

Law and the Public's Health

One of the great advances in health policy in recent years, spurred on by the Affordable Care Act, is the concept of cross-sector collaboration that brings together health care, social services, and public health. The law can advance or inhibit such collaboration efforts, and the fundamental importance of using law to expand these types of efforts is the subject of this installment of *Law and the Public's Health*.

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LAW, THE HEALTH IN ALL POLICIES APPROACH, AND CROSS-SECTOR COLLABORATION

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This installment of *Law and the Public's Health* examines the role of law in fostering collaborations to achieve a health in all policies (HiAP) approach to the development of social policy. This advance has developed as recognition has grown that health care alone cannot sufficiently affect the social determinants of health.

Following a discussion of HiAP, this article describes how legal processes directly or indirectly advance HiAP by requiring or authorizing collaboration as well as building the processes and institutions that foster, carry out, and fund collaborative relationships. The article also discusses situations in which legal mechanisms may not be appropriate and considers the opportunities and challenges for jurisdictions seeking a law-based approach to HiAP.

BACKGROUND

The quantity of research documenting the impact of the social determinants of health^{1,2} (i.e., the conditions in which people live, learn, work, and play³) on population health is staggering.⁴⁻⁶ To address the social determinants, policy makers and practitioners can select among various interventions, many of which involve law.⁷ Addressing the social determinants remains a challenge, partly because it requires operating outside the traditional health sector to influence the root causes of inequity.^{8,9}

The U.S. Centers for Disease Control and Prevention, Institute of Medicine (IOM), European Union, and World Health Organization all recognize the potential of HiAP to address the social determinants of health, and through them, upstream contributions

to morbidity and mortality.¹⁰⁻¹³ Sometimes called “healthy public policy”¹⁴ or described as a component of “horizontal government,” “joint-up government,” or “whole-of-government,”¹⁵ HiAP is an approach that integrates health considerations into non-health sectors; it recognizes that “corporate boardrooms, legislatures, and executive branches” make choices that profoundly affect health.¹¹ Additional research is critical to determine whether HiAP leads to decisions that are more likely to consider health¹⁶ and, ultimately, improve it.^{17,18} Nonetheless, HiAP is a promising approach consistent with solving complex social problems through the “collective impact” of multiple sectors collaborating around a common agenda.¹⁹ These sectors include transportation, agriculture, housing, employment, planning, business, education, and energy,^{11,20} and in federal, state, and local government, they are often connected to agencies charged with regulating or facilitating their work.

IOM recommends that governments engage in HiAP when considering “major legislation, regulations, and other policies that could potentially have a major impact on public health.”¹¹ But how do governments implement HiAP?

Consistent with law's contributions to improving the public's health,²¹⁻²⁴ law can be “an important tool for institutionalizing an infrastructure for HiAP and for requiring agencies to ensure that the policies they pursue serve . . . health.”¹¹ Governments use law to integrate health into other sectors.²⁵⁻²⁸ They also use legal mechanisms to further cross-sector collaboration around health, which is a critical component of HiAP.¹⁷ Law can support cross-sector collaboration around health in multiple and often overlapping ways. Law can require collaboration, authorize collaboration, establish institutions for collaboration, prescribe collaborative processes, assign responsibility, prioritize a public health issue, coordinate government efforts, provide for funding, and foster informal relationships. Deciding whether or not to rely on law to encourage

collaboration requires an understanding of what law can do and related considerations.

LEGAL MECHANISMS THAT FACILITATE CROSS-SECTOR COLLABORATION

Requiring collaboration

Law can create legally binding duties for departments to collaborate around health. For example, using an executive order, former California Governor Arnold Schwarzenegger created the California HiAP Task Force and required all executive agencies under his control to cooperate with the Task Force and the state's public health department.²⁹ This order requires state agencies charged with handling state business, transportation, housing, environment, health and human services, labor, natural resources, and corrections issues³⁰ to work toward improving health.²⁹ At the local level, a Knox County, Tennessee, ordinance explicitly requires the local health department "to cooperate with, aid, consult with, advise, and be responsible for coordinating with any other [county] department . . . where issues and occurrences affect public health."³¹ Such legally binding mandates may help persuade non-health agencies to collaborate around health.

Authorizing collaboration

Even when law does not require cross-sector collaboration around health, it may permit it. This permission may be direct and explicit. For example, Nebraska's state statute authorizes its local boards of health to advise and inform local government authorities on "all matters pertaining to sanitation and public health,"³² while Vermont's state statute authorizes its state health commissioner—at the motor vehicle department's request—to advise "on health aspects" of motor vehicle licensing.³³

Law may also authorize collaboration around health implicitly, through broad grants of public health authority. The Baltimore City Charter broadly authorizes its health commissioner to establish and implement "policies for treating and preventing physical and mental illness,"^{34,35} Idaho's statute authorizes its district boards of health to "do all things required" to preserve and protect the public health,³⁶ and Connecticut code authorizes the state health commissioner to "employ the most efficient and practical means" to prevent and suppress disease.³⁷ These laws authorize public health agencies to collaborate with other departments around health, especially when supported by court decisions interpreting authority broadly.^{38,39}

Establishing institutions for collaboration

Law can organize and implement collaboration by formalizing relationships through task forces, boards, commissions, or other institutions. Ohio statute creates the Ex-Offender Reentry Coalition, comprising various state-level departments collaborating to reduce recidivism by addressing "collateral consequences" of criminal convictions, including limited access to housing, employment, and education. This Coalition provides an organizing structure for the department of rehabilitation and corrections to collaborate with other state agencies, including the departments of health, substance abuse, employment, education, public safety, and commerce. The Coalition must report its findings, activities, and recommendations to the legislature⁴⁰ and has designated departments responsible for specific goals, objectives, and tasks.⁴¹

Prescribing a collaborative process

Governments can go beyond generally requiring or authorizing collaboration to prescribe specific collaborative processes. When New York City enacted legislation forming a multidisciplinary Child Fatality Review Team to study and prevent child deaths, it established that the Team must accomplish its mission through at least quarterly meetings and annual recommendations to city leadership.⁴² The 2007 report recommended promoting access to parks, safe routes to schools, traffic safety, interagency data sharing, and speed enforcement.⁴³ The Team's work was extended beyond its planned expiration.⁴⁴

Assigning responsibility

In Minnesota, Governor Mark Dayton issued an executive order to reduce the negative impacts of state operations on the environment. This order requires state agencies to decrease their generation of waste and air pollution and use of water, energy, gasoline, and toxic products. It also requires agencies to use "environmentally preferable products and services." To meet this challenge, the order creates several cross-sector teams, each tasked with responsibilities. One team can make necessary adjustments to the state's sustainability model plan. Others must decrease fuel use by state-owned vehicles, manage state-owned property sustainably, and incorporate sustainability practices into state procurement. Each agency also must create an annual sustainability plan and report progress. The Pollution Control Agency must assist other agencies to meet sustainability requirements and may alter targets or timelines.⁴⁵

Prioritizing a public health issue

Law can elevate a particular public health issue and focus the efforts of different agencies on that issue. After mass shootings, New Jersey Governor Chris Christie created the SAFE Task Force on Gun Protection, Addiction, Mental Health and Families, and Education Safety to study and address “the root causes of mass violence” by executive order. The order prioritizes prevention of mass violence across the administration by authorizing the Task Force to request assistance, information, or personnel from any state agency. It also recognizes the complexity of mass violence, linking it to mental health and substance abuse.⁴⁶ After the Task Force recommended a “standing interagency working group” on mass violence, Governor Christie created by order the Mental Health and Community Safety Working Group, which includes the attorney general and state health, education, human services, child and family services, and corrections departments. All other state agencies must cooperate with the Working Group as it advises the governor, creates a public information campaign, expands a school law-enforcement program, and increases workforce capacity.⁴⁷ Together, these executive orders formalize agencies’ attention to the issue of mass violence.

Coordinating government efforts

For a complex problem such as homelessness, requiring attention from several agencies, law can encourage agencies to work in concert and in consistent and complementary ways. The Texas Interagency Council on the Homeless, created by statute, provides an example. The Council, which advises the state’s housing department on policy,⁴⁸ includes representatives from Texas health, human services, mental health, criminal justice, education, aging, substance abuse, and veterans affairs agencies. By requiring each participating agency to assign a representative responsible for homelessness with authority to bind the agency to the Council,⁴⁹ use standard data, and contribute resources,⁵⁰ the statute promotes consistent and complementary work. It also encourages working in concert by requiring the Council to survey available resources, provide and coordinate state services, improve information flow, establish a resource and information center, and develop monitoring guidelines.⁵¹

Providing for funding

Collaboration or executing collaborative recommendations may require funding. Law can create public finance infrastructure and provide and incentivize funding through appropriations, grants, or social impact bonds.⁵² For example, the statute establishing

the District of Columbia Mayor’s Council on Physical Fitness, Health, and Nutrition, which convenes the health, education, and parks and recreation departments to advise the mayor and develop obesity-related objectives, creates a separate fitness fund in the District’s treasury to support the Council’s activities. The statute authorizes depositing appropriations, gifts, donations, and other money into this fund; prohibits transfers to the general revenue fund; and limits payment of administrative costs from the fund.⁵³ Legal mechanisms can also serve to fund collaboration. After Texas Governor Rick Perry issued an executive order creating the Governor’s Advisory Council on Physical Fitness, consisting of Perry’s appointees and non-voting representatives from several state departments,⁵⁴ the city of Austin received a grant from the Council to fund its local physical fitness efforts.⁵⁵ The Texas legislature earmarked \$800,000 in its 2010–2011 operating budget bill for the Council to provide grants to other mayors’ councils.⁵⁶

Fostering informal relationships

Laws formalizing collaboration around any issue can improve relationships and create opportunities for future collaboration around health. Philadelphia Mayor Michael Nutter issued an executive order creating an Economic Opportunity Cabinet to increase the city’s contracting with women- and minority-owned businesses. Cabinet members consist of top city leadership, including the mayor, solicitor, directors of finance and procurement, and the deputy mayors for planning and economic development, transportation and utilities, public safety, and health and opportunity. The order requires the Cabinet to meet at least quarterly,⁵⁷ although regular meetings have been a challenge.⁵⁸ The Cabinet’s meetings and work provide officials with another opportunity to reinforce relationships.

IMPLICATIONS FOR PUBLIC HEALTH POLICY AND PRACTICE

Governments considering cross-sector collaboration around health should appreciate the challenges and opportunities associated with law-based strategies. Legal provisions are not substitutes for organic, sustained relationships built on mutual trust and demonstrated commitment and cannot guarantee genuine collaboration. Legal mandates may over-prescribe processes at the expense of flexibility, and agencies can comply with technical legal mandates (e.g., partnering on reports) without engaging in good-faith collaboration. In addition, legal requirements to collaborate may be difficult to enforce, while laws authorizing collaboration

nonetheless reserve the ultimate decisions for agency leadership.

When law requires cross-sector collaboration, however, it signals that government agencies must work together regardless of budgets, politics, and competing priorities. When legal mechanisms institutionalize collaborative goals, methods, and entities, they can create legally binding duties. Government agencies, advocates, and the public can invoke such laws to urge collaboration. Even if legal requirements to collaborate memorialize existing norms,⁵⁹ they can further imbed collaborative norms and decision-making. In addition, laws that authorize collaboration assure agencies and advocates that collaboration is permitted and provide agencies discretion to decide when and how to collaborate.

Fostering cross-sector collaboration through law necessitates understanding the characteristics of different legal tools. For example, legislative requirements to work together demonstrate that democratically elected legislators—and through them the public—expect collaboration. Legislative requirements also persist when agency heads, elected executives, and personnel change, even if priorities shift. However, because legislation may be difficult to enact, modify, or repeal, the legislative process may not be sufficiently dynamic to adapt to changing circumstances.

An executive order mandating cross-sector collaboration, on the other hand, expresses a commitment from the top executive official, who is empowered to make decisions about the administration's priorities and through the political process is ultimately accountable for agency actions. An executive order is more flexible than legislation because it may be easier to promulgate, alter, and revoke. Like agency regulations, an executive order must be consistent with its scope of authority. Both legislation and executive orders also may contain sunset provisions, causing collaboration-enhancing laws to expire even if they appear beneficial. Determining whether and how to use law to encourage cross-sector collaboration requires appreciating these considerations.

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