

SHOWERS

High: 84
Low: 74
70% chance of rain



Saturday: Showers, 87/70
Sunday: T-storms, 89/69
Monday: Partly cloudy, 90/70

Complete weather: B10

The Atlanta Journal-Constitution

Credible. Compelling. Complete.

AJC TOP STORY: CORONAVIRUS OUTBREAK

AJC EXCLUSIVE

STATE

White House warns of viral spread in Georgia

Kemp drops face mask lawsuit



Medical workers arrive for work at Grady Memorial Hospital in downtown Atlanta on Thursday, the same day Gov. Brian Kemp withdrew a lawsuit challenging the city of Atlanta's mask mandate and business restrictions. JOHN SPINK / JSPINK@AJC.COM

Instead, he will ban cities from requiring them at businesses.

By Greg Bluestein
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and Jeremy Redmon
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Gov. Brian Kemp on Thursday withdrew his lawsuit challenging the city of Atlanta's mask mandate and coronavirus restrictions, ending a legal dispute between the Republican governor and the Democratic leader of the state's capital city over how to contain the pandemic.

Kemp said he will instead sign an executive order Saturday that is expected to specify that local governments can't order private businesses to require masks. It is also likely to remove a provision that explicitly outlawed cities and counties from mandating face coverings, administration officials say.

"Unfortunately, the mayor has made it clear that she will not agree to a settlement that safeguards the rights of private property owners in Georgia," said Kemp, citing a "stalemate" in

Kemp continued on A10



Gov. Brian Kemp has withdrawn his lawsuit to halt the city of Atlanta's mask mandate. ALYSSA POINTER / ALYSSA.POINTER@AJC.COM

ALSO INSIDE

» Mayor orders report on impact of COVID-19 on minorities, A10

Report calls for mask mandate, closing some businesses.

By J. Scott Trubey
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President Donald Trump's coronavirus task force warns that Georgia continues to see "widespread and expanding community viral spread" and that the state's current policies aren't enough to curtail COVID-19.

The task force "strongly recommends" Georgia adopt a statewide mandate that citizens wear masks, joining a chorus of public health officials, Democrats and others who have warned that Gov. Brian Kemp's refusal to order face coverings has plunged the state into deeper crisis and will prolong recovery.

"Current mitigation efforts are not having a sufficient impact," the report said. Businesses such as nightclubs, bars and gyms, currently open with some restrictions in Georgia, should be closed in the highest risk counties, the report said.

The task force recommends restricting indoor dining at restaurants, now limited only by the number of diners who can be safely distanced 6 feet apart, to less than one-quarter of dining room capacity. Social gatherings, now capped at 50 people in Georgia, should be limited to 10 or fewer people.

Georgia also needs to ramp up testing and contact tracing statewide, the report said, and testing and infection control measures need to be expanded in nursing homes and other long-term care facilities.

The Atlanta Journal-Constitution obtained the White House Coronavirus Task Force recommendations for Georgia, dated Aug. 9, from a source.

Dr. Melanie Thompson, principal investigator of the AIDS Research Consortium of Atlanta, said it is frustrating that the report is only seeing the light of day because of a leak.

Virus continued on A10

THE LATEST DEVELOPMENTS

Dr. John D. Marshall Jr. of Americus is the first practicing Georgia physician killed by the novel coronavirus, A6

THE VIRUS IN GEORGIA

As of Thursday afternoon

228,668

CONFIRMED CASES

4,538

CONFIRMED DEATHS

AJC.com

For daily statewide updates, go to ajc.com/cvupdate

SENIOR CARE

Senior homes still scramble for testing as cases rise

Georgia's most vulnerable residents, their caregivers, not getting what they need.

By Carrie Teegardin
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For five months, Georgia's nursing homes and assisted living facilities have operated in lockdown mode. Visitors aren't allowed. Residents are confined largely to their rooms, with no communal dining or group activities. Only workers can come in and out.

In spite of the extreme measures, COVID-19 cases inside the homes have been

trending sharply upward in recent weeks. Senior care operators know their workers are more likely than ever to bring the virus into a facility because rates are so high in communities throughout Georgia and finding adequate supplies of masks, gowns and gloves can still be a challenge.

The facilities are also still struggling to get the rapid, reliable testing they need to battle the virus, with recent backlogs at labs delaying test results for up to a week. "It's so critical to get those tests back within 48 hours," said Neil Pruitt Jr., CEO of PruittHealth, one of the largest senior care operators in the South-

Senior care continued on A6



Neil L. Pruitt Jr., chairman and CEO of PruittHealth, one of the largest senior care operators in the Southeast, said the facilities are still struggling to get the fast, reliable testing they need to battle the coronavirus outbreak. CONTRIBUTED

AJC DIGGING DEEPER NEW STATE COURT

Business court's tall order: Get both parties to show up

First new state court since 1906 mediates commercial disputes.

By Andy Peters
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Walt Davis believes the new state court he leads can help businesses across Georgia reconcile thorny disputes, but success is no sure thing.

The Georgia State-wide Business Court started taking cases this month and is the state's first

new court since 1906. It offers an alternative to long waits in Superior and State courts, which have fallen further behind because of coronavirus shutdowns, even as commercial disputes mushroom amid mounting financial losses.

The new court, though, has its own hurdles. Opposing parties are by nature at loggerheads, and Davis must get both sides to agree for their lawsuit to be assigned to him. Davis is also the sole judge and the court's annual budget is

New court continued on A6



Judge Walter Davis said he wanted to preside over the new Georgia State-wide Business Court in Atlanta because he relished the opportunity to lead. ELIJAH NOUVELAGE / FOR THE AJC

METRO, B1

Food stamp use soars as welfare rolls shrink

Though nearly 800 Georgia households got off welfare in recent months, 250,000 more households use food stamps.

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FROM PAGE ONE

OBITUARY DR. JOHN D. MARSHALL JR.

First practicing Georgia doctor dies from COVID-19

By Alan Judd
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The cancer patient was old and frail, so after the examination, Dr. John D. Marshall Jr. helped the man to his car.

This simple act of kindness may have cost Marshall his life.

Marshall, 74, a family-practice doctor in Americus for more than three decades, contracted COVID-19 from his elderly patient, family members said. Marshall died Wednesday after spending 111 days on a ventilator, apparently the first practicing Georgia physician killed by the novel coronavirus.

Marshall was an Air Force veteran, a one-time pharmaceutical salesman, a former president of an NAACP chapter and the publisher of a monthly newspaper, the Americus Sumter Observer, which covers the African American community in the southwest Georgia town.

While practicing in nearby Plains in the 1980s, Marshall once performed a physical examination of former President Jimmy Carter. He maintained a full-time medical practice well past retirement age.

"He served up until the time he could not," Charles "Yahvo" Marshall, the doctor's brother, said in an interview Thursday.

The death emphasizes the risks that medical professionals face from the COVID-19 pandemic, which has killed at least 97 Georgia health care workers. Marshall became



Dr. John D. Marshall Jr. of Americus spent 111 days on a ventilator and dialysis.

CONTRIBUTED

ill in late March, before social distancing, facial masks and other precautions were in widespread use.

When Marshall learned his patient had tested positive for the virus, he had himself tested, too, then self-quarantined alone at home in Americus. By the time his test came back positive, his brother said, Marshall had a fever and diarrhea. He got progressively sicker but tried to manage his illness on his own.

"He was the type of person who would take care of himself and take care of others as well," said his niece, Leslie Marshall.

She and her brother went to their uncle's house on April 6. They found him weak, his breathing labored. They retrieved an oxygen tank from Marshall's office

and stabilized his breathing. But when the oxygen ran out, Marshall agreed to go to a hospital.

Because the local hospital was over capacity with COVID-19 patients, Marshall was transferred to Memorial University Medical Center in Savannah on April 13. The same day, doctors placed him on a ventilator. Eventually they sent him to an acute long-term care facility.

"He coded a couple of times," Leslie Marshall said, and the family finally decided to sign papers instructing that he not be resuscitated. Doctors had told them that however long Marshall lived, he would require ventilation and dialysis.

On Wednesday, the 11th day since he was ventilated, Marshall's family took him off life support. He died minutes later.

"It was like he just said, 'No, the fight is over,'" Leslie Marshall said. "He had been fighting all his life."

Hours later, mourners held a vigil outside the headquarters of the Americus-Sumter County Chapter of the NAACP. Friends praised his dual commitments to medicine and civil rights.

"He was one of the greatest doctors in Americus, certainly, and a great citizen," Bishop Melvin McCuster, senior pastor of Friendship Missionary Baptist Church and a longtime patient of Marshall's, said in an interview. "It's a great loss to the community."

Staff writer Ariel Hart contributed to this article.

New court

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a modest \$1.4 million, limiting the caseload.

A former commercial litigator at the law firm Jones Day, the 44-year-old Davis was attracted to the job because, after years of representing business, he now gets to be a leader himself.

"It was the ability to start this thing from scratch," he said. "There's never going to be another first judge of the Business Court."

He has largely focused on hiring staff, monitoring office construction inside the Nathan Deal Judicial Center and overseeing the adoption of software and other technology.

Now comes the trickier task of recruitment. Davis has received inquiries from lawyers on about 15 potential cases so far. However, all but two attorneys warned they expect the other party to oppose the case being filed at the Business Court.

Corporate litigants should flock to business court because cases won't get stuck behind the hundreds of criminal and domestic disputes that Superior Court and State Court judges hear, said Dan Laney, an attorney at Rogers & Hardin.

"Our state trial courts are second-to-none, but they have a crushing docket," said Laney, who represents companies in complex cases. "This will help litigants get cases decided faster and, hopefully, with less expense."

When a Superior Court judge deals with a sensitive topic like parental custody of children, a domestic case should obviously take precedence, said Ronan Doherty, a business attorney at Bondurant, Mixson & Elmore. But hundreds of domestic

Corporate litigants should flock to business court because cases won't get stuck behind the hundreds of criminal and domestic disputes that Superior Court and State Court judges hear, said Dan Laney, an attorney at Rogers & Hardin.

and criminal cases sit on a single judge's docket, and business owners wait weeks or months to have their case heard.

A total of 32,725 cases were filed in Fulton County Superior Court in 2019, according to the Administrative Office of the Courts. About 80% of those were criminal or domestic cases. Georgia does not provide details on the number of business-related lawsuits.

For a case to reach Georgia's new business court, though, both parties have to agree. The Georgia Trial Lawyers Association and other advocacy groups pushed for that requirement after Georgia voters endorsed the creation of the court in a 2018 ballot referendum.

Statesboro attorney Daniel Snipes, past president of the GTLA, said small businesses would be at a disadvantage at the new court because they would need to hire "Atlanta lawyers" who are experienced in complex cases and who would be expensive.

"We didn't want to see a big company like Home Depot come after a small-

town sawmill about a bad load of lumber and it go to the business court," he said. "It would put small businesses at a disadvantage."

The business court in neighboring North Carolina, by contrast, requires only a single party's consent. Since its founding in 1996, the North Carolina court now has five judges and four locations. The court heard 133 cases in 2019.

Three lawsuits have been filed with Georgia's business court so far, including one involving a company that owns apartment complexes in Columbus and Macon and the financial company Orix USA.

Quarreling Georgia businesses have other options. The Fulton County and Gwinnett County courts each maintain separate divisions to hear business cases. Other counties are allowed to establish a business division.

Litigants can also hire a private arbitrator to referee disputes and altogether avoid the courts. The Georgia State-wide Business Court's \$3,000 filing fee is about the same cost as hiring an arbitrator, said Davis, the judge.

Once the court has been operating for a few months, business owners and their lawyers should see the benefits it offers, said Doherty, the business attorney. Davis has the experience to handle litigation that involves anti-trust, intellectual property, securities and other complex areas of the law.

It would have helped some of his past clients if the business court had existed, Doherty said. In one recent case involving a fuel supplier and a trucking company that carried fuel to convenience stores, Doherty said his client had no idea what he was getting into by filing a lawsuit in Superior Court.

"They were amazed to see how long it takes," he said.

Senior care

continued from A1

east. "If we get them back in seven days, it's too late."

Such delays in identifying a COVID-positive worker can have grim consequences. It's still routine for nursing homes to report large, sudden outbreaks and multiple deaths, with dozens of residents and workers testing positive, the AJC found in reviewing state and federal reports.

Yet federal and state support for testing has fallen far short of what's needed to protect long-term care residents.

To enable nursing homes to run rapid tests onsite, the U.S. Department of Health and Human Services has begun sending the facilities "point-of-care" testing systems. In conjunction with the shipments, the Centers for Medicare and Medicaid Services, the agency that regulates nursing homes at the federal level, is preparing to impose a new requirement that the facilities in COVID-19 hot zones conduct weekly checks of nursing home workers.

But HHS will provide only an initial supply of test kits, it is likely to take months for the systems to arrive in every nursing home in the nation, and the rapid-result systems come with a high rate of false negatives. Plus, assisted living facilities and personal care homes, which are regulated at the state level, aren't included in the federal plan.

Some other states — including Florida and Tennessee — are mandating frequent testing and equipping homes with test kits or paying for testing. But Georgia stopped sending test kits out with the National Guard weeks ago, and the state has announced no plans to help long-term care homes with testing going forward.

That has left Georgia's senior care operators, whose residents are the most at-risk of death during the pandemic, largely on their own to decide how often their residents and workers should be tested and figure out a way to obtain and pay for it.

Some experts say a testing system is so important that the state needs to step forward.

"You can either have a Wild West where every pro-

vider is going to sink or swim on their own, in which case those providers with stronger networks and greater resources will do a better job of taking care of their populations, and those with less resources and likely a less affluent population of residents will do less well," said Dr. Harry J. Heiman, an associate professor in the School of Public Health at Georgia State University. "Or, you can accept that this requires state leadership and coordination and support."

For nursing homes across Georgia, the opening days of the pandemic proved both deadly and frustrating. Hospitals got the priority for testing, masks and gowns. Finally, in June, things eased up. Senior homes could get better access to supplies and tests, and results were coming back quickly. The outbreaks and deaths slowed.

But that didn't last long. "Unfortunately the month of July saw [coronavirus] cases grow by over 2,700, which was the highest month that we have had," said Tony Marshall, president and CEO of the Georgia Health Care Association, which represents senior care providers.

The total number of long-term care residents who have tested positive during the pandemic now exceeds 11,000. The number of workers testing positive increased steeply during July, and that trend line is continuing.

National statistics mirror Georgia's. "With the recent major spikes of COVID cases in many states across the country, we were very concerned this trend would lead to an increase in cases in nursing homes, and unfortunately it has," said Mark Parkinson, president and CEO of the American Health Care Association and National Center for Assisted Living. "This is especially troubling since many nursing homes and other long-term care facilities are still unable to acquire the personal protective equipment and testing they need to fully combat this virus."

While PPE is easier to get than it used to be, dozens of homes across Georgia do not have a seven-day supply of critical items, according to an AJC review of federal reports.

A statewide mask mandate for everyone and more robust testing are the best ways to protect seniors liv-

ing in long-term care, said Ginny Helms, president of LeadingAge Georgia, which represents nonprofit and mission-driven senior care providers.

"We need the rapid testing," Helms said. That way, homes can more quickly stop asymptomatic workers from infecting residents.

A.G. Rhodes, a nonprofit that operates three nursing homes in Georgia, has ordered on-site testing systems that are supposed to offer the most reliable results, but they are still waiting for them to arrive, said Mary Newton, a spokesperson. The organization is also working on a detailed testing plan, she said.

Pruitt, the CEO of Pruitt Health, said he hopes the "point-of-care" systems that a federal agency is sending will be a game changer even though he's been told the tests are accurate just 75% of the time. His company plans to test part of each nursing home's staff daily, which could identify outbreaks faster since results come back in an hour, instead of the days it takes now.

Now, Pruitt said, his company is spending about \$430,000 a month for its employee testing plan, which tests every other week in homes without outbreaks and more frequently in homes that have cases. "That's a significant cost that other states are picking up," Pruitt said.

He wants Georgia to do more to support the efforts of those running long-term care facilities who find themselves running from one crisis to the next. He's not sure why nursing homes wouldn't get the support here that other states are providing.

"We're at the epicenter of this pandemic," he said, "We feel like every day we show up, we're at war."

A new state law requires all long-term care residents to undergo baseline testing by late September, and some homes are still working toward that requirement to test everyone for the first time.

Assisted living communities and large personal care homes won't face the federal weekly testing mandate, but they won't get the point-of-care tests from CMS, either.

The homes that are already doing regular testing are focused on what tests work the best. "We all know the

rapid tests aren't as accurate as other ones, but the question is, what are you going to do?" said Beth Cayce, who operates a senior care company.

Cayce said frequent, accurate testing and careful use of PPE can stop the spread of a virus within a facility. But that doesn't keep the virus out forever. Workers still have to go home, go to the grocery store and care for children who may soon attend in-person classes at school. Until community spread is slowed with more use of masks and social distancing, she said, even frequent testing can only do so much to protect residents.

Heiman said Georgia's political and public health leaders should craft a plan for testing in long-term care, help pay for it and hold the facilities accountable for carrying out the plan, given how

deadly the virus can be for frail, elderly people. "This is a perfect storm that should remind of us why we need to match resources to needs — to protect those who are most vulnerable," he said.

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