

COVID-19

Emergency Legal Preparedness Primer

As of September 10, 2020

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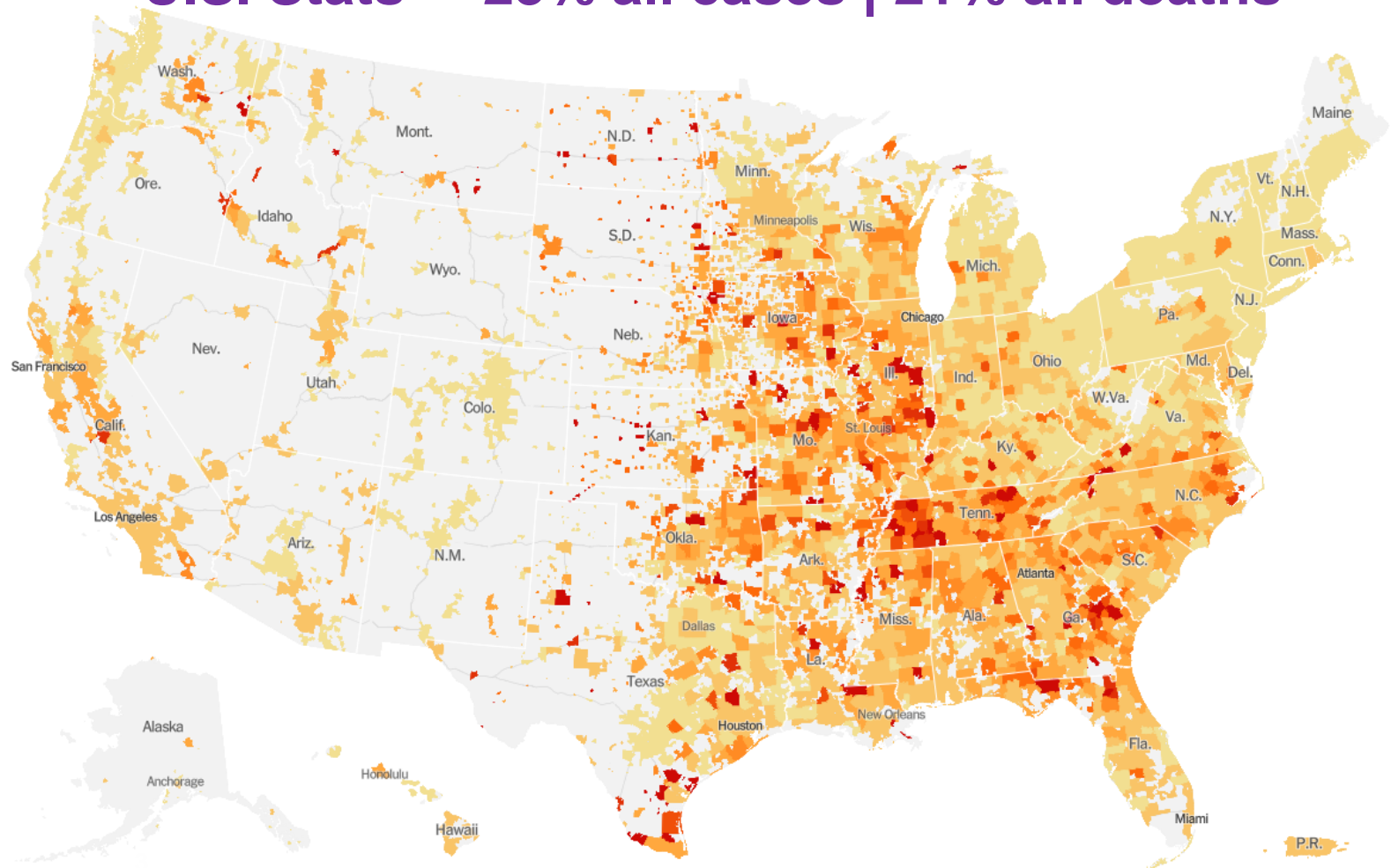
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- ❑ **COVID-19 Epi Trends**
- ❑ **Emergency Legal Preparedness/
Response/Recovery**
 - Federal | State | Tribal | Local
- ❑ **Public Health Emergency Powers**
- ❑ **Constitutional & Other Challenges**
- ❑ **Additional Resources/Ask the
Network**

Global Cases 27.5 million | Deaths: 897,789
U.S. Cases 6.35 million | Deaths: 189,500
U.S. Stats 23% all cases | 21% all deaths



Source: <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>



Asymptomatic persons could account for 40-45% of infections spread



Multiple potential vaccines are in Phase III clinical trials for safety & efficacy






Antibodies may be insufficient to ward off additional infections

Recovery from COVID-19 can take a long time, even in young adults with no chronic conditions

1 in 5 previously healthy young adults* weren't back to usual health 14-21 days after testing positive

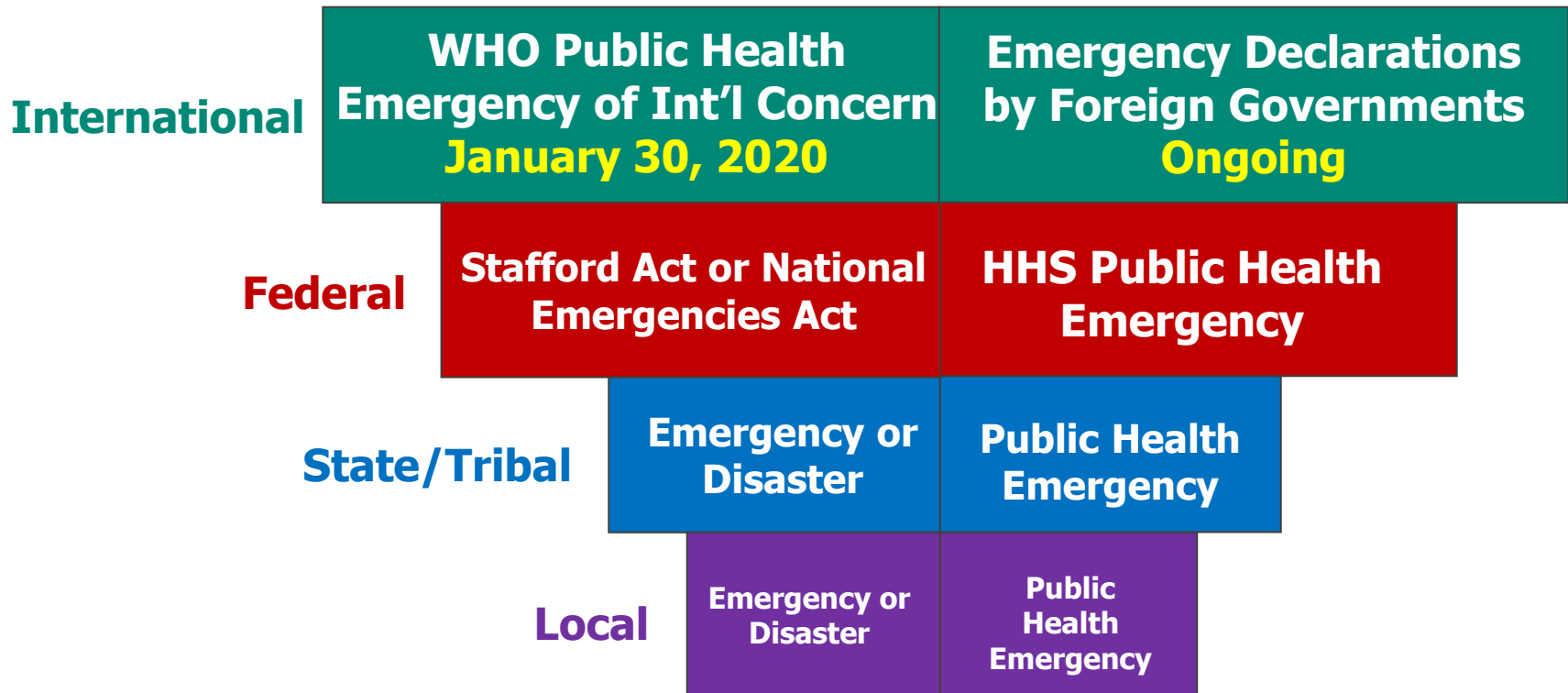
To stay well and protect others...

-  Stay 6 feet away from others not living in your household
-  Wash hands often
-  Wear face coverings consistently and correctly in public

*ages 18-34
Random sample of adult outpatients with COVID-19 from 14 U.S. academic health care systems
CDC.GOV bit.ly/MMWR72420 MMWR

COVID-19 can cause milder outpatient illnesses among young adults & others

Public health authorities & 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

July 25: Sec. Alex Azar renews PHE declaration for 90 additional days.



FEMA

Mar. 13: President Trump declares dual emergencies via the National Emergencies Act & § 501(b) of the Stafford Act authorizing:

- Access to FEMA's Disaster Relief Fund & 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 Bills

7/27

Senate proposes a \$1 trillion relief bill providing for a new round of stimulus checks, expanded unemployment benefits & additional school funding.



6/24

Emergency House Protections & Relief Act introduced to prevent evictions, foreclosures & unsafe housing conditions resulting from COVID-19.

6/24

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

6/22

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

5/15

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

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:

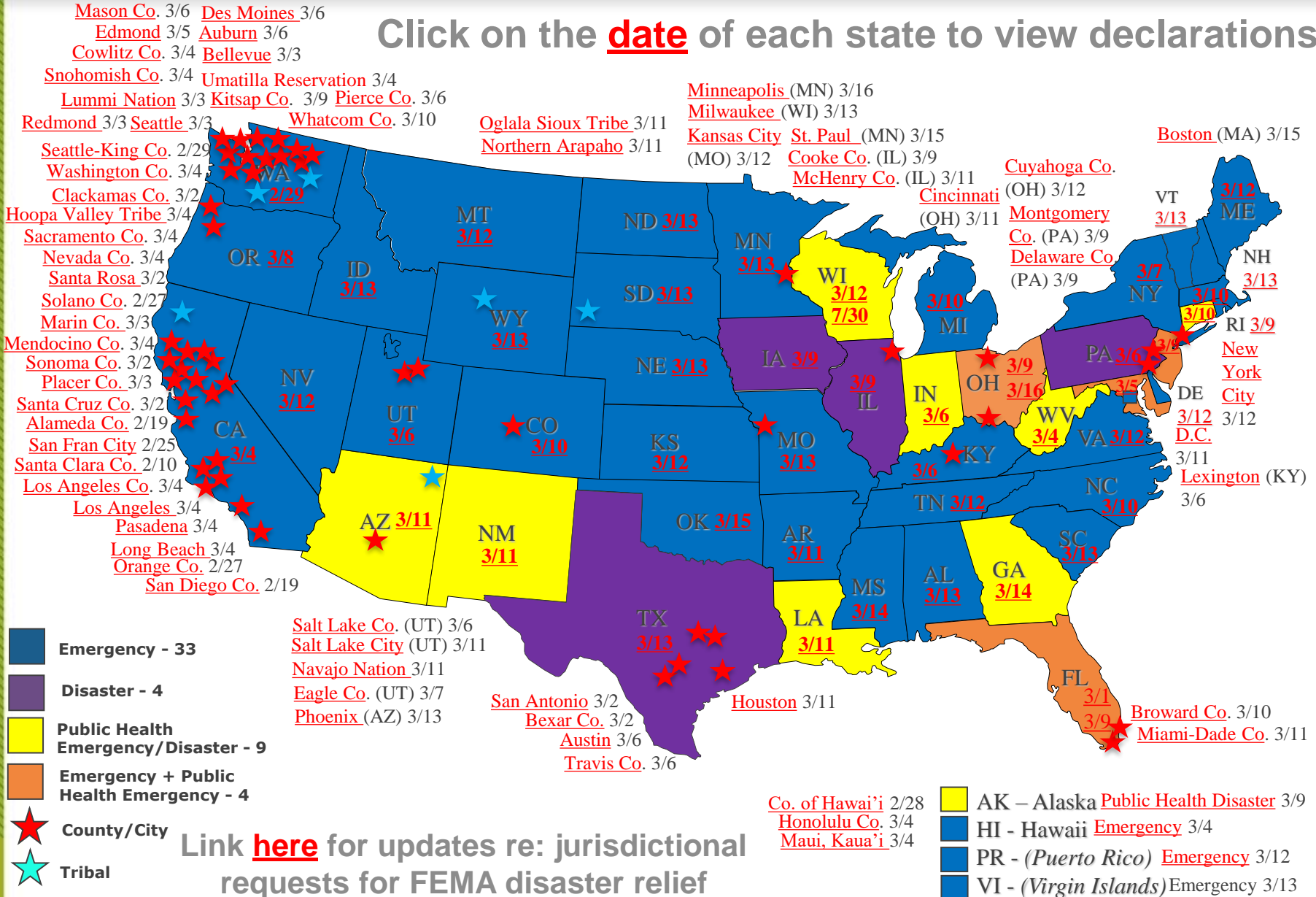
- **Telemedicine provisions**, facilitating Medicare services
- **Patient rights** surrounding access to medical records, visitation & seclusion
- **Physical environments** to allow care in non-hospital settings during surge

- **Restore trust & credibility in public officials**
 - Reinstatement of daily briefings, ensure decisions are made by public health officials & not politicians, restore the White House National Security Council for Global Health Security & 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

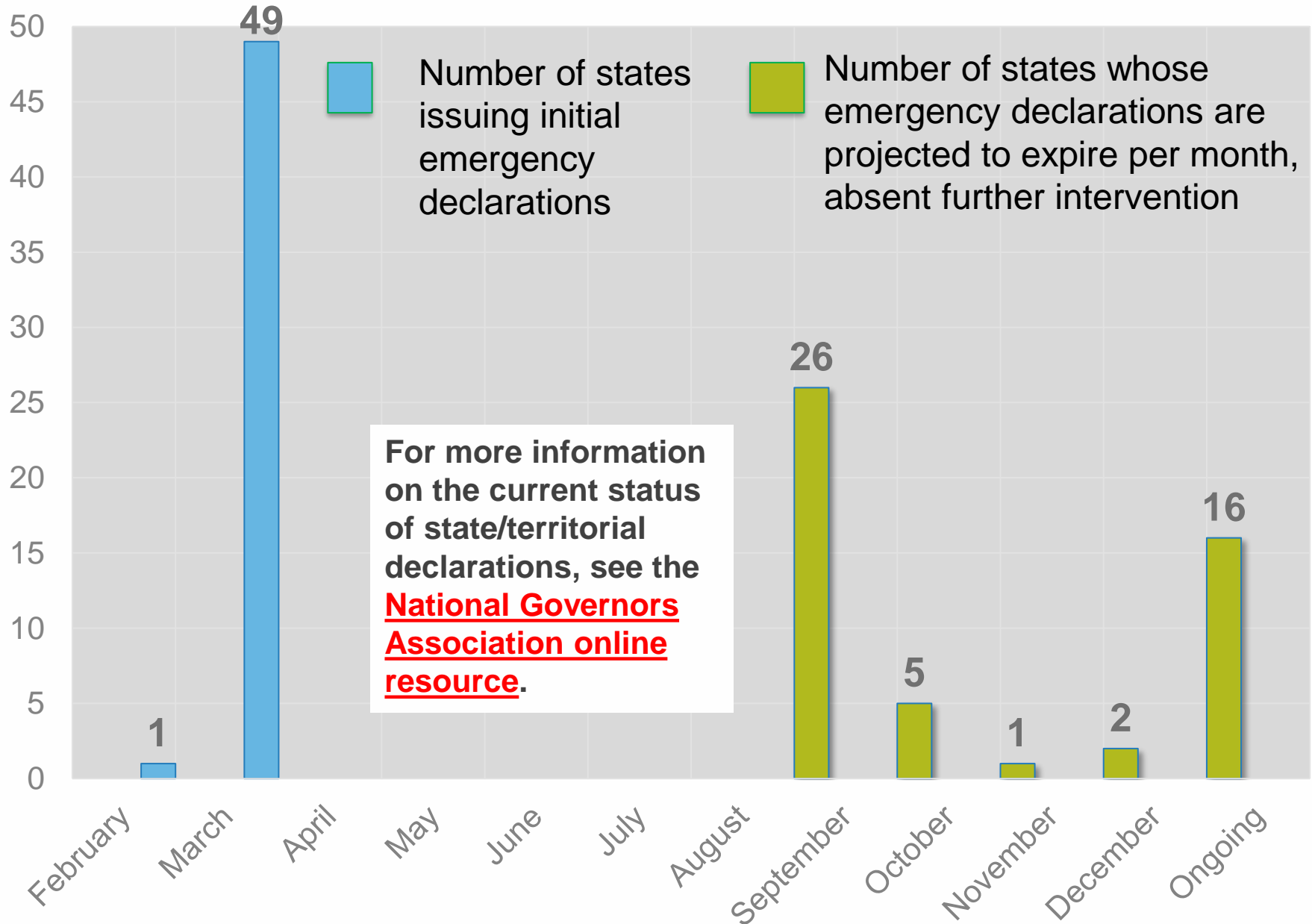


Select State Emergency Powers Explicitly Invoked by Declarations

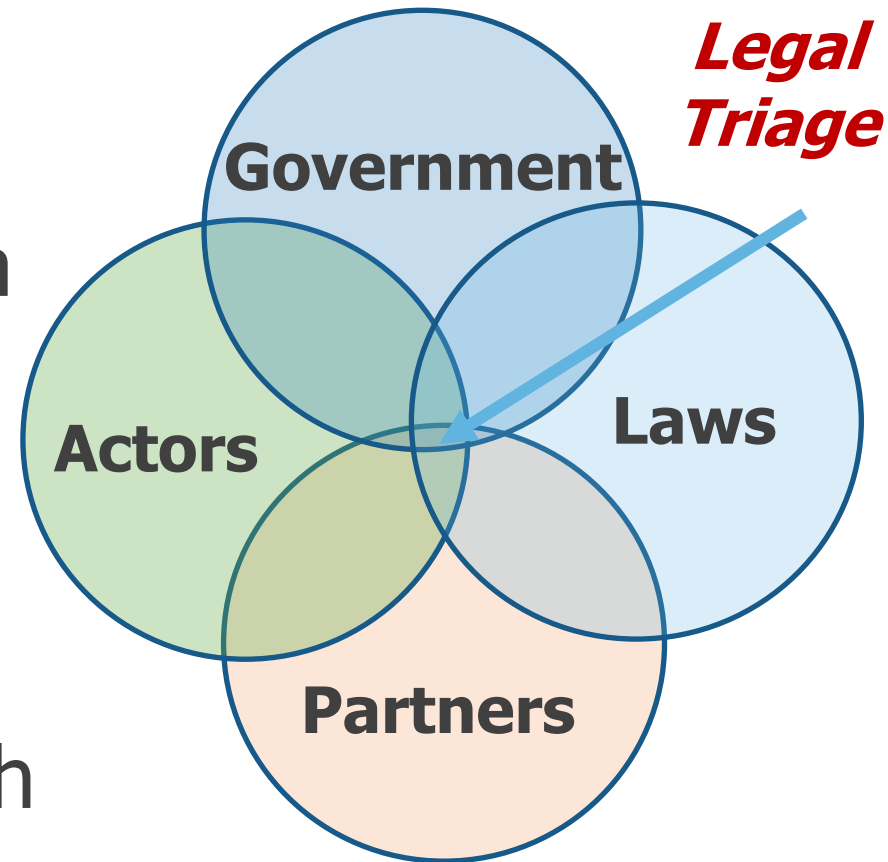
Note: this table tracks select, express authorities referenced via state emergency declarations ([link](#) on each state acronym for access). *Additional emergency powers may be authorized under state law through which the declarations are issued.*

| Emergency Powers | A | A | A | C | C | C | D | F | H | I | I | I | K | L | M | M | M | M | N | N | N | N | O | O | P | R | T | V | U | W | W | W | | |
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| | K | Z | R | A | O | T | E | L | I | L | N | A | Y | A | E | D | A | I | J | M | Y | C | H | R | A | I | N | A | T | A | V | I | | |
| 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 | ■ | ■ | ■ | | ■ | | | | | | | | | ■ | | | | | ■ | ■ | ■ | ■ | | ■ | ■ | ■ | ■ | ■ | ■ | | | | | ■ |

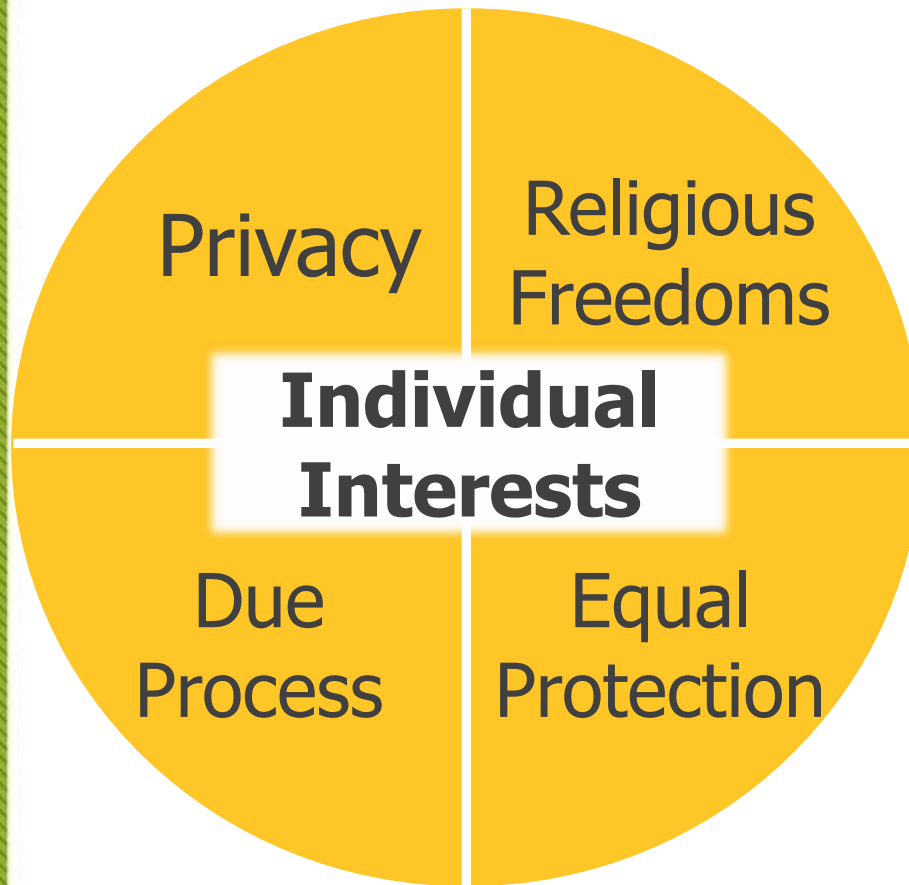
Emergency Declaration Initial Timing & Projected Expiration by Month (2020)



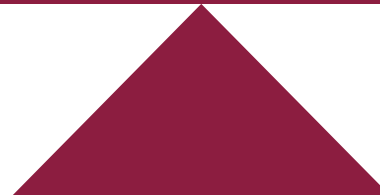
Legal Triage: efforts of legal actors & others during declared emergencies to build a favorable legal environment by prioritizing issues & solutions facilitating legitimate public health responses



Balancing Individual & Communal Interests



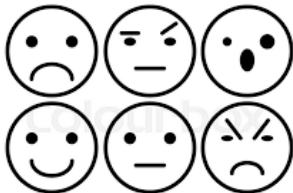
Emergency Preparedness & Response



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



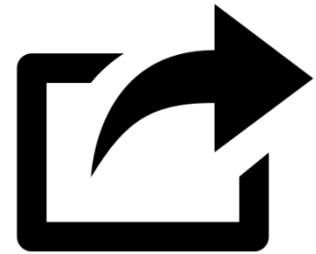
Preemption



Due Process



Cruel & Unusual Punishment



Judicial Deference



Right to Privacy



Takings



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** & **inaccuracies** raise alarms.

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





Aug 23: New York Times reports that the national shift in COVID-19 hospital surveillance practices from CDC's existing system to the Pittsburgh-based private company, Teletracking Technologies, in April 2020 included a mandate from HHS Sec'y Alex Azar:

Hospitals must participate with the new surveillance system as a “perquisite to payment” of hospital preparedness funds via the CARES Act.

Click on image to access



*The National
Academies of*

SCIENCES
ENGINEERING
MEDICINE

Committee on Equitable Allocation of Vaccine for the Novel Coronavirus

First Committee Meeting Public Agenda

Friday, July 24, 2020
4:30 p.m. – 5:30 p.m. ET
Zoom Webinar

Meeting Objectives

- Hold an open session to hear from sponsoring agencies on their perspectives of the statement of task

Friday, July 24, 2020

OPEN SESSION

National Academies Initial Vaccine Allocation Guidance

Phase 1

- High-risk workers in health care facilities
- First responders
- People of all ages with comorbid & underlying conditions at *significantly* higher risk
- Older adults living in congregate settings

Phase 2

- Critical risk workers
- Teachers & school staff
- People of all ages with comorbid & underlying conditions at *moderately* higher risk
- All other older adults
- People in homeless shelters & prisons

Phase 3

- Children
- Young adults
- Workers in essential industries

Phase 4

- Everyone else living in the US

The National Academies of
SCIENCES • ENGINEERING • MEDICINE



Face Mask Requirements



- Localities in 43 states & territories require face masks to be worn by employees, customers, or others in public.
- July 7: Freedom Foundation files lawsuit challenging the constitutionality of WA state mask mandate. On July 27, it sues Oregon re: its mask mandate.
- July 10: Judge rejects FL lawsuit challenging the constitutionality of Orange County's mask requirement.
- Aug. 13: GA Governor Kemp announces his office is dropping its case against the City of Atlanta re: its mask requirement.
- Aug. 13: Democratic Presidential candidate Joe Biden calls on states to craft face mask requirements.
- Aug. 20: NY Gov. Cuomo admits mask requirement should have been issued months earlier.

- Contact tracing - efforts typically led by public health agents to ascertain specific contacts of persons infected with COVID-19 & notify them of potential exposure & 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 bill signed into law in Kansas on June 8 restricts contact tracing to voluntary participants, provides strong confidentiality protections & 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 & guidance, contact Denise Chrysler, JD, or Sallie Milam, JD, CIPP/US/G, at the [Network–MidStates Region](#)

Sept. 2: CDC Director Dr. Robert Redfield signs declaration **temporarily halting evictions.**

- Order bans evictions of residential renters earning less than \$99k annually (\$198k jointly) through December 2020.
- Qualifying renters must present written declaration testifying to their circumstances to landlords
- Landlords who defy the moratorium may face criminal penalties
- CDC cites its authority under the [Public Health Service Act § 361\(42 U.S.C. 264\)](#) & an emergency action taken under [42 C.F.R. 70.2](#), “measures in the event of inadequate local control.”
- Questions arise related to CDC’s legal capacity to implement eviction limitations as a communicable disease control matter



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

Crisis Standards of Care

A Systems Framework for
Catastrophic Disaster Response

Select States' CSC Plans

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

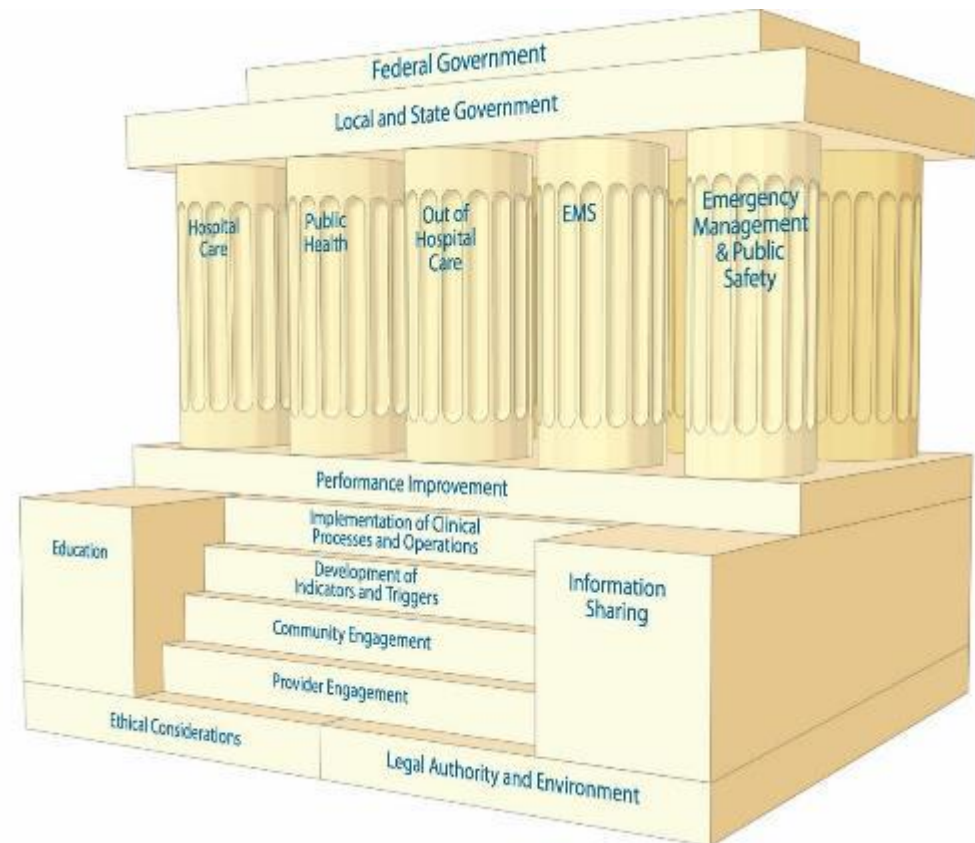


*The date provided indicates when a state's CSC plan was published, not necessarily activated.

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

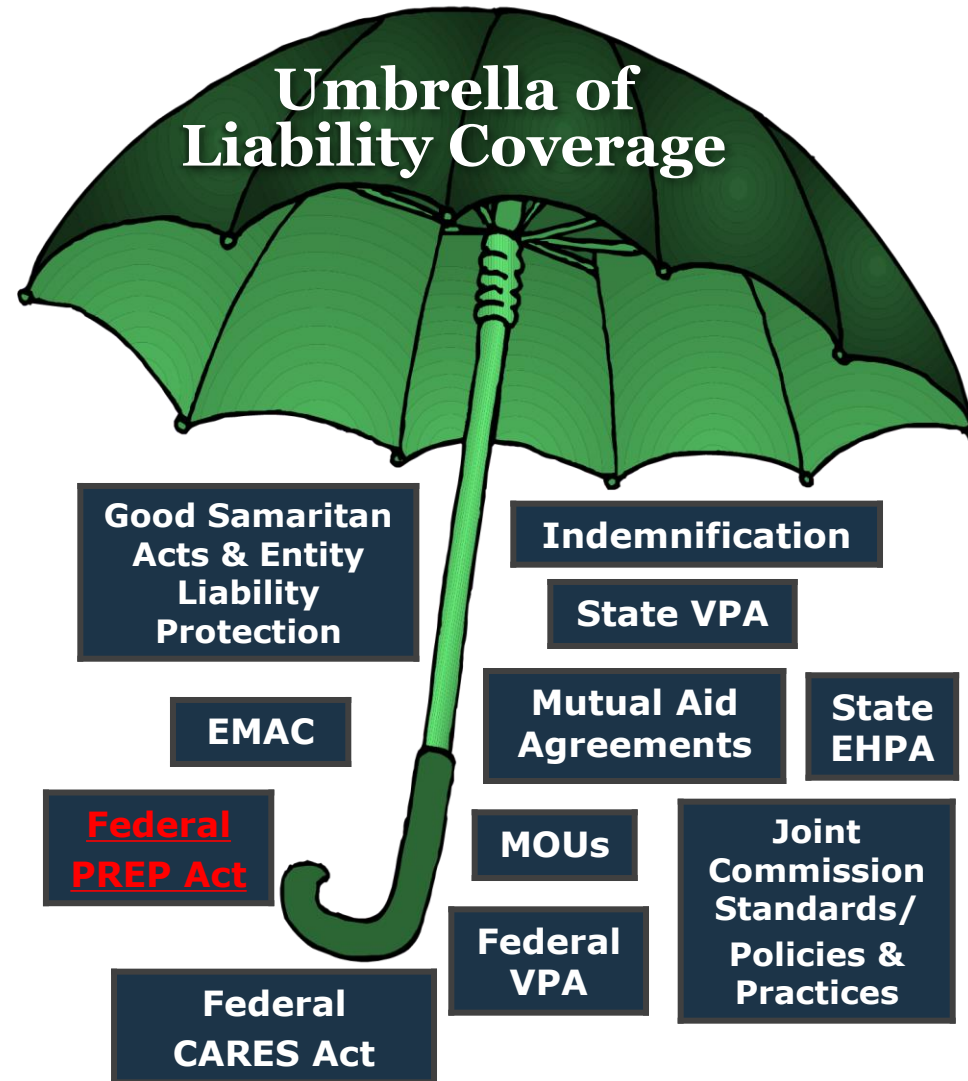
- Allocation
- Patient's Rights
- Reimbursement
- Licensure
- Scope of Practice
- Civil Rights
- Duty to Care
- Uniformity
- **Liability**



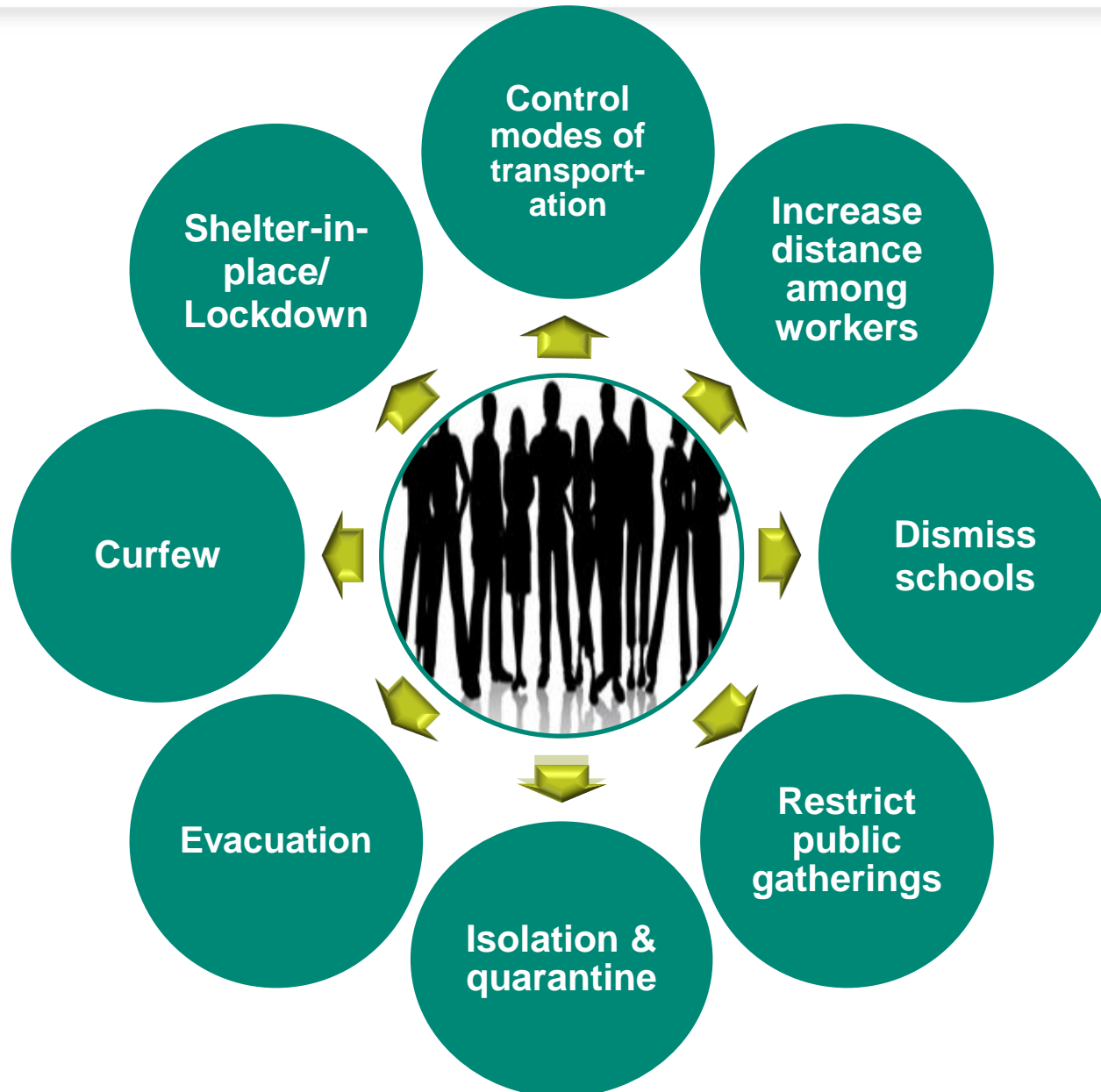
Emergency Liability Protections - Health Practitioners & Entities



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



Social Distancing Measures



Justifying Social Distancing



Assess Epi



Assure Mobilization



Acquire PPE



Find Treatments



Develop Vaccines



Save Lives

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

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



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 (ending on May 10).

Aug. 19: Puerto Rico Governor Wanda Vazquez imposes “Sunday” lockdown (in addition to weekly 10 pm – 5 am curfew across the territory).

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



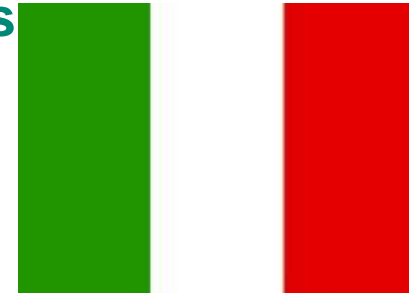
- On what authority?
- By who specifically?
- At what governmental level?
- In what specific setting?
- For how long?

Government limits on assembly & 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)

Jan. 31: Trump Administration bans foreign national travel for those who have been in China w/in last 14 days & 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 & extended to Dec. 31.



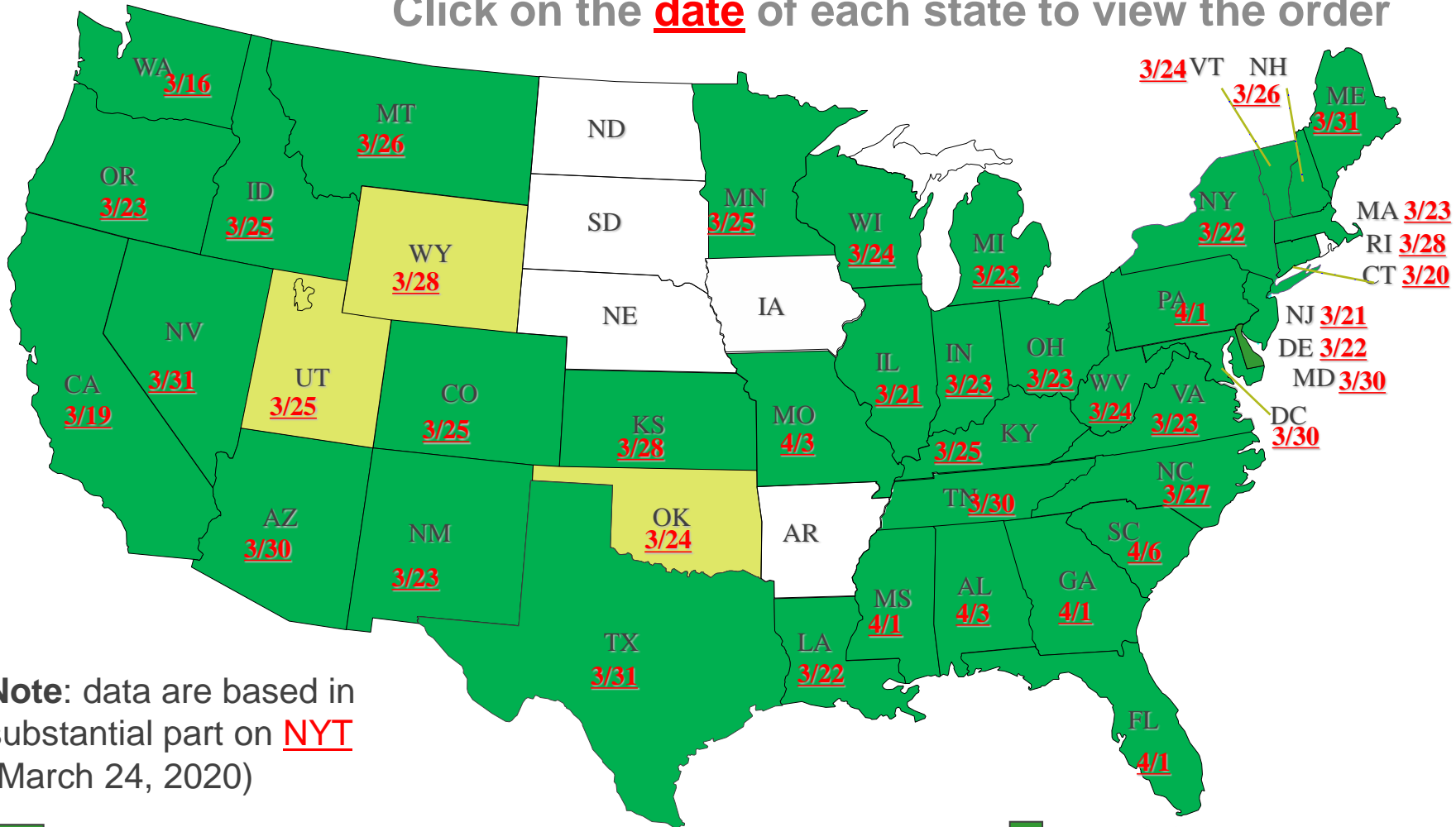
June 22: President Trump temporarily suspends foreign work visas through the end of 2020.

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 & imposes 14 day quarantine on arrivals
- ❑ Alaska Governor Mike Dunleavy orders residents & 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
- ❑ **July 3**: U.S. federal district judge rules that Hawaii’s quarantine is reasonable in a public health crisis, allowing the order to be implemented.

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)

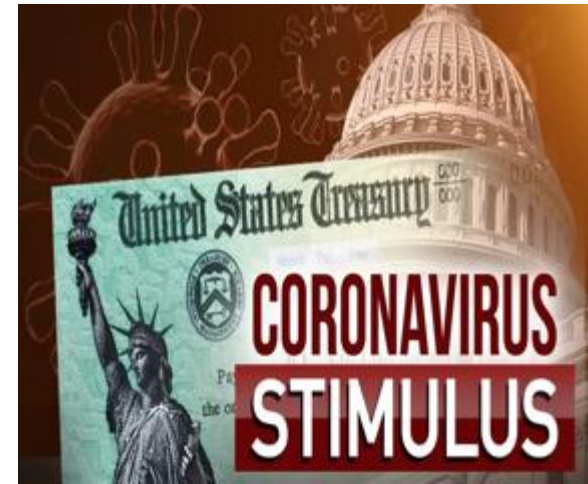
Assessing the Consequences



Unemployment



Business Failures



Government Bailouts



Active Protests



Mental Health



Lost Lives

Re-opening Phases

Phase 1

- Vulnerable individuals shelter-in-place
- Practice social distancing & avoid socializing in groups >10
- Employers should encourage telework & most businesses remain closed

Phase 2

- Resume non-essential travel
- Schools, gyms & 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



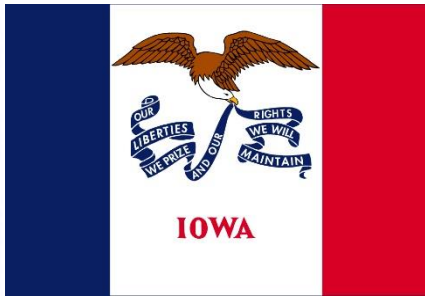
Restaurants

School Re-openings

Multiple legal issues extending from school re-opening include: lawful authority to open (or not), liability claims (related to potential outbreaks), liability protections, discrimination, demands for tuition refunds, rights to education & teacher union disputes.



Aug. 13: In Florida, the state's largest teachers' union & others filed a lawsuit to block Gov. Ron DeSantis' emergency order that requires most school districts to open schools 5 days a week by August's end or face a reduction of state funding.



Aug. 19: Iowa's State Education Association & Iowa City Community School District sued Gov. Kim Reynolds & the state education department, arguing that state officials exceeded their authority by requiring in-person learning at least 50% of the time during any 2 week period.



Aug. 20: In Oregon, a federal district judge denied an emergency order sought by 3 Christian schools to reopen despite Gov. Kate Brown's orders keeping K-12 schools closed.

University Re-openings



August 17: One week after re-opening, the University of North Carolina-Chapel Hill pivoted to online classes only following substantial COVID-19 outbreaks on campus.

August 19: Six days after reopening in-person classes, the University of Alabama reported 566 positive COVID-19 cases among students & faculty.

September 4: Florida State University reported that in a 7 day period ending Sept. 4, 21% of 3,429 COVID-19 tests administered came back positive.

September 8: After the Labor day weekend's spike in COVID-19 cases, Winona State University in Minnesota required the campus to quarantine for 2 weeks.

Thank You Contributors!



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ASU JD Candidate



Erica White,
ASU JD Candidate



COVID-19 Response and Recovery

September
16-17

Register online for this no-cost program

– note, CLE credits available at minimal cost

- **Ask the Network** re: questions/comments relating to this information or other legal preparedness & response efforts

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