The Network for Public Health Law
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2021 Public Health Law Conference Preview Webinar: Equitable COVID-19 Recovery

1:00 – 2:00 p.m. ET | July 29, 2021

Co-sponsored by:

The Network for Public Health Law

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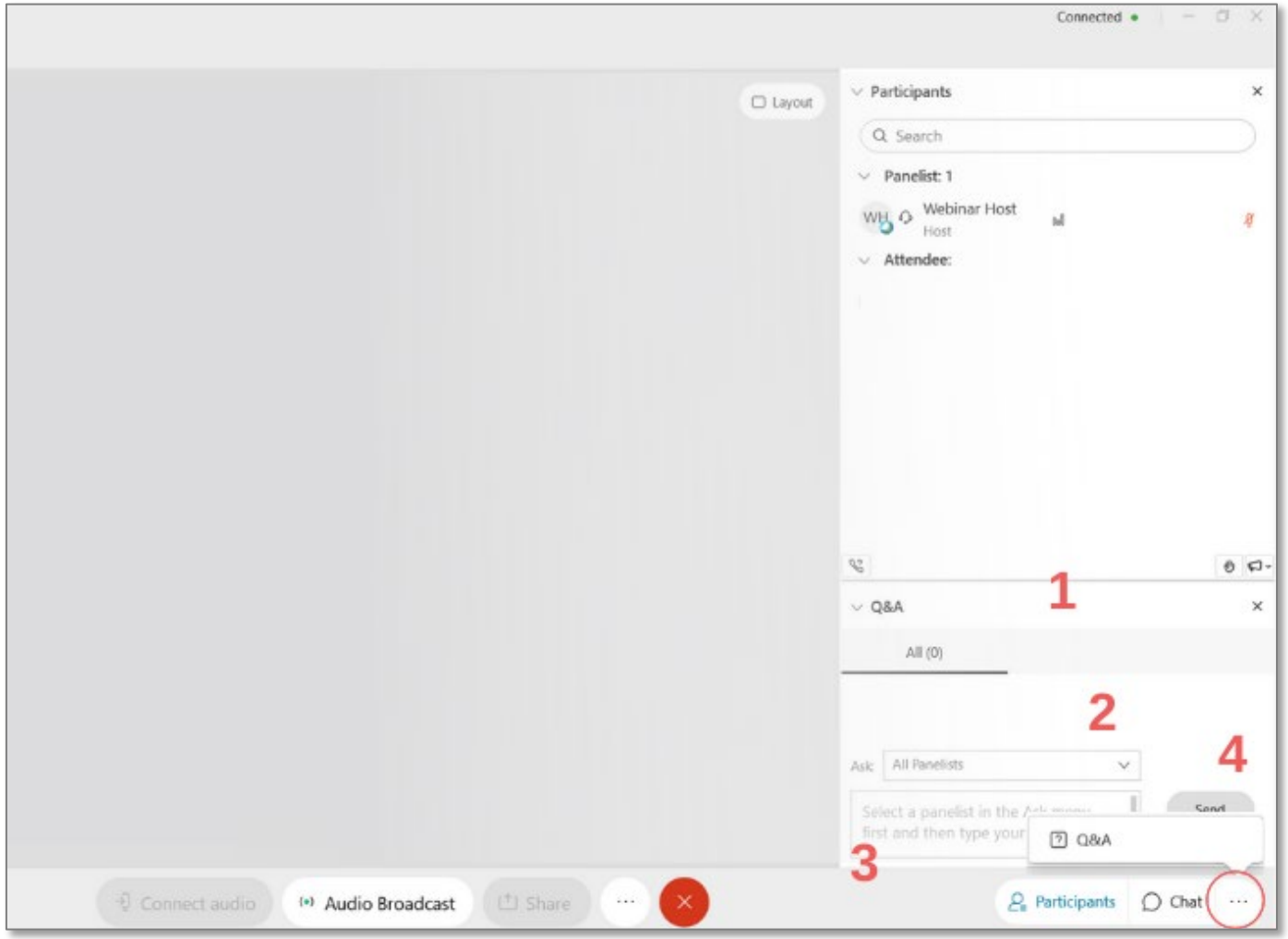
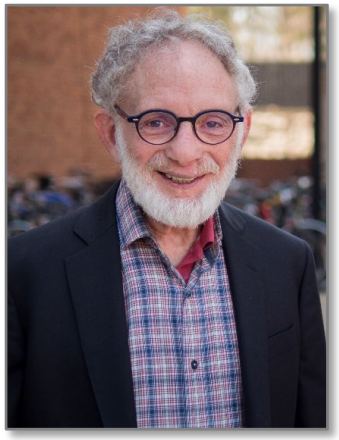


Moderator

Betsy Lawton, J.D., Senior Staff Attorney, Network for Public Health Law—Northern Region Office

Presenter



Peter Jacobson, J.D., M.P.H., Professor Emeritus of Health Law and Policy, University Michigan School of Public Health; Co-Director, Network for Public Health Law – Mid-States Region Office

Presenter

Jennifer Piatt, J.D., Senior Attorney, Network for Public Health Law – Western Region Office; Research Scholar, Arizona State University Sandra Day O'Connor College of Law

Presenter

April Shaw, Ph.D., J.D., Staff Attorney, Network for Public Health Law—Northern Region Office

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Sounding the Alarm: The Duty of Public Health Officials to Take Politically Unpopular Stands

Peter Jacobson

Introduction

- **Politics can overwhelm public health decisions**
  - COVID-19 and the Flint Water Crisis as examples
  - Must public health officials oppose political decisions that threaten the public's health?
  - How should the law account for this responsibility?
  - What are the political and personal consequences for opposition to political decisions?

First Presentation: Holding Out for a Public Health Hero

- **Expectation that public health officials must take a stand**
  - Simultaneously reasonable and unreasonable
  - Simultaneously logical and illogical
  - Primary function is to safeguard the community's health over competing interests
    - A legal duty in most state public health codes
    - Professional loyalty to public health
    - Commitment to speak truth to power

Holding Out for a Public Health Hero

- **Expectation that public health officials will speak truth to power regardless of consequences**
  - Set aside professional self-interests
  - Represent the community's interests during a fiscal crisis or when political decisions would threaten the public's health
    - Understood as a minimal job requirement
    - But can professional martyrdom or heroism really be a basic job requirement?

Holding Out for a Public Health Hero

- **Risking jobs in name of public heath has implications for legal preparedness**
  - How to define and operationalize such a duty
  - Would law protect the official who speaks out?
  - If not, what legal changes are needed?
  - Is it realistic for officials to expect legal protection?

Second Presentation: Even Public Health Heroes Need Accountability

- **Public health decision-making is difficult and complex under the best of circumstances**
  - Mistakes in judgment and policy implementation are inevitable
  - Sound policy may turn out in retrospect to be harmful or wrong
  - Acknowledging fallibility should not inherently lead to culpability
  - What are the appropriate accountability mechanisms when decisions cause harm or fail to prevent harm to the population's health?

Even Public Health Heroes Need Accountability

- **Public health decision-making is difficult and complex under the best of circumstances**
  - Flint Water Crisis as an example
    - **Poor policy decisions led to tragic harms from lead in the drinking water**
    - **Failure to notify the public ignored potential harms from Legionella outbreaks**
    - **State public health, environmental, and political officials blamed for poor judgments**

Even Public Health Heroes Need Accountability

- **Legal consequences ensued**
  - Criminal prosecutions
  - Liability litigation
  - What are the legal and political ramifications of these approaches?
    - What is the appropriate level of responsibility for what happened?
    - What are the relevant factors for holding public health officials accountable for harm?

Third Presentation: Beyond the Public Health Code

- **Broad grant of authority in state public health codes that public health officials rely on to justify interventions**
  - Codes are not self-executing
  - Codes offer little operational guidance
  - Public health officials thus have considerable discretion to act

Beyond the Public Health Code

- **Reality that functioning within a political system**
  - Sometimes the public health code is insufficient
  - Health officer must decide when to go beyond the code, even if politically risky
    - **Flint Water Crisis**
    - **COVID-19**

Beyond the Public Health Code

- **Flint Water Crisis**
  - Failed to use the bully pulpit
  - Failed to intervene when it might have changed the political environment
  - Should have gone beyond the public health code
- **COVID-19**
  - Facing intense political and community resistance
  - Threats to health and safety
  - Hard to justify going beyond the public health code

Conclusion

- Health officer's primary obligation is to serve the community
- Developing appropriate accountability measures is essential when decisions cause harm
- Being a public health hero is difficult in the best of circumstances
- COVID-19 made it dangerous

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Revisiting Crisis Standards of Care: Law, Policy, and Ethics Implementation

Introductory Session
July 29, 2021

Jennifer L. Piatt

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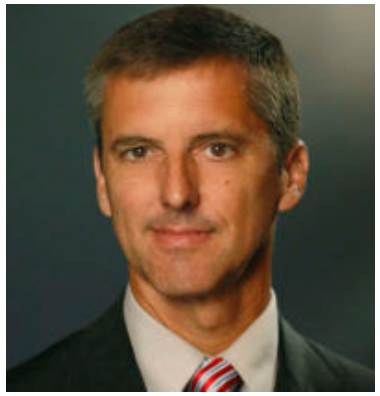
Revisiting Crisis Standards of Care: Law, Policy, and Ethics Implementation

2021 Public Health Law Conference
September 22, 2021, 1:30-2:45 PM



James G. Hodge, Jr., JD, LLM
Director, Network – Western Region Office; Peter Kiewit Foundation Professor of Law

Dan Hanfling, M.D.
Vice President, Technical Staff, In-Q-Tel

Jennifer L. Piatt, J.D.
Senior Attorney, Network – Western Region Office
Research Scholar, ASU Law

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Highlights

- COVID-19: Pandemic circumstances and CSC implementation
- Evolution of CSC across COVID-19
- COVID-19's CSC "tripping points": discrimination, status of emergency declarations, liability, and more
- The future of CSC resource allocation and decision-making post-COVID-19

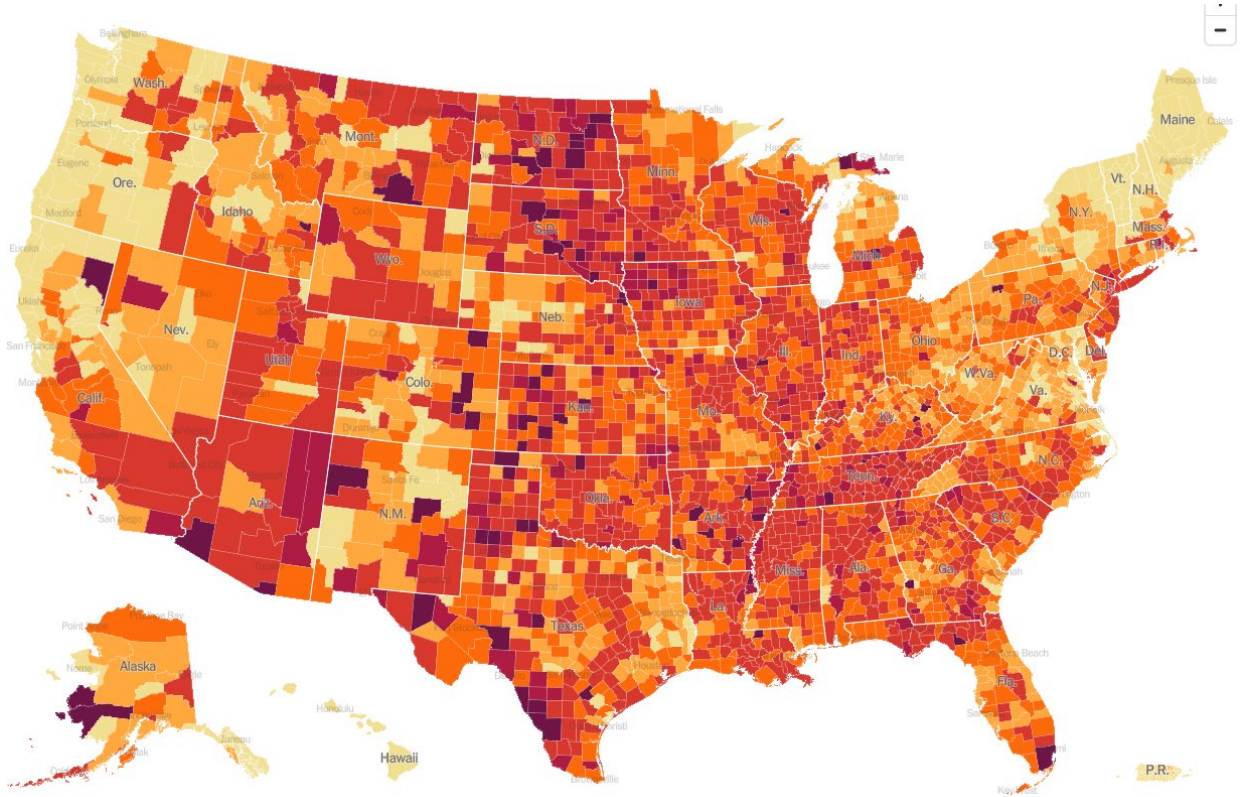
COVID-19 Pandemic

COVID-19 Confirmed Cases & Deaths

Global Cases 194.6 million | Deaths: 4.1 million

U.S. Cases 34.4 million | Deaths: 610,722

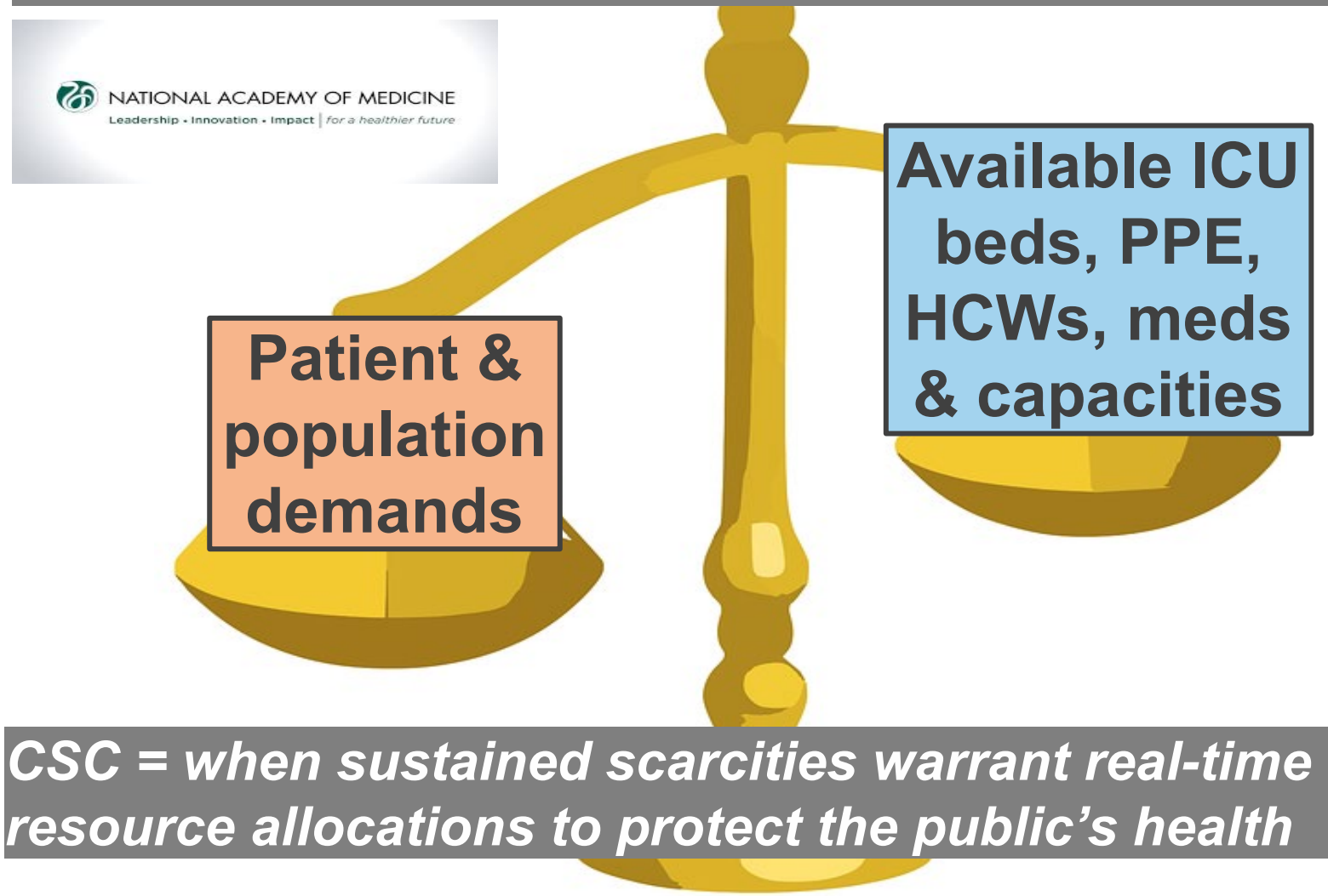
U.S. Stats 18% all cases | 15% all deaths



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

Crisis Standards of Care ("CSC")

CSC = substantial change in usual healthcare operations & level of care due to a pervasive/catastrophic disaster.



CSC = when sustained scarcities warrant real-time resource allocations to protect the public's health

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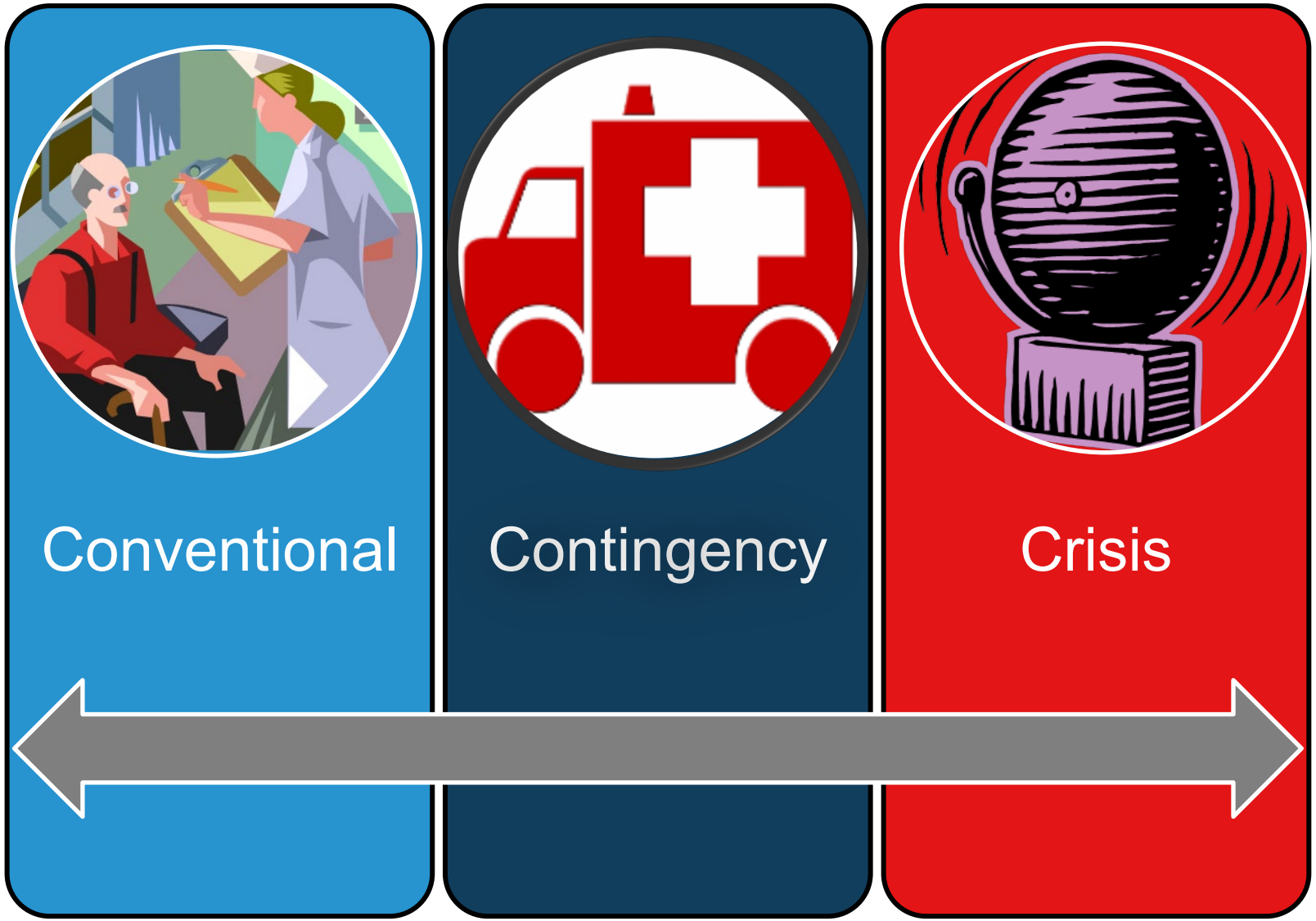
Continuum of Care



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Evolutions in CSC

National Organizations Share Strategies to Improve Crisis Standards of Care Implementation During Future COVID-19 Surges and Beyond

May 13, 2021 | News

The Best Time to Address Crisis Standards of Care Issues Is Now

Although the late winter wave of COVID-19 in the United States seems to have crested, the emergence of variant strains and ongoing questions about immunity and vulnerability leave open the real possibility of additional waves later this year. Meanwhile, there is a growing humanitarian crisis befalling South Asia – in particular, the tragedy unfolding in India, where the health care system has essentially collapsed and many victims of COVID-19 are unable to receive any level of care whatsoever. These current events should make clear how important it is to prepare for future waves of the virus, as the fight against COVID-19 is not over. We must promote vaccination at every turn, support efforts to share clinical and operational lessons learned in order to make improvements based on this past year's experiences, and ready our health care system and communities for the potential for further surges in demand for care.

The prospect of once again facing decisions about whether to transition to crisis standards of care (CSC) calls for action now, while a relative lull in cases allows stakeholders to plan thoughtfully for such decisions. This is especially important in light of painful lessons the pandemic has taught about the need for clarity and consistency across institutions and jurisdictions about invoking CSC and the disproportionate impact COVID-19 has had on historically minoritized and marginalized populations. Going forward, addressing equity must be recognized as a vital consideration for refining and deploying CSC. The challenge of CSC that are not sensitive to issues of equity can be compounded when they are put into practice through processes that similarly fail to embed considerations of equity.

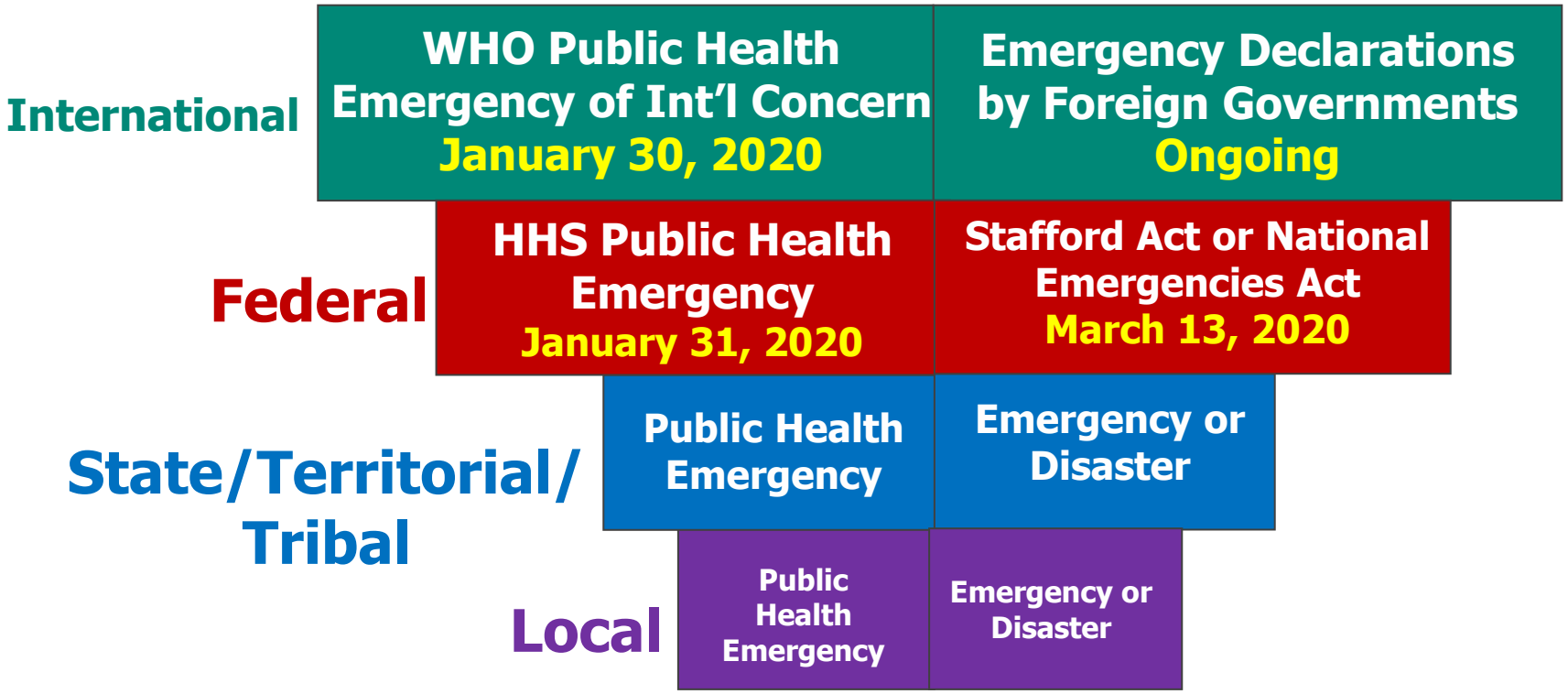
50 years NATIONAL ACADEMY of MEDICINE

Source: https://nam.edu/national-organizations-share-strategies-to-improve-crisis-standards-of-care-implementation-during-future-covid-19-surges-and-beyond/

Emergency Declarations

UNPRECEDENTED RESPONSES

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



Licensure/SOP Expansion

Avoiding Discrimination

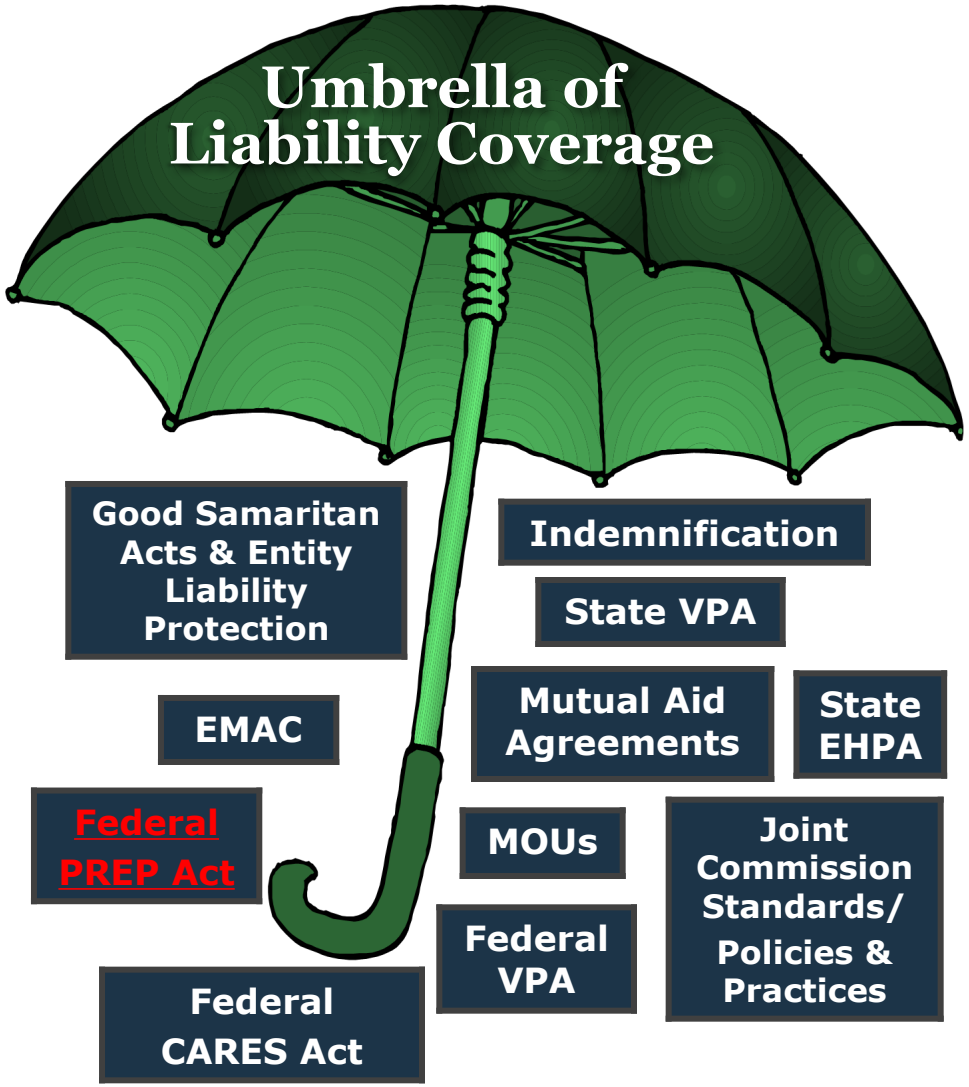
"Persons with disabilities, with limited English skills, and older persons should not be put at the end of the line for health care during emergencies."

- Roger Severino, former Director of HHS OCR

Source: https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf

Emergency Liability Protections

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



Questions

- jpiatt@networkforphl.org
- Jennifer.Piatt@asu.edu | @Jen_Piatt
- For more information & ongoing updates, please see the Network for Public Health Law COVID-19 Resources

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Panel: Building Racial Equity and Community into Suicide Prevention and Mental Health Promotion

April Shaw

Panel Sessions

A Community Approach to Mental Health: Fostering a Sense of Belonging and Inclusion Along the Way – **Christina McCoy,** MA, CCAP, Validated Quality Coach, Community Partnership Manager – Community Engagement, M Health Fairview

Equitable Suicide Prevention in American Indian and Alaska Native Communities – **Tyler M. Dougherty**, MPH, CPH, Director of Public Health Policy and Programs, National Indian Health Board

Suicide Prevention: Achieving Racial Health Equity by Limiting Police Intervention – **April Shaw**, PhD, JD, Staff Attorney, Network for Public Health Law – Northern Region Office

Key Issues: Suicide Prevention and Race

- Racial health equity
- Declarations of racism as a public health crisis/emergency
- At-risk populations
- COVID-19 pandemic impacts on mental health / suicide rates
- Disproportionate use of force
- Overreliance on policing to respond to people in crisis (system designed by default)

Suicide Prevention: Achieving Racial Health Equity by Limiting Police Intervention

Three Digit Dialing Code *"988"* (July 16, 2022)

- Easy to remember
- Alternative to calling 911
- At risk populations
- Authorizes fee to provide 988 services, including:
  - Routing calls
  - Acute mental health, crisis outreach, and stabilization services

NATIONAL SUICIDE PREVENTION LIFELINE™
1-800-273-TALK
www.suicidepreventionlifeline.org

Veteran Crisis Line

State Legislation (Signed into Law & Pending) – General Features

- Designate agency to coordinate 988 services in the state
- Support center
- Implement surcharge
- Mobile crisis response teams

Equity Concerns

- ✓ High suicide rates/disparities
- ✓ Reduce reliance on police & unnecessary arrests
- ✓ Equitable access to services
- ✓ Culturally "competent" care

Suicide Prevention: Achieving Racial Health Equity by Limiting Police Intervention

State Legislation: Mobile Teams (988)

Nevada (Passed) (Mobile Crisis Teams)

Encourages establishment of MCTs:

1) Jurisdiction-based team (professionally qualified in the field of behavioral health and peer recovery support service providers);

2) Established by emergency medical service providers (same); or

3) **Established by law enforcement agencies**

- Professionally qualified in the field of psychiatric mental health;
- Peer support recovery service providers; and
- **Law enforcement officers**

Massachusetts (Proposed) (Mobile Behavioral Health Crisis Responders)

A Team of Behavioral Health Professionals:

1) **Emergency Service Provider/Mobile Crisis Intervention team**;

2) Local/regional behavioral health teams (licensed behavioral health professionals, peers; may include crisis co-responders); or

3) Licensed behavioral health professionals, and peers embedded in emergency medical services

"Mobile behavioral health crisis responders ***shall collaborate*** *with local law enforcement agencies and* ***include police as co-responders*** in behavioral health teams ***only as needed to respond in high-risk situations that cannot be managed without the assistance of law enforcement personnel.***"

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Thank you

Any questions contact: April Shaw - ashaw@networkforphl.org

Special thanks to Madeline Kim, Public Health Associate – Network for Public Health Law - National & Northern Region Offices, for providing research assistance

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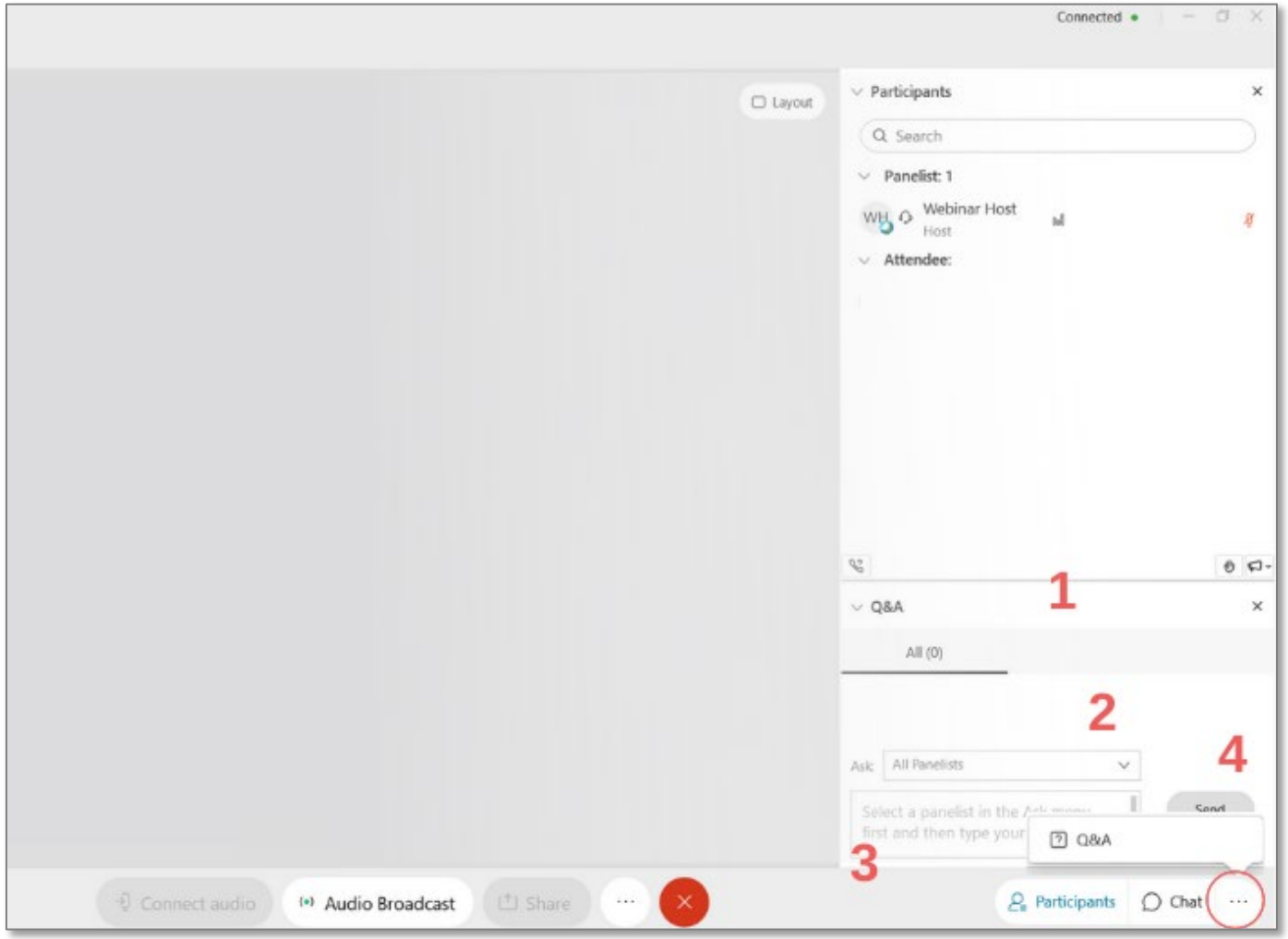

Thank you for attending

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Upcoming Events:

2021 Public Health Law Conference:
Building and Supporting Healthy Communities for All
September 21 – 23, 2021 | Baltimore, MD