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, pains, headache, severe fatigue, and loss of smell/taste.

• 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.
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

COVID-19 Global Distribution

Total Confirmed Deaths >: 175,694 = Mortality Rate 6.9%
Total Confirmed Cases >: 2,544,792

U.S. Cases of COVID-19

Total Confirmed Cases > 828,441  Total Deaths > 46,379

Multi-level Emergencies

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>January 30, 2020</th>
<th>Emergency Declarations by Foreign Governments</th>
<th>Ongoing</th>
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<tbody>
<tr>
<td>Federal</td>
<td>Stafford Act or National Emergencies Act</td>
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<td>HHS Public Health Emergency</td>
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<td>State/Tribal</td>
<td>Emergency or Disaster</td>
<td>Emergency or Disaster</td>
<td>Public Health Emergency</td>
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<td>Local</td>
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</table>
Federal Emergencies/Invocations

HHS Public Health Emergency: Jan. 31

National Emergencies Act: Mar. 13

Stafford Act Emergency: Mar. 13

HHS PREP Act Declaration: Mar. 17

Defense Production Act: Mar. 20

The Network for Public Health Law

HHS, Department of Health & Human Services, USA

Department of Homeland Security, USA

FEMA
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

3/14
Families First Coronavirus Response Act provides paid sick/quarantine time & other benefits

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

4/14
House introduces ACA amendment for COVID-19 emergency enrollment period

4/23
House introduces legislation to immediately procure COVID testing materials via the DPA

4/24
Conresses passes $484 billion relief plan to support small businesses, health care & COVID testing
Families First Coronavirus Response Act

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
COVID-19 Additional Relief Package: Key Public Health Elements

Apr. 24: Congress approves $484 billion Paycheck Protection Program (PPP) & Healthcare Enhancement Act to:
• Fund hospitals & healthcare providers for COVID-19 expenses;
• Support COVID-19 testing & contact tracing efforts;
• Fund federal agencies to support COVID-19 testing;
• Require governors receiving funds to submit a COVID-19 testing plan with goals for 2020; and
• Require HHS Secretary to periodically report on COVID-19 testing, cases & deaths.

Congress has now approved $2.7 trillion for COVID-19. Still, this latest measure contains no $ for state governments.


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 limited duration)
• In-state **licensure requirements** for health care workers
• **Participation restrictions** on Medicare, Medicaid, & S-CHIP
• Medicare Advantage **payment limitations**
• **Stark Law** sanctions

April 15: CMS updates waivers for health care providers re:
• **Telemedicine provisions**, facilitating Medicare services
• **Patient rights** surrounding access to medical records, visitation & seclusion
• **Physical environments** to allow care in non-hospital settings during surge
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
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.

<table>
<thead>
<tr>
<th>Emergency Powers</th>
<th>AK</th>
<th>AZ</th>
<th>AR</th>
<th>CO</th>
<th>DE</th>
<th>FL</th>
<th>HI</th>
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<td>Altered Contracts</td>
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<td>Emergency Plans</td>
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</table>
**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.
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
Array of Constitutional Issues

Separation of Powers

Federalism

Supremacy

Preemption

Judicial Deference

Freedom of Expression

Freedom of Assembly

Freedom of Religion

Due Process

Right to Privacy

Equal Protection

Right to Travel

Right to Bear Arms

Cruel & Unusual Punishment

Takings
COVID Constitutional Law Issues – Top 10

For more information, view the Network Constitutional Challenges webinar from April 15, 2020.
Emerging Legal Issues

Topics

- Testing/Screening/Treatment
- Surveillance & Reporting
- Emergency Powers - Triage
- Crisis Standards of Care
- Social Distancing Measures
- Privacy
- Liability & Insurance
Substantial change in usual healthcare operations and level of care due to a pervasive or catastrophic disaster.
Mar. 28: National Academies issues rapid expert consultation on CSC implementation

The National Academies of
SCIENCES • ENGINEERING • MEDICINE

March 28, 2020

Click on image to access

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.
Select States’ COVID CSC Plans

Click on the **date** of each state to view CSC plans (where available)

![Map of the United States with dates for COVID CSC plans for different states.](image)
CSC Legal Issues

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

Click on article image to access
March 24: Alabama Disabilities Advocacy Program files complaint with HHS OCR challenging the state’s EOP listing several health conditions (severe mental retardation, dementia, severe traumatic brain injury) for which providers should not issue ventilators based on 2010 CSC guidance. On April 8, Alabama formally rescinds its guidelines in response to OCR.
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 w/in 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 U.K. & Ireland

Mar. 19: U.S. closes border with Canada & Mexico (through 5/20) to persons travelling for non-essential purposes (e.g. tourism).

Apr. 21: President Trump suspends all immigration activities for 60 days.
U.S. Domestic Travel Restrictions

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

Note: data are based in substantial part on NYT (March 24, 2020)

Shelter-in-Place or Stay Home Orders – 42 states

Shelter-in-Place or Stay Home Orders – 3 partial states
## Select Components of State Shelter-in-Place & Stay Home Orders

<table>
<thead>
<tr>
<th>Component</th>
<th>CA</th>
<th>CT</th>
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<th>IA</th>
<th>MA</th>
<th>MI</th>
<th>NY</th>
<th>OH</th>
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<th>OR</th>
<th>WV</th>
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<td>Restricts Gatherings of “Any Number of People” Outside Household Unit</td>
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<td>Closes Non-Essential Businesses per CISA</td>
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<td>Bans Leaving Homes for Non-Essential Purposes</td>
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</table>
## “Essential” v. “Non-essential” Businesses

<table>
<thead>
<tr>
<th>“Essential Businesses” Typically Include:</th>
<th>“Non-essential Businesses” Typically Include:</th>
<th>Exceptions Allowing for Continued Operations:</th>
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<tbody>
<tr>
<td>Healthcare providers</td>
<td>Theaters</td>
<td>Religious institutions (KS)</td>
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<tr>
<td>Food providers/grocers</td>
<td>Salons/Barbers</td>
<td>Gun shops (PA)</td>
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<td>Food cultivation/agriculture</td>
<td>Gyms</td>
<td>Golf courses (AZ)</td>
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<td>Social services/Daycare</td>
<td>Casinos</td>
<td>Construction (WA)</td>
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<td>Veterinary clinics/pet stores</td>
<td>Concert venues</td>
<td>Federal critical infrastructure (HI)</td>
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<td>Media</td>
<td>Shopping malls</td>
<td>Inventory companies (MI)</td>
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<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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<td>Sanitation</td>
<td>Racetracks</td>
<td>Liquor stores (NY)</td>
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<td>Home/hardware stores</td>
<td>Sporting venues</td>
<td>Blood drives (AZ)</td>
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<td>Educational institutions</td>
<td>Spas</td>
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<td>Transportation/gas stations</td>
<td>Recreation centers</td>
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<td>Warehousing/storage</td>
<td>Tattoo parlors</td>
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<tr>
<td>Post offices/shipping</td>
<td>Community pools</td>
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</table>
April 16: The White House releases guidelines for “Opening Up America Again,” a 3 phased approach for state/local officials to consider. States must first meet regional gating criteria:

- Downward trajectory of COVID illnesses reported within 14 days
- Downward trajectory of cases or positive tests within 14 days
- Hospitals must treat all patients outside CSC or implementation of a “robust reporting system”

https://www.whitehouse.gov/openingamerica/
Re-opening America Phases

**Phase 1**
- Vulnerable individuals shelter-in-place
- All individuals should practice social distancing when in public and avoid socializing in groups <10
- Employers encourage telework and most businesses remain closed

**Phase 2**
- Resume non-essential travel
- Schools, gyms, and bars may re-open

**Phase 3**
- Vulnerable individuals may resume public interactions, with social distancing
- Large venues may reopen
## State Actions to Open America

<table>
<thead>
<tr>
<th>States relaying interests or plans to reopen</th>
<th>States allowing (or set to allow) specific open activities</th>
<th>States issuing Exec. Orders to reopen some businesses</th>
<th>States lifting “stay at home” orders partially or fully</th>
</tr>
</thead>
</table>
Roadmap to Recovery: A Public Health Guide for Governors
April 22, 2020
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 assemblies. Events that attract more than 10 people can be reduced or modified to occur virtually. This recommendation is intended for large events and mass gatherings throughout the United States, with exceptions for schools, institutes of higher learning, and 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.
April 15: In Michigan, thousands protested Governor Gretchen Whitmer’s stay-at-home order at the state capitol Lansing. Organized by the Michigan Conservative Coalition, the protesters voiced concerns over harms to workers & businesses.

Additional protests have arisen in other states, including California, Florida, Idaho, Maryland, Minnesota, North Carolina, Texas & Virginia

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
Closures & Cancellations

Places of Worship

Employers

Universities

Events

Sports

Festivals
School Closures

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

James G. Hodge, Jr.

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

Apr. 22: Montana Governor Bullock allows local school districts to determine whether to re-open as soon as May 7
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
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 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.
Q & I Best Practices

Safe, hygienic premises
Monitoring & care
Basic necessities

Means of communication
Least restrictive means
Termination
March 28: Seattle & King County Health Department issues Quarantine Directive and Isolation Order mandating that persons testing positive for COVID-19 self-isolate and persons with COVID-19 symptoms self-quarantine as they await test results. Non-compliers could face involuntary detention.
March 3: VP Pence: “Any American can be tested . . . subject to doctor’s orders.”
Emerging issues: availability, allocation, costs, reimbursements & voluntary v. mandatory testing

March 21: Some health officials are restricting coronavirus testing to HCWs & hospitalized persons, 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 & related services with no patient cost-sharing.

April 19: Antibody tests key to reopening country are in high demand, yet tests’ availability and inaccuracies raise alarms.
COVID-19 & HIPAA Bulletin
Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency

March 2020

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
Access these and other Network materials here
Acknowledgements

• Special thanks to Sarah Wetter, JD, MPH and Claudia Reeves at the Network - Western Region Office for their research & 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

• swetter@asu.edu