President Donald Trump issued two emergency declarations on March 13, pledging $50 billion in unspecified aid in the ongoing COVID-19 response efforts. He did so under both the Stafford Act and the National Emergencies Act (NEA). Section 501(b) of the Stafford Act allows the federal government to declare an emergency without a governor’s request and makes available only certain subsets of Federal Emergency Management Agency (FEMA) recovery funds. This enables FEMA to operate as a vehicle to deliver virus response funds to state and local governments, reduce the spread of the virus, and stimulate the economy against its mounting impact. Sections 201 and 301 of the National Emergencies Act in this case allows US Health and Human Services Department (HHS) Secretary Alex Azar to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children’s Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the pandemic.

The declaration comes as part of a broader effort to bolster the economy and contain the virus as it continues to quarantine workers and consumers, ground flights, close factories and schools, ban public events, disrupt supply chains, impact the stock market and cause other fallout. While the Department of Health and Human Services (HHS) has so far taken the lead on the COVID-19 response, HHS Secretary Alex Azar joined public and private voices in support of the president moving forward on the emergency declarations in recent weeks. The declaration came as governors, mayors, county officials, state legislatures and others in state and local government nationwide have stepped up actions to mitigate the spread—efforts that will be bolstered under the Stafford Act and NEA declarations.

**Emergency Declarations: Stafford Act, Public Health Service Act and National Emergencies Act**

There are three sources of statutory authority for the federal government to issue an emergency declaration, each associated with varying procedures, resources and funding. These include the Stafford Act, Public Health Service Act and National Emergencies Act. As of March 13, emergencies have been declared under all three acts.
**Stafford Act**

On March 13, the president declared an emergency for COVID-19 under Section 501(b) of the Stafford Act. Declarations under the Stafford Act are typically associated with natural disasters, but they can also be used for health emergencies such as the COVID-19 outbreak. Stafford Act declarations can take several forms, each involving various procedures, types and amounts of assistance. These programs are funded by the Disaster Relief Fund (DRF) which is currently funded at $42 billion. Emergency and catastrophic disaster declarations typically require a governor’s request, based on well-documented and verified cost estimates via preliminary damage assessments. However, Section 501(b) of the Stafford Act allows the president to declare an emergency without a request from the governor of the affected state when the primary responsibility for the emergency rests with the federal government. Such an emergency declaration does not prevent the governor from subsequently requesting a major disaster declaration for other unmet needs caused by the event.

Emergency declarations under the Stafford Act activate the National Response Framework (NRF) which enables domestic response partners at all levels to provide a unified national response to disasters and emergencies. FEMA is likely to lead operational meetings, provide overall coordination, activate its interagency emergency operations center at FEMA headquarters in Washington, D.C., and activate all 10 FEMA regional offices to directly support states in their regions. Below are important details for states, specific to the coronavirus declaration.

**What assistance does the Stafford Act COVID-19 emergency declaration offer states?**

The COVID-19 declaration:

- Limits available FEMA recovery funding to emergency protective measures under Public Assistance grants—or "Category B" measures.
  - These are measures taken before, during and immediately after the incident to save lives and protect public health and safety. In this case, they must be taken at the direction or guidance of public health officials in response to this emergency. These include activation of State Emergency Operations Centers (EOC), National Guard costs, law enforcement and other measures necessary to protect public health and safety.
- Does not authorize funding under FEMA Individual Assistance grants or (406) Hazard Mitigation grants under Public Assistance.
- Provides FEMA Incident Management Assistance Teams to state Emergency Operations Centers to aid in the COVID-19 response effort. These teams are made up of 10 experienced senior-level emergency management professionals with expertise in operations, logistics, planning and recovery. They are meant to:
  - Rapidly deploy to an incident or potentially threatened area.
  - Identify ways available federal assistance could be used to best support virus response and recovery efforts.
  - Work with partners across jurisdictions to support the affected state or territory.
- Provides access to $7 billion in low-interest, long-term loans to qualifying small businesses to assist economic recovery under the Small Business Administration (SBA).
- Authorizes the Treasury Department and the IRS to grant filing and payment extensions for income taxes and other taxes administered to any taxpayer determined to be affected, for up to one year.
Requires states to request an amendment to the emergency declaration in order access any additional forms of funding under the Stafford Act.

How can states access this assistance?

In order to access assistance:

- Governors must work with the applicable FEMA regional administrators within their FEMA region to create and execute a FEMA-State Agreement—a document that:
  - Imposes binding obligations on FEMA, State or Territory, local governments and private nonprofits.
  - States the understandings, commitments and conditions under which assistance will be provided.
  - Describes the event and the incident period for which assistance will be made available, and the type and extent of the assistance.
- States must activate their EOC.
- States must cover 25% of the costs in matching funds.
- FEMA assistance will not duplicate other assistance provided or available under the authority of other federal agencies, including HHS.
- For SBA disaster assistance loans, small businesses must apply online with FEMA or SBA. The program allows businesses of all sizes as well as private nonprofit organizations to borrow up to $2 million to replace inventory and other business assets lost as a result of the outbreak.

Despite what we know so far, details for use of the DRF for COVID-19 are not immediately familiar to public health and emergency management officials, given the infrequency of pandemics. The details of this process may well continue to develop over time.

**National Emergencies Act**

On March 13, the president also declared an emergency for COVID-19 under Section 201 and 301 of the National Emergencies Act. The National Emergencies Act (NEA) generally authorizes the president nearly unlimited discretion to declare a national emergency. These sections allow the Secretary of HHS to exercise the authority under section 1135 of the Social Security Act to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children’s Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the pandemic. The Secretary of HHS shall provide certification and advance written notice to the Congress. These waivers can loosen restrictions on the use of telehealth and certain requirements for hospitals and healthcare providers to improve their response efforts.

The NEA was enacted by Congress in 1976 to formalize presidential and congressional power—and related checks and balances—surrounding national states of emergency. However, this formalization does not include definitions for or requirements of the national emergency itself. The law does not itself provide authorities associated with a state of national emergency, though it does allow activation of powers provided the president in other statutes. A national emergency under NEA was also activated by President George W. Bush for the Sept. 11 terrorist attacks in 2001. For more information on the NEA, see NCSL’s blog.
Public Health Service Act

Section 319 of the Public Health Service (PHS) Act allows the secretary of the Department of Health and Human Services to declare a public health emergency (PHE) for significant outbreaks of infectious diseases. HHS Secretary Alex Azar declared a public health emergency on Jan. 31 in response to the COVID-19 outbreak, as did President Barak Obama for the H1N1 influenza virus outbreak in 2009. The administration established the Coronavirus Task Force to lead the response effort shortly thereafter and HHS has since issued multiple policy modifications and waivers to support response efforts of the health care community. For more information on the Public Health Services Act, visit the HHS webpage.

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