

Saint Louis University Journal of Health Law & Policy

Volume 14
Issue 2 *Health Equity and Justice Challenges of
the COVID-19 Pandemic*

Article 3

2021

Introduction

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Recommended Citation

Alexander Williams, *Introduction*, 14 St. Louis U. J. Health L. & Pol'y (2021).
Available at: <https://scholarship.law.slu.edu/jhlp/vol14/iss2/3>

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INTRODUCTION

ALEXANDER WILLIAMS, JR.*

The COVID-19 pandemic has upended all aspects of our lives for more than a year. From work to education, to family gatherings and entertainment, life as we knew it came to an abrupt halt in March 2020. However, the impact of the pandemic has not been uniform. Certain groups, including people of color, people with disabilities, and the incarcerated population, have faced disparate health and economic outcomes. This special issue of the *Journal of Health Law & Policy* examines health equity and justice issues raised by the COVID-19 pandemic.

COVID-19 sees no color, and, sadly, this deadly pandemic has had an overwhelmingly disparate impact on Black and Hispanic communities.¹ Whether it is a lack of adequate family physicians, a lack of access to healthcare, or a lack of fair employment opportunities, people of color have borne the brunt of the pandemic.² Health care providers and staff have consistently responded differently to Black and Brown patients, as compared with White patients.³ Some of these biases might be unconscious but they have been well-documented and remained largely unaddressed prior to the pandemic.⁴ Because of these policies and structural racism, Black and Hispanic communities were particularly positioned to be disproportionately affected by a pandemic of this magnitude. In *Racism, Health Equity, and Crisis Standards of Care in the COVID-19 Pandemic*, Professors Charlene Galarneau and Ruqaiyah Yearby discuss the manifestations of racism in crisis standards of care that contribute to health inequity during the COVID-19 pandemic. Additionally, in *Seeking Safety While Giving Birth During the Pandemic*, Professor Elizabeth Kukura discusses

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1. William F. Marshall, *Coronavirus Infection by Race: What's Behind the Health Disparities*, MAYO CLINIC (Aug. 13, 2020), <https://www.mayoclinic.org/diseases-conditions/coronavirus/expert-answers/coronavirus-infection-by-race/faq-20488802>.

2. *See id.*

3. Martha Hostetter & Sarah Klein, *Understanding and Ameliorating Medical Mistrust Among Black Americans*, THE COMMONWEALTH FUND (Jan. 14, 2021), <https://www.commonwealthfund.org/publications/newsletter-article/2021/jan/medical-mistrust-among-black-americans>.

4. *See id.*

how the regulatory restrictions on community birth negatively impact pregnant people of color and contribute to poor maternal health outcomes and hospitalization or death from COVID-19. Underlying health conditions, such as high blood pressure, lung disease, cancer, diabetes, and other respiratory ailments—all of which have been historically more prevalent, particularly, in the Black community—have not made things any easier.⁵ Because of these longstanding disparities, the Black community was primed to be disproportionately affected by any virus with community spread, let alone a virus as deadly as COVID-19.

Sweeping and generational changes in technology allowed many of us to continue our day-to-day interactions in a way thought unimaginable at the outset of the pandemic. Yet the economic and business-oriented “gains” achieved during the pandemic have not been shared by all groups. Black and Brown people have consistently been underrepresented in white-collar professions and thus have been on the short end of teleworking opportunities.⁶ The sad consequence of that reality is that many minorities are forced into front-line blue-collar work, which significantly increases the risk of exposure to the virus.⁷ Other longstanding elements of structural racism also have made minorities more vulnerable to COVID-19. For example, generational poverty and lack of fair housing have made it difficult for families of color to live in spacious homes where they can practice social distancing.⁸ Often, poor people are living in multi-family dwellings, which enables rampant spread of the virus between family members.⁹

People with disabilities have also been disproportionately impacted by the COVID-19 pandemic. COVID-19 poses a higher risk to some people with disabilities.¹⁰ Further, the risk of infection is complicated by other factors, such as group living, the needs and preexisting conditions of the individual, and the ability to take precautions such as wearing a mask or following social distancing procedures.¹¹ In *Retaining Medicaid COVID-19 Changes to Support Community*

5. See Sherita Hill Golden, *Coronavirus in African Americans and Other People of Color*, JOHNS HOPKINS MED., <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid19-racial-disparities> (last visited Aug. 1, 2021).

6. See, e.g., JOCELYN FRYE, CTR. FOR AM. PROGRESS, ON THE FRONTLINES AT WORK AND AT HOME: THE DISPROPORTIONATE ECONOMIC EFFECTS OF THE CORONAVIRUS PANDEMIC ON WOMEN OF COLOR 5 (2020).

7. *Id.* at 8.

8. See Golden, *supra* note 5.

9. See, e.g., *Study Links Crowded Homes, Poor Neighborhoods to Increased Risk of COVID-19*, NAT'L HEART, LUNG, & BLOOD INST. (June 18, 2020), <https://www.nhlbi.nih.gov/news/2020/study-links-crowded-homes-poor-neighborhoods-increased-risk-covid-19>.

10. Nicole Baumer, *The Pandemic Isn't Over — Particularly for People with Disabilities*, HARV. HEALTH PUBL'G (May 25, 2021), <https://www.health.harvard.edu/blog/the-pandemic-isnt-over-particularly-for-people-with-disabilities-202105252464>.

11. *Id.*

Living, authors Elizabeth Edwards, David Machledt, and Jennifer Lav discuss the importance of home and community-based services (HCBS) and argue that the state emergency policies that allowed greater access to HCBS during the pandemic should be retained by states post-pandemic to strengthen the HCBS system and increase access to this type of care.

Moreover, COVID-19 precaution policies and resource allocation guidelines have made disparities more apparent with respect to people with disabilities.¹² In *Policies of Exclusion: The Impact of COVID-19 on People with Disabilities*, Professors Amanda Caleb and Stacy Gallin discuss how COVID-19 public health strategies and health facilities' triage policies have deprioritized and excluded people with disabilities. Also, in *Disability, Access, and Other Considerations: A Title II Framework for a Pandemic Crisis Response (COVID-19)*, authors George Powers, Lex Frieden, and Vinh Nguyen discuss the obligations of state and local governments under Title II of the Americans with Disabilities Act to create and enforce equitable rationing guidelines during the pandemic.

Incarcerated populations are another group that are disproportionately impacted by COVID-19. Due to issues such as overcrowding, lack of hygiene, lack of testing, and high prevalence of chronic health conditions, incarcerated people have much higher COVID-19 infection and death rates compared to the overall U.S. population.¹³ In *COVID-19, Doctors, and the "Realities of Prison Administration" Part I: The Realities of a Subject Matter Expert*, Dr. Fred Rottnek discusses his observations as an expert witness of the conditions within prison systems, and the mixed reception of his expert testimony in different court proceedings. In the second part of this two-part article, *COVID-19, Courts, and the "Realities of Prison Administration" Part II: The Realities of Litigation*, Professor Chad Flanders analyzes how district and appellate courts treat lawsuits challenging prisons and jails for not doing enough to stop the spread of COVID-19 among inmates, and why these cases often win in district court but lose on appeal.

While these inequities are becoming more widely discussed, they are still woefully understudied, and policymakers do not have the benefit of examining all of the relevant statistics. For example, in *Examining Sociodemographic Data Reporting Requirements in State Disease Surveillance Systems*, authors Samantha Weber, Amanda Moreland, Rachel Hulkower, and Tara Ramanathan Holiday analyze existing state laws that require the capture and reporting of sociodemographic data, and discuss why identifying and addressing the gaps in data is important to help prevent future outbreaks. Therefore, it is imperative that policymakers develop new and innovative ways of capturing data, in

12. *Id.*

13. *Covid-19's Impact on People in Prison*, EQUAL JUST. INITIATIVE, <https://eji.org/news/covid-19s-impact-on-people-in-prison/> (last updated Apr. 16, 2021).

addition to implementing initiatives that will assist in developing policies and strategies to address inequities. In my nearly two decades on the federal bench, I have been a witness to the realities of social disparities and structural racism in many different areas of day-to-day life. But I have also seen many of the realities mentioned above through some of my other pursuits in public service. I have been directly involved in health care administration in the state of Maryland, serving as vice chairman of the University of Maryland Medical System (UMMS), which includes thirteen affiliated hospitals across the state.¹⁴ I also serve as Chairman of the University of Maryland Capital Region Health—the UMMS affiliate located in Prince George’s County, which has nearly one million residents and is predominantly Black.¹⁵ As far as healthcare administration is concerned, Prince George’s County and the UM Capital Region Health have borne the brunt of the pandemic, as they have incurred the state’s heaviest caseloads including many deaths resulting from COVID-19.¹⁶

Although the volume of the virus continues to rise nationally, and our chief recourse in the fight against this pandemic remains social-distancing, mask-wearing, and getting vaccinated, I have attempted to use my role in public service as an advocate for change and the advancement of racially equitable health policy. For example, in my role as Chairman of the UMMS diversity and inclusion committee, the committee is focused on exploring ways to implement changes to the state’s healthcare system that would contribute to the general elimination of disparities across the spectrum in the delivery of healthcare. While we have not yet reached all of the goals we wish to achieve at UMMS, I believe that the increased public awareness in racial disparities will give us the fuel necessary to move forward in conquering the pandemic and achieving equitable outcomes in healthcare administration. I also believe that our great restoration project in this country will afford us an opportunity to target other marginalized groups that have suffered from a lack of access to high-quality healthcare, such as individuals with disabilities and prison inmates. While the last year of enduring this pandemic has presented us with some of the greatest challenges our nation has ever faced, I am confident that we are well-positioned to rebuild equitably.

14. *About Us*, UNIV. OF MD. MED. SYS., <https://www.umms.org/about> (last visited Aug. 1, 2021).

15. See *Quick Facts: Prince George’s County, Maryland*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/princegeorgescountymaryland/PST040219> (last visited Aug. 1, 2021).

16. See Jean Marbella & Naomi Harris, *Maryland’s Prince George’s County Is Among Nation’s Wealthiest Black Communities, But It Leads State in Coronavirus Cases*, BALT. SUN (July 9, 2020, 11:46 PM), <https://www.baltimoresun.com/coronavirus/bs-md-prince-georges-coronavirus-20200709-pawnopbtgngx7kh6cmq6ugldni-story.html>.