A New National Strategy for COVID-19 Response: Legal Opportunities & Challenges

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How to Use WebEx Q & A

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Principal Objectives

- COVID-19 Epidemiologic Trends
- National COVID-19 Strategic Response Plan
- Legal Opportunities & Challenges
- Questions & Comments
COVID-19 Confirmed Cases & Deaths

Global Cases 103 million | Deaths: 2.23 million

U.S. Cases 26.19 million | Deaths: 441,331

U.S. Stats 25% all cases | 20% all deaths

COVID-19 Deaths

U.S. weekly deaths above & below normal since 2015

Profile of U.S. COVID-19 Deaths

- 81% of deaths in persons ages 65+
- 66,000+ deaths of persons ages 64 & under
- 54% of deaths among males

- 2.8x* number of deaths among Blacks
- 2.8x* number of deaths among Hispanics
- 2.6x* number of deaths among Native Americans

* Compared to White/Non-Hispanics persons
Evidence of long-term associated disabilities

Multiple vaccines are authorized for use; others are forthcoming

Substantial mental health impacts of COVID infection and responses

Variants/mutations challenge existing infection rates & vaccines
“There are moments in history when more is asked of us as Americans. We are in that moment now and history will measure whether we were up to a task. **Beating this pandemic will be one of the most difficult operational challenges we have ever faced as a nation.**” Jan. 21, 2021
Day 1: January 20, 2021:
- Appoint national COVID-19 Response Coordinator
- Create Safer Federal Workforce Task Force
- Issue mask “challenge” & federal mandate
- Allow delays in student loan payment
- Extend restrictions on home evictions/foreclosures
- Seek $1.9 trillion COVID-19 relief legislation
- Re-engage with the World Health Organization & global priorities

Days 2-10:
- Introduce National Strategic Plan
- Set public health standards based in science & best practices
- Restructure federal response efforts globally & domestically
- Deliver economic relief to families bearing the brunt of the crisis

Days 11-100:
- Coordinate with state, territorial tribal & local governments to sync social distancing & mask requirements nationally
- 100 million+ vaccine shots to Americans
- Open 100 FEMA-supported vaccination centers
Objectives & Duties:
• Reduce disparities in COVID-19 response & treatment
• Coordinate efforts to produce & distribute PPE, vaccines, tests & other response supplies
• Ensure continuity of educational & other services for kids & elementary/secondary students
• Coordinate with state, tribal, territorial & local authorities
Safer Federal Workforce Task Force

The Task Force shall guide heads of agencies on multiple subjects related to the federal workforce:

- Testing methodologies & protocols
- Case investigation & contact tracing
- Requirements & limitations on physical distancing
- Enhanced structures to support telework
Federal Agency Coordination

Right click on each image to link to COVID-19 sites
National Strategic Plan

National Strategy for the COVID-19 Response and Pandemic Preparedness

January 2021
National Strategic Plan – 6 Primary Domestic Goals

“We can and will beat COVID-19. America deserves a response to the COVID-19 pandemic that is *driven by science, data, and public health — not politics.*”

1. Restore trust with Americans
2. Comprehensive vaccination campaign
3. Mitigate spread through public health standards

4. Expand emergency relief via DPA
5. Reopen schools, business & travel
6. Equity across racial, ethnic & rural/urban lines
“To rebuild the trust of the American people, the National Strategy will signal *clear public leadership and a commitment to a robust whole-of-government response* that puts science first.”

A. National COVID-19 response structure driven by science & equity

B. Conduct regular science-based public briefings

C. Publicly share data around key response indicators

D. Lead science-first public health campaigns
“The [U.S.] will spare no effort to ensure Americans can get vaccinated quickly, effectively, and equitably. The federal government will execute an aggressive vaccination strategy, focusing on the immediate actions necessary to convert vaccines into vaccinations. . . .”

A. Ensure the availability of safe, effective vaccines
B. Accelerate vaccine administration to people & communities
C. Create new venues for people to be vaccinated
D. Focus on hard-to-reach & high-risk populations
E. Expand range of providers & assure they are compensated
F. Monitor vaccine safety & efficacy
Goal 3. Mitigate Spread

“A comprehensive national public health effort to control the virus — even after the vaccination program ramps up — will be critical to saving lives and restoring economic activity.”

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<th>Action</th>
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<tr>
<td><strong>A.</strong> National mask mandate &amp; “challenges” to state, tribal &amp; local governments</td>
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<td><strong>B.</strong> Establish COVID-19 Pandemic Testing Board to unify approaches</td>
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<td><strong>C.</strong> Effectively distribute tests &amp; expand access to testing, especially among schools</td>
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<td><strong>D.</strong> Seek new treatments &amp; therapeutics</td>
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<td><strong>E.</strong> Empower CDC to develop actionable, evidentiary guidance based on new data</td>
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<td><strong>F.</strong> Expand U.S. public health workforce &amp; increase clinical care capacity</td>
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“It’s past time to fix America’s COVID-response supply shortage problems for good. The [U.S.] will immediately address urgent supply gaps, . . . while also steering the distribution of supplies to areas [of] greatest need.”

A. Increase emergency funding to states & bolster FEMA’s response efforts

B. Fill major supply shortfalls via the Defense Production Act

C. Develop a new Pandemic Supply Chain Resilience Strategy

D. Improve distribution, expand availability, & control pricing of critical materials
Goal 5. Re-opening

“At the same time that the [U.S.] takes immediate steps to achieve an overall decrease in COVID-19 spread, it will also support the safe operation of schools, businesses, and travel.”

A. Implement a national strategy to safely reopen schools
B. Fund safe operations at child care centers & at-home providers
C. Support equitable reopenings & operations at colleges
D. Protect workers via OSHA & other federal safety guidelines
E. Provide guidance & support to safely open commerce & small businesses
F. Promote safe travel domestically & abroad
“The COVID-19 pandemic has exposed & exacerbated severe & pervasive health inequities among communities defined by race, ethnicity, geography, disability, sexual orientation, gender identity & other factors.”

A. Establish a COVID-19 Health Equity Task Force

B. Ramp up data collection & reporting for at-risk populations

C. Ensure equitable access to critical PPE, tests, therapies & vaccines

D. Expand access to high quality health care

E. Enhance the “social service safety net” to meet basic needs

F. Address risks for persons in congregate settings
The Assistant to the President for National Security Affairs (APNSA) shall convene the National Security Council (NSC) Principals Committee for guidance regarding:

- Preparing & responding to biological threats
- Identifying, monitoring & preparing for emerging pandemic threats
- Assessing secondary or tertiary effects of COVID-19
- Intersection of COVID-19 responses & other national security priorities
- Re-engaging with the World Health Organization
National Vision for a Healthier, Safer America

- Widespread vaccinations
- Prevention via surveillance, testing, tracing, masks
- Focus on equitable & uniform allocations & benefits
- Reopening schools & businesses safely with substantial support
National Reality Facing America

Discordant vaccination approaches

COVID fatigue re: prevention efforts

Disparate access to essential services & safe environments

Partial reopenings across jurisdictions
Major Strategic Changes in Approach

Responsibility for:

- Testing
- Screening
- Masks
- Vaccination
- Treatments
- Travel/Openings

Shifts to:

- Science
- Guidance
- Data
- Best Practices
- Funding

In return for:

Shared with:
Practical Realities

Costs

Logistics

Industry

Lobbies

Implementation

Infrastructure
Legal Realities
Legal Opportunities

A Healthier, Safer & Open America

Cooperative Federalism

Emergency Powers

Interstate Commerce Powers

National Security

PREP Act

Tax & Spend Powers

PHS Act

Defense Production Act

A Healthier, Safer & Open America
Emerging Law & Policy Issues

National Strategic Plan

- Scope of Powers
- Access
- Benefits
- Research
- Contracts
- Price Gouging
- Pre-emption
- Privacy
- Civil Rights
- Liability
- Duties
- Waivers
- Costs
Potential Legal Hurdles

- Enforcement
- Allocations
- Mobilizing Personnel
- Constitutional Rights
- States’ Interests
States’ Interests

- Non-cooperative Federalism
- Public Health Sovereignty
- Spending Power Limits
Constitutional Rights

- Freedom of Expression
- Freedom of Assembly
- Freedom of Religion
- Right to Travel
- Right to Privacy
- Due Process
Mobilizing Personnel

Licensure

Scope of Practice

Standards of Care
Allocations

- Disability Discrimination
- Age Discrimination
- Equal Protection
- 8th Amendment Cruel & Unusual Punishment
Enforcement

Moratoriums  Regulations  Mandates

Centers for Disease Control and Prevention

CDC

OSHA

Occupational Safety and Health Administration

ADMIT ONE
Can these & other legal hurdles be cleared?
Questions & Comments

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• Special thanks to Emily Carey, Senior Legal Researcher, at ASU’s Sandra Day O’Connor College of Law for her contributions!
• Ask the Network re: additional questions/comments
• james.hodge.1@asu.edu | @jghodgejr
Thank you for attending

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