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POLICY BRIEF #6
August 16, 2023

COVID-19 Mortality Rates were Higher in States that Limited Governments from Enacting Public Health Emergency Orders

Xue Zhang, Mildred E. Warner, and Gen Meredith

During the COVID-19 pandemic, many U.S. state and local (e.g., county, city) governments activated disease mitigation and control policies, such as stay at home orders, mask mandates, and water shutoff and eviction moratoria. Those mitigation policies resulted in lower COVID-19 infection rates and mortality rates than would have occurred absent these policies.[1,2] However, some states limited emergency public health authority of state executives, state governors, and state and local officials during the pandemic.[3] These limits may have undermined efforts to control disease spread, and raise concerns about how states and localities will prevent and respond to future public health challenges.

This brief summarizes the findings from our recent study.[4] We explored (1) which U.S. states passed laws that set limits on emergency public health authority of a) state executives, b) state governors, c) state health officials, and d) local health officials between January 2021 and May 2022; (2) whether the limits on emergency authority was a reaction to the implementation of COVID-19 mitigation policies, a reflection of the state partisan composition (as a proxy for the politicization of public health), or related to other government characteristics (legislative professionalism, local government autonomy, and broader non-COVID-19 related preemptions); and (3) whether state limitations on local public health emergency authority affected COVID-19 death rates.

KEY FINDINGS

- States with unified Republican control were more likely to limit emergency authority during the COVID-19 pandemic.
- Legislative professionalism (pay, legislative session length, and staff resources) protects emergency public health authority.
- States that limited emergency public health authority had higher COVID-19 mortality rates than those who did not limit this authority.
- More attention should be given to professionalizing state legislatures and educating them and the public on the importance of public health authority. Structural changes related to party control, legislative professionalism, and local autonomy may enhance public health authority.

Limiting Emergency Public Health Authority was Associated with More COVID-19 Deaths

By May 2022, 21 states had passed laws that set limits on public health emergency orders (Figure 1). Among those 21 states, 14 imposed limits on policies issued by all four of the government entities, three states imposed limits only on policies issued by the state governor and state public health officials, two states imposed limits only on policies issued by the state governor, and two states imposed limits only on policies issued by state public health officials (Figure 1). 29 states imposed no limits on public health policy-making authority.

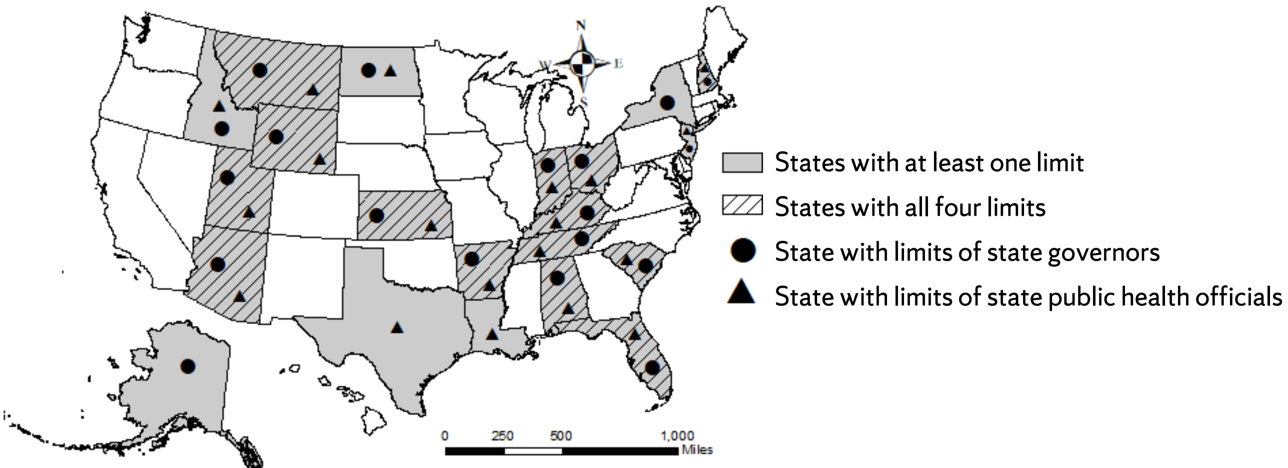

Figure 1: Map of states passing laws limiting public health emergency orders (of state executive, state governor, state health official, and/or local health official) from January 2021 to May 2022
Data source: Center for Public Health Law Research (2022)[3]

We found that COVID-19 death rates in 2021 and 2022 were higher in states with limits on each of the four actors. Compared to states that imposed no limits on emergency orders, COVID-19 mortality rates were, on average, 3 deaths per 10,000 population higher among states that limited the public health authority of state executives, state governments, and state public health officials. Average mortality rates were 5 deaths per 10,000 population higher among states that limited the authority of local public health officials. This confirms other research that has found that when a higher level of government limits or eliminates the authority of a lower level of government, there are negative impacts on public health.[5]

Politicization and Political Competition Drive the Limits on Emergency Authority

Our study shows that states with unified Republican control (both legislature and governor are Republican) were the most likely to limit public health emergency authority against all four actors. This finding suggests that limiting emergency authority is primarily a problem of politicization and political competition between state executives, governors, and legislatures.

Implementing more COVID-19 mitigation polices early in the pandemic pushed states to limit the emergency public health authority of state executives and governors, but not of state and local health officials. This could be because state and local health officials were less likely to attempt to enact policies in states that imposed limits on emergency authority.

Legislative Professionalism Protects Emergency Public Health Authority

More professionalized state legislatures—those with higher pay, longer legislative sessions, and more legislative staff resources—were less likely to limit state and local health official authority. Professionalization was not associated with whether limits were placed on state executives and governors. This could be because state legislatures compete with state executives and governors, who are also state-level elected leaders. By contrast, state and local health officials are appointed and regularly answer to state legislative and executive leaders.

Empowering Governments' Response to Public Health Emergencies: Three Action Paths

We suggest three paths of action for public officials to better protect their constituents in the face of pandemics or other public health emergencies:

1) Promote more legislative professionalism. More attention should be given to professionalizing state legislatures and educating them and the public on the importance of public health authority to mitigate disease spread.

2) Help state and local health officials identify other public health measures within their normal range of action to use in cases of emergency pandemic response. State executives and governors often took the lead during the first year of the pandemic, and thus became lightning rods for states setting limits on emergency authority. But it is local and state health officials that take the lead on a more regular basis. They may be able to operate under the radar and pursue other non-emergency measures that address health concerns even if emergency powers are restricted.

3) Promote broader state policies to address the structural determinants of health. Population health scholars have called for more attention to policy environments as critical upstream factors that affect health equity.[6] During the first months of the COVID-19 pandemic, it was states with more expansive social safety net policies that were more likely to impose earlier shut down orders and have lower mortality rates.[7] Policies to improve social determinants of health could empower states to impose more timely public health emergency measures.

Data and Methods

Our data include 50 states. Data on state policies are from the Center for Public Health Law Research[3] and Oxford COVID-19 Government Response Tracker.[8] Measures on government characteristics are from various data sources. See the published study for details. We used generalized structural equation modeling to link government characteristics, whether states passed laws limiting emergency public health authority, and COVID-19 death rates.

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