COVID-19
Emergency Legal Preparedness Primer
As of March 29, 2021
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- Emergency Legal Preparedness/Response/Recovery
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COVID-19 Confirmed Cases & Deaths

Global Cases  127.36 million | Deaths: 2.79 million
U.S. Cases      30.27 million | Deaths: 549,507
U.S. Stats     24% all cases | 20% all deaths

# Profile of U.S. COVID-19 Deaths

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
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<tbody>
<tr>
<td>81% of deaths</td>
<td>66,000+ deaths of persons ages 64 &amp; under</td>
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<td>Overall U.S. life expectancy dropped by 1 year</td>
<td>2.8x* number of deaths among Blacks</td>
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<td>2.8x* number of deaths among Hispanics</td>
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<td>2.6x* number of deaths among Native Americans</td>
<td>2.8x* number of deaths among Hispanics</td>
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* Compared to White/Non-Hispanics persons
Public health authorities & powers vary depending on the type of emergency declared at every level of government.
Jan. 31: HHS Sec. Alex Azar declares national public health emergency effective as of Jan. 27, 2020 (and since renewed on 3 subsequent occasions).

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

- **HHS Public Health Emergency**: Jan. 31
- **HHS PREP Act Declaration**: Feb. 4
- **Stafford Act Emergency**: Mar. 13
- **National Emergencies Act**: Mar. 13
- **Defense Production Act**: Mar. 20

*Logos of Health and Human Services, Department of Homeland Security, and FEMA*
COVID State & Select Tribal/Local Emergency Declarations

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

**Emergency** - 33
**Disaster** - 4
**Public Health**
**Emergency/Disaster** - 9
**Emergency + Public Health Emergency** - 4
**County/City**
**Tribal**

**Link here** for updates re: jurisdictional requests for FEMA disaster relief
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 | C | C | C | D | F | H | I | I | K | L | M | M | M | M | M | N | N | N | N | O | O | O | O | P | P | R | T | V | V | W | W |
| 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              |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |

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.
For more information on the current status of state/territorial declarations, see the National Governors Association online resource.
Major Enacted Federal Legislation

**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
Dec. 27: President Trump signs $2.3 trillion CAA 2021 (largest stimulus package in history):

• Provides $900 billion in stimulus relief for COVID-19 & $1.4 trillion omnibus spending bill for 2021’s federal fiscal year
• Supplements CARES ACT Paycheck Protection Program with additional $284.5 billion for PPP loans
• Expands Medicare access to mental health services via telehealth
• Mitigates cuts to physician payments & provides $3 billion in increased physician services
• Establishes a new Rural Emergency Hospital Medicare designation
American Rescue Plan Act of 2021

Feb. 5: Budget Reconciliation measure passes House & Senate
March 11: President Biden signs the American Rescue Plan Act of 2021 into law

The $1.9 trillion package includes:

- $1,400 stimulus checks to adults/children at certain income thresholds;
- $350 billion in support for state/local governments;
- $47.8 billion to detect & trace COVID-19 infections;
- $7.7 billion to establish, expand & sustain the public health workforce;
- $7.6 billion for community health centers
- $7.5 billion to CDC to promote, distribute, administer & track COVID-19 vaccinations;
- $6 billion for research, development, purchase of vaccines, therapeutics & other products; and
- $1.5 billion for block grants towards community mental health services
Federal Agency Coordination

Right click on each image to link to COVID-19 sites
Key Legal Issues

Topics

- Emergency Powers - Triage
- Crisis Standards of Care
- Social Distancing Measures
- Privacy
- Liability
- Surveillance & Reporting
- Testing/ Treatment/ Vaccination
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.
Emergency Preparedness & Response

Balancing Individual & Communal Interests

Privacy
- Religious Freedoms

Individual Interests
- Due Process
- Equal Protection

Communal Interests
- Surveillance
- Treatment
- Isolation & Quarantine
- Curfews & Closures

Emergency Preparedness & Response
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 & inaccuracies* raise alarms.

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

January 11, 2021: More than *260 million* COVID-19 tests have been conducted in the U.S.
**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

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

HIPAA, Health Information Exchanges, and Disclosures of Protected Health Information for Public Health Purposes

OCR Issues Guidance on HIPAA, Health Information Exchanges, and Disclosures of Protected Health Information for Public Health Purposes

Today, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) issued guidance on how the Health Insurance Portability and Accountability Act of 1996 (HIPAA) permits covered entities and their business associates to use health information exchanges (HIEs) to disclose protected health information (PHI) for the public health activities of a public health authority (PHA).

For additional expert analyses & guidance, contact Denise Chrysler, JD and colleagues at the Network–MidStates Region
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**: Future President Joe Biden calls on states to craft face mask requirements.
• **Aug. 20**: NY Gov. Cuomo admits mask requirement should have been issued months earlier.
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.”

- **Oct. 29**: U.S. District Court of Georgia - Atlanta Division affirms CDC’s eviction order.
Social Distancing Measures

- Control modes of transportation
- Increase distance among workers
- Dismiss schools
- Restrict public gatherings
- Isolation & quarantine
- Evacuation
- Curfew
- Shelter-in-place/ Lockdown
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 extending across Navajo Nation requires all persons (w/some exceptions) to stay home from 8:00 p.m. - 5:00 a.m., 7 days a week.

May 5: Gallup, NM imposes strict confinement measures via use of “riot act” authorities allowed by NM Gov. Grisham.


Jan. 20: Arizona state court judge voids Pima County’s 10:00 p.m. curfew as violation of state law.
Travel Restrictions

- Flight Bans
- Immigration Activities
- Foreign Work Visas
- Border Crossings
- State Quarantines
- Closures
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) 3/23
VI - (U.S. Virgin Islands)
Substantial change in usual healthcare operations & level of care due to a pervasive or catastrophic disaster.
CSC Legal Issues

Practical, Ethical, and Legal Challenges Underlying Crisis Standards of Care

James G. Hodge, Jr., Dan Hanfling, and Tia P. Powell

- Allocation
- Patient’s Rights
- Reimbursement
- Licensure
- Scope of Practice
- Civil Rights
- Documentation
- Uniformity
- Liability
Multiple liability protections may apply to HCWs, volunteers & entities for acts of negligence – but not intentional misconduct.
| 1 | Emergency declarations authorize numerous powers essential to effectuating CSC |
| 2 | Legal invocation of CSC may arise via different routes and entail multiple options for public and private sectors |
| 3 | Resolving jurisdictional challenges across states may require utilizing emergency authorities to resolve conflicts |
| 4 | Alleviating licensure & scope of practice concerns through SOP expansions or reciprocity can ameliorate shortages |
| 5 | Shifting standards of care do not belie general legal duties or additional CSC duties owed to patients |
| 6 | Documenting decisions lawfully and transparently implicates CSC shifts internally and externally |
| 7 | Manifold liability protections help assure HCWs, volunteers, and entities can implement CSC |
| 8 | Mitigation of legal risks entails advance planning, real-time interventions & commitment to sound process/ethics |

**CSC Legal Issues – Key Take-aways**
National Academies 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

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The National Academies of Sciences • Engineering • Medicine
### Core Legal Issues Regarding COVID-19 Vaccine Allocation

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<td>Relevance of Emergency Declarations</td>
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<tr>
<td>2</td>
<td>Legal Challenges to the Allocation Scheme</td>
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<td>3</td>
<td>FDA Approval and EUA Authorization Process</td>
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<td>4</td>
<td>Federal Authority over State, Tribal, &amp; Local Governments</td>
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<td>5</td>
<td>State Mandates to Vaccinate</td>
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<td>6</td>
<td>Employer Mandates</td>
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<td>7</td>
<td>Vaccine Exemptions</td>
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<td>8</td>
<td>Informed Consent</td>
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<tr>
<td>9</td>
<td>Liability Protections for Providers &amp; Entities</td>
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<td>10</td>
<td>Compensation for Injuries Resulting from Vaccination</td>
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**Slide Credit:** Jennifer L. Piatt, JD, Senior Attorney, Network – Western Region Office
Emergency Use Authorization (EUA): FDA evaluates evidence available, balancing known risks with known benefits, to determine whether the product “may be effective” and subsequently authorized.

**Slide Credit:** Jennifer L. Piatt, JD, Senior Attorney, Network – Western Region Office
Biden-Harris Administration National Response Efforts

“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
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
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
Emerging Law & Policy Issues

National Strategic Plan

- Scope of Powers
- Access
- Benefits
- Research
- Contracts
- Pre-emption
- Price Gouging
- Civil Rights
- Liability
- Duties
- Waivers
- Costs
Access these and other Network materials here

- Latest Resources
- Federal Public Health Emergencies
- Social Distancing Powers
- Liability of Health Care Workers and Entities
- Hospital Emergency Legal Preparedness
- State and Local Preparedness
- Emergency Declarations and Powers
- Mental and Behavioral Health Preparedness
- Model Emergency Laws
- Emerging Threats Preparedness and Response
- Crisis Standards of Care
- Public Health Emergency Ethics

- Special thanks to Jen Piatt, JD, Research Scholar, and Claudia Reeves, Senior Legal Researcher, at ASU Sandra Day O’Connor College of Law, for their contributions
- Ask the Network re: questions/comments
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