

# **COVID-19**

# **Emergency Legal Preparedness Primer**

**As of June 19, 2020**

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

**Peter Kiewit Foundation Professor of Law**

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

**ASU Sandra Day O'Connor College of Law**

**[james.hodge.1@asu.edu](mailto:james.hodge.1@asu.edu)**

- ☐ **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 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)

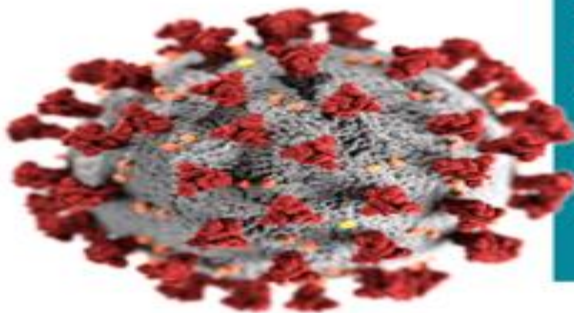
## COVID-19 CHILDREN



## ALERT FOR PARENTS

### Pediatric Multi-System Inflammatory Syndrome Potentially Associated with COVID-19

Although rare, this condition can lead to serious and life-threatening complications if left untreated. Parents are urged to take note of the following signs/symptoms and monitor their children closely.



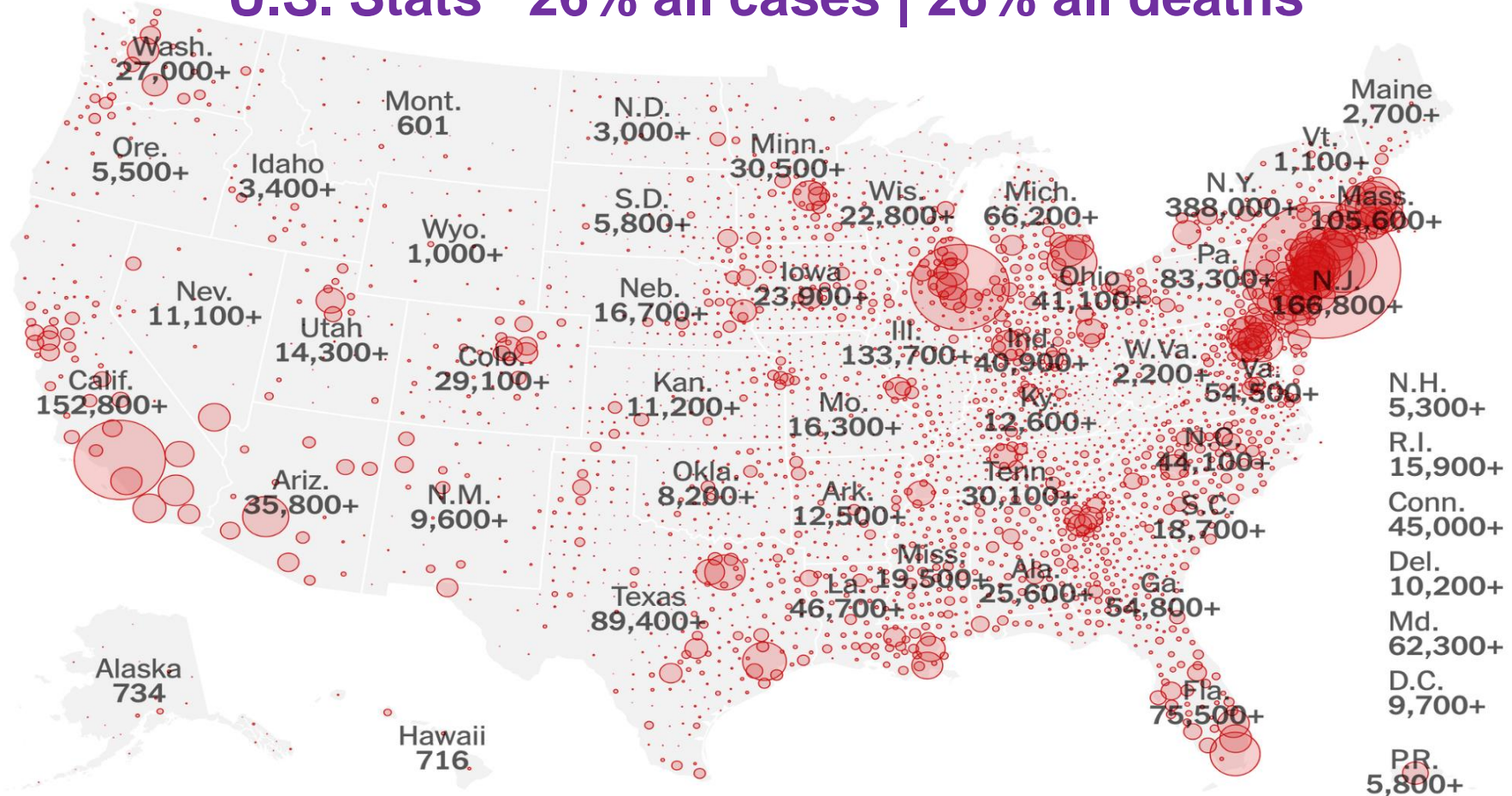
- Fever (> 100.4F or 38.0C)
- Rash over the whole body
- Red or pink eyes
- Red tongue that looks like a strawberry
- Red chapped lips that may crack and bleed
- Swollen hands and feet and red palms and soles
- A swollen lymph node or gland on one side of the neck
- Breathing difficulty or gasping breaths
- Confusion or disorientation
- Severe headache
- Extreme weakness
- Excessive irritability or lethargy (not responding appropriately, not fully awakening)
- Joint pain or swelling
- Vomiting and diarrhea
- Decreased feeding (infants) or intake of fluids
- Call your pediatrician immediately if your child becomes sick and is exhibiting any of the above

Text COVIDsuffolk to 67283

IF YOUR CHILD IS SEVERELY ILL, REPORT TO THE NEAREST EMERGENCY ROOM OR CALL 9-1-1

**U.S. Cases      2.23 million |    Deaths: 120,000**

## U.S. Stats 26% all cases | 26% 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**

**Defense  
Production  
Act**

**Mar.  
20**



**FEMA**



**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, providing  
emergency financial  
aid for families and  
businesses

**4/23**

Congress passes  
\$484 **Paycheck  
Protection  
Program** to  
support small  
businesses,  
health care &  
COVID testing

**5/15**

House passes  
**HEROES Act**  
providing more  
economic  
stimulus & funds  
for contact tracing

**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



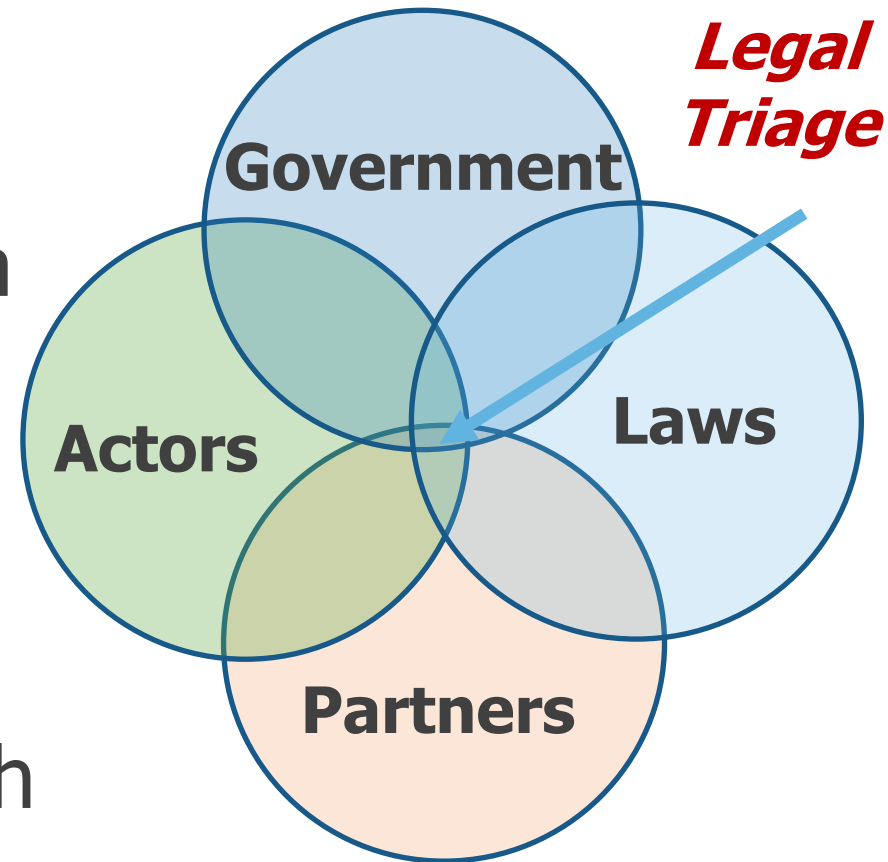


# Select State Emergency Powers Explicitly Invoked by Declarations

**Note:** this table tracks select, express authorities referenced via state emergency declarations ([link](#) on each state acronym for access). *Additional emergency powers may be authorized under state law through which the declarations are issued.*

Emergency Powers	<a href="#">A</a> <a href="#">K</a>	<a href="#">A</a> <a href="#">Z</a>	<a href="#">A</a> <a href="#">R</a>	<a href="#">C</a> <a href="#">A</a>	<a href="#">C</a> <a href="#">O</a>	<a href="#">C</a> <a href="#">T</a>	<a href="#">D</a> <a href="#">E</a>	<a href="#">F</a> <a href="#">L</a>	<a href="#">H</a> <a href="#">I</a>	<a href="#">I</a> <a href="#">L</a>	<a href="#">I</a> <a href="#">N</a>	<a href="#">I</a> <a href="#">A</a>	<a href="#">K</a> <a href="#">Y</a>	<a href="#">L</a> <a href="#">A</a>	<a href="#">M</a> <a href="#">E</a>	<a href="#">M</a> <a href="#">D</a>	<a href="#">M</a> <a href="#">A</a>	<a href="#">M</a> <a href="#">I</a>	<a href="#">N</a> <a href="#">J</a>	<a href="#">N</a> <a href="#">M</a>	<a href="#">N</a> <a href="#">Y</a>	<a href="#">N</a> <a href="#">C</a>	<a href="#">O</a> <a href="#">H</a>	<a href="#">O</a> <a href="#">R</a>	<a href="#">P</a> <a href="#">A</a>	<a href="#">R</a> <a href="#">I</a>	<a href="#">T</a> <a href="#">N</a>	<a href="#">V</a> <a href="#">A</a>	<a href="#">U</a> <a href="#">T</a>	<a href="#">U</a> <a href="#">A</a>	<a href="#">W</a> <a href="#">V</a>	<a href="#">W</a> <a href="#">I</a>			
Altered Contracts   Procurements		■		■					■	■				■	■					■	■	■	■	■		■	■		■						
Emergency Plans   ICS		■		■	■			■		■		■	■	■		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	
Funding   Resource Allocation	■	■							■	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■				■	■	■	■			
Intrastate Coordination	■	■	■	■	■	■			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Isolation   Quarantine		■	■		■	■		■						■							■														
Licensure Reciprocity		■		■					■											■	■	■					■								
Price Controls re: Gouging		■		■					■					■					■			■	■	■		■	■						■	■	
Surveillance   Reporting		■		■				■														■													
Testing   Screening   Treatment		■			■										■			■		■	■	■	■	■	■		■								
Travel Restrictions			■	■		■		■						■					■			■	■												
Waivers   Suspensions		■	■	■		■								■					■	■	■	■		■	■	■	■	■	■						■

***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





# Select Structural & Rights-based Constitutional Issues



**Separation of Powers**



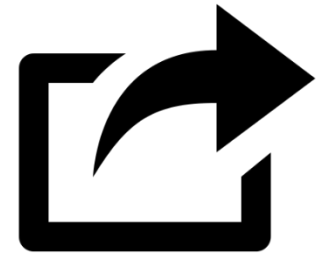
**Federalism**



**Supremacy**



**Preemption**



**Judicial Deference**



**Freedom of Expression**



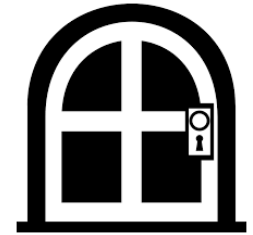
**Freedom of Assembly**



**Freedom of Religion**



**Due Process**



**Right to Privacy**



**Equal Protection**



**Right to Travel**



**Right to Bear Arms**



**Cruel & Unusual Punishment**



**Takings**



**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.



# Face Mask Requirements



*Multiple states & localities issue requirements based on CDC recommendations to wear face masks in public places.*

**May 26**: City of Nashua (New Hampshire) is sued on constitutional grounds over its face mask requirements.

**June 17**: AZ Governor Ducey allows localities to set specific requirements for face masks. Multiple AZ cities, including **Scottsdale**, Mesa, and Tucson, immediately respond.

**June 18**: CA Governor Newsom orders state-wide use of face masks in public places where social distancing cannot be assured.



# Contact Tracing

- Contact tracing - efforts typically led by public health agents to ascertain specific contacts of persons infected with COVID-19 and notify them of potential exposure and seek testing.
- States are hiring thousands for contact tracing activities within health agencies
- Apple & Google released Bluetooth technology on April 10 that sends automatic alerts to persons in range of COVID + persons, raising privacy concerns
- New legislation in Kansas (June 5) restricts contact tracing to voluntary participants, provides strong confidentiality protections, and extensively limits liability.





**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, or Sallie Milam, JD, CIPP/US/G, in our Network–MidStates Region**

# 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

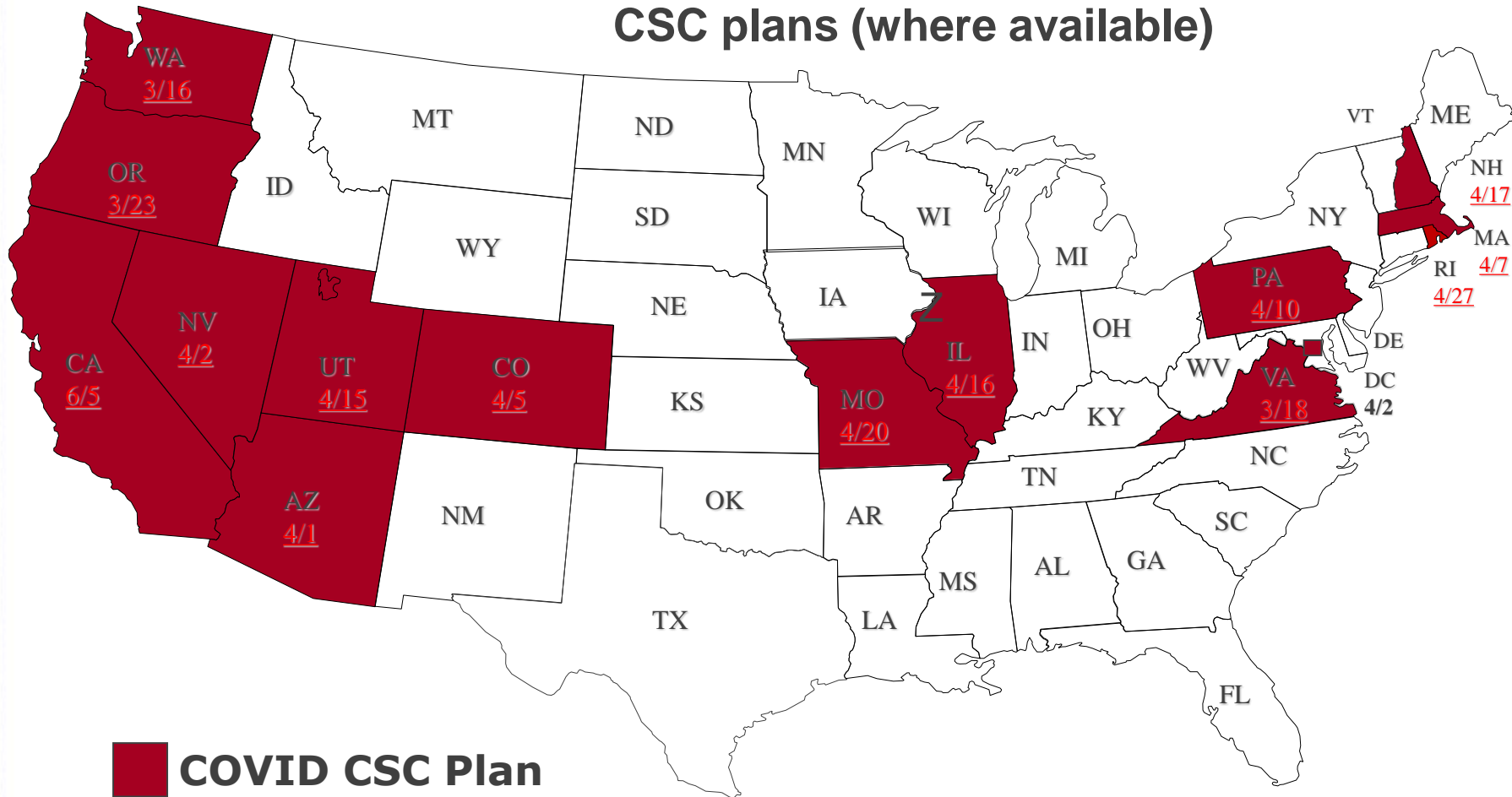


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# Select States' COVID CSC Plans

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.

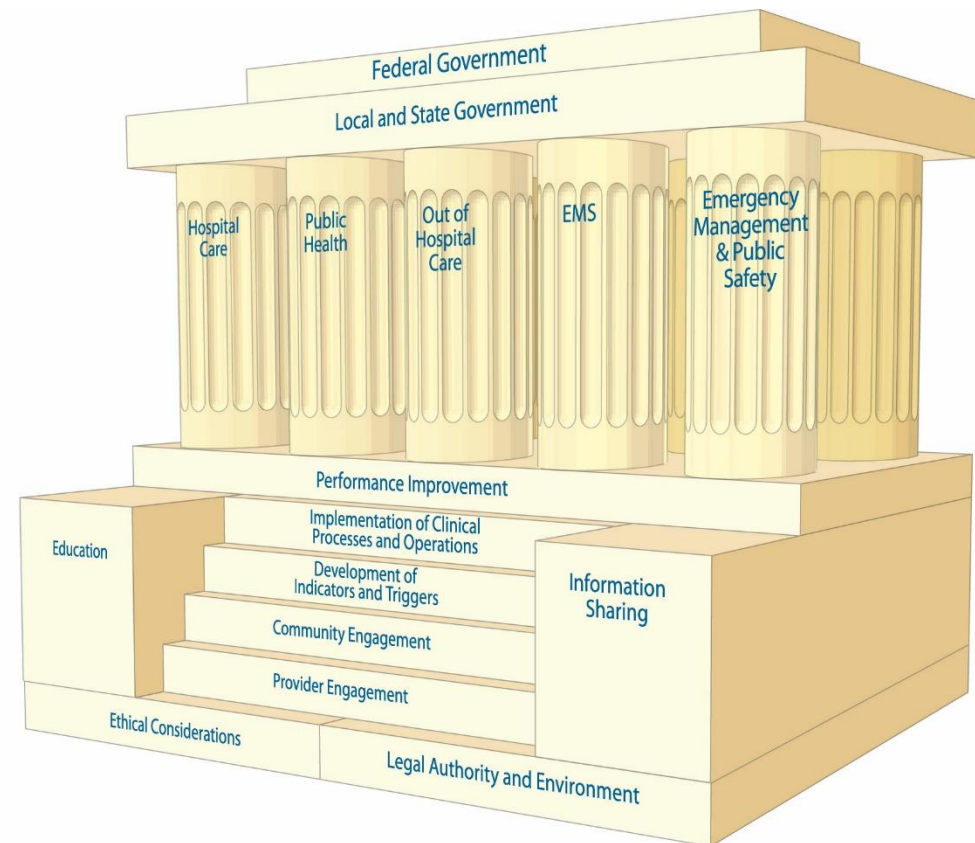
-  AK – Alaska
-  HI - Hawaii
-  PR - (*Puerto Rico*)
-  VI - (*Virgin Islands*)

## 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*

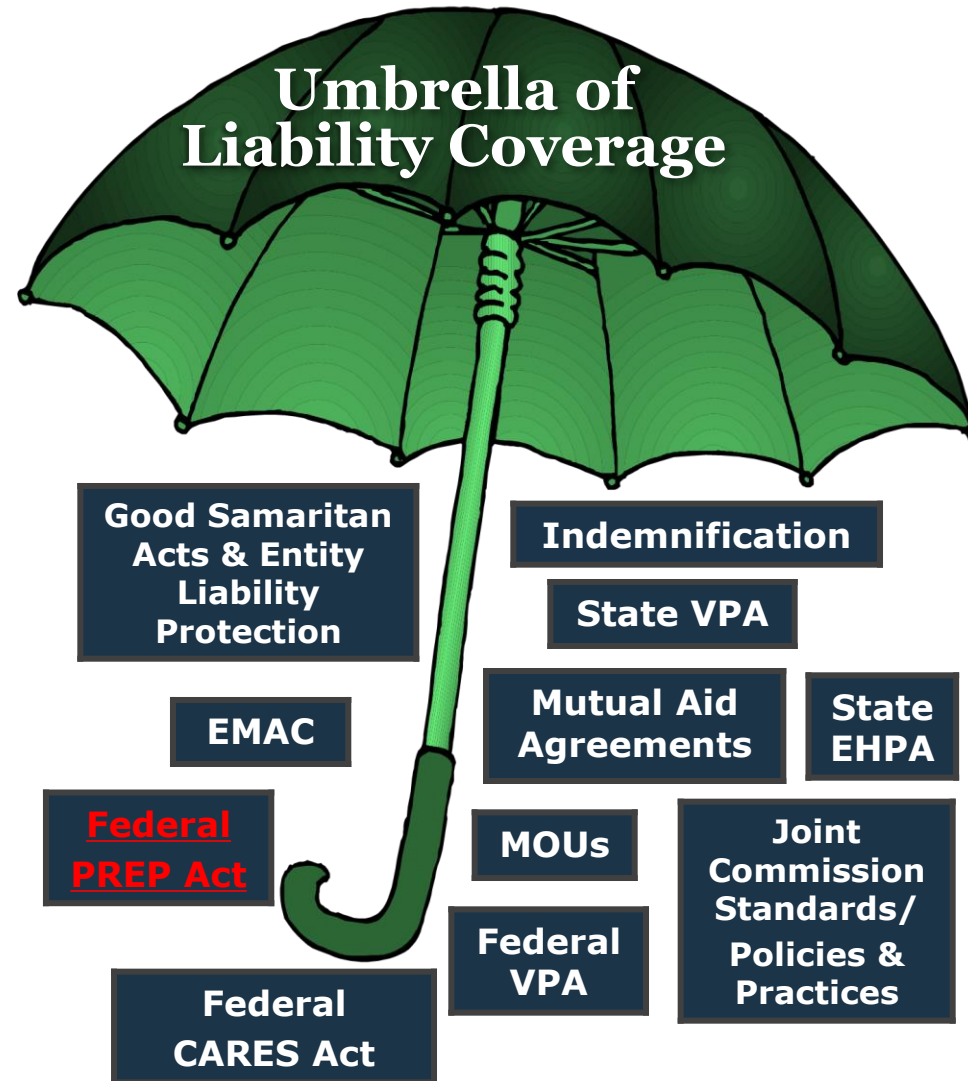
- Allocation
- Patient's Rights
- Reimbursement
- Licensure
- Scope of Practice
- Civil Rights
- Duty to Care
- Uniformity
- **Liability**



# Emergency Liability Protections - Health Practitioners & Entities

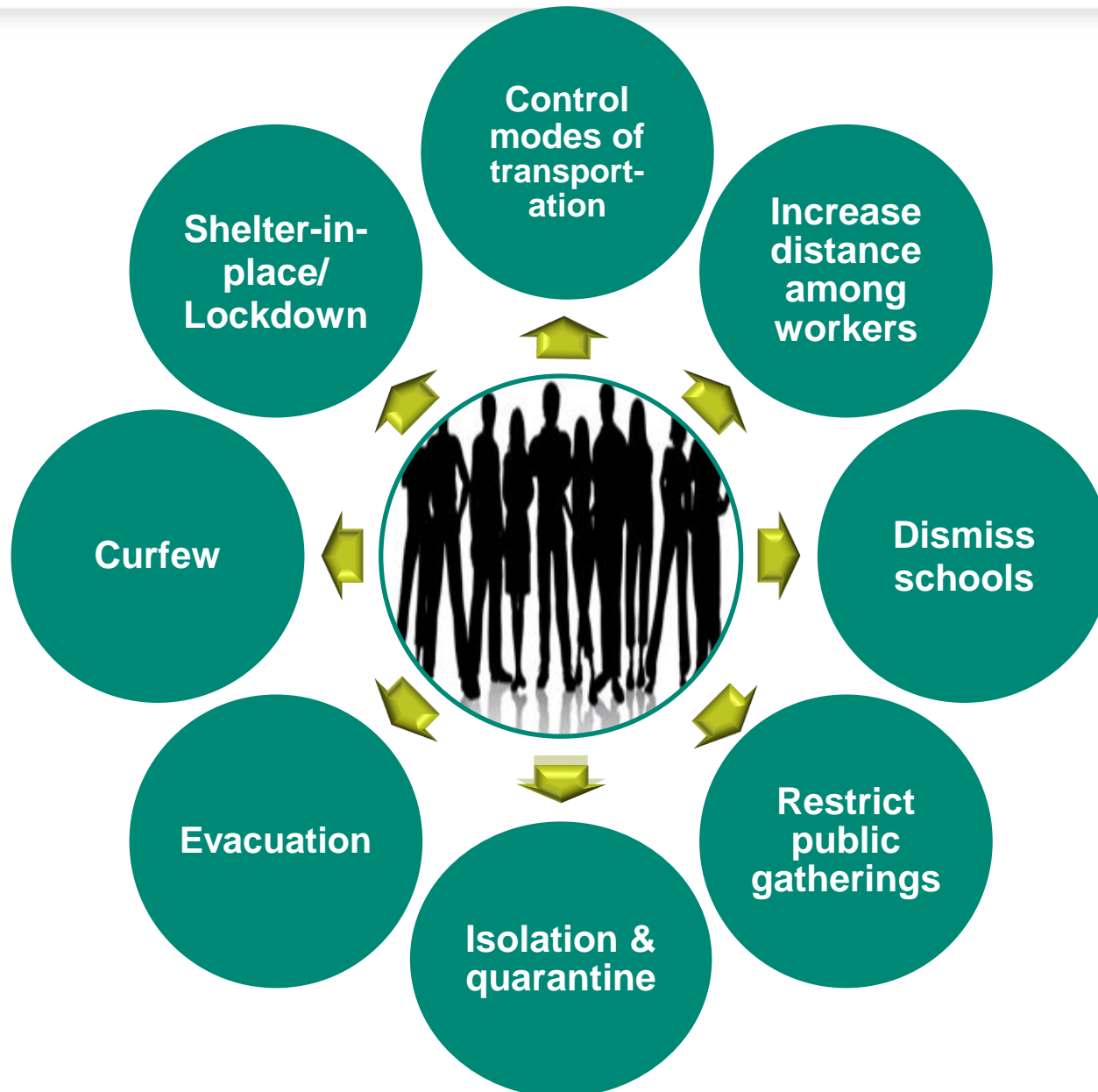


Despite risks, many legal liability protections apply in routine events & declared emergencies, especially concerning health care volunteers, workers, and entities.





# 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



See the National Conference of State Legislatures for a listing of state-based quarantine and isolation statutes.



**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** 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.

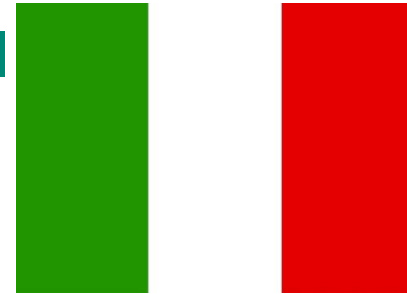
**May 5: Nearby Gallup, NM imposed strict confinement measures** via use of “riot act” authorities allowed by NM Governor Michelle Lujan Grisham that ended on on May 10, 2020.

# 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 7/20) to persons travelling for non-essential purposes (e.g. tourism).

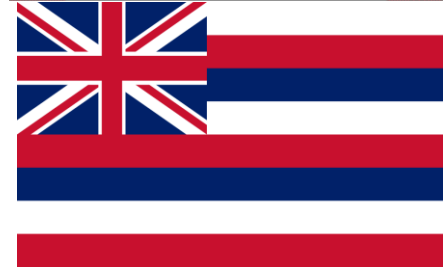


**Apr. 21**: President Trump suspends limited immigration activities for 60 days.

## The New York Times

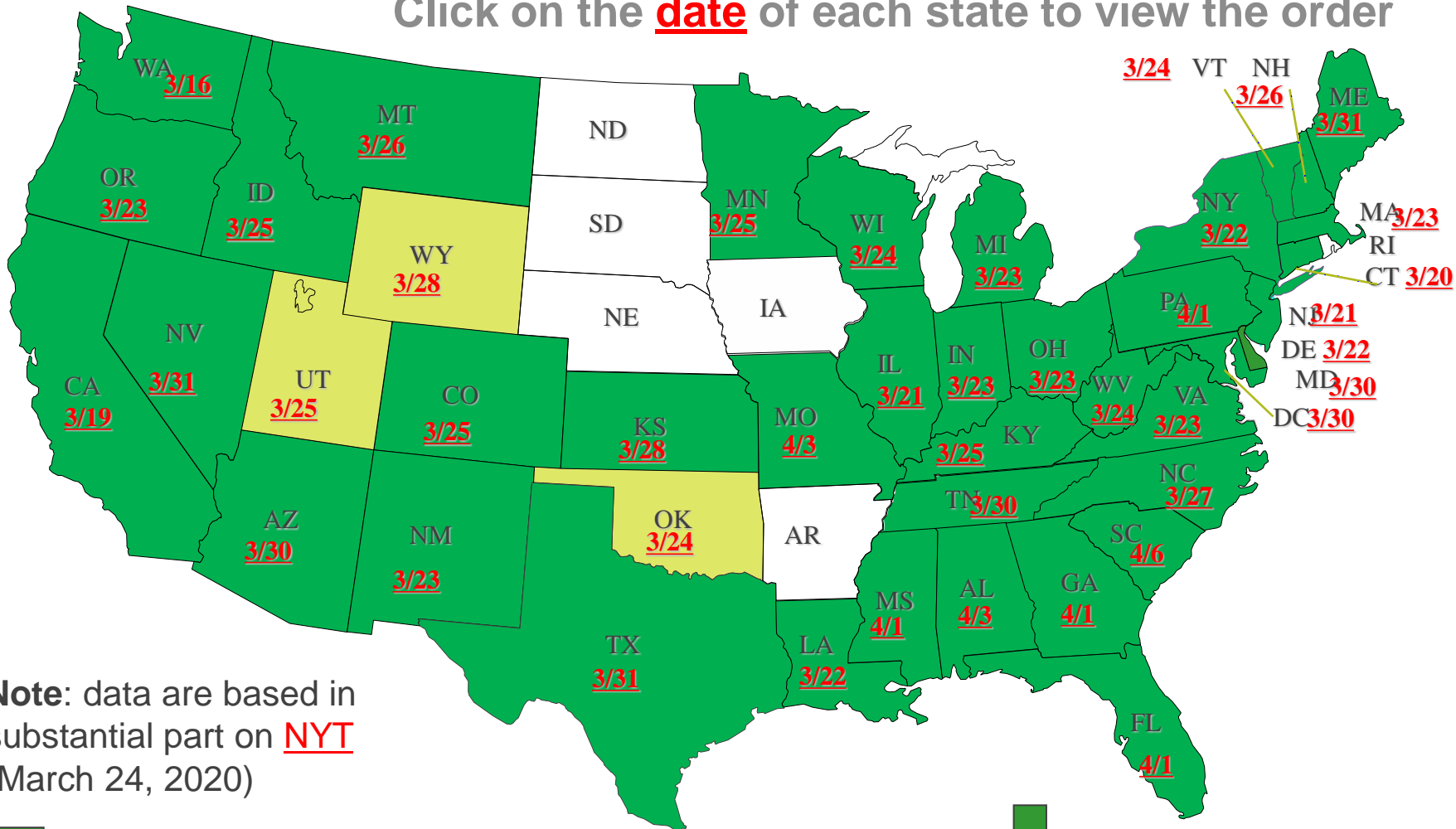
**Mar. 26:** “Governors Tell Outsiders From ‘Hot Zone’ to Stay Away as Virus Divides States”

- ☐ **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**









# 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**

-  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		■											

# 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



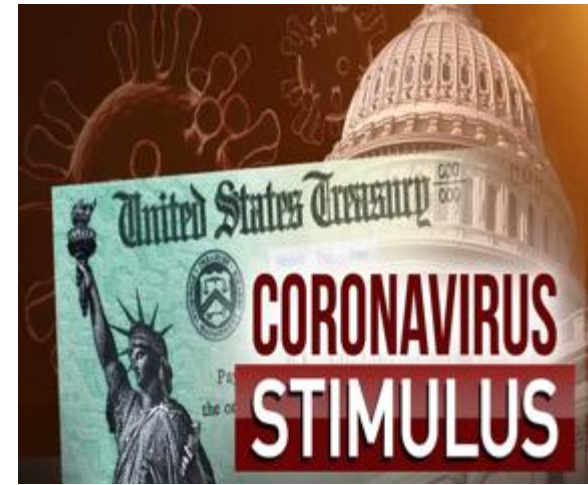
# Assessing the Consequences



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

# 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.

# Public v. Private Litigation

**Friends of Danny DeVito v. Wolf** – On April 13, PA’s Supreme Court ruled that the temporary closure of non-essential businesses within the scope of the Governor’s emergency order did not constitute a taking.

**Poopy’s Pub & Grub v. J.R. Pritzker** - After Poopy’s held a large MMD party in violation of IL Gov. Pritzker’s stay-at-home order, its owner sued, alleging due process violations.

**Tesla Inc. v. Alameda County** - On May 9, Tesla sued Alameda County, CA alleging it violated principles of due process & equal protection by disallowing Tesla to operate its manufacturing plant. The case was dismissed after Tesla was allowed to do basic, preparatory operations.

**House of Pain Gym v. St. Louis County** - On May 4, 2 gym locations in St. Louis County, MO opened despite their “non-essential” status and were fined. They sued alleging equal protection, due process, and takings violations.

**Open Our Oregon v. Kate Brown** - On May 5, 9 businesses sued Gov. Brown contending that closing their businesses violates due process, equal protection, and a taking. A U.S. district court judge denied the businesses’ motion for emergency injunction.

# Employee Legal Claims

- **Workers compensation** - often exclusive remedy for workplace injuries
- **Wrongful termination** - e.g., employee faces adverse action for seeking protections
- **Discrimination** - e.g., persons are discriminated based on age, parenthood, health, sex, or other protected characteristics
- **Nuisance** - e.g., employer workplace hazards pose public or private nuisance
- **Negligence & intentional torts** - e.g., employer fails to implement CDC/OSHA safety measures



# Current or New Wave?



**June 15**: Public health officials are concerned about adding to current or 2<sup>nd</sup> wave of cases related to multiple factors including:

- Widespread business re-opening practices in many states;
- States' rescinding stay-home and shelter-in-place orders;
- National protests concerning racial unrest over police violence; American's active resistance to continued diligence re: social distancing and face mask requirements; and
- Political and other gatherings leading into national elections

# Select Acts of Intimidation of Public Health Officials

- Since April, at least 27 state & local health leaders have “resigned, retired, or been fired” in 13 states.
- In April & May, the Tri-County Health Department (in CO) was vandalized on 3 different occasions (i.e., broken windows, spray painting vulgarities, harassing notes).
- As of May 9, the residence of Ohio’s state health director was picketed on 3 occasions. On June 11, armed protestors surrounded the property, leading to her resignation that same day.
- As of June 8, the health officer of Orange County (CA) resigned after public meeting and social media threats.





# Thank You Contributors!



**Sarah Wetter,  
JD, MPH**



**Michelle Notrica,  
PharmD, JD, MPH**



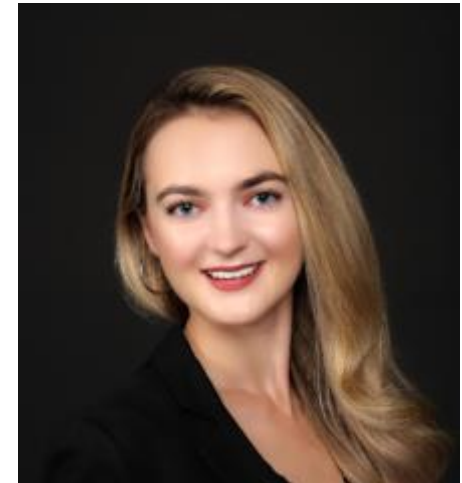
**Emily Carey,  
ASU JD Candidate**



**Elyse Pendergrass,  
ASU JD Candidate**



**Hanna Reinke,  
ASU JD Candidate**



**Claudia Reeves,  
ASU JD Candidate**



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- [Ask the Network](#) re: questions/comments relating to this information or other legal preparedness & response efforts

[james.hodge.1@asu.edu](mailto:james.hodge.1@asu.edu) | [@jghodgejr](https://twitter.com/jghodgejr)