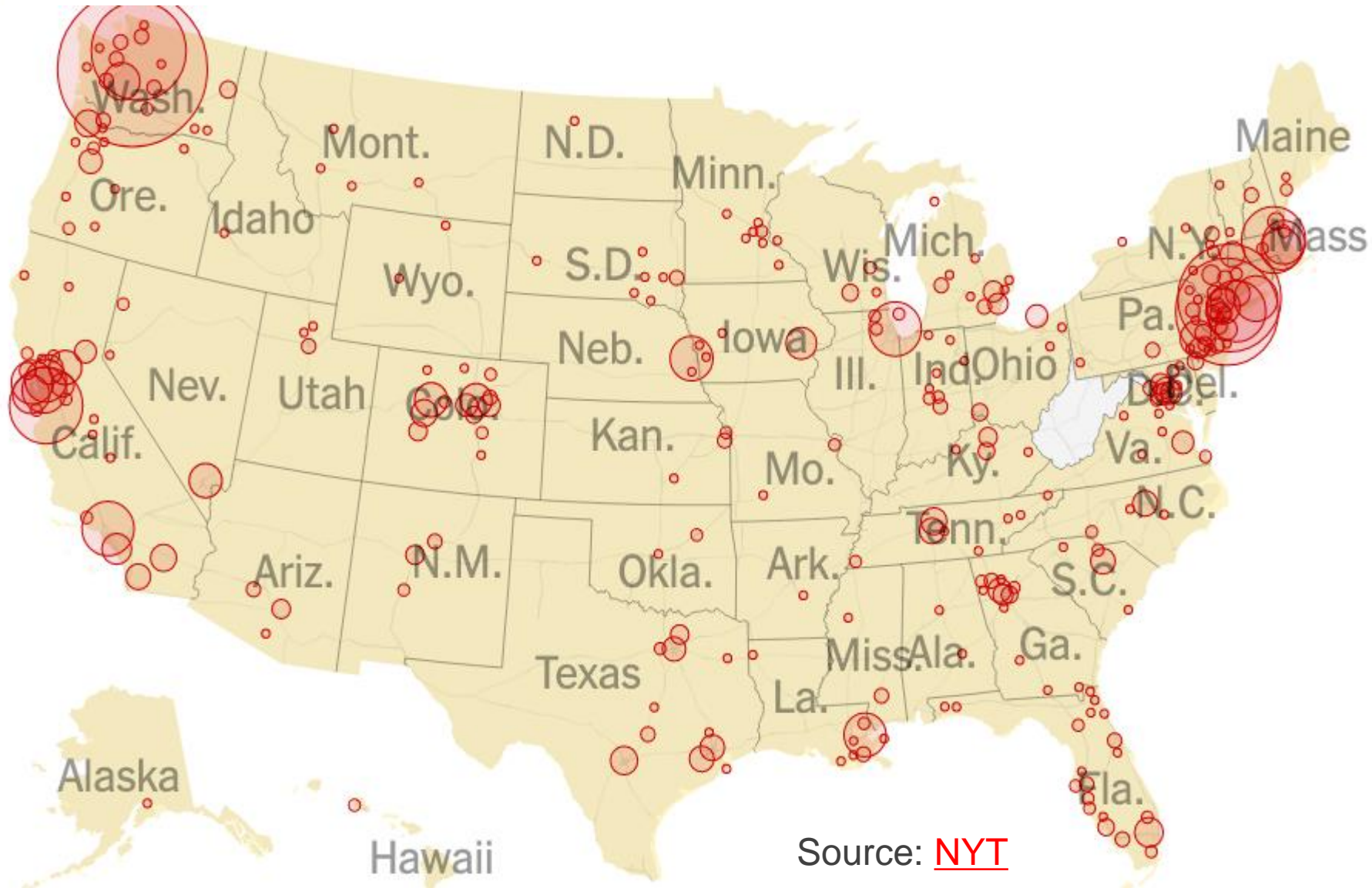
## U.S. Legal Preparedness & Response Efforts



# US Cases of COVID-19

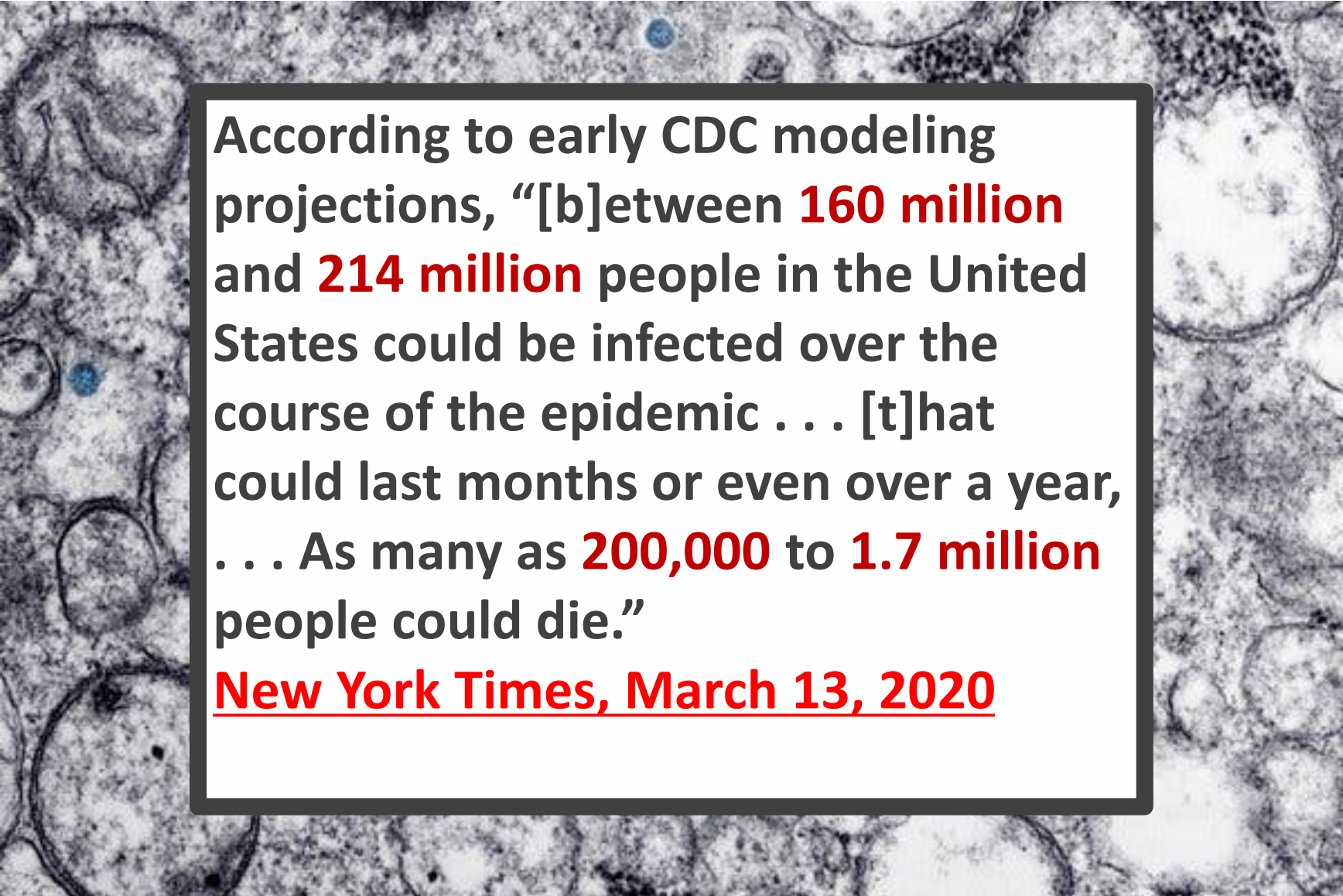
Total Confirmed Cases > **4,225**

Total Deaths > **75**



Source: [NYT](#)

# U.S. COVID Projections

A grayscale electron micrograph showing cellular structures, including mitochondria with cristae and various organelles. A central text box is overlaid on the image.

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**



**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:** Forms Coronavirus Task Force.

**Feb. 4:** “My administration will take all necessary steps to safeguard our citizens from this threat.”

**Feb. 26:** Appoints Vice President Mike Pence to lead national COVID-19 response efforts.

**Mar. 11:** “I am fully prepared to use the full power of the Federal Government to deal with our current challenge of the CoronaVirus!”



**President Donald Trump**



**Vice President Mike Pence**

# Select Congressional Responses



**3/14**

**Families First  
Coronavirus  
Response Act**  
provides paid  
sick/quarantine  
time & other  
benefits

**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  
expenses

**2/6**

Senators request  
info. on VA  
health care  
facilities’  
prevention &  
response efforts

## **Mar. 18: Families First Coronavirus Response Act signed by President Trump (effective date April 2):**

- Requires private health plans to provide no cost coverage for COVID-19 diagnostic tests
- Temporarily > federal portion of Medicaid benefits
- Releases \$ millions in assistance to domestic nutrition assistance programs such as SNAP and WIC
- Grants \$5 million to the Department of Labor to administer emergency paid sick leave
- Requires certain employers to provide employees 14 days of paid sick leave
- Releases an additional \$1 billion in FY2020 emergency grants for unemployment insurance benefits

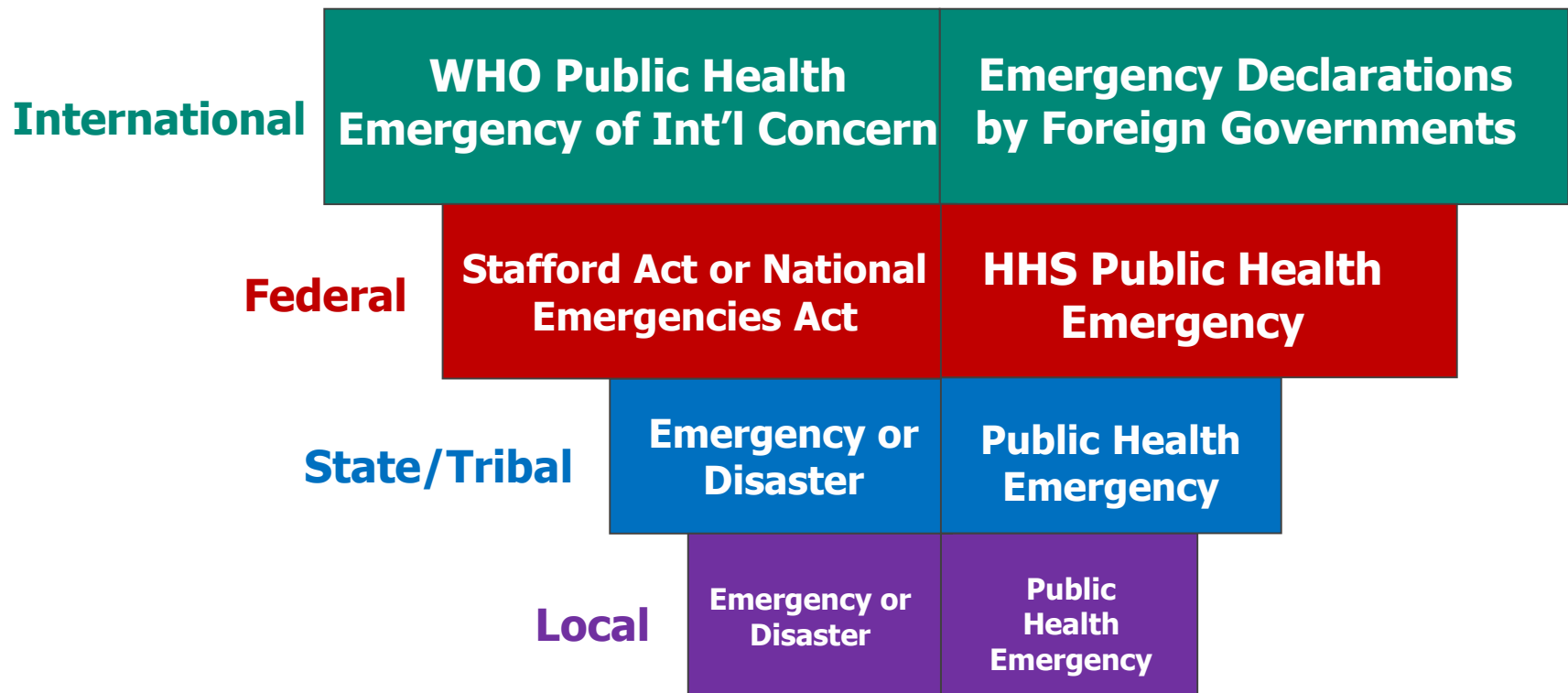


# Federal Agency Coordination



# 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)





# 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 types of federal assistance to states & localities

**Mar. 13:** HHS Sec. Azar issues § 1135 national waivers (retroactive effect on March 1) re:

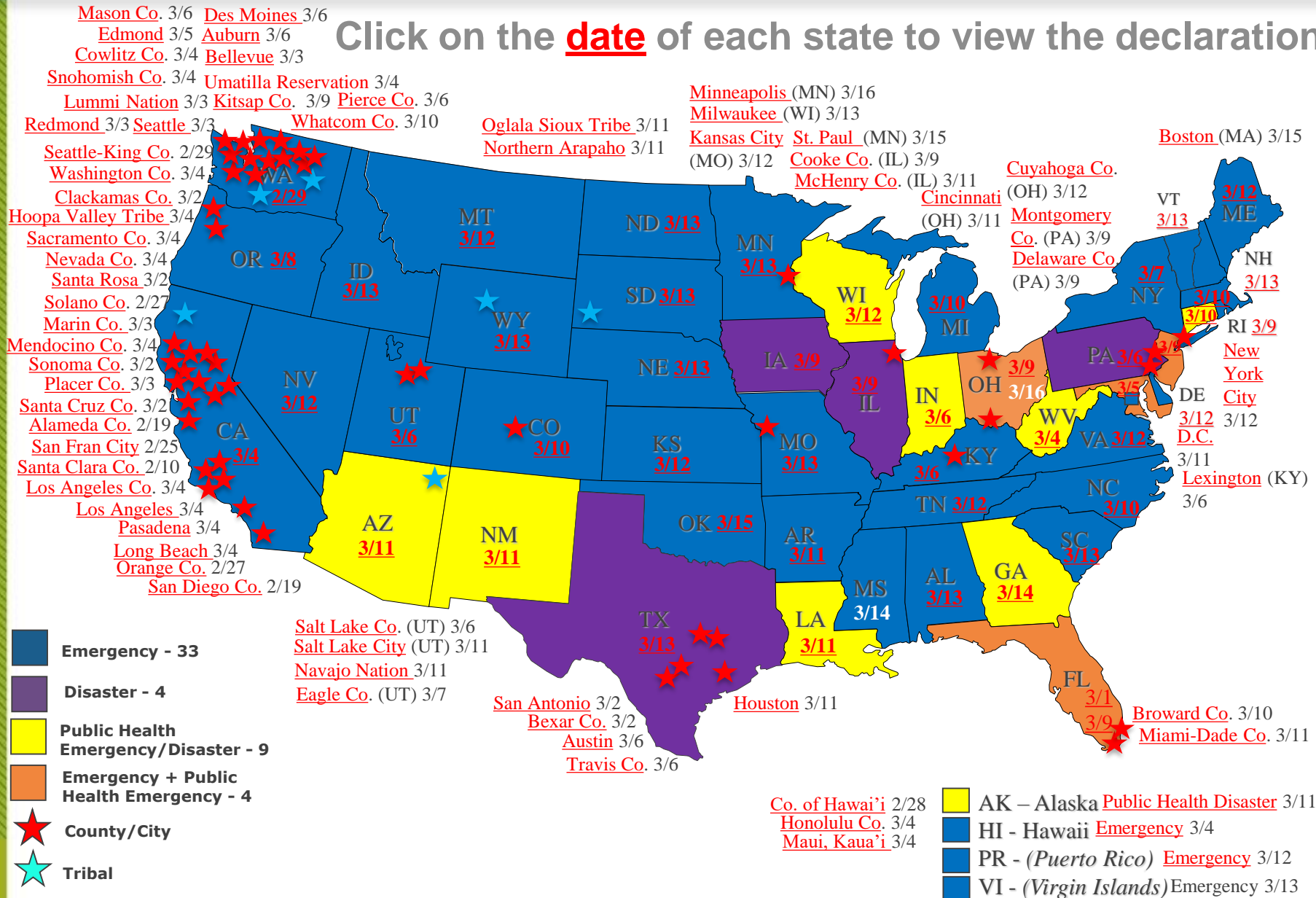
- **EMTALA** sanctions for patient relocation purposes
- **HIPAA Privacy Rule** regulations for 72 hours following implementation of hospital disaster protocol
- requirements that health care workers hold **licenses** in the state where they are providing services
- **certain conditions of participation** in Medicare, Medicaid, and SCHIP
- Medicare Advantage **payment limitations**
- **Stark Law** sanctions



**Mar. 17:** CMS expands Medicare telehealth coverage to facilitate healthcare services without visiting physical facilities; clinicians may be paid for telehealth services for beneficiaries across the entire country.

# 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). *Additional emergency powers may be authorized under state law through which the declarations are issued.*

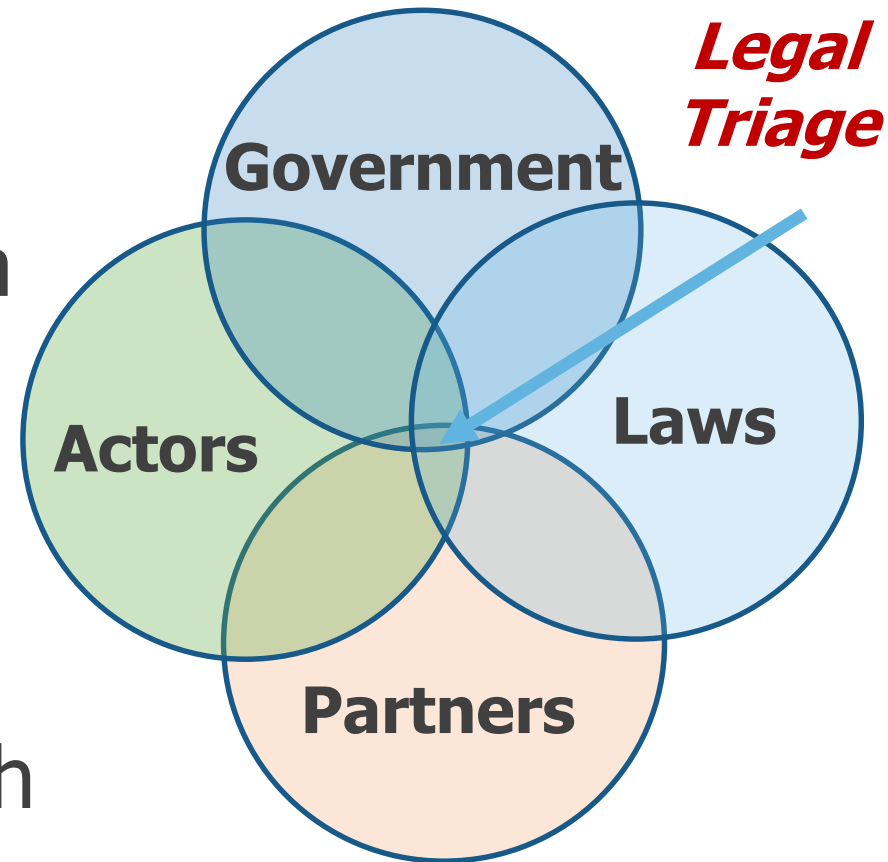
Emergency Powers	<a href="#">A K</a>	<a href="#">A Z</a>	<a href="#">A R</a>	<a href="#">C A</a>	<a href="#">C O</a>	<a href="#">C T</a>	<a href="#">D E</a>	<a href="#">F L</a>	<a href="#">H I</a>	<a href="#">I L</a>	<a href="#">I N</a>	<a href="#">I A</a>	<a href="#">K Y</a>	<a href="#">L A</a>	<a href="#">M E</a>	<a href="#">M D</a>	<a href="#">M A</a>	<a href="#">M I</a>	<a href="#">N J</a>	<a href="#">N M</a>	<a href="#">N Y</a>	<a href="#">N C</a>	<a href="#">N O</a>	<a href="#">O H</a>	<a href="#">O R</a>	<a href="#">P A</a>	<a href="#">R I</a>	<a href="#">T X</a>	<a href="#">V A</a>	<a href="#">U T</a>	<a href="#">U V</a>	<a href="#">W I</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	3/2/20	<ul style="list-style-type: none"> <li>Establish emergency policies and protocols</li> <li>Recoup financial costs and redirect funds</li> <li>“Order such other measures as . . . immediately necessary for the protection of life and/or property.”</li> </ul>
<u>County of Hawai’i</u> (HI) Emergency	2/28/20	<ul style="list-style-type: none"> <li>Sponsor and enter into mutual aid programs</li> <li>Receive, expend &amp; use contributions or grants; procure federal aid</li> <li>Relieve and suspend hardships and inequities or obstructions to public health, safety or welfare</li> </ul>
<u>Solano County</u> (CA) Emergency	2/27/20	<ul style="list-style-type: none"> <li>Department Operations Center to bolster identification &amp; screening</li> <li>Collaboration with local, state, and federal agencies to implement containment efforts</li> </ul>
<u>Orange County</u> (CA) Emergency	2/27/20	<ul style="list-style-type: none"> <li>Reimbursements from county, state &amp; federal partners if resources are exhausted</li> <li>Agency coordination &amp; resource leveraging</li> </ul>
<u>San Francisco City</u> (CA) Emergency	2/25/20	<ul style="list-style-type: none"> <li>Mobilization of city resources &amp; acceleration of emergency plans</li> <li>Streamlining staffing and coordination agencies city-wide</li> </ul>
<u>San Diego County</u> (CA) Health Emergency	2/19/20	<ul style="list-style-type: none"> <li>Reimbursement from state &amp; federal governments</li> <li>Increasing resources such as beds at local hospitals</li> </ul>
<u>Santa Clara County</u> (CA) Emergency	2/10/20	<ul style="list-style-type: none"> <li>Leveraging state funds and mutual aid resources</li> <li>Increasing resources such as protective gear and training for healthcare workers</li> </ul>

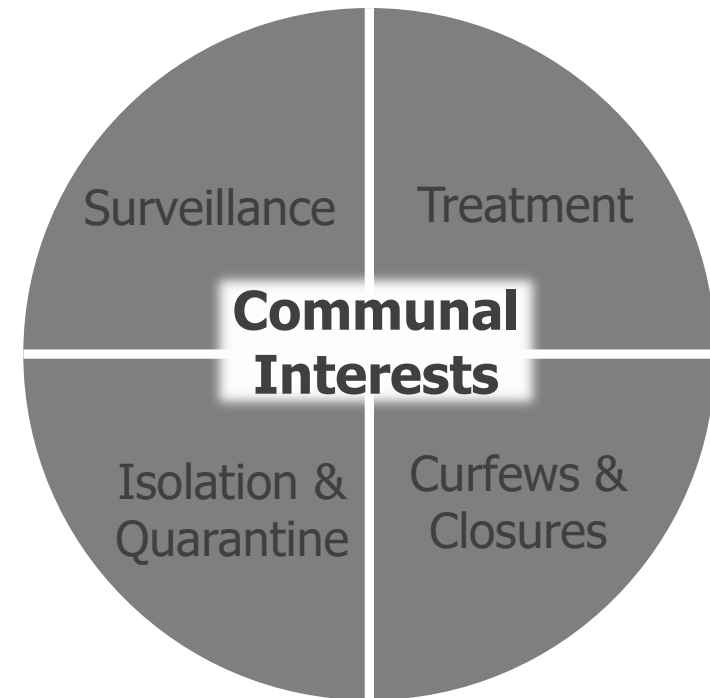
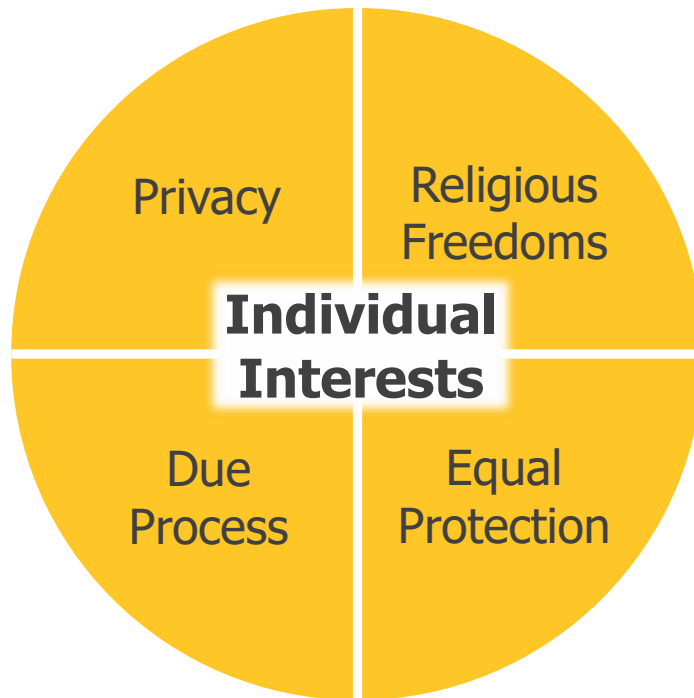
# Legal Triage In Emergencies

***Legal Triage***: efforts of legal actors & others during declared emergencies to build a favorable legal environment by prioritizing issues & solutions facilitating legitimate public health responses



# Balancing Individual & Communal Interests

**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



**Emergency Preparedness and Response**

# Constitutionality of Selected, 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
Real-time medical triage decisions based on government recommendations grounded in epidemiologic and medical science	Real-time medical triage decisions based on specious grounds (e.g., race, ethnicity, religious affiliation, ability to pay)
Limited waivers of federal, state, or local statutory or regulatory laws impeding effective public health responses	Complete waiver of constitutionally-required due process, equal protection, or other rights
Reasonable testing or screening measures designed to mitigate exposure of others to COVID	Forced invasive testing of autonomous adults without a warrant based on probable cause
Accurate, real-time sharing of identifiable patient health information between medical & public health authorities for surveillance purposes	Mass publication of identifiable patient health information absent compelling circumstances
Government acquisition of critical resources or property from private entities sector with reimbursement	Government “taking” of private sector property or resources without “just compensation.”





# Assessing Federal & State Emergency Powers

## VIEWPOINT

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**Lindsay F. Wiley, JD,  
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Washington College of  
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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.<sup>1</sup> 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.<sup>5</sup>

### 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-



Harris County  
**Public Health**  
Building a Healthy Community

**Click on image to access**



**LINA HIDALGO**

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## **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**.



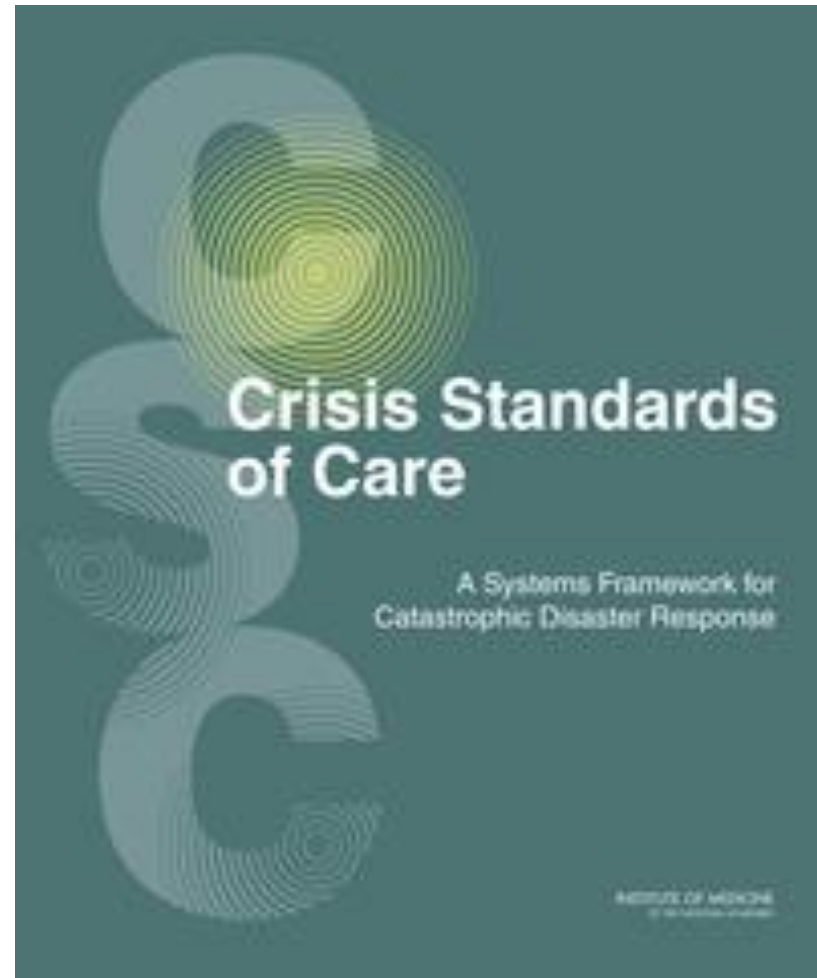
## Steps Healthcare Facilities Can Take Now to Prepare for Coronavirus Disease 2019 (COVID-19)

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

[Click on article image to access](#)

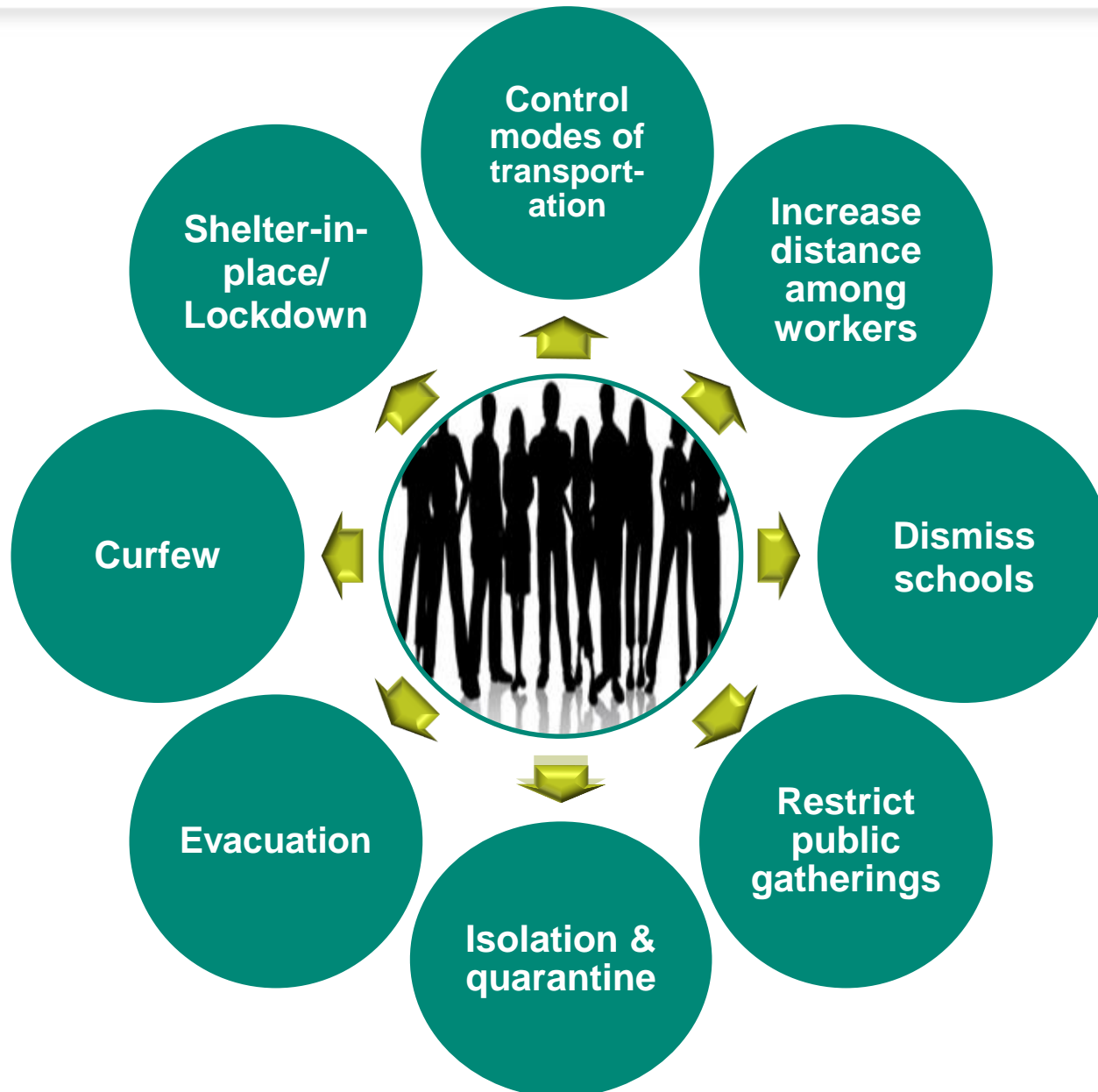
*James G. Hodge, Jr., Dan Hanfling, and Tia P. Powell*

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.





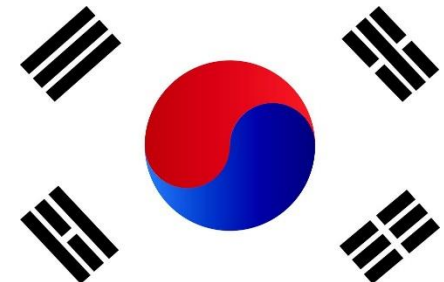
# Social Distancing Measures



**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, 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; and
  - Quarantine or isolation measures.

Virtual “Lock Down”

**Public Health & Safety Zone**

Click on images to access

# “Shelter in Place” Orders

Framed in terms of “sheltering in place” or other broad proclamations, state and local orders seek to limit travel and out-of-residence activities to minimal levels to control disease spread.

While several exceptions to the scope of these measures apply, they rely on broad interpretations of social distancing powers, likely subject to judicial challenge.

JAY INSLEE  
Governor



STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • [www.governor.wa.gov](http://www.governor.wa.gov)

PROCLAMATION BY THE GOVERNOR  
AMENDING PROCLAMATION 20-05

20-13

Statewide Limits: Food and Beverage Services, Areas of Congregation



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



# 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



**3/5:** Division III NCAA games cancelled/crowds banned



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

# 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. 10**: NY Gov. Cuomo announces 2 week school closure for entire NYC district

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

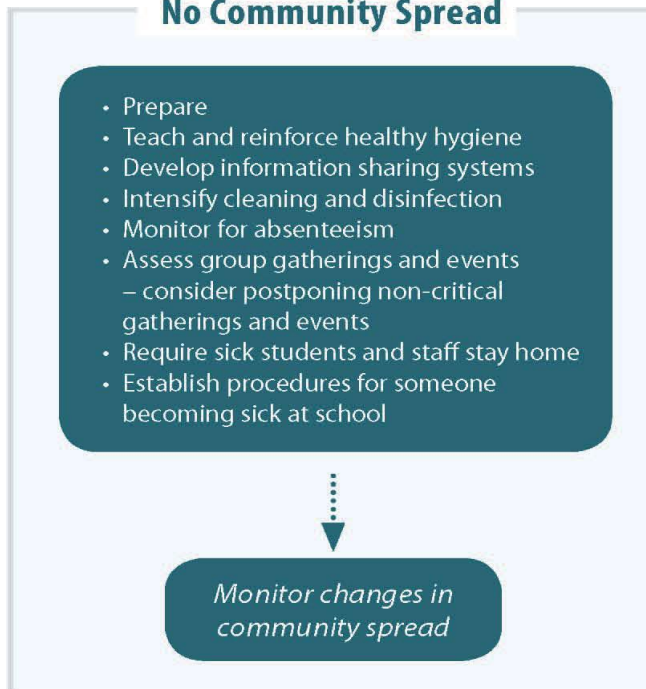


## School Decision Tree

### 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

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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**

# Limiting Assemblies

## County of Santa Clara Public Health Department

Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> 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 Limits

- On what authority?
- By who specifically?
- At what level of government?
- In what specific setting or capacity?
- For how long?
- Consistent with 1<sup>st</sup> 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



# Quarantine & Isolation

## Quarantine

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



## Isolation

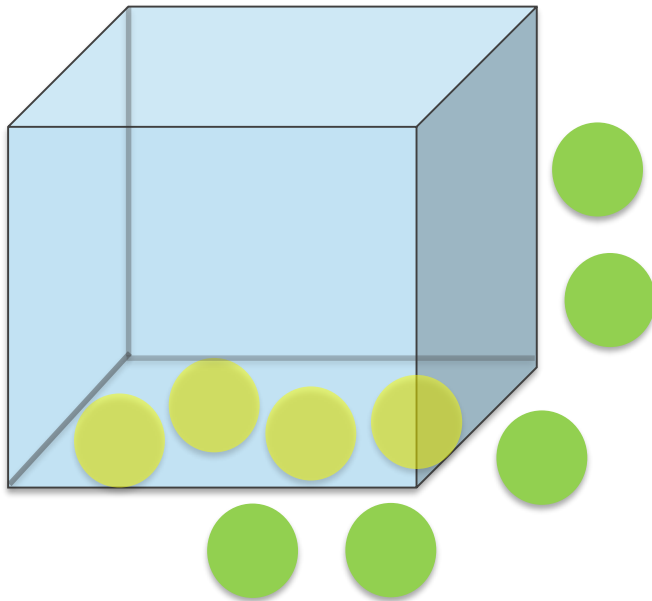
Separation from others of people who are known to be infected, or capable of infecting others, with a contagious condition






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

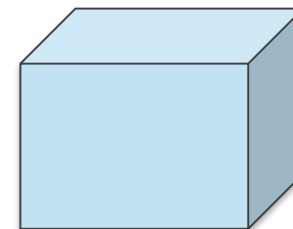
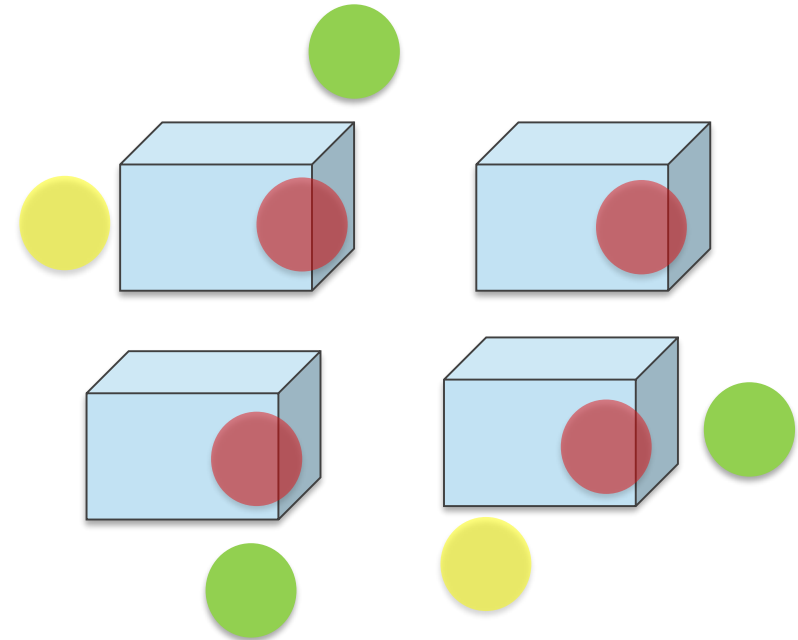
# Quarantine & Isolation - Illustrated

## Quarantine



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

## Isolation



**Place of isolation  
or quarantine**

# Federal Quarantine



**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. 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-s>

**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.



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

**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.

# Select State/Local Quarantines



**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. 11**: GA state health officials require nearly 200 Georgians to self-monitor at home for 2 weeks.

**Feb. 19**: New York's Westchester County requires home quarantines of 26 people.

**Mar. 2**: In Oregon dozens of health care workers are placed on paid furlough and subjected to home quarantines.

**Mar. 4**: According to the CA Dept. of Health, more than 9,400 Californians have been asked to self-quarantine.



## 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 \$

# Current & Prospective Civil Liability Claims

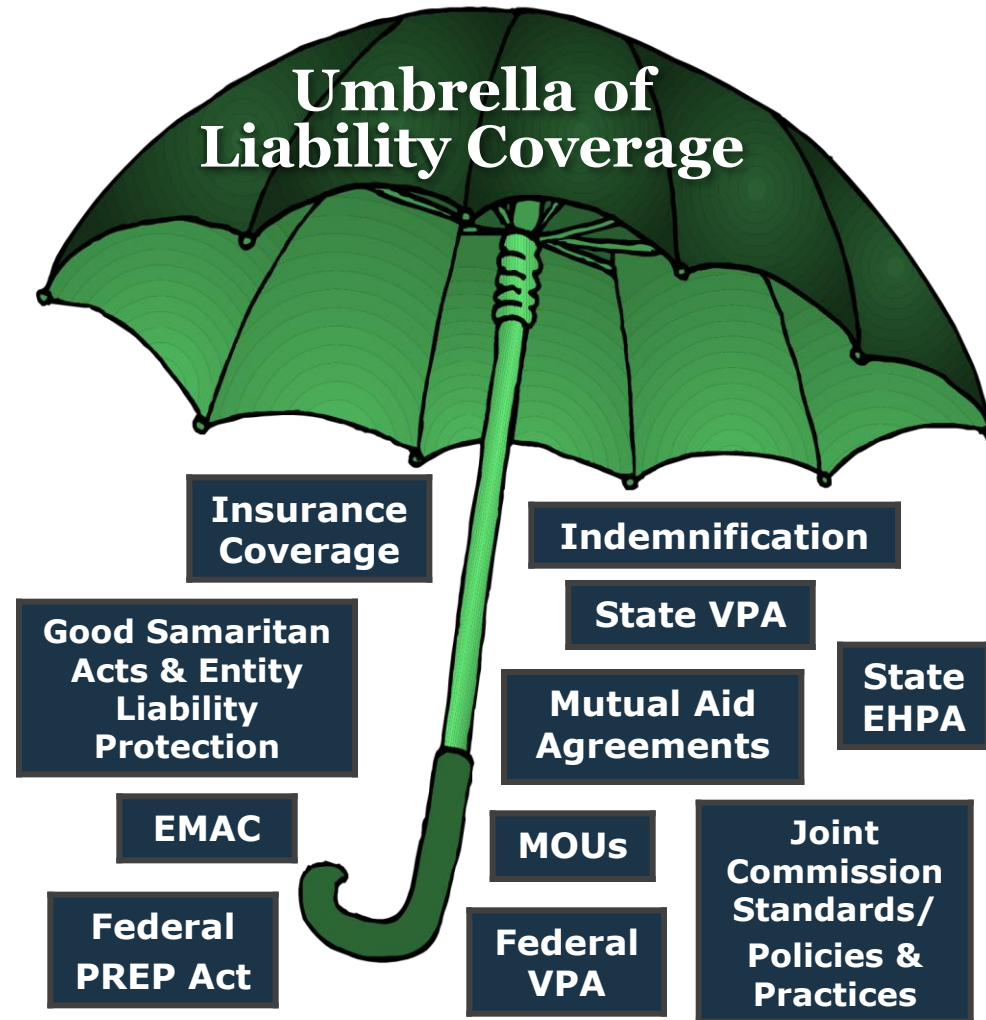
- **Negligence/Malpractice**
- **Intentional Torts**
- **Privacy Infringements**
- **Discrimination**
- **Breach of Contract**
- **Worker's Compensation**
- **Price Gouging**
- **Cruise Lines**



# Emergency Liability Protections - Health Practitioners & Entities



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





# Screening & Testing: Transportation Hubs



## Legal Research Digest 34

### AIRPORT PUBLIC HEALTH PREPAREDNESS AND RESPONSE: LEGAL RIGHTS, POWERS, AND DUTIES

This digest was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. Under Topic 09-01, this digest was prepared by Leila Barraza, Mel and Enid Zuckerman College of Public Health, University of Arizona, Tucson, AZ, and Elizabeth Hall-Lipsy, College of Pharmacy, University of Arizona, Tucson, AZ.

#### Background

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International-North America concluded that city ownership accounts for 38 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Research reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

#### Foreword

Modern air travel has frequently been cited as a leading cause for the rapid spread of disease within countries and

internationally. Recent outbreaks of SARS, MERS, Ebola, and Zika have focused the debate on a number of issues surrounding air travel, including isolation and quarantine, restrictions on freedom of travel, and screening protocols. A number of issues expose the lack of clarity on the respective powers and duties of airport and airline personnel, governments (including federal, state, and local entities) and public health authorities, and the insufficient communication and coordination among local, state, national and international stakeholders.

Numerous legal issues are associated with these inherent challenges, but through planning and coordination with relevant stakeholders they can be addressed. This digest addresses the legal issues concerning the measures to detect communicable diseases, regulations to control communicable diseases, methods for decontamination, emergency legal preparedness, privacy, and potential sources of liability. This digest provides a checklist that airport attorneys and other staff can use to help prepare, plan, and coordinate with their partners in response to a threat of a communicable disease.

This legal digest provides the background on multimodal or intermodal facilities. The history of the laws, rules, and regulations in this area are provided, as well as case studies to assist airport operators in understanding and navigating the complexity of multimodal developments.



## Legal Research Digest 50

### PUBLIC TRANSIT EMERGENCY PREPAREDNESS AGAINST EBOLA AND OTHER INFECTIOUS DISEASES: LEGAL ISSUES

This report was prepared under TCRP Project J-05, "Legal Aspects of Transit and Intermodal Transportation Programs," for which the Transportation Research Board is the agency coordinating the research. The report was prepared under Topic 16-03 by Trudy C. Henson and Megan Timmons, University of Maryland Center for Health and Homeland Security; James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.

#### The Problem and Its Solution

The nation's 6,000 plus transit agencies need to have access to a program that can provide authoritatively researched, specific, limited-scope studies of legal issues and problems having national significance and application to their business. Some transit programs involve legal problems and issues that are not shared with other modes; as, for example, compliance with transit-equipment and operations guidelines, FTA financing initiatives, private-sector programs, and labor or environmental standards relating to transit operations. Also, much of the information that is needed by transit attorneys to address legal concerns is scattered and fragmented. Consequently, it would be helpful to the transit lawyer to have well-resourced and well-documented reports on specific legal topics available to the transit legal community.

The *Legal Research Digests* (LRDs) are developed to assist transit attorneys in dealing with the myriad of initiatives and problems associated with transit start-up and operations, as well as with day-to-day legal work. The LRDs address such issues as eminent domain, civil rights, constitutional rights, contracting, environmental concerns, labor, procurement, risk management, security, tort liability, and zoning. The transit legal research, when conducted through the TRB's legal studies process, either collects primary data that generally are not available elsewhere or performs analysis of existing literature.

#### Foreword

As a result of the 2014 outbreak of Ebola, federal and state authorities in the United States have implemented

of the disease. Transit and other public agencies have developed emergency advance measures and directives to employ for immediate containment.

This research examines responses to infectious disease epidemics and identifies legal issues that may be confronted by transit agencies. Such responses include but are not limited to closures of public facilities, businesses, and other major traffic generators; checkpoints for screening; quarantine zones; compulsory leave for possibly infected employees; refusals of employees to come to work; prescreening of passengers; and full or partial suspension of service. The study evaluates privacy and civil rights of patrons and employees, as well as liability issues.

The digest considers federal and state laws and available court decisions affecting transit agencies' responses to infectious disease outbreaks, including potential cohesiveness among transit agencies' procedures and federal and state guidance.

The digest examines the legal basis for the protocols that public transit agencies and other transportation providers such as airlines have planned or implemented to respond to epidemics and pandemics. It reviews pertinent information from leading agencies and organizations such as the Centers for Disease Control, Department of Homeland Security, and the World Health Organization to ascertain what procedures transit agencies should have in place before and during an epidemic.

The digest built upon the 2014 NCHRP Report 769: *A Guide for Public Transportation Pandemic Planning and Response*. The digest should be useful to public transit administrators and other personnel, government and private attorneys, students, professors, and research-



**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
- Options – voluntary, mandatory, compelled





The logo for the Ohio Department of Health, featuring a red outline of the state of Ohio followed by the word "Ohio" in a dark red serif font.

**Department  
of Health**

**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.**”



**Click on image to access**

**March 2020**



**COVID-19 & HIPAA Bulletin**  
**Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency**

The Novel Coronavirus Disease (COVID-19) outbreak imposes additional challenges on health care providers. Often questions arise about the ability of entities covered by the HIPAA regulations to share information, including with friends and family, public health officials, and emergency personnel. As summarized in more detail below, the HIPAA Privacy Rule allows patient information to be shared to assist in nationwide public health emergencies, and to assist patients in receiving the care they need. In addition, while the HIPAA Privacy Rule is not suspended during a public health or other emergency, the Secretary of HHS may waive certain provisions of the Privacy Rule under the Project Bioshield Act of 2004 (PL 108-276) and section 1135(b)(7) of the Social Security Act.

**For additional expert analyses and guidance, contact Denise Chrysler, JD, and colleagues in our Network – Mid-States Region at [dchrysler@networkforphl.org](mailto: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 the Network - Western Region Office for their research and assistance
- **Ask the Network** concerning questions or comments relating to this information or ongoing COVID-19 legal preparedness and response efforts
- **james.hodge.1@asu.edu** | @jghodgejr