

COVID-19 PANDEMIC: AN EXTRAORDINARY PUBLIC HEALTH CHALLENGE

LEGISLATIVE OVERVIEW SERIES: 2021 PUBLIC HEALTH SPOTLIGHT

Introduction

In 2020, the United States saw great disruption to daily life due to the COVID-19 pandemic and suffered the loss of over 300,000 lives—a number that continues to grow.¹ Every state and territory exercised its emergency powers to implement necessary public health measures to slow the spread of the disease and increase the capacity of the healthcare system.² Fact-based measures like stay-at-home orders, school and business protocols, gathering limits, and face mask requirements—while effective at reducing activities associated with the community spread of COVID-19—were seen by some as a government overreach and faced legal challenges and resistance among community members.³

Although many actions taken to address the pandemic were done through executive emergency powers, states and territories also enacted legislation to facilitate components of pandemic response such

as procuring personal protective equipment (PPE), conducting testing, and implementing contact tracing programs.

PERSONAL PROTECTIVE EQUIPMENT

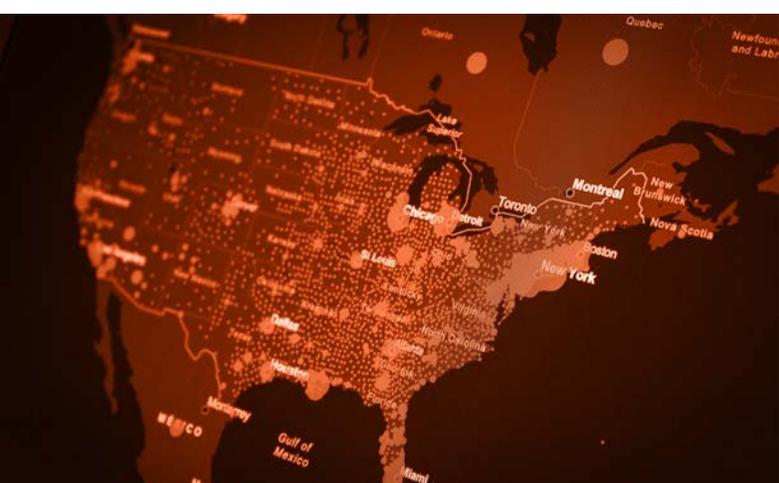
Throughout the pandemic, there have been shortages of personal protective equipment like N95 respirators, making it difficult for government and nongovernment organizations to procure needed supplies to support the healthcare system. To encourage production of PPE, Oklahoma enacted a law providing businesses liability protection if they created PPE for sale or donation outside of their normal scope of businesses. Virginia expanded the Governor's emergency powers to authorize the state to purchase PPE for private, nongovernmental entities during a public health emergency. Looking ahead, California passed a law that will require acute care hospitals to provide PPE to staff and patients as well as to create a three-month stockpile of PPE by April 2021.

TESTING

To support testing capacity for COVID-19, the federal government required that FDA-authorized diagnostic tests be covered by Medicare, Medicaid, and private health insurers without cost-sharing requirements for the patient. To further support extensive testing, several state and territorial health officials issued statewide standing orders to expand the types of medical professionals who are authorized to administer COVID-19 tests. Beyond the standing orders, New Jersey enacted a law authorizing pharmacists to order COVID-19 diagnostic tests for patients.

CONTACT TRACING

Contact tracing is an established public health function that has been used for decades to prevent and control disease within communities. The practice has been implemented on a national scale during the pandemic. While many legislatures considered bills related to contact tracing, Kansas enacted comprehensive COVID-19 contact tracing legislation that outlined requirements for contact tracers, specified how contact



The COVID-19 pandemic was the first time in history that every state and territory was under a simultaneous emergency declaration.

tracing data may be used, and requires destruction of collected data when it is no longer necessary. States enacted legislation to ensure that the contact tracers are representative of the communities they serve, and also considered bills that would limit the use of contact tracing data while ensuring that participation in contact tracing is voluntary.

PUBLIC HEALTH AUTHORITY

With concerns of government overreach in some COVID-19 response policies, a few legislatures considered measures to curtail executive branch emergency powers and public health authority. For example, Virginia considered a bill that would have required a public hearing prior to the Board of Health issuing an emergency order, along with a 45-day limit on emergency orders. Similarly, a bill was introduced in Ohio to limit the department of health's isolation and quarantine order powers.

Legislative efforts to limit public health powers largely failed in 2020, however there were successful judicial challenges to public health interventions in state and federal courts. For example, the Wisconsin Supreme Court ruled that the secretary of health should have used a formal rulemaking process to implement the state's stay-at-home order rather than rely on the governor's emergency powers. In federal court, the U.S. District Court for the Western District of Pennsylvania struck down a public health order restricting public gatherings. In that case, the court found the limitation overly broad and not sufficiently narrowed to meet a compelling government interest. The U.S. Court of Appeals for the Third Circuit postponed the district court's invalidation of the COVID-19 orders pending the state's appeal.



Pandemics are stressful. Coping with stress in a healthy way is beneficial to individuals, families, and communities.⁴

Looking Ahead

ASTHO expects state legislatures to continue to address the COVID-19 pandemic in 2021. In addition to proposals on PPE supply, COVID-19 testing, contact tracing, and public health authority, upcoming state legislation may:

- **Address issues related to the COVID-19 vaccines, including vaccine requirements, immunity certificates, and data collection and usage.**
- **Expand the scope of practice of healthcare providers to administer COVID-19 vaccines.**
- **Address the mental health impact of the pandemic on the public health and healthcare workforce.**

1. Centers for Disease Control and Prevention (CDC). "CDC COVID Data Tracker." Available at <https://covid.cdc.gov/covid-data-tracker/#cases-casesper100klast7days>. Accessed on 12-18-2020.
2. The Council of State Governments. "Executive Orders." Available at <https://web.csg.org/covid19/executive-orders/>. Accessed on 12-18-2020.
3. Moreland A, Herlihy C, Tynan MA, et al. "Timing of State and Territorial COVID-19 Stay-at-Home Orders and Changes in Population Movement – United States, March 1–May 31, 2020." *Morb Mortal Wkly Rep.* 2020;69:1198–1203. Available at <http://dx.doi.org/10.15585/mmwr.mm6935a2>. Accessed on 12-18-2020.
4. CDC. "Coping with Stress." Available at <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>. Accessed on 12-18-2020.

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