A stylized illustration of a diverse crowd of people, all wearing face masks. The figures are rendered in various colors (blue, orange, green, purple) and are shown from the chest up, looking in different directions. The background is a solid dark blue.

CRISIS MANAGEMENT FOR COVID-19

Phase 33: Kentucky Vaccines, Legal Challenges, CDC Guidance, PPP, and Presidential Executive Orders

*Presented by:
Hanna Resource Group
and
Morris & Morris, PSC*

INTRODUCTIONS



Lyle S. Hanna SPHR, SHRM-SCP
*President and CEO
Hanna Resource Group*



James M. Morris, Esq.
*Juris Doctor, MPA
Morris & Morris, P.S.C*



Brad Patrick
*Adviser/Consultant for
Practical Performance
Solutions*



Troy Landoch
*VP of Operations
HRG*



Jim Gray
*Kentucky COVID-19 Task
Force
Former Lexington Mayor*



Allison Pettrey
*SHRM-CP, PHR
Manager HR Outsourcing
HRG*



Autumn Morris
*MBA, SHRM-CP
HR Assessments and
Analytics - Consultant
HRG*



Bonnie Hackbarth
*Vice President, External
Affairs
Foundation for a Healthy KY*



Angie Bailey
*Director of Business
Development & HR Services
HRG*



Chase Adams
*M.S. SHRM-CP
Mgr Organizational
Development
HRG*

WHAT WE'LL COVER

1

Vaccine Update

2

Kentucky Legal Update

3

Critical National
Changes Coming



1

Vaccine Distribution Update



Jim Gray
Kentucky COVID-19 Task Force
Former Lexington Mayor



Bonnie Hackbarth
Vice President,
External Affairs
Foundation for a Healthy
KY

Vaccine Distribution Update

We've made solid progress, but patience is still key.

442,858


Total Unique Persons Vaccinated in KY

As of February 7th

90%

of first doses received have been administered

As of February 7th



The vaccine supply remains very limited. **Continued patience is key.**

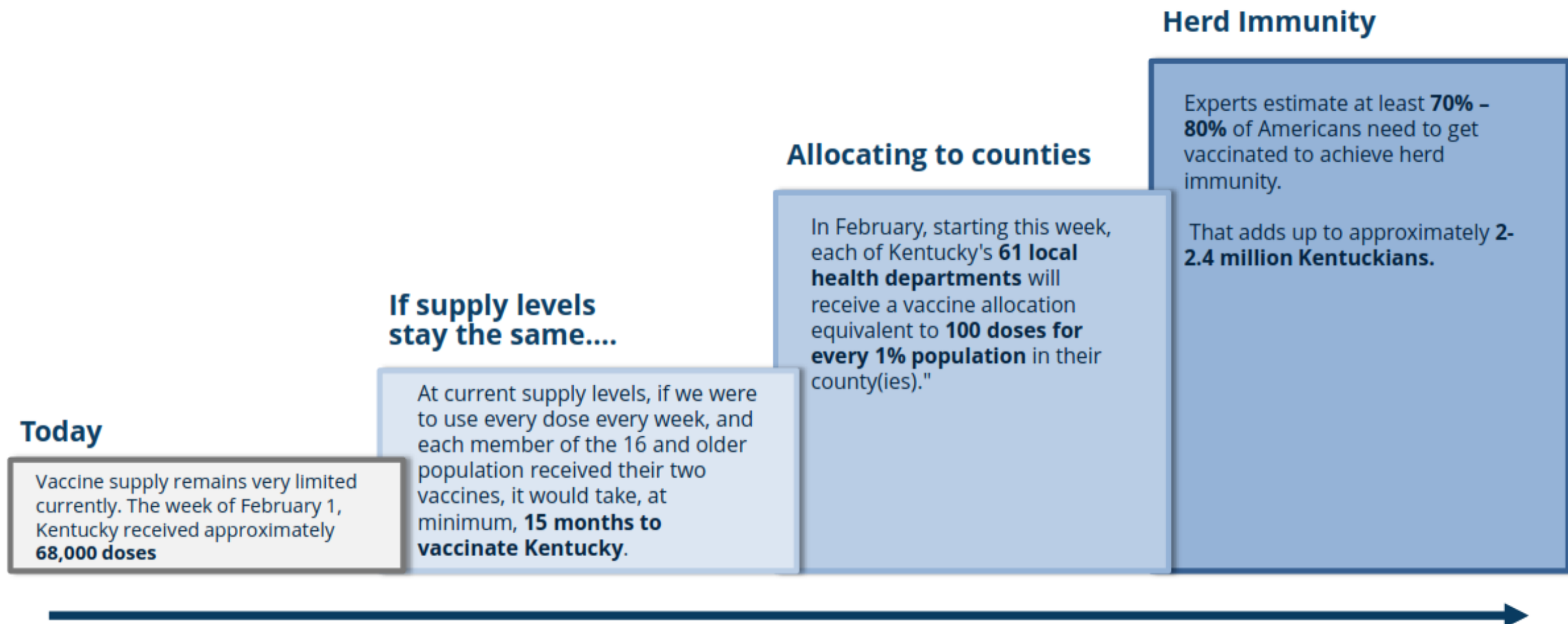
The vaccine distribution strategy includes **both regional, high-capacity sites and local sites** to meet the differing needs of Kentuckians.

We are ramping up our infrastructure so that, as supply increases, we are **ready to get it in arms as quickly as possible.**

**It's all about three words:
supply, supply, supply.**

**Vaccine distribution is a
complex logistical project.**

Vaccine distribution is a complex logistical project.



We are identifying new local and regional sites week over week.

Week of Feb. 1: first regional site launched.



Existing Sites



New Sites for the Week of February 1st



Disclaimer: The location of each site is an approximation.

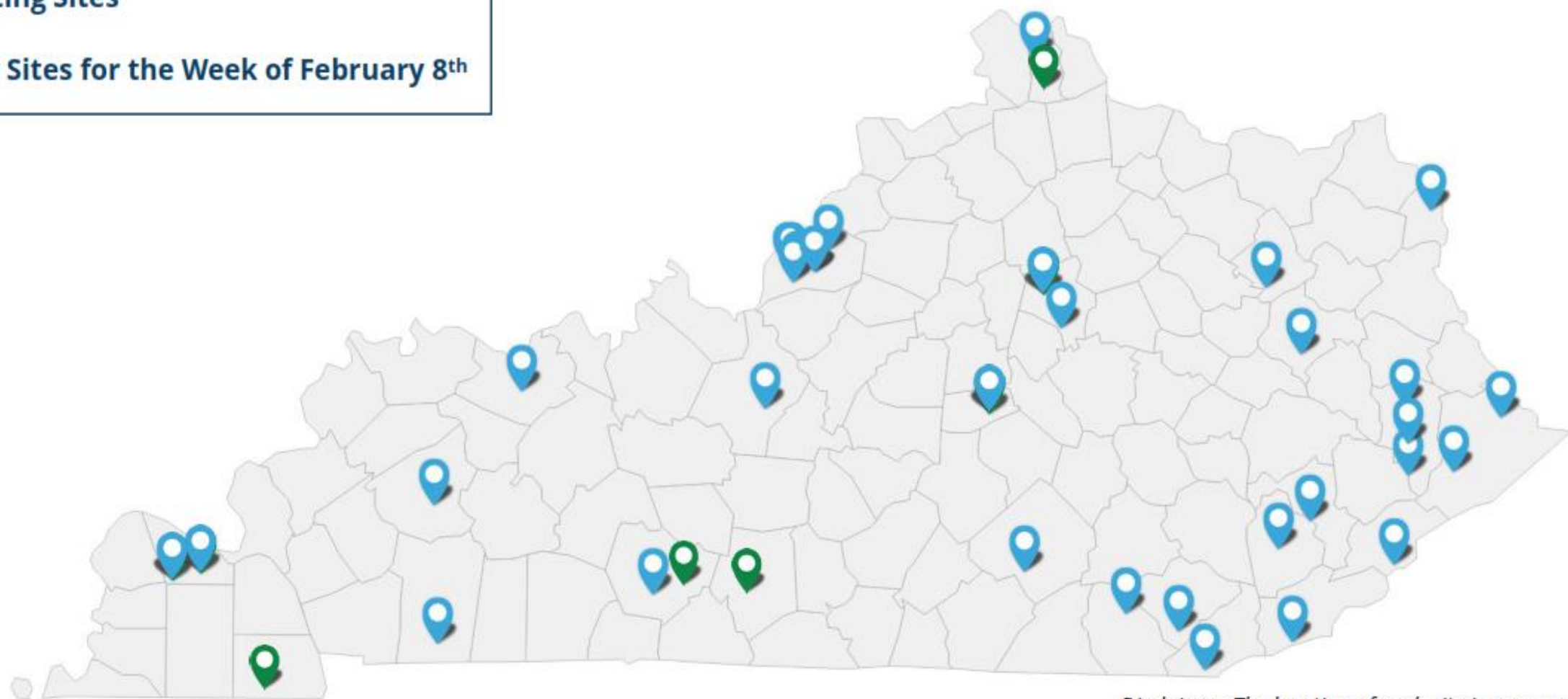
Week of Feb. 8: four new regional sites launched.



Existing Sites

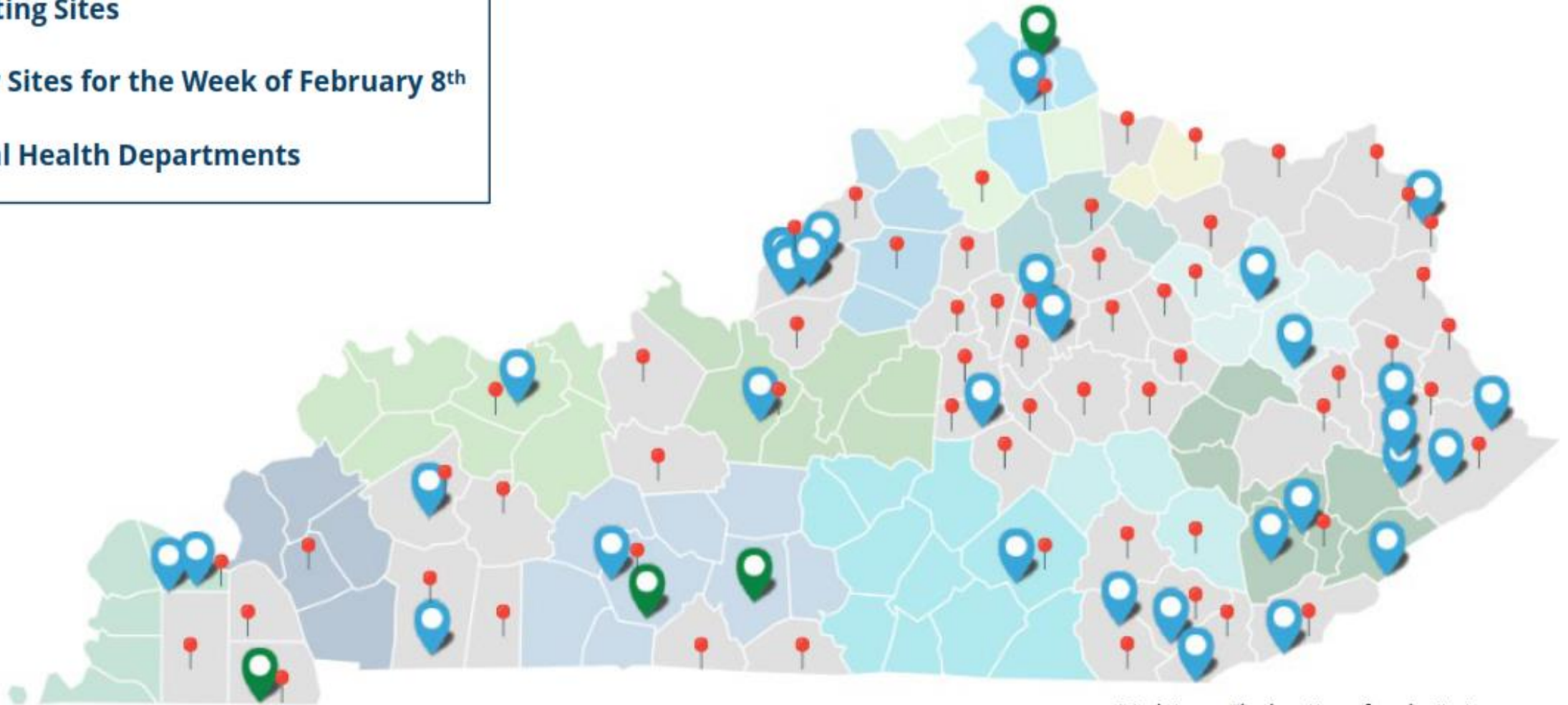


New Sites for the Week of February 8th



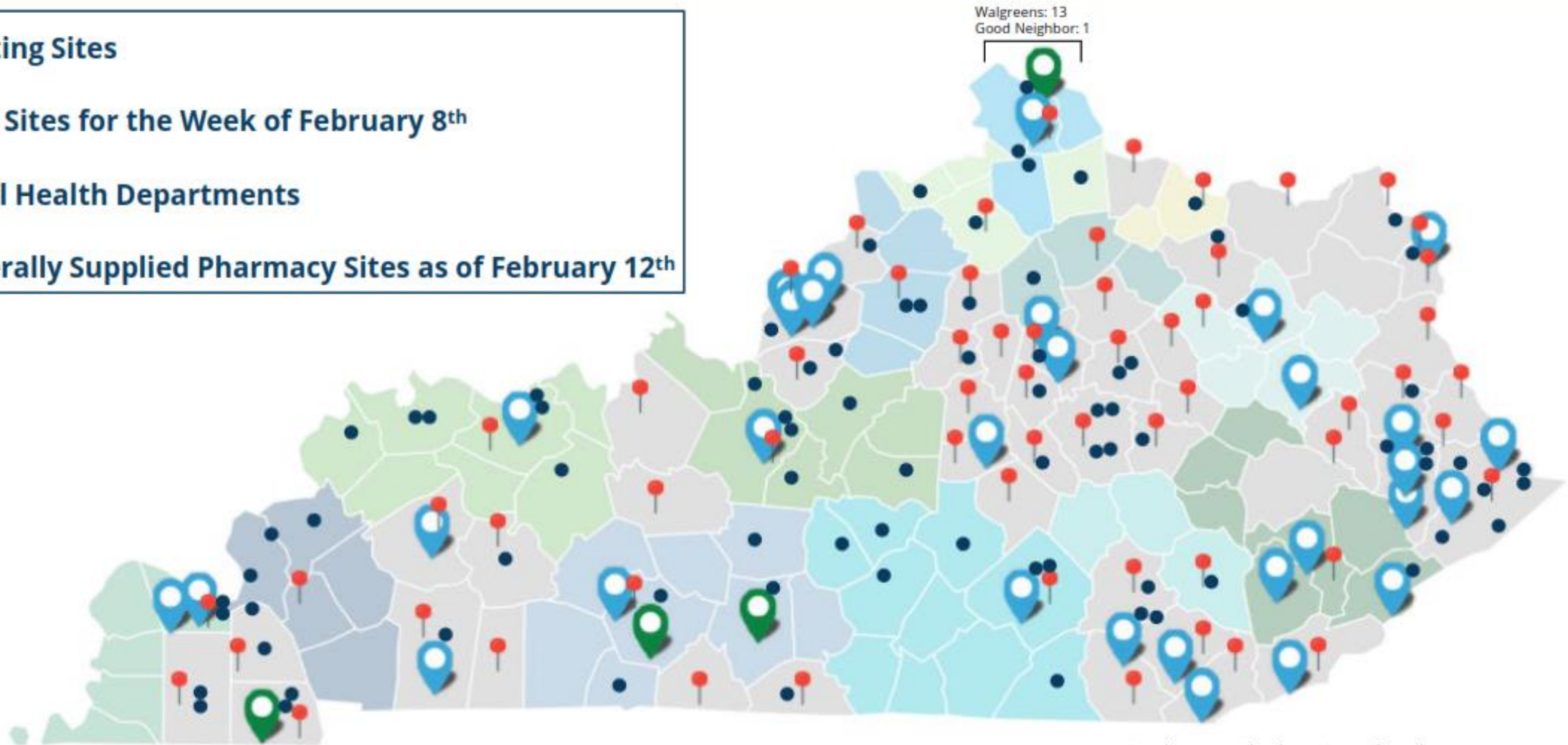
Disclaimer: The location of each site is an approximation

Week of Feb. 8: allocations for every health department announced.



Disclaimer: The location of each site is an approximation

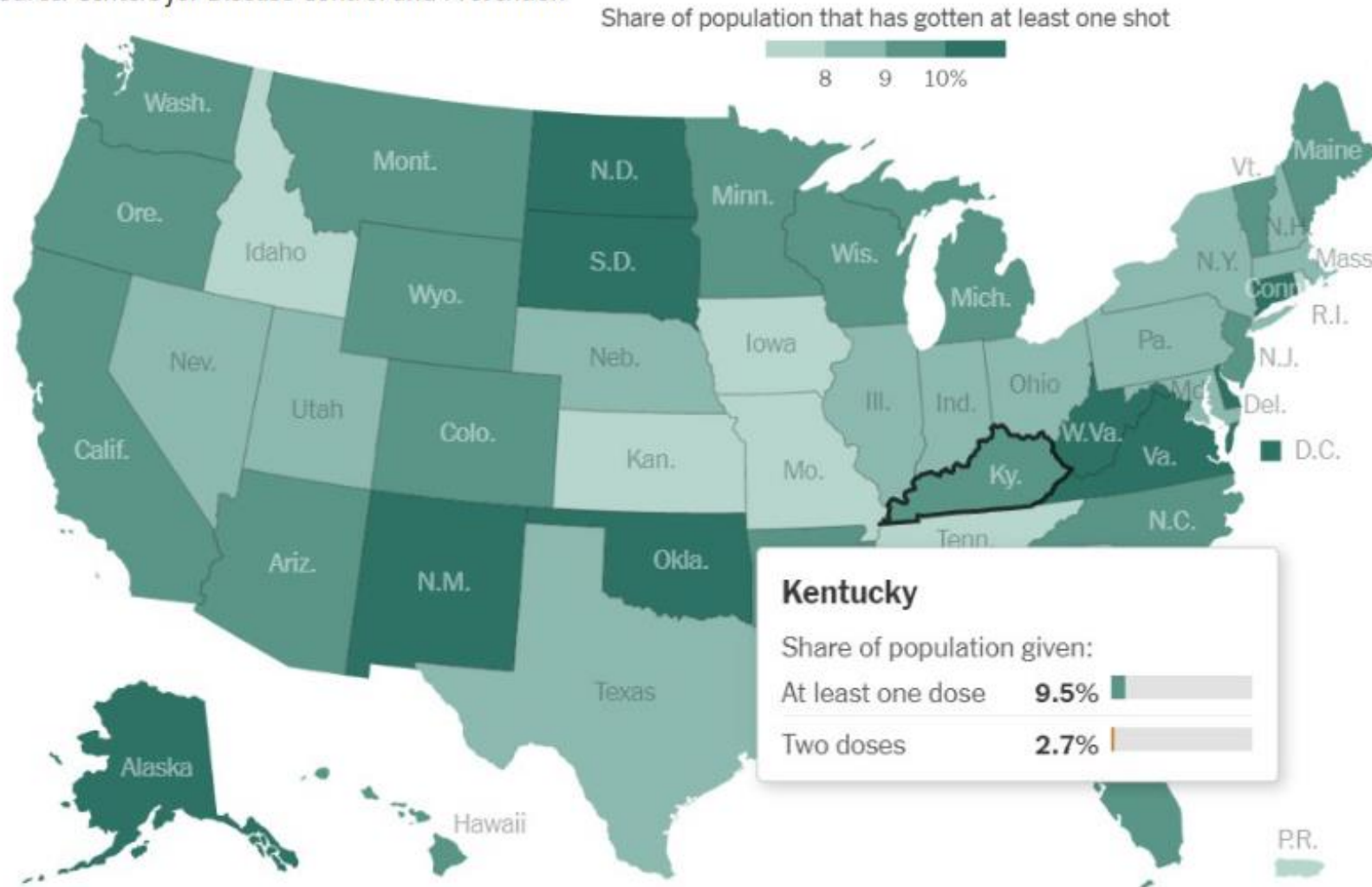
Week of Feb. 12: adding federally supplied pharmacy sites.



Disclaimer: The location of each site is an approximation

Kentucky outperforming most neighboring states.

Source: Centers for Disease Control and Prevention



The New York Times

- Kentucky is ranked **19th** as of February 7th among States and the District of Columbia in vaccination pace
- This map highlights the share of population that has received at least one shot

We're ramping up for increased supply.

Our distribution plan is strategic, equitable, and is based on CDC guidelines.

Kentucky is distributing the COVID-19 vaccine in **phases** with a focus on reaching the **most vulnerable members of society** as quickly as possible. To reach the most people quickly, Kentucky has instructed all vaccine sites to **administer at least 90% of all vaccines** they receive within seven days of arrival at their facility.

These timelines are dependent upon on vaccine availability and are subject to change.

	Eligible Populations	Estimated Timing
Phase 1a	Long-term care and assisted living facilities, health care personnel	December 2020 – Winter 2021
Phase 1b	70 and older, first responders, K-12 personnel (in-state K-12 only)	January 2021 – Spring 2021
Phase 1c	60 and older, persons with high-risk conditions, essential workers	February 2021 – Summer 2021
Phase 2	40 and older	Late Summer 2021 – Winter 2021
Phase 3	16 and older	Fall 2021 – Winter 2022

Note: Vaccination Phases are updated as of January 27th

We've created several vaccine information resources for Kentuckians.



kycovid19.ky.gov

- Read KY's Vaccination Distribution Plan
- Vaccination Phases
- Vaccine Monitoring Statistics
- Frequently Asked Questions



vaccine.ky.gov

- Find Vaccination Sites near you
- Find your Vaccination Phase
- Sign up for notifications about the vaccine once you become eligible



[Call Center](tel:855-598-2246)

- 855-598-2246
- For persons who are deaf or hard of hearing: 855-326-4654



2

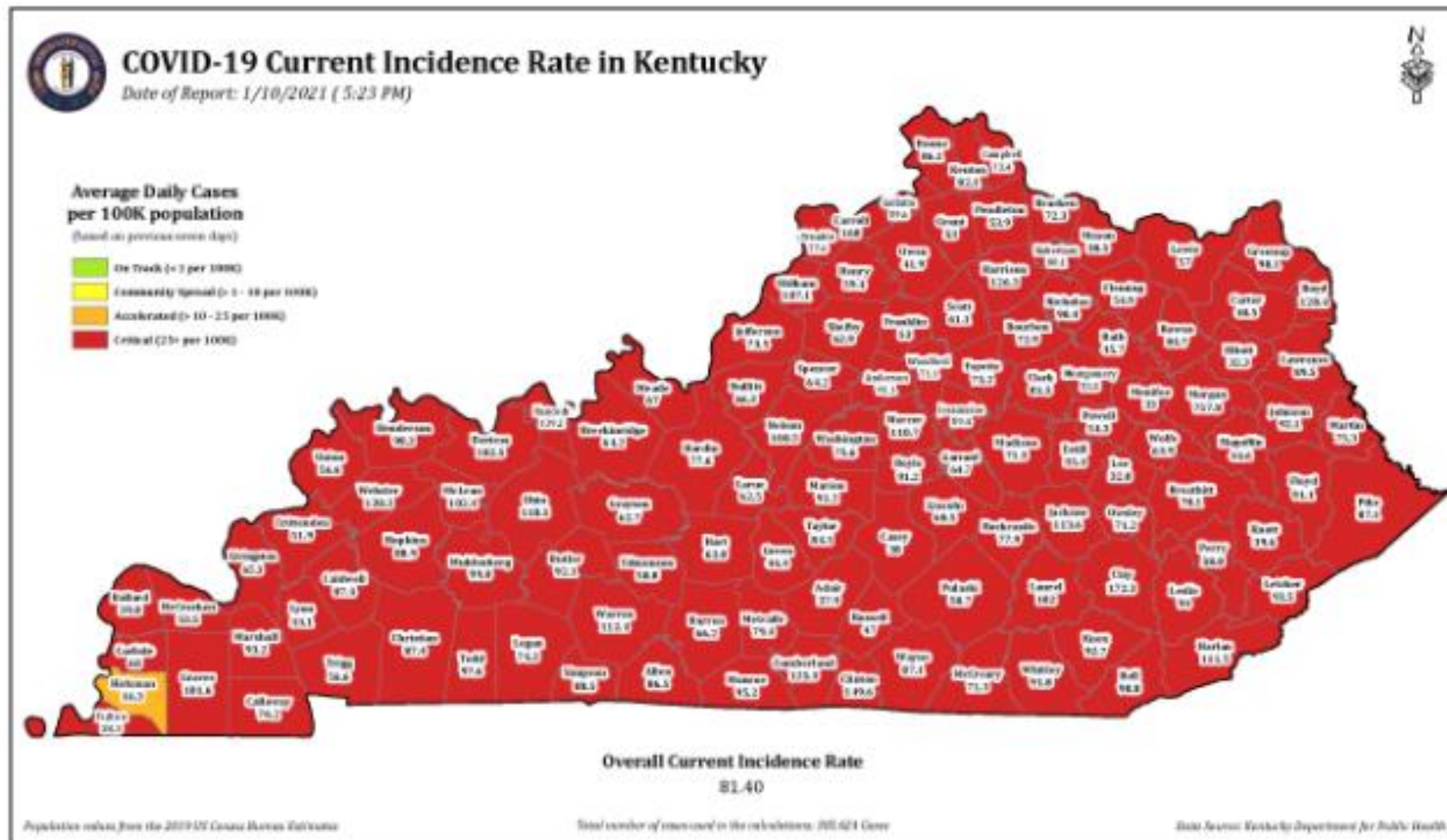
Kentucky Legal Update

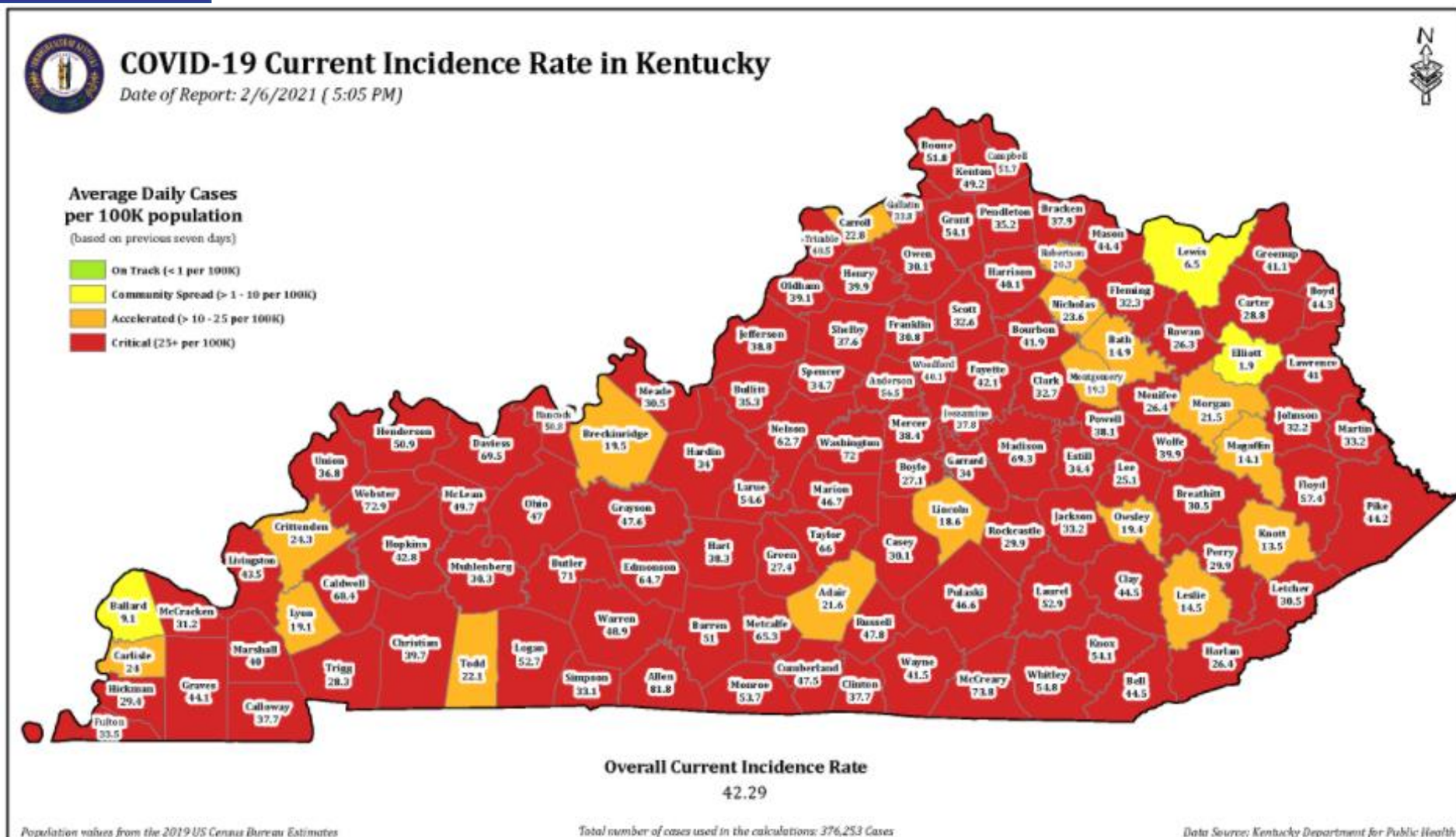


James M. Morris, Esq.

Juris Doctor, MPA

Morris & Morris, P.S.C





Kentucky's State-Wide COVID-19 Red Zone Reduction Recommendations

RED ZONE REDUCTION RECOMMENDATIONS

- Employers allow employees to **work from home** when possible
- Non-critical **Government offices to operate virtually**
- **Reduce in-person shopping**; order online or curbside pickup
- **Order take-out**; avoid dining in restaurants or bars
- Prioritize **businesses that follow and enforce mask mandate and other guidelines**
- **Reschedule, postpone or cancel public and private events**
- **Do not host or attend gatherings of any size**
- **Avoid non-essential activities** outside of your home
- **Reduce overall activity and contacts, and follow existing guidance**, including 10 steps to defeat COVID-19

2

Kentucky Laws Restrict Governor's Authority

New Laws Delivered to Kentucky Secretary of State Following Governor Veto and Legislative Override

BILL	STATUS	DATE	DESCRIPTION
SB1	Veto Overridden Became Law	2/2/2021	Limits the effective dates of executive orders issued by the Governor to 30 days unless an extension is approved by the general assembly
SB2	Veto Overridden Became Law	2/2/2021	Amends KRS 13A.030 to include, in the list of administrative regulations that may be found legally deficient, any emergency administrative regulations without adequate justification

2

Kentucky Laws Restrict Governor's Authority

Legislature Overrides Governor's Veto, Laws go into Effect – with an exception

BILL	STATUS	DATE	DESCRIPTION
HB1	Veto Overridden Became Law Injunction Issued	1/19/21	Provides relief to businesses and individuals during COVID related state of emergencies; provides guidelines for reopening schools and businesses; suspends interest on unpaid unemployment insurance contributions. (All Retroactive to March 6, 2020)
HB5	Veto Overridden Became Law	2/2/2021	Amends KRS 12.028 to remove the provisions related to temporary reorganizations; repeals KRS 12.027, removing authority for temporary reorganizations by executive order

2

Kentucky Laws Restrict Governor's Authority

Legislature Overrides Governor's Veto, Laws go into Effect – with an exception

- On February 2, 2021, Governor Beshear filed suit
 - Lawsuit sought injunction precluding enactment of each of these Bills
- On February 3, 2021, Franklin Circuit Court conducted an emergency hearing
- On February 3, 2021, Judge Phillip Shepherd issued an Order that denied an injunction as to Senate Bill 1 and 2, and House Bill 5, but Enjoining portions of House Bill 1 for a period of no more than 30 days pending further hearings
 - Injunction precludes enforcement of HB 1 Section 1(1)(a),(b), and (c).
 - These sections allowed businesses, schools, and governments to remain open despite Governor's Executive Orders, Regulations, or Directives, so long as the business meets or exceeds CDC or Executive Directive
- Judge found that "House Bill 1, on its face, allows for thousands of Kentucky businesses to make their own rules and adopt their own policies that may be at variance with the duly promulgated Executive Orders and Administrative Regulations, which have been enacted by the Governor to prevent disease and death that is inevitable with the spread of COVID-19"
- "The Court is concerned that this portion of Section 1 of House Bill 1 could create chaos and undermine any effective enforcement of public health standards to prevent the spread of this deadly disease during this pandemic. Moreover, in the absence of injunctive relief, it appears that these provisions of House Bill 1 could likely wreak havoc with public health.

CDC addresses Vaccine Distribution, Disabilities, and Variant COVID-19 Strains

COVID Data Tracker



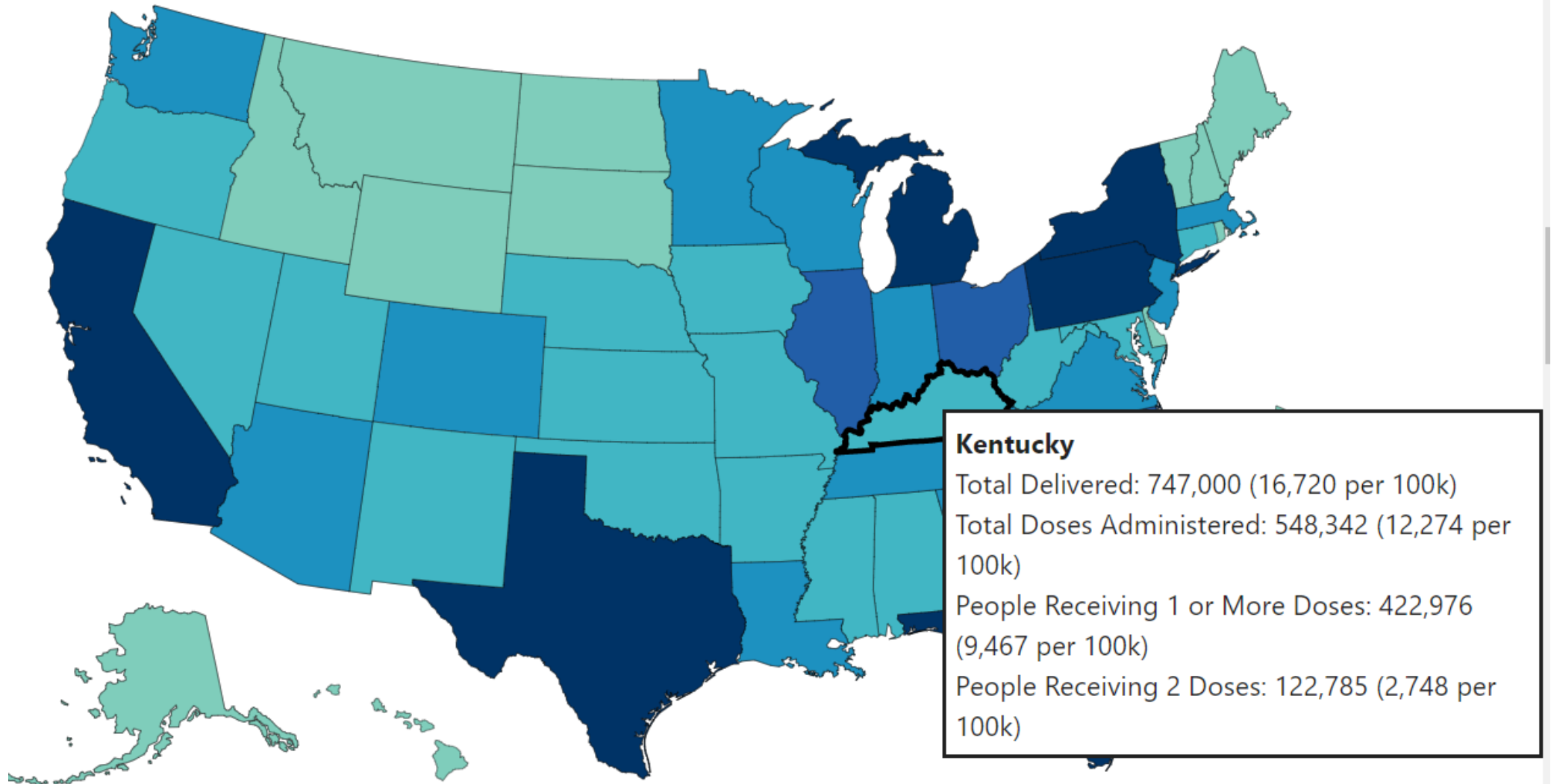
CDC Updates of Note:

- 2/2/2021: Three new variants of COVID-19
 - United Kingdom variant (B.1.1.7); more contagious with increased death rate (US in 12/2020)
 - South Africa variant (B.1.351) shares some mutations with B.1.1.7 (US late 1/2021)
 - Brazil variant (P.1) found in travelers to Japan, in early 1/2021; variant contains additional mutations that may affect its ability to be recognized by antibodies. (US late 1/2021)
- 2/5/2021: International travelers must produce proof of negative test no more than 3 days prior
- 1/29/2021: Travel Mask Requirement: All passengers, crew, employees, and locations on all public transportation (airplanes, ships, ferries, trains, subways, buses, taxis, ride-shares) into, within, or out of US

3

CDC Addresses Vaccines

CDC addresses Vaccine Distribution, Disabilities, and Variant COVID-19 Strains



On January 21, 2021, the President issued an executive order requiring the federal government to take “swift action” to protect U.S. workplaces from the COVID-19 pandemic. OSHA was mandated, to:

1. Consider, within 2 weeks, whether an **emergency COVID-19 standard** is necessary and, if so, to implement such a standard by no later than March 15, 2021
 2. issue within 2 weeks **“revised guidance** to employers on workplace safety during COVID-19 pandemic”
 3. Review its current enforcement efforts, and “identify any short-, medium-, and long-term changes that could be made to better protect workers and ensure equity in enforcement.”
- New ETS most likely will “include masks in the workplace.” However, OSHA stated masks were not PPE
 - New ETS may also include mandatory vaccination
 - OSHA ETS is issued without notice-and-comment rulemaking. Employers must be on the lookout
 - ETS remains in effect for only six months and OSHA has had difficulty adopting such standards
 - To justify an ETS, OSHA must find “that employees are exposed to grave danger.”

On January 21, 2021, the President issued another Executive Order directing the DOL to issue new instructions to state unemployment agencies that will allow individuals to claim unemployment even if they quit their jobs because they felt unsafe working during the pandemic. In explaining this broad-based directive, the White House stated that “workers should have the right to safe work environments and that no one should have to choose between their livelihoods and their own or their families’ health.”

- Under the Consolidated Appropriations Act, 2021, those who are unemployed are again receiving additional funds in excess of state unemployment amounts of an additional \$300 per week
- The executive order does not specify the criteria to determine who will be eligible for additional unemployment benefits.
- This Executive Order will greatly increase the number of Unemployment Claims being issued, will result in substantial numbers of new claims being made, will undercut the job market, and cause further disruption.
- The subjective “fear based” declaration will undercut employers’ ability to challenge unemployment

3 Timely Court Order on Religious Discrimination regarding Vaccines

Fifth Circuit Court of Appeals (TX, LA, and MS) Issues Opinion providing guidance on Religious Objectors to Vaccines

.

As discussed last update, employers considering mandatory vaccination have concerns related to objectors. In *Horvath v. City of Leander*, (1/2020) the Fifth Circuit Court of Appeals considered an employer's accommodations to a firefighter who refused a mandatory TDAP vaccine for religious reasons, providing timely guidance to employers considering a different type of mandatory vaccine.

The fire department offered a choice of two accommodations: (1) reassignment to another position at the same rate of pay, without a vaccination; or (2) remain in current position but wear PPE, including a respirator, at all times while on duty, etc. The employee rejected both and countered with a different alternative. The employer refused. The employee ignored the directive and was terminated.

The appeal was rejected, because the employer cannot mandate a specific "reasonable" accommodation. The analysis in *Horvath* is instructive (but not binding in Kentucky) in dealing with similar requests related to the COVID-19 vaccine. Importantly, the city promptly reviewed the accommodation request, identified reasonable accommodation options, and presented those to the employee. The law does not require employers to adopt the employee's requested or preferred accommodation, so long as they offer accommodations that are reasonable and effective.

While the new guidance largely reiterates and incorporates existing guidance from OSHA and CDC, the new guidance contains certain new guidance:

- OSHA now recommends that employers “[p]rovide all workers with face coverings (i.e., cloth face coverings, surgical masks)” at no cost “unless their work task requires a respirator.”
- OSHA also now recommends that employers “[r]equire any other individuals at the workplace (e.g., visitors, customers, non-employees) to wear a face covering,” with certain exceptions.
- Additionally, OSHA’s new guidance touches on COVID-19 vaccinations by recommending that employers make COVID-19 vaccines available at no cost to employees and that employers ensure vaccinated workers “continue to follow protective measures”

On January 29, 2021, the SBA Issued New Guidance on Shuttered Venue Grants

FAQ released by the SBA does not specify a starting date for the new Shuttered Venue Operators Grant (SVOG) program but does recommend actions. The SVOG will provide eligible applicants with grants equal to 45% of their gross earned revenue, up to a maximum of \$10 million.

- Obtain a DUNS number so they can then register in the System for Award Management (SAM.gov). Cannot use FEIN or Individual Tax ID
- Immediately begin registering in SAM.gov (may take up to two weeks after submission)
- Gather documentation showing employee count and monthly revenue to be able to calculate the average number of qualifying employees over the prior 12 months.
- Determine and document the extent of gross earned revenue loss experienced in 2020 compared to 2019. Other required information includes floor plans, contract copies, etc.
- Eligibility details: live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theater operators, and talent representatives in business on 2/29/2020, without a pending PPP after 12/27/2020

AICPA has Requested Guidance from SBA on PPP Loan Process following numerous issues with new systems

On February 3, 2021, the AICPA sent a letter urging the SBA to address ongoing problems with the new application process:

- Challenges with first- and second-draw PPP applications being denied acceptance in system:
 - Additional validation checks to counter fraudulent applicants are causing legitimate applications to be denied acceptance by the SBA.
- SBA processing and resolution delays for applications successfully submitted into the E-Tran system is flagging 20% to 30% of all first- and second-draw PPP applications for additional review based on validation checks, causing over 40 types of "error code" with no solution
- SBA capping of first- and second-draw PPP loan amount is reducing the approved amounts
- The need for communication on available funding, overall processing and timing is critical with ongoing confusion of small businesses struggling through process
- The SBA approved nearly 900,000 loans totaling \$72.7 billion from Jan. 11 through Jan. 31, leaving almost \$212 billion available. Applications for PPP loans close March 31, 2021.

The IRS Issued New Guidance Regarding the Employee Retention Credit and PPP

IR-2021-21: Explains how the ERC was extended and amended. The expansions include:

- An increase in the credit rate from 50% to 70% of qualified wages;
- Increase in limit on per employee wages from \$10,000 per year to \$10,000 per quarter;
- A reduction in the required year-over-year gross receipts decline from 50% to 20%;
- A safe harbor allowing employers to use prior-quarter gross receipts to determine eligibility;
- A provision to allow certain governmental employers to claim the credit;
- Increase from 100 to 500 employees counted in determining the qualified wage base; and
- Rules allowing new employers who were not in existence for all or part of 2019 to be eligible

The new provision that employers who receive PPP loans may still qualify for the ERC for wages not paid with PPP proceeds raises questions about how the reporting of wages as payroll costs on a previously filed PPP loan forgiveness application will affect ability to claim the ERC for wages that were included on a loan forgiveness application but did not affect the amount of forgiveness

Questions & Answers



HRCI (Strategic/Business): 550051
SHRM: 21-9RW79



HANNA RESOURCE GROUP



Morris & Morris, PSC