

2019 Novel Coronavirus: Public Health Legal Preparedness

Tuesday, February 18, 2020 | 1:00 pm Eastern

Sponsored by the Public Health & Policy Interest Group



AMERICAN **BAR** ASSOCIATION

Health Law Section

Free 2-Part Webinar Series: Healthcare and Public Health Legal Preparedness: 2019 Novel Coronavirus (2019-nCoV)

Complimentary two-part webinar series hosted in collaboration with:

- **The American Bar Association Health Law Section (ABA HLS)**
- **American Health Lawyers Association (AHLA).**
- **CDC's Public Health Law Program and Center for Preparedness and Response**
- **The National Governor's Association (NGA)**
- **Association of Healthcare Emergency Preparedness Professionals (AHEPP)**

WEBINAR #1: Hosted by the ABA HLS, the first webinar, “[2019 Novel Coronavirus: Public Health Legal Preparedness](#)” is being held **February 18th** (1pm-2:30pm EDT).

WEBINAR #2: Hosted by AHLA, the second webinar, “[2019 Novel Coronavirus: Healthcare Provider Legal Preparedness](#)” is being held **February 25th** (12noon-1:30pm EDT)

CLE credit is available for the February 25th webinar only

Montrece Ransom, JD, MPH

- Team Lead, Training and Workforce Development with the Public Health Law Program (PHLP) in the Center for State, Tribal, Local, and Territorial Support, CDC
- Co-founder & Former Chair, Public Health and Policy Interest Group, HLS, ABA
- Former Chair, Government Attorneys Interest Group, HLS, ABA
- Vice Chair, Diversity and Inclusion Committee, HLS, ABA



Before we get started...

Recording

- Today's session will be recorded.
 - available within 24hrs
 - ABA Interest Group's website.
 - Go to: ambar.org/health
 - Click "Networking & Engagement Interest Groups"
 - Click "Government Attorneys"

Q/A

- Type your questions into the "Question Box" on your control panel, either during or after the presentation.

21st Emerging Issues in Healthcare Law



- March 11-14, 2020 | Manchester Grand Hyatt San Diego, CA – Early Bird & Hotel Block Close Today!
 - Visit ambar.org/EMI2020

2019 Novel Coronavirus: Public Health Legal Preparedness

TODAY'S SPEAKERS



AMERICAN **BAR** ASSOCIATION

Health Law Section

Joseph Bresee, M.D., FAAP

- Currently serving as CDC's Deputy Incident Manager for the 2019 novel coronavirus (nCoV) response.
- Associate Director of Global Health Affairs at the Centers for Disease Control and Prevention's Influenza Division in Atlanta.
- Director of the Partnership for Influenza Vaccine Introduction (PIVI) based at the Task Force for Global Health



Heather Huntley, JD, MHA

- Senior Attorney with the CDC/ATSDR Branch of HHS Office of General Counsel
- Member of the Infectious Diseases and Terrorism Response Legal Team and primarily provides legal advice to the Coordinating Center for Infectious Diseases (CCID).
- Provides legal advice in the topic area of copyright law.



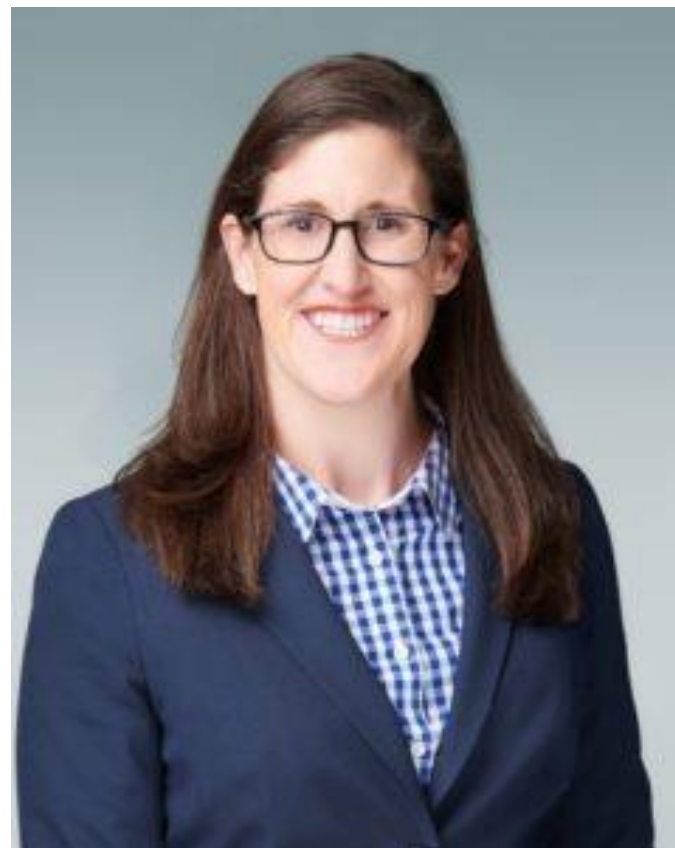
Joyce Roper, JD

- Senior Assistant Attorney General, State of Washington Attorney General's Office
- Counsel to the State of Washington Department of Health, advising:
 - Office of Emergency Preparedness and Response
 - Prescription Monitoring Program,
 - Drug Take-back Program,
 - Medical Marijuana Program



A Welcome from NGA: Lauren Stienstra

- Program Director, NGA Solutions Center for Best Practices, Homeland Security & Public Safety
- Manages the Governors Homeland Security Advisors Council (GHSAC), an association of governors' homeland security advisors (HSA) from every state, territory and the District of Columbia
- Former local emergency manager in Arlington, VA



Welcome

From the National Governors
Association



Lauren Stienstra

Program Director, Homeland Security & Public Safety



Who We Are

Over 100 years of serving our nation's governors



Conference of Governors at the
The White House, 1908

National Governors Association (NGA) is the bipartisan organization of the nation's governors. The association's members are the governors of the 55 states, territories and commonwealths. NGA is the premier resource for not only governors but also for their cabinet members, the U.S. Congress, private business enterprise and the international community.

What We Do

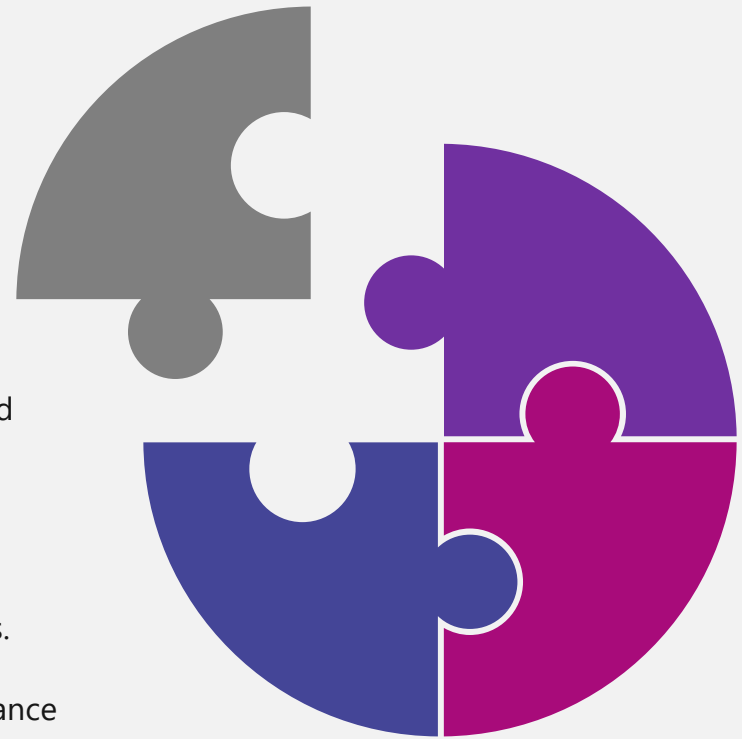
Services Provided

To support states in their work, NGA serves as the:

Collective Voice for Governors identify priority issues and deal with matters of public policy and governance at the state, national, and global level.

Research arm for Governors to help develop and implement innovative solutions to public policy challenges.

Consultancy for Governors by providing technical assistance to both new and incumbent governors, their senior executive staff and trusted advisors.



Joseph Bresee, M.D., FAAP

The 2019 novel coronavirus (nCoV) response: An Update from CDC





State, Tribal, Local, and Territorial Legal Preparedness for COVID-19

Heather Huntley, JD
Senior Attorney
HHS Office of General Counsel
CDC Branch

February 18, 2020

CDC–PHLP Disclaimer

The contents of this presentation have not been formally disseminated by the Centers for Disease Control and Prevention (CDC) and should not be construed to represent any agency determination or policy.

These materials are for instructional use only and are not intended as a substitute for professional legal or other advice.

Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.



What is legal preparedness?

Public health preparedness requires legal preparedness

■ Key Components of Public Health Preparedness

- A professional workforce competent in essential skills
- Public health agencies that meet defined preparedness performance standards
- Collaborative networks of agencies and partners
- Modern information systems and laboratories
- Agencies and partners that are legally prepared



For more on STLT public health legal preparedness, visit:
www.cdc.gov/phlp/publications/topic/emergency.html

Talk to your lawyers!

They will:

- **Assure agency has necessary authority**
- **Assist development of emergency policies**
- **Anticipate and protect agency against legal liability**
 - Action may be required even in the face of potential liability—goals are to:
 - Maximize effectiveness and minimize legal exposure
 - Recognize small liability concerns, but do not preclude necessary, common-sense responses

Legal tools, for your consideration...

- Surveillance**
- Control**
- Response**

Surveillance

Disease surveillance and disease reporting

- National Notifiable Diseases Surveillance System (NNDSS)
- States and localities can **require** reporting of dangerous diseases to the state or local health department
 - Accomplished through statutes, regulations, or both
 - Changes can be made quickly through executive orders, emergency declarations, or emergency rulemaking
 - Notifications sent via a jurisdiction's Health Alert Network (HAN)



Examples: State disease reporting requirements

Specific Diseases

- Ebola
- Tuberculosis
- Zika
- West Nile

Classes of Diseases

- Viral hemorrhagic fevers
- Arboviruses
- Novel coronavirus

Dangerous Disease Catchalls

- “Any dangerous contagious or infectious disease”
- “Any cluster of illnesses”
- “Any unexpected pattern of cases, suspected cases, deaths, or increased incidence of any other disease of major public health concern, because of the severity of disease or potential for epidemic spread, which may indicate a newly recognized infectious agent, outbreak, epidemic, related public health hazard or act of bioterrorism”

State COVID-19 reporting requirements for providers and laboratories as of Feb. 11, 2020

■ Statutes and regulations

- 48 states and D.C.
 - Require the reporting of clusters of illness and outbreaks of public health significance immediately or within 24 hours of identification
- 13 jurisdictions (AZ, AR, CA, CO, ME, MA, MI, ND, OK, RI, SD, TX, & VA)
 - Require reporting suspected or confirmed cases of any **novel coronavirus** to the health department immediately or within 24 hours of identification

■ HAN, news release, director memo, provider guidance, or website list

- 47 states and D.C.
 - Require reporting suspected or confirmed cases of **2019-nCoV** to the health department immediately or within 24 hours of identification

Control

Nonpharmaceutical interventions

Strategies for disease, injury, and exposure control not involving the use of pharmaceuticals, such as medicine or vaccines

- **Examples—**

- Precautionary protective behaviors (e.g., handwashing)
- Monitoring by public health authorities
- Use of a respirator
- Isolation or quarantine
- Restrictions on movement
- Travel advisories
- External decontamination

Nonpharmaceutical interventions

- **Community interventions**

- Social distancing

- Actions communities might take to **increase space** between people

- **Personal interventions**

- Isolation

- Separating sick people who have a communicable disease from people who are **not sick** to prevent spread of the disease

- Quarantine

- Separating and/or restricting the movement of people who were **exposed** to a communicable disease but are **otherwise well** from those not exposed

Who has authority to implement nonpharmaceutical interventions?

- **Federal government**
 - With exceptions, typically limited to guidance and recommendations
 - Federal laws and regulations provide limited powers in specific contexts
- **States**
 - Under the Tenth Amendment police powers and through state statutes and regulations
- **Localities**
 - Pursuant to authorities delegated by the state and passed through local ordinances
- **Territories**
 - Pursuant to codified public health authorities
- **Federally Recognized Tribes**
 - Pursuant to tribal constitutions, statutes and regulations, and their inherent sovereignty

Variations in state laws

- **State laws for public health interventions vary greatly**
 - Who has the authority?
 - Who can be quarantined?
 - Where do we quarantine?
 - How long?
 - What are the penalties?
 - Do the laws change if there's an emergency?
 - Is there a process for judicial review?
- **Or the law may be silent on all or some of the above**

Who has the power?

State	Non-Emergency vs. Emergency Declaration	Authority to Quarantine
CT	Non-Emergency	Any town, city, borough or district director of health
	Emergency declared by the Governor	<u>State Commissioner of Public Health</u> , if so authorized by the Governor
GA	No difference	Commissioner of the Georgia Department of Public Health District Health Directors for each Health District (<u>not</u> County Boards of Health)
IL	No difference	State Department of Public Health Local Health Authority
MA	No difference	Local boards of health and the Department of Public Health
TX	No difference	State department, a local health authority, or a regional health authority

Where can you quarantine?

State	Non-Emergency vs. Declaration	Location of Quarantine
CT	Non-Emergency	Private homes or other private or public premises as designated by the district director of health
	Emergency declared by the Governor	Private homes or other private or public premises as designated by the <u>State Commissioner of Public Health</u>
GA	No difference	Unspecified
IL	No difference	Health care facility (if person is already there), home setting (if possible), or hospital (if home quarantine cannot be accomplished), or other public or private premises; premises used for quarantine shall be maintained to minimize the likelihood of further transmission of infection or other harm to persons quarantined
MA	No difference	Residences; other locations may be used so long as the Department or local board of health obtains an order of the Superior Court authorizing the quarantine as soon as practicable, but in no event later than ten days following the commencement of isolation or quarantine
TX	Non-Emergency	Location designated by the health authority or the Commissioner, including health care facilities designated by the health authority or the Commissioner
	Public Health Disaster	Location designated by the health authority or the Commissioner, including health care facilities designated by the health authority or the Commissioner A court may also <u>designate a private health care facility at the expense of the person and with agreement from the head of the private health care facility</u>

What are the penalties for noncompliance?

State	Non-Emergency vs. Emergency Declaration	Penalties for Noncompliance
CT	Non-Emergency	Class C misdemeanor
	Emergency declared by the Governor	<\$1,000 fine, <1 year imprisonment, or both, for each offense
GA	No difference	Misdemeanor
IL	No difference	Class A misdemeanor
MA	No difference	A minimum fine of \$10, maximum fine of \$100
TX	No difference	Individual quarantine: Class B misdemeanor Area quarantine: felony of the third degree

Legal actions implemented by United States territories or freely associated states as of Feb. 5, 2020

■ Travel Restrictions Imposed

- American Samoa: through Emergency Declaration (extended and previously declared for Measles)
- Federated States of Micronesia: through Public Health Emergency Declaration
- Northern Mariana Islands: through Declaration of State of Significant Emergency
- Republic of Marshall Islands: through Travel Ban (State of Health Emergency previously declared for dengue fever outbreak)
- Republic of Palau: through Executive Order
- All U.S. territories (Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands): through U.S. Presidential Proclamation

■ Types of Restrictions

- Suspension of all visas for foreign nationals
- Spend 14 days in unaffected country prior to entry
- Mandatory of health examination prior to entry
- Ban on citizens traveling to China

PUBLIC HEALTH THREATS & THE US CONSTITUTION: WHAT RESPONDERS NEED TO KNOW



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Law & policy innovation for the common good.



Centers for Disease Control and Prevention
Office for State, Tribal, Local and Territorial Support

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www.publichealthlawacademy.org

Response

Legal actions to address a pandemic

- **What do you need?**

- Treatment facilities
- Personal Protective Equipment
- Medical Countermeasures

- **Who do you need?**

- Healthcare providers (doctors, nurses, paramedics, EMTs, etc.)
- Health department, laboratory, and emergency management personnel

- **How will the law help or hinder?**

- Procurement/seizure of property and supplies
- Licensure reciprocity
- Scopes of practice
- Liability protections

Analysis of influenza emergency executive orders and declarations

- Focused on executive orders (EOs) and emergency declarations issued during influenza emergencies
- Excluded non-emergency EOs, such as those establishing advisory committees and leave programs
- Used legal databases, online searches, and direct contact with jurisdictions
- Established coding categories to find common trends such as—
 - Jurisdiction
 - Date
 - Issuer
 - Types of actions ordered
 - Types of laws suspended

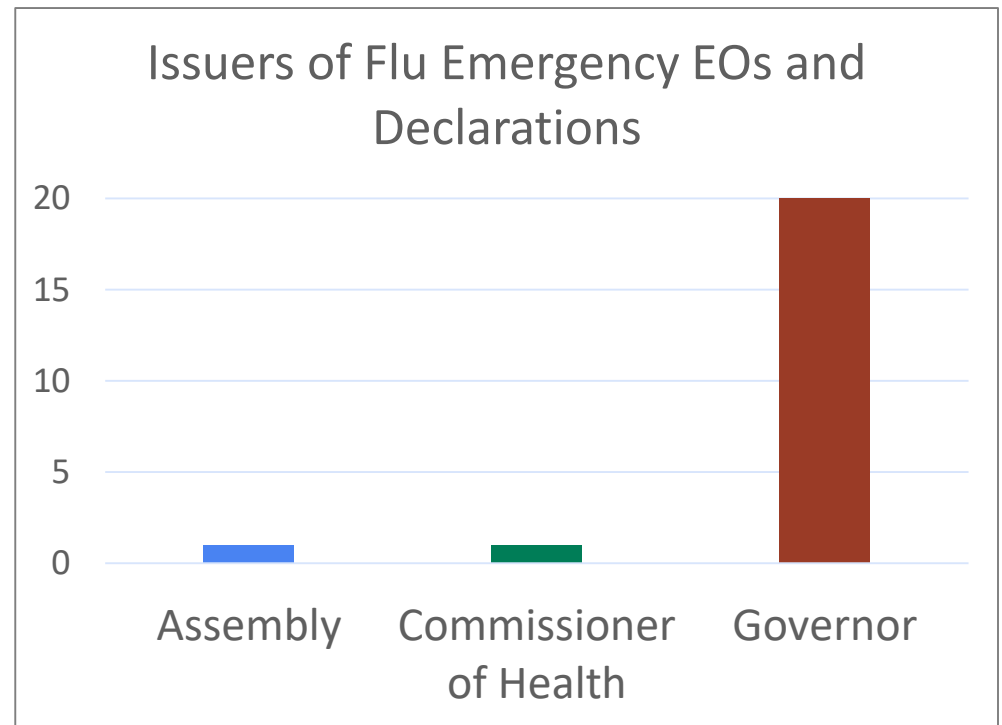
How many influenza emergency EOs and emergency declarations did we find?

- **22 total**
 - Range from 2004 to 2014 (likely due to limitations of what's online)
 - 18 were for H1N1
 - 3 were for a “Vaccine Shortage Creating Potential for a Public Health Crisis” in 2004
 - 1 was for Epidemic Seasonal Flu

Interesting trends

- **Who has issued influenza emergency declarations and orders?**

- Governors
- Commissioners of Health
- State Assemblies



Interesting Trends

- **What types of actions are being ordered?**
 - Nonpharmaceutical Interventions & COOP
 - State agencies must advise employees to stay home if they have flu symptoms
 - State agencies must amend COOPs to address the current threat
 - Public Outreach and Education
 - State health department must create informational website for the public
 - All state agencies directed to work with all government partners to use their websites to direct the public to the state's informational website

Interesting Trends

- **What types of vaccine supply, distribution, and administration actions were ordered?**
 - Prioritize vaccines for certain groups
 - Assess and report vaccine supply to CDC
 - Access and distribute state and federal antiviral stockpiles
 - Make antiviral treatments available to persons within the State, regardless of insurance or other health coverage
 - State agencies must coordinate and facilitate the establishment, implementation, administration and operation of vaccination clinics in school-based settings
 - Authorize registered volunteers to assist with receipt, distribution, accounting for and administration of vaccine
 - Suspend statutes or regulations for vaccine distribution purposes

Suspension of statutes and regulations in emergencies

- **Research has shown 35 states can suspend statutes and regulations, and 7 states can suspend regulations during an emergency**
 - An Assessment of State Laws Providing Gubernatorial Authority to Remove Legal Barriers to Emergency Response (<https://doi.org/10.1089/hs.2018.0126>)
- **Generic response suspensions in influenza orders**
 - Purchasing and contracting requirements
 - Any statutes or regulations that inhibit the response
- **Vaccine supply, distribution, and administration suspensions**
 - Waive vaccination reporting requirements
 - Allow lapsed licensees to administer vaccinations at PODs
 - Allow state Medicaid to reimburse for administration of the H1N1 vaccine
 - Expand scopes of practice

What scopes of practice were expanded?

- EMTs – Intermediate
- EMTs – Paramedic
- EMTs – Cardiac Rescue Technicians
- Advanced EMTs
- Physician assistants
- Specialist assistants
- Midwives
- Pharmacists
- Dentists
- Dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate
- Podiatrists pursuant to a non-patient specific order
- Additional categories of healthcare providers as determined by the state health official (SHO)



Conclusions

- Protecting the public's health is primarily the responsibility of state and local governments under the 10th amendment
- Planning and exercises must account for legal processes and include health officials, attorneys, and the judiciary to ensure an efficient response
- State laws governing isolation and quarantine vary greatly
- Pandemics will bring about novel legal issues: be ready to adapt

Public Health Emergency Law Online Training

Management of public health emergencies requires effective use of legal authorities. In these incidents, public health and emergency management responses must be coordinated under a complex set of federal, state, tribal, and local laws. CDC's Public Health Emergency Law course prepares state, tribal, local, and territorial practitioners to make informed legal decisions related to emergency preparedness and response activities in their jurisdictions.

PHEL consists of three [competency-based](#) units and covers legal issues to consider before, during, and after public health emergencies. Each interactive unit takes about 40 minutes to complete.

- [Unit 1—Introduction to Emergency Management Systems Preparedness and Response](#) 
- [Unit 2—Emergency Powers: Protection of Persons, Volunteers, and Responders](#) 

Covers the legal underpinnings of emergency management systems

Describes legal considerations for personnel responding to emergencies

- [Unit 3—Emergency Powers: Management and Protection of Property and Supplies](#) 

Examines considerations surrounding materials and property during public health emergencies



Ohio National Guard members load drinking water onto a helicopter for delivery to Ocean Springs, Mississippi, after Hurricane Katrina disrupted water supplies along the Mississippi Gulf Coast.

www.cdc.gov/phlp/publications/topic/trainings/ph-emergencylaw.html

Thanks!

For more information, contact CDC
1-800-CDC-INFO (232-4636)
TTY: 1-888-232-6348 www.cdc.gov

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.



HEALTHCARE AND PUBLIC HEALTH LEGAL PREPAREDNESS: COVID-19

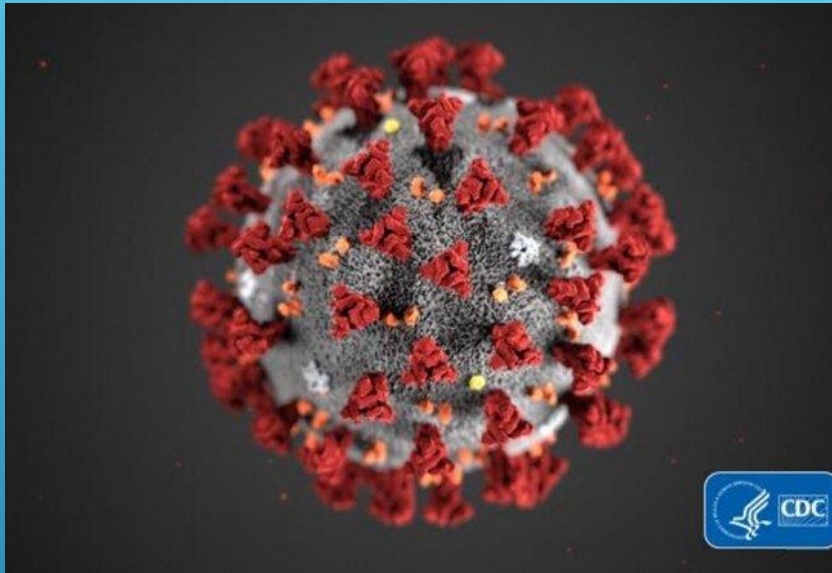
Joyce A. Roper

Sr. Assistant Attorney General

State of Washington

Office of the Attorney General

February 18, 2020



**SNOHOMISH COUNTY MAN HAS THE
UNITED STATES' FIRST KNOWN CASE OF
WUHAN CORONAVIRUS (SEATTLE TIMES,
1/21/2020)**

TIMELINE

- 1/15/2020 Washington resident returns from travelling in Wuhan since November (no symptoms)
- 1/19/2020 patient visits medical clinic, having developed symptoms (fever & cough) – visit prompted by seeing the CDC health alert, dons a mask
- Other potential pathogens ruled out by lab tests
- Notifications:
 - Clinic notified local and state health departments
 - State DOH notified CDC EOC. Specimen sent to CDC.
- Patient sent home with isolation instructions; active monitoring by Snohomish County Public Health
- 1/20/2020* CDC confirmed positive for COVID-19
- Patient admitted to airborne-isolation unit in Providence Regional Medical Center

*Federal and state holiday

The NEW ENGLAND JOURNAL of MEDICINE

BRIEF REPORT

First Case of 2019 Novel Coronavirus in the United States

Michelle L. Holshue, M.P.H., Chas DeBolt, M.P.H., Scott Lindquist, M.D.,
Kathy H. Lofy, M.D., John Wiesman, Dr.P.H., Hollianne Bruce, M.P.H.,
Christopher Spitters, M.D., Keith Ericson, P.A.-C., Sara Wilkerson, M.N.,
Ahmet Tural, M.D., George Diaz, M.D., Amanda Cohn, M.D., LeAnne Fox, M.D.,
Anita Patel, Pharm.D., Susan I. Gerber, M.D., Lindsay Kim, M.D.,
Suxiang Tong, Ph.D., Xiaoyan Lu, M.S., Steve Lindstrom, Ph.D.,
Mark A. Pallansch, Ph.D., William C. Weldon, Ph.D.,
Holly M. Biggs, M.D., Timothy M. Uyeki, M.D., and Satish K. Pillai, M.D.,
for the Washington State 2019-nCoV Case Investigation Team*

NEJM ARTICLE AUTHORED BY THE WASHINGTON STATE CASE INVESTIGATION TEAM

- Provides a thorough report of the patient's disease and treatment courses
- Patient was discharged home by February 4
- Home isolation and monitoring continued post-discharge

WASHINGTON'S INCIDENT MANAGEMENT

- ▶ Home Rule State – Local » State » Federal
- ▶ Collaborative Culture – LHOs notified, cross jurisdiction operations coordination with affected counties (King, Snohomish)
- ▶ CDC sent staff to assist
- ▶ Initial Products:
 - ❖ Lab specimen procedures
 - ❖ Pre-hospital EMS Infection Control Guidance
 - ❖ Guidance for COVID-19 Monitoring for Contacts and Travelers
 - ❖ Exposure Risk Categories
 - ❖ Guidance for Contacts (why, methods of monitoring, key symptoms to track)
 - ❖ Health Care Provider Tracking Form (for PUI or confirmed case)

2/18/2020

GUIDANCE, PLANS & CHECKLISTS

- ❖ COVID-19 Interim Infection and Prevention and Control Recommendations for Hospitalized Patients
- ❖ Healthcare Readiness Checklist
- ❖ Communications Plan
- ❖ Pre-hospital and Healthcare Survey (to identify resources and gaps)
- ❖ Triage guidance for 911 operators
- ❖ Guidance for Social Distancing
- ❖ LHJ 2019-nCoV Quicksheet
- ❖ Contact Investigation
- ❖ School Nurse and Administrator Resources
- ❖ Home Isolation Guidance
- ❖ **AND MORE AT:**
<https://www.doh.wa.gov/Emergencies/Coronavirus>

POLICY GROUPS CONVENED

Policy Groups, comprised of representatives from private and public sector affected parties, were organized as part of the post-911 response plans

- ▶ Between events, the groups work on items identified during event responses to improve the next event response
- ▶ During events, they provide guidance, assistance, and resources to the decision-makers

For the COVID-19 response, the following policy groups were convened:

- ▶ Public Health Surveillance and Response
- ▶ Healthcare System Policy
- ▶ Disaster Medical Advisory Committee

FEDERAL ACTIONS

► January 31, 2020

- ❖ HHS Secretary Azar declares a public health emergency,
- ❖ Also announces, effec. Sunday, February 2, 5:00 PM EST (2:00 PST),
 - Returning U.S. citizens who travelled in Hubei province in the 14 days prior to return must be quarantined for up to 14 days upon return
 - Returning U.S. citizens who travelled anywhere else in mainland China in the 14 days prior to return must undergo screening at select ports of entry (including SeaTac) and up to 14 days of monitored self-quarantine
- ❖ Presidential Proclamation 9984 signed: *Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus*, effec. February 2, 5:00 PM EST
 - Suspends entry of all aliens who were in mainland China in the 14 days prior to seeking entry to the U.S. (excl. Hong Kong and Macau), with 11 categories of exceptions, e.g. lawful permanent resident, immediate family members of a citizen or lawful permanent resident
 - Identified 11 airports as select ports of entry

STATE PREPARATIONS

- ▶ After confirming that no quarantine facility had been identified by the federal government in Washington for persons subject to the President's Proclamation, who do not reside in Washington, DOH began working with its partners to identify a suitable facility
- ▶ Two state owned facilities identified
- ▶ To date, neither facility has been used
- ▶ Thus far, travelers meeting the quarantine criteria have been quarantined and monitored in their homes

WASHINGTON'S I&Q LAWS

- ▶ I&Q standards and rules are under the authority of the State Board of Health (SBOH), not the Department of Health – RCW 43.20.050(2)(e)
- ▶ SBOH referenced in the Washington Constitution
- ▶ SBOH comprised of DOH Secretary, a tribal health official experienced in matters of health and sanitation, three other persons experienced in health and sanitation matters, elected city official who is a member of a local health board, elected county official who is a member of a local health board, a local health officer, and two persons representing consumers of health care (public members) = 10 members, appointed by Governor
- ▶ Isolation and quarantine rules: WAC 246-100-011 through -070
- ▶ Notifiable conditions rules: WAC 246-101-001 et seq.
- ▶ “All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city or township thereof, shall enforce all rules adopted by the state board of health.” RCW 43.20.050(4)

2/18/2020

I&Q PROCEDURES

- ▶ A local health officer may order isolation or quarantine, if such measures are necessary to control or prevent the spread of a dangerous, contagious, or infectious disease in his or her jurisdiction.
- ▶ Voluntary compliance is preferable, but if the nature of the disease or other circumstances indicate questionable compliance or medical urgency in protecting the public, I&Q can be ordered by the health officer.
- ▶ DOH Secretary is granted the same authority as LHOs, which the Secretary may exercise in an emergency, by agreement with the LHO or local board of health, or when the LHO fails or is unable to do so – RCW 43.70.130(7)
- ▶ I&Q orders may also be obtained *ex parte* from a superior court. The orders may not exceed ten days, although, upon petition to the court, the orders may be extended up to a period of thirty days.
- Due Process Rights for persons isolated or quarantined:
 - ❖ Right to notice
 - ❖ Right to counsel
 - ❖ Right to hearing on request
 - ❖ Rational/reasonable basis for detention

RIGHTS OF PERSONS UNDER I&Q ORDERS

► Persons subject to isolation or quarantine have the right to:

- ❖ Petition the court for a hearing within 72 hours of the quarantine, exclusive of Saturdays, Sundays and holidays, WAC 246-100-040;
- ❖ Have the courts rule on any petition within 48 hours, WAC 246-100-055(1)(a);
- ❖ Counsel and appointment of counsel per chapter 10.101 RCW (indigence). WAC 246-100-060.

I&Q CONDITIONS AND PRINCIPLES

- ▶ To better achieve voluntary compliance and reduce risk of legal challenges:
 - ❖ I&Q must be the least restrictive means necessary to prevent the spread of the disease
 - ❖ Must confine isolated and quarantine persons separately
 - ❖ Must regularly monitor health status to determine need for continued I&Q
 - ❖ Must be released as soon as practicable when it is medically determined that they pose no substantial risk to the health and safety of others
 - ❖ Their needs must be addressed to the greatest extent possible in a systematic and competent way, including but not limited to food, clothing, shelter, communication with others, medication and competent medical care
 - ❖ Premises must be safe and hygienic to minimize risk of transmission or harm to persons isolated or quarantined
 - ❖ To the extent possible, cultural and religious practices should be considered in addressing their needs
 - ❖ Shall not abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat the disease (person declining medical treatment may be isolated in the discretion of the health officer for the duration of their communicable infection)

WAC 246-100-045

CONSEQUENCES FOR VIOLATING I&Q ORDERS

Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or **violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases** by the local board of health or local health officer or administrative officer or state board of health, **or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease**, is **guilty of a misdemeanor**, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to **imprisonment in the county jail not to exceed ninety days** or to both fine and imprisonment.

RCW 70.05.120

I&Q FORMS TAILORED FOR COVID-19

Generic Forms

- ▶ DOH Website:

<https://www.doh.wa.gov/ForPublicHealthandHealthcareProviders/EmergencyPreparedness/IsolationandQuarantine>

- ▶ Chart explaining factors for choosing among the range of options from voluntary to court ordered involuntary isolation or quarantine:

<https://www.doh.wa.gov/Portals/1/Documents/1400/IsoQuar-Documents/DocumentChart.doc>

Modified Forms

- ▶ Generic forms were tailored to this specific disease, describing the etiology and risk of contagion, as well as adding resource links about the disease and an attachment describing the steps to take to protect themselves and others
- ▶ Focused on the voluntary quarantine request and emergency involuntary detention order issued by the DOH Secretary
- ▶ Added more detail about the medical justification for the involuntary quarantine order

CONSULAR NOTIFICATIONS

- ▶ When isolating or quarantining a foreign national, the nearest embassy or consulate of that person's country should be notified "without delay"
- ▶ Includes lawful permanent resident aliens
- ▶ Does not include dual citizens if one of their citizenships is U.S.
- ▶ The governmental entity (federal, state or local) effecting the detention is responsible for notifying the consulate
- ▶ Notification is mandatory for some countries, but not all
- ▶ Excellent resource: *Consular Notification and Access, prepared by the US Dept. of State*
https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf
 - ❖ Page 18 contains the Q&A re: quarantine or hospitalization
 - ❖ Page 4 lists the mandatory notification countries

**WHEN IT COMES TO GLOBAL HEALTH, THERE IS NO
'THEM'... ONLY 'US.'**

— GLOBAL HEALTH COUNCIL

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Q&A

- Type your questions into the “Question Box” on your control panel, either during or after the presentation.



THANK YOU!

REGISTER FOR PART II:

Hosted by AHLA, the second webinar, **“2019 Novel Coronavirus: Healthcare Provider Legal Preparedness”** is being held **February 25th** (12noon-1:30pm EDT).

The program will cover healthcare preparedness considerations and focus on the legal issues for the healthcare sector, including patient screening and testing, personal protective equipment (PPE), and more.

Register now:

<https://distancelearning.healthlawyers.org/p/W-NCV20>

CLE credit is available for the February 25th webinar only



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