COVID-19
Emergency Legal Preparedness Primer
As of April 13, 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
ASU Sandra Day O’Connor College of Law
james.hodge.1@asu.edu
COVID-19 Epi Insights
Emergency Legal Preparedness/Response
  Federal | State | Tribal | Local
Public Health Emergency Powers
Constitutional & Other Challenges
Additional Resources
Questions/comments
Transmission

- Transmissible person-to-person with potential infectivity rate exceeding annual influenza.
- Asymptomatic persons may infect others.

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

- Vaccine trials are underway, but no approved vaccine is anticipated for months.
- No efficacious treatments exist despite initial claims.
COVID-19 Global Distribution

Total Confirmed Deaths $>:$ 117,785 = Mortality Rate 6.2%
Total Confirmed Cases: $>:$ 1,898,018

Total Confirmed Cases > 555,371  Total Deaths > 22,056

People Who Are at Higher Risk for Severe Illness

Underlying health condition/Risk factor for severe outcomes from respiratory infection (% with condition)
- One or more conditions (37.6%)
- Diabetes (10.9%)
- Chronic lung disease (9.2%)
- Cardiovascular disease (9.2%)

8 out of 10 deaths reported in the U.S. have been in adults 65 years old and older

Multi-level Emergencies

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

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</table>
Federal Emergencies/Invocations

- HHS Public Health Emergency: Jan. 31
- National Emergencies Act: Mar. 13
- Stafford Act Emergency: Mar. 13
- Defense Production Act: Mar. 20

[Logos for HHS, FEMA, and DHS]
Jan. 31: HHS Sec. Alex Azar declares national public health emergency

- Frees up federal resources
- Encourages interjurisdictional coordination
- Allows waivers of specific federal laws
- Authorizes real-time countermeasures through emergency use authorizations
- Supports social distancing measures (e.g., travel or border limits, quarantine)
Mar. 13: President Trump declares dual emergencies via the National Emergencies Act and § 501(b) of the Stafford Act authorizing:

- Access to FEMA’s $50+ billion Disaster Relief Fund and reimbursement for eligible emergency protective response measures.
- Waivers under SSA § 1135 of select Medicare, Medicaid, S-CHIP, HIPAA Privacy Rule
- Additional types of federal assistance to states & localities
Select Congressional Responses

3/27
Congress passes the CARES Act, the largest economic stimulus package in history

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
Mar. 18: Families First Coronavirus Response Act:

- Requires private health plans to provide no cost coverage for COVID-19 diagnostic tests
- Temporarily increases federal portion of Medicaid
- Releases millions $ in assistance to domestic nutrition assistance programs (e.g., SNAP, WIC)
- 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
COVID-19 Stimulus Bill: Key Public Health Elements

Mar. 27: Congress approves $2.2 trillion CARES Act (largest stimulus package in history):

- Hundreds of billions $ in emergency funding;
- Requires group health plans & insurance providers to cover testing, vaccines, and preventative services related to COVID-19 without cost sharing;
- Establishes a Ready Reserve Corps to ensure deployable workers are available for COVID-19 response;
- Provides explicit federal & state liability protections for volunteer HCWs assisting COVID-19 patients in good faith; and
- Authorizes disclosure of PHI to covered entities upon the one-time written consent of patient.

Federal Agency Coordination
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 declarations

Link [here](#) for updates re: jurisdictional requests for FEMA disaster relief

**Emergency** - 33
**Disaster** - 4
**Public Health**
**Emergency + Public Health Emergency** - 4

**County/City**

**Tribal**

- **Salt Lake Co. (UT) 3/6**
- **Salt Lake City (UT) 3/11**
- **Navajo Nation 3/11**
- **Eagle Co. (UT) 3/7**
- **Phoenix (AZ) 3/13**
- **San Antonio 3/2**
- **Bexar Co. 3/2**
- **Austin 3/6**
- **Travis Co. 3/6**
- **Co. of Hawai‘i 2/28**
- **Honolulu Co. 3/4**
- **Maui, Kaua‘i 3/4**

**AK** – Alaska **Public Health Disaster** 3/11
**HI** – Hawaii **Emergency** 3/4
**PR** – (Puerto Rico) **Emergency** 3/12
**VI** – (Virgin Islands) **Emergency** 3/13
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 | A | A | C | C | C | D | F | H | I | I | I | K | L | M | M | M | M | N | N | N | N | O | O | O | P | R | T | V | U | W | W | W | W |
| 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 | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ | □ |
Emerging Legal Issues

Topics

- Emergency Powers - Triage
- Crisis Standards of Care
- Social Distancing Measures
- Liability & Insurance
- Privacy
- Surveillance & Reporting
- Testing/Screening/Treatment
**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
Substantial change in usual healthcare operations and level of care due to a pervasive or catastrophic disaster.
This rapid expert consultation responds to your March 25 request to provide a rationale for the implementation of crisis standards of care (CSC) in response to the COVID-19 outbreak. Also discussed are the broad principles and core elements of CSC planning and implementation. This discussion builds on a 10-year foundation of three seminal reports on CSC issued in 2009, 2012, and 2013 by the Institute of Medicine, which are described in Appendix A at the end of this document.

This document is meant to provide principles and guidance. It is neither appropriate nor feasible for us to detail actual choices and preferences that apply to specific situations, each of which depends on the exigencies of the epidemic relative to locally available facilities, equipment, personnel and other needed resources. Rather, this document describes the basis upon which to carry out such decision-making whenever it has to happen.
Practical, Ethical, and Legal Challenges Underlying Crisis Standards of Care

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
“Some administrators noted that with difficult decisions about ventilator allocation also come concerns about liability. . . [O]ne hospital administrator . . . conclu[ed] that: “Government needs to provide guidelines on ethics if health resources are limited and decisions need to be made about which patients to treat. Are physicians liable for their decisions if that happens?””
Despite risks, many legal liability protections apply in routine events & declared emergencies, especially concerning health care volunteers, workers, and entities.
Social Distancing Measures

- Control modes of transportation
- Increase distance among workers
- Dismiss schools
- Restrict public gatherings
- Isolation & quarantine
- Evacuation
- Curfew
- Shelter-in-place/Lockdown
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

Mar. 19: U.S. closes border with Canada and Mexico to persons travelling for non-essential purposes, including tourism.
The New York Times

Mar. 26: “Governors Tell Outsiders From ‘Hot Zone’ to Stay Away as Virus Divides States”

- Florida Governor Ron DeSantis orders 14 day quarantine against anyone arriving from NY in prior 3 weeks
- Hawaii Governor David Ige recommends all travelers postpone trips for 30 days and imposes 14 day quarantine on arrivals
- Alaska Governor Mike Dunleavy orders anyone (including residents) arriving in state to self-quarantine for 14 days
State Shelter-In-Place or Stay Home Orders

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

Map showing states with Shelter-In-Place or Stay Home Orders:
- **Green** states: Shelter-in-Place or Stay Home Orders – 42 states
- **Yellow** states: Shelter-in-Place or Stay Home Orders – 3 partial states

**Note:** data are based in substantial part on [NYT](https://www.nytimes.com) (March 24, 2020)
### Select Components of State Shelter-in-Place & Stay Home Orders

<table>
<thead>
<tr>
<th>Component</th>
<th>CA</th>
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<th>DE</th>
<th>IA</th>
<th>LA</th>
<th>MA</th>
<th>MI</th>
<th>NY</th>
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<th>OR</th>
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<td>Restricts Gatherings of “Any Number of People” Outside Household Unit</td>
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<td>Bans Leaving Homes for Non-Essential Purposes</td>
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<td>Allows for Reauthorization</td>
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<td>Opportunities for Additional Exceptions</td>
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<td>Limits Local Responses</td>
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### “Essential” v. “Non-essential” Businesses

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<th>Exceptions Allowing for Continued Operations:</th>
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<td>Food providers/grocers</td>
<td>Salons/Barbers</td>
<td>Gun shops (PA)</td>
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<tr>
<td>Food cultivation/agriculture</td>
<td>Gyms</td>
<td>Golf courses (AZ)</td>
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<tr>
<td>Social services/Daycare</td>
<td>Casinos</td>
<td>Construction (WA)</td>
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<tr>
<td>Veterinary clinics/pet stores</td>
<td>Concert venues</td>
<td>Federal critical infrastructure (HI)</td>
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<tr>
<td>Media</td>
<td>Shopping malls</td>
<td>Inventory companies (MI)</td>
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<tr>
<td>Pharmacies</td>
<td>Museums</td>
<td>Takeout restaurants (WV)</td>
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<tr>
<td>Convenience stores</td>
<td>Bowling alleys</td>
<td>Marijuana dispensaries (PA)</td>
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<tr>
<td>Sanitation</td>
<td>Racetracks</td>
<td>Liquor stores (NY)</td>
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<tr>
<td>Home/hardware stores</td>
<td>Sporting venues</td>
<td>Blood drives (AZ)</td>
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<tr>
<td>Educational institutions</td>
<td>Spas</td>
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<tr>
<td>Transportation/gas stations</td>
<td>Recreation centers</td>
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<tr>
<td>Warehousing/storage</td>
<td>Tattoo parlors</td>
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<td>Post offices/shipping</td>
<td>Community pools</td>
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“Shelter in Place” Orders

Virtual “Lock Down?”

OR

Public Health & Safety Zone?
U.S. Travel Restrictions & Lockdowns - Constitutionality

- **Substantive due process** – hard to rationalize government responses restricting liberty that are not tied to known risks

- **Equal protection** – explicitly tying travel restrictions to persons from specific regions of the U.S. raises questionable classifications

- **Right to travel** – limiting ingress and egress, especially across state lines, implicates federal interests and fundamental rights

- **Fundamental rights** – infringements require assessments of efficacious, less restrictive alternatives:  
  - Strong incentives/messaging to avoid travel;  
  - Closures;  
  - Screening, quarantine, isolation or other legit. measures
Mar. 29: Curfew order takes effect for Navajo Nation

- Public Health Order extends existing Stay at Home Order to set a curfew for the entire Navajo Nation: everyone must stay home from 8:00 p.m. - 5:00 a.m., 7 days a week
- Excludes essential employees reporting to or from duty, with official identification and/or a letter of designation from their essential business employer
Closures & Cancellations

Places of Worship

Employers

 Universities

Events

Sports

 Festivals
Feb. 16: CDC issues initial guidance intimating school mitigation could include possible closures

Mar. 13: Multiple states (e.g., OR, IL, MD, NM) determine to close schools for select periods of time followed by extensive closures in most states for all of Spring term

The Legal Landscape for School Closures in Response to Pandemic Flu or Other Public Health Threats

James G. Hodge, Jr.

Click here to access article
Guidance as of 3/15/2020

Large events and mass gatherings can contribute to the spread of COVID-19 in the United States via travelers who attend these events and introduce the virus to new communities. Examples of large events and mass gatherings include conferences, festivals, parades, concerts, sporting events, weddings, and other types of gatherings throughout the United States.

White House and CDC recommend no in-person events consisting of 10 or more people throughout the United States until April 30, 2020.

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
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
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.

State and Local Q & I Initiation

Option A: Temporary Quarantine or Isolation w/out Judicial Notice via Written Directive

Option B: Quarantine or Isolation w/Judicial Notice

Agency petitions court for an order authorizing Q or I of an individual or group specifying:

- identity of the individual(s) or groups;
- premises subject to Q or I;
- date and time at which Q or I commences;
- suspected contagious disease;
- statement of compliance with conditions and principles; and
- statement of the basis upon which such intervention is justified.

**Notice**
- **Hearing:** held in proximity of petition, absent extraordinary circumstances.
- **Order:** if, by clear and convincing evidence, Q or I shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others.
March 28, 2020

LOCAL HEALTH OFFICER

QUARANTINE DIRECTIVE
AND
ISOLATION ORDER

EFFECTIVE IMMEDIATELY, as Local Health Officer I hereby DIRECT and ORDER as follows:

QUARANTINE DIRECTIVE

Everyone with COVID-19 symptoms (fever, cough, and/or difficulty breathing) who has a test result pending, shall stay in a quarantine location (your home if you have one or in a government directed or publicly provided location if one is available) in accordance with CDC and Public Health guidance.

If your test result is positive, you must then remain in isolation.
Q & I Best Practices

- Safe, hygienic premises
- Monitoring & care
- Basic necessities
- Means of communication
- Least restrictive means
- Termination
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.” Emerging issues include: (1) Availability, (2) Allocation, (3) Costs, (4) Reimbursements, (5) Voluntary v. Mandatory testing

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.

April 11: CMS issues guidance requiring insurers to cover diagnostic testing and related services with no patient cost-sharing.
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

COVID-19 and HIPAA: Disclosures to law enforcement, paramedics, other first responders and public health authorities

Does the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule allow a covered entity to share the name or other identifying information of an individual who has been infected with, or exposed to, the virus SARS-CoV-2, or the disease caused by the virus, Coronavirus Disease 2019 (COVID-19), with law enforcement, paramedics, other first responders, and public health authorities without an individual’s authorization?

For additional expert analyses and guidance, contact Denise Chrysler, JD, and colleagues in our Network–MidStates Region at dchrysler@networkforphl.org
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<th>Liability of Health Care Workers and Entities</th>
</tr>
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<tbody>
<tr>
<td>Hospital Emergency Legal Preparedness</td>
<td>State and Local Declarations and Powers</td>
<td>Emergency Preparedness</td>
<td>Mental and Behavioral Health Preparedness</td>
</tr>
<tr>
<td>Model Emergency Laws</td>
<td>Emerging Threats Preparedness and Response</td>
<td>Crisis Standards of Care</td>
<td>Public Health Ethics</td>
</tr>
</tbody>
</table>

Access these and other Network materials [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

• james.hodge.1@asu.edu | @jghodgejr