



WHITE PAPER

Using Emergency Declarations to Address the Opioid Epidemic: Lessons Learned from States



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Executive Summary

The United States remains embroiled in a national opioid epidemic. Continued escalation of opioid overdose fatalities has left states searching for new levers to address important public health and public safety objectives. One such lever is the use of emergency powers.

States have used emergency powers to provide governors with new avenues to enhance capabilities, coordination and collaboration across state and local agencies. Emergency declarations may also allow governors to temporarily modify their state's legal framework to more quickly respond to an emergency. Once an emergency declaration has been issued, a state government may also have authority to take certain actions that are available only for the duration of the emergency. These declarations and their accompanying powers give states flexibility to respond to exigent circumstances, including reallocating state funds, mandating data sharing and strengthening collaboration among public health and law enforcement agencies.

Before making such declaration and exercising emergency powers, however, governors and their senior state officials should carefully consider whether this type of lever is appropriate for the actions that need to be taken to address the epidemic in their states.

The following eight states have activated their emergency powers in response to the opioid epidemic: **Alaska, Arizona, Florida, Maryland, Massachusetts, Pennsylvania, South Carolina and Virginia.**

Background

Every state has the legal authority to declare an emergency, disaster or public health emergency. State laws specify how these legal declarations are made, most often through an executive order issued by the governor, though some states use other mechanisms (e.g., a statement from the health commissioner). States have utilized two types of emergency powers to address the opioid epidemic: disaster declarations or public health emergencies. Depending on the state, either may be declared via executive order.

Based on what has been learned from states, emergency declarations can be useful in achieving specific policy objectives to address the escalating opioid epidemic. Additionally, states have grappled with how to set an appropriate duration of the emergency phase and manage its possible wind-down and conclusion. Therefore, based on the experience of states that have issued emergency declarations (“declaration states”), governors pursuing public health or disaster emergencies within the context of the opioid epidemic may wish to consider the following aspects in designing and implementing their declaration:

- Evaluating the respective statutory and legal landscape of the governor’s emergency powers and/or the public health emergency powers;
- Debating and discussing internally and externally the rationale for declaring an emergency;
- Drafting a declaration that addresses issues identified in the investigative process;
- Engaging stakeholders early on in the process, including state officials, law enforcement, community health providers and others;
- Developing metrics for process and outcome evaluation;
- Communicating a clear delineation of what success will look like and how the emergency phase will end; and
- Creating a plan for post-declaration sustainability.

MASSACHUSETTS

Governor Deval Patrick issued a Declaration of Emergency Detrimental to the Public Health on March 27, 2014, in response the number of opioid-related overdoses and amount of opiate addiction seen across the state. The declaration provided for the prohibition of prescribing and dispensing of certain drugs, expanded access to naloxone for individuals in a position to assist a person experiencing an opiate-related overdose and expanded access to naloxone for first responders. The public health emergency continues under Governor Baker’s Administration.

Lessons Learned from State Declarations

Pre-Declaration Process

In determining whether exercising this type of gubernatorial power was an appropriate tool to utilize for the opioid epidemic, declaration states conducted a thorough analysis of how a declaration of emergency would impact the overall epidemic and what specific goals it would aim to achieve. This audit process included a scan of other state examples of opioid emergencies, an analysis of current gaps and needs within the state, an evaluation of applicable statutory and constitutional executive powers and consensus on clear definitions of the parameters for success. Once these initial steps were complete, governors and key stakeholders were better

positioned to make informed decisions as to whether to declare and what the potential short- and long-term impacts would mean for their states.

For the pre-emergency phase, declaration states have cited two major lessons learned: the importance of (1) thoughtfully thinking through a plan for the emergency declaration and (2) contemplating the end of the emergency from its conception.

For states contemplating whether to issue a declaration, discussions with key stakeholders should occur prior to establishing a formal emergency. Most declaration states took time to brief external stakeholders on the basis of the order, why the governor has decided to order an emergency and what the governor needed to deem the order successful. Examples of external stakeholders include local public health and emergency units, local public safety and first responder officials, regional federal government officials, private advocacy groups, etc. Transparency regarding the decision, the decision-making process and the governor's goals for the emergency response can help strengthen buy-in and coordination throughout the emergency period.

The pre-emergency phase should also include robust discussions and debate on when the emergency should conclude. Some declaration states noted that an absence of discussions during the pre-emergency phase on how the emergency should conclude created challenges later when it became more politically difficult to end the emergency. If state leaders do not feel ready to define a timeline to sunset the declaration, the emergency may linger longer than anticipated and present additional challenges.

Implementing the Declaration

As states' chief executives, governors are positioned to bring together state agencies, local law enforcement and external partners to pursue and achieve solutions that promote public health and safety. The decision to use emergency powers is only the beginning. During the emergency phase, states should ensure a robust role for the governor, prepare a communications plan that sets realistic expectations and create a flexible structure to manage the epidemic that can evolve and be sustained for the longer-term. Declaration states note that transitioning state operations, fulfilling new policy and regulatory strategies and defining success are crucial to ensuring positive outcomes from the declaration.

Emergency declarations significantly impact state operations. Most declaration states have utilized the emergency or disaster declaration to strengthen their operational command reporting structure and sharpen

VIRGINIA

The Virginia Department of Health, with support from former Governor McAuliffe, issued a declaration of public health emergency in response to the opioid epidemic on November 21, 2016. The declaration was intended to support the development of the Governor's Executive Leadership Team on Opioid Abuse and Addiction, support a standing order for naloxone, spur a federal declaration and draw public attention to the disease of addiction. The public health emergency remains in effect under the administration of his successor, Governor Ralph Northam.

ALASKA

Governor Bill Walker declared a public health crisis through a Declaration of Disaster Emergency on February 14, 2017. The Disaster Declaration provided authority for a statewide medical standing order for distribution of naloxone rescue kits. The declaration was expanded on February 16, 2017, which provided for an incident command structure with participation of cabinet-level officials and their senior staff under the Governor Walker's leadership to implement a coordinated response.

their overall opioid overdose epidemic response. Declaration states have also noted that planning for sustainability should occur in both the pre-declaration phase as well as throughout the implementation phase to ensure an effective long-term response. Planning for short- and long-term impacts on state operations is crucial during the emergency declaration period and must reflect the state's enduring goals and strategies for fighting the epidemic.

For most declaration states, the discussion around what success looks like at the end of the emergency can be difficult. Effective long-term, sustained and comprehensive outcomes take time; 30-60-day statutory emergency periods are not always long enough to see immediate results. Because of this, most states' opioid emergencies have extended well beyond the initial periods through formal renewals. Declaration states also grappled with defining what success would look like at the end of the emergency period and therefore developed a series of metrics around the parameters of their intended declaration objectives. For several states, their command structure management process drove the establishment of work plans and a series of performance and process metrics during the run-up to the declaration. Through the declaration process, a lead agency and individual in each state was tapped to lead the effort and carry out the declaration's parameters and mandate.

Types of Strategies Pursued and Desired Outcomes

A primary goal of state opioid emergency declarations is to reduce the number of overdoses and overdose fatalities. Declarations should allow governors to create a sustainable, systematic effort that strengthens coordination and collaboration to overcome certain statutory, legislative or regulatory barriers. Each state declaration acknowledges the existence of an emergency, outlines immediate next steps to respond to the crisis, and details several strategies to implement or pursue. States should contemplate these identified strategies, determine metrics for assessing outcomes and define what success means to the state for an impactful, sustained response. Types of strategies pursued in state opioid emergency declarations include:

- Increased naloxone distribution;
- Allowing statewide standing orders for naloxone;
- Mandating cross agency data sharing;
- Increasing data timeliness and surveillance;
- Addressing regulatory barriers;
- Strengthening access to treatment, specifically medication assisted treatment;
- Increasing opioid prescribing restrictions;

MARYLAND

Governor Larry Hogan issued an executive order on March 1, 2017, to declare an emergency regarding the heroin, opioid and fentanyl overdose crisis. Informed by the state's overdose fatality data, prescribing data and seizure data, the declaration was intended to implement efforts to reduce the number of fatalities and non-fatal overdoses throughout the state and establish state and local coordination structures to identify and respond to gaps in prevention, enforcement, treatment, and recovery services.

FLORIDA

Governor Rick Scott issued an executive order on May 3, 2017, directing a public health emergency across the state. The declaration allowed the state to accelerate the dispersal of federal funding from the Health and Human Services' Opioid State Targeted Response Grant, awarded to the state in April 2017.

- Authorizing funding or the pursuit of funding; and
- Strengthening interagency coordination.

In analyzing their emergency periods, declaration states cited a series of desired outcomes. States contemplating the use of emergency declarations should consider the following “7-P’s” of potential accrued benefits:¹

- **Personnel.** States that issue declarations have reassigned and/or appointed new personnel to better address the epidemic.
- **Pay-fors.** Declarations may provide governors and states with additional options to supplement existing opioid funding. State emergency orders can allow the governor to redirect previously allocated funding or use certain reserve funding.
- **Procurement.** State emergency declarations have allowed for accelerated procurement practices for certain supplies.
- **Practice.** Executive orders have been used to force changes in practice among public or private actors.
- **Policy.** Declaration states have used their emergency orders to address larger policy issues and address existing regulatory barriers.
- **Perception.** By declaring an emergency, states can reset their respective statewide conversations around the opioid epidemic and provide a more accurate public perception of the challenges. Such declarations have allowed for further conversations to destigmatize addiction and raise the importance of this issue in the eyes of the public, state legislatures and the judiciary. Through an emergency phase, the public can better understand the true scale and scope of the epidemic.
- **Partnerships.** Declaration states have sought to strengthen partnerships with other local or state entities, private entities and/or the federal government through their emergencies.

ARIZONA

Governor Doug Ducey issued the Opioid Overdose Epidemic Declaration of Emergency on June 5, 2017 to address the growing number of opioid deaths in the state. The governor’s declaration has served as a catalyst for the development and implementation of the state’s Opioid Action Plan.

SOUTH CAROLINA

Governor Henry McMaster signed an executive order proclaiming a statewide public health emergency on December 18, 2017. The order established the Opioid Emergency Response Team to ensure coordination and collaboration among government agencies, private entities and associations, and state and local law enforcement authorities.

Considerations for Governors

Governors are leading statewide initiatives to strengthen treatment, prevention, recovery and public safety responses to the opioid epidemic. Public health emergencies and disaster declarations can provide states with new tools to improve outcomes for states, communities and individuals affected by the opioid epidemic. As such, crafting and executing emergency declarations for use in the opioid epidemic can potentially assist states

¹ The “7-P’s” concept was first conceived by Dr. Jay Butler, Chief Medical Officer and Director of **Alaska’s** Division of Public Health.

when they have utilized other policymaking vehicles but face continued policy barriers while overdose fatalities continue to rise.

Weigh the Options. Before making a declaration, governors should ensure that this lever is weighed against other intermediate options (e.g. commissions, committees, working groups, task forces). Governors' offices must analyze and evaluate how the state will use this legal lever most appropriately to fit their state's unique public health and public safety needs. Further, governors' offices may need to examine how the use of this lever fits within the state's comprehensive goals to address the epidemic.

Define the Objectives. If a governor determines that an emergency is the right lever, state officials must balance the need to craft discrete outcomes within the confines of the declaration against allowing for sufficient flexibility to meet the evolving challenges and community needs within the epidemic. Should the governor issue the declaration, he or she should be prepared to explain the rationale to external stakeholders and the public and articulate how it will help the overall health and safety.

Develop Sustainable Practices. Once implementation begins, states ought to ensure that the declaration leads to data-driven, evidence-based practices and/or innovative strategies. Such practices and strategies require support from a well-defined organizational structure that—once the emergency concludes—can transition and be sustained over the long-term.

Employ Consistent Messaging. Throughout the emergency phase, governors' offices must execute a communications plan that prioritizes and engages with key stakeholders and the public to prepare them for the eventual winding down of the emergency phase.

By leveraging the emergency tools and authorities they have, governors are uniquely positioned to lead state efforts to create healthier communities, increase public safety, improve outcomes for those with substance use disorders and build more effective inter- and intra-governmental responses to the opioid epidemic.

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PENNSYLVANIA

Governor Tom Wolf signed a Proclamation of Disaster Emergency for the opioid epidemic on January 10, 2018. The statewide disaster declaration was issued to enhance a coordinated state and local response effort, increase access to treatment, increase data collection and improve tools for law enforcement and families.