

VERSION 2.0 WORK IN PROGRESS: Evidence Related to Public Health Law and Policy October 2019



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This document represents findings from a scan of the literature related to public health law and policy. It is not meant to be an exhaustive search. If there are other resources on this topic of which you think PHAB should be aware, please contact Jessica Kronstadt at jkronstadt@phaboard.org.

Public health law practice has been defined as “the application of professional legal skills in the development of health policy and the practice of public health.”¹ Public health law can take the following forms:

- **Interventional public health laws** have the specific goal of protecting and improving the public's health.
- **Incidental public health laws** do not have improving public health as an explicit goal, but do have implications (positive or negative) on health.
- **Infrastructural law** establishes powers, responsibilities, and features of public health agencies.^{2,3}

Importance of Public Health Law and Areas of Focus

The Institute of Medicine states that “law is...one of the main ‘drivers’ facilitating population health improvement.”⁴ Many studies have focused, in particular, on the impact of interventional health laws including those related to safety belts, alcohol taxes, smoking bans, school vaccination requirements, graduated drivers licenses, among others,^{3,5} and many of the top public achievements in the last twenty years have been related to public health policy and law (e.g., motor vehicle safety).^{6,7} Law may also be instrumental in addressing social determinants of health.¹ As Lustig and Cabrera explain, “Issues that arise as a direct results of differential access to opportunities and resources require systemic solutions. Policy changes are needed to create the proper conditions and environments that allow people to live a healthy life outside of the health care system.”⁸

Mello et al describe “critical opportunities” as a means of identifying important targets for public health laws. These opportunities arise when there is: 1) a problem of public health significance; 2) the problem is understood well enough to believe it can plausibly be changed through law; and 3) there is at least one plausible legal intervention.⁵ As such, key public health legal topics will change over time, with recent examples including: Good Samaritan Laws, designed to encourage bystanders to intervene if they witness an overdose⁹ and competitive food policies, which may restrict food and beverages that are sold in schools competition with reimbursable meal programs.¹⁰

Health Departments' Roles in Public Health Law and Policy

The Essential Public Health Law Services help define public health's role in legal matters:

- Ensure access to evidence and expertise (including scientific expertise to understand the problem and its drivers, knowledge about the local setting, political expertise to generate support, and legal expertise to determine the most effective use of laws, regulations, or other levers)
- Design legal solutions (including statutes, regulations, executive orders, enforcement guidance, case laws)
- Engage communities, forge partnerships, and build political will
- Enforce and defend legal solutions
- Monitor and evaluate policy¹¹

Consistent with those services, one public health policy training program identified the following steps: identify local health problem/need; quantify local health problem need; synthesize evidence about effective public health policy options; assess current local policy; assess local stakeholders; select and describe policy; plan for adoption/enactment; communicate with stakeholders; implement policy; and measure performance.¹²

It is important to understand the breadth of legal and policy options that are available. For example, the IOM notes the following as options within the “toolbox of public health legal and policy interventions”:

- “The power to regulate (e.g. seat belt laws, restaurant licensure and inspections);
- The power to tax and spend (e.g. alcohol taxes; conditioning highway funding on motor vehicle safety requirements);
- The power to modify the built environment (e.g. urban development rules to encourage walking and biking; land use planning to limit proliferation of fast-food outlets and provide incentives for supermarkets).”⁴

In addition to supporting the adoption of new laws, legal interventions may also include modifying existing legal rules or enforcement protocols, clarifying existing laws through official statements, and removing harmful or ineffective laws.⁵ Additionally, “public health advocacy in the courts,” as defined by Kromm and colleagues, can include filing suits, serving as expert witnesses, writing amicus briefs, among other activities.¹³

In addition, there are many components of policy advocacy, ranging from direct lobbying, to coalition building and community mobilization, and community-based participatory action research.¹⁴ Several articles note the critical importance of framing policy issues, using both anecdotes and quantitative information.^{15,16} Meyerson et al. list a range of activities associated with evidence-based policy communication including:

- “prepare issue briefs for policy makers;
- publish a state policy agenda;
- publish consensus or other evidence-based document aimed at policy change;
- advance model public health legislation, regulation or ordinance;
- publish policy implications as part of research publications;
- give public testimony to policy makers;
- communicate with legislators, regulatory officials, or other policy makers regarding proposed regulations, legislation or ordinances;
- provide technical assistance to a legislative, regulatory or advisory group for drafting proposed legislation, regulation, or ordinance;
- participate on a board or panel responsible for health policy;

- conduct policy surveillance;
- conduct media advocacy."¹⁶

Providing health communication in conjunction with new laws may also increase their likelihood of passage or the efficacy after they become law.¹⁷

Status of Health Department Law/Policy Work

In the 2016 National Association of County and City Health Officials (NACCHO) National Profile of Local Health Departments, over 90% of LHDs reported involvement in at least one policy area. The most common areas are:

- Tobacco, alcohol, or other drugs (74%)
- Emergency preparedness and response (72%)
- Infectious disease (68%).

42% of LHDs were involved in developing new or revising existing public health ordinances or regulations in the previous two years.¹⁸

A 2015 study of local health departments found that agencies serving smaller populations tended to be engaged in a larger number of regulatory activities than larger agencies.¹⁹

In the Association of State and Territorial Health Officials (ASTHO) Profile of State and Territorial Public Health, 71% of state health departments report that they provide technical assistance (TA) for public health law to LHDs, and 75% provide TA for policy development to LHDs. State health departments also provide TA for public health law and policy development to other entities, including emergency medical services, hospitals, laboratories, and nonprofits.²⁰

In addition, both state and local health departments report regulation, inspection, and/or licensing services. In states, top areas for regulatory activities include labs, food service, trauma system, swimming pools, and hospitals; for locals, top areas include food service establishments and schools/daycare.^{18,20}

Legal Expertise

One of the recommendations from the IOM's 2011 report, *Revitalizing Law and Policy to Meet New Challenges*, is to ensure that all public health departments have adequate access to lawyers with public health expertise.⁴ According to Burris et al., to help inform policy discussions, health departments need access to attorneys who "possess knowledge and experience in the following areas: laws that establish the public health agency and set forth its jurisdiction and authorities, programmatic aspects of the agency's work, and procedures and processes consistent with applicable laws and policies."³ Despite this, by 2016, Burris et al. noted that "there has been little progress in increasing dedicated, qualified legal counsel for health agencies," particularly smaller ones.¹ In addition, non-attorney staff working on policy are not always adequately prepared for such work; the public health field could benefit from more inclusion of policy-related content in schools of public health and relevant internships in order to strengthen the pipeline of future employees with relevant skills.²¹ Efforts have been made to define and develop law-based competencies for public health practitioners.^{22,23}

Evidence Informed Policymaking

A European project identified several indicators of evidence-informed policy making. In addition to staffing and communications, as described above, they also highlighted domains related to documentation (e.g., procedures for reviewing literature and citing relevant reports) and monitoring and evaluation.²⁴

With regard to documentation, there are a number of resources that list evidence-based policies. For example, the Trust for America's Health identified 11 such policies and highlighted them in their Promoting Health and Cost Control in States project, by pulling from such sources as CityHealth, HI-5, County Health Rankings & Roadmaps, Pew-MacArthur Results First Initiative, Community Guide.⁸ Other resources include CDC's Prevention Status Reports²⁵ and Healthy People 2020.²⁶

Another key resource are model laws. The Turning Point Model State Public Health Act is an example of a model that states can use in developing infrastructural laws,²⁷ while a number of other model laws have been developed to address particular policy areas.²⁸

With regard to evaluation of policy, the IOM recommended that it should occur both before and after enactment.⁴ Policy surveillance, which entails systematic collection and analysis about laws on a particular topic, is one key component of evaluating the efficacy of laws.²⁹

Health in All Policies

The 2011 IOM report also encouraged the implementation of health in all policies (HiAP) approaches to address a range of policies (e.g., housing, employment, education) that have an impact on health.⁴ Common strategies in HiAP approaches include: "developing and structuring cross-sectoral relationships; incorporating health into decision-making processes; enhancing workforce capacity; coordinating funding and investments; integrating research, evaluation, and data systems; synchronizing communications and messaging; and implementing accountability structures."³⁰

¹ Burris S, Ashe M, Levin D, Penn M, Larkin M. A transdisciplinary approach to public health law: the emerging practice of legal epidemiology. *Annu Rev Public Health*. 2016;37:135-148.

² Burris S, Wagenaar AC, Swanson J, Ibrahim JK, Wood J, Mello MM. Making the case for laws that improve health: a framework for public health law research. *Milbank Q*. 2010;88(2):169-210.

³ Burris S, Mays GP, Scutchfield DF, Ibrahim JK. Moving from intersection to integration: public health law research and public health systems and services research. *Milbank Q*. 2012;90(2):375-408.

⁴ Institute of Medicine. *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges*. Washington, DC: National Academies Press; 2011.

⁵ Mello MM, Wood J, Burris S, Wagenaar AC, Ibrahim JK, Swanson JW. Critical opportunities for public health law: a call for action. *Am J Public Health*. 2013;103(11):1979-1988.

⁶ Centers for Disease Control and Prevention. Ten great public health achievements--United States, 1900-1999. *MMWR Morb Mortal Wkly Rep*. 1999;48(12):241-243.

⁷ Centers for Disease Control and Prevention. Ten great public health achievements--United States, 2001-2010. *MMWR Morb Mortal Wkly Rep*. 2011;60(19):619-623.

⁸ Lustig A, Cabrera M. Assisting states in considering evidence-based and promising policies to advance health, well-being, and opportunity. *J Public Health Manag Pract*. 2019;25(4): 303-307.

⁹ Latimore AD, Bergstein RS. "Caught with a body" yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law. *Int J Drug Policy*. 2017;50:82-89.

¹⁰ Dinour LM. Conflict and compromise in public health policy: analysis of changes made to five competitive food legislative proposals prior to adoption. *Health Educ Behav*. 2015;42(1S):76S-86S.

¹¹ Burris S, Ashe M, Blanke D, et al. Better health faster: the 5 essential public health law services. *Public Health Rep*. 2016;131(6):747-753.

¹² Luck J, Yoon J, Bernell S, et al. The Oregon Public Health Policy Institute: building competencies for public health practice. *Am J Public Health*. 2015;105(8):1537-1543.

¹³ Kromm JN, Frattaroli S, Vernick JS, Teret SP. Public health advocacy in the courts: opportunities for public health professionals. *Public Health Rep*. 2009;124:889-94. Quoted by: Burris S, Mays GP, Scutchfield DF, Ibrahim JK. Moving from intersection to integration: public health law research and public health systems and services research. *Milbank Q*. 2012;90(2):375-408.

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- ¹⁷ Gielen AC, Green LW. The impact of policy, environmental, and educational interventions. A synthesis of the evidence from two public health success stories. *Health Educ Behav*. 2015;42(1S):20S-34S.
- ¹⁸ National Association of County & City Health Officials. *2016 National Profile of Local Health Departments*. Washington, DC: National Association of County & City Health Officials; 2017
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