



# **PARTNERSHIP *for*** **PUBLIC HEALTH LAW**

*Advancing Public Health Through Law*

## **What is Public Health Law?**

### **Definition**

Public health law is a field that focuses legal practice, scholarship and advocacy on issues involving the government's legal authorities and duties "to ensure the conditions for people to be healthy,"<sup>1</sup> and how to balance these authorities and duties with "individual rights to autonomy, privacy, liberty, property and other legally protected interests."<sup>2</sup> The scope of public health law is broad. Public health law issues range from narrow questions of legal interpretation to complex matters involving public health policy, social justice and ethics.

### **Law as a public health tool**

Legal tools such as statutes, regulations and litigation have played a vital role in historic and modern public health achievements including advances in infectious disease control, food safety, occupational health, injury prevention and emergency preparedness and response. For example, local governments have passed clean indoor air legislation to address tobacco as a health hazard, state courts have upheld vaccination mandates and federal regulations have established vehicle performance crash standards to promote motor vehicle safety.<sup>3</sup>

### **Sources of public health law**

Legal authority relevant to population health comes from five basic legal sources and from every level of government.

- **Constitutions.** All government action to advance public health must be consistent with constitutional authority and constitutional protections of individual rights. In addition to the U.S. Constitution, which applies nationally, all 50 states and many tribal and territorial governments have adopted constitutions.
- **International agreements.** The President may bind the U.S. to international treaties and executive agreements that require creation of domestic laws, or that create law that is on par with federal statutes.<sup>4</sup>
- **Legislation.** The legislative branch (Congress, state legislatures and city councils and other local legislative bodies) creates policies and distributes public funds by enacting statutes, which are commonly called ordinances at the local level.
- **Regulations.** The executive branch (the President, governor, mayor, county executive and agencies such as departments of public health) may issue rules and regulations based on authority delegated by the legislature through statutes. Local boards of health are administrative bodies whose members are appointed or elected to lead, guide and oversee the delivery of public health services and activities in their local communities. The role boards of health play in public health generally depends on their legal authority and powers as defined in state statutes. In addition, executive branch officials are authorized to issue legally binding executive orders. Regulatory decisions, and the laws governing executive branch actions, are known collectively as "administrative law."<sup>7</sup>
- **Case law.** The judicial branch, through courts, resolves disputes and interprets laws, including balancing community needs with constitutionally-protected rights of individuals.<sup>5</sup>

## State government police power

The U.S. Constitution reserves the primary power to regulate health, safety and welfare for the common good, often known as the “police power,” to the states through the 10<sup>th</sup> Amendment.<sup>6</sup> Police power in this context does not refer solely to criminal law enforcement. Rather, police powers may be used by states to promote laws in the interests of the general welfare and health of society. Public health examples of government’s police power include laws authorizing: (1) isolation and quarantine; (2) community vaccination; (3) licensure of medical professionals;<sup>7</sup> and (4) response to public health emergencies, such as bioterrorism or infectious disease outbreaks. Though broad, police powers may be limited by fundamental constitutional rights such as the right to privacy and freedom of expression, subject to a balancing of community and individual interests.<sup>8</sup>

State police power, however, may be preempted when it conflicts with federal law. Although the states primarily address public health issues, the federal government can adopt public health laws pursuant to its powers to tax, spend and regulate interstate commerce.<sup>9</sup> The Supremacy Clause of the U.S. Constitution states that the federal Constitution and federal laws override state and local laws.<sup>10</sup> As long as the federal government has authority to create the law in question, federal law supersedes state law when conflicts arise. For Example, the Patient Protection and Affordable Care Act of 2010 (ACA) created nutrition labeling requirements for certain chain restaurants and vending machines that cannot be contradicted by state law.<sup>11</sup>

Other levels of government also have substantial public health authority:

- **Local governments** in many states possess some police power delegated to them by the state government.<sup>12</sup> Mayors, city and county councils and some local boards of health operate under this delegation of authority.
- **Tribal governments** possess independent authority to address public health concerns in their communities. They usually work with federal and state governments to provide public health services.<sup>13</sup>
- **Federal government**, as mentioned earlier, has authority to act in the public health realm stemming mostly from its powers to tax, spend regulate interstate commerce<sup>14</sup> and regulate in the interests of national security.

## Online Resources

The Network for Public Health Law, [www.networkforphl.org](http://www.networkforphl.org)

The CDC Public Health Law Program, [www.cdc.gov/phlp/](http://www.cdc.gov/phlp/)

Public Health Law Center, <http://publichealthlawcenter.org>

ChangeLab Solutions, <http://changelabsolutions.org/>

Public Health Law Research, <http://publichealthlawresearch.org/>



*The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.*

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## Endnotes

- <sup>1</sup> Gostin LO. *Public Health Law: Power, Duty, Restraint*. 2<sup>nd</sup> ed. Berkeley, CA: University of California Press; 2008: 4.
- <sup>2</sup> Public Health Law Center [Internet]. St. Paul, MN: Public Health Law Basics; 2010 [cited 2012 Dec. 1]. Available from <http://phlc.stylefish.com/topics/public-health-law-basics>.
- <sup>3</sup> Moulton AD, Goodman, RA and Parmet WE. Perspectives: law and great public health achievements. In: Goodman RA, Hoffman RE, Lopez W, Matthews GW, Rothstein M, Foster KL, eds. *Law in Public Health Practice*. 2<sup>nd</sup> ed. New York: Oxford University Press; 2007: 3-21.
- <sup>4</sup> Garcia MJ. International Law and Agreements: Their Effect Upon U.S. Law [Internet]. Washington: Congressional Research Service; 2010 [cited 2012 Dec. 1]. Available from: <http://www.fas.org/sgp/crs/misc/RL32528.pdf>.
- <sup>5</sup> Gostin LO. *Public Health Law: Power, Duty, Restraint*. 2<sup>nd</sup> ed. Berkeley, CA: University of California Press; 2008: 82-86
- <sup>6</sup> CDC Public Health Law Program [Internet]. Atlanta: Public Health 101. [cited 2012 Dec. 1]. Available from: <http://www.cdc.gov/phlp/docs/PHL101/PHL101-Unit%201%20-%2016Jan09-Secure.pdf>.
- <sup>7</sup> Gostin LO. *Public Health Law: Power, Duty, Restraint*. 2<sup>nd</sup> ed. Berkeley, CA: University of California Press; 2008: 95.
- <sup>8</sup> Gostin LO. *Public Health Law: Power, Duty, Restraint*. 2<sup>nd</sup> ed. Berkeley, CA: University of California Press; 2008: 141.
- <sup>9</sup> Gostin LO. *Public Health Law: Power, Duty, Restraint*. 2<sup>nd</sup> ed. Berkeley, CA: University of California Press; 2008: 99-106.
- <sup>10</sup> U.S. Const. art. VI, cl. 2.
- <sup>11</sup> 21 U.S.C.A. § 343-1(a) (2013)
- <sup>12</sup> Gostin LO. *Public Health Law: Power, Duty, Restraint*. 2<sup>nd</sup> ed. Berkeley, CA: University of California Press; 2008: 78-82 .
- <sup>13</sup> Bryan RT, Schaefer RM, DeBruyn L, and Stier DD. Public health preparedness in Indian Country. *Am J Public Health*. 2009; 99(4):607-614.
- <sup>14</sup> Gostin LO. *Public Health Law: Power, Duty, Restraint*. 2<sup>nd</sup> ed. Berkeley, CA: University of California Press; 2008: 99-106.