

# PUBLICATION

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## Coronavirus: Implications of an Emergency Declaration

Authors: Wendy Huff Ellard, Ernest B. Abbott

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As the situation continues to unfold, the outbreak of the coronavirus (COVID-19) in the United States is prompting increased federal and state action. There is much confusion regarding the implications of an emergency declaration and the significance of individual state emergency declarations. This article provides a summary of the current landscape and general recommendations that affected entities should consider in the event they may be eligible for federal or state reimbursement funding for costs incurred related to this outbreak.

### Implications of an Emergency Declaration

- **Public Health Emergency – HHS.** Health and Human Services (HHS) Secretary Alex Azar declared a public health emergency on January 31 pursuant to his authority under the Public Health Service Act. The Coronavirus Task Force was established shortly thereafter to lead the response effort and HHS has since issued multiple waivers and policy adjustments to support the critical response efforts of the health care community. However, as the outbreak has continued to build momentum, and fears of an impending pandemic have grown, there have been conflicting reports regarding the current and anticipated role of the Federal Emergency Management Agency (FEMA) and what can be, and possibly should be, done to take advantage of the Agency's resources, personnel, and funding.
- **Emergency Declaration – FEMA.** As of the morning of March 11, multiple Senate leaders are reportedly preparing a letter that will ask President Donald Trump to issue an emergency declaration for the coronavirus pandemic. Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), the President has the authority to declare an emergency based on a finding that the necessary response is beyond the capabilities of the requesting state and affected local governments. Very different than the public health emergency previously issued, an emergency declaration under the Stafford Act would provide greater access to the wide array of resources managed by FEMA, from personnel experienced in complex response efforts to resources including temporary medical facilities, logistics contracts including those for emergency shelter (or in this case, quarantines), and even additional bottled water and rations. Perhaps more importantly, such a declaration would also allow access to the Disaster Relief Fund (DRF) to support emergency response efforts, a resource totaling over \$35 billion as of February 29, according to FEMA's March 6 report to Congress.

To clear a few misconceptions though: (1) the President would not issue one emergency declaration under the Stafford Act covering the entire nation. Stafford Act emergencies can generally be declared only on request of the governor, and the President would make individual emergency declarations for each state. (2) Stafford Act emergency declarations would not necessarily remove HHS from the lead role. Under the National Response Framework, HHS would remain as the head of the "Emergency Support Function" of health and medical care, and would still have the primary responsibility for most decision making and communications. FEMA would activate its interagency emergency operations center at its Washington, D.C. Headquarters, all ten FEMA regional offices would directly support states in their regions, and FEMA would lead operational meetings and work to coordinate the overall effort, including using its typical disaster recovery frameworks to ensure the most beneficial response.

Particularly in the wake of the \$8.3 billion COVID-19 spending package enacted last week, the likelihood is that FEMA's funding would not go directly to state and local government health officials, or health care entities, but rather to support emergency measures such as temporary tent isolation or quarantine centers. The reality, however, is that we are in atypical times and those affected must monitor the changing situation in order to make an informed decision on the best path forward.

- **State of Emergency – Individual States.** A sufficient federal response is critical; however, much of the response effort is managed at the state level. Beginning with the state of California on March 4, at least 17 other states have now declared a state of emergency related to the virus, including Colorado, Florida, Hawaii, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, Utah, and Washington. But what does this mean?

Primarily an operational formality, state-level declarations often result in the immediate activation of a state's emergency response plan, including heightened coordination of agency leadership and greater incorporation of the state's emergency management agency, and can trigger greater access to state and federal funding and resources. These actions also allow flexibility regarding a variety of state laws and regulations; these can vary greatly to include waiver of procurement rules, easing of licensing requirements, exceptions to transportation rules, even suspension of school attendance laws, and many other changes meant to facilitate a more efficient response.

For this specific event, the benefits of a state level declaration translate to greater support of the primary focus of the current response effort, the health care community. For example, relaxed rules may allow expedited purchase of cleaning and testing supplies, qualified professionals other than doctors and nurses to conduct testing and expedited leasing of lab space, EMS personnel to transport patients to quarantine locations other than hospitals, even waiver of quorum requirements for public meetings of health officials. These declarations can also trigger the ability to command beneficial state resources, such as the quarantine facilities set up this week in a state port, military base, and a state park, and to activate the National Guard if needed.

## Recommended Actions for Affected Entities

State and local governmental entities and private non-profits providing critical services (e.g., utilities, hospitals, educational providers, emergency, and custodial care facilities) or essential social services may be eligible to receive state and/or federal resources and funding in the event that an emergency declaration is issued in connection with this outbreak.

The following are critical points to keep in mind as this becomes more likely:

- **Consult with your local and state emergency management authorities frequently regarding your needs and coordinated response efforts and resources.** These officials will also have the most up-to-date information regarding the federal response and available resources and programs.
- **Stay up-to-date on the CDC's guidance, which may be found [here](#).**
- **Procurement and grant conditions compliance.** Entities that may be eligible to receive funding through FEMA (or any federal agency) for emergency preparation and response costs should review procurement policies, standards of conduct, and forms of contract for any work that might be reimbursable as it is of critical importance that these documents be compliant with federal regulations to protect the eligibility of associated funding. Our Disaster Recovery and Government Services Team has developed a Procurement Toolkit and other compliance aids and resources, available [here](#).

- **Document all work performed and costs incurred.** All affected entities should document work performed (including paid and volunteer assistance) and costs incurred (including copies of all receipts and time logs). These records can support insurance claims and will be required to support claims to FEMA for additional assistance.

For more information specific to this topic, please contact our Disaster Recovery and Government Services co-chairs, [Ernest B. Abbott](#) and [Wendy Huff Ellard](#), or visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.