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Legal Frameworks for Chronic Disease Prevention

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Legal Frameworks for Chronic Disease Prevention

George Mensah, Wendy Collins Perdue, Marcus Plescia, and Donna F. Stroup (Moderator)

Donna F. Stroup

There have been many success stories in the history of the application of public health law to corralling infectious diseases: laws that govern the reporting of communicable diseases, judgments upholding the constitutionality of compulsory immunizations, and the Safe Drinking Water Act. The role of public health law must now take on a new dimension with respect to chronic diseases. Cardiovascular disease and cancer are the leading causes of death in the United States and throughout the world. The conditions causing the most morbidity, cost, and loss of quality of life, include diabetes, mental disorders, and arthritis. Moreover, the underlying risk factors for chronic disease, the combination of tobacco use, lack of exercise, and poor diet taken together account for more than 70 percent of deaths in year 2000. These are not conditions amenable to medical intervention. It takes a combination of skills and requires public health to work with seemingly unusual partners. A hallmark of the Centers for Disease Control's new Futures Initiative involves the creation of new coordinating centers whose very purpose is to increase our effectiveness and accountability in addressing emerging public health problems, in addition to becoming more focused on our constituents and new partners.

George Mensah

The major question to address is whether our prevention and control efforts can be more successful. If we lived in an environment that maintained legal frameworks that made it easier to use law to promote good

health, could it be used to prevent chronic disease? At the turn of the century when infectious disease was the leading cause of death, there were very effective legal tools used to manage these diseases; chronic disease prevention and control efforts can certainly be more successful if the law is utilized to combat the problem. Laws and policies can enhance healthful choices and make them easier choices. They can be used to assist traditional approaches—using law as a tool that helps to build a healthier environment, that promotes increased physical activity, and that makes such things as healthy food choices the easier choices to make. How can law assist in facilitating that goal, that healthful choices become the right choices, or popular choices, or what society comes to think of as the norm?

Legal frameworks can help to achieve our broad goals, much as *Healthy People 2010* helps to achieve broad public health goals. These objectives have been developed to assist in decreasing chronic diseases as major public health threats, using a comprehensive framework to make sure that all avenues are appropriately considered. For example, under a comprehensive structure, law can assist us in monitoring various interventions for their appropriateness and their efficacy. It can also be used to ensure new laws are implemented and enforced. Core program strategy includes system level changes to reach our public health goals of broad public education, increasing behavioral change, decreasing risk factors, achieving a higher quality of life, and decreasing disparities. If we determine and use the appropriate legal frameworks, we can achieve these goals more effectively. Such legal tools are meant to enhance, enable and facilitate conventional approaches; the law serves to complement and support rather than replace the traditional tools

of public health.

Key questions for using law effectively include: What are the existing state and federal laws in this area and do they need to be revised? Does new legislation need to be developed? Can these laws be tracked? Which laws are the most useful to state legislatures? And, what are the barriers to this type of legislation? The Centers for Disease Control's Chronic Disease Center is building capacity in this area and developing a web group for dissemination of information. More collaboration is necessary, but we are developing partnerships at all levels to continue to advocate for law as a public health strategy.

Most of the foundations of this presentation have been published in the *Preventing Chronic Disease Journal* and are available from that website.

Wendy Collins Perdue

Law is a tool that can be used to shape both private and government conduct so as to impact public health. There are at least seven different techniques of legal intervention, each of which has advantages and disadvantages. These techniques are: direct regulation through command and coercion; economic incentives to encourage private parties to behave in a particular way; indirect regulation through private enforcement such as tort law; altering the informational environment; directly providing services or infrastructure to the public; government acting as a "model citizen" with respect to its employees and facilities; and, inducing other levels of government to take appropriate steps.

Direct regulation requires or prohibits certain conduct. Examples include seat belt laws and pollutant regulations. An advantage of this approach is that it directly addresses and impacts the issue. Disadvantages are that it is a coercive tactic and enforcement may be difficult and costly. One can take the approach of using economic incentives or subsidies to encourage the desired conduct or to subsidize activities. Examples include imposing a cigarette or snack food tax, or providing direct subsidies of food and health care to increase healthful choices. This approach encourages the desired condition without directly using coercion. The disadvantage is that it can create economic inequalities and alter preferences in ways that are ineffective or undesirable.

Indirect regulation through private enforcement such as tort or nuisance law can also encourage or discourage certain behaviors. Examples in the health arena include tobacco litigation and medical malpractice actions. Advantages of this approach include a

lower cost to government for enforcement and monitoring. A disadvantage is that in targeting undesirable behavior, this kind of regulation can also unwittingly trigger unintended defensive responses. Furthermore, litigation can be long and complex.

Government can use information to encourage healthy behaviors and discourage unhealthy ones. This approach preserves to a large extent individual autonomy, but can also increase the perception that individuals are to blame for the onset of disease. Government can also directly provide needed health and recreation facilities and services, and thereby respond directly to the specific needs of a community. This approach also allows the government greater responsibility, but may be less efficient than maintaining private providers of service and facilities.

Government employs millions of workers and occupies numerous buildings and facilities. The steps that government takes in its role as employer and facilities manager not only affect its employees and customers, but also provide an important opportunity for government offices to be living laboratories in which to develop best practices for private industries. The disadvantage is that this is specific to a targeted audience rather than the general public.

Finally, one level of government may provide incentives to another level, in the form of funding grants that can be made conditional. For example, federal highway money is conditional upon the state enacting legislation which lowers the legal drinking limit to 0.08. One advantage of this approach is practical—it allows those seeking legal changes throughout the country to focus on one effort at the federal level rather than having to pursue change one state at a time. A drawback is that a federal policy may be less responsive to unique local situations.

The techniques described above are not mutually exclusive. In seeking to encourage healthy behaviors, government may use a combination of these techniques. For example, in order to increase physical activity, government may: impose some direct requirements on building developers concerning sidewalks and pedestrian access; sponsor a public information campaign to encourage physical activity; increase direct government spending on recreation facilities and pedestrian amenities; and, improve walk-ability and fitness opportunities at government buildings.

Marcus Plescia

North Carolina is a politically moderate state with eighty-six local health departments (LHD) and a strong infrastructure for chronic disease program-

ming with an emphasis on policy and environmental interventions. There are three main areas where law has been helpful in chronic disease: enhancing core capacity in public health; collaboration with the medical care sector; and traditional public health programming.

Our focus for enhancing core capacity has been the creation of a statewide accreditation system to support structure and consistency among the LHDs using the ten essential functions of public health. A six-county pilot has been completed. A law was introduced into legislation that ultimately failed, but which will be reintroduced once greater support for the accreditation system has been developed.

Another core capacity area is development and use of a financial trust to secure funds dedicated to be used for public health such as the tobacco settlement dollars. The goal is to ensure that the money that is earmarked for public health is used for public health activities; e.g., chronic disease programming.

The second area for using law is in the medical care sector. In North Carolina there has been interest in mandating insurance coverage for preventative services, and in designating obesity as a medical diagnosis. Thus far, legal efforts have focused on Medicaid expansions. A voluntary approach has been used with commercial insurance providers and this has been successful in getting North Carolina insurers to increase coverage of preventative services.

The third area for using law is in traditional public health sites, which means among the core components of public health departments. Most of the work recently has been with our school system. A law introduced to mandate schools to provide care to all chil-

dren with diabetes provided a framework and justification to expand the state's school nursing programs, increasing their breadth, funding, and capacity. A state law dating back to 1977 allows school health districts to initiate and fund school health coordinators (SHC) or school health advisory councils (SHAC) for the districts. In 2003, the Board of Education adopted a policy which required all districts to have SHACs. This is important in providing better context and structure for health departments to work in chronic disease programming and establishes a forum for using the school health index or state nutritional frameworks as resources.

Local laws and ordinances are also useful, taking both environmental and systemic approaches to interventions seeking to prevent chronic disease. These approaches encourage county health department professionals to work more closely with other departments in the counties to develop ordinances that promote healthier behaviors. An example is the sidewalk ordinances—transforming the physical environment to promote a healthier lifestyle.

We have also had to deal with legal barriers to our chronic disease control agenda, including existing state laws which work adversely to the promotion of public health. An example is a state pre-emption law regarding smoke-free workplaces. These laws act as a barrier to completely transforming work sites into healthier environments and limit local ordinances for smoke-free environments. LHDs must look to the same legal strategies to overcome these barriers. They can do so through advocacy efforts which increase public support for public health programming.