

# **COVID-19**

# **Emergency Legal Preparedness Primer**

**As of May 29, 2020**

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- ☐ **COVID-19 Epi Snapshot**
- ☐ **Emergency Legal Preparedness/  
Response/Recovery**
  - Federal | State | Tribal | Local
- ☐ **Public Health Emergency Powers**
- ☐ **Constitutional & Other Challenges**
- ☐ **Additional Resources/Ask the  
Network**

## Transmission

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

## Symptoms

- Respiratory symptoms, fever, cough, breathing difficulties, chills, muscle pains, headache, sore throat & loss of smell/taste
- In severe cases infection can cause pneumonia, respiratory issues, kidney failure & death.

## Vaccines & Treatment

- There are no effective treatments or vaccines although several possible options are under close review or early assessments.

## 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%)



#### Older Adults

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



#### People with Asthma



#### Groups at Higher Risk for Severe Illness



#### People with HIV



# COVID Multisystem Inflammatory Syndrome - Children (MIS-C)



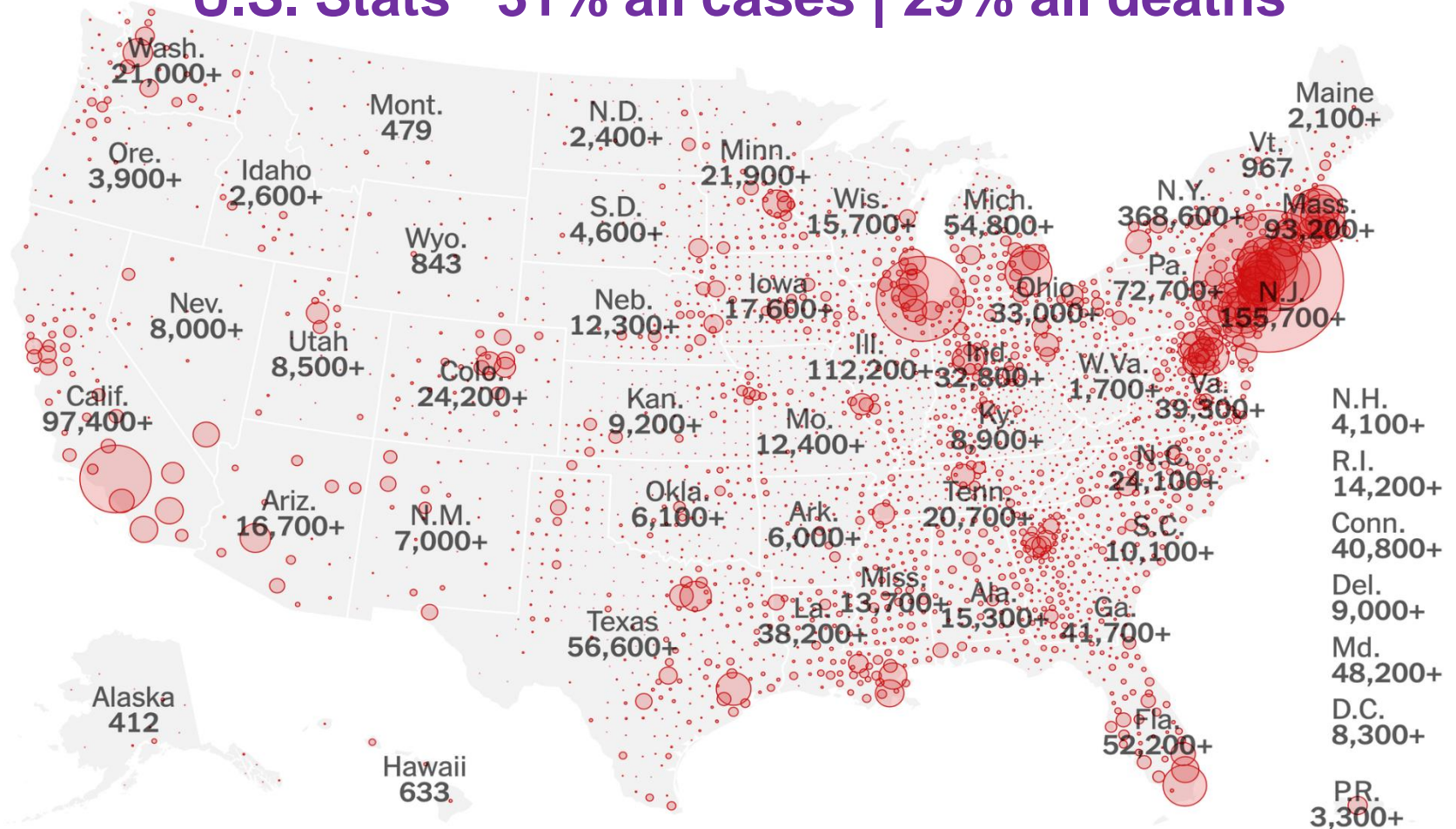
Distributed via the CDC Health Alert Network  
May 14, 2020, 4:45 PM ET  
CDCHAN-00432

## Summary

The Centers for Disease Control and Prevention (CDC) is providing 1) background information on several cases of a recently reported multisystem inflammatory syndrome in children (MIS-C) associated with coronavirus disease 2019 (COVID-19); and 2) a case definition for this syndrome. CDC recommends healthcare

**U.S. Cases      1.71 million | Deaths: 100,468**

## U.S. Stats 31% all cases | 29% all deaths



# Unprecedented Emergency Declarations

**Public health authorities and powers vary depending on the type of emergency declared at every level of government**

<b>International</b>	<b>WHO Public Health Emergency of Int'l Concern</b> <b>January 30, 2020</b>	<b>Emergency Declarations by Foreign Governments</b> <b>Ongoing</b>
<b>Federal</b>	<b>Stafford Act or National Emergencies Act</b>	<b>HHS Public Health Emergency</b>
<b>State/Tribal</b>	<b>Emergency or Disaster</b>	<b>Public Health Emergency</b>
<b>Local</b>	<b>Emergency or Disaster</b>	<b>Public Health Emergency</b>



# Federal Emergencies/Invocations

**HHS Public  
Health  
Emergency**

**Jan.  
31**



**HHS  
PREP  
Act  
Declara-  
tion**

**Feb.  
4**



**Stafford  
Act  
Emergency**

**Mar.  
13**

**National  
Emer-  
gencies  
Act**

**Mar.  
13**



**FEMA**

**Defense  
Production  
Act**

**Mar.  
20**



**Jan. 31: HHS Sec. Alex Azar declares national public health emergency effective as of Jan. 27**



- Encourages interjurisdictional coordination
- Allows waivers of specific federal laws
- Authorizes real-time countermeasures through emergency use authorizations
- Supports social distancing measures

**Apr. 21: Sec. Alex Azar renews PHE declaration for an additional 90 days**



# 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 Disaster Relief Fund and reimbursement for eligible emergency protective response measures.
- Waivers under SSA § 1135 of select Medicare, Medicaid, S-CHIP, HIPAA Privacy Rule requirements
- 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

**4/23**  
Congress  
passes \$484  
billion relief plan  
to support small  
businesses,  
health care &  
COVID testing

**5/08**  
House  
introduces bill to  
increase support  
for SCHIP during  
the COVID-19  
emergency

**5/08**  
House  
introduces bill  
to study racial  
and ethnic  
disparities tied  
to COVID.



# 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



# Coronavirus Aid, Relief & Economic Security (CARES) Act



## **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 in stimulus funds for or COVID-19.***



# 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



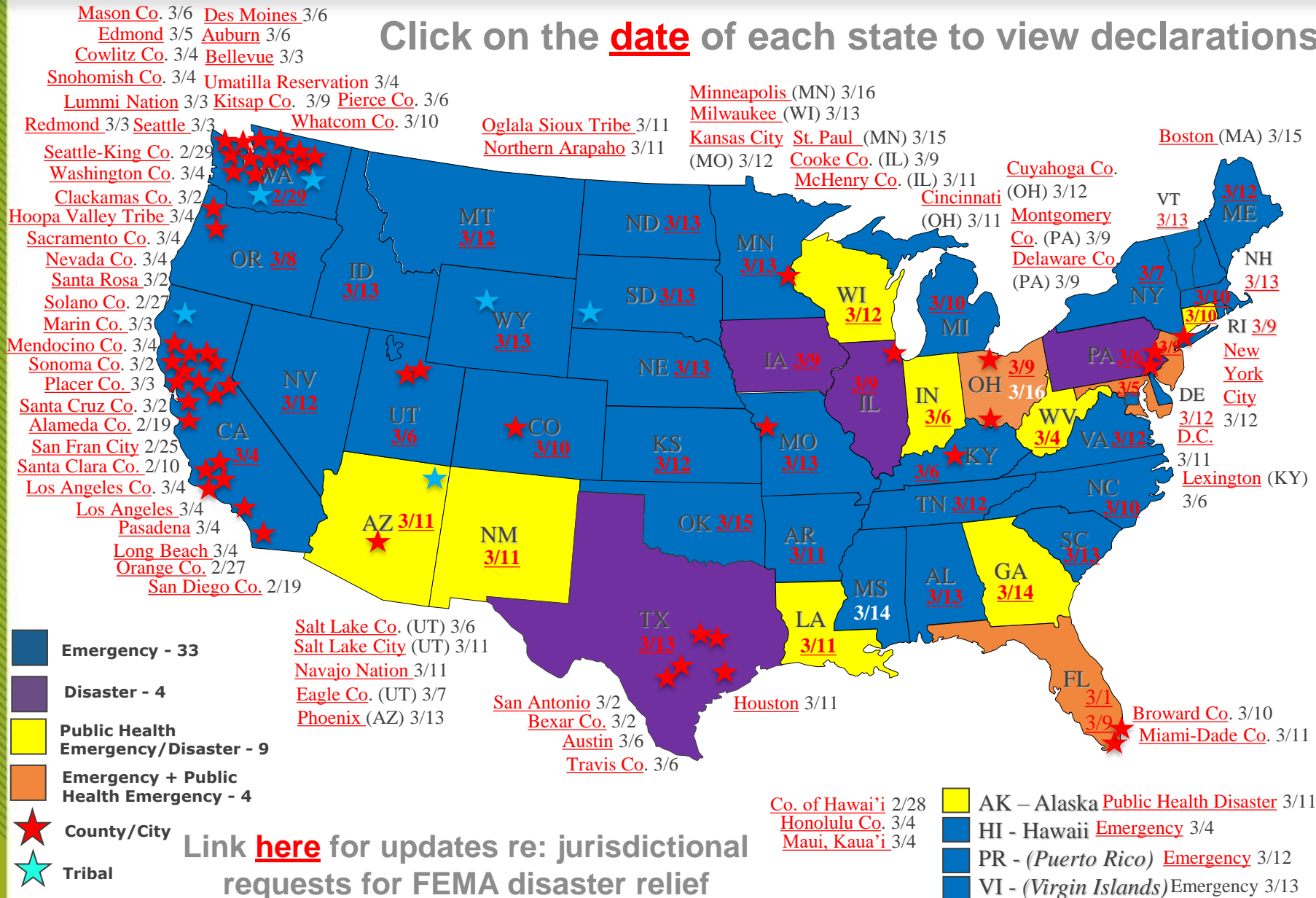
**April 15:** CMS updates waivers for health care providers re:

- **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 & Select Tribal/Local Emergency Declarations

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

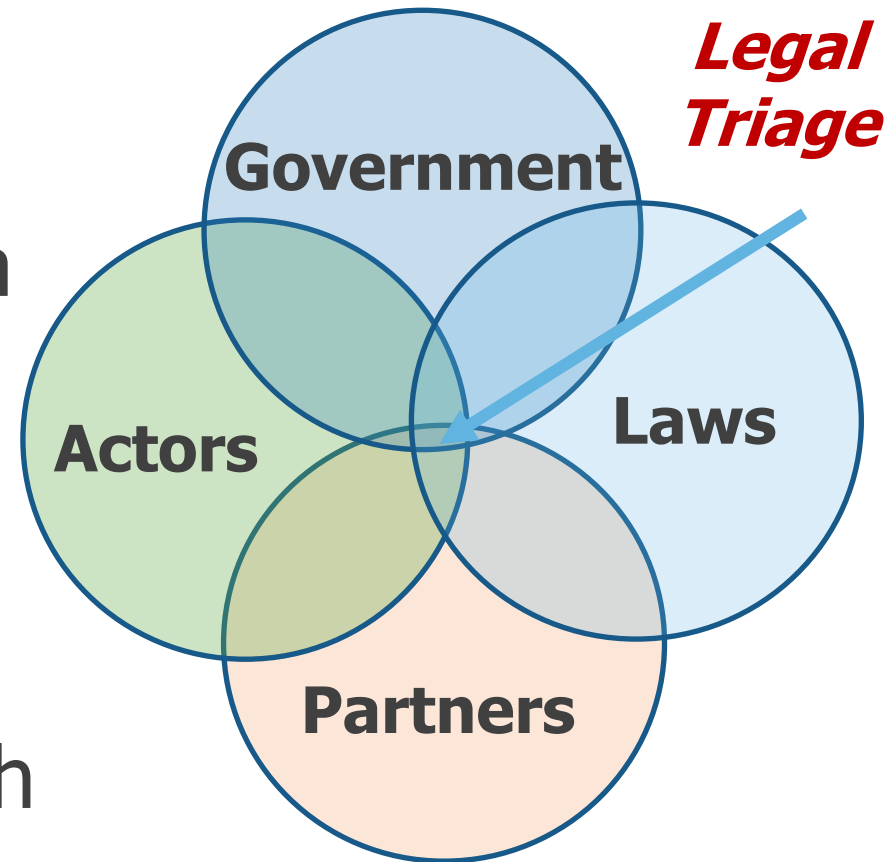


# Select State Emergency Powers Explicitly Invoked by Declarations

**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="#">AK</a>	<a href="#">AZ</a>	<a href="#">AR</a>	<a href="#">CA</a>	<a href="#">CO</a>	<a href="#">CT</a>	<a href="#">DE</a>	<a href="#">FL</a>	<a href="#">HI</a>	<a href="#">IL</a>	<a href="#">IN</a>	<a href="#">IA</a>	<a href="#">KS</a>	<a href="#">LA</a>	<a href="#">ME</a>	<a href="#">MD</a>	<a href="#">MA</a>	<a href="#">MI</a>	<a href="#">MN</a>	<a href="#">MO</a>	<a href="#">NE</a>	<a href="#">NH</a>	<a href="#">NJ</a>	<a href="#">NM</a>	<a href="#">NY</a>	<a href="#">NC</a>	<a href="#">ND</a>	<a href="#">OH</a>	<a href="#">OR</a>	<a href="#">PA</a>	<a href="#">RI</a>	<a href="#">TN</a>	<a href="#">TX</a>	<a href="#">UT</a>	<a href="#">VA</a>	<a href="#">WY</a>	<a href="#">WA</a>	<a href="#">WI</a>	<a href="#">WV</a>	<a href="#">WY</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		■	■	■		■									■							■	■	■	■			■	■	■	■	■	■									■	

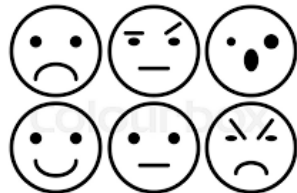
***Legal Triage***: efforts of legal actors & others during declared emergencies to build a favorable legal environment by prioritizing issues & solutions facilitating legitimate public health responses



# Select Structural & Rights-based Constitutional Issues



**Separation of Powers**



**Freedom of Expression**



**Equal Protection**



**Federalism**



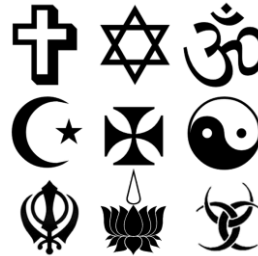
**Freedom of Assembly**



**Right to Travel**



**Supremacy**



**Freedom of Religion**



**Right to Bear Arms**



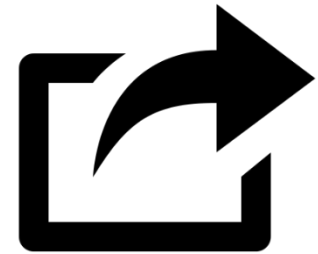
**Preemption**



**Due Process**



**Cruel & Unusual Punishment**



**Judicial Deference**



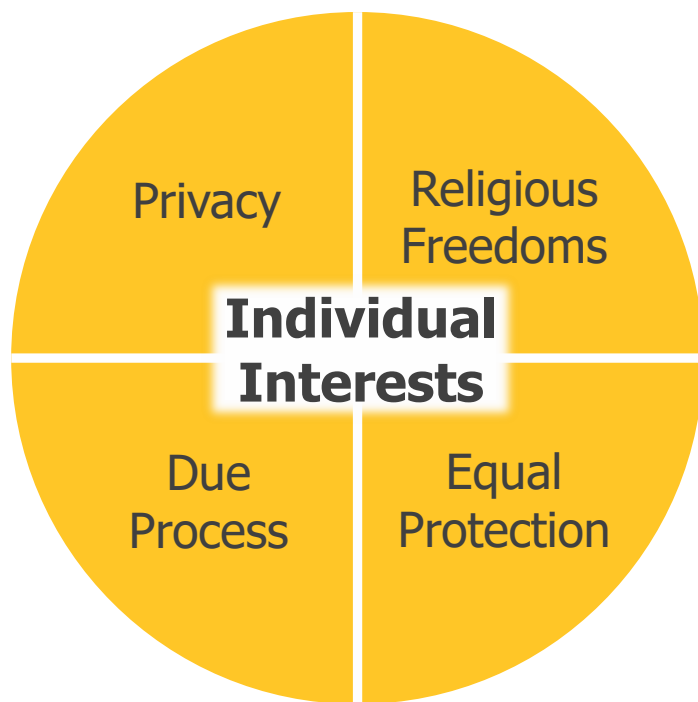
**Right to Privacy**



**Takings**



# Balancing Individual & Communal Interests



**Emergency Preparedness and Response**



**March 3:** VP Pence: “**Any American can be tested . . . subject to doctor’s orders.**”

**March 21:** Some health officials restrict **coronavirus** testing to HCWs & hospitalized persons, **saying “the battle to contain the virus is lost [as we move] 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.

**May 7:** AZ Gov. Ducey **withdraws access** by university researchers to select health data for in-state surveillance, then reverses decision.





**Click on images 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

**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](mailto:dchrysler@networkforphl.org)**



# Crisis Standards of Care

**Substantial change in usual healthcare operations and level of care due to a pervasive or catastrophic disaster.**

## Crisis Standards of Care

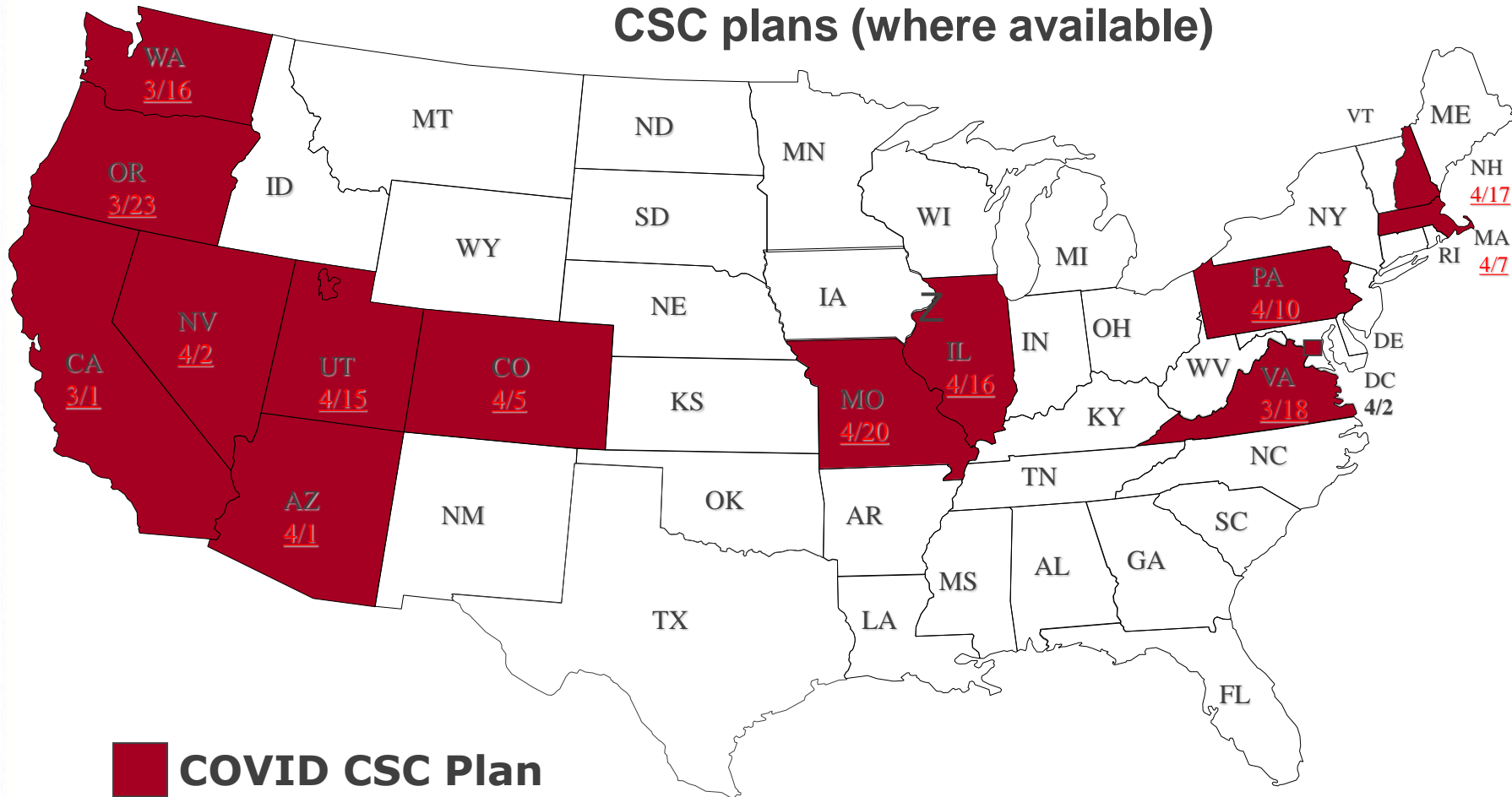
A Systems Framework for  
Catastrophic Disaster Response



NATIONAL ACADEMY OF MEDICINE  
Leadership • Innovation • Impact | *for a healthier future*

# Select States' COVID CSC Plans

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



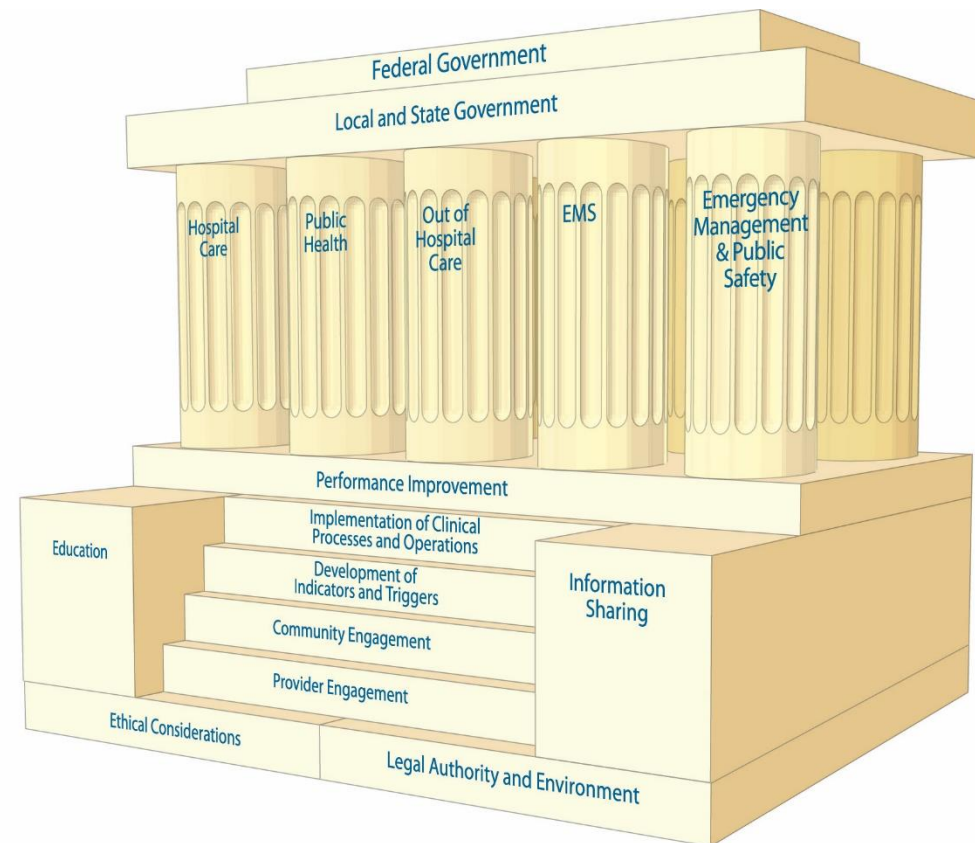
\*The date provided indicates when a state's CSC plan was published, not necessarily activated.

## 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*

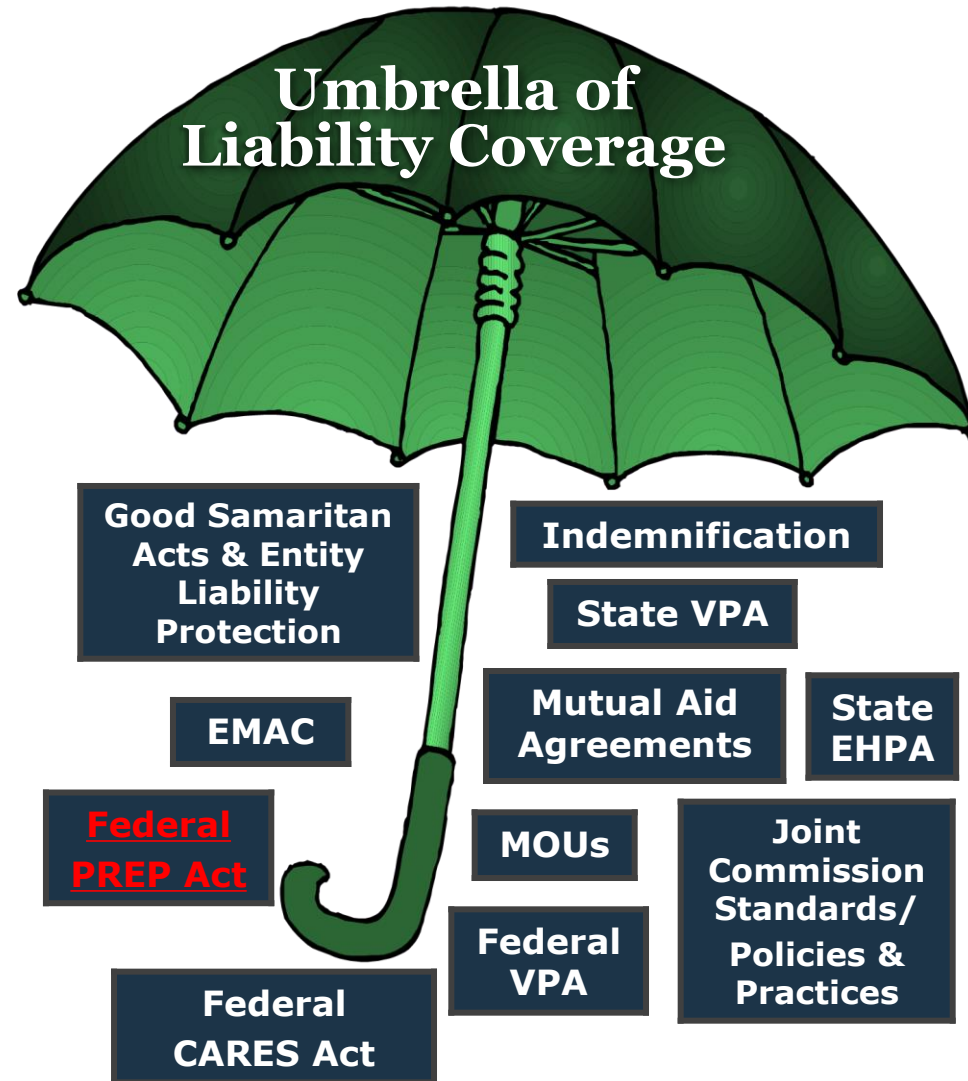
- Allocation
- Patient's Rights
- Reimbursement
- Licensure
- Scope of Practice
- Civil Rights
- Duty to Care
- Uniformity
- **Liability**



# Emergency Liability Protections - Health Practitioners & Entities

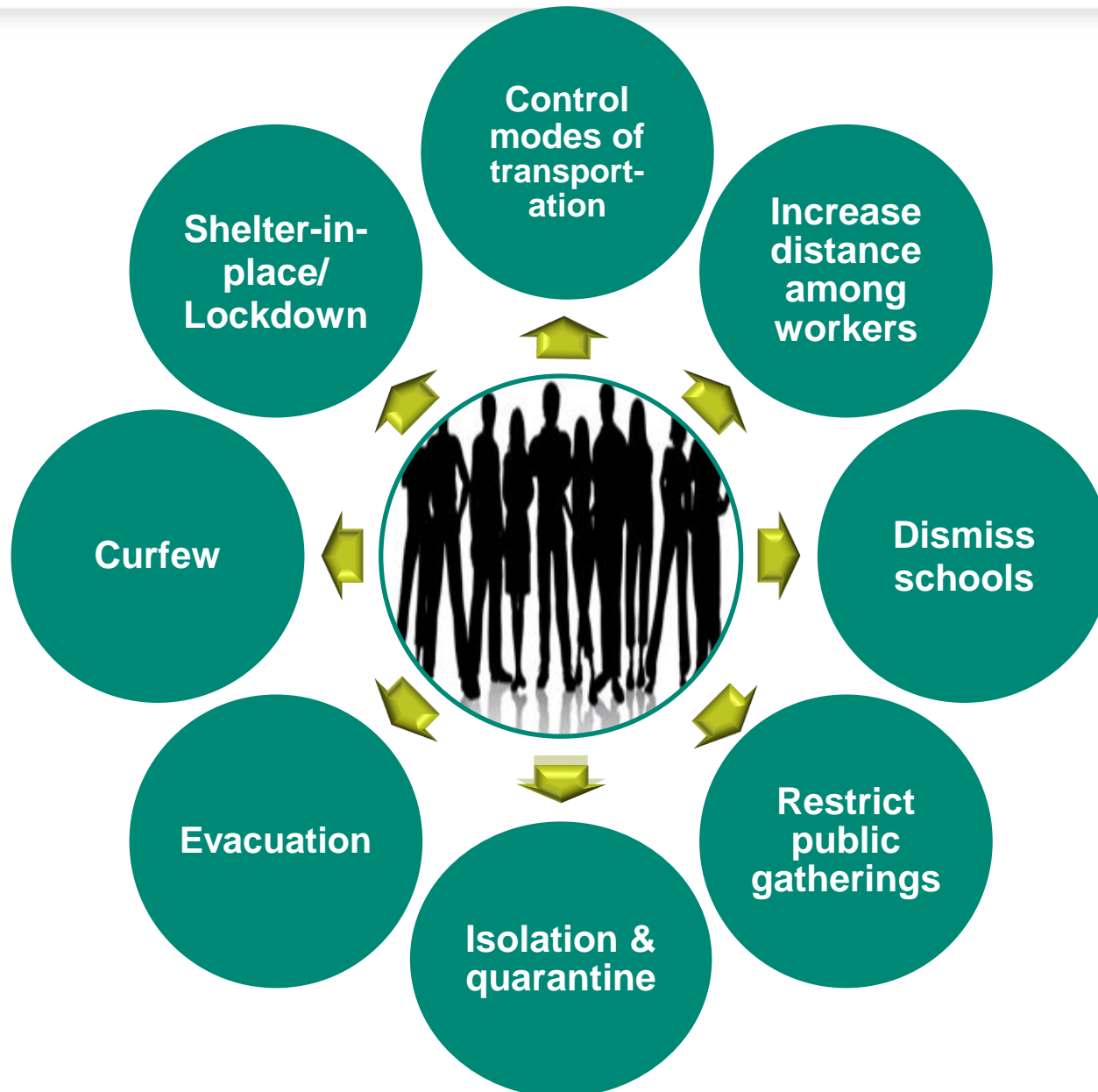


Despite risks, many legal liability protections apply in routine events & declared emergencies, especially concerning health care volunteers, workers, and entities.





# Social Distancing Measures



# 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.

**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.

## 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**



# Closures & Cancellations



Places of Worship



Employers



Universities



Events



Sports



Festivals



## 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](#)

**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

**Apr. 27:** President Trump suggests states should “seriously consider” reopening public schools despite safety concerns



# Assembly Limits

**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



- On what authority?
- By who specifically?
- At what governmental level?
- In what specific setting?
- For how long?

Government limits on assembly and speech are constitutional provided they are narrowly tailored to a substantial governmental interest & allow alternative channels for communication. [Clark v. Community for Creative Nonviolence](#), 468 U.S. 288 (1984)





**Mar. 29:** Curfew order across the Navajo Nation extends existing Stay at Home Order for the entire Navajo Nation. All persons, subject to some exceptions, must stay home from 8:00 p.m. - 5:00 a.m., 7 days a week.

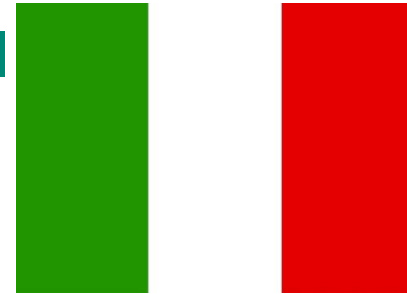
**May 5:** Nearby Gallup, NM imposes strict confinement measures via use of “riot act” authorities allowed via NM Governor Michelle Lujan Grisham

# U.S. Foreign Travel Restrictions

**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).

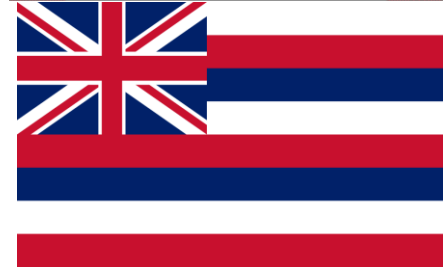


**Apr. 21**: President Trump suspends limited immigration activities for 60 days.

## 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**




Click on the [date](#) of each state to view the order

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

State	Order	Status
WA	3/16	Closed
OR	3/23	Closed
ID	3/25	Closed
MT	3/26	Closed
ND		Not Closed
SD		Not Closed
WY	3/28	Quarantined
NE		Not Closed
IA		Not Closed
MN	3/25	Closed
WI	3/24	Closed
MI	3/23	Closed
IL	3/21	Closed
IN	3/23	Closed
OH	3/23	Closed
PA	4/1	Closed
NY	3/22	Closed
VT	3/24	Closed
NH		Not Closed
ME	3/31	Closed
MA	3/23	Closed
RI		Not Closed
CT	3/20	Closed
NJ	3/21	Closed
DE	3/22	Closed
MD	3/30	Closed
DC	3/30	Closed
VA	3/23	Closed
WV	3/24	Closed
NC	3/27	Closed
SC	4/6	Closed
GA	4/1	Closed
FL	4/1	Closed
AL	4/3	Closed
MS	4/1	Closed
LA	3/22	Closed
TX	3/31	Closed
OK	3/24	Quarantined
KS	3/28	Closed
MO	4/3	Closed
AR		Not Closed
NM	3/23	Closed
AZ	3/30	Closed
UT	3/25	Quarantined
CA	3/19	Closed
NV	3/31	Closed

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

 Shelter-in-Place or Stay Home Orders – **3 partial states**

AK – Alaska **4/1**  
HI – Hawaii **3/23**  
PR - (*Puerto Rico*)  
VI - (*U.S. Virgin Islands*)



# Select Components of State Shelter-in-Place & Stay Home Orders

Component	C A	C T	D E	I L	I N	L A	M A	M I	N Y	O H	P A	O R	W V
Restricts Gatherings of “Any Number of People” Outside Household Unit					■			■		■		■	■
Restricts Gatherings >10	■	■	■	■	■	■	■	■	■	■		■	■
Closes Non-Essential Businesses per <a href="#">CISA</a>	■	■	■	■	■		■	■	■	■	■	■	■
Exempts Religious Establishments	■		■		■		■	■	■	■	■		■
Bans Leaving Homes for Non-Essential Purposes			■	■	■	■		■		■		■	■
No Non-Essential Travel			■	■	■					■		■	
Explicitly Addresses Homelessness			■	■	■					■			
Duration >2 Weeks	■	■	■			■		■			■	■	■
Allows for Reauthorization					■			■					
Opportunities for Additional Exceptions		■					■		■				
Criminal Penalties	■		■	■			■	■		■		■	
Limits Local Responses		■											

# “Essential” v. “Non-essential” Businesses

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

# Assembly Protests

**April 15**: In Michigan, thousands protested Governor Whitmer's stay-at-home order at the state capitol in Lansing. Organized by the Michigan Conservative Coalition, protesters voiced concerns over harms to workers & businesses.

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



Source: <https://www.bbc.com/news/av/world-us-canada-52304832/coronavirus-michigan-protesters-defy-stay-at-home-order>



# Justifying Social Distancing



Assess Epi



Assure Mobilization



Acquire PPE



Find Treatments



Develop Vaccines



Save Lives

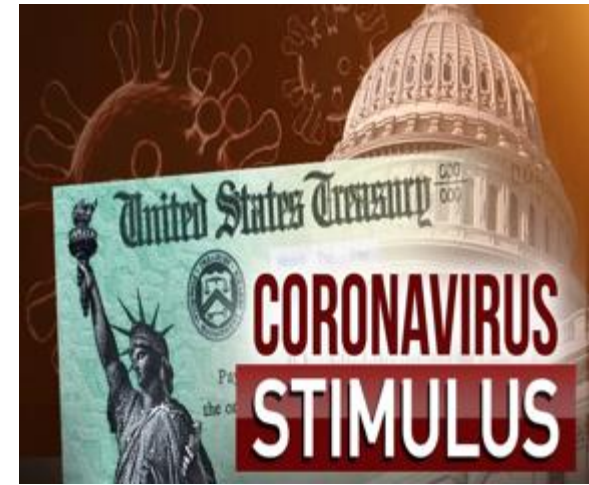
# Assessing the Consequences



Unemployment



Business Failures



Government Bailouts



Active Protests



Mental Health



Lost Lives





**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 w/in 14 days
- Downward trajectory of cases or positive tests w/in 14 days
- Hospitals must treat all patients outside CSC or implementation of a “robust reporting system”

**April 21:** U.S. Attorney General William Barr instructs U.S. Attorneys to litigate against states failing to comply with national re-opening strategies



# State Actions to Re-open America

States relaying  
interests or  
plans to reopen

Alabama, Alaska,  
California,  
Colorado, Florida,  
Georgia, Hawaii,  
Idaho, Indiana, Iowa,  
Kentucky,  
Maryland, Michigan,  
Missouri, Montana,  
Nevada, New  
Hampshire, New  
Jersey, North Carolina,  
North Dakota, Ohio,  
Oklahoma, Oregon,  
Pennsylvania,  
Rhode Island,  
South Carolina,  
Tennessee,  
Texas, Utah, Vermont,  
Washington, Wisconsin,  
West Virginia

States allowing  
(or set to allow)  
specific open  
activities

Alaska, Arizona,  
Arkansas, Florida,  
Georgia, Idaho,  
Iowa, Kentucky,  
Minnesota,  
Mississippi,  
Missouri,  
Montana,  
Ohio, Oklahoma,  
Oregon,  
South Carolina,  
Tennessee,  
Texas,  
Vermont,  
West Virginia

States issuing  
Exec. Orders to  
reopen some  
businesses

Arizona  
Colorado  
Georgia  
Iowa  
Minnesota  
Missouri  
Mississippi  
Montana  
North Dakota  
Texas  
Utah  
Virginia  
Wisconsin

States lifting  
“stay at home”  
orders partially  
or fully

Alabama, Alaska,  
Colorado, Florida,  
Georgia, Idaho,  
Indiana, Iowa,  
Kansas,  
Mississippi,  
Missouri,  
Montana,  
North Dakota,  
Ohio, Rhode  
Island,  
South Carolina,  
Tennessee,  
Texas,  
West Virginia

# Re-opening Phases

## Phase 1

- Vulnerable individuals shelter-in-place
- Practice social distancing and avoid socializing in groups >10
- Employers should 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

# Re-opening Efforts



Essential Business



Light Retail



Salons & Barbers



Bars



Gyms



Restaurants



# Legal Controversies



Federal v. State



State v. Local



Employee  
v.  
Employer



State v. Tribal



Public v. Private Sector

# Federal v. State



May 19: A high ranking DOJ official sent a letter to California Governor Newsom, threatening to intervene if CA does not alter its stay home order and re-opening policy.

- While restaurants and malls can open in phase 2, religious entities cannot do so until phase 3.
- DOJ characterizes this deferential treatment as unconstitutional pursuant to *Lukumi v. City of Hialeah*.
- Houses of worship may now open in limited capacity after being classified “essential” by President Trump.



**May 12:** Pennsylvania Governor Tom Wolf threatens multiple counties attempting to open businesses in contravention of existing state-level stay-at-home orders with denial of discretionary federal funds and various sanctions for offending businesses including loss of license and payment of unemployment benefits for employees unwilling to work for safety reasons.



**May 13:** Texas Attorney General issues letter to local officials in Dallas, Austin, and other municipalities to cease enforcement of multiple social distancing and preventive measures related to religious institutions, wearing of masks, and contact tracing efforts under threat of litigation.



# Wisconsin S. Ct Rejects Stay Home Order



**May 13**: In *Wisconsin Legislature v. Palm*, the WI Supreme Court determined that Department of Health Secretary Andrea Palm's stay home "order" issued pursuant to Governor Evers' emergency declaration was actually an unconstitutionally crafted "rule," and consequentially nullified the order.



## Reopening Communities

- NM Gov. Michelle Lujan Grisham invoked emergency powers to lock down the City of Gallup to stop tribal members (largely from Navajo Nation) from spreading COVID to state residents.
- St. Regis Mohawk Tribe in NY remains closed with a curfew as the region around it reopens, preventing visitors from entering the community.

## Restricting Travel

- SD Gov. Kristi Noem ordered checkpoints on state highways to be removed and requested Pres. Trump for federal assistance when tribes refused.

## Reopening Casinos

- CT Gov. Ned Lamont recognized the Mashantucket Pequot and Mohegan Tribes' sovereignty over reopening decisions but warned of impacts of reopening casinos on state and tribal partnerships, as well as public health.



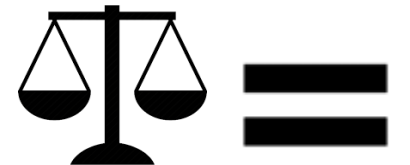
*Friends of Danny DeVito  
v. Wolf*



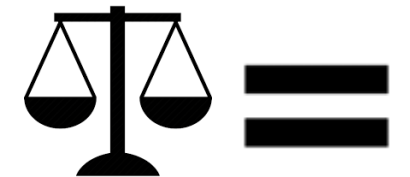
*Poopy's Pub & Grub  
v. J.R. Pritzker*



*Tesla Inc. v. Alameda  
County*



*House of Pain Gym v.  
St. Louis County*



*Open Our Oregon v.  
Kate Brown*





## Potential legal claims for employees:

- **Workers compensation** - typical and often exclusive remedy for workplace injuries
- **Wrongful termination** - e.g., employee faces adverse action for seeking protections
- **Discrimination** - e.g., persons are fired/discriminated against on basis of age, parenthood, health status, or other protected characteristics
- **Public nuisance** - e.g., *Rural Community Workers Alliance v. Smithfield Foods, Inc. (Missouri)*
- **Negligence & intentional torts** - e.g., if employer fails to implement CDC/OSHA safety measures

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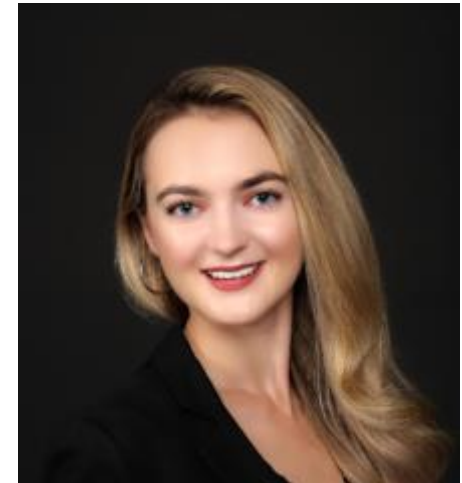
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