

# **COVID-19**

# **Emergency Legal Preparedness Primer**

**As of March 29, 2021**

**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 and Day O'Connor College of Law**

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

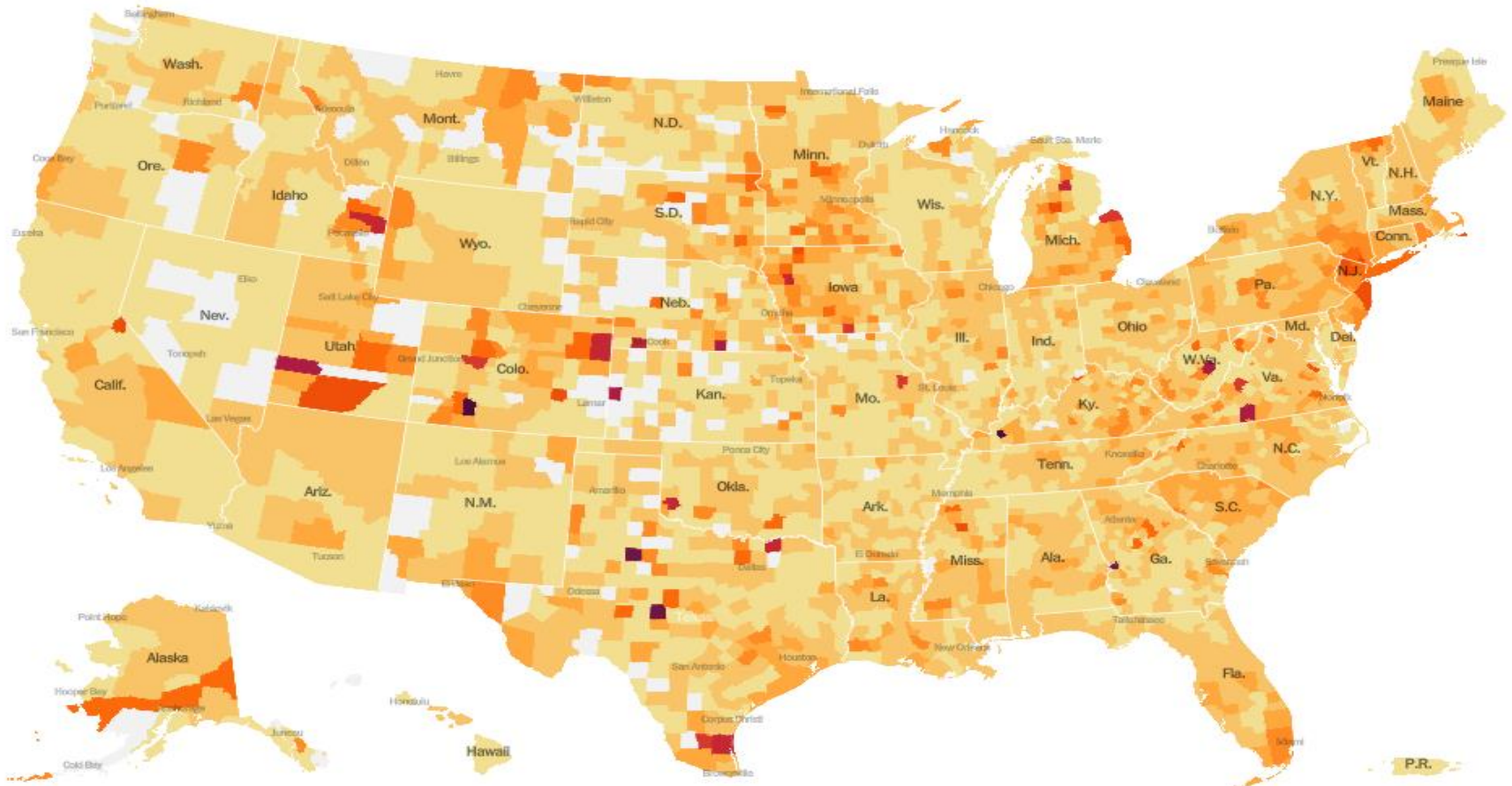
- ☐ **COVID-19 Epi Trends**
- ☐ **Emergency Legal Preparedness/  
Response/Recovery**
- ☐ **Public Health Emergency Powers**
- ☐ **Crisis Standards of Care**
- ☐ **COVID-19 Vaccinations**
- ☐ **National Strategic Response Plan**
- ☐ **Additional Resources**

# 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**



Source: <https://www.cnn.com/interactive/2020/health/coronavirus-us-maps-and-cases/>

# Profile of U.S. COVID-19 Deaths

81%  
of deaths in  
persons  
ages 65+

66,000+  
deaths of  
persons ages  
64 & under

Overall U.S.  
life  
expectancy  
dropped by 1  
year to 77.8  
yrs

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



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

|                      |  |  |
|----------------------|--|--|
| <b>International</b> | <b>WHO Public Health<br/>Emergency of Int'l Concern</b><br><b>January 30, 2020</b> | <b>Emergency Declarations<br/>by Foreign Governments</b><br><b>Ongoing</b> |
| <b>Federal</b>       | <b>Stafford Act or National<br/>Emergencies Act</b>                                | <b>HHS Public Health<br/>Emergency</b>                                     |
| <b>State/Tribal</b>  | <b>Emergency or<br/>Disaster</b>   | <b>Public Health<br/>Emergency</b>   |
| <b>Local</b>         | <b>Emergency or<br/>Disaster</b>   | <b>Public<br/>Health<br/>Emergency</b>                                     |

**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  
Declara-  
tion**

**Feb.  
4**

**Stafford  
Act  
Emergency**

**Mar.  
13**

**National  
Emer-  
gencies  
Act**

**Mar.  
13**

**Defense  
Production  
Act**

**Mar.  
20**



**FEMA**



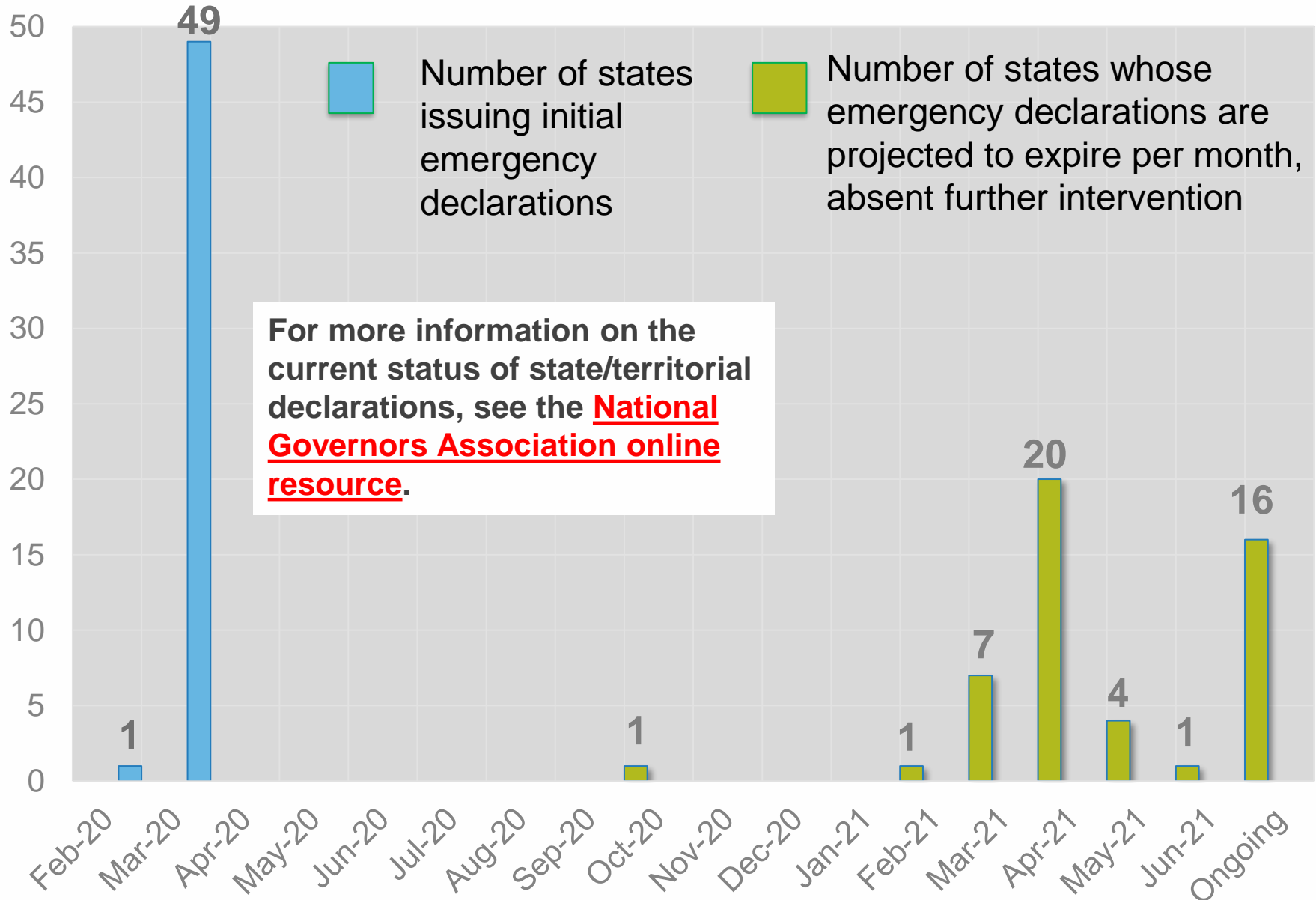


# Select State Emergency Powers Explicitly Invoked by Declarations

**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="#">AK</a> | <a href="#">AZ</a> | <a href="#">AR</a> | <a href="#">CA</a> | <a href="#">CO</a> | <a href="#">CT</a> | <a href="#">DE</a> | <a href="#">FL</a> | <a href="#">HI</a> | <a href="#">IL</a> | <a href="#">IN</a> | <a href="#">IA</a> | <a href="#">KS</a> | <a href="#">LA</a> | <a href="#">ME</a> | <a href="#">MD</a> | <a href="#">MA</a> | <a href="#">MI</a> | <a href="#">MN</a> | <a href="#">NJ</a> | <a href="#">NM</a> | <a href="#">NY</a> | <a href="#">NC</a> | <a href="#">ND</a> | <a href="#">OH</a> | <a href="#">OR</a> | <a href="#">PA</a> | <a href="#">RI</a> | <a href="#">TN</a> | <a href="#">TX</a> | <a href="#">UT</a> | <a href="#">VA</a> | <a href="#">WA</a> | <a href="#">WV</a> | <a href="#">WI</a> | <a href="#">WY</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            |                    | ■                  | ■                  | ■                  |                    | ■                  |                    |                    |                    |                    |                    |                    |                    |                    | ■                  |                    |                    |                    |                    |                    | ■                  | ■                  | ■                  | ■                  |                    |                    | ■                  | ■                  | ■                  | ■                  | ■                  | ■                  |                    |                    |                    |                    | ■ |   |

# Emergency Declaration Initial Timing & Projected Expiration by Month (2020-2021)



## 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



*President Biden signs the American Rescue Plan Act of 2021.*

*Image: National League of Cities*



# Federal Agency Coordination

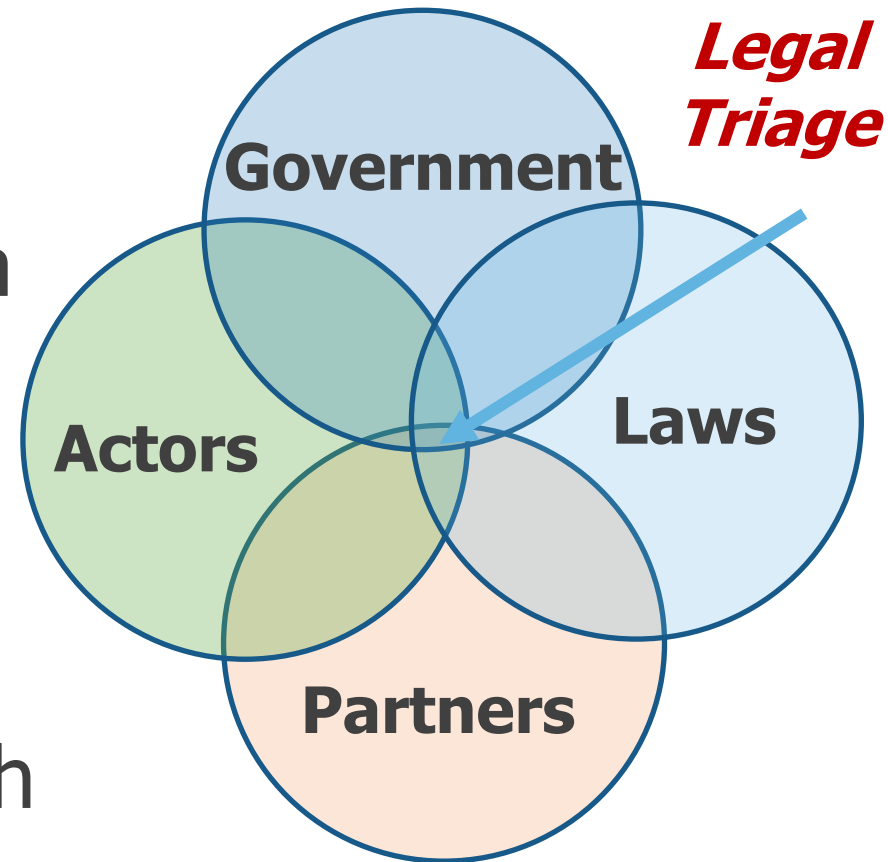
Right click on each image to link to COVID-19 sites







***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



# Structural & Rights-based Constitutional Issues



**Separation of Powers**



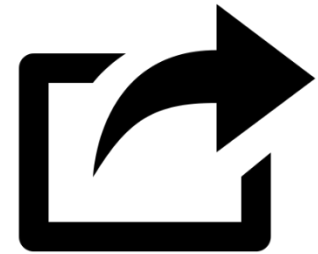
**Federalism**



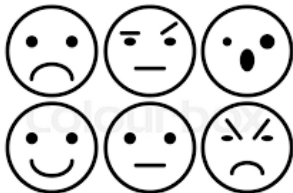
**Supremacy**



**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**

# Screening & Testing

**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

- 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.





# Data Sharing & Privacy

**Click on images to access**

December 18, 2020



**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



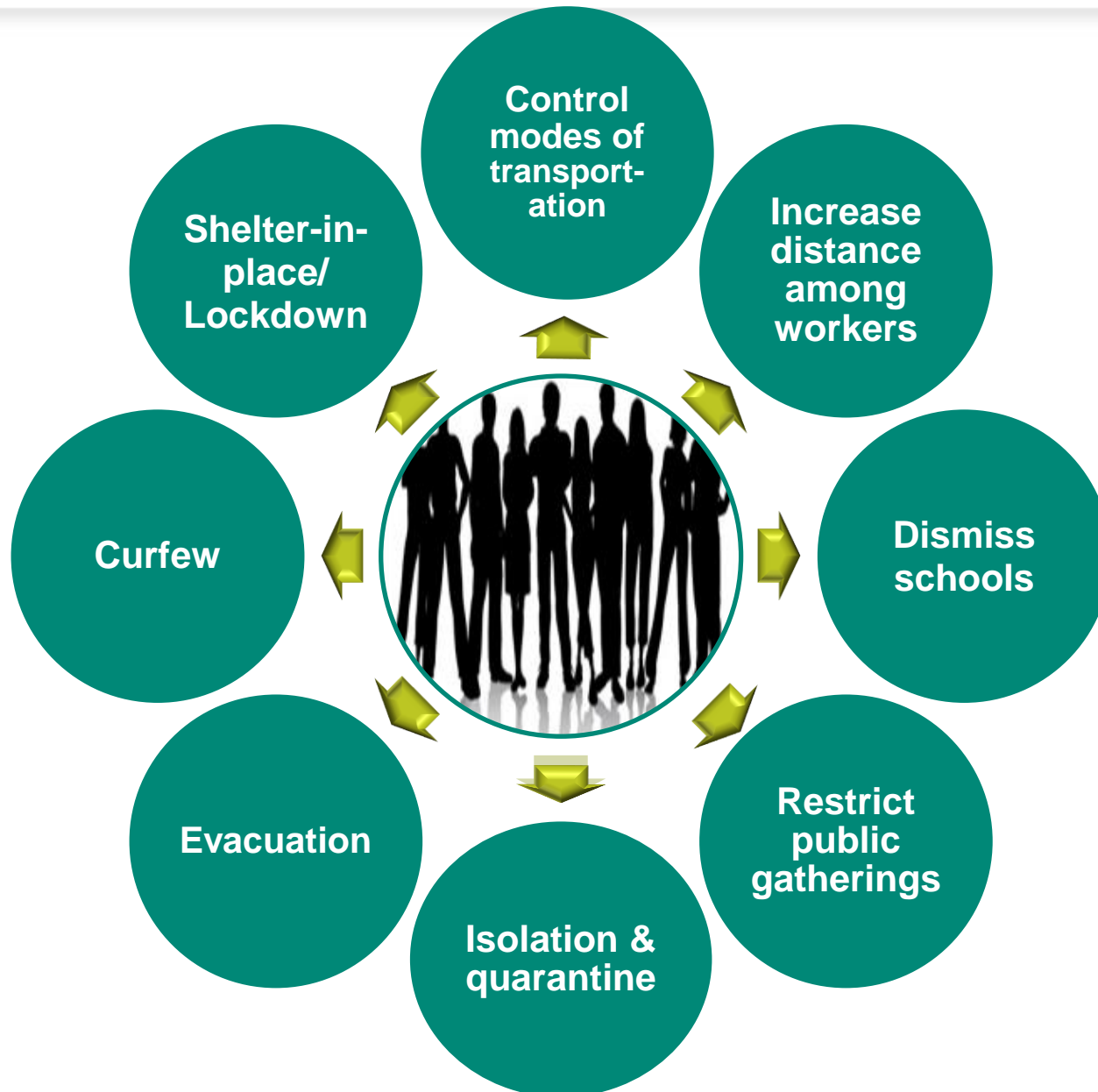
- Localities in 43 states & territories require face masks to be worn by employees, customers, or others in public.
- July 7: Freedom Foundation files lawsuit challenging the constitutionality of WA state mask mandate. On July 27, it sues Oregon re: its mask mandate.
- July 10: Judge rejects FL lawsuit 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





# 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.

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

**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



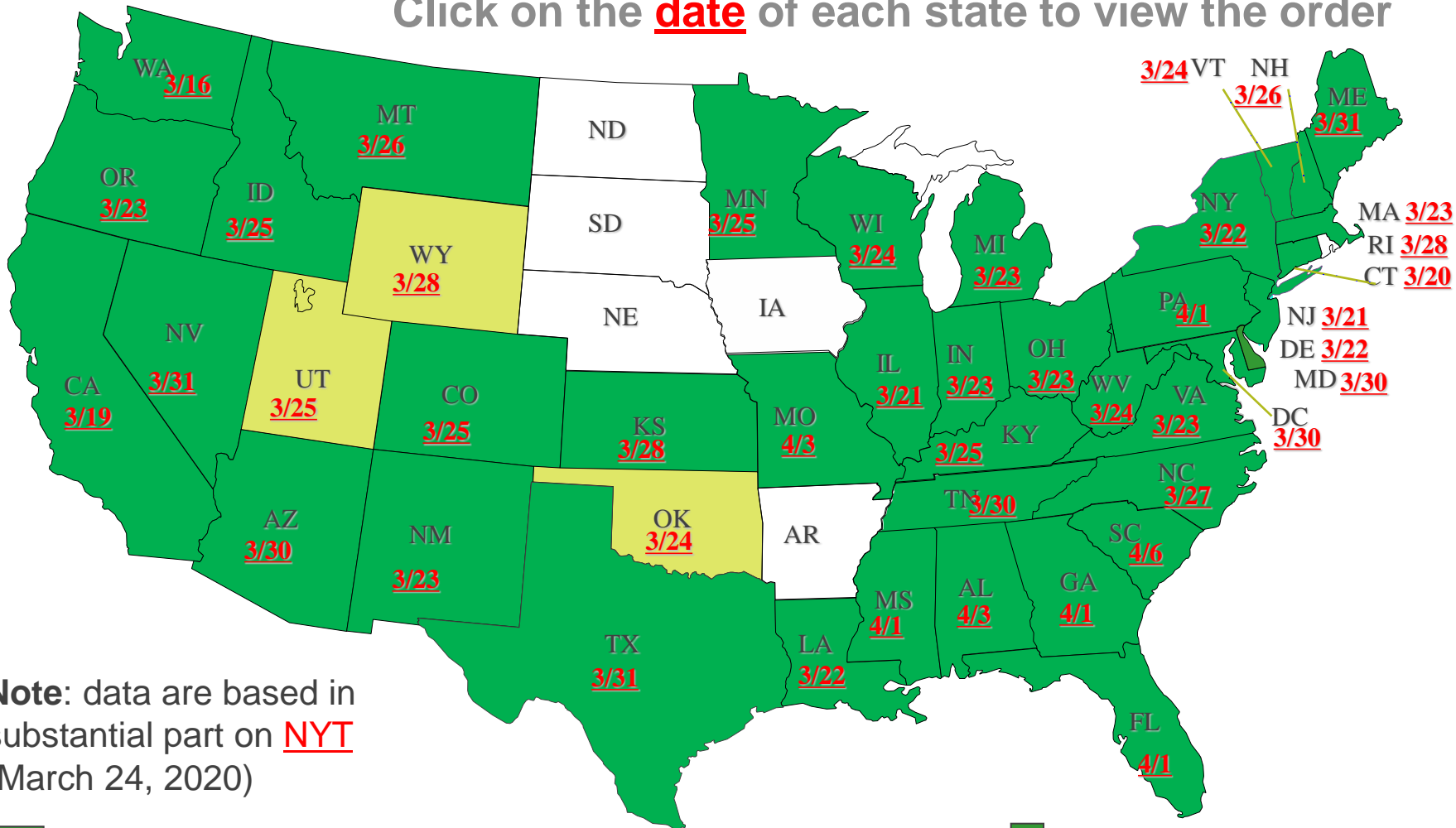
State Quarantines



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)  
VI – (U.S. Virgin Islands)

# Crisis Standards of Care

**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



NATIONAL ACADEMY OF MEDICINE  
Leadership • Innovation • Impact | *for a healthier future*

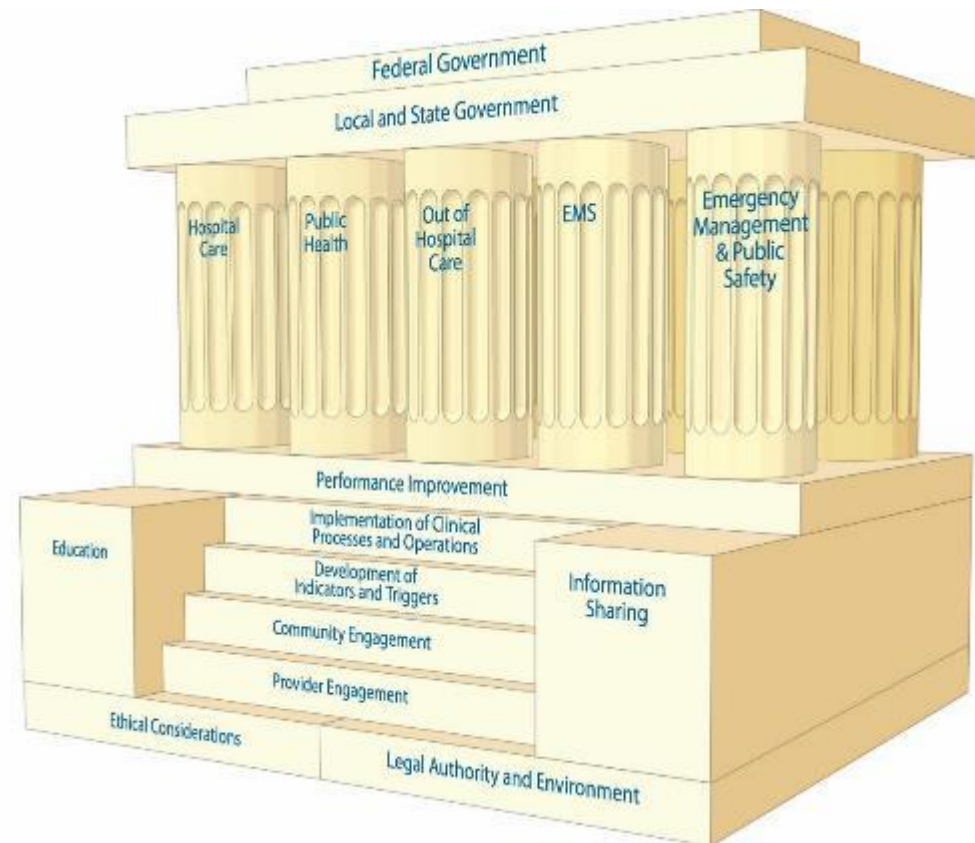


## Practical, Ethical, and Legal Challenges Underlying Crisis Standards of Care

[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
- Documentation
- Uniformity
- **Liability**

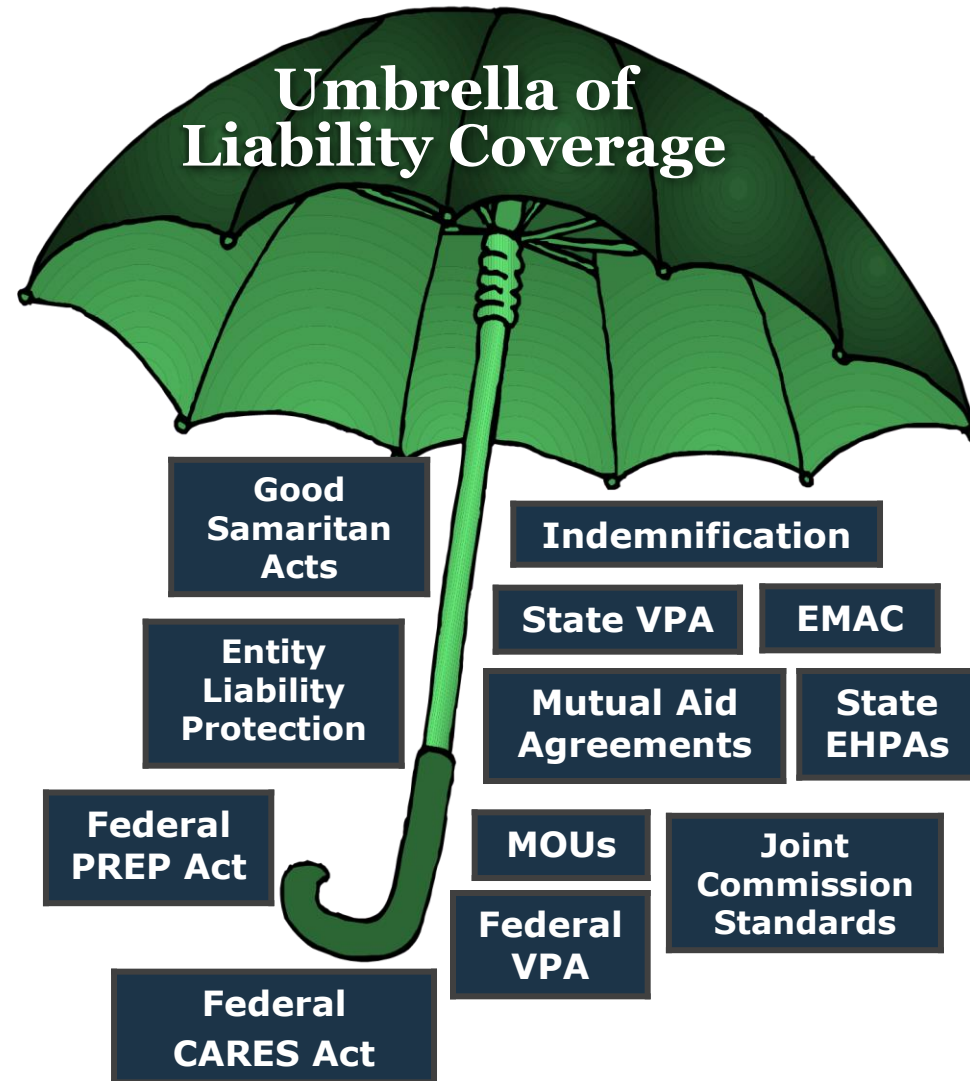




# Emergency Liability Protections



*Multiple liability protections may apply to HCWs, volunteers & entities for acts of negligence – but not intentional misconduct.*



# CSC Legal Issues – Key Take-aways

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



# 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

*The National Academies of*  
SCIENCES • ENGINEERING • MEDICINE





# Core Legal Issues Regarding COVID-19 Vaccine Allocation

1

Relevance of Emergency Declarations

2

Legal Challenges to the Allocation Scheme

3

**FDA Approval and EUA Authorization Process**

4

Federal Authority over State, Tribal, & Local Governments

5

State Mandates to Vaccinate

6

Employer Mandates

7

Vaccine Exemptions

8

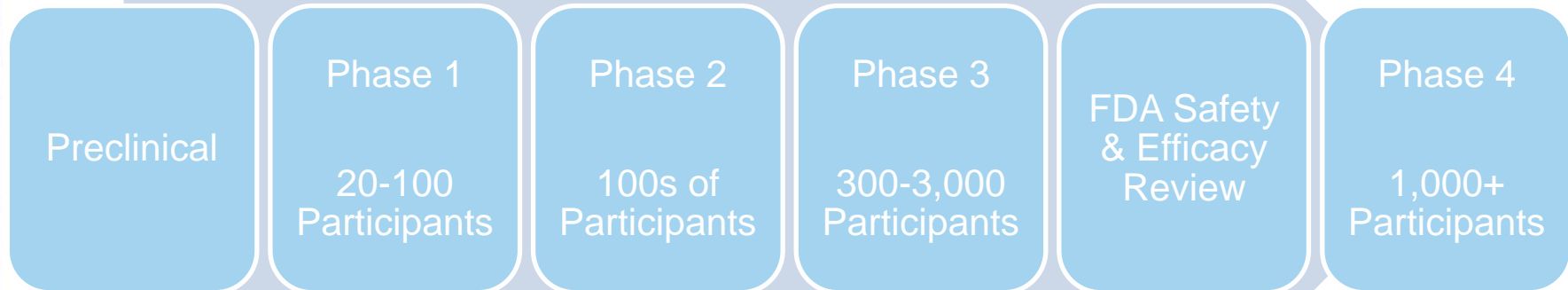
Informed Consent

9

Liability Protections for Providers & Entities

10

Compensation for Injuries Resulting from Vaccination



**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.

# 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



# Goal 7. Global Responses

## Goal 7. Restore U.S. leadership globally



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



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

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- [Ask the Network](#) re: questions/comments
- [james.hodge.1@asu.edu](mailto:james.hodge.1@asu.edu) | @jghodgejr