

# VERSION 2.0 WORK IN PROGRESS: Summary of Public Health Law Expert Panel Recommendations August 1, 2019



The Public Health Accreditation Board is a 501(c)3 nonprofit organization dedicated to improving and protecting the health of the public by advancing and transforming the quality and performance of governmental public health agencies in the U.S. and abroad.



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The Public Health Accreditation Board (PHAB) held its Public Health Law Expert Panel on August 1, 2019. A summary of the points of discussion and recommendations follows. Discussion on the specific measures considered that there is a connection with legal/law/policy in several domains (1, 2, 5, 6, 3, 4, 8, and 11). However, only those measures where specific recommendations were made are summarized in this report.

## Recommendations for Proposed Changes to the PHAB Standards and Measures

Measure 6.1.1: Laws reviewed in order to determine the need for revisions

- Clarify that access to legal counsel is for the purpose of reviewing public health laws; therefore, access to/utilization of attorneys with public health expertise is essential. This is different from access to legal counsel for administrative purposes, as might be described in Domain 11.
- Clarify that a state health department may be the best place for this expertise to be accessed by smaller, more rural local health departments.
- By incorporating the concepts of legal epidemiology (see definition below\*) at varying levels, health departments will be systematically and scientifically assessing key laws in their jurisdiction. If legal epidemiology methods are followed, health departments will produce robust materials that can serve as acceptable documentation for accreditation. These documents include a protocol that defines the scope of the assessment that was completed, empirical legal data that can be used for evaluation, reports highlighting the results of the assessment, and codebooks illustrating the features of the law being captured.

\* Legal epidemiology is the scientific study of law as a factor in the cause, distribution, and prevention of disease and injury. Scott Burris, Marice Ashe, Donna Levin, Matthew Penn, & Michelle Larkin, A Transdisciplinary Approach to Public Health Law: The Emerging Practice of Legal Epidemiology, 37 Ann. Rev. Pub. Health 135 (2016).

Measure 6.2.1: Department knowledge maintained, and public health laws applied in a consistent manner

- Should include education for legal counsel on public health and the Essential Public Health Services
- Should clarify the transdisciplinary nature of public health legal work
- Should consider “legal literacy” of public health practitioners
- Should move RD2 (application of public health laws) to the measure on enforcement

Measure 6.2.2: Laws and permit/license application requirements are available to the public

- These are two different things; should separate them

Measure 6.3.1: Written procedures and protocols for conducting enforcement actions

- Should have some health equity language included

Measure 6.3.4: Patterns or trends identified in compliance from enforcement activities and complaints

- Need enforcement for laws to be meaningful, but education and compliance assistance rather than punitive actions should be emphasized.
- Should address the policy for monitoring compliance. Compliance enforcement should consider a health equity lens policy and then require an example of implementing the policy.
- Consider adding to reaccreditation the impact of the chosen method(s) of enforcement

Measure 6.3.5: Coordinated notification of violations to the public, when required, and coordinated sharing of information among appropriate agencies about enforcement activities, follow-up activities, and trends or patterns

- This measure may need to be two measures. One is the sharing of information among appropriate agencies; and the other is coordinated notification of violations to the public, as appropriate. If the health department is working with the regulated entity to assist them in coming into compliance, then publicly calling them out may not be the appropriate approach.
- Suggest that the health department provide PHAB with their protocol for how they decide about public notifications and then ask for examples of how they followed that protocol.

Measure 5.1.3: Informed governing entities, elected officials, and/or the public of potential intended or unintended impacts from current and/or proposed policies

- Clarify that the health department doesn't need to produce analysis; could use analysis done by others to inform potential or unintended impacts of current/proposed policies

## Overarching Comments

- PHAB should consider noting the principles of Health in All Policies where indicated throughout the measures.
- PHAB should consider noting the elements of Public Health 3.0 where indicated throughout the measures.
- PHAB should consider the 5 Essential Public Health Law Services ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2856694](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2856694)) and integrating them across the standards and measures and consider public health as empowering health departments.
- PHAB should consider noting that legal counsel can assist with policy work; not just formal laws, ordinances, etc.
- Consider places where laws or legal opinions can be used for documentation.
- There is a difference in measuring capacity and processes for initial accreditation and in measuring the impact of legal/policy implementation that may be more relevant for reaccreditation.

## Items Referred to Other Think Tanks, Expert Panels or PHAB Initiatives

- Concern about the public health law workforce and the lack of access that smaller, rural health departments have to well informed public health legal counsel. PHAB will take this concern to the Workforce Think Tank and to the Joint PHAB/NACCHO Task Force on Small Health Department Accreditation.
- Concern about the legal considerations around emergency preparedness and the declaration of an emergency.

## Expert Panel Participants

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