

COVID-19 Daily Update

April 5, 2020

Summary

The United States now has 324,052 confirmed COVID-19 cases. More than 1,000 people died in the United States on April 4 alone, raising the death toll to over 9,000. White House officials note that the main hot spots in the U.S. continue to be New York, Louisiana, and Detroit. New hot spots are emerging in places such as Colorado, Pennsylvania, and Washington, D.C. Health officials issued grave warnings to the American public saying the next week – when the outbreak is expected to reach its peak in places like New York – will be “our Pearl Harbor” and our “9/11 moment.” U.S. Surgeon General Adams asked governors in nine states that do not have stay-at-home orders to limit their resident’s exposure. NIAD Director Fauci noted that it would be “a false statement” to say the U.S. government has the coronavirus pandemic under control.

CDC recommended that all Americans wear face coverings in public settings where other social distancing measures are difficult to maintain – especially in areas of significant community-based transmission. CDC warned that surgical masks and N95 masks should remain reserved for health care workers. Queen Elizabeth II addressed the United Kingdom in a rare speech, urging self-discipline and resolve in the midst of the coronavirus pandemic. USDA reported the first known case of COVID-19 in a tiger, as a tiger at the Bronx Zoo in New York has tested positive. Samples from this tiger were taken and tested after several lions and tigers at the zoo showed symptoms of respiratory illness.

Governor Andrew Cuomo announced that there appears to be “a slight plateauing” in the number of coronavirus deaths. The number of deaths dropped for the first time; the death toll rose by 594 on Sunday compared to 630 on Saturday. The number of new hospitalizations also declined; 1,095 were hospitalized on Friday compared to 574 on Saturday. Cuomo issued an Executive Order allowing medical students who are slated to graduate to begin practicing immediately to help with the state’s surge health care force. Mayor de Blasio announced that New York City only has a sufficient number of ventilators to get through Tuesday or Wednesday, April 7-8. The City needs 1,000 to 1,500 additional ventilators over the next week but only has 135 left in stock.

General/Employer Guidance

Presidential updates

- [*President Trump urges states to share ventilators*](#), April 4
 - President Trump predicted that the coming week will be “one of the toughest weeks” of the outbreak. He expressed frustration at the toll of social distancing measures on

the economy, saying “the cure could not be worse than the virus” and that the country should re-open soon.

- President Trump urged states to share extra ventilators with those most in need while characterizing the federal stockpile as a “backup.” Agencies are closely monitoring state needs to determine how best to distribute the 10,000 machines in the federal stockpile.
 - The President signaled to governors who make what he characterized as “inflated requests” that if they don’t get what they requested, it’s because “we don’t think you need it.” President Trump noted that distributions must be “made on a fair basis” and that “we have to take care of a large country, not just certain areas of the country.”
 - White House officials praised mitigation efforts but warned against the risk of resurgence of the virus. Task force members are closely watching three hot spots: Detroit, Louisiana, and New York. Each is on the upside of its mortality curve and officials anticipate each will hit its peak in the next six to seven days.
- [Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing](#), April 3
 - President Trump announced that the federal government will reimburse hospitals for treating uninsured COVID-19 patients. The reimbursement will be paid using funds from the economic relief package Congress passed last month. Trump announced that Blue Cross Blue Shield will not require any co-pays from patients for treatment of the virus over the next 60 days, similar to previous commitments by Cigna and Humana.
 - Treasury Secretary Mnuchin said eligible taxpayers will receive their first direct payments within two weeks, one week earlier than originally promised. Mnuchin dismissed reports that some relief payments — especially to people who can't accept direct deposits and require paper checks — may take up to 20 weeks to reach some Americans.
 - [Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use](#), April 3
 - Invoking the Defense Production Act, President Trump authorized the Secretary of Homeland Security to allocate the following scarce or threatened materials to *domestic* use: N-95 respirators; other filtering facepiece respirators; PPE surgical masks; and gloves.
 - President Trump [stated](#) that this order would stop companies from purchasing domestic supplies of scarce and critical materials, hoarding them while they engage in profiteering and speculation, and exporting them. This practice can generate foreign demand, and lead to price gouging. The order is intended to help ensure that needed PPE is kept within the country and gets to where it is needed to defeat the virus.
 - [President Donald J. Trump Approves Major Disaster Declarations](#), April 4
 - President Trump declared that a major disaster exists in Nebraska, Wisconsin, Arkansas, West Virginia, Indiana, New Hampshire, and Oregon. 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, Kansas, Virginia, Tennessee, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

World Health Organization (WHO)

- [Coronavirus disease 2019 \(COVID-19\) Situation Report – 76 and Situation Report – 75](#), April 5
 - Two new countries reported cases of COVID-19, the Falkland Islands and Bonaire, Saint Eustatius and Saba.
 - Pan American Health Organization launched a new searchable [database](#) that contains the latest COVID-19 guidance and research from affected countries worldwide. WHO Europe released the [Health System Response Monitor](#), an online platform summarizing the COVID-19 response of health systems in Europe.
 - WHO has released [new technical guidance](#) recommending universal access to public hand hygiene stations and making their use obligatory on entering and leaving any public or private commercial building and any public transport facility.
 - WHO Director-General Tedros [recommended](#) that countries enact social welfare and debt relief programs to avoid economic collapse. WHO warned that if countries rush to lift restrictions too quickly, the virus could resurge and the economic impact could be even more severe and prolonged.

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

- [COVIDView: A Weekly Surveillance Summary of U.S. COVID-19 Activity](#), April 4
 - The national percentage of respiratory specimens testing positive for SARS-CoV-2 is increasing and is now 16.5% at public health laboratories and, 8.8% at clinical laboratories.
 - The overall cumulative COVID-19 associated hospitalization rate is 4.6 per 100,000, with the highest rates in persons 65 years and older (13.8 per 100,000) and 50-64 years (7.4 per 100,000). These rates are similar to what is seen at the beginning of an annual influenza epidemic.
- [Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission](#), April 3
 - Recent studies show that a significant portion of individuals with COVID-19 lack symptoms (“asymptomatic”) and that even those who eventually develop symptoms (“presymptomatic”) can transmit the virus to others before showing symptoms.
 - In light of this new evidence, CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) – especially in areas of significant community-based transmission.

- The cloth face coverings recommended are not surgical masks or N-95 respirators; CDC warns that critical supplies of those items should be reserved for health care workers.

New York State

- [*Federal Government to Deploy Approximately 1,000 Personnel to New York State*](#), April 5
 - Governor Cuomo announced that New York has over 122,000 COVID-19 cases. 4,159 people died from the virus in the state, up from 3,565 on Saturday. At least 16,479 patients are hospitalized and 4,376 people are in the ICU, but 75% of hospitalized patients are being discharged, on average.
 - The number of new deaths dropped for the first time; the death toll was 594 on Sunday compared to 630 on Saturday. The number of new hospitalizations also declined; 1,095 were hospitalized on Friday compared to 574 on Saturday. It is too early to confirm whether this is a downward trend.
 - The federal government is deploying approximately 1,000 personnel to New York State, including doctors, nurses, respiratory technicians and therapists, to help the state's overwhelmed hospital systems. The first 325 personnel will be deployed to the New York City hospital system today.
- [*Governor Cuomo Announces 1,000 Ventilators Donated to New York State*](#), April 4
 - The Chinese government facilitated a shipment of 1,000 donated ventilators to New York, and Oregon pledged another 140 ventilators from Oregon's stockpile.
 - Governor Cuomo issued an Executive Order allowing medical students who are slated to graduate to begin practicing immediately to help with the state's surge health care force. To date, 85,000 health professionals, including 22,000 out-of-state individuals, have signed up to volunteer.

New York City

- [*Updated NYC Department of Health Guidance*](#), April 4
 - The NYC Department of Health (NYC DOH) released updated [guidance](#) for people who are pregnant, breastfeeding, or caring for newborns. DOH released general COVID-19 [guidance](#) for businesses and other non-health care settings, including retail and food establishments. DOH updated its COVID-19 [FAQ](#) for residential and commercial buildings.
 - Each update reflects new face-covering recommendations. In general, individuals should wear a face covering when they cannot maintain at least 6 feet of distance between themselves and others. It is essential that individuals continue to practice social distancing and good hand hygiene even when wearing a face covering — including keeping 6 feet of distance between themselves and others whenever possible.
- [*New York City expects to run out of ventilators by Wednesday*](#), April 4
 - Mayor de Blasio announced that New York City has a sufficient number of ventilators only to meet demand through Tuesday or Wednesday. The Mayor originally expected the City to run out as early as Sunday.

- The City has distributed 2,865 ventilators to hospitals and 1,780 BPAP machines, which can be of help for some patients. De Blasio reports that the city needs 1,000 to 1,500 additional ventilators over the next week but only has 135 left in stock. There are about 10,000 ventilators in the federal stockpile and 2,800 ventilators in the state stockpile.
- Mayor de Blasio announced partnerships with JetBlue and United Airlines to provide free round-trip flights for medical volunteers traveling to New York City.
- [*Face Coverings: Frequently Asked Questions*](#), April 3
 - NYC DOH recommends that all New Yorkers wear a paper or cloth face covering when outside of their home to help stop the spread of COVID-19. Before putting a face covering on or taking it off, DOH recommends washing your hands for 20 seconds.
 - If using a cloth face covering, DOH recommends washing it once a day by hand or machine using detergent. The face covering should be fully dry before use. People should have a couple of face coverings so they can rotate for washing. Used paper masks should be thrown out at the end of the day.
 - NYC DOH urges New Yorkers not to use N95 respirators or surgical masks, to continue conserving the limited supply for health care providers.

Other Related Updates

- [*Department of Labor COVID-19 Updates*](#), April 5
 - DOL published [guidance](#) for states on the Federal Pandemic Unemployment Compensation (FPUC). Under FPUC, states will administer an additional \$600 weekly payment to certain eligible individuals who are receiving other benefits. The timeline for these payments will vary by state.
 - OSHA issued enforcement [guidance](#) on respirators certified under other countries' standards during the COVID-19 pandemic. The federal government advises that employers may consider using respirators under certain standards in Australia, Brazil, China, the EU, Japan, Republic of Korea, or Mexico.
 - OSHA issued [interim enforcement guidance](#) outlining enforcement discretion to permit the extended use and reuse of respirators, as well as the use of respirators that are beyond their manufacturer's recommended shelf life. This guidance applies in all industries, including workplaces in which health care personnel are exposed to patients with confirmed or suspected COVID-19.
- [*FDA COVID-19 Update: Daily Roundup*](#), April 3
 - FDA [announced](#) a collaboration with BARDA, the American Red Cross, and the Mayo Clinic to develop and implement a protocol that will provide convalescent plasma to patients without access to institutions with clinical trials in place. Convalescent plasma has the potential to lessen the severity or shorten the length of illness caused by COVID-19.
 - FDA posted [an FAQ](#) allowing for the use of respirators approved under standards used in other countries during the COVID-19 pandemic. FDA issued a new [Emergency Use Authorization](#) (EUA) for non-NIOSH-approved respirators made in China. FDA

[revised guidance](#) to expand the availability of general use face masks for the general public and respirators for health care professionals.

- FDA [announced](#) it will begin requesting that importers send required records to FDA via electronic means under the Foreign Supplier Verification Program.
- FDA released a [temporary policy](#) on the packaging and labeling of shell eggs to provide temporary flexibility regarding eggs sold to consumers in retail food establishments so that industry can meet the increased demand for shell eggs during the COVID-19 pandemic.
- [*OIG Policy Statement Regarding Application of Certain Administrative Enforcement Authorities Due to COVID-19 National Emergency*](#), April 3
 - The Office of Inspector General (OIG) recently issued [blanket waivers](#) for health care providers, waiving the enforcement of certain sections of the Social Security Act. The waivers were issued to ensure that health care providers that furnish services in good faith but are unable to comply with the Act's requirements may still be reimbursed.
 - The waivers dismiss certain sanctions that otherwise apply to violations of the physician self-referral law (often known as the "Stark regulations" or "Stark law"), if certain conditions are met. Ordinarily, some financial relationships that implicate the physician self-referral law also may implicate, and potentially violate, the federal anti-kickback statute.
 - The Office of Inspector General (OIG) issued a policy statement that it will exercise its enforcement discretion not to impose administrative sanctions under the federal anti-kickback statute for certain remuneration covered under the COVID-19 blanket waivers. OIG seeks to avoid the need for parties to undertake a separate legal review under the Federal anti-kickback statute for arrangements protected by the blanket waivers.

Other recent events covered in detail elsewhere:

- [Heightened Oversight May Lead to Rise in False Claims Act Actions Related to Assistance Programs Under the CARES Act](#), April 4
- [How To Get Your Individual Rebate \(And Fast!\)](#), April 3
- [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

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