Public Health Law 101

Presented June 7, 2013
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Objectives

» Describe role of law in protecting public health
» Explain the sources of the government’s legal authority to protect public health
» Identify constitutional principles that limit government power
» Apply legal thinking to emerging public health challenges
» Recognize when legal advice or assistance may be required

What is Public Health Law?
The study of the legal authority of the government to assure the conditions for people to be healthy and limitations on the government’s power to constrain autonomy, privacy, liberty, property or other legally protected interests of individuals for protection or promotion of public health.


The Network for Public Health Law

Contact the Network to:
• Get practical legal assistance on a variety of public health topics
• Find helpful resources from webinars and trainings to fact sheets and legal briefs
• Connect with a community of experts and users of public health law

Support is available at no cost! Visit www.networkforphi.org for more information.

10 Public Health Achievements

Illustration from www.whatispublichealth.org

What is Public Health Law?
Principles in the U.S. Constitution

» Federalism
» Separation of Powers
» Limiting the government’s power

Federalism

» Powers that are not granted to the federal government, and that are not prohibited to the states, are reserved to the states and to the people
» In general, the “police power” is reserved to the states
» Police power refers to the power to regulate health, safety, and welfare for the common good

Separation of Powers

» The Constitution creates branches of government, so that absolute power does not reside in any one branch of government
» Executive
  U.S. Department of Health and Human Services
  North Dakota Department of Health
» Legislative
» Judicial

Limits on Government Power

» First Amendment
  Freedom of speech, religion, and right to peacefully assemble
» Second Amendment
  Right to bear arms
» Fourth Amendment
» Fifth Amendment
  Due process of law; just compensation for condemnations
» Fourteenth Amendment
  Equal protection and due process of law

Sources of Law

» Constitution
» Statutes
» Regulations
» Ordinances
» Court opinions (case law)
» International agreements and treaties
» Contracts, Memorandums of Understanding or Agreement

Levels of Government

» Federal
» Tribal
» State
» Local
Public Health in North Dakota

- State Health Council (appointed by governor)
- North Dakota Century Code Title 23 has most key provisions
- Powers and Duties of health council
  - Establish standards, rules, and regulations
  - Direct state health officer
  - Monitor health care costs and quality
  - Recommend changes to the health care system
  - Publish an annual report on health care

State Department of Health

- State Health Officer is the administrative officer
- Powers and Duties of State Health Officer
  - Enforce all rules and regulations passed by health council
  - Advise public health unit boards of health and hold them accountable; coordinate health activities
  - Study health problems and plan solutions
  - Collect and publish vital statistics
  - Publish an annual report on health care
  - Promote the development of local health services
  - Collect and distribute health education material

State Health Officer Powers and Duties (Continued)

- Maintain a public health laboratory; issue bulletins and reports on sanitary and pathological analyses
- License medical hospitals and related institutions
- Programs related to sudden infant death syndrome
- Issue orders for measures to prevent spread of communicable disease
- Bacteriological examinations of water, food, and sewage
- Improve sanitation; collect sanitary statistics
- Epidemiological assessments of commercial buildings

Local Public Health

- Public health unit
  - Health district
  - Public health department
  - Tribal health unit
- Board of health
- Regional public health network
  - New funding to plan and establish networks under 2013 state legislation, S.B. 2030

Public Health Unit

- A public health unit is a local organization formed under state law to provide public health services in a city, county, or designated multi-county or city-county area or Indian reservation
- All land in state must be in a public health unit
- Types of public health unit include:
  - City public health department
  - County public health department
  - Tribal health department
  - Health district

Board of Health

- A board of health governs a public health unit
- Advised by state department of health
- Meets at least quarterly
- Acts at the district, city, county, or tribal level
- Appoints the local health officer. If the health officer is part time, may appoint a director
- May make rules and enforce orders, or make recommendations to governing body
Tools of Public Health Law
» Power to tax and spend
» Power to alter the informational environment
» Power to alter the built environment
» Power to alter the socioeconomic environment
» Direct regulation
» Indirect regulation through the tort system
» Deregulation: laws as a barrier to public health


Hot Topic: Health Care Reform

Authority: Power to Tax and Spend

Limitations: Liberty interests; Federalism


Authority: Police Power

Limitations: Liberty interests; Property interests

Hot Topic: Tobacco Control

Authority: Police Power; Power to Tax and Spend; Power to Alter Info. Environment

Limitations: Liberty interests; Property interests; First Amendment

Hot Topic: Vaccinations

Authority: Police Power; Power to Regulate; Power to Alter Info. Environment

Limitations: Liberty interests; Privacy Interests; First Amendment

Hot Topic: Public Nuisance

Authority: Police Power; Power to Regulate

Limitations: Property interests; Liberty interests; Privacy Interests
Hot Topic: Obesity Prevention

Authority: Police
Power: Power to Regulate; Power to Alter Info.
Environment

Limitations:
Liberty interests; Autonomy interests; First Amendment

Working with an Attorney

» Recognize that reviewing existing laws and updating them as needed is a PH function.
» See Domain 6 of PHAB accreditation standards
» Develop a relationship with your attorney
» Seek legal input early
» Understand attorney’s risk management goals
» Explain your public health/program/policy goals
» The Network is an additional resource for information, brainstorming, and strategizing

Additional Resources
The Network Report, www.networkforphl.org (free e-newsletter for people who join the Network)
Institute of Medicine. For the Public’s Health: Revitalizing Law and Policy to Meet New Challenges (2011).

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