COVID-19
Emergency Legal Preparedness Primer
As of March 9, 2020

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Purposes of the Network Primer

• 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
Primer Contents

Brief Overview – COVID-19
International Response Efforts
U.S. Legal Preparedness/Response
  Federal | State | Tribal | Local
Additional Resources
Questions & Comments
Transmission:
- Initially-infected persons in Wuhan, China are linked epidemiologically to a large seafood/animal market.
- 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, Tests & Treatment:
- No vaccines, rapid tests, or proven treatments are available.
COVID-19 Global Distribution

Total Confirmed Deaths >= 3,800
Total Confirmed Cases: > 108,000

= Mortality Rate 3-4%

WHO PHEIC Declaration – Key Guidance

**Organized Responses** | Engage in containment, active surveillance, early detection, isolation & contact tracing

**Data Sharing** | Share data with WHO via IHR legal requirements

**Prevention** | Focus on reducing human infection/secondary transmission

**Communication** | Engage in multi-sectoral communication re: knowledge & research

**Restrict Movement** | Restricting movement of people/goods may be temporarily useful under limited response capacities or intense cases

**Travel** | Inform WHO about travel measures as required by the IHR

**Discrimination** | Avoid actions promoting stigma or discrimination

**Developing Countries** | Support LMICs to enable their responses & facilitate access to diagnostics, vaccines & therapeutics

**Justification** | 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
Total Confirmed Cases: 564  Total Deaths: 22

Source: NYT
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. . . .”

Appoints Vice President Mike Pence to lead national COVID-19 response efforts.
Select Congressional Responses

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

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

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 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. The new Coronavirus (SARS-CoV-2) has been classified as a public health threat by the World Health Organization (WHO) and the US Centers for Disease Control and Prevention (CDC), and federal and state officials have enacted emergency powers in response to COVID-19 beyond those used for previous health emergencies such as SARS, H1N1 influenza, and Ebola. The administration premised the exercise of federal powers on the need to avert “cascading public health, economic, national security, and societal consequences.”²

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.³ Additional warnings may take effect with “little or no advance notice.”³ Nonessential diplomatic, military, and other personnel...
Emerging Legal Issues

Topics

- Emergency Powers - Triage
- Crisis Standards of Care
- Social Distancing Measures
- Liability & Insurance
- Privacy
- Surveillance & Reporting
- Testing/Screening/Treatment
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
## Constitutionality of Selected, Potential COVID Emergency Responses

<table>
<thead>
<tr>
<th>Constitutional</th>
<th>Unconstitutional</th>
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<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>
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<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>
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<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>
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<tr>
<td>Real-time medical triage decisions based on government recommendations grounded in epidemiologic and medical science</td>
<td>Real-time medical triage decisions based on specious grounds (e.g., race, ethnicity, religious affiliation, ability to pay)</td>
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<tr>
<td>Limited waivers of federal, state, or local statutory or regulatory laws impeding effective public health responses</td>
<td>Complete waiver of constitutionally-required due process, equal protection, or other rights</td>
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<td>Reasonable testing or screening measures designed to mitigate exposure of others to COVID</td>
<td>Forced invasive testing of autonomous adults without a warrant based on probable cause</td>
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<td>Accurate, real-time sharing of identifiable patient health information between medical &amp; public health authorities for surveillance purposes</td>
<td>Mass publication of identifiable patient health information absent compelling circumstances</td>
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<tr>
<td>Government acquisition of critical resources or property from private entities sector with reimbursement</td>
<td>Government “taking” of private sector property or resources without “just compensation.”</td>
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Public health authorities, powers, liabilities & immunities vary depending on the type of emergency declared at each level of government.

<table>
<thead>
<tr>
<th>International</th>
<th>WHO Public Health Emergency of Int’l Concern</th>
<th>Emergency Declarations by Foreign Governments</th>
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<tbody>
<tr>
<td>Federal</td>
<td>Stafford Act or National Emergencies Act</td>
<td>HHS Public Health Emergency</td>
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<td>State/Tribal</td>
<td>Emergency or Disaster</td>
<td>Public Health Emergency</td>
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<tr>
<td>Local</td>
<td>Emergency or Disaster</td>
<td>Public Health Emergency</td>
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**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.
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)
COVID State and Select Local/Tribal Declarations of Emergency

Total State-based Declarations: 12

Santa Clara Co. 2/10
San Diego Co. 2/19
San Francisco City 2/25
Orange Co. 2/27
Solano Co. 2/27
Seattle-King Co. 2/29
Clackamas Co. 2/29
Hoopa Valley Tribe 3/4
Sacramento Co. 3/4
Nevada Co. 3/4
Santa Rosa 3/20
Solano Co. 2/27
Marin Co. 3/3
Mendocino Co. 3/4
Sonoma Co. 3/2
Alameda Co. 2/19
San Fran City 2/25
Santa Clara Co. 2/10
Los Angeles Co. 3/4
Los Angeles 3/4
Pasadena 3/4
Long Beach 3/4
Orange Co. 2/27
San Diego Co. 2/19

Mason Co. 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
Redmond 3/3
Seattle 3/3
Seattle-King Co. 2/29
Washington Co. 3/4
Clackamas Co. 3/2
Hoopa Valley Tribe 3/4
Sacramento Co. 3/4
Nevada Co. 3/4
Santa Rosa 3/20
Solano Co. 2/27
Marin Co. 3/3
Mendocino Co. 3/4
Sonoma Co. 3/2
Alameda Co. 2/19
San Fran City 2/25
Santa Clara Co. 2/10
Los Angeles Co. 3/4
Los Angeles 3/4
Pasadena 3/4
Long Beach 3/4
Orange Co. 2/27
San Diego Co. 2/19

Eagle Co. 3/7
CO

Salt Lake Co. (UT) 3/6

San Antonio 3/2
Bexar Co. 3/2
Austin 3/6
Travis Co. 3/6

Hawai‘i Emergency 3/4
Co. of Hawai‘i 2/28
Honolulu Co. 3/4
Maui, Kaua‘i 3/4

AK – Alaska
HI - Hawaii
PR - (Puerto Rico)
VI - (U.S. Virgin Islands)
State-based COVID Emergency Declarations

Feb. 29
March 1
March 4
March 6
March 8
March 6
### Select State COVID Emergency Powers

**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.

<table>
<thead>
<tr>
<th>Emergency Powers</th>
<th>CA</th>
<th>FL</th>
<th>HI</th>
<th>IN</th>
<th>KY</th>
<th>MD</th>
<th>NY</th>
<th>PA</th>
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<td>Contracts &amp; Procurements</td>
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<td>Isolation and Quarantine</td>
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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>
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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                                                                                                                                                                      |
Steps Healthcare Facilities Can Take Now to Prepare for Coronavirus Disease 2019 (COVID-19)

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

Select, constitutional implications of potential “lockdowns:”

- Sweeping limits on constitutional rights to travel face strict scrutiny to survive;
- State border closures (even in emergencies) subject to federal acquiescence;
- Municipal efforts to close borders subject to state interventions and overrides;
- “Cordon sanitaire” infringes substantive due process and equal protection rights that have negated prior attempts to lock down areas;
- Emergency powers allow for temporary closures, assembly limits, and evacuations, but lockdowns actually place many persons at greater risk of harm
- Less restrictive alternatives include:
  - Strong incentives or messaging to avoid travel;
  - Mass closures of schools and public places;
  - Private entity decisions to temporarily close;
  - Screening of persons arriving or departing from public places; and
  - Mass quarantine or isolation measures.
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

3/2: Microsoft MVP Global Summit cancelled (WA)
School Closures

Feb. 16: CDC issues initial guidance intimating school mitigation, including possible closures, may be warranted

Mar. 4: Northshore School District outside of Seattle announces plans to close for 2 weeks; multiple other districts close as well

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 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.


Feb. 23: President Trump blocks plans to quarantine persons at federal facility in Anniston County AL, amid litigation.
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.
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.
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.
Prospective Civil Liability Claims

- Negligence/Malpractice
- Intentional Torts
- Privacy Infringements
- Discrimination
- Breach of Contract
- Worker’s Compensation
- Price Gouging
Despite risks, many legal liability protections apply in routine events & declared emergencies, especially concerning health care volunteers, workers, and entities.
Airport Preparedness & Response: Legal Rights, Powers & Duties

Legal Research Digest 34

• 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

Source: [https://www.medpagetoday.com/infectiousdisease/covid19/85138](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

• Special thanks to Claudia M. Reeves and Erica N. 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

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