Public Health Learning Modules

Module 2- Legal Infrastructure

Part 2- Integrating Law and Public Health Systems Research and Practice

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- Now we're going to turn to integrating law in public health systems, research into practice. How do we take this knowledge of the elements of successful public health work including legal elements and make sense of it as daily life, as daily practice? Oh, I want to start with the proper recognition of how challenging public health practice can be. This is a slide I grabbed off the internet of public health systems. And it's great, look at it, look at the diversity. You've got a public health agency - I guess you know it's a public health slide because - the public health agency is in the middle here. But you can see all the different kinds of agencies and people that the health agency has to work with to do it's job everyday. It's got to work with a whole other range of government agencies doing a lot of different things. Different kinds of professionals, different kinds of community organizations. All those people fit integrally into the work of public health agencies and yet public health agencies can tell them what to do and they often have trouble finding them, reaching out to them etcetera. This is just actually part of the picture cause I immediately thought of other things I would add. So for example every public health agency has got to deal with policy makers and particularly the appropriators in whatever legislative governmental body is going to be setting policy and budgets for that health agency. They've got to have a good relationship and understand the priorities and concerns of those people. Any time a health is doing something the least bit controversial or of public interest it's going to have to deal with how the media understands it and how much coverage it gets and whether it gets favorable or unfavorable coverage. Of course it's going to deal with interests groups.

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If a health agency wants to promote a regulation tax that is going to regulate somebody or tax somebody who doesn't want to be regulated. Naturally in a democracy those entities are going to spend their time and money to oppose that activity. And that's going to tie into the media and that's going to tie into the policy makers and the whole web of community organizations and community support to ultimately determine whether the government comes out in favor or against the intervention that the health agency is promoting. And of course if you're a local agency, the city health department or the county health department you may have to deal

with the state health department or you have to deal with OSHA or EPA or CDC and all those relationships are going to be influencing your daily life. So that means you've got all sorts of challenges. Now this is a complicated table from an important study of the economic institutional and political determinants to public health delivery systems structure by some people who do public health systems and services research. Now, it's based on a very complicated typology of different kinds of health departments based on their funding and jurisdiction and their function. You could see on the left hand column they've actually identified seven distinct configurations of health departments. Don't worry about that, just sort of browse across these columns. They look at four different important drivers of public health agency performance: funding, partnerships, collaboration. Can they do it? Can they not? How widely do they do it? Who are they partnering with? The agency organization, the challenges and political relationship challenges. Right.

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So you can see for example in funding that this study picks up the fact that health agencies have been facing continuing budget cuts. From their local funding, from their state funding, from their federal funding and trying to reach into new funding streams to get back to functional resources. So for example one of the kinds of problems faced by the health agency is it's getting cuts in it's Medicaid from the extreme. But it's trying to balance those out with increased use of funding for emergency preparedness. You see under the partnership and collaboration heading that agencies have responded to some of their challenges by increasing involvement with community organizations and private health care organizations. And looking for new sources of support or new partners to accomplish things they can no longer afford to accomplish on their own. If you look at challenges in the agency organization one of the long term infrastructural legal trends we see in public health law is a kind of pendulum swing between agencies that are re-organized as parts of larger human services agencies and then later on removed and established as distinct stand alone health agencies. So we see agencies emerging with other agencies, we see outsourcing of lavatory services. We see in other words law makers and health agency leaders trying to come up with a structure that works best with a given set of commissions and funding streams. And of course finding politics is really important. So agencies are facing change by trying to strengthen relationship with local elected officials because they know that's where their money and political support is going to come from.

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They're finding that many policy makers may be unaware of what they do. Of the importance of public health if they improve the relationship with the state held agencies. So all these are challenges of the pitfalls you can

face and how complicated it is for a local health or state health agency to operate. So I give you that complexity as an introduction to a simplified model that we're going to look at for the rest of the class. This is a simple model of public health systems operation without any law in it at all. Right, so it starts with on the left hand side the basic capacities of an agency it's resources physical spaces and tools, it's human resources and natural resources, how it's organized, how it uses technology relations as it sort of brings to bare to do it's mission. Goes through some kind of process of implementation and the outputs just in here and essentially the ten essential health services we talked about before. Are we protecting the public? Are we educating the public? Are we engaging the public? Are we helping people get health services? Are we monitoring health status? Are we maintaining a competent work force? Evaluating and improving programs interventions and contributing the evidence base for public health and finally are we developing health polices and plans and enforcing the laws that exist? If all that's happening then we are confident - of course it should always be tested by research - that we will see a decrease in morbidity and mortality in general and generally better public health. Well this is the sort of standard model and when we try and put law into it - as we have been doing for the last 15 to 20 years - it goes something like this. Quite obviously you were able to recognize those earlier reports talking about infrastructure and so on. They're recognizing that the law is what sets a bunch of the parameters of the structural capacity.

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It's deciding what shape the organization will have. It's deciding the information it can collect and keep. It's often stipulating what kind of people can be in the agency. It's quite common for the law to require that a health director be a doctor or have a health degree of some kind or another. So that is the initial stage, let's look at that structural law and see if that makes any difference and if new laws versus old laws and so on. Or if there's kinds of ways of organizing health departments that work better than others. As time went on two other elements of law also became interesting to people thinking about health agency function and health research. One was what they called legal competency. We've talked about that before in the previous module; that is just a fairly simple measure of the degree to which employees in health agency understood their legal roles and had the skills to carry them out. And there was this interest in developing health policies and plans; in other words law making and whether or not health agencies were good at that. Today we've basically added the full legal capacity box in talking about what we want to know in health systems work about the law and public health performance. So we're looking not just at legal competency but also as a broader idea of legal consciousness. Understanding of the law among the workforce and the institution of legal culture. Because we clearly see differences between health agencies that aggressively use the law and health agencies that aggressively avoid the law. And we want to understand why those differences emerge and how to understand their good and bad sides and how you might want to intervene to give everybody the optimal legal capacity.

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Now, of course we have to remember, even in this simplified model the more complicated context. So there's all these - I showed you before - all these sort of other agencies and politics and so on involved and we keep those in mind. But for the next few minutes we're going to follow the simpler view. Just so we can understand the many complicated ways that law operates within health agencies. So let me just run through, you might say an ideal story of legal authority, legal capacity interacts with structural capacity and the outputs and outcomes of public health. So let's imagine a health agency that in doing it's work, cause you're about to see some circularity and recursiveness in this model. It's monitoring health status, it's doing it's job, it's evaluating health, improving programs and interventions and it's engaged with community. And so it learns through that kind of work that smoking is dangerous, that there's lots and lots of exposure to second hand smoke in the bars and restaurants in the town. And that obviously being an effective intervention to and in fact something that a lot of people would like to see to ban smoking in those facilities. So now it's got to develop and plan a health policy to do that. It's got to take it through the law making process because it doesn't have the authority to do it itself, to create this ban. Propose it to the local city council, to work with the community to inform the city council about what the issues is, what the issues are and why this would be effective to develop a good case for why it's good for the community to do this.

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To deal with the opposition, potentially from the restaurants or bars, from their associations or even from external parties representing those kinds of interests that may come in and fight the battle. To do that it's got to sort of come back to those capacities right. It's got to have the people who understand the importance of this health issue who can make the case. But also it's got to have people who understand how law works to be able to write the law. To be able to sell the law; to able to think about how you craft the law that would be acceptable even to the regulated parties. They will be enforceable, that will have appropriate penalties. And to do that you've got to have an institution, a legal culture that's not law averse and doesn't retreat at the first sign of opposition but instead is willing to proceed in a diligent way to produce a sound proposal and defend it and advance it in the law making process. Our next and final part will look at more examples of how legal capacity, legal consciousness, legal culture influence the effectiveness of health agencies, looking at recent research and telling some stories about things that work and things that don't.