

NEW MEXICO PUBLIC HEALTH LAW REFORM

Institute for Public Health

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Public health law is an essential tool of public health practice. It creates legal authority and defines the legal duties of government and responsibilities of individuals to protect the health and safety of society. The New Mexico Legislature establishes public health policy by law for the Executive Branch and others to implement through the rule-making process as administrative and clinical practice.

Public health law reform should be considered in order to allow New Mexico to address antiquated, fragmented and inconsistent non-emergency provisions of state law. Much of the current non-emergency public health law is outdated and scattered throughout the New Mexico statutes in no logical order. Presently needed reform is in addition to the New Mexico public health emergency preparedness statutes passed in 2003-2005.

Modernized public health laws in New Mexico would allow public health agencies and their partners in the public health system to respond to contemporary health threats with a range of public health powers that are based on modern science and management of information systems and that comport with current legal standards of privacy and due process. Public health law reform may also better inform the legislative appropriations process for public health activities.

New Mexico is not alone among numerous other states across the country that have suffered from outdated, confusing public health laws. To help address this situation, a national initiative, The Public Health Statute Modernization Collaborative, released a Model State Public Health Act in 2003 for states to consider as part of a process of assessing existing public health laws and identifying those that need to be changed.

New Mexico public health law reform could include amending or repealing outdated public health statutes and rules, identifying gaps in existing law, drafting new laws if needed, and re compiling all public health related statutes into a Public Health Code similar to the existing Motor Vehicle Code, Insurance Code, Children's Code, Probate Code and the newly enacted Emergency Powers Code which became law in 2005 (Laws of 2005, Chapter 22).

National Activities

- The Institute of Medicine in 1988 recommended that states review their public health statutes and make revisions to clearly delineate the basic authority and responsibility entrusted to public health agencies to support modern disease control measures and to incorporate due process safeguards.
- The US Department of Health and Human Services in 2001 recommended public health law reform as part of its Healthy People 2010 initiatives, considering it one of the ten priorities for improving public health measures.
- The Turning Point Public Health Statute Modernization National Collaborative sought to strengthen the legal framework for public health law by developing a Model State Public Health Act, released in 2003, with guidance from a multi-disciplinary panel of experts in public health, law and ethics.
- Later in 2003, the National Association of Attorneys General adopted a Resolution at its Winter Meeting urging states to review their public health laws and to "update those laws to reflect present circumstances."

According to the Center for the Law and the Public's Health at Georgetown and Johns Hopkins Universities, as of October 24, 2006, 33 States have introduced 110 bills or resolutions in whole or in part related to the Model State Public Health Act.

For example, the State of Alaska reformed its public health laws during its 2005 Legislative Session. The Alaska process was similar to the process used in New Mexico during 2002-2003 (described below) to update New Mexico's emergency preparedness statutes, including the enactment of the Public Health Emergency Response Act in 2003.

Examples of Changes Needed in New Mexico's Statute

The following is a sample of some of the issues public health law reform could address:

□ Public health related legal authorities are scattered throughout the NM Constitution in Article XIV, Section 1 (State Institutions) and the New Mexico Statutes Annotated in Chapters 9 (Executive Department), 22 (Public Schools), 23 (State Health Institutions), 24 (Health and Safety), 28 (Human Rights), 40 (Domestic Affairs), 42 (Commitment Procedures) and possibly others.

□ The NM Public Health Act was enacted in its current form in 1973. It's been amended numerous times since then. Several of the powers delegated to DOH in Section 24-1-3 NMSA 1978 in place today are almost exactly the same as those specified in New Mexico Laws of 1919, Chapter 85, Section 10. This law outlined the powers of the first NM Department of Health created in the aftermath of the 1918 Spanish Flu pandemic.

□ Health related privacy issues should be revisited in light of the enactment of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the implementation of its Privacy Rules in April, 2003 (45 CFR Parts 160 and 164). One area not currently addressed by state law concerns access to publicly acquired databases by health researchers. This subject is addressed in HIPAA's Privacy Rule. A Model State Public Health Privacy Act was issued in 1999 and can be reviewed as part of the public health law reform process.

□ There is no provision in New Mexico law on legal procedures and protections for tracking "contacts" who may have been exposed to a communicable disease by an infected person.

□ The marriage statute, Section 40-1-11 NMSA 1978 requires DOH to adopt regulations establishing tests and examinations for applicants for marriage licenses yet DOH repealed its regulation, DOH 94-13, in 1995 as not being a cost-effective use of limited health resources.

□ The statute needs to consider contemporary topics of importance to public health such as environmental health and nutrition (suggested by State Senator Dede Feldman when HJM 30 was presented in the Senate Public Affairs Committee during the 2004 Regular Legislative Session).

Recent Efforts for Public Health Law Reform in New Mexico

New Mexico engaged in a process to update its emergency preparedness laws starting in the 2002 Regular Legislative Session with the enactment of SJM 62 and HJM 34. These nearly identical Memorials created a working group of attorneys from Department of Health (DOH), the Department of Public Safety and the Attorney General's Office to evaluate the State's existing laws for the handling of emergencies and report back to the Legislature with recommendations. The findings along with recommended draft legislation were presented to the Legislative Interim Health and Human Services Committee in August, 2002 and most of the legislative recommendations were subsequently enacted into law in 2003.

It was immediately recognized that non-emergency public health law reform is needed to insure consistency with the newly-enacted emergency preparedness laws. HJM 30 (2004 Regular Legislative Session), sponsored by

Representative Jim Trujillo of Santa Fe, called for the DOH and other interested state agencies and parties to study the Model State Public Health Act, the NM Public Health Act, and related New Mexico public health statutes and rules, and make recommendations to the Interim Legislative Health and Human Services Committee for the eventual enactment of a modern New Mexico Public Health Code. Technical assistance would be provided by the UNM Institute of Public Law and nationally recognized consultants.

HJM 30 died upon adjournment of the 2004 Regular Legislative Session on the Senate Calendar awaiting final passage. Little action in the area of non-emergency public health law reform has taken place since in New Mexico.

In the 2006 Regular Legislative Session, Representative Trujillo reintroduced HJM 26, a slightly modified version of the Memorial introduced in 2004. The main difference is that this Memorial directed the NM Health Policy Commission to lead the study. HJM 26 also died on adjournment.

Since the 2006 Regular Legislative Session, the issue of public health law reform was presented to the Health Policy Commission on September 21, 2006 and updated at the November 20, 2006 meeting of the Interim Legislative Health and Human Services Committee. Rep. Trujillo intends to introduce a bill during the 2007 Regular Legislative Session to enact a Public Health Code to better organize existing public health statutes and repeal clearly outdated language in the Public Health Act.

With or without enabling state legislation, a study group could be organized from the UNM Institute of Public Law, the UNM Institute for Public Health, state agencies and other interested parties to review existing statutes that have not been recently reviewed and recommend updates. Other study groups with specialized expertise could also examine identified gaps in current New Mexico law and propose new law to be included in the proposed Public Health Code.

MORE INFORMATION

Hodge, James G., Gostin, L.O. Improving Education in Public Health Law through the Turning Points Model State Public Health Act, 6 Transformation 8 (2005).

Model State Public Health Act:

<http://www.turningpointprogram.org>

Model State Public Health Privacy Act:

<http://www.critpath.org/msphpa/privacy.htm>

New Mexico Legislative Council Service:

<http://www.legis.state.nm.us>

New Mexico Public Health Emergency Response Act (2003 Regular Legislative Session) [Sections 12-10A-1, et seq., NMSA 1978 (2005 Replacement Pamphlet)].

The Center for Law and the Public's Health at Georgetown and Johns Hopkins University - <http://www.publichealthlaw.net>

AUTHORS

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