Public Health Law

PHC 6102
Principles of Health Policy and Management
Objectives

• Define public health law
• Understand the relationship of federal and state/local governments in public health law
• Recognize the dichotomy of common good vs. individual freedoms in public health law
• Contrast public health law and criminal law
• Distinguish the multiple perspectives of the role of public health law in society
• Apply various sources of public health law to students’ public health domain
Definition of Public Health Law

• “The legal powers and duties of the state to assure the conditions for people to be healthy, and …

• the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.”

Emerging Role of Public Health Law

- Terrorism (biological, chemical)
- Reemergence of infectious disease (SARS, H1N1, West Nile Virus, etc.)
- Public health genetics

Sources of Public Health Law

- Federal law
- State laws
- Judicial decisions
- Regulations
- International treaties

- U.S. Constitution
  - 1st Amendment
  - 2nd Amendment
  - 4th Amendment
  - 5th and 14th Amendment
  - 10th Amendment
Federalism and Public Health Law

- Federalism
- 10th Amendment of the U.S. Constitution gives the states all powers that are
  - neither given to the federal government
  - nor prohibited by the Constitution.
- Federal preemption
  - Doctrine giving federal law precedence
  - Federal preemption occurs in many areas of public health law

State Police Powers

• States retain police powers to protect public’s health

• Powers exercised by states to:
  – Enact laws and promulgate regulations
  – That are used to protect public and to promote the common good

• Contrasted with criminal law powers
  – Don’t require probable-cause warrants
  – Enforce protections without a court hearing
  – “More probable than not” standard of evidence

Multiple Perspectives on the Role of Public Health Law

• Public health practice strategies must be responsive to diverse cultural values
  – Ideological left
  – Ideological right
  – Personal libertarianism
  – Economic libertarianism

Balance: Public Good Vs. Individual Rights

<table>
<thead>
<tr>
<th>Public Health Intervention</th>
<th>Public Good</th>
<th>Individual Right</th>
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<tbody>
<tr>
<td><strong>Childhood vaccinations</strong></td>
<td>Reduce vaccine-preventable disease incidence</td>
<td>Religious freedom (1st Amendment); parental autonomy</td>
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<tr>
<td><strong>Helmet laws (e.g., Florida)</strong></td>
<td>Reduce death and head injury</td>
<td>Violation of “personal freedom,” according to Gov. Bush</td>
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<td><strong>Mandate of flu vaccine for health care workers</strong></td>
<td>Controlling influenza outbreaks</td>
<td>Due process (5th &amp; 14th Amendments); right to free exercise of religion (1st Amendment)</td>
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<tr>
<td><strong>Quarantine/isolation</strong></td>
<td>Infectious disease control</td>
<td>Freedom of movement; due process (5th &amp; 14th Amendment)</td>
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<tr>
<td><strong>Ban on handguns in homes (D.C.)</strong></td>
<td>Controlling gun violence</td>
<td>2nd Amendment “protects an individual right to keep and bear arms”</td>
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Models of Public Health Interventions

1. Tax and spend (cigarette tax and highway funds tied to legal drinking age)
2. Alter the informational market (labeling laws)
3. Direct regulation (business inspection, seatbelt laws)
4. Tort system (safer cars)
5. Deregulation (needle exchanges)

Relevant Examples from COPH

• Epidemiology
• Health Policy
• Community and Family Health
• Environmental and Occupational Health
• Global Health
Legal Powers of Epidemiology

- Federal powers reporting derive from the Constitution’s 10th Amendment, specifically the Commerce Clause
- Most public health surveillance based on state police powers
  - Some laws for reporting passed by state legislatures
  - Most regulations promulgated by state DOH
Health Policy: Affordable Care Act as Public Health Law

• Contrast with personal health law
• National Prevention, Health Promotion, and Public Health Council
• Preventive care benefits without cost sharing; Medicaid payments increased
• Supreme Court decisions
  – Individual mandate
  – Medicaid expansion

Indirect Impacts of Health Insurance Coverage

Figure 3

Barriers to Health Care Among Nonelderly Adults, by Insurance Status, 2009

Percent of adults (age 18-64) reporting:

- No Usual Source of Care
  - Uninsured: 11%
  - Medicaid/Other Public: 10%
  - Employer/Other Private: 8%

- Postponed Seeking Care Due to Cost*
  - Uninsured: 32%
  - Medicaid/Other Public: 12%
  - Employer/Other Private: 8%

- Went Without Needed Care Due to Cost*
  - Uninsured: 26%
  - Medicaid/Other Public: 9%
  - Employer/Other Private: 4%

- Could Not Afford Prescription Drug*
  - Uninsured: 27%
  - Medicaid/Other Public: 13%
  - Employer/Other Private: 6%

*In past 12 months.
Respondents who said usual source of care was the emergency room were included among those not having a usual source of care.
All differences between uninsured and insurance groups are statistically significant (p<0.05).
SOURCE: KCMU analysis of 2009 NHIS data.
Laws of Community and Family Health

• Injury prevention laws
  – State and local responsibility
  – Federal government offers incentives to meet certain standards (e.g., legal drinking age)

• Child abuse and neglect laws
  – Laws seeking to prevent harm informed by public health law
  – Prosecution follows criminal law
Environmental & Occupational Public Health Laws

• Laws and regulations often originate from multiple governmental levels
  – Federal & state (air and water pollution)
  – State and local (mosquito and animal control)

• Businesses with health department permits or licenses:
  – Subject to warrantless inspections
  – Can be closed on order of an inspector
Public Health and International Law

• World Health Organization (WHO)
  – Treaty created at the Convention on Tobacco Control

• Right to Health – United Nations
  – Right to health recognized in international law
  – Racial and ethnic disparities may violate treaty

Questions

1. What happens if a federal law conflicts with a state law? Which law should be followed? What is this concept called?
2. Name five public health law intervention models and give examples of each.
3. Other than the five presented, name a public health intervention, its objective and how it may infringe on an individual right.
4. Describe how ACA may indirectly improves the public’s health.
5. How does the United States differ from many governments in the view of health as a human right?