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Historical, Legal, and Ethical Perspectives on Public Health Policy

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Overview

- Public health orientation
- Public health law
- History of public health regulation
- Ethical issues in public health
Section A

Population Basis of Public Health
Populations/Individuals

- Orientation of public health is to the health of populations
- Orientation of medical care is to the health of individuals
Domain of Public Health

- What is the domain of public health?
- What are public health issues?
“Public health is oriented toward the analysis of the determinants of health and disease on the population basis, while medicine is oriented toward individual patients.”

— Elizabeth Fee
“Public health services are those shared by all members of the community, organized and supported by, and for the benefit of, the people as a whole.”
— Larry Gostin
Population Based Perspective

- “Public health is what we, as a society, do collectively to assure the conditions for people to be healthy.”
  — IOM
Blurry Lines between Public Health and Medical Care for Certain Issues

- Health insurance coverage
- Health care spending
- Health care policy
One of the Criterion in the Eight Step Model Is Often Legality

- Is the proposed change legal?
- What is the legal basis for public health?
Tradeoffs in Public Health Law

- Improved health vs. autonomy, privacy, and other individual rights
  - Which takes priority?
Stem Cell Research

- Role of scientific investigation vs. sanctity of life
  - Which has priority?
  - What is the basis for your opinion?
Section B

Public Health Law
“Public health law is the study of the legal powers and duties of the state to assure the conditions for people to be healthy (e.g., to identify, prevent, and ameliorate risks to health in the population) 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.”

— Gostin, “A Theory and Definition of Public Health Law,” p. 4
Five Components of Public Health Law

1. Role of government
2. Power to assure compliance
3. Public concerns
4. Direct service provision
5. Relationship between government and public
Role of Government in Public Health

- What is legal basis for public health in federal law
- “We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, **promote the general welfare**, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution....”
  - Preamble to the Constitution
Promote the General Welfare

- How much authority can be drawn from those four words?
- Who should interpret the general welfare?
- When do other provisions in the Constitution take precedence?
Government Public Health Regulation—Historical Perspective

- 1700-2006—gradual increase in government’s role in public health
- Continual debate over when the public welfare is more important than individual rights
- Continual debate over improved health or individual freedoms
  - Improved health gradually winning
Government Public Health Regulation—1700s and 1800s

- Travel at sea
- Quarantines
- Inoculations
- Food inspections
- Garbage control
Additional Roles—1900s

- Sanitary movement
  - Response to epidemics
- Surveys of health conditions
- Regulation of food, sewage, water, etc.
Additional Roles—Early 20th Century

- State boards of health
- Bacteriology
- Disease reporting
- Food and drug administration
Additional Roles—Late 20th Century

- Greater regulation of private sector
- National Institutes of Health established
- Air and water quality standards (EPA)
- Limited tobacco advertising
- Communicable disease reporting
- Pesticide production
- Consumer product safety
- Occupational health and safety
Government Health Regulation in the 21st Century

- What additional public health roles will be needed?
- What about the IOM report?
- Which of these items are highest priority?
Section C

Legal Issues in Public Health
What Are the Legal Issues in Public Health?

- When should government act to promote community health?
- When should government protect individual freedoms?
Are these the Core Functions of Public Health?

- Prevent epidemics
- Protect against environmental hazards
- Promote healthy behaviors
- Respond to disasters
- Assure quality of health services
Are these the Essential Functions of Public Health?

- Monitor community health status
- Investigate health problems
- Educate the public about health
- Enforce health and safety protections
- Fund research
- Assure competent workforce
Tradeoffs

- When is it acceptable to compromise on the core functions and essential roles of public health?
Laws and regulations can be influenced by ethical concerns
Ethical concerns can influence policy debates
Moral Constraints versus Public Policy

- How do moral constraints differ from the criteria used to evaluate public policies?
The term used to describe various ways of examining the moral life
The systematic study of morality
  — Beauchamp and Childress (2001)
Morality

Morality is the term used to describe those set of beliefs concerning right and wrong human conduct which are so widely shared as to form a stable consensus

- Common morality—norms that bind all persons in all places
- Community-specific moralities—norms which are binding upon members of particular religions, cultures, or professions
  - Beauchamp and Childress (2001)
Moral Goals of Public Health

- Producing benefits
- Avoiding/minimizing harms
- Maximizing benefits over harms
General Moral Considerations

- We consider two general types of moral considerations in public health
  - Those that relate directly to the goals of public health
  - More general considerations which serve as constraints on what we can do to achieve the goals of public health
    - Childress, et al. (2002)
Resource Allocation

- Policy is about resource allocation
- Opportunity costs
  - Alternative ways to allocate resources
Principles of Distributive Justice

- **Strict Egalitarianism**
  - Every person should have exactly the same level of material goods or services

- **Utilitarianism**
  - Resources distributed in a way that maximizes the welfare of all the people

- **Dessert-Based Principle**
  - Resources distributed to those people who deserve certain benefits or rights in light of their actions (contribution, effort, or need for compensation)

- **Difference Principle**
  - Resources to be distributed in a way that the least-advantaged people receive the maximum possible gain
Question

- What should be the principle for allocating public health services?
Individual Rights vs. Collective Good

- Smoking
- Drinking
- Toxic waste
- Ergonomics
- Seat belts
- Gun ownership
Moral Dilemmas

- Moral Dilemmas exists when . . .
  - There are good moral arguments which dictate that one do action “X” AND there are good moral arguments which dictate that one NOT do action “X” BUT arguments on either side do not clearly outweigh the others
  - There are good moral arguments which require that one do action “X” AND good moral arguments which require that one do action “Y” BUT circumstances are such that you cannot do both AND the arguments for one do not clearly outweigh the arguments for the other
    - Beauchamp and Childress (2001)
Moral Dilemmas versus Policy Debates

- What are the similarities?
- What are the differences?
A General Strategy for Public Health Ethics Analysis

- Identify the ethical problem
- Assess the available facts relevant to the problem
- Identify stakeholders
- Identify the values at stake
- Identify the available options
- Consider the process and values pertaining to process
Section D

Application: Medicare Modernization Act of 2003
Example of Political/Legal Issue

- Medicare Modernization Act of 2003
  - Also known as the Prescription Drug Bill
  - Designed to give health and prescription drug benefits to Medicare recipients in 2006
Medicare Modernization Act of 2003: Background

- Medicare passed in 1965 without prescription drug coverage
- Private sector and Medicaid have drug coverage
- Strong push by elderly for drug coverage
Situation in 2003

- Medicare going broke
- Republicans believe fundamental reform is necessary
- Limited ($400 billion over 10 years) amount of money is available
Legislation Passes

- Minor reforms to Medicare program
- Substantial payments to hospitals, managed care plans, and rural providers
- Prescription drug coverage with significant gaps in coverage and no controls over pharmaceutical spending
1. Define the Problem—Political Debate

- Republicans need to defend legislation
- Democrats need to criticize legislation
Define the Problem—Policy

- High drug prices needed to support pharmaceutical research and development
- Drug benefits insufficient
2. Assemble Some Evidence

- How much more does the U.S. pay for prescription drugs?
- Do gaps in coverage make a difference?
Relative Prices of Pharmaceuticals

- Relative prices of 30 pharmaceuticals in 4 countries (2003)

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20% US Discount
Medicare Spending on Drugs

- Spending on Medicare prescription drug benefits in 2006

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<th>Total drug spending (billions)</th>
<th>Medicare</th>
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<th>Third-party payers</th>
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<td>B. Alternative benefit</td>
<td>73.6</td>
<td>44.5</td>
<td>19.1</td>
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Reduction in out-of-pocket costs under current and alternative Medicare drug benefits, by number of chronic conditions

Current Legislation
Alternative Benefit

Mean reduction in o-o-p spending

Number of chronic conditions

Current and Alternative Out-of-Pocket Medicare Costs
3. Construct the Alternatives

- Do nothing
- Price controls
- Discount cards
- Reimportation
4. Select the Criterion

- Political contributions
  - AARP
  - Pharma
- Votes of seniors
- Access to existing pharmaceuticals
- New drug development
### 5. Project the Outcomes

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<td>– –</td>
<td>0</td>
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</table>
6. Confront the Trade-offs

- Which constituency is more important—AARP or Pharma?
- Which concern (access or research and development) is most important?
7. Decide
8. Tell Your Story

- Access to pharmaceuticals for Medicare beneficiaries
- New medicines/new hope