



MAINTAINING PUBLIC HEALTH'S LEGAL AUTHORITY TO PREVENT DISEASE SPREAD



LEGISLATIVE OVERVIEW SERIES: 2022 PUBLIC HEALTH SPOTLIGHT

INTRODUCTION

State and territorial governments have broad authority to protect the public's health and safety. These powers include preventing and controlling communicable disease transmission. Often, the disease prevention and control authority operates through state and territorial health departments. Although specific powers vary between jurisdictions, common powers include the ability to order isolation or quarantine, conduct contact tracing and disease investigations, and order other measures to prevent and reduce the community spread of disease.

During the COVID-19 pandemic, public health authority has been used to limit the size of gatherings, encourage social distancing, temporarily close high-risk venues, and require the use of face masks. In several states these legal authorities have been challenged and, in many jurisdictions, limited or eliminated. Maintaining the legal authority to prevent and control the spread of infectious disease is crucial to preparing for and addressing disease outbreaks. Moreover, constraints on public health legal authority could make it more difficult to respond to future outbreaks.

States and territories are adopting a wide array of limitations on public health authority including restrictions on the duration and scope of public health orders and removing the ability of public health agencies to order certain disease mitigation measures (e.g., mask protocols). Despite the challenges to public health legal authority, many states adopted legislation to increase access to COVID-19 vaccines and improve pandemic planning and response.

LEGISLATIVE TRENDS

DURATION AND SCOPE OF PUBLIC HEALTH ORDERS

In 2021, some states enacted laws limiting the duration and renewal of public health orders issued by the governor or health department. For example, in Kentucky, health department orders that restrict the ability of people to gather for school, business, religious, and political functions are limited to 30 days. Before the new restriction there were no such limits

on these orders. Also, a new Texas law requires legislative approval to renew a public health disaster declaration issued by the state health commissioner.

In addition to the duration of public health orders, states also passed laws that limit the scope of the public health orders. For example, a new law in North Dakota prohibits that state's health commissioner from issuing a statewide order for disease control measures unless the governor also declares a state of emergency.

DISEASE OUTBREAK MITIGATION MEASURES

Despite evidence showing that disease mitigation measures such as social distancing, masking, and venue closures help prevent the spread of infectious disease, many states imposed limits on or eliminated the ability of health departments to order such measures. For example, laws enacted last year in Arkansas and North Dakota prohibit the states' health departments from issuing orders that require individuals to wear a face mask in any setting. Also, a new law in Utah requires the state health department to give the legislature 24 hours notice before issuing a stay-at-home order during a public health emergency.

BROADENING THE ABILITY FOR PANDEMIC RESPONSE

In 2021, nearly 20 states expanded the scope of practice of certain health professions to administer the COVID-19 vaccination (Arkansas, Georgia, Indiana, Iowa, Maine, Maryland, Minnesota, North Dakota, New Hampshire, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia). Pharmacists and dentists were the most common professions to receive an expanded scope of practice. Additional professions for which states expanded scope of practice to administer COVID-19 vaccines included emergency medical technicians, pharmacy technicians, pharmacy interns, and cardiac technicians.

The COVID-19 pandemic illustrates the need for robust pandemic planning and response protocols, especially within high-risk settings. To this end, Maryland enacted a new law establishing planning and reporting requirements for nursing homes during a declared public health emergency. In New York, a new law requires employers to create plans to prevent the spread of airborne infectious diseases in workplaces. The law also authorized New York's health commissioner to investigate employer violations of the law and to impose fines.

LOOKING AHEAD

During the 2022 state legislative sessions ASTHO expects some states to continue to pursue the limitation or elimination of public health authority. If enacted, such actions will significantly hinder health departments' ability to prevent the spread of COVID-19 and other infectious diseases. These legislative proposals include the following:

- Restricting or prohibiting hospitals and long-term care facility policies which limit visitors during disease outbreaks.
- Establishing statutory limitations on the use of information collected during contact tracing.
- Prohibiting or constraining the creation of COVID-19 vaccination verification systems.



Studies show that disease mitigation measures, such as social distancing, face masks, and venue closures, helped reduce activities associated with COVID-19 spread and limited community transmission of the disease.^{1,2,3,4,5,6,7}

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