PHC 6102, Principles of Health Policy & Management
Policy Formulation: Legislative Development

PresentationContains 19 Slides

1. Hello and welcome to this series of lectures called “Policy Formulation and Implementation.” Legislative Development is the second stage of policy formation, following Agenda Setting. Legislative Development is the creation of potential solutions to problems that were highlighted priorities during the Agenda Setting stage. The content for this lecture is taken, among other cited sources, from Public Health Administration by Lloyd F. Novick, et al., chapter 6, and Health Policymaking in the United States, by Beaufort B. Longest, chapter 4.

2. The objectives of this lecture are:
   - Relate Agenda Setting to Legislative Development in the policy formulation phase
   - Summarize the stages involved in the development of federal legislation
   - Differentiate the budgeting process from the general legislative development process
   - Discriminate state government legislative processes from federal legislative development

3. We present this series of lectures in a manner conceptualized by Beaufort B. Longest in his text, Health Policymaking in the United States. In a previous lecture, you learned about Agenda Setting whereby health policy is established through a framing of health problems and creation possible solutions during a set certain political circumstances. During this lecture, we will discuss the second part of Policy Formulation: Legislative Development. Later lectures will cover the Policy Implementation phase.

4. The chart on this slide is from the Longest text. Note the box on the left for Legislative Development. When a favorable opportunity arises, legislative development may begin. Ideas become proposals. Proposals become legislation. Legislation becomes (through a highly structured process that we will discuss) a new law or an amendment. The Policy Formulation phase ends with the formal enactment of the legislation.

5. Legislative proposals are provided by politicians/legislators, individuals, health-related organizations, and interest groups. Of course, many politicians rise to become legislators by presenting their ideas to voters about solutions to problems. Private citizens are afforded the right to petition the government by the 1st Amendment of the United States Constitution. Interest groups, supported by professional lobbyists, play a significant role in the Legislative Development phase - often drafting language for Congress to incorporate into legislation. Of course, the Executive branch of the federal government, lead by the President, may propose legislative ideas.

As an example in health policy, health reform was a major issue in the 2008 presidential campaign. All of the Democratic candidates promoted major health reform proposals, according to the June 5th, 2007 edition of the Washington Post. Two years later, the White House released a statement thanking the chairmen of three important healthcare subcommittees of the House of Representatives for introducing a proposal that “will begin the process of fixing what’s broken about our health care system.” These proposals were vigorously supported by liberal advocacy groups, such as Families USA, and vehemently opposed by conservative groups, such as U.S. Chamber of Commerce.
6. Congress introduces legislation. The U.S. legislative body is made up of two different parts, known as bicameral. The House of Representatives contains 435 members elected for two year terms. The number of Representatives is apportioned to the states by the population. The effect of this apportionment means that each member of the House represents approximately 700,000 citizens (as of 2008). The Senate is made up of 100 members, two for each state in the union. They are elected for six year terms.

7. We will now discuss the stages in federal legislation. Once a proposal is formally introduced in Congress, it is called a bill. This bill language is transformed from an idea into legal language by lawyers. As you can see in the chart provided, a bill starts in a subcommittee. In each stage, a bill can be revised and amended. If a bill is approved by the subcommittee, it moves on to the full committee. If approved there, a debate can be scheduled by the full House or entire Senate. It should be noted that a bill can “die” at any point in the process – a very common occurrence.

8. There are 20 standing committees in the House and 20 in the Senate. There are several important health-related committees in Congress to be aware of, such as Senate Finance, Senate Health, Education, Labor and Pensions (HELP), House Ways and Means, and House Energy and Commerce. A bill can be divided between committees (simultaneously or sequentially). For example, ObamaCare (H.R. 3590) was introduced in the House of Representatives on October 29, 2009, and was referred to both the House Ways and Means Subcommittee on Health and House Energy and Commerce Subcommittee on Health.

9. While in committee or subcommittee, several important things happen that you should understand. Sometimes committees hold hearings where citizens are invited to speak about issues related to the legislation. Also, the legislators make edits, or “mark-ups,” to the bill. If the bill is agreed upon by the members of the committee /subcommittee (from both Republican and Democratic parties), then analysis of the bill is created in a report delivered to the full House or Senate along with the legislation.

Once a bill is “reported” out of committee to the full body for consideration, it is debated on the floor, and amendments can be added and changes made. Then the same thing happens in the opposite legislative body. When the two versions are completed, they are “conferenced.” The compromised legislation is sent to the full House and full Senate for approval.

Finally, the identical legislation is voted on by the House and the Senate. This final legislation must be approved by both Houses of Congress. If this bill passes, it goes to the President for consideration. The president may sign into law or veto the bill. If the president vetoes a bill, it is sent back to the House and Senate to be voted on again. Three-fourths of the House and three-fifths of the Senate are needed to override a veto and enact a bill into law.

10. It should be noted that each chamber if Congress has slightly different procedural rules. Before each bill is voted on in the House of Representatives, the House Rules committee also decides the length of time for consideration of a bill and what amendments will be permitted to be considered. There is the possibility that the House Rules Committee would block the legislation.

On the other hand, the Senate has rules that allow members to filibuster. Filibustering is a series of parliamentary procedures, including debate, which slows the process down, preventing the Senate from consideration of other legislation. The longest filibuster speech was given by U.S. Senator Strom Thurmond of South Carolina, who spoke for 24 hours and 18 minutes against the Civil Rights Act of 1957. A super-majority vote (60 out of 100 Senators) is required to invoke cloture, a parliamentary procedure ending filibuster.
11. The development of federal government legislation differs from other types of legislation. Most significantly, the U.S. Constitution requires that all bills regarding taxation must originate in the House of Representatives.

The APHA has developed a very helpful handout for the federal budget process. Please see the course materials to download the document, “The Budget & Appropriations Process.” In this process flow, the federal budget legislation development occurs in four distinct stages. First, the President develops an annual budget request for the entire federal government. This is sent to Congress for debate. The role of the President (the Executive branch) is more formalized in budget development than in the general legislative process. We’ll discuss the President’s budget proposal more in the next slide.

In Congress, a Budget Resolution is debated and revised in committee. Once the House Budget Committee and Senate Budget Committee approve the budget (after much consideration), it is sent to the full body for approval. If the legislation is passed, the bill is sent to a combined House and Senate committee to be “conferenced,” just as other legislation would.

Third, the Appropriations process decides how much money (if any) would be spent for a program for each year. It should be noted that the programs or agencies for which money is needed must be authorized for creation, continuation, or modification. An Appropriation Bill is a legislative motion that permits the government to fund expenditures for programs that are already authorized. The Appropriations step is particularly important, because an Authorization Bill has no funding power! We’ll examine the difference between Authorization and Appropriations in a subsequent slide.

The fourth and final step is called Reconciliation. The budget reconciliation is the step whereby the budget committee instructs the authorizing committee (or committees) to develop legislation that changes existing law to match the Budget Resolution budget numbers. Sometimes these instructions require the other committees to decrease spending for the programs for which they have oversight. Sometimes, the committees must increase revenues by a specified amount. In this step, debate is limited, filibusters are not allowed, and the reconciliation bill cannot contain any language unrelated to the budget.


12. At this time, let’s back up and present in more detail the President’s Budget. Required by legislative statute, the budget includes funding requests and performance plans of all federal executive departments and independent agencies under the Executive branch. The budget represents a detailed proposal of the Administration’s intended spending and revenue plans for the following fiscal year. Each federal department and independent agency provides additional detail and supporting documentation to justify its budget request.

The president relies on the Office of Management and Budget (OMB) serves as the budget office for the executive branch of the federal government. The OMB assists the President in the development and execution of his policies and programs and in meeting certain requirements in law such as preparation of an annual federal budget. The OMB also reviews agency budgets, management, legislative, regulatory, financial, procurement, and other proposals.
13. What is the difference between Authorization and Appropriation? Authorization represents legislation which establishes, continues, or modifies existing agencies or programs. It also usually specifies the maximum amount that can be spent on a program and for how long.

The appropriations process would then decide how much money (if any) would be spent for this program for each year. Even if a program has been authorized at $18 million, the appropriations committee could decide on no funding or funding at, say, $15 million. Programs rarely receive funds at the maximum amount authorized, which mean that the appropriations is extremely important in carrying out health care policy.

14. You should understand the difference between what is called mandatory spending and discretionary spending. Discretionary spending is funded by appropriation bills. However, mandatory spending does not fall under appropriation bills. Mandatory spending refers to funded programs established by law. This means that changes in spending can only be made through changes in substantive laws. Examples of mandatory spending include interest on the public debt and entitlement programs, such as Medicare, Medicaid, and Social Security. The way an entitlement program works is Congress creates a program and determines who is eligible and any other criteria it may want to stipulate. The amount that is then set aside for the program each year using estimates of how many people will be eligible and apply for the program. In other words, the amount appropriated is not based upon revenue or costs estimations for that year. Unlike discretionary spending, the Congress does not decide each year to increase or decrease an entitlement program’s budget. Instead, it periodically reviews the eligibility rules and may change them in order to exclude or include more people depending on the available funds.

Discretionary Spending, on the other hand, refers to the portion of the budget which goes through the annual appropriations process each year. Congress directly sets the level of spending on programs which are discretionary. Congress can choose to increase or decrease spending on any of those programs in a given year. When you hear elected officials at the federal level talking about cutting the budget, generally what they are referring to is discretionary spending. The reason is because it is far easier to bring about reductions in discretionary spending than in mandatory spending.

15. Above, the Office of Management and Budget assisted the President with the budgeting process. Now we’ll focus on the legislative branch. A very important agency that serves the United States Congress is the Congressional Budget Office (CBO). The CBO was created as a non-partisan federal agency. Non-partisan means that the CBO is indifferent with respect to political party; it serves Congress as a whole and does not serve the Democratic, Republican, or other political party.

The function of the CBO is to provide assistance to Congress in the budget process. The CBO performs policy analyses, cost estimates of legislation, and budget and economic projections that serve as a basis for Congressional decisions about spending and taxes. Every piece of legislation affecting the use of the nation's resources undergoes CBO’s scrutiny. The CBO also assesses the cost estimates and economic assumptions of the OMB and the Executive Branch in creating the annual federal budget. The function of the CBO is to give the OMB’s assumptions a “reality check.”

16. The state governments in the United States are similar to that of the federal government. The tenth amendment in the United States Constitution covers Powers of the States and People. The U.S. Constitution mandates that all states uphold a "republican form" of government, and all state
governments are modeled after the federal government. This means that each state usually has three branches: executive, legislative, and judicial, though the three-branch structure is not required.

In every state, the executive branch is headed by a governor who is directly elected by the people. In most states, the other leaders in the executive branch are also directly elected, including the lieutenant governor, the attorney general, the secretary of state, and auditors and commissioners. States reserve the right to organize in any way, so they often vary greatly with regard to executive structure. No two state executive organizations are identical.

Legislative authority is operative in both the federal government and state governments. All 50 states have legislatures made up of elected representatives. These representatives consider matters brought forth by the governor or introduced by its members to create legislation that becomes law. The legislature also approves a state's budget and initiates tax legislation.

17. Let’s examine the State of Florida’s budget development process as an example. Like the federal government, Florida’s budget process involves the Legislative branch and the Executive branch (including the Governor and state agencies).

The creation of the state budget begins each fall with the development of the Long Range Financial Outlook that provides a three year estimate of the budget. Then, Florida’s state agencies devise budgets, called Legislative Budget Requests, which are submitted to both the Legislature and the Governor. Thirty days prior to the start of Legislative Session, the Governor recommends a budget to the Legislature. During the annual 60-day Legislative Session each spring, both the House and Senate work to pass their own appropriations bills within their respective chambers’ committees.

A conference committee works to create a single budget out of the separate House and Senate budgets. Following a successful conference, the two bodies produce a single conference report, called the General Appropriations Act. After the budget is sent the Governor, he or she has the authority to remove certain parts, called a “line item veto,” before signing into law.

18. Florida’s budget is divided into three primary funding sources: General Revenue, state trust funds and federal trust funds. General Revenue is the revenue collected from state taxes, such as sales tax and new home construction. General Revenue makes up roughly a third of the state budget. These funds can be used for any purposes, so agencies and programs (and their lobbyists) compete mightily for this funding. It should be noted that, under its Constitution, Florida must balance its budget each fiscal year, which means the state may not spend more than it takes in from taxes. Florida’s fiscal year runs from July 1st to June 30th.

State trust funds are monies designated by state law for specific purposes, such as the Affordable Housing Trust Fund and the State Transportation Trust Fund. State trust funds are a little less than a third of our state’s total budget.

Finally, federal trust funds are monies provided to the state by the federal government. Depending on the year, federal trust funds account for a little more than a third of our state’s total budget. These trust funds often fund a large portion of our state’s health and human services spending and fund programs, such as Medicaid. Discussed later in the course in more detail, Medicaid is a joint state/federal program that provides health insurance for certain eligible low-income individuals.
This concludes the lecture on “Policy Formulation: Legislative Development.” The following questions are some that you will be expected to know:

1. What Congressional Committees are most important in development of health policy?
2. What is the relationship between the CBO and the OMB?
3. Describe the difference between mandatory and discretionary spending categories. Most public health programs belong to which category?
4. What is the relationship between federal budget and health policy?
5. What actions can the State of Florida government undertake in instances of a budget shortfall?

Thank for listening and watching. Now, please turn your attention to “Policy Implementation: Rulemaking” in this week’s course materials.