

COVID-19 Daily Update

April 3, 2020

Summary

There are over one million confirmed COVID-19 cases around the world, and the United States now has 261,438 reported cases. President Trump invoked the Defense Production Act—which gives the president powers to direct domestic industrial production to provide essential materials and goods needed in a national security crisis—to compel 3M to provide more N95 face masks for health care workers. He additionally authorized the Secretary of Homeland Security to facilitate the supply of materials for the production of ventilators to General Electric and Medtronic, among others. FDA relaxed restrictions on receiving blood donations from gay men and other groups as the country confronts an unprecedented drop in the U.S. blood supply.

In light of increasing evidence that infected people without symptoms can spread the virus, the White House announced a plan to formalize new guidance recommending that all Americans wear face coverings when leaving home. The guidance may be limited to those who live in areas hard-hit by community transmission of COVID-19. The Mayor of Los Angeles urged residents to use face coverings when in public. New York City officials recently advised residents to shield their faces with a scarf, bandana or other homemade protective covering when leaving their homes.

The number of deaths in New York doubled in three days, jumping from 1,550 on Tuesday to 2,935 on Friday. There are now 102,863 confirmed cases in New York State, up from 92,381 on Thursday. New York accounts for 45 percent of the nation's total COVID-19 deaths and 25 percent of the country's confirmed cases. Governor Cuomo announced an executive order authorizing New York State to seize and redistribute ventilators, masks and other supplies from hospitals and private-sector companies that did not immediately need them. Any equipment commandeered will be returned after the crisis ends. Mayor de Blasio warned that New York City is days away from a "D-Day" when the outbreak will overwhelm the health care system. The Mayor called for a national enlistment of health-care workers organized by the U.S. military.

General/Employer Guidance

Presidential updates

- [*Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*](#), April 2
 - White House officials announced a plan to formalize new guidance recommending that all Americans wear face coverings when leaving home. The recommendations would at

least apply to those who live in areas hard-hit by community transmission of COVID-19. The guidance has yet to be released.

- The Coronavirus Task Force is working on a proposal to compensate hospitals directly for any coronavirus treatment that they provide to uninsured Americans. A final decision on this proposal is expected imminently.
- [*Order Under the Defense Production Act Regarding 3M Company*](#), April 2
 - President Trump invoked the Defense Production Act, which gives the president powers to direct domestic industrial production to provide essential materials and goods needed in a national security crisis.
 - The President authorized the Secretary of Homeland Security to acquire, from any subsidiary or affiliate of 3M Company, the number of N-95 respirators that FEMA determines to be appropriate.
 - 3M [stated](#) that is “working closely” with the White House to prioritize order for N-95 masks for FEMA. 3M highlighted that the federal government asked 3M to stop exporting respirators that are currently manufactured domestically. 3M stated that doing so would put health care workers in Canada and Latin America at risk, and could cause other countries to retaliate by cutting off important supplies of protective equipment to the United States.
- [*Order Under the Defense Production Act Regarding the Purchase of Ventilators*](#), April 2
 - Under the Defense Production Act, the President authorized the Secretary of Homeland Security to facilitate the supply of materials to the following entities for the production of ventilators: General Electric Company; Hill-Rom Holdings, Inc.; Medtronic Public Limited Company; ResMed Inc.; Royal Philips N.V.; and Vyair Medical, Inc.
- [*Memorandum on Providing Federal Support for Governors’ Use of the National Guard to Respond to COVID-19*](#), April 2
 - President Trump issued an order directing the Secretary of Defense to request that the governors of the following states order National Guard forces to engage in emergency COVID-19 assistance: Georgia, Hawaii, Indiana, Missouri, New Hampshire, New Mexico, Ohio, Rhode Island, Tennessee, Texas, and the territory of the U.S. Virgin Islands.
 - The President also directed FEMA to fund 100 percent of the emergency assistance activities undertaken by the National Guard in these states. The federal cost share will terminate within 30 days of the memorandum.
- [*President Donald J. Trump Approves Major Disaster Declarations*](#), April 2
 - President Trump declared that a major disaster exists in Kansas, Virginia, Tennessee, and the U.S. Virgin Islands. He ordered Federal assistance to supplement state, and local recovery efforts in the areas affected by COVID-19. The action makes Federal funding available for crisis counseling for affected individuals in the State, and for other emergency protective measures.
 - President Trump recently issued similar declarations for New York, California, Washington State, Louisiana, Iowa, Texas, Florida, New Jersey, Illinois, Missouri, Maryland, Massachusetts, Michigan, Oregon, Connecticut, Colorado, South Carolina,

Kentucky, Georgia, Puerto Rico, Guam, the District of Columbia, Kansas, Alabama, Rhode Island, Pennsylvania, Ohio, Montana, Hawaii, North Dakota, and the Commonwealth of the Northern Mariana Islands.

- [*Letter from President Donald J. Trump to Senator Charles E. Schumer*](#), April 2
 - President Trump issued an open letter to New York State Senator Schumer, criticizing the senator's response to the COVID-19 crisis and indicating that the Senator was himself distracted from the COVID-19 threat by his own impeachment efforts.
 - The letter highlights that the federal government has “given New York many things, including hospitals, medical centers, medical supplies, record numbers of ventilators, and more.” President Trump expressed that the New York should have been more prepared, noting that “the federal government is merely a back-up for state governments.”

World Health Organization (WHO)

- [*Coronavirus disease 2019 \(COVID-19\) Situation Report – 73*](#), April 2
 - WHO highlighted that the incubation period for COVID-19, which is the time between exposure to the virus (becoming infected) and symptom onset, is on average 5-6 days, but can last up to 14 days. During this period, also known as the “presymptomatic” period, some infected persons can be contagious.
 - WHO urged countries in the [Middle Eastern region](#) to “be more aggressive” in testing suspected cases, isolating confirmed cases, and urging citizens to stay home. Public health experts are particularly worried about the threat the coronavirus poses to the refugees, many of whom live in crowded and unsanitary conditions where infection could spread easily.

U.S. Centers for Disease Control and Prevention (CDC)

- [*Personal Protective Equipment When Caring for COVID-19 Patients*](#), April 3
 - CDC issued [guidance](#) on strategies to optimize the supply of personal protective equipment (PPE) when supplies are stressed, running low, or absent.
 - CDC created a [factsheet](#) with information on the use of PPE when caring for patients with confirmed or suspected COVID-19. It covers when and what PPE is necessary, how to don (put on) and doff (take off) PPE, limitations of PPE, and the proper care, maintenance, and disposal of PPE.

New York State

- [*Cuomo Gives Coronavirus Update*](#), April 3
 - The number of deaths in New York doubled in three days, jumping from 1,550 on Tuesday to 2,935 on Friday. There are now 102,863 confirmed cases in New York State, up from 92,381 on Thursday. New York accounts for 45 percent of the nation's total COVID-19 deaths and 25 percent of the country's confirmed cases.
 - Governor Cuomo announced an executive order authorizing the state to seize and redistribute ventilators, masks and other supplies from hospitals and private-sector companies that did not immediately need them. Any equipment commandeered will be returned after the crisis ends.

- There has been a sharp decline in emergency hospital admissions unrelated to COVID-19. Pandemic restrictions have caused traffic and crime to drop, relieving some of the strain on the health care system.
- [Temporary Hospital Facility at Javits Convention Center Will Treat COVID-19 Patients](#), April 2
 - Governor Cuomo announced that the temporary 1,000-bed hospital facility created in the Javits Convention Center will now be used for COVID-19 positive patients. The Javits Center facility was originally created to take non-COVID-19 patients from hospitals to open up hospital beds. President Trump approved the State's request due to the dramatic increase in the number of COVID-19 positive patients.
- [Governor Cuomo Announces State Department of Health Has Approved New Protocol to Allow BiPAP Machines to be Converted Into Ventilators](#), April 2
 - Northwell Health [developed](#) a protocol to transform a BiPAP machine into a functional ventilator. A bi-level positive airway pressure, or BiPAP, machine is used to maintain consistent breathing at night for people with sleep apnea, congestive heart failure or chronic obstructive pulmonary disease. Northwell plans to share the design online so other hospitals facing ventilator shortages can prepare. The New York State Department of Health approved Northwell's protocol. The State purchased 3,000 BiPAP machines from Philips in Pittsburgh. 750 machines are already in stock and will be distributed to hospitals.
 - Governor Cuomo announced that the State will conduct a hospital-by-hospital survey on a nightly basis to take inventory of all supplies. All hospitals are being asked to contribute the supplies they don't currently need to a central stockpile to be distributed to hospitals with the greatest need.
 - Governor Cuomo urged businesses to begin manufacturing personal protective equipment. If a manufacturer has the capacity to make these products quickly, the State offered to pay to transition the facility to make PPE products.
- [Attorney General James Orders 78 Transport Providers to Immediately Stop Endangering New Yorkers](#), April 3
 - New York Attorney General James ordered 78 medical transportation companies and providers of transportation services to Medicaid recipients in and around Albany, Buffalo, Rochester, and Syracuse to immediately cease and desist conducting medical transports with more than one occupant per vehicle in violation of Department of Health guidance.

New York City

- [Mayor de Blasio Appears Live on CNN's New Day](#), April 3
 - Mayor de Blasio warned that the number of COVID-19 patients requiring live-saving ventilators will double by early next week. The City predicts that 5,000 people will be intubated in city ICUs by Monday or Tuesday. There are currently 2,240 patients in city ICUs. Many, but not all, of them are on ventilators.

- The Mayor stated that the USS Comfort and Javits Center temporary hospital will be filled up with patients soon and reiterated the City's need for 1,000 nurses, 150 doctors, and 300 respiratory therapists.
- [*Mayor de Blasio Calls for Draft of Essential Medical Personnel*](#), April 2
 - The Department of Health and Mental Hygiene advised all New Yorkers to cover their noses and mouths using a scarf, bandana, or piece of clothing when in public to reduce the risk of transmission. This recommendation is based on a new CDC [study](#), which outlined the possibility of pre-symptomatic COVID-19 transmission in Singapore. New Yorkers should not use surgical or N95 masks as face covers. Masks must be preserved for health care workers and first responders.
 - The City is working to dispatch 400 ventilators from the federal stockpile that were distributed by the State. While these ventilators will sustain the City for a short, interim period, a minimum of 2,500-3,000 ventilators must be procured by Sunday to carry the City through the next week. The City still needs a total of 15,000 ventilators.
 - The Department of Education expanded its grab-and-go meal service to include all children and adults across the five boroughs. Adults and children can pick up three meals at a time and no adult will be turned away. There is no registration or identification required.

Other Related Updates

- [*FDA Provides Updated Guidance to Address the Urgent Need for Blood During the Pandemic*](#), April 2
 - FDA issued updated guidance to address the urgent and immediate need for blood. The changes are to be implemented immediately and are expected to remain in place after the pandemic.
 - For male donors who would have been deferred for having sex with another man: FDA changed the recommended deferral period from 12 months to 3 months. LGBTQ rights advocates cautiously welcomed the policy change, saying federal officials should remove all wait times for gay men.
 - For those with recent tattoos and piercings: FDA changed the recommended deferral period from 12 months to 3 months.
 - For those who have traveled to malaria-endemic areas (and are residents of malaria non-endemic countries): FDA changed the recommended deferral period from 12 months to 3 months
 - For those who spent time in certain European countries or on military bases in Europe who were previously considered to have been exposed to a potential risk of transmission of Creutzfeldt-Jakob Disease: FDA changed the recommended deferrals and is recommending allowing reentry of these donors.
- [*NIDA Director outlines potential risks to people who smoke and use drugs during COVID-19 pandemic*](#), April 2
 - National Institute on Drug Abuse (NIDA) Director recently highlighted that people who smoke or vape, or use opioids or methamphetamine may face heightened risk for more severe complications from COVID-19. In addition, chronic opioid use already increases

the risk of slowed breathing due to hypoxemia, which can lead to cardiac and pulmonary complications that may result in overdose and death.

- People recovering from addiction face new challenges due to physical distancing measures. These measures eliminate social support needed for addiction recovery, and may decrease the likelihood of observed overdoses; administration of naloxone to reverse overdose may be less likely, potentially resulting in more fatalities.
- [*Ventilators Are No Panacea For Critically Ill COVID-19 Patients*](#), April 2
 - According to several small studies from the U.S., China, and Europe, most coronavirus patients who end up on ventilators do not recover. Early research suggests that once coronavirus patients are placed on a ventilator, they likely need to stay on it for weeks. The longer patients remain on a breathing machine, the more likely they are to die.
 - The largest study to examine mortality among ventilated coronavirus patients was conducted by the Intensive Care National Audit & Research Centre in London. It [found](#) that among 98 ventilated patients in the U.K., just 33 were discharged alive. A [study](#) of patients in Wuhan found that three of 22 ventilated patients survived. A study of 18 ventilated patients in Washington [found](#) that nine were still alive when the study ended, but only six had sufficiently recovered that they could breathe on their own.
- [*Thinking Globally, Acting Locally — The U.S. Response to Covid-19*](#), April 2
 - According to the New England Journal of Medicine, COVID-19 exposed major weaknesses in the United States federalist system of public health governance, which divides powers among the federal, state, and local governments.
 - The Journal provides three recommendations to promote a unified response. First, the White House could strengthen the resolve of governors to do all they can to mitigate the impact and spread of the disease. Second, Congress could use its spending power (i.e., condition future relief funds) to further encourage states to follow a uniform plan for community mitigation that includes measures for effective enforcement of public health orders. Third, Congress could leverage its interstate-commerce powers to regulate economic activities that affect the interstate spread of SARS-CoV-2.

Other recent events covered in detail elsewhere:

- [U.S. IP Courts/USPTO Issue New Guidelines in Response to COVID-19](#), April 2
- [COVID-19 Disruptions of International Clinical Trials: Comparing Guidance Issued by FDA, EMA, MHRA and PMDA](#), April 2
- [CARES Act – Financial Relief Sections Applicable to Health Care Providers](#), April 1
- [IRS Issues Initial Tax Guidance for Advance Payment of Employee Retention Credits and Families First Credits](#), April 1
- [FCA’s Head of Technology, Resilience and Cyber outlines expectations on cyber resilience and security](#), April 1

Send questions to COVID-19-Implications@ropesgray.com