

Public Health Law 101



A CDC Foundational Course for
Public Health Practitioners



Public Health Law Program

<http://www.cdc.gov/phlp>



PUBLIC HEALTH LAW 101

A CDC Foundational Course for Public Health Practitioners

- Unit 1: Key Concepts of U.S. Law in Public Health Practice
- Unit 2: Ethics and the Law
- Unit 3: Administrative Law
- Unit 4: Role of the Legal Counsel
- Unit 5: Law of Public Health Surveillance, Investigations, and Emergencies
- Unit 6: Privacy and Confidentiality
- Unit 7: Infectious Diseases
- Unit 8: Chronic Diseases and Birth Defects
- Unit 9: Environmental Public Health, Occupational Health, and Injury



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Unit 1
Key Concepts of U.S. Law in
Public Health Practice



Disclaimer

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Historical Perspective

While the modern health officer must be an educator and a statesman, rather than merely a police officer, many of his duties are still necessarily concerned with law enforcement. . . . Health officers must be familiar not only with the extent of their powers and duties, but also with the limitations imposed upon them by law.

James A. Tobey, 1947



•Source: Tobey JA. Public Health Law. Third Edition. The Commonwealth Fund. New York, 1947.

Unit 1 Objectives

By the end of this unit, you should be able to:

1. Understand key definitions and concepts framing the relation between U.S. law and public health practice.
2. Describe sources of law necessary for public health practice.
3. Recognize the Constitutional balance between the rights of individuals and the needs of the community with respect to public health.



- Instructor: this is an essential slide, as the objectives frame the order of content included in this unit.
- Core concepts and definitions will include: federalism (U.S. governance and legal system), police powers, and definition of “law.”
- Sources of law necessary for public health practice will include: constitutions, statutes, administrative law, and common (case) law.
- Constitutional safeguards protecting individuals’ rights will include: the Bill of Rights and the Due Process clauses of the 5th and 14th Amendments, and how they provide checks on government authorities.

Law's Paramount Role: 10 Great Public Health Achievements, United States, 1900-1999*

Do you know how law contributed to these achievements?

- Vaccination
- Motor-vehicle safety
- Safer workplaces
- Control of infectious diseases
- Decline in deaths from coronary heart disease and stroke
- Safer and healthier foods
- Healthier mothers and babies
- Family planning
- Fluoridation of drinking water
- Recognition of tobacco use as a health hazard



Note to instructor: this is an optional slide.

•*Source of slide: *MMWR* 1999: Vol. 48 / No. 12

•Purpose of slide is to, at onset of course, further stimulate class participants to begin actively thinking about role of law in relation to each major public health achievement listed in slide.

•If used, either simply display and move on to next slide, or invite class participation to discuss role of law for all or for only selected achievements. For example, for each listed achievement, invite course participants to give 1-2 laws that contributed to the public health achievement (e.g., for motor-vehicle safety, laws include speed limits, safety-/seat-belt requirements, airbag requirements, blood-alcohol limits, highway funding contingent on minimum legal drinking age).

•An alternative is to use this optional slide to conclude this unit or as a starter in subsequent units.

Impact of Specific Laws on Public Health Problems

Law	Public Health Issue	How Law Works
	Herd immunity or individual immunity	
	Exposure to environmental tobacco smoke	
	Unintentional injuries of children	
	Dental caries	



Impact of Specific Laws on Public Health Problems

Law	Public Health Issue	How Law Works
School entry vaccination laws	Herd immunity or individual immunity	
	Exposure to environmental tobacco smoke	
	Unintentional injuries of children	
	Dental caries	



Impact of Specific Laws on Public Health Problems

Law	Public Health Issue	How Law Works
School entry vaccination laws	Herd immunity or individual immunity	Requires parental behavior
	Exposure to environmental tobacco smoke	
	Unintentional injuries of children	
	Dental caries	



Impact of Specific Laws on Public Health Problems

Law	Public Health Issue	How Law Works
School entry vaccination laws	Herd immunity or individual immunity	Requires parental behavior
Smoking bans or restrictions	Exposure to environmental tobacco smoke	Requires behavioral change to alter environment
Child safety seat use laws	Unintentional injuries of children	Requires direct behavioral change
Fluoridation of community water supplies	Dental caries	Directly changes physical environment requiring no action on part of target population



Objective 1.1

Understand key definitions and concepts framing the relation between U.S. law and public health practice.



Definitions: *Public Health*

- *Public health*: “Fulfilling society’s interest in assuring conditions in which people can be healthy.”*



•*Source: Adapted from: Institute of Medicine. The Future of Public Health. National Academy Press, Washington, D.C., 1988; pg 7.

Definitions: Law

- Law has many definitions:
 - Rules that are subject to the enforcement power of a government entity.
 - The structures, norms, and rules that a society uses to resolve disputes, govern itself, and order the relations between members of the society.
 - “The enterprise of subjecting human conduct to the governance of rules.”*
- What does law mean to you?



•*source: Lon L. Fuller, *The Morality of Law*, (New Haven and London: Yale University Press (1969) p. 106.

•INSTRUCTOR: optional discussion point is to discuss the question, what is meant by the term *public health law*? One option is the following definition, offered by Gostin, which juxtaposes both the state’s legal powers and applicable limitations on those powers: ““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.” (Adapted from: Gostin LO. *Public Health Law: Power, Duty, Restraint*. Berkeley: Univ. of California Press, 2000, pg 4.)

Definitions: The *State*

- *State* has different meanings in U.S. law:
 - A general term for government, without regard to a specific level of government
 - The government of an entire country
 - The government of a single U.S. state or of all the states, as opposed to the federal government
- Because of these different meanings, it is important to be clear whether the reference is to the federal government or the government of a single state.



Key Concept:
Federalism in the U.S. Constitutional System

- Defined: Relationship and distribution of power between the individual states and national government*
- Impact under U.S. Constitution: Each of 50 states possesses substantial independent legal authority, but also is subject to federal government's legal authorities which overlap those of states†
- Concept shapes system in which laws apply to public health practice



•*Source: Black's Law Dictionary. Abridged 6th ed. St. Paul (MN): West Publishing Co; 1991.

•†Source: Sager S. The sources and limits of legal authority. Pp 27-56. In: Fundamentals of American Law. Eds: Morrison AB. Oxford Univ. Press, New York, 1997.

Key Concept: *Police Powers*

- Defined: Powers exercised by the states to enact legislation and promulgate regulations to protect the public health, welfare, and morals, and to promote the common good.
- Examples:
 - Investigations of infectious disease outbreaks
 - Childhood vaccinations as condition for school entry
 - Ban on distribution of free cigarette samples in areas around schools and other places frequented by minors
 - Involuntary detention of persons with certain communicable diseases
 - Property seizure and destruction to control toxic substance threats



Objective 1.2

Describe sources of law necessary for public health practice.



Basic Sources of U.S. Law

- **Constitutions**
- Treaties
- Statutes
- Regulations
- Common law



Constitutions

- U.S. Constitution is the source of all legal authority for the federal government
- Both state and federal constitutions are sources of legal authority for the states
- State constitutions differ in significant ways, producing different styles of government in the states



The U.S. Constitution

- “Supreme law of the land” (drafted 1787)
- Establishes 3 branches of federal government and separation of powers
 - Legislative
 - Executive
 - Judicial
- Confers limited set of enumerated federal powers



•Instructor: this slide permits you to underscore the concept of the doctrine of enumerated powers for the federal government; this slide is set up in tandem to subsequent slides, including that on the Tenth Amendment.

U.S. Constitution and Federal Branches: Roles in Lawmaking

Branch	Entity	Role	Type(s) of law
Legislative	Congress	Enacts law	Statutes
Executive	-President -Agencies	Enforces law and regulates	-Executive orders -Treaties -Regulations
Judicial	Court system -Supreme -Appellate -District -Special	Interprets law in resolving disputes	Common law (includes case law)



The U.S. Constitution and Public Health

- Term *public health* not mentioned
- Enables some federal public health-related activities (Art. I, Sec. 8)
 - Interstate commerce
 - Taxation and spending
- Primary responsibility for public health left to states (10th Amendment)



U.S. Constitution and States' Powers: The Tenth Amendment

The Tenth Amendment framed the powers of the states:

“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.”

Impact: States retain police powers and other powers not expressly enumerated to U.S. federal government.



- Instructor: this slide emphasizes the point that nowhere within the Constitution, as the Supreme Law of the Land, is the term “public health” mentioned in relation to enumerated powers. However, some sections of the Constitution do enable federal public health-related activities, including, for example, provisions within Article I, Section 8, which address Congress’ powers to tax and spend, and to provide for the general Welfare.

State and Local Government Branches: Roles in Lawmaking

- While the U.S. Constitution is the supreme law, each state's own constitution provides for establishment of state and local government branches and powers
- State governments' branches and lawmaking roles generally are similar to federal government's
 - Legislature → enacts statutes
 - Governor and state agencies → enforce laws and promulgate regulations
 - Courts (supreme, appellate, trial) → interpret laws
- Under state constitutions and laws, local governments' branches and lawmaking roles vary



U.S. Constitutional Design: Implications for Public Health

- Most public health activities carried out by state and local governments
- Federal government functions in public health carried out through regulatory (e.g., FDA) and non-regulatory (e.g., CDC) agencies
- Federal government shapes state / local public health through funding and defunding



Basic Sources of U.S. Law

- Constitutions
- Treaties
- **Statutes**
- Regulations
- Common law



Statutes

- Statutes are enacted by Congress and state legislatures
- Statutes give power to executive branch agencies, such as health departments



Under U.S. Constitution Congress Enacts Statutes Providing for Federal Roles in Public Health

- **Creation of federal public health infrastructure**
 - Systems: U.S. Public Health Service (USPHS) and explicated authorities / powers (e.g., quarantine)
 - Laws: Governing management / safekeeping of information
- **Establishment of federal public health agencies, programs, and services**
 - Explicit regulatory authorities and functions (e.g., FDA, OSHA) and non-regulatory agencies (e.g., CDC, NIH)
 - Other federal agencies with major public health-related powers (e.g., EPA, NHTSA)
- **Appropriation of funds for federal agencies' public health work or to aid states' public health work**



Example of Federal Statute:
Public Health Service Act (PHSA) Sec. 311*
(Covers: Federal-State Cooperation)

(a) The Secretary is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this Act which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of public health.



•*also: 42 U.S.C. 243

Example of State Statute: Official Code of Georgia 31-2-1

The Department of Human Resources is created and established to safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease, disorders, and disabilities and to provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease, disorders, and disabilities;



Basic Sources of U.S. Law

- Constitutions
- Treaties
- Statutes
- **Regulations**
- Common law



Administrative Regulations

- Legislatures can give agencies the power to make regulations that have the same force as statutes
- Regulations allow agencies to respond to new challenges because they can be promulgated and amended more quickly than statutes, and can address highly technical aspects of issues
- Federal and state laws require agencies to allow the public to participate in rule making



“Administrative Law” and Regulations

- Defined: Law created by administrative agencies through rules, regulations, orders, and procedures designed to further legislatively enacted policy goals*
- Govern spectrum of public health actions, such as:
 - Designation of notifiable diseases
 - Development of sanitation codes
 - Enforcement of environmental measures



•*source: Black’s Law Dictionary. Abridged 6th ed. St. Paul (MN): West Publishing Co; 1991.

•Instructor: Reminder that PHL101 Course includes an entire separate unit dedicated to Administrative law and, as such, this slide does not cover essential concepts that are otherwise developed in Unit ____ (e.g., due process, enforcement and punishment).

•Instructor: Following this slide are two optional sets of slides demonstrating the linkage between a statute and regulation, one for the federal level and one for the state level.

Example of a Regulatory Delegation: Public Health Service Act (PHSA) Sec. 361

The Surgeon General, with the approval of the Administrator [Secretary], is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.



*also 42 U.S.C. 264

Example of a Federal Regulation: 42 C.F.R. § 70.2 (Aug 16, 2000)

Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.



Example of State Statute Authorizing Regulation: Official Code of Georgia 31-12-2

(a) The department is empowered to declare certain diseases, injuries, and conditions to be diseases requiring notice and to require the reporting thereof to the county board of health and the department in a manner and at such times as may be prescribed. The department shall require that such data be supplied as are deemed necessary and appropriate for the prevention of certain diseases, injuries, and conditions as are determined by the department. All such reports and data shall be deemed confidential and shall not be open to inspection by the public; provided, however, the department may release such reports and data in statistical form or for valid research purposes.



Example of State Regulation: Georgia 290-5-3.02 Provisions. Amended.

(1) It shall be the duty of every licensed physician to report all cases of notifiable diseases or conditions declared to be notifiable to the board of health in the county where the report originates or to the Department. Such reports shall also be made by the chief administrative officer, or a designee thereof (hereinafter referred to as reporters), of each hospital, nursing home, clinic, health maintenance organization, university health service, primary health care center, or institution such as a school, day care center, mental health hospital, and detention facility. These reports may be made by telephone, by letter, or by completing and mailing forms provided by the Department.



Administrative Adjudications

- Decisions agencies make in individual cases are called “adjudications”:
 - Board of Medical Examiners' hearing on license revocation
 - Review of a zoning permit application
- These decisions are not precedential, but the agency must explain if it changes its position in later cases
 - For example: Knowing how inspectors enforce the health code is important to restaurants, even though it does not prevent the agency from changing the procedure
- Decisions cannot be arbitrary



Basic Sources of U.S. Law

- Constitutions
- Treaties
- Statutes
- Regulations
- **Common law**



The Courts: Organization and Roles

- There are three levels of state and federal courts
 - District courts → conduct trials
 - Appeals courts → review decisions of trial courts
 - Supreme court → reviews appeals courts to assure that lower courts' decisions are consistent
- The state and federal courts determine the guilt of accused criminals, resolve private law disputes between individuals, and review actions of agencies enforcing civil laws such as public health laws

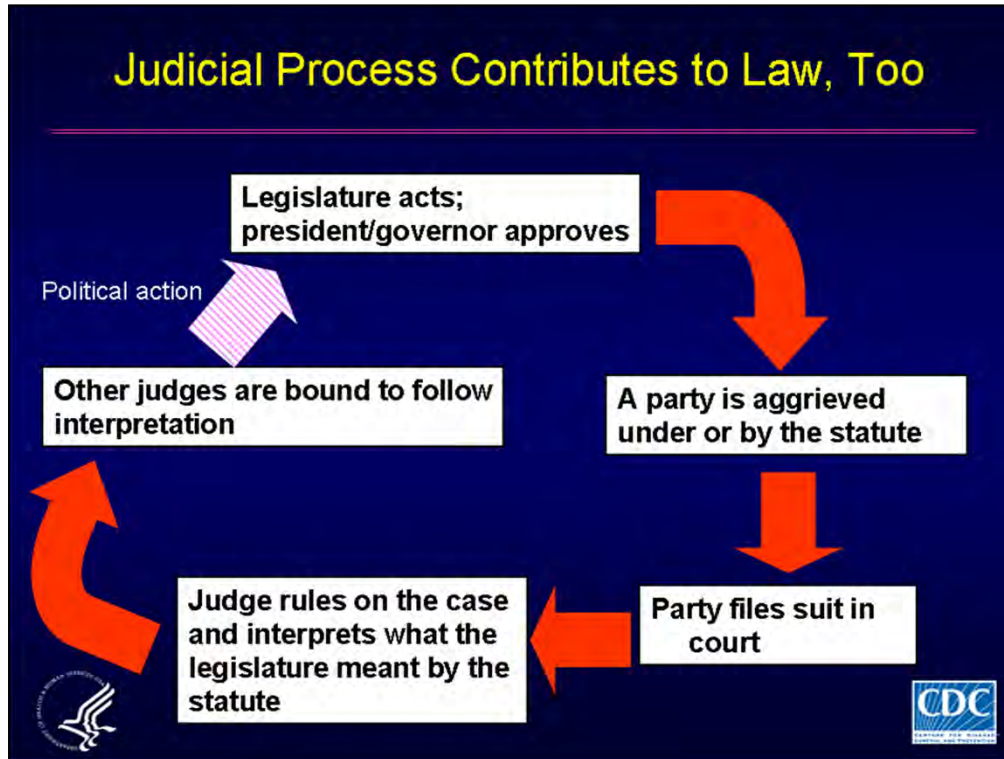


The Courts: Judicial Review

- Courts make law in the process of ruling on disputes between aggrieved parties
- In general, lower courts must follow decisions of higher courts
- State courts review the state's laws to determine if they violate the state or federal constitutions
- Federal courts review the constitutionality of state and federal laws
- U.S. Supreme Court decisions bind all state and federal courts



Judicial Process Contributes to Law, Too



- Note this is just one way judges can make laws, laws that have the same force as a law made by the legislature
- Judges are empowered to decide disputes
 - In doing so, they interpret constitutions and laws made by legislatures
 - Their interpretations are often the “last word,” unless the legislature acts again

Common Law Precedents

- The federal courts and the courts of all states (except Louisiana) use common law precedent
 - Precedent means that the judgments of appeals courts bind the lower courts under that appeals court
 - Appellate decisions are published as a guide to this judge-made law
- The United States Supreme Court binds all state and federal courts
- The state supreme court binds the courts in that state



Landmark court case:

**JACOBSON v.
MASSACHUSETTS**

SUPREME COURT
OF THE UNITED STATES

197 U.S. 11 (1905)

Decided: Feb. 20, 1905



Justice Harlan



Jacobson v. Massachusetts: Facts and Findings

- Setting: 1902 smallpox outbreak in Massachusetts
- Law: State statute compelling vaccination of residents not recently vaccinated
- Defendant: Henning Jacobson, on March 15, 1902, refused vaccination ordered by Cambridge Board of Health and fined \$5
- U.S. Supreme Court (February 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.



Jacobson v. Massachusetts: Key Holdings and Implications

- Beginning of application of modern constitutional analysis to disease control law
- Articulated key holdings for states:
 - Use of police powers for public health concerns
 - Delegation of certain authorities to health agencies and other government subdivisions
 - Use of actions limiting individual liberty for well-established public health interventions
- Provides constitutional support for spectrum of contemporary public health laws



Objective 1.3

Recognize the Constitutional balance between the rights of individuals and the needs of the community with respect to public health.



Example of Constitutional Balance: 21st Century Concept of Quarantine

A collective action for the common good predicated on aiding individuals infected or exposed to infectious agents while protecting others from the dangers of inadvertent exposure.

Public good  **Individual liberties**



Constitutional Safeguards

- U.S. Constitution
 - “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it” (Art. I, §9)



U.S. Constitutional Safeguards: Bill of Rights

- Bill of Rights (First 10 Amendments): ratified in 1791
- The source of individual liberties such as freedom of speech and religion, the right to assemble, and the right to be free of unreasonable searches and seizures
- Originally applied only to the federal government, not the states: The 14th Amendment (ratified after the Civil War) applied most of the Bill of Rights to the states



Constitutional Safeguards Relevant to Public Health

- **1st Amendment**
 - Free Speech and Assembly
 - Freedom of Religion
- **4th Amendment**
 - Unreasonable Search and Seizure
- **5th Amendment**
 - Due Process (federal)
 - Equal Protection
 - Criminal Procedure
 - Property Rights - Takings
- **14th Amendment**
 - Applies the Bill of Rights to the States
 - Requires Due Process
 - Expands Equal Protection



Constitutional Rights in States

- Until the 14th Amendment, most U.S. Constitutional protections did not apply to state laws
- Now state laws must meet U.S. Constitutional protections
- Many state constitutions provide more protection for individual liberties than does the U.S. Constitution
- Many state constitutions limit agency powers more than does the U.S. Constitution



The 4th Amendment: Unreasonable Search and Seizure

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”



4th Amendment: Relation to Public Health Administrative Searches

- 4th Amendment prohibitions against unreasonable searches and seizures:
 - Establishes overarching protection covering privacy expectations in homes, workplaces, and businesses
 - Searches presumptively unreasonable if conducted without a warrant
- Searches reasonable if performed pursuant to warrant or judicial exception to warrant requirement
- Exceptions to warrant requirement may be:
 - Persons with authority to *consent* to search
 - *Exigent circumstances* compel immediate action by government
 - Search of business or workplace that is part of *pervasively regulated industry*



14th Amendment Due Process Clause

“... nor shall any State deprive any person of life, liberty, or property without due process of law ...”



14th Amendment: Significance of Due Process Clause*

- Many government actions can affect an individual's life, liberty (self determination), or property (economic interests)
- 14th Amendment: Government cannot deprive individuals of life, liberty, or property without *due process* of law
- Due process: Involves fairness and reasonableness of such actions by government



•*Adapted from Public Health Law Program, Public Health Institute.

Due Process: 2 Types

- Substantive: Appropriateness of government's justification for depriving someone of life, liberty, or property
- Procedural: Fairness of procedures government uses before depriving someone of life, liberty, or property



•Adapted from Public Health Law Program, Public Health Institute.

Procedural Due Process

- Issue: Did government use fair process before depriving someone of life, liberty, or property?
- Basic requirements:
 - Notice → the need to inform involved parties
 - Means to object → ability to oppose government action in formal hearing
- Possible additional requirements:
 - Access to legal counsel
 - Confrontation of witnesses
 - Option to appeal



Comparison of Constitutional Safeguards: Criminal Law vs. Civil Law and Public Health

- Searches
 - Criminal law: Must have a warrant based on probable cause for criminal evidence
 - Civil law (public health): No probable cause required, but search must be legislatively reasonable
- Right to counsel
 - Criminal law: Right to appointed counsel
 - Civil law (public health): No right to appointed counsel
- Standard of proof
 - Criminal law: Beyond a reasonable doubt
 - Civil law (public health): Preponderance of the evidence



Discussion Points: Why do Constitutional rights differ for criminal justice and public health?

- Why should health departments be able to enter your house without a warrant from a judge?
- Why should health departments be able to isolate or quarantine you without a trial?
- Some law enforcement officials want health inspectors to report drugs they find:
 - What issues could this raise?
 - How might this undermine the special Constitutional status of public health enforcement?



Discussion Points: Are these laws Constitutional?

- A sanitation law that only applies to Vietnamese-owned restaurants?
- An HIV testing program directed at a specific racial-ethnic community where HIV is increasing fastest?
- A rat control law that allows inspectors to enter homes on a regular basis to look for rats?
- A law that requires rat inspectors to call the police if they find methamphetamine-making supplies in a home?



Conclusion:
Unit 1



Summary: Unit 1

- Federalism frames the public health relationship between the federal and state governments.
- Sources of U.S. law for public health practice include constitutions, legislatures, regulatory agencies, and courts.
- Due process and other Constitutional safeguards balance a community's public health needs with individuals' interests.



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Historical Perspective

Everyone condemns unnecessary legislation and equally abhors ill considered and badly framed laws, but the relations of human beings are becoming more complex every day. . . . There is no doubt, too, that those who "on general principles" condemn "meddling legislation," when it comes to specific problems affecting themselves, are in favor of rat proofing plague infected cities, of stamping out virulent smallpox by drastic measures, of compelling one city to cease discharging its sewage into its neighbor's drinking water and of dealing summarily with him who peddles tuberculosis with his milk.

Charles V. Chapin, 1925



- Source: Tobey JA. Public Health Law. Third Edition. The Commonwealth Fund. New York, 1947.
- Charles V. Chapin, MD, served as Health Officer for the city of Providence, Rhode Island, from 1884 to 1932, and President of the American Public Health Association in 1927.

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