**Legal Strategies for Promoting Mental Health and Wellbeing in Relation to the COVID-19 Pandemic**

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**SUMMARY.** The loss of life, severe illnesses, uncertainty, loneliness, and exhaustion related to COVID-19, together with the social and economic impacts of community mitigation measures, have taken a toll on mental health throughout the population. Many elderly, African-Americans, Latinos, Native Americans, Asian Americans, health care providers, public health professionals, essential workers, unemployed people, children, young adults, educators, parents, women, caregivers, LGBTQ people, prisoners, and people who live alone have experienced heightened stress, anxiety, depression, burnout, and isolation. Beyond treating individuals experiencing mental illness, law and policy can support mental health and wellbeing in four primary ways: (1) strengthen the social and economic safety net, (2) improve access to mental health care, (3) support mental health knowledge and skills, and (4) prevent self-harm and violence. Bolstering the ability to meet basic needs such as housing, food, childcare, and safer employment or unemployment benefits will reduce stress and improve health outcomes. Substantial, sustained investment in community mental health will expand access to treatment, increase use of public and private insurance, and overcome provider shortages, especially in rural communities and communities of color. Every educational setting must prioritize social and emotional wellbeing of students, educators, employees, and parents. Strengthening interventions including Psychological First Aid, the Crisis Counseling Program, suicide prevention, and violence prevention will support connectedness, nurture coping skills, and increase safety. Legal action to reverse structural racism and support mental health in communities of color is essential. Strategies to support posttraumatic growth should be at the forefront of pandemic response, recovery, and restructuring.

**Introduction**

The COVID-19 pandemic may be viewed as a mass trauma experienced throughout the United States and the rest of the world. Loss of life, severe illness, extended recovery periods, uncertainty, shortages of personal protective equipment, economic upheaval, limitations on daily activities, isolation, exhaustion, and structural racism have taken a substantial toll. By July 2020, more than 50% of respondents to a Kaiser Family Foundation Health Tracking Poll indicated that worry or stress about the new coronavirus had negatively affected their mental health (Hamel et al., 2020).

Scientific opinion has identified five key principles for response to mass trauma:

- Promote sense of safety
- Promote calming

(Hobfoll et al., 2007). These principles provide valuable guidance for assessing and strengthening the legal response to the COVID-19 pandemic. A backlash against community mitigation measures and growing disinformation and skepticism about the very nature of the pandemic undermined each of these principles.

COVID-19 has been characterized by disparities in infection and mortality rates for communities of color, based in part upon disproportionate representation in low-wage service jobs at high risk for COVID-19, greater exposure to adverse environmental factors such as air pollution and limited access to nutritious food, as well as higher rates of chronic disease such as diabetes, asthma, and cardiovascular disease. These disparities have resulted in a
greater burden of grief for many people of color and increased anxiety for those worried about the high levels of risk to themselves and their communities (Purtle et al., 2020). These effects were compounded by concurrent racial trauma, with the death of George Floyd at the hands of Minneapolis police. The Hogg Foundation in Texas has urged adoption of declarations of racism as a mental health issue (Hogg Foundation, 2020). Evidence-based legal strategies to address structural racism and strengthen protective factors are necessary to increase health equity.

The field of positive psychology posits a “dual continuum” model, which considers both mental illness and mental health (also referred to as flourishing). According to the research, people who are flourishing typically engage in six daily activities: interacting, helping others, playing, moving (physical activity), spiritual activity, and learning something new (Catalino & Fredrickson, 2011). The COVID-19 pandemic and community mitigation measures disrupted daily routines and combined to threaten these core pillars of wellbeing on a greater scale than most people have previously experienced in their lifetimes. To withstand the remainder of the pandemic, as well as improve our capacity to flourish as individuals and as a society in the face of future challenges, including pandemics, we must (1) strengthen the social and economic safety net, (2) improve access to mental health care, (3) support mental health knowledge and skills, and (4) prevent self-harm and violence.

**Strengthen the Social and Economic Safety Net**
Federal legislation enacted in response to the COVID-19 pandemic sought to address the conditions that might otherwise have contributed to even poorer mental health (Purtle et al., 2020). This assistance and associated recommendations are discussed in other Chapters of this Report and include unemployment benefits; moratoria on evictions; SNAP and a modified National School Lunch Program; paid sick leave for those remaining at home while ill with the new coronavirus; and paid family leave for those caring for those ill with the new coronavirus, or for children home from school. Because many of these legal interventions were time-limited, however, recipients experienced anxiety and uncertainty about when and whether Congress would extend or terminate these social supports.

**Improve Access to Mental Health Care**
Among the general population affected by the pandemic, some needed only short-term mental health care. One means of providing emergency mental health care is through the Crisis Counseling Program (CCP) authorized under the Stafford Act when there is a major disaster declaration, but not when there is an emergency declaration. Through the CCP, the federal government provides federal funding and technical assistance to states, territories, and Tribes. The CCP provides support with problem-solving and coping skills, thus enhancing self-efficacy. The president approved major disaster declarations for all 50 states, the District of Columbia, and four territories due to the pandemic in 2020. Stafford Act provisions limiting the CCP to nine months following a major disaster declaration should be amended to make the CCP available for a longer time during ongoing declared emergencies, including public health emergencies.

The Mental Health Parity and Addiction Equity Act of 2008 and the Affordable Care Act provide that to the extent private health insurers provide insurance coverage for physical health concerns, their coverage for mental health concerns must be comparable. However, these laws have not resulted in parity in coverage for mental health treatment, due to lack of enforcement among other problems. This requirement also applies to public insurance, but the federal and state governments have not maximized use of Early Periodic Screening, Diagnosis and Treatment under Medicaid to provide mental health promotion and treatment services to children at highest risk, including during the pandemic (Counts et al., 2020). One bright spot with respect to individual mental health treatment during the pandemic was administrative changes by the Centers for Medicare and Medicaid Services (CMS) and the Office of Civil Rights (OCR) within the Department of Health and Human Services to expand eligibility for reimbursement for telehealth and to suspend requirements related to privacy and security of platforms for telehealth. CMS and OCR should consider strategies to expand access to telehealth permanently, as discussed further in Chapter 18, “Telehealth and Inequity during the COVID-19 Response.”

**Support Mental Health Knowledge and Skills**
The pandemic has highlighted critical gaps in mental health literacy and skills, as well as opportunities to strengthen social and emotional learning and skill development. This knowledge and skillset is essential throughout the population, and particularly among children, parents, educators, health care providers, and first responders.

Investments in home visiting programs, parenting skills programs, and universal pre-kindergarten are all strategies that can prevent adverse childhood experiences, nurture coping skills, and promote emotional wellbeing and connectedness. The federal Every Student Succeeds Act provides grants to state and local education agencies to create the conditions for student learning and improve the school climate. Before the pandemic, ratios of school counselors and mental health professionals to students were inadequate. The need will be greater post-pandemic. The mental health of all people within school, university, and community college systems — from teachers and school employees, to students and parents — warrants sustained legal and policy attention. State laws, learning standards, and benchmarks may advance social and emotional learning. These educational approaches can be implemented in-person and online (CASEL, 2020). Other state laws may promote school mental health in the context of the COVID-19 pandemic — examples include a law requiring instruction in mental health first aid for teachers in Florida; laws requiring that mental health be addressed in health education courses in New York and Virginia; and an Oregon law recognizing student absences for mental health. A growing body of evidence supports the importance of access to nature for mental health, such that the Great American Outdoors Act may provide opportunities to reduce stress and increase equity.

As the pandemic enters a second year in the United States, exhaustion and burnout are substantial concerns among health care providers and first responders (Shechter, 2020). Prior
investments in emergency preparedness research resulted in online curriculum and trainings in Psychological First Aid, and policy adoption among health departments and health care systems (Birkhead & Vermeulen, 2018). The Pandemic and All Hazards Preparedness and Advancing Innovation Act of 2019 authorizes the hospital preparedness program, which provides funds and technical assistance for health care coalitions to engage in efforts to encourage a resilient health care workforce, which may include training in psychological first aid. The Coronavirus Aid, Relief, and Economic Security (CARES) Act included additional funding for hospital preparedness. The Coronavirus Response and Relief Supplemental Appropriations Act of 2021, passed in December 2020 as Division M of the Consolidated Appropriations Act of 2021 (CRRSA Act), dwarfs the investment in mental health of any prior COVID-relief bill, with $4.25 billion. This renewed investment in research and training is needed, including in culturally competent approaches to support purpose and resilience in the health care workforce and their patients.

The CRRSA Act allocated more funding for mental health by orders of magnitude, though most of it seems destined for mental health treatment. Future legislation should prioritize mental health promotion, commensurate with the detrimental impact of COVID-19 on mental health throughout the population. As the experience of elderly residents of nursing homes demonstrates, promoting social connections to combat loneliness should be as much a priority as infectious disease control measures. In order to inspire hope, as it begins to focus on a longer-term vision for recovery, Congress should search for models that support posttraumatic growth among populations, such as interventions with veterans.

Prevent Self-Harm and Violence

Until social and emotional skills in self-awareness and self-management are universally taught and embraced, crises like the pandemic are likely to raise concerns about potential increases in suicide, child abuse, domestic violence, and substance use disorder. Suicide rates were at historic highs prior to the COVID-19 pandemic. They may increase substantially, based upon reported suicidal ideation, especially among young people in summer 2020 (Czeisler et al., 2020). The CARES Act and the CRRSA Act of 2021 each authorized $50 million for suicide prevention. Evidence-based laws that decrease the risk of suicide include the Garrett Lee Smith Act, which provides for grants from the federal government to state and Tribal communities as well as colleges for training gatekeepers, those who are in regular contact with young people but are not mental health professionals, in basic suicide prevention. Other effective legal interventions include lethal means control, including lethal means education, safe storage initiatives, and extreme risk protection orders for those shown to be a danger to themselves or others. Implementing continuing education requirements at the state level regarding suicide prevention and mental health for health care providers may also improve suicide prevention, especially for individuals who may not fall into an identified higher risk group. Programs to enhance social and emotional learning and skill development and encourage social connections, such as those described above, are also strategies to prevent violence.
Recommended for Action

Federal government:

- Congress should strengthen the safety net to more robustly address the economic disruptions and practical needs created by the pandemic, as set forth in the relevant Chapters.
- Congress and HHS should expand access to mental health care and treatment, especially for those most affected by the health consequences of the pandemic and the economic consequences of community mitigation measures, and those most at risk of being adversely affected:
  - Enforce mental health parity requirements;
  - Extend changes to telehealth regulations and consider making them permanent;
  - Work with states to maximize utilization of Medicaid funds, including EPSDT for children;
  - Increase funding to training and recruitment programs to address mental health provider shortages and increase the proportion of culturally competent providers;
- Congress, HHS, the Department of Education, and the Department of the Interior should increase their commitment to mental health promotion, including providing opportunities to build knowledge and skills related to mental health and wellbeing:
  - Increase investment in maternal, infant, and early childhood home visiting programs;
  - Create the conditions for student learning, including social and emotional learning, trauma-informed education, and Mental Health First Aid;
  - Link receipt of emergency preparedness funds for hospitals and healthcare coalitions to ongoing, culturally competent training in Psychological First Aid, Skills for Psychological Recovery, and preventing and addressing burnout among front-line healthcare and mental health providers;
- Prioritize states and communities hardest hit by morbidity, mortality, and economic impacts of COVID-19 for funding under the Great American Outdoors Act.
- Congress and SAMHSA should use suicide prevention funds to serve identified high-risk populations and the general population.
  - Increase funding for Gatekeeper training for suicide prevention among youth and young adults, especially those who are Native American, African-American, people of color, LGBTQ, and live in rural communities, through the Garrett Lee Smith Act.

State governments:

- State governors, agencies, and legislatures should strengthen the safety net to more robustly address the economic disruptions and practical needs exacerbated by the pandemic, as set forth in the relevant Chapters.
- State governors, agencies, and legislatures should expand access to mental health care and treatment, especially for those most affected by the health consequences of the pandemic and the economic consequences of community mitigation measures, and those most at risk of being adversely affected:
  - Enforce mental health parity requirements;
  - Work with CMS to maximize utilization of Medicaid funds, including EPSDT for children, to promote mental health and treat mental illness;
  - Join the Psychology Interjurisdictional Compact to overcome licensure limitations to expand tele-mental health;
  - Provide a pathway for psychologists to gain prescribing authority.
- State governors, agencies, and legislatures should increase their commitment to mental health promotion, including providing opportunities to build knowledge and skills related to mental health and wellbeing:
  - Issue a declaration of racism as a mental health crisis, or add mental health to a declaration of racism as a public health crisis, and implement measures to address declaration;
  - Increase investment in maternal, infant, and early childhood home visiting programs;
  - Make free, public pre-kindergarten
available to all children in the state, or to all children whose parents or caregivers are eligible for WIC;

- Provide flexible yet robust benchmarks, funding, and technical assistance to local educational agencies to create the conditions for student learning, including social and emotional learning, trauma-informed education, and Mental Health First Aid;

- Fund mental health education and services in public universities and community colleges;

- Enact and implement laws to promote safe storage of firearms and limit access to guns among those who are shown to pose a danger to themselves or others (extreme risk protection orders);

- Support ongoing, culturally competent training in Psychological First Aid, Skills for Psychological Recovery, and preventing and addressing burnout among front-line healthcare and mental health providers;

- When determining allocation of state and federal funds to acquire, expand, or maintain green space, prioritize communities hardest hit by morbidity, mortality, and economic impacts of COVID-19;

- In community mitigation executive orders and statutes, prioritize keeping institutions which contribute most to flourishing and economic stability, such as schools, open to the extent this may be done safely.

* State governors, agencies, and legislators should prioritize suicide prevention:

- Implement gatekeeper training for suicide prevention among youth and young adults, especially those who are Native American, African-American, people of color, LGBTQ, and live in rural communities;

- Incorporate mental health assessment and suicide prevention in continuing education requirements for health care providers, including mental health providers.

**Local governments:**

- Local health officers, boards of health, school boards, and elected officials should increase their commitment to mental health promotion, including providing opportunities to build knowledge and skills related to mental health and wellbeing:

  - Issue a declaration of racism as a mental health crisis, or add mental health to a declaration of racism as a public health crisis and implement measures to address declaration;

  - Prioritize those at greatest risk for adverse impacts of the pandemic for maternal, infant, and early childhood home visiting programs;

  - Make free, public pre-kindergarten available to all children in the jurisdiction, or to all children whose parents or caregivers are eligible for WIC;

  - Establish and implement policies to create the conditions for student learning, including social and emotional learning, trauma-informed education, and Mental Health First Aid;

- Support ongoing, culturally competent training in Psychological First Aid, Skills for Psychological Recovery, and preventing and addressing burnout among public health professionals;

- When determining allocation of state and federal funds to acquire, expand, or maintain green space, prioritize communities and neighborhoods hardest hit by morbidity, mortality, and economic impacts of COVID-19.

* Local governments should:

  - Prioritize keeping institutions which contribute most to flourishing and economic stability, such as schools, open to the extent this may be done safely when operating under community mitigation ordinances and orders;

  - Develop and expand systems to respond to mental and behavioral health emergencies with mental and behavioral health providers rather than law enforcement.
CHAPTER 19 • LEGAL STRATEGIES FOR PROMOTING MENTAL HEALTH AND WELLBEING IN RELATION TO THE COVID-19 PANDEMIC

About the Author

Jill Krueger, JD, is the director of the Northern Region of the Network for Public Health Law. She has taught courses in public health law at Mitchell Hamline School of Law. Her work focuses on the use of public health law to improve mental health and wellbeing, increase rural health equity, and reduce the health impacts of climate change.

References


