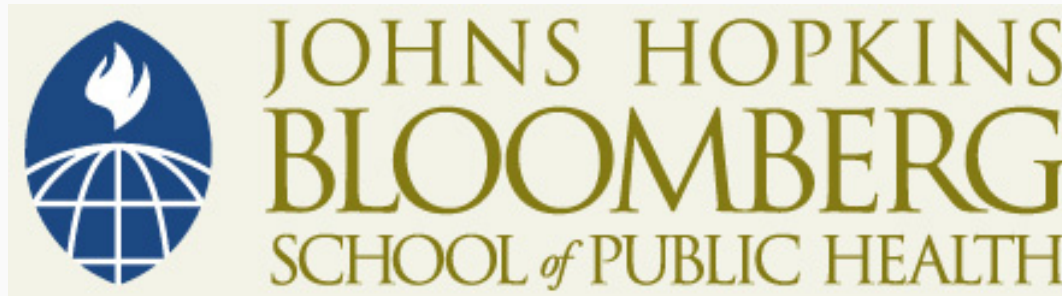


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Historical, Legal, and Ethical Perspectives on Public Health Policy

Gerard F. Anderson, PhD
Johns Hopkins University

Overview

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



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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?

Population Based Perspective

- “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

Population Based Perspective

- “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?

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



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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?



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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

- 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 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

■ **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

■ **Desert-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 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



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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

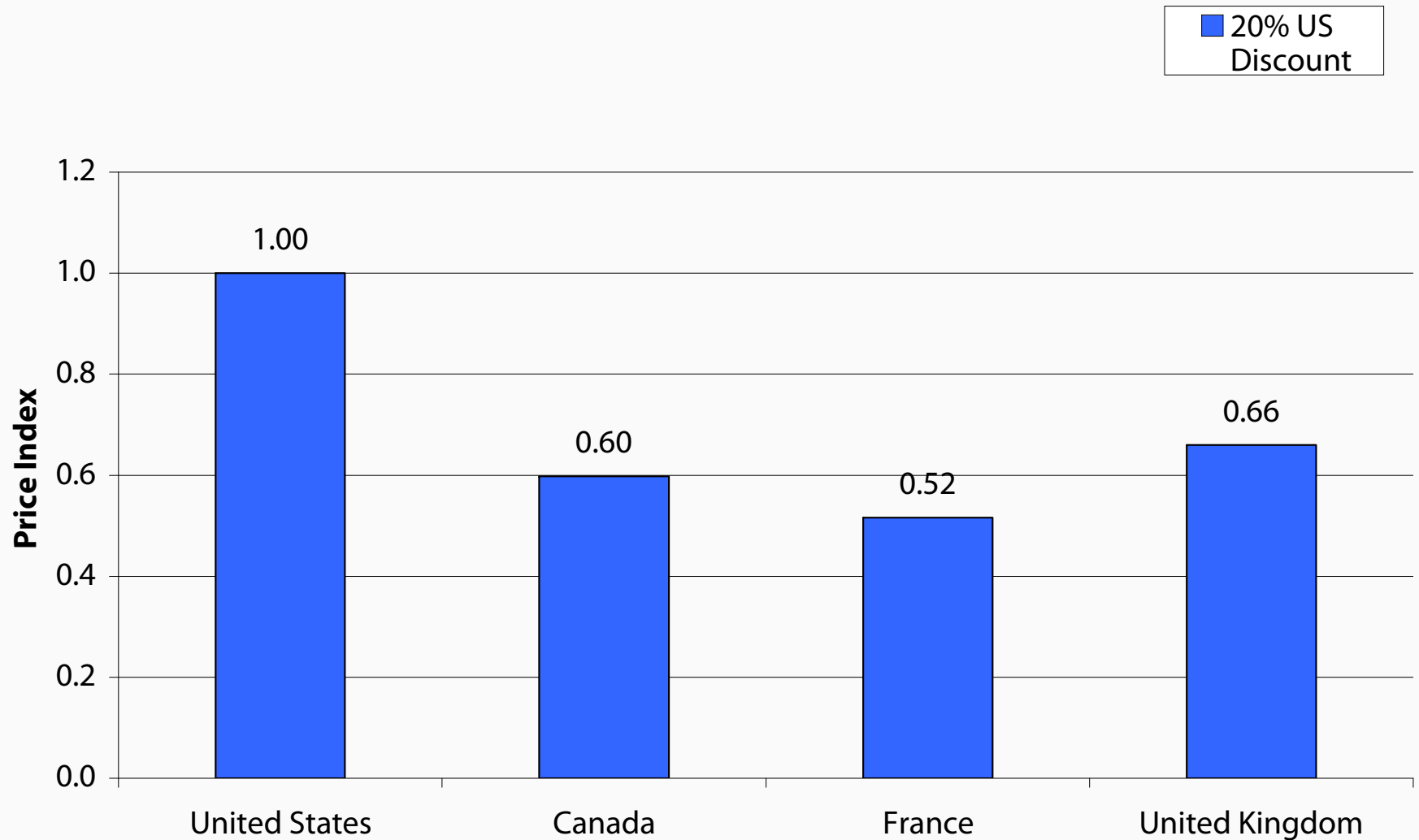
- High drug prices needed to support pharmaceutical research and development
- Drug benefits insufficient

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)

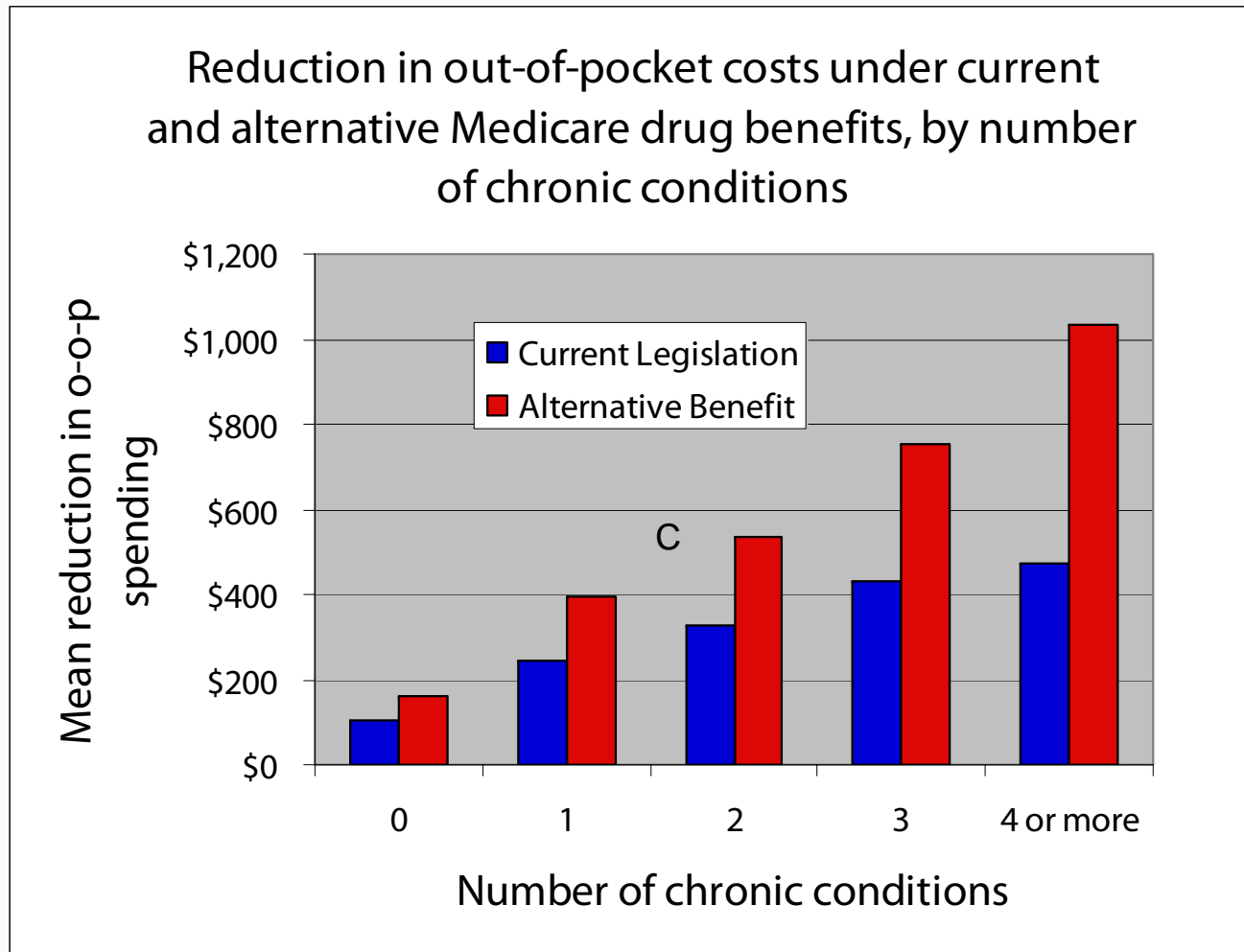


Medicare Spending on Drugs

- Spending on Medicare prescription drug benefits in 2006

	Total drug spending (billions)	Medicare	Out-of-pocket	Third-party payers
A. Current legislation	101.9	44.5	31.0	26.4
B. Alternative benefit	73.6	44.5	19.1	9.9

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

	Do Nothing	Price Controls	Discount Cards	Reimportation
AARP	--	?	+	+
Pharma	++	--	+	-
Votes of seniors	--	?	?	++
Access to pharmaceuticals	0	++	+	+
Drug development	++	--	0	-

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