Public Health Law: A Tool to Address Emerging Health Concerns

December 13, 2016

Accessible Version: https://youtu.be/d5DsDJoDrE
Mission is to advance the use of law as a public health tool

Public health law now increasingly recognized as a vital and essential component of public health practice

Public Health Law Program is part of a network of partners

- Representatives from federal, state, and local governments
- Academic and private organizations
- Focus on implementing public health law strategies
Public Health Law Program’s Mission

To advance the understanding of law as a public health tool
Legal history reveals both the **POWER** and **LIMITATIONS** of government authority to protect the public’s health
The Broad Street pump handle, Soho neighborhood in London, England

Early Example of a Legal Public Health Intervention

Outbreak of cholera in London, 1854

Caused 616 deaths

Effort led by Dr. John Snow, resulted in local council deciding to remove the pump handle
New York City Before Sanitation Reform: Varick Street in 1890s
New York City After Sanitation Reform
The Conquest of Pestilence in New York City

...As Shown by the Death Rate as Recorded in the Official Records of the Department of Health and Mental Hygiene.

[Graph showing historical death rates and key events in public health history from 1800 to 2000.]

POPULATION

119,734 242,278 696,115 1,478,103 2,507,414 4,766,883 6,930,446 7,391,957 7,894,862 7,322,564 8,008,278

OLD CITY OF NEW YORK

FORMER CITIES OF NEW YORK & BROOKLYN

GREATER CITY OF NEW YORK
Legal Support for Government to Intervene through Law and Regulation to Protect the Public’s Health

“There are manifold restraints to which every person is necessarily subject for the common good.”

Jacobsen vs. Massachusetts: A 1902 smallpox outbreak in Massachusetts that made it to the United States Supreme Court
Key Holdings in *Jacobsen vs. Massachusetts*

1. Use of police powers for public health concerns
2. Delegation of certain authorities to health agencies and other government subdivisions
3. Use of actions limiting individual liberty for well-established public health interventions
4. Provides constitutional support for spectrum of contemporary public health laws
## The Role of Law in Selected Public Health Achievements of the Last Century

<table>
<thead>
<tr>
<th>Health Achievement</th>
<th>Laws Associated with Public Health Achievement</th>
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| Vaccination                              | School vaccination laws  
Childhood vaccination programs  
Vaccine Adverse Event Reporting System                                                                 |
| Control of infectious diseases           | Sanitary codes, drinking water standards, food inspection  
Quarantine and isolation laws  
Mosquito and rodent control                                                          |
| Decline in heart disease and stroke      | Education and information programs  
Food labeling  
Bike and walking paths                                                                    |
| Recognition of tobacco as a health hazard| Sales tax and restrictions on sale to minors  
Smoke-free laws  
Lawsuits leading to settlement agreements                                                   |

Who has the power to shape public policy to improve public health?
Federal Government Has Limited Public Health Authority

Article 1, Section 8 of the U.S. Constitution
The 10th Amendment gives states the primary responsibility for public health.
Legal Concept of Police Power

Promotes the public health, safety, and the general well-being of the community

Ability to enact and enforce laws for general welfare

Regulates private rights in the public interest
Balancing State and Local Public Health Authority In California

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”
What about tribal sovereignty?

Tribes can create laws and regulations that protect health and safety.
How can law be used as a tool to improve public health?
Federal regulations can provide incentives for local action

1984 Minimum Drinking Age Act withheld highway funding from states with drinking age under 21

Upheld by Supreme Court in 1987
Federal or State Authorities Can Also Prohibit Action by Lower Levels of Government

- Preemption by higher levels of government can sometimes impede public health action
- The federal government can preempt state action
- States can preempt local government action
  - For example, states can forbid cities or counties from passing smoke-free ordinances
State and local governments can …
Investigate Disease Outbreaks (Common)
Isolate or Quarantine (Rare)
Ban Smoking in Multi-unit Housing, But Not Single-Occupancy Homes
Create Zoning for Farmer’s Markets
Require Kids to Wear Helmets

22 state-wide laws
201 local ordinances
Prevent Drug Overdose Deaths

Increase access to naloxone and use of prescription drug monitoring information
Prepare For And Respond To Emergencies

Examples:
Emergency declarations
Emergency Use Authorizations
Social distancing laws
Over the past century and a half, laws and rules have been increasingly used as tools to promote and protect the public’s health.

In the United States, legal authority for public health resides primarily at the state, local, and tribal level.

Governments can provide incentives and disincentives for actions at lower levels of government.

Legal interventions can promote prevention of infectious, chronic, and injury-related diseases.
Using Law to Improve Public Health Practice

Matthew Penn, JD, MLIS
Director, Public Health Law Program
Office for State, Tribal, Local and Territorial Support
Social Determinants of Health

3 miles could equal up to 13-year life span difference

Kansas City, Missouri

Life Span for Given Location

Minneapolis and St. Paul, Minnesota

Maintaining healthy housing
Creating transportation infrastructure
Promoting social and cognitive development through educational laws and policies
Law As a Social Determinant of Health

Legal epidemiology is the study of law as a factor in the cause, distribution, and prevention of disease and injury in a population.

We use legal epidemiology to
- Understand trends in law
- Study the impact and effectiveness of laws on health
- Inform and support best practices
- Develop an evidence base of what works

Legal Language Authorizing Involuntary Decontamination in Emergency Response to Radiological Incidents, by U.S. State and Select Cities
<table>
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<th>Legal Mapping</th>
<th>Legal Evaluation</th>
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<td><strong>Legal Assessments</strong></td>
<td><strong>Policy Surveillance</strong></td>
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<tr>
<td>What do laws say across jurisdictions on a topic?</td>
<td>How do laws across jurisdictions change over time?</td>
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<td><strong>Association Studies</strong></td>
<td><strong>Investigation Studies</strong></td>
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<td>Do trends in law relate to trends in health?</td>
<td>What impact does the law have on health, cost, and the health system?</td>
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Legal Mapping

Comparing provisions in law and policy across jurisdictions or over time
This polar graph shows a cross-sectional analysis of vaccination exemption laws by state:

- Medical or religious exemptions only
- Philosophical exemptions expressly excluded
- Exempted student exclusion during outbreak
- Parental acknowledgement of student exclusion
- Exemptions not recognized during outbreak
- Parental notarization or affidavit required for exemptions
- Enhanced education for exemptions
- Medical exemptions expressly temporary or permanent
- Annual healthcare provider recertification for medical exemptions
Ongoing, systematic collection, analysis, interpretation, and dissemination of information about a given body of public health law and policy

- Useful for comparing historical or longitudinal public health data, such as morbidity and mortality, costs, and system performance
Ebola Screening and Monitoring Policies for Asymptomatic Individuals

Ebola related policies as of December 18, 2014

Policy as compared to CDC guidance:
- More restrictive
- Equivalent
- Less restrictive
- Unclear if more, equivalent, or less restrictive
- No policy found

Ebola Screening and Monitoring Policies for Asymptomatic Individuals

Ebola related policies as of January 21, 2015

Policy as compared to CDC guidance:

- More restrictive
- Equivalent
- Less restrictive
- Unclear if more, equivalent, or less restrictive
- No policy found

Ebola Screening and Monitoring Policies for Asymptomatic Individuals

Ebola related policies as of February 2, 2015

Policy as compared to CDC guidance:
- More restrictive
- Equivalent
- Less restrictive
- Unclear if more, equivalent, or less restrictive
- No policy found

Ebola Screening and Monitoring Policies for Asymptomatic Individuals

Ebola related policies as of August 31, 2015

Policy as compared to CDC guidance:
- More restrictive
- Equivalent
- Less restrictive
- Unclear if more, equivalent, or less restrictive
- No policy found

Legal Evaluations

Measuring the impacts of law and policy on health, and vice versa
2012 Fungal Meningitis Outbreak Due to Contaminated Injectable Steroids

PROBLEM: Contaminated steroid given to many patients in hospitals and pain clinics across the United States

- 20 States
- 751 Infections
- 64 Deaths
- FDA Recall
Evaluated Public Health Access to Electronic Health Records

- **Interviews with health departments generated**
  - List of barriers
  - Suggestions to overcome barriers
  - Highlight best practices and policies
  - Practical tools
Perceived Legal Barriers vs. Actual Legal Prohibitions

Many perceived legal barriers to data use and release
- Not all are actual legal prohibitions

Overcoming perceived barriers
- Apply conservative data use policies
- Identify legal solutions
- Identify technologic solutions
Developed Toolkit on Accessing Electronic Health Records

- Worked with ASTHO to develop toolkit for health departments for perceived and actual barriers to EHR during outbreaks

Best Practices for Access and Use of EHRs

Build and Sustain Good Relationships with Healthcare Facilities Before, During and After Outbreaks

Evolving National Efforts and Resources to Improve Information Exchange

Address Patient Privacy, Authority and Security Concerns

ASTHO: Association of State and Territorial Health Officials
EHR: Electronic health records
astho.org/Toolkit/Improving-Access-to-EHRs-During-Outbreaks/
How Do We Use Law To Affect Social Determinants of Health?

Developing and Implementing Local Laws that Enhance Community Health: A Case Study and Model for Public Health 3.0

Karen DeSalvo, MD, MPH, MSc
Assistant Secretary for Health (Acting)
U.S. Department of Health and Human Services
A major health challenge for New Orleans: 25 year gap in life expectancy
Health Issues not caused by Hurricane Katrina
Katrina created opportunity in tragedy: Health Care System Crippled
FORCED TO CHANGE

Charity Hospital, an icon in trauma treatment and teaching, will never be the same after Katrina.

By Keith Davis and John Pope

The debate had raged for years over whether to rename Charity Hospital or build a new facility on Tulane Avenue and replace it with a modern facility better adapted to current realities in an era of increasingly relevant digital medicine.

Katrina ended the debate and may even have turned it back on the hospital’s future.

For years, New Orleans’ Charity Hospital was at the epicenter of the city’s medical community, as a center for treating victims of trauma and complex care — especially the poor and uninsured — and as the training ground for most of Louisiana’s doctors.

That tradition ended in August. Post-Katrina floods isolated the hospital, wrecked wiring and plumbing and trashed medical equipment.

Days after Hurricane Katrina inundated the city, Battalion 216 surrounded Charity Hospital, just.

MEDICAL

611

See HOOSPITAL, A-17.

By Keith Davis and John Pope

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Delivery System Successfully Reformed

1. Grounded in community health infrastructure
2. Focused on improving quality
3. Digitized to improve individual care and allow for population health efforts
4. Financing focused on value and coverage expanded to include everyone
Better Care: Necessary But Not Sufficient
A major health challenge for New Orleans: 25 year gap in life expectancy
Three Buckets of Prevention

Prevention and Population Health Framework

1. **Traditional Clinical Prevention**
   - Increase the use of clinical preventive services

2. **Innovative Clinical Prevention**
   - Provide services that extend care outside the clinical setting

3. **Community-wide Prevention**
   - Implement interventions that reach whole populations

Social Determinants Obvious

200,000 Households flooded.
And the surrounding social infrastructure of
churches...schools...friends...family...libraries...Not just health care.

PUBLIC HEALTH

What we do together as a society to ensure the conditions in which everyone can be healthy.
Public Health Pressures

Governmental Public Health Expenditures 2003–2013

publichealtheconomics.org/2015/01/06/national-public-health-spending-still-waiting-for-recovery/
Public Health Pressures
Build strong infrastructure – capable in disaster and everyday
- Accreditation as the roadmap

First advice – look to statutory roles and responsibilities
- Identify gaps where new legislation may impact health
- CDC OSTLTS and Public Health Law group

Review
- Framework: required; allowed; not authorized
- Antiquated? Pigs and Fowl regulation in the French Quarter
- Allowed and also not authorized: Smoking
A significant upgrade in public health practice to a modern version that emphasizes cross-sectorial environmental, policy- and systems-level actions that directly affect the social determinants of health.

Local Public Health Leaders as the Chief Health Strategist

DeSalvo K and Benjamin G. healthaffairs.org/blog/2016/11/21/public-health-3-0-a-blueprint-for-the-future-of-public-health/
PUBLIC HEALTH 3.0

Social Determinants of Health
are the conditions in which people are born, live, work and age.

Economic Opportunity
Housing
Environment
Education

Food
Safe Neighborhoods
Transportation
PUBLIC HEALTH 3.0

KEY COMPONENTS

LEADERSHIP & WORKFORCE

ESSENTIAL INFRASTRUCTURE

STRATEGIC PARTNERSHIPS

DATA, ANALYTICS & METRICS

FLEXIBLE & SUSTAINABLE FUNDING

PUBLIC HEALTH 3.0 LISTENING TOUR
Our recommendations reflect what we heard across the country. We propose five key recommendations that define the conditions needed to support health departments and the broader public health system as it transforms.

www.healthypeople2020.gov/ph3
1. Public health leaders should embrace the role of **Chief Health Strategist for their communities**—

working with all relevant partners so that they can drive initiatives including those that explicitly address “upstream” social determinants of health.

**Specialized Public Health 3.0 training should be available for those preparing to enter or already within the public health workforce.**
2. Public health departments should engage with community stakeholders—from both the public and private sectors—to form vibrant, **structured, cross-sector partnerships** designed to develop and guide Public Health 3.0–style initiatives and to foster shared funding, services, governance, and collective action.

www.healthypeople2020.gov/ph3
3. Public Health Accreditation Board (PHAB) criteria and processes for department accreditation should be enhanced and supported so as to best foster Public Health 3.0 principles, as we strive to ensure that every person in the United States is served by nationally accredited health departments.
4. Timely, reliable, granular-level (i.e., sub-county), and actionable data should be made accessible to communities throughout the country, and clear metrics to document success in public health practice should be developed in order to guide, focus, and assess the impact of prevention initiatives, including those targeting the social determinants of health and enhancing equity.
5. Funding for public health should be enhanced and substantially modified, and innovative funding models should be explored so as to expand financial support for Public Health 3.0-style leadership and prevention initiatives. Blending and braiding of funds from multiple sources should be encouraged and allowed, including the recapturing and reinvesting of generated revenue. Funding should be identified to support core infrastructure as well as community-level work to address the social determinants of health.
PH 3.0: Community Health and the Law in New Orleans

- Public Health Law is a major non-medical determinant of health
- Powerful tool to affect change at the system level
- Affordable Care Act ensured ongoing access to value focused care
- HITECH Act supports health IT efforts for care and for public health
- Leading causes of morbidity and mortality
  - Complete streets
  - City-wide smoking ban
Creating Healthier Communities: Who's Doing It, and How?

A look at places that have charted a “roadmap to health.”

By RACHEL POMERANCE

March 14, 2013

Here's a riddle for you. How do you make a public health example out of New Orleans? That's right, the city known for po' boys and partying and a flavor all its own—one that's very often fried and fatty. And that's the sunnier side of the story. New Orleans has suffered one scourge after another: Hurricane Katrina, which flooded 80 percent of the city, killing 1,000 people and leveling homes and beloved landmarks; notorious levels of corruption (Ray Nagin, the mayor during the catastrophe, was recently indicted for fraud, bribery, money laundering and other federal charges); and some of the nation's highest rates of poverty, obesity and crime.

But New Orleans is remaking itself. The health department's "Fit NOLA" campaign has employed a range of sectors and civic groups, and public-private partnerships to envision a city that's among America's 10 healthiest by 2018, New Orleans' tricentennial. The program has earned New Orleans recognition as one of six U.S. communities awarded the Roadmaps to Health prize, a new initiative from the Robert Wood Johnson Foundation (RWJF), which funds public health programs and, in this case, $25,000 to each community. The other prize winners, announced last month, are: Cambridge, Mass.; Falls River, Mass.; Manistique, Mich.; Minneapolis, Minn.; and Santa Cruz County, Calif. (To learn more about these efforts and see the video clips on each community, visit the foundation's website.)
Premature death in Orleans Parish, LA

Years of Potential Life Lost (YPLL): County, State and National Trends

Orleans Parish is getting better for this measure.

3-year Average

Please see Measuring Progress/Rankings Measures for more information on trends.
PUBLIC HEALTH 3.0

www.healthypeople.gov/ph3

#PH3