

# **COVID-19**

# **Emergency Legal Preparedness Primer**

**As of July 21, 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 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



**Asymptomatic persons present real risks of infection**



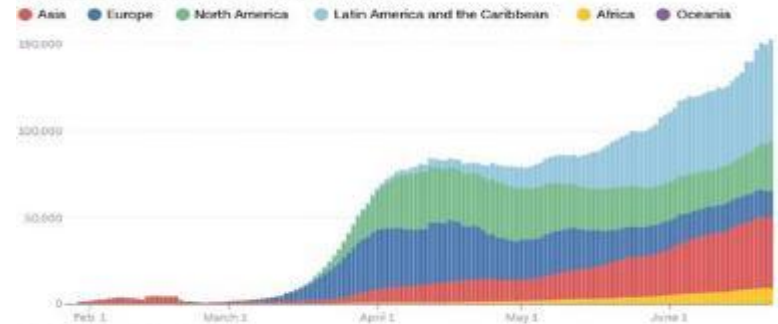
**Vaccinations are still months away from mass use**



**Antibodies may be insufficient to ward off additional infections**

## New Covid-19 cases still rising at record levels

The rise in the average number of new daily coronavirus cases is being propelled by infections in the Americas and Asia.



Note: Data based on rolling seven-day average. Regions are based on World Health Organization. American have been broken down into subregions Latin America and the Caribbean and North America.

COVID-19 Last updated: June 03, 2020 at 4:00 a.m. ET  
Source: Johns Hopkins University Center for Systems Science and Engineering  
Graphic: Sergio Hernandez, DataMint, Workplaces and Health Publications, 2020

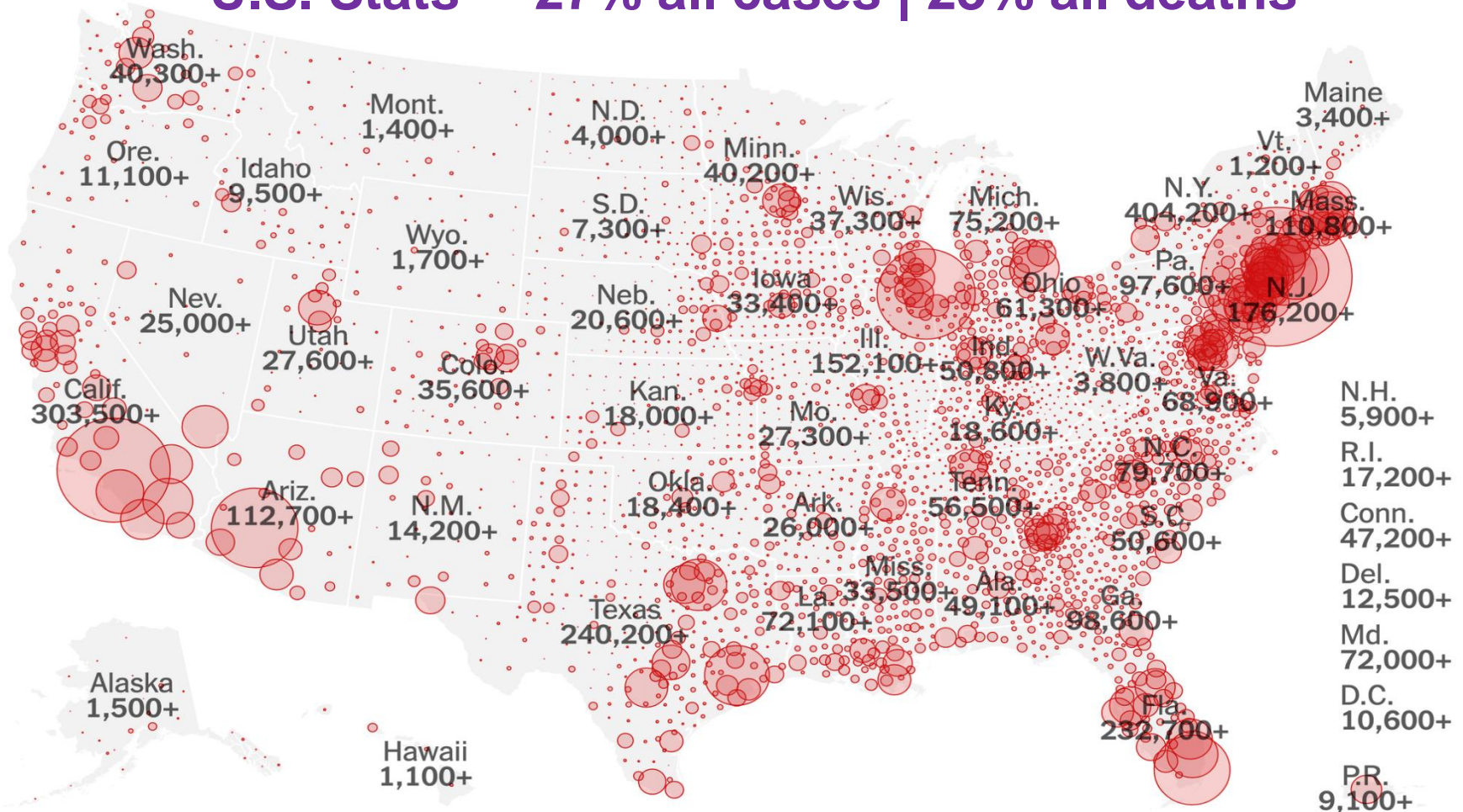
**Emerging new cases are rising from re-opening activities**

# COVID-19 Confirmed Cases & Deaths

**Global Cases 14.77 million | Deaths: 611,599**

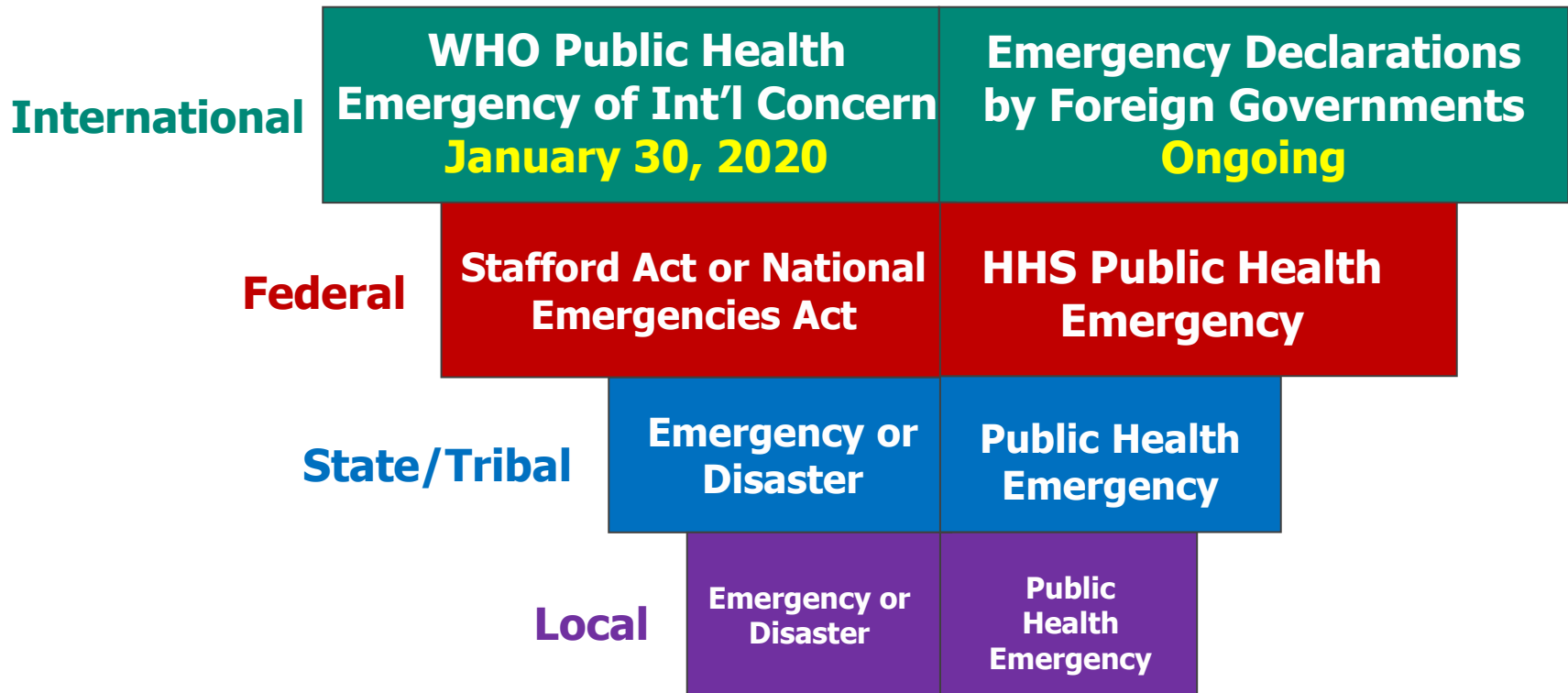
**U.S. Cases 3.96 million | Deaths: 143,390**

**U.S. Stats 27% all cases | 23% all deaths**



# Unprecedented Emergency Declarations

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



# 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

**June 19**: American Hospital Association et al. urge Sec'y Azar to extend the PHE beyond its July 25 expiration



# 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

**6/24**

**Emergency House  
Protections and  
Relief Act**

introduced to prevent evictions, foreclosures, and unsafe housing conditions resulting from COVID-19.



**6/24**

Senate introduces **a bill** to provide funding to address health workforce shortages and disparities highlighted by COVID-19.

**6/22**

House introduces **a bill** to require COVID-19 drugs developed with Federal support to be affordable and accessible.

**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



### Mar. 18: Families First Coronavirus Response Act

- Private health plans must provide \$0 cost coverage for COVID-19 tests
- Temporarily increases federal portion of Medicaid
- Requires 14 days of paid sick leave for certain employees

## CARES Act



### Mar. 27: CARES Act

- Largest stimulus package in history
- Requires insurance providers to cover COVID-19 testing, vaccines & preventative services
- Protects volunteer HCWs from liability
- Authorizes PHI disclosure with written patient consent

## PPP & HEA



### Apr. 24: Paycheck Protection Program & Healthcare Enhancement Act

- Additional funding for hospitals & HCPs
- Supports testing & contact tracing efforts
- Requires governors to submit 2020 testing plan
- HHS Secretary must report on testing, cases & deaths

# Federal Agency Coordination

Right click on each image to link to COVID-19 sites



**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

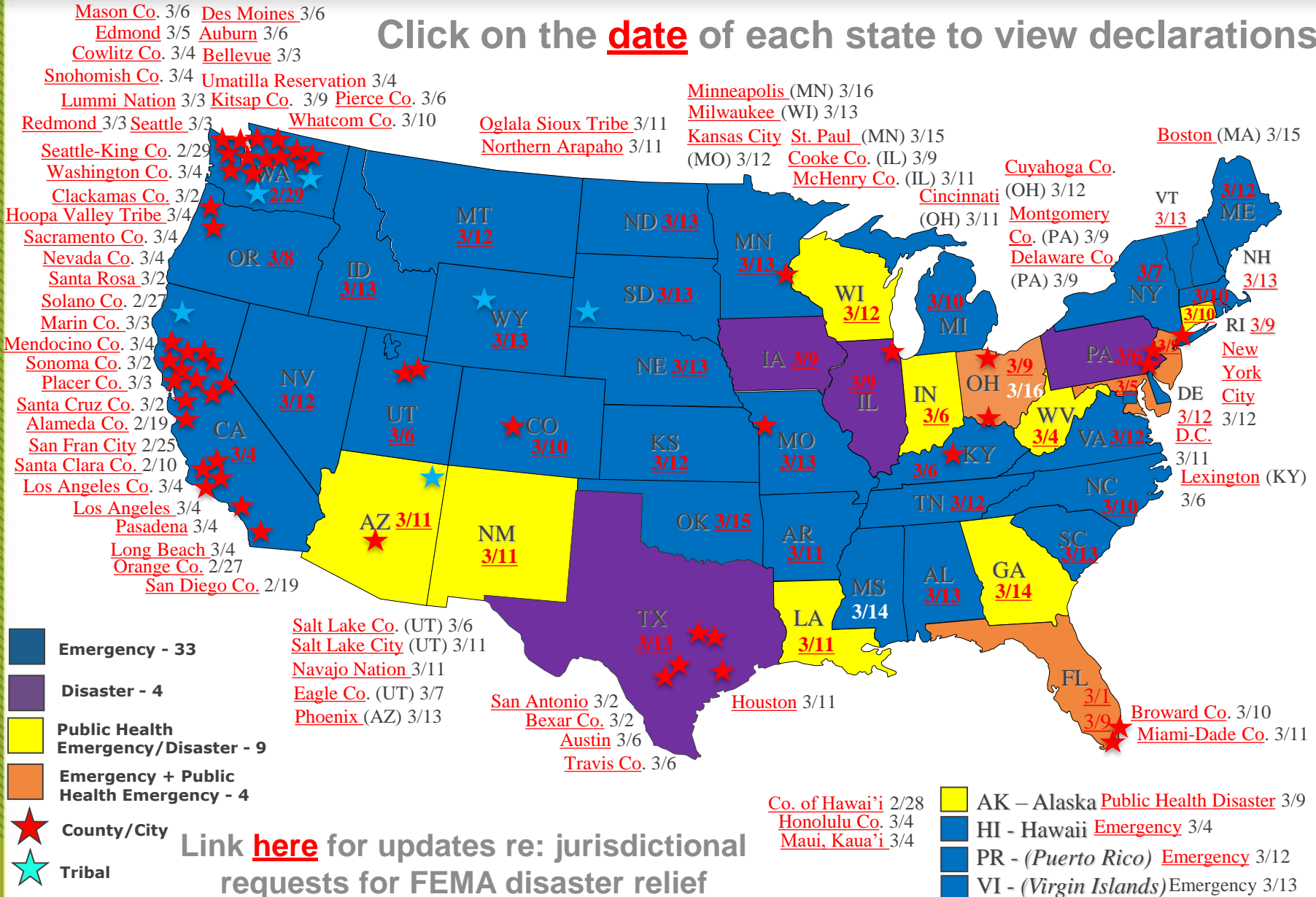
# Joe Biden's COVID Plan

- **Restore trust & credibility in public officials**
  - Reinstatement of daily briefings, ensure decisions are made by public health officials and not politicians, restore the White House National Security Council for Global Health Security and Biodefense
- **Effective national emergency response**
  - Make testing widely available, create more capacity for prevention, response & treatment, accelerate development of treatment & vaccines, provide timely data & information
- **Eliminate cost barriers to prevention & treatment**
  - Ensure everyone irrespective of insurance coverage has access to free testing, preventative services & vaccines.
- **Support workers, small businesses & stabilize the economy**
  - Provide guaranteed paid sick & care-giving leave, expanded unemployment relief & state/local emergency funds.
- **Lead global responses to COVID-19**
  - Create a Global Health Emergency Board, advance global pandemic preparedness



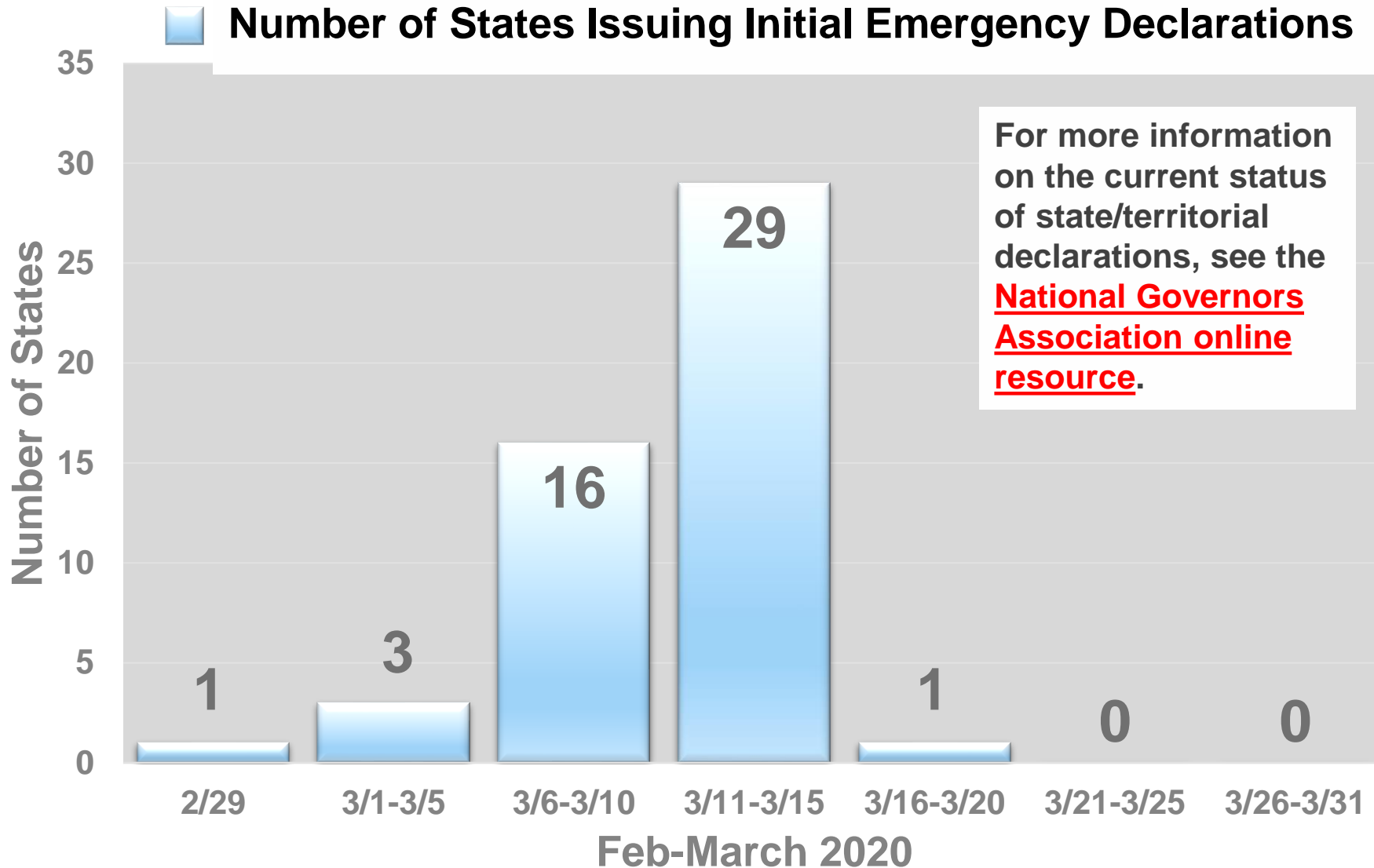
# COVID State & Select Tribal/Local Emergency Declarations

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





# Initial Timing of State-based Emergency Declarations

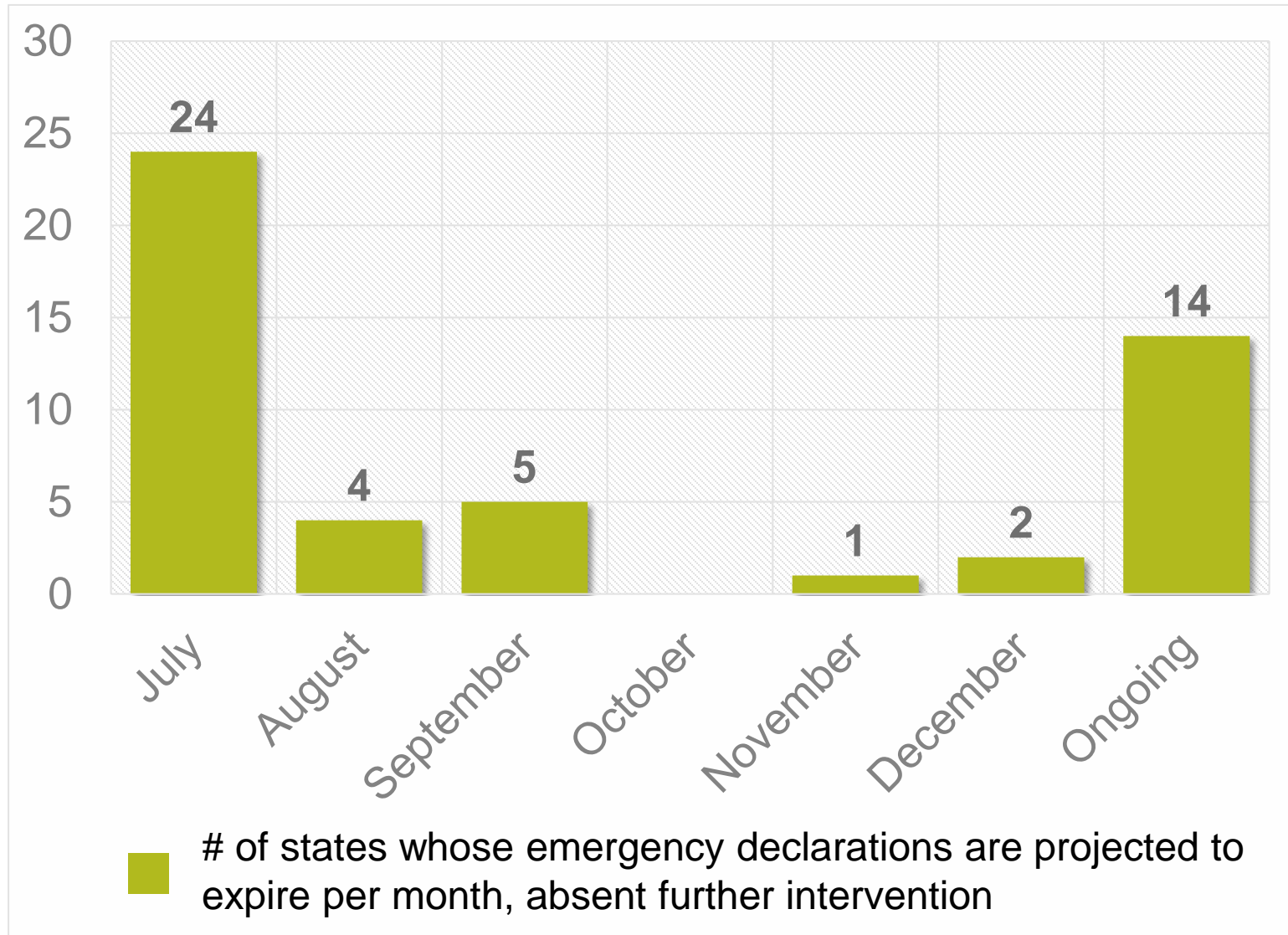


# Select State Emergency Powers Explicitly Invoked by Declarations

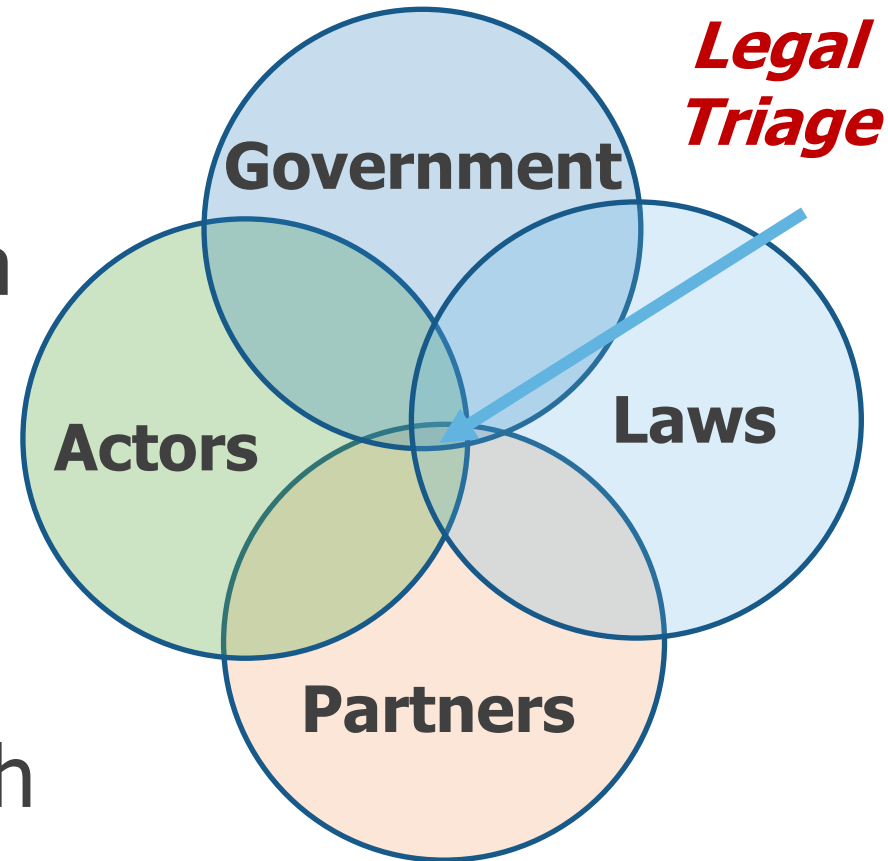
**Note:** this table tracks select, express authorities referenced via state emergency declarations ([link](#) on each state acronym for access). *Additional emergency powers may be authorized under state law through which the declarations are issued.*

Emergency Powers	<a href="#">A</a>	<a href="#">A</a>	<a href="#">A</a>	<a href="#">C</a>	<a href="#">C</a>	<a href="#">C</a>	<a href="#">D</a>	<a href="#">F</a>	<a href="#">H</a>	<a href="#">I</a>	<a href="#">I</a>	<a href="#">I</a>	<a href="#">K</a>	<a href="#">L</a>	<a href="#">M</a>	<a href="#">M</a>	<a href="#">M</a>	<a href="#">M</a>	<a href="#">N</a>	<a href="#">N</a>	<a href="#">N</a>	<a href="#">N</a>	<a href="#">O</a>	<a href="#">O</a>	<a href="#">P</a>	<a href="#">R</a>	<a href="#">T</a>	<a href="#">V</a>	<a href="#">U</a>	<a href="#">W</a>	<a href="#">W</a>	<a href="#">W</a>		
	<a href="#">K</a>	<a href="#">Z</a>	<a href="#">R</a>	<a href="#">A</a>	<a href="#">O</a>	<a href="#">T</a>	<a href="#">E</a>	<a href="#">L</a>	<a href="#">I</a>	<a href="#">L</a>	<a href="#">N</a>	<a href="#">A</a>	<a href="#">Y</a>	<a href="#">A</a>	<a href="#">E</a>	<a href="#">D</a>	<a href="#">A</a>	<a href="#">I</a>	<a href="#">J</a>	<a href="#">M</a>	<a href="#">Y</a>	<a href="#">C</a>	<a href="#">H</a>	<a href="#">R</a>	<a href="#">A</a>	<a href="#">I</a>	<a href="#">N</a>	<a href="#">A</a>	<a href="#">T</a>	<a href="#">A</a>	<a href="#">V</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	■	■	■			■								■					■	■	■	■		■	■	■	■	■	■					■

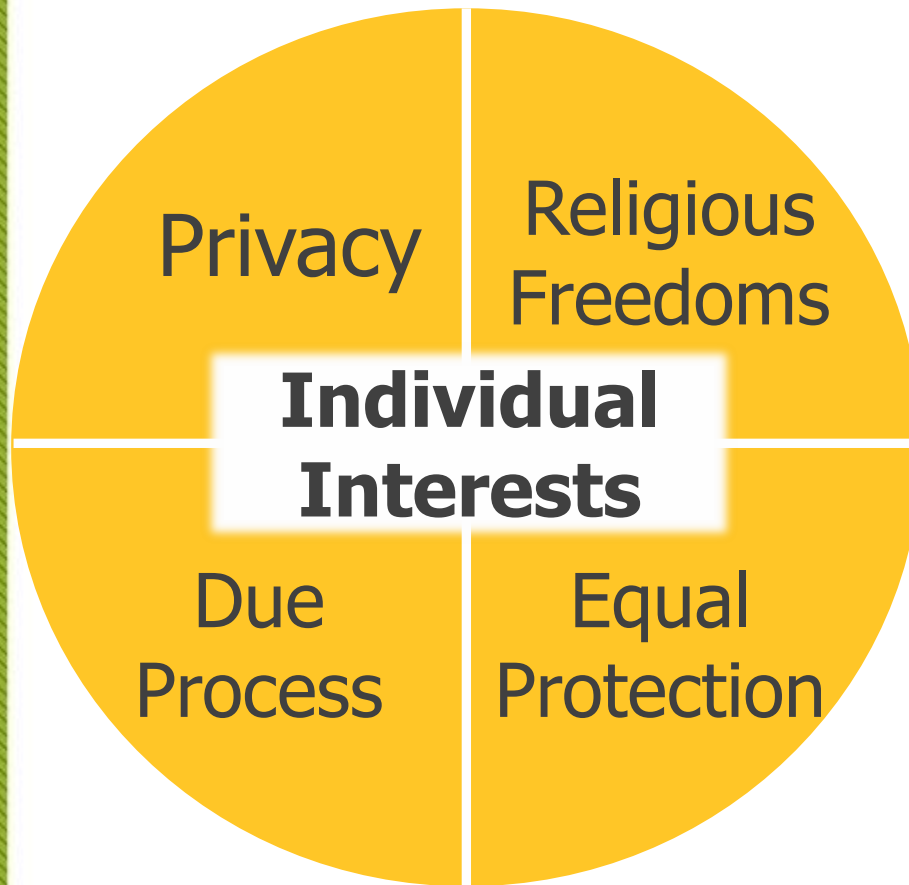
# Projected Emergency Declaration Expirations by Months (2020)



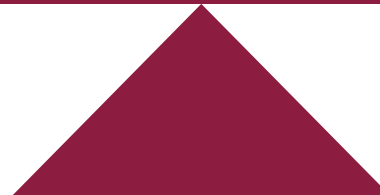
***Legal Triage***: efforts of legal actors & others during declared emergencies to build a favorable legal environment by prioritizing issues & solutions facilitating legitimate public health responses



# Balancing Individual & Communal Interests



**Emergency Preparedness and Response**



# Select Structural & Rights-based Constitutional Issues



**Separation of Powers**



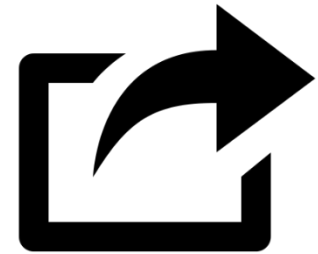
**Federalism**



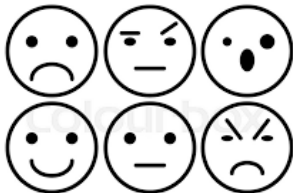
**Supremacy**



**Preemption**



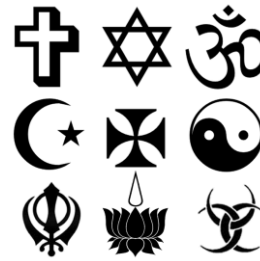
**Judicial Deference**



**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.*

- Localities in at least 35 states require face masks to be worn by employees, customers, or others in public.
- May 20: Poll shows that 64% of respondents said everyone should be required to wear a mask; 33% said no.
- June 17: AZ Governor Ducey allows localities to set specific requirements for face masks. Multiple AZ cities, including Phoenix, Scottsdale, Mesa & Tucson, immediately respond.
- June 18: CA Governor Newsom orders state-wide use of face masks where social distancing cannot be assured.
- June 22: FL state representative joined business owners in a lawsuit against Orange County challenging Mayor Deming's mask requirement as unconstitutional.

# Clashes over Mask Mandates in Georgia



Keisha Lance Bottoms   
@KeishaBottoms



3104 Georgians have died and I and my family are amongst the 106k who have tested positive for COVID-19. Meanwhile, I have been sued by @GovKemp for a mask mandate. A better use of tax payer money would be to expand testing and contact tracing. #ATLStrong

**July 15, 2020:** Georgia Governor Brian Kemp issues executive order suspending any local mandates for face coverings.

**July 16, 2020:** Gov. Kemp files a lawsuit against the Atlanta City Council and Mayor Keisha Lance Bottoms for continuing to require face masks, asserting state authority and seeking injunctive relief. Mayor Bottoms alleges her July 8th executive order requiring face coverings is enforceable and still stands.

Atlanta mayor **defies**  
**governor**, announces  
public mask rule







**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**

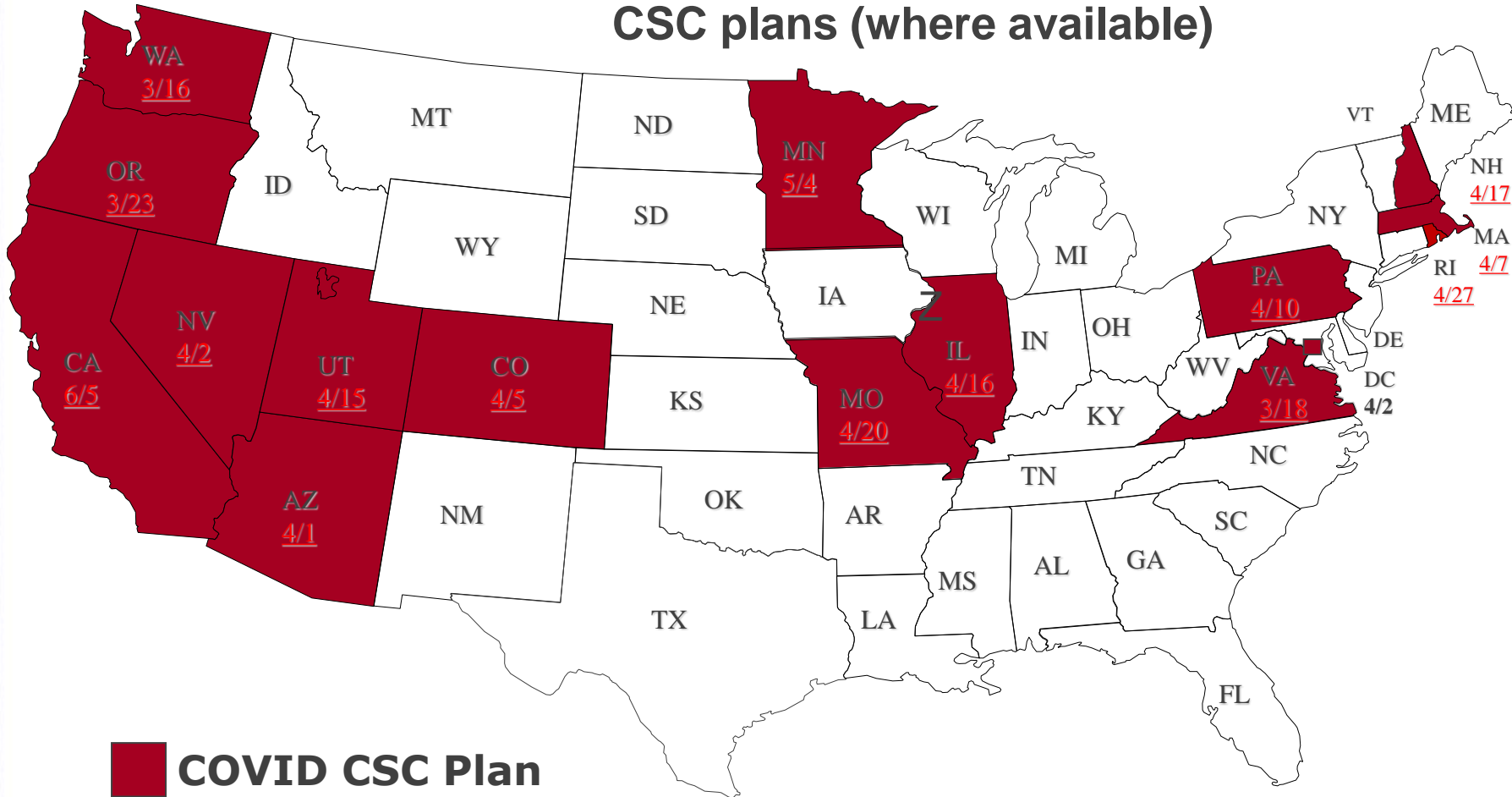
**Substantial change in usual healthcare operations and level of care due to a pervasive or catastrophic disaster.**

## Crisis Standards of Care

A Systems Framework for  
Catastrophic Disaster Response

# Select States' COVID CSC Plans

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



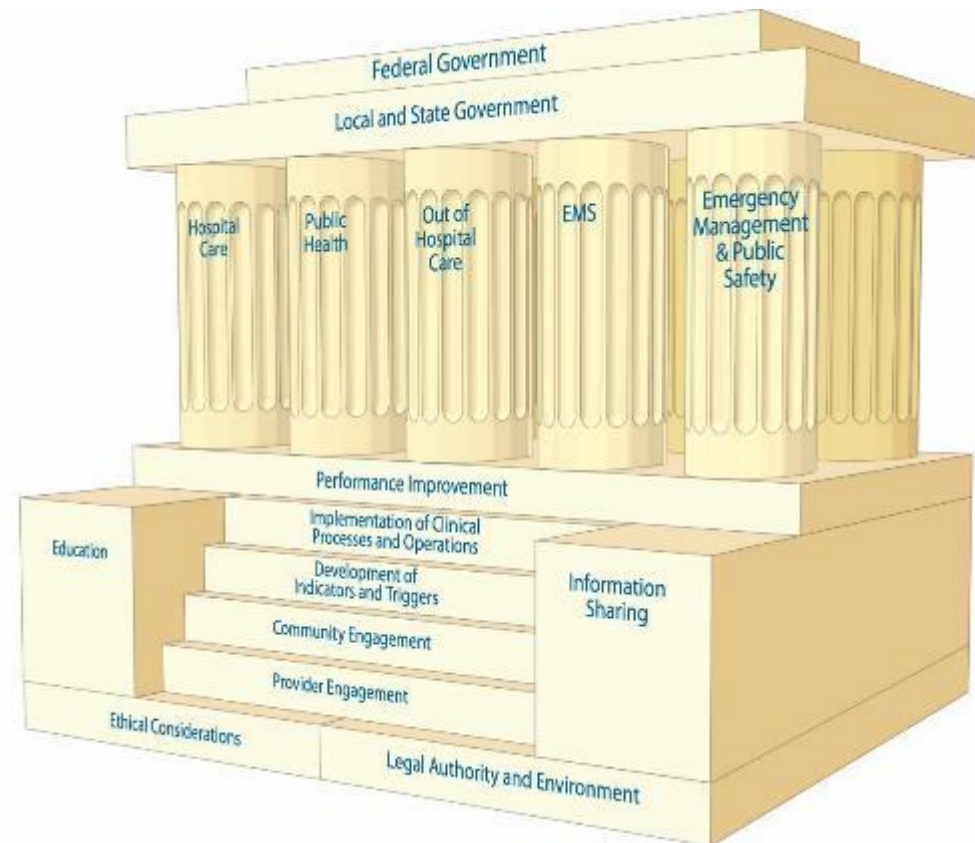
\*The date provided indicates when a state's CSC plan was published, not necessarily activated.

- 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*

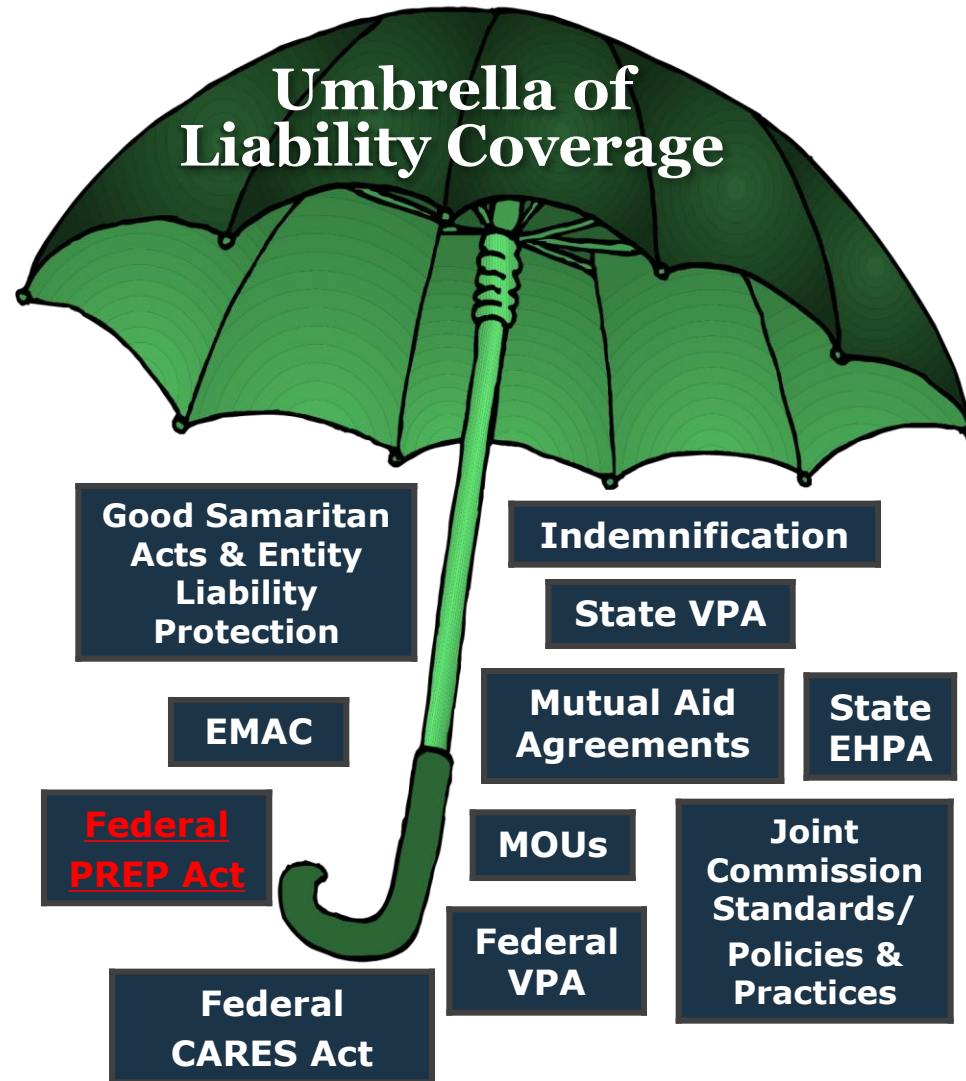
- Allocation
- Patient's Rights
- Reimbursement
- Licensure
- Scope of Practice
- Civil Rights
- Duty to Care
- Uniformity
- **Liability**



# Emergency Liability Protections - Health Practitioners & Entities

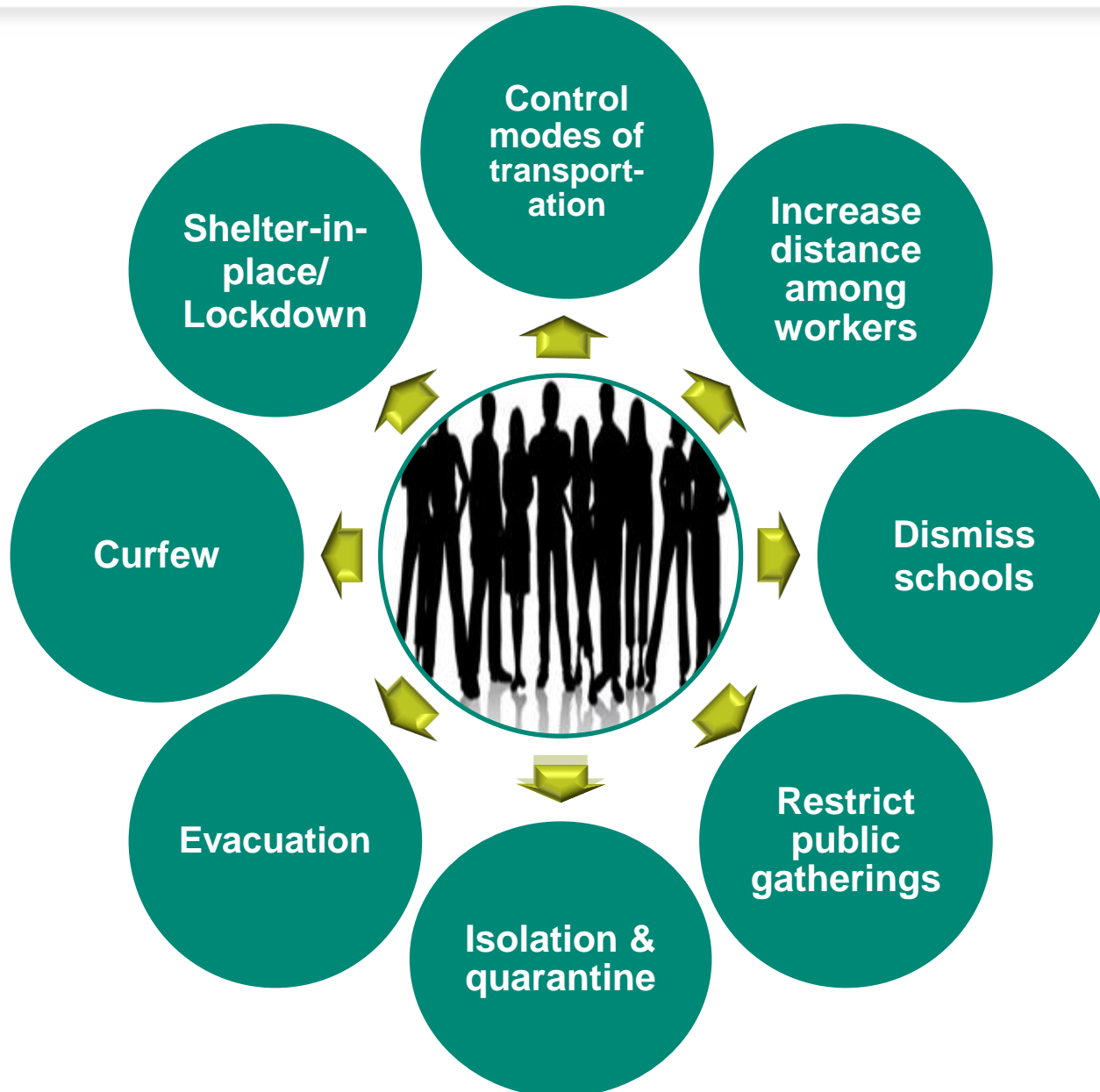


Despite risks, many legal liability protections apply in routine events & declared emergencies, especially concerning health care volunteers, workers, and entities.





# Social Distancing Measures



## Quarantine

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.](#)

# Q & I Best Practices



**Safe, hygienic premises**



**Monitoring & care**



**Basic necessities**



**Means of communication**



**Least restrictive means**



**Termination**

# Closures & Cancellations



Places of Worship



Employers



Schools & Universities



Events



Sports



Festivals

# 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)



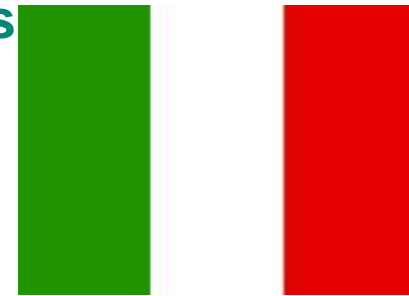
**Mar. 29: Curfew order** extends existing Stay at Home Order for the entire Navajo Nation. All persons, subject to some exceptions, must stay home from 8:00 p.m. - 5:00 a.m., 7 days a week.

**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.

**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).

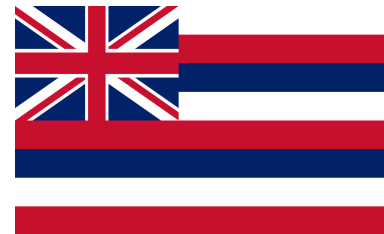
**Apr. 21**: President Trump suspends limited immigration activities for 60 days initially, and extended to Dec. 31.



**June 22**: President Trump temporarily suspends foreign work visas through the end of 2020.

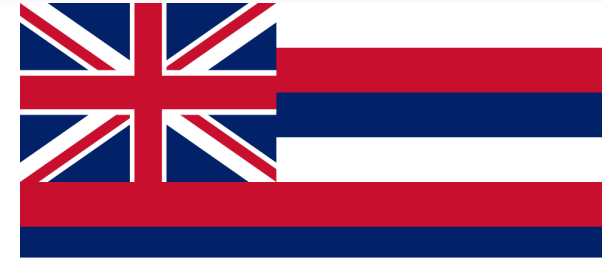
## **Mar. 26:** “Governors Tell Outsiders From ‘Hot Zone’ to Stay Away as Virus Divides States”

- ❑ **Florida Governor Ron DeSantis orders 14 day quarantine against anyone arriving from NY in prior 3 weeks**
- ❑ **Hawaii Governor David Ige recommends travelers postpone trips for 30 days and imposes 14 day quarantine on arrivals**
- ❑ **Alaska Governor Mike Dunleavy orders residents and others arriving in state to self-quarantine for 14 days**
- ❑ **June 24: NY, NJ & CT Governors set 14 day quarantine requirement for persons returning or visiting from COVID “hotspot” states with > cases**





## **June 23: Federal DOJ challenges constitutionality of HI's 14-day quarantine order**



THE UNITED STATES ATTORNEY'S OFFICE  
DISTRICT *of* HAWAII

[U.S. Attorneys](#) » [District of Hawaii](#) » [News](#)

Department of Justice

U.S. Attorney's Office

District of Hawaii

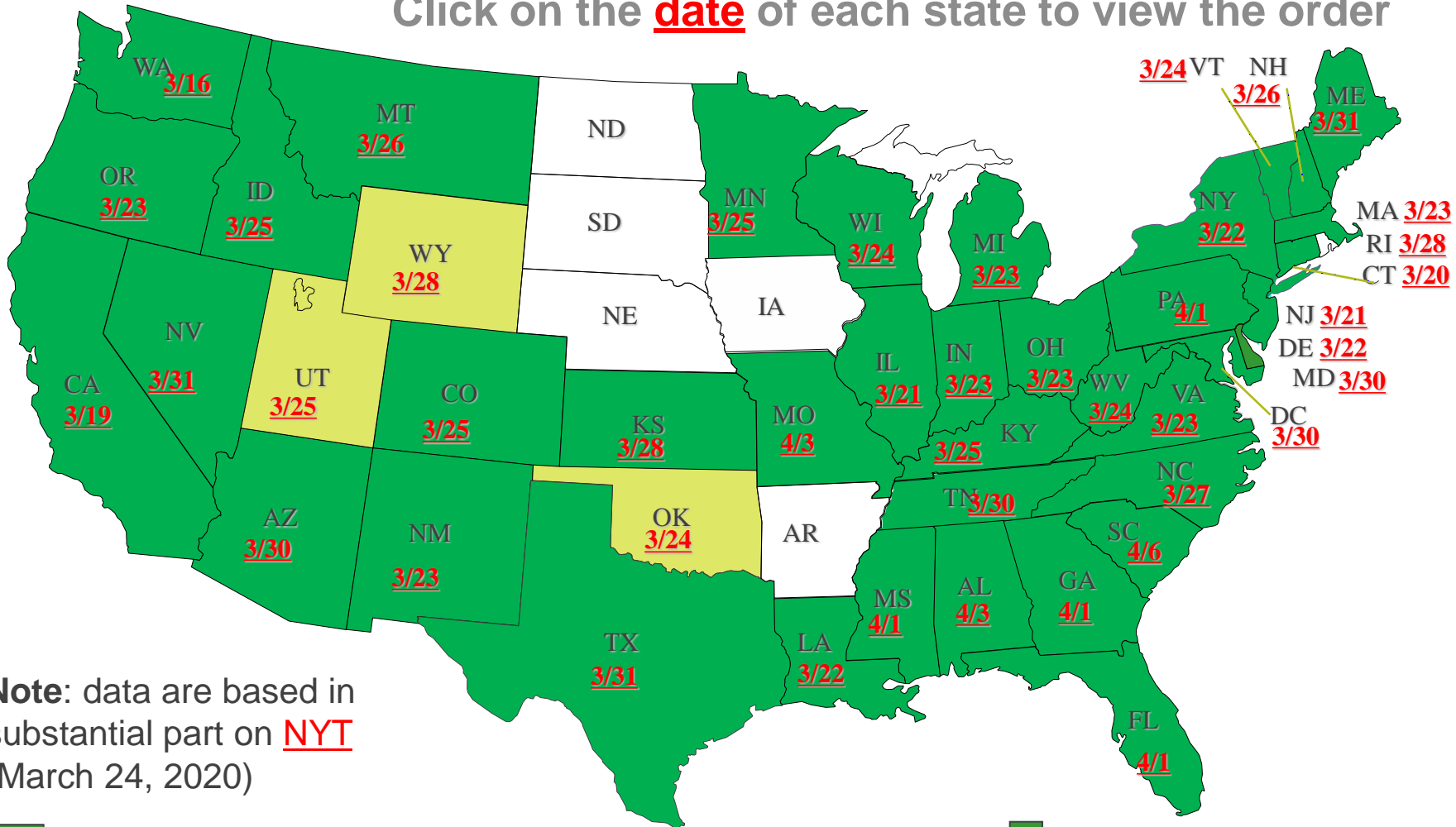
FOR IMMEDIATE RELEASE

Tuesday, June 23, 2020

**Department of Justice files Statement of Interest challenging the constitutionality of Hawaii Governor's COVID-19 Order that effectively discriminates against out-of-state residents in a manner that harms Hawaii's economy**

# 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 – 43 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)

# Justifying Social Distancing



Assess Epi



Assure Mobilization



Acquire PPE



Find Treatments



Develop Vaccines



Save Lives

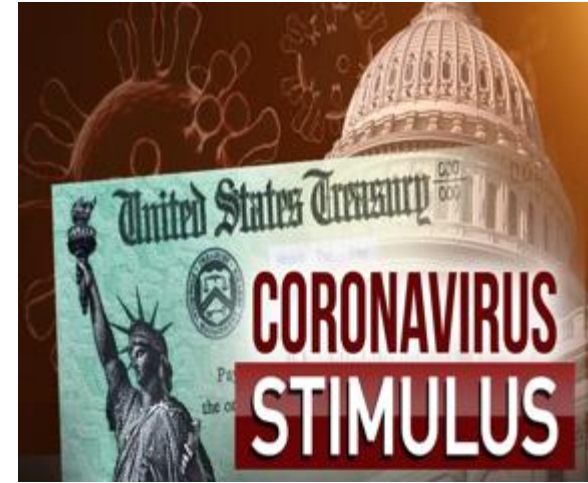
# Assessing the Consequences



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



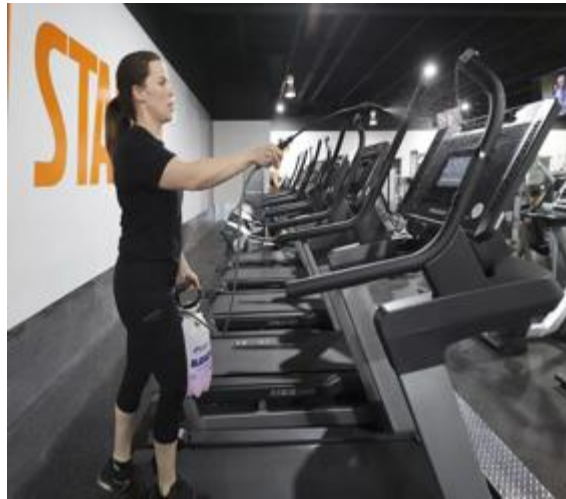
Light Retail



Salons & Barbers



Bars



Gyms



Restaurants

# School Re-openings



For more information on state education re-opening plans, see [National Governor's Association Education COVID-19 Resources](#)

- **Apr. 27**: President Trump suggests states should “seriously consider” reopening public schools despite safety concerns
- Experts point to **multiple legal issues** that could arise from reopening schools, including claims of negligence (related to potential outbreaks), discrimination, and for tuition refunds
- **All 50 states** and some territories have released executive orders or other information detailing reopening dates and guidance for schools.
- Arizona **Executive Order 2020-44**, for example, requires in-person classes to be delayed until August 17. Any school commencing prior to this date must do so via distance learning.



# Select Changes to School Vaccination Policies Due to COVID-19

## Permitting Delays

- [Nevada](#) is granting immunization extensions for the 2020-21 school year because the postponement of non-essential medical services halted necessary enrollment vaccinations. Students may enroll irrespective of immunization status.
- A [Tennessee school principal](#) stated that a grace period on the school's immunization schedule may be given if parents demonstrate they attempted to catch their kids up on shots.

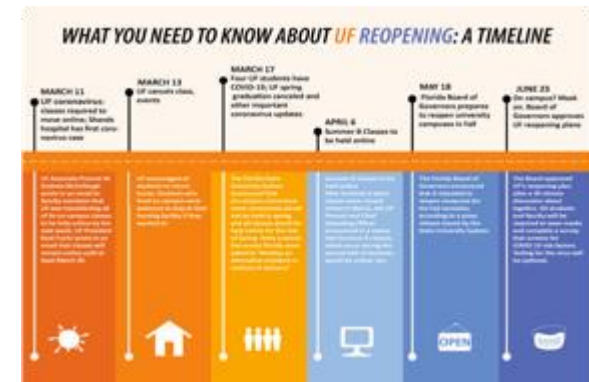
## Maintaining Immunization Requirements

- [Ohio schools](#) are requiring vaccination for the 2020-21 school year (like many school systems nationally).
- [Kentucky schools](#) require that records be up-to-date on required vaccines for the 2020-21 school year with exemptions for religious or medical reasons.

## Drive-thru Immunization Clinics

- [Cleveland County \(NC\) schools](#) are partnering with the county's public health center to provide immunizations via drive-thrus.
- [Sweetwater County \(WY\) public health authorities](#) are offering a drive-thru immunization clinic for incoming 7<sup>th</sup> graders required to get Tdap and Meningococcal vaccines.

# Re-opening Universities



- **Epidemiologists are concerned that factors unique to residential universities (e.g., shared living spaces, large gatherings) heighten risks for significant outbreaks**
- **CDC & American Association of University Professors released guidance on reopening campuses emphasizing safety for faculty, staff & students**
- **In May, 14 university presidents met with VP Pence and Sec'y of Educ. DeVos to seek liability protections as campuses reopen, citing concerns of lawsuits over outbreaks and tuition fees.**

# Legal Controversies



Federal v. State



Employee  
v.  
Employer



State v. Local



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.

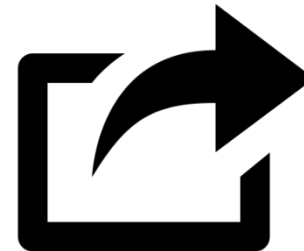


**May 13:** Texas Attorney General issues letter to local officials in Dallas, Austin, and other municipalities to cease enforcement of multiple social distancing and preventive measures related to religious institutions, wearing of masks, and contact tracing efforts under threat of litigation.

# 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

- From May 1-10, 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.
- With new guidance issued May 27, the St. Regis Mohawk Tribe (NY) remains closed with a curfew and quarantine restrictions as the region around it reopens.

## Restricting Travel

- On May 8, SD Gov. Kristi Noem ordered checkpoints on state highways to be removed and requested Pres. Trump for federal assistance when tribes refused. The Bureau of Indian Affairs plans to withdraw law enforcement funding if checkpoints are not removed.

## Reopening Casinos

- CT Gov. Ned Lamont recognized the Mashantucket Pequot and Mohegan Tribes' sovereignty over the decision to reopen on June 1 but warned of impacts of reopening casinos on state and tribal partnerships, as well as public health.

**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. As of June 14, Poopy’s has ignored 2 state cease-and-desist letters.

**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 operations.

**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. Recent judgement in Oakland against McDonald's<sup>®</sup> requires new employee safety protocols to sustain reopening.
- **Negligence & intentional torts** - e.g., employer fails to implement CDC/OSHA safety measures

# Select Acts of Intimidation of Public Health Officials

- Since April, over 2 dozen state & local health leaders have “resigned, retired, or been fired” in multiple states.
- In April & May, the Tri-County (CO) Health Department 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 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.
- As of June 22, L.A. County’s public health director received threats of being shot.



# Thank You Contributors!



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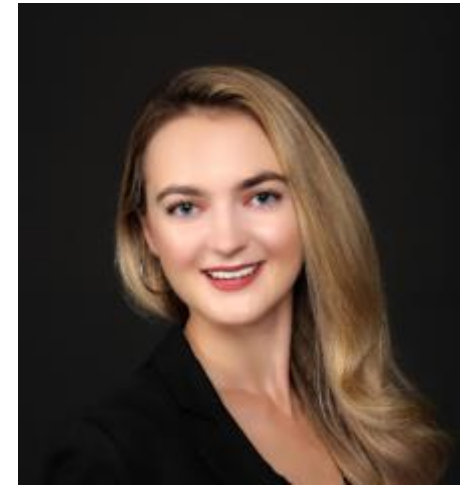
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Access these and other Network materials [here](#)

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

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