

CRISIS MANAGEMENT FOR COVID 19

Phase 52: COVID and Legal Updates

*Presented by:
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and
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INTRODUCTIONS



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The Homes that Bourbon Built!

A RAFFLE TO BENEFIT HABITAT FOR HUMANITY



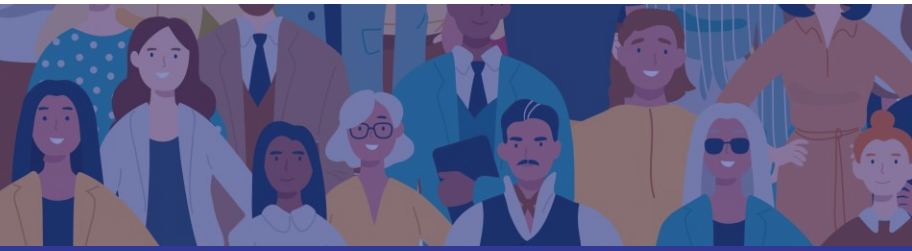
Proceeds will benefit tornado relief in Western Kentucky as well go towards building affordable homes in Louisville!

Raffle Tickets \$100 each; only 5,000 available!

Go to: louisvillehabitat.org/bourbon-raffle/

WHAT WE'LL COVER

- 1 Dr. Winter COVID Update
- 2 Legal and Regulatory Changes



1 Dr. Winter



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PhD, MPH
State Epidemiologist
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COVID-19 Community Levels & Guidance Framework for Kentucky

Kathleen Winter, PhD, MPH

State Epidemiologist

Director, Division of Epidemiology and Health Planning



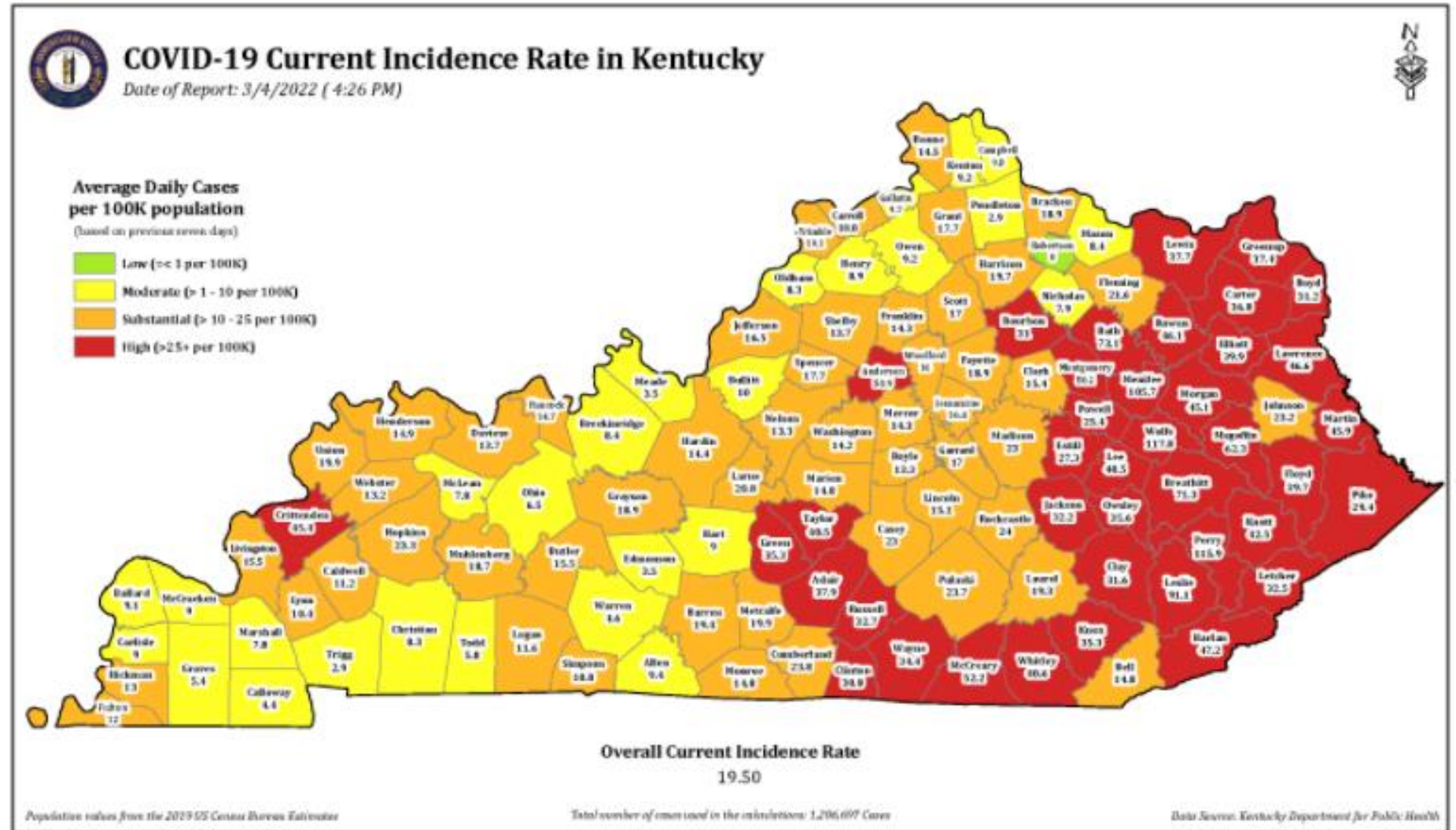
Kentucky Public Health
Prevent. Promote. Protect.

COVID-19 Risk Framework: Key Messages

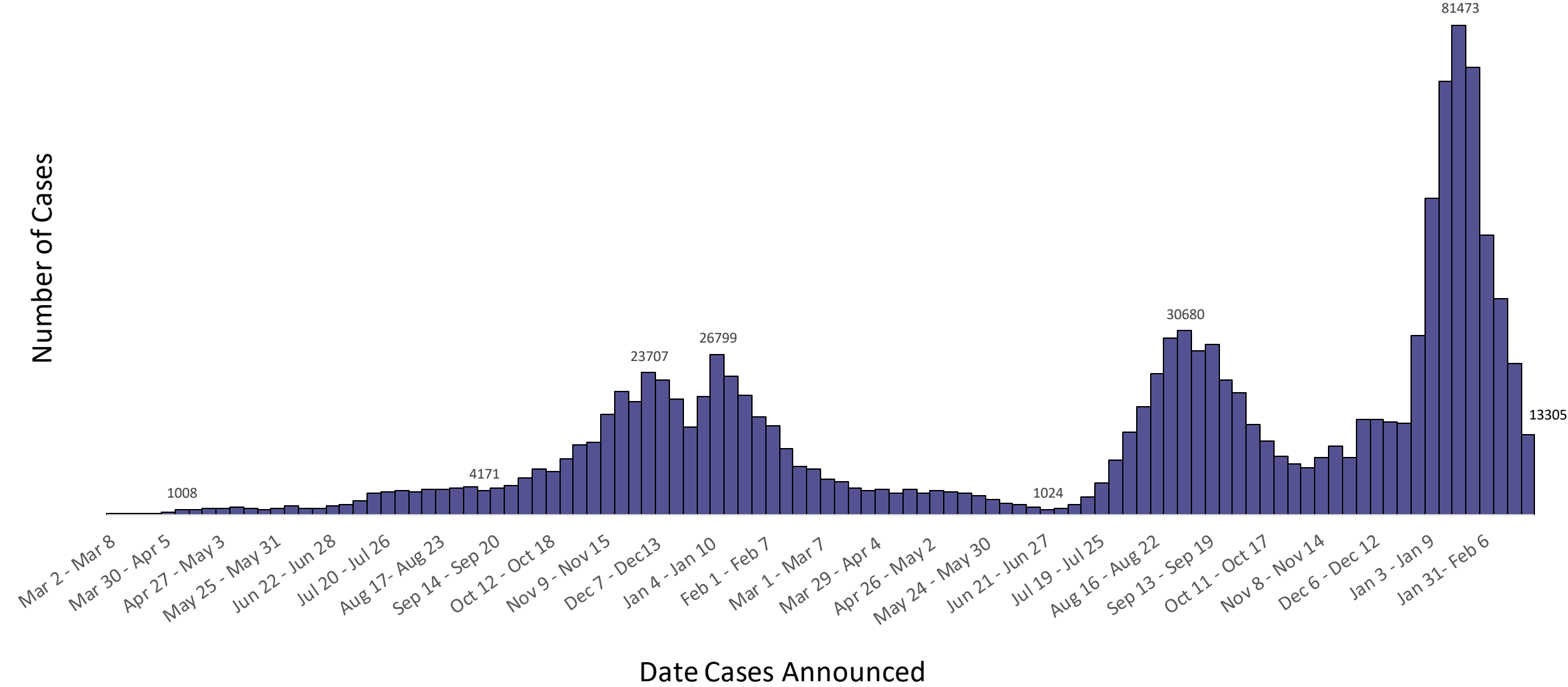
- **New phase of the pandemic:** the virus will continue to circulate, however vaccines, boosters, viral tests, and therapeutics are available.
- Priority must shift away from individual case management and eliminating transmission **towards preventing COVID-19 from overwhelming our hospitals and healthcare systems** and protecting people who are at increased risk for severe illness.
- Tracking **severe cases** alongside **overall incidence** rates provide a better picture of the impact of COVID-19 in our communities.
- Estimating the burden of COVID-19 at the community level allows for individualized decision making and localized public health response.

Current Incidence Rate in Kentucky

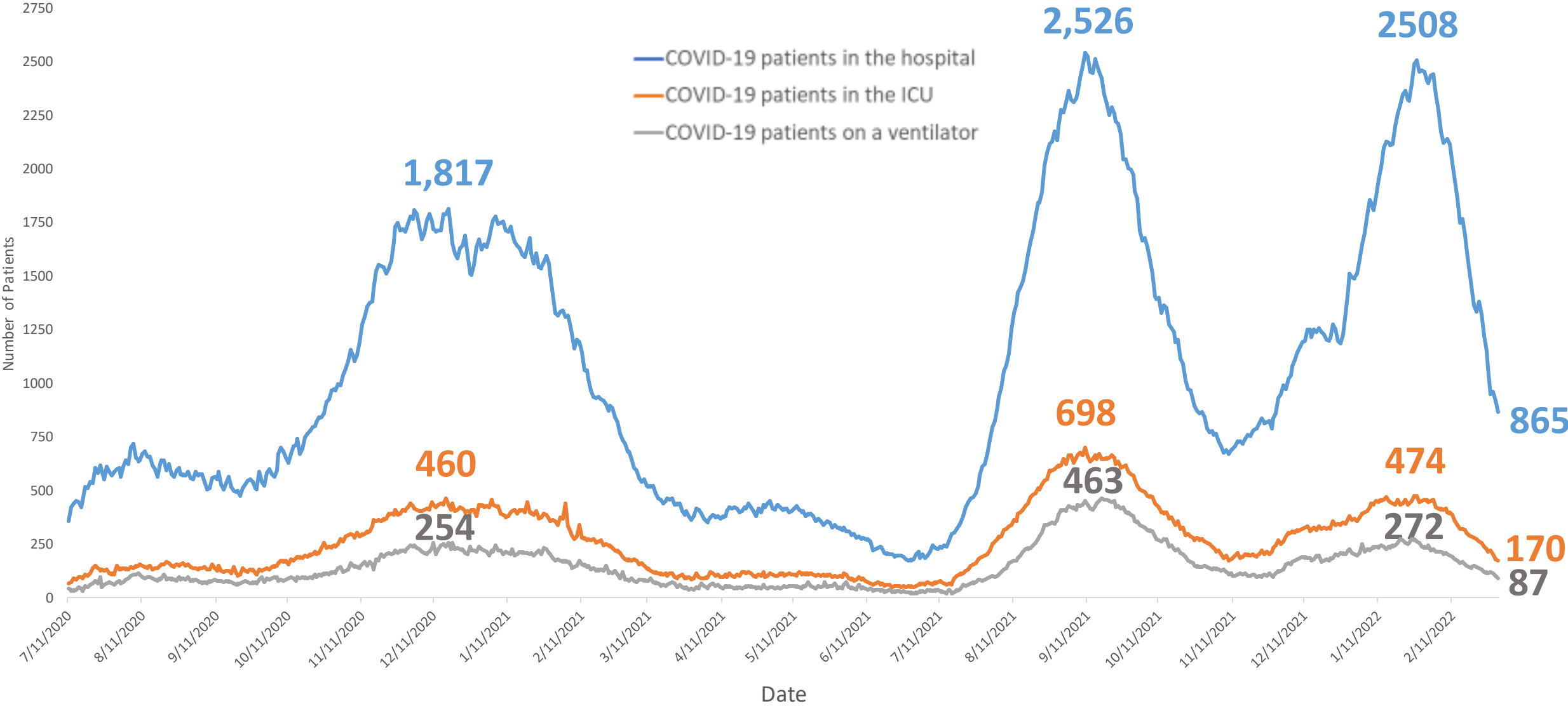
- Incidence of new cases
- % positivity
- Case fatality rate



Kentucky COVID-19 New Cases by Week (n = 1,276,696)



COVID-19 hospitalization, ICU, and ventilator census in Kentucky hospitals - July 11, 2020 – March 2, 2022



New C.D.C. Guidelines Suggest 70 Percent of Americans Can Stop Wearing Masks

The agency issued a new set of recommendations intended to help communities live with the virus and get back to normal life.



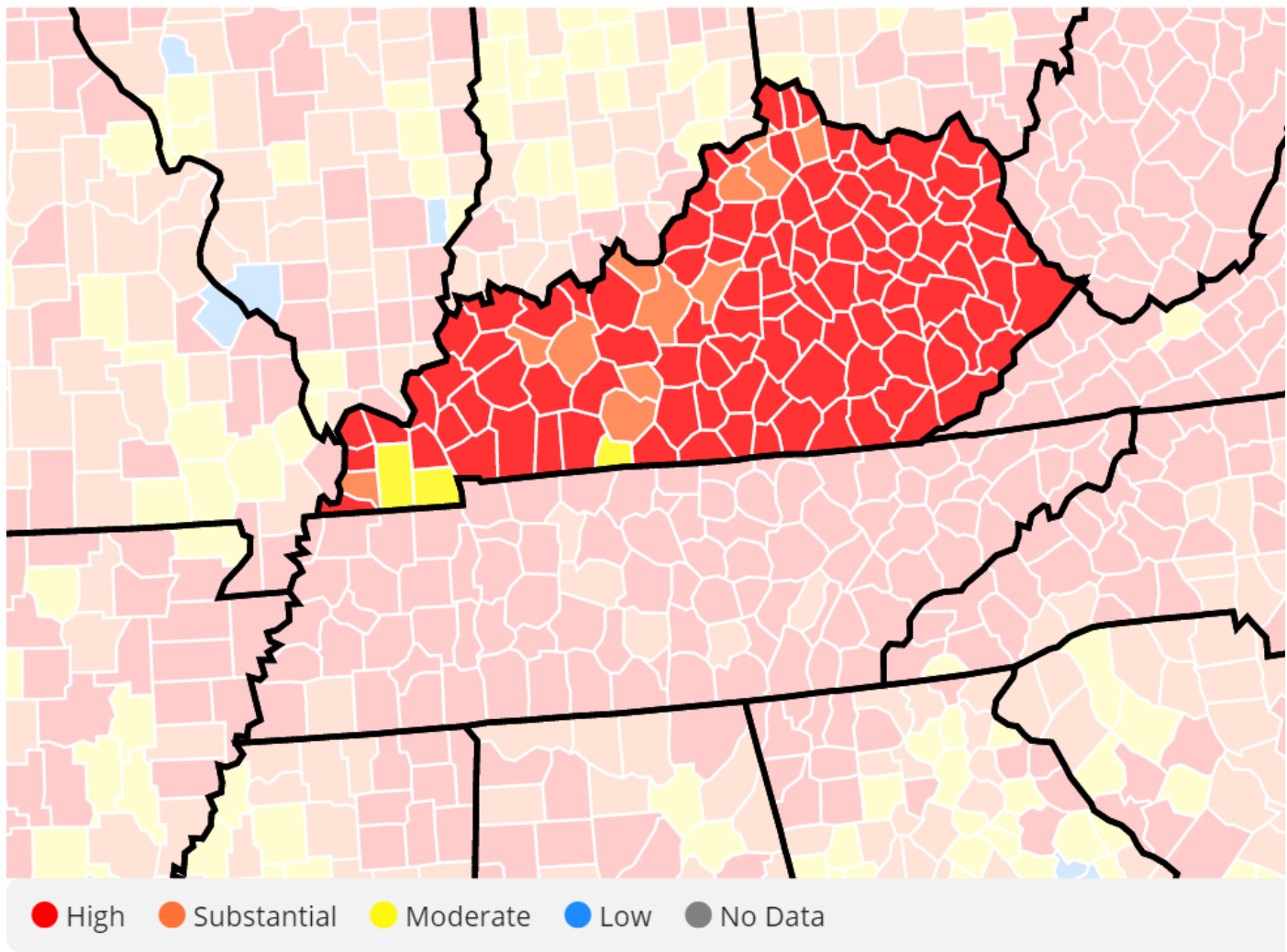
New mask guidelines arrive as the coronavirus is in retreat across the country. Alex Wong/Getty Images



By Apoorva Mandavilli

Feb. 25, 2022

Level of Community Transmission in Kentucky



Mon Mar 07 2022 10:05:28 GMT-0500

New cases per 100,000
persons in the past 7 days*

Percentage of positive NAATs
tests during the past 7 days**

Low	Moderate	Substantial	High
<10	10-49.99	50-99.99	≥100
<5%	5-7.99%	8-9.99%	≥10.0%

Final 3 metrics for COVID-19 Community Levels

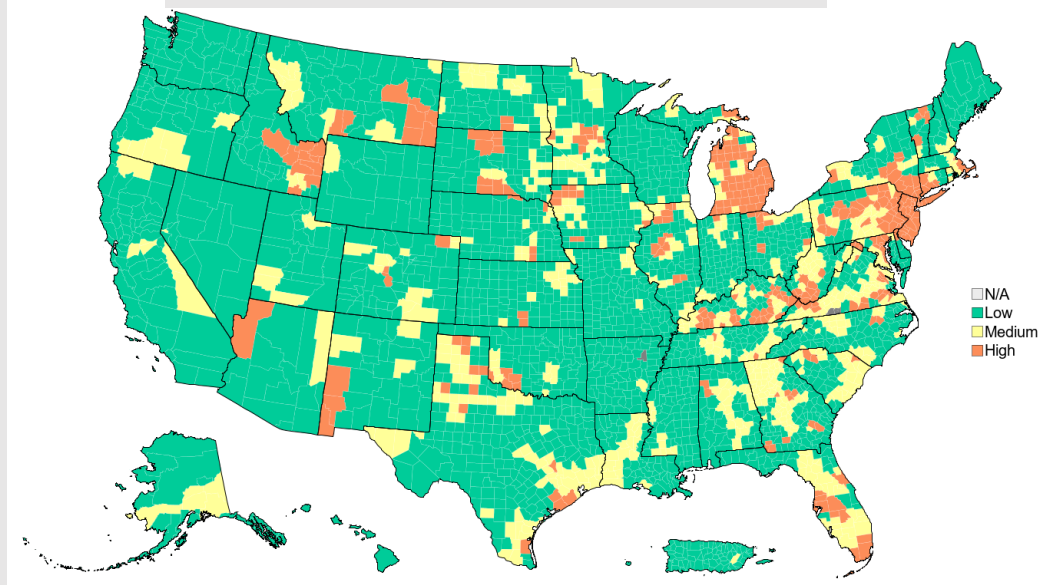
- Number of **new cases of COVID-19 in each county** reported in the prior week per 100K
 - Using surveillance data
- Number of **new hospital admissions for COVID-19** per 100K
 - Reported by each facility directly to HHS
 - Attributed to the county level using health services area mapping
- Percent of **inpatient beds occupied by COVID-19 patients**
 - Reported by each facility directly to HHS
 - Attributed to the county level using health services area mapping

CDC's COVID-19 Community Levels and Indicators

New COVID-19 Cases Per 100,000 people in the past 7 days	Indicators	Low	Medium	High
Fewer than 200	New COVID-19 admissions per 100,000 population (7-day total)	<10.0	10.0-19.9	≥20.0
	Percent of staffed inpatient beds occupied by COVID-19 patients (7-day average)	<10.0%	10.0-14.9%	≥15.0%
200 or more	New COVID-19 admissions per 100,000 population (7-day total)	NA	<10.0	≥10.0
	Percent of staffed inpatient beds occupied by COVID-19 patients (7-day average)	NA	<10.0%	≥10.0%

COVID-19 Community Levels on March 30, 2021

COVID-19 Community Level

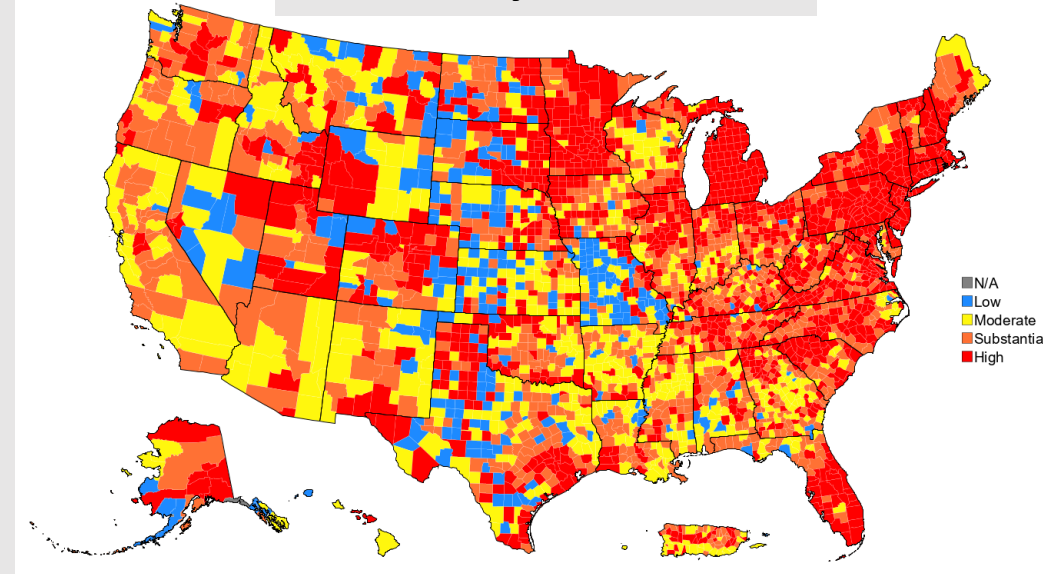


% of Counties

% of Pop.

Low	67.3%	56.9%
Medium	22.0%	23.4%
High	10.6%	19.7%

Community Transmission



% of Counties

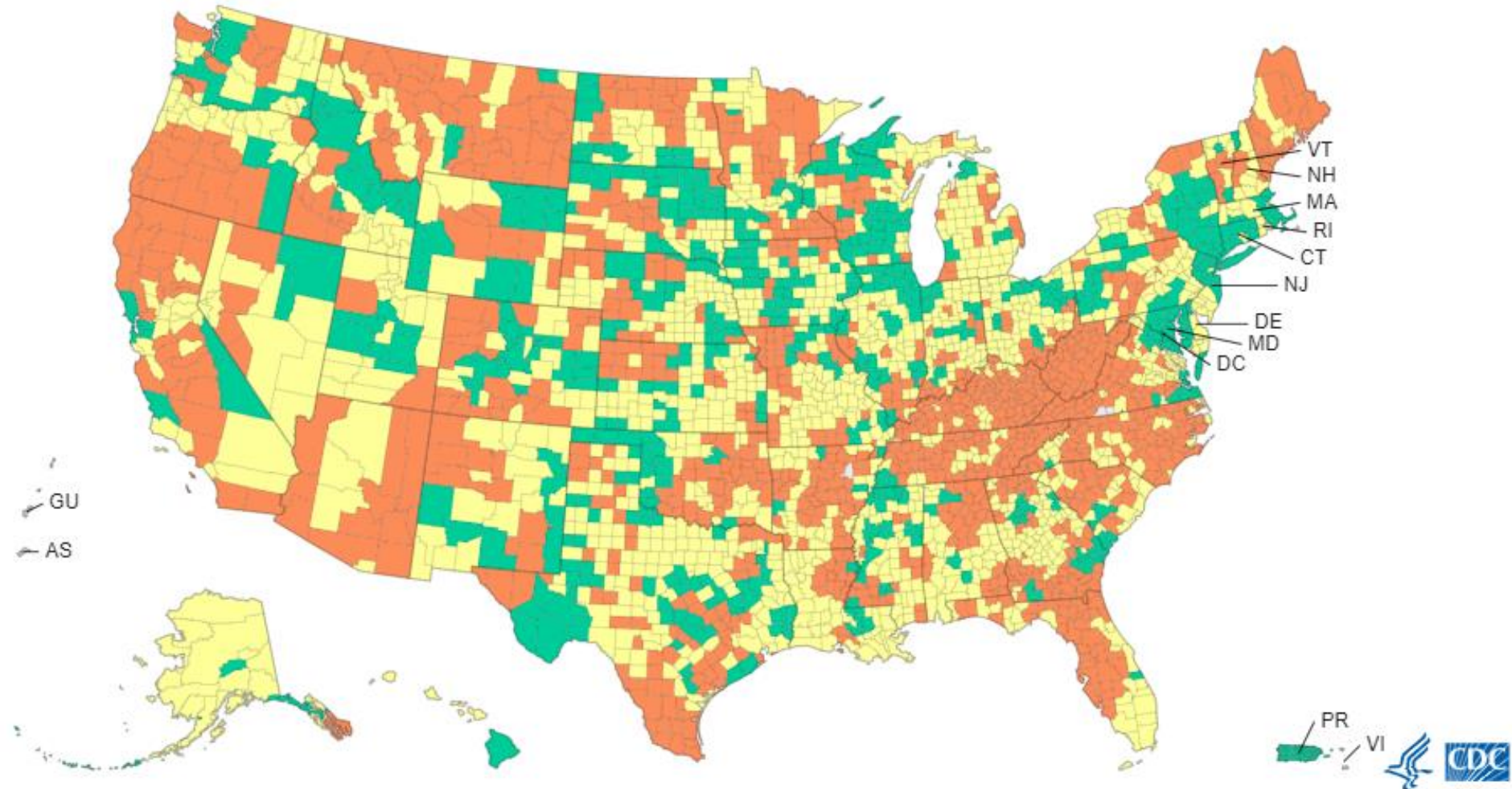
% of Pop.

Low	9.3%	1.4%
Moderate	22.0%	17.3%
Subst.	28.3%	26.4%
High	40.5%	54.9%

U.S. COVID-19 Community Levels by County

Data provided by CDC

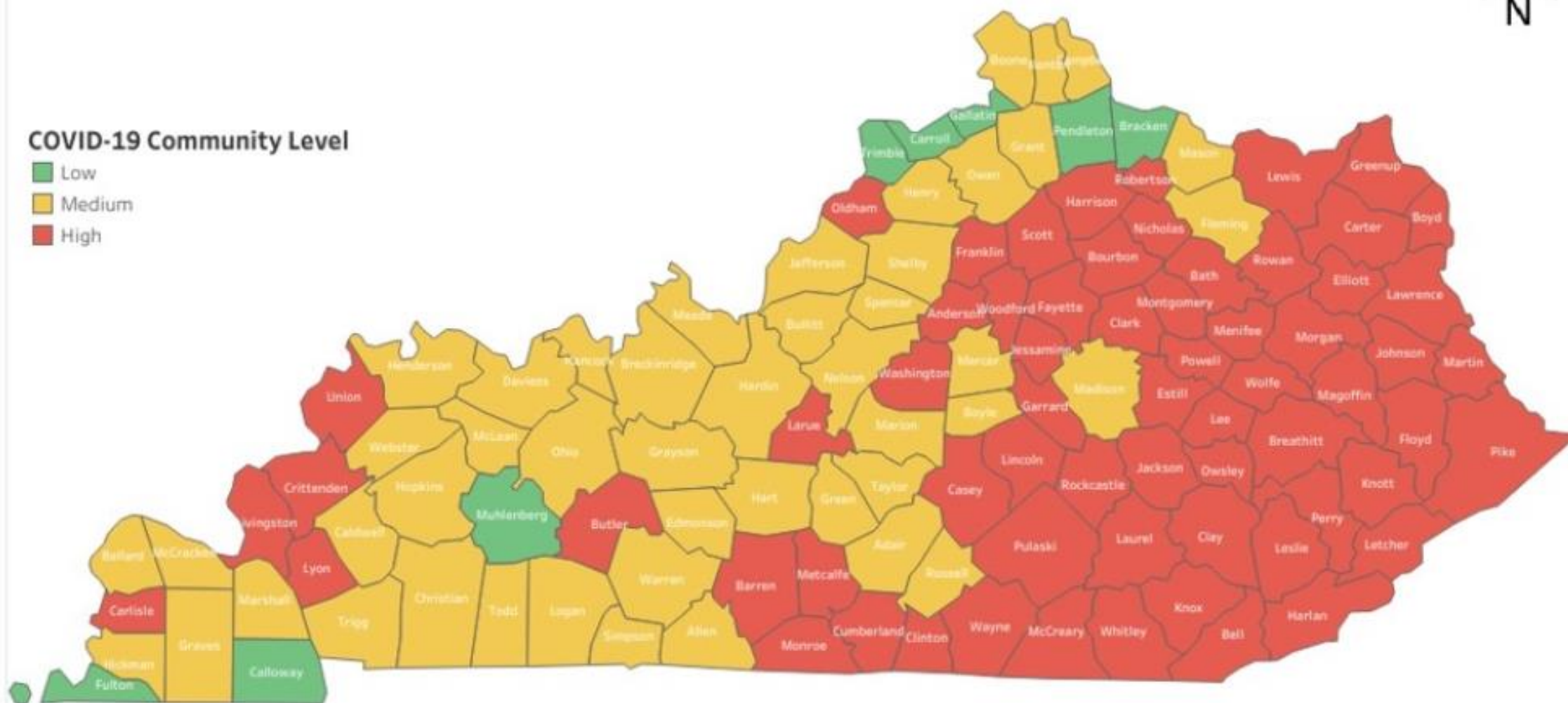
Updated: Feb. 24, 2022





COVID-19 Community Level

- Low
 Medium
 High



	LOW	MEDIUM	HIGH
Vaccination	Stay up to date with vaccinations	Stay up to date with vaccinations	Stay up to date with vaccinations
Mask use	Mask based on individual preference, informed by individual risk Targeted mask use in schools and other indoor settings following exposures	Consider universal mask use in indoor congregate settings Targeted mask use in schools and other indoor settings following exposures	Wear well-fitted masks in all indoor public settings including K-12 schools
Isolation & Quarantine	Stay home when sick Follow isolation & quarantine guidance, including getting tested if exposed or have symptoms of COVID-19	Stay home when sick Follow isolation & quarantine guidance, including getting tested if exposed or have symptoms of COVID-19	Stay home when sick Follow isolation & quarantine guidance, including getting tested if exposed or have symptoms of COVID-19
Physical distancing			Limit indoor in-person gathering and reduce size of gatherings. Encourage physical distancing.
High risk persons	Talk to healthcare provider about preventative treatments	Consider wearing well-fitted mask in all indoor public settings Talk to healthcare provider about preventative treatments	Consider avoiding non-essential indoor public activities Talk to healthcare provider about preventative treatments

COVID-19 Community Level and K-12 Schools

LOW	MEDIUM	HIGH
Baseline prevention strategies	Localized and targeted mitigation	Most layered prevention strategies
<ul style="list-style-type: none">• Stay up to date with vaccinations• Stay home when sick• 5-day isolation + 5-day masking for individuals with COVID-19• Targeted mask use following at-school exposures• Promote on-site testing programs for sick or exposed persons• Test to Stay modified quarantine following community exposures	<ul style="list-style-type: none">• Stay up to date with vaccinations• Stay home when sick• 5-day isolation + 5-day masking for individuals with COVID-19• Targeted mask use following at-school exposures• Consider universal masking for all students and staff• Promote on-site testing programs for sick or exposed persons• Test to Stay modified quarantine following community exposures• Cohort classrooms and limit mixing between students, where possible	<ul style="list-style-type: none">• Stay up to date with vaccinations• Stay home when sick• 5-day isolation + 5-day masking for individuals with COVID-19• Universal masking for all students and staff indoors and on buses.• Promote on-site testing programs for sick or exposed persons• Test to Stay modified quarantine following community exposures• Cohort classrooms, limit mixing between students, where possible• Limit large gatherings and activities• Encourage physical distancing >3ft

Living with COVID-19 Guidance

- Get vaccinated
- Keep up to date with vaccine boosters
- Isolate when sick or test COVID-19 positive
- Consider targeted mask use following exposures and for high-risk persons
- Follow applicable state and local guidance



2

Legal and Regulatory Updates



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On February 25, 2022, the CDC updated its mask guidance, dropping public indoor mask recommendations for the majority of groups of individuals.

- The CDC's guidance reflects a shift in analyzing data to determine mitigation strategies
- CDC is now focused on protecting high-risk individuals and to prevent overwhelming healthcare systems.
- The new "COVID-19 Community Levels" metrics classify counties based on new COVID-19 hospitalizations, hospital capacity, and new COVID-19 cases. Instead of 100%, now 70% live in low or medium levels!
- The new recommendations are as follows:
 - low-level: individual preference and risk
 - Medium: immunocompromised or high risk for severe illness should mask (or contact)
 - In high-level communities, all individuals two-years-old and older should mask indoors in public, regardless of vaccination status or individual risk. Those who are immunocompromised or are otherwise high risk should choose a high-quality mask or respirator.

On March 3, 2022, the President signed into law the *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*

- Makes pre-dispute arbitration agreements or collective/class action waivers invalid and unenforceable “with respect to a case which is filed” that “relates to” a sexual assault or sexual harassment dispute
- The decision of arbitrability is “at the election of the person alleging” the misconduct.
- Enforcement must “be determined by a court, rather than an arbitrator.”

As a result of this new law, employers must review their arbitration agreements/waivers

- The law takes effect immediately and applies to all existing arbitration agreements, even those signed prior to the bill’s enactment.
- An employer and employee still could agree to arbitrate a sexual assault or sexual harassment dispute **after the harassment occurs.**

- OSHA has now withdrawn the Covid Emergency Temporary Standard
- OSHA asked the Sixth Circuit to dismiss the ETS litigation advising the Sixth Circuit that the case is moot has withdrawn the ETS
- According to OSHA:
 - “Although OSHA is withdrawing the vaccination and testing ETS as an enforceable emergency temporary standard, the agency is not withdrawing the ETS as a proposed rule. The agency is prioritizing its resources to focus on finalizing a permanent COVID-19 Healthcare Standard.
- OSHA is still strongly encouraging COVID vaccination of workers and suggesting a “general duty” clause.
- OSHA is expected to issue a permanent standard specific to the health care industry in the next 6-9 months.

Many companies are starting to rely upon Artificial Intelligence (AI) for HR

- AI is sometimes used to attempt to avoid potential inherent biases
- AI algorithms set to select applicants with traits associated with employees who have been good for the employer in the past are now being scrutinized
- Removing race, sex, and age from the algorithm is not enough, because sometimes the algorithm may discriminate by mixing cause and effect
- AI doesn't always know the difference between correlation and causation (i.e., is length of employment due to race or gender instead of capability, etc.).
- The end result is that AI may "believe" that being a white male is a good employee because of historical bias, lack of gender/minority representation
- Look for the EEOC to start investigating these programs for systemic bias
- Employers utilizing AI may be held liable for biased programs
- Employers need to be careful with blind use of AI without investigating bias

The WH Task Force on Worker Organizing and Empowerment released its recommendations:

- Instruct GSA, DOD, and National Park Service to ensure that union organizers can access contractor employees working at federal facilities, military bases, and national parks
- Instruct DOL to review its policies on persuader reporting and take actions to strengthen its rules and enforcement to ensure maximum compliance and reporting of persuader activity
- Identify federal contractors that are engaging in persuader activity (already occurring)
- Develop regulations prohibiting reimbursement of federal contractors' costs related to activities undertaken to persuade employees of their rights to join or not join labor unions
- Direct the Treasury to "review and evaluate options for legislative tax proposals that could incentivize union participation and formation and other worker empowerment initiatives."
- Instruct the DOL to scrutinize independent contractor arrangements through enforcement (including IRS, etc.), as well as through the issuance of guidance and regulations
- Instruct the DOL to improve enforcement of the Service Contract Act in order to give unionized contractors a greater ability to compete for federal service contracts
- Instruct Department of the Interior to consider preferences for major construction contracts to companies submitting proposals that include commitments to project labor agreements

On February 10, 2022, NLRB GC outlined NLRB’s continuing efforts to “cooperate”

- Follows on the WH Task Force suggesting such inter-agency “cooperation”
- In addition to the NLRB’s agreements with the DOL and EEOC, NLRB is establishing partnerships with the IRS, DOJ Antitrust Division, and the FTC to address unfair methods of competition that undermine workers’ rights.”
- Such partnerships are intended to:
 - “reduce the incidence of misclassification of employees and ensure that employers properly pay their employees and their employment taxes”;
 - share “data about acquisitions, mergers or similar employer organizational actions that may detrimentally affect organizing or bargaining efforts”; and
 - “give greater attention to non-disclosure, non-solicitation, and non-compete agreements that harm fair competition and violate employees’ rights under [NLRB] Section 7.”

The Kentucky Legislature has done virtually nothing ... which, for once, is probably a good thing. The only action of note, thus far, is extension of the COVID-19 Emergency Orders through April 15, 2022.

However, in nearby Indiana, a new law has been implemented addressing vaccination mandates, and precluding employers from accepting legitimate alternatives and taking adverse action against employees.

- HB 1001
- All employers, regardless of size, must comply with the law with respect to their employees in Indiana.
- Does not apply to Federal employers/contractors
- Healthcare employers that receive Medicare and Medicaid funding
- Professional sports organizations and entertainment venues

SHRM CODE: Self Report
HRCI CODE: Self Report



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