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Public Health Policy Change Webinar Series

• Providing substantive public health policy knowledge, competencies & research in an interactive format
• Covering public health policy topics surrounding Tobacco, Obesity, School and Worksite Wellness, and more
• Two times a month from 12:00 p.m. to 1:30 p.m. Central Time

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The Tobacco Control Legal Consortium

A national network of attorneys and legal centers dedicated to advancing tobacco-control policy.

- Seminars / Webinars
- Law Synopses
- Fact Sheets
- Legal Updates
- www.TCLConline.org

- Policy development
- Litigation Support
- Legal research, analysis, and interpretation
- Education and training*
Who We Serve:

- Public health advocacy organizations and community coalitions
- Public health officials
- Elected officials
- City and county attorneys
- Private attorneys and individual citizens
Network for Public Health Law

- Serves as a seamless foundation to connect experts and users of public health law
- Delivers legal technical assistance
- Provides training and educational resources
Introductions

Mary Marrow
Staff Attorney
Public Health Law Center
Introductions

Jill Krueger
Senior Attorney

National Coordinating Center and Northern Region of the Network for Public Health Law
Introductions

Natasha Frost
Staff Attorney, Public Health Law Center
Introductions

Warren Ortland
Staff Attorney, Public Health Law Center,
Tobacco Control Legal Consortium
Presentation Objectives:

• Understand role of law in public health policy and implementation

• Understand key legal issues governing public health policy and implementation

• Identify potential legal issues with public health initiatives
What is Public Health Law?
Public Health Definition

Public Health:

“What we as a society do collectively to assure the conditions for people to be healthy”

“Fulfilling society’s interest in assuring conditions in which people can be healthy.”
“Law” Definition

“The regime that orders human activities and relations through systematic application of the force of politically organized society”

“The structure, norms, and rules that a society uses to resolve disputes, govern itself, and order the relations between members of the society”

Centers for Disease Control and Prevention, http://www2a.cdc.gov/phlp/phl101/
Public Health Law Definition

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, or other legally protected interests of individuals for protection or promotion of public health.

Public Health Law

Elements of Public Health Law

- Power
- Duty
- Restraint

Public Health Law

• Federalism
  • The relationship and distribution of power between individual states and the national government
Public Health Law

• State Police Power
  • Powers exercised by the states to enact legislation and promulgate regulations to protect the public health, welfare, and morals and to protect the common good.

• 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
Landmark Court Case

Jacobson v. Massachusetts (1905)

“Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.”

- Beginning of application of modern constitutional analysis to disease control law
- Provides constitutional support for range of contemporary public health laws
Public Health Law Partners

Health care institutions

Academia

Media

Businesses

Governmental agencies

Grassroots and non-profit organizations

Communities

Other non-traditional partners
Public Health Law Themes

- **Government**: has primary responsibility for the public’s health
  - Power to compel individuals and organizations
  - Limitations on power
  - Capacity to create laws and regulations
Public Health Law Themes

• Populations: public health strives to improve the functioning and longevity of populations
Public Health Law Themes

- Relationships: public health address relationship between the state and populations
Public Health Law Themes

- **Services**: provision of population-based (as opposed to individual) services

![Reaction to tuberculin antigen](image)
Public Health Law Themes

- **Prevention orientation:**
  - Interventions designed to avert the occurrence of injury or disease
Public Health Law Approaches

- 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 of persons, professionals and businesses
- Indirect regulation through the tort system
- Deregulation: laws as a barrier to health

Public Health Law Approaches

- **Model 1: The power to tax and spend**

(State Children’s Health Insurance Program – SCHIP)
Public Health Law Approaches

- **Model 2**: The power to alter the informational environment

(Product warning labels)
Public Health Law Approaches

- Model 3: The power to alter the Built Environment (accessibility enhancements; promotion of activity)
Public Health Law Approaches

- **Model 4**: The power to alter the Socioeconomic Environment
Public Health Law Approaches

- **Model 5**: Direct regulation of persons, professionals, and businesses (emissions control)
Public Health Law Approaches

• **Model 6**: Indirect regulation through the Tort system
  (defective or dangerous products)
Public Health Law Approaches

- **Model 7: Deregulation: Laws as a barrier to Health**
  (medical marijuana; needle exchange programs)
Topics – Tobacco Control

- Federal Level Example
  - Family Smoking Prevention and Tobacco Control Act
Topics – Tobacco Control

• State Level Example
  • Clean Indoor Air Acts
  • Taxes
Topics – Tobacco Control

- Local Level Examples
  - Set back restriction
  - Licensing ordinances
  - Signage restrictions
  - Restrictions on sale of flavored “other tobacco products”
Topic – Health Care Reform

• Appeal from 11th Circuit Court of Appeals
  • Department of Health & Human Services v. Florida
  • National Federation of Independent Businesses v. Sebelius
  • Florida v. Department of Health & Human Services

• Four Issues on Appeal
  • Anti-Injunction Act
  • Individual mandate/ minimum coverage requirement
  • Severability
  • Medicaid expansion
Health Care Reform Lawsuit is Fundamentally a Debate about Government Authority

Question: Whether the minimum coverage provision is a valid exercise of Congress’ Commerce Clause Powers?

- **Yes.** Long-standing Court precedent recognizes broad Congressional authority to regulate activity that, when viewed cumulatively, has a substantial effect on interstate commerce.

- **No.** The requirement to purchase insurance is unprecedented and goes beyond Congress’ authority. It is regulating “inactivity” and, if allowed, there would be no principle to limit Congressional authority.
Topics: The Farm Bill

About 70% of the Farm Bill budget is dedicated to the Supplemental Nutrition Assistance Program (SNAP) (formerly food stamps).

A number of policy initiatives to better promote healthy eating have been proposed or implemented on a pilot basis:

- Increase funding and benefits to improve link between Thrifty Food Plan and Dietary Guidelines
- Use of EBT at farmers’ markets (also FMNP)
- Provide incentives for purchase of healthy foods
- Tighten requirements for vendors
- Prohibit use of SNAP benefits to purchase unhealthy foods
Life Cycle of the Farm Bill

• Agenda development, coalition building
• Citizen input and lobbying (throughout process)
• Congressional hearings
• Bill drafting and amendments
• Passage in each house; conference committee
• Presidential approval
• Implementation—rulemaking and grantmaking
• Appropriations
• Public Health has a role at each stage!
Topic – Social Justice

Social Determinants of Health

“Where we live, learn, work and play can have a greater impact on how long and how well we live than medical care.”
Topic – Social Justice
Next Webinar in the Series

No Smoking, Child on Site!: New Smoke-free Policies to Protect Kids

Tuesday, June 5, 12:00 p.m. – 1:30 p.m. CST

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Questions?

www.publichealthlawcenter.org