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Public Health Law News

October 2022



Public Health Law Program
Center for State, Tribal, Local, and Territorial Support
Centers for Disease Control and Prevention



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Announcements


Virtual & In-Person Events | APHA 2022 Annual Meeting and Expo

Registration is open for the American Public Health Association (APHA) 2022 Annual Meeting and Expo scheduled to be held in person **November 6–9** in Boston—and virtually **November 14–16**. The theme this year is “150 Years of Creating the Healthiest Nation: Leading the Path Toward Equity.” [Register today](#) and [view the Law Section sessions and events](#).


In-Person Events | Fundamentals of Health Law Training Program

Registration is open for the American Health Law Association's Fundamentals of Health Law Training Program, scheduled to be held in person **November 9–11** in **Chicago**. This program is designed for new associates/in-house counsel, compliance officers, and other legal health professionals. [Learn more](#)  about this training and [register today](#) .


Blog Post | Declines in County COVID-19 Hospitalization Rates After States Issued Mask Mandates

The *Journal of Public Health Management Practice* recently published a blog post titled "Declines in County COVID-19 Hospitalization Rates After States Issued Mask Mandates." Current and former Public Health Law Program staff members are co-authors on the upcoming journal article discussed in this blog post. [Read the blog post](#) .


Fellowship Opportunity | Health & Disability Fellow, NACCHO

The National Association of County and City Health Officials (NACCHO) is seeking two graduate students to participate in the 2022–2023 Health and Disability Fellowship Program. This remote, paid fellowship is projected to run November 2022 to July 2023 and will offer students hands-on experience in the public health disability field in addition to funding for conference attendance. [Learn more and apply](#) .


Spring Internship Opportunity | Government Affairs Intern, NACCHO

NACCHO is seeking candidates for a Government Affairs internship. The intern will learn about federal policymaking, government affairs, and grassroots advocacy. Candidates should be pursuing a master's degree in public health, health education, public policy, or a related field. [Learn more and apply](#) .


Multiple Job Openings | Health Equity, Social Justice, and Population Health, Rutgers University

Rutgers University and the Rutgers Global Health Institute are recruiting for multiple tenure-tracked/tenured positions. They are searching for scholars in health, healthcare, public health, epidemiology, bioinformatics, or related fields with a demonstrated track record of scholarly work in health equity, discrimination, structural racism, inclusion, diversity, or related disciplines. [Learn more and apply](#) .


Job Opening | Public Health Attorney, The Network for Public Health Law

The Network for Public Health Law is seeking an attorney to facilitate training, oversee the production of educational materials, and provide technical assistance, with an emphasis on advancing health equity. This position will work within the organization's Northern Region Office in **Edina, Minnesota**. [Learn more and apply](#) .


Job Opening | Public Health Policy Advisor, Po'okela Solutions

The Alaka'ina Foundation Family of Companies, owner of Po'okela Solutions, is a not-for-profit, designated Native Hawaiian Organization and Small Disadvantaged Business that aims to serve its federal clients. The public health policy advisor, based in **Washington, DC**, will support the Health and Human Services on Women's Health through project management, strategic planning, support services, and subject-matter expertise. [Learn more and apply](#) .

Job Opening | Adjunct Assistant Professor, SUNY Downstate Health Sciences University


SUNY Downstate Health Sciences University's School of Public Health is seeking an adjunct assistant professor in Health Policy & Management. Job responsibilities include student engagement and teaching Introduction to Health Policy and Management and Health Services Research Design and Methods courses. This hourly, part-time position will be based at the university's campus in **Brooklyn, New York**. [Learn more and apply](#) .

Research Opportunity | Center for Public Health Law Research Fellow, Temple University Beasley School of Law



The Center for Public Health Law Research at Temple University Beasley School of Law is accepting applications for research fellows. Candidates must be faculty, staff members, PhD candidates, or post-doctoral fellows at Temple University or another institution. Fellows are appointed for two-year terms to conduct public health law research and to support the center's community engagement efforts. [Learn more and apply](#) .

Tribal Announcements



Webinar | Tribal Public Health Surveillance and the Law

Hosted by the Great Lakes Inter-Tribal Epidemiology Center (GLITEC) and scheduled to be held on **October 23**, this webinar will discuss jurisdiction, principles of tribal public health and federal Indian health law, and special legal considerations for tribal public health surveillance. Guest speakers will include Desi Rodriguez-Lonebear, PhD, and Aila Hoss, JD. Dr. Rodriguez-Lonebear is an assistant professor of Sociology and American Indian Studies at the University of California, Los Angeles, and works with tribes as a data advocate. Ms. Hoss is an assistant professor of law at the University of Tulsa College of Law and formerly with CDC's Public Health Law Program. [Learn more and register](#) .



Job Opening | Public Health Policy and Programs Deputy Director, NIHB

The National Indian Health Board (NIHB) is accepting applications for a deputy director role that will hold managerial, administrative, and financial responsibilities. This position will facilitate contract processing, monitor ongoing projects, and communicate with contractors and funders. The role is based in **Washington, DC**. [Learn more and apply](#)  [\[PDF – 194 KB\]](#) .

Job Opening | Public Health Project Coordinator, NIHB


NIHB is accepting applications for a public health project coordinator for the Environmental Health sector. This role will create and coordinate projects benefitting tribal environmental health. [Learn more and apply](#)  [\[PDF – 117 KB\]](#) .

Job Opening | Policy Research Analyst, NIHB


NIHB seeks an experienced analyst to advance its mission through policy research, data analysis, data translation, and communication. Candidates must understand healthcare delivery; the federal trust relationship with Indian tribes; and legal, policy, and political frameworks impacting Direct Service and Self-Governing Tribes. This position will be based in **Washington, DC**. [Learn more and apply](#)  [\[PDF – 182 KB\]](#) .

Legal Tools


Report | Fighting for Public Health

In this feasibility study, The Network for Public Health Law interviewed public health advocates and leaders from 45 organizations to answer the question, “How do we strengthen public health advocacy at local, state, and national levels?” [Read the report](#) .

Report | When Is “Good Enough” Not Good Enough? Making Public Health Policy in Politically Contentious Times

Published by The Network for Public Health Law, this report discusses the ethical considerations surrounding advocacy for public health policy legislation in the context of diverse political sentiments and new research. [Read the report](#) .

Report | Special Issue of AJPH Illuminates Lead Risks Throughout US, Prevention Steps

This issue of the *American Journal of Public Health* highlights the risks of lead poisoning and shows ways that public health professionals can mitigate and prevent poisoning. [Read the report](#) .

Top Story

New York: [New law could boost drinking water quality in New York](#)

Spectrum News 1 (10/05/2022) Nick Reisman

Story Highlights:

Governor Kathy Hochul of New York signed legislation (S.8763A/A.9824A) into law on October 5 that will allow municipalities to take legal action against drinking water polluters. Many such claims were barred by the statute of limitations, which previously stood at three years. This new law widens the scope of the definition of “emerging contaminants” to include “physical chemical, microbiological or radiological substances.” Governor Hochul stated, “Every New Yorker deserves access to clean, safe, and affordable drinking water. By signing this legislation, which gives local

water suppliers another avenue to take action against polluters and recover the costs of treatment or filtration, we are making sure that we not only hold these companies accountable, but also prioritize the health and wellbeing of New Yorkers.”

Environmental groups in New York argue that this proposal does not do enough. “Under this proposal, at least half a million New Yorkers will continue to drink water contaminated with PFAS, even though EPA has confirmed there is not safe level of exposure to some of these toxic chemicals,” said Rob Hayes, the director of clean water at Environmental Advocates NY.

[Editor’s note: [PFAS](#) are chemicals that are widely used in manufacturing and consumer goods that take an extraordinary amount of time to break down and have been found in soil, water, air, and fish worldwide. Read [S.8763A](#) and the [press release](#). Read more about [PFAS](#).]

Briefly Noted

California: [Nine significant bills Newsom acted on as signing deadline nears](#)

Fox 40 (09/30/2022) Jacque Porter

[Editor’s note: [Read the press release](#).]

Colorado: [Colorado woman gets bill passed to help people survive cardiac arrest](#)

CBS Colorado (09/26/2022) Spencer Wilson

[Editor’s note: Read [HB22-1251](#) and learn more about [cardiopulmonary resuscitation](#).]

Hawaii: [Maui Ocean Center supports new bill passed in Maui County](#)

KHON2 (10/03/2022) Mikey Monis

[Editor’s note: Read [Ordinance No. 5306](#) and learn more about [sun safety](#).]

Maryland: [First-in-the-nation legislation requiring health exchange to operate as state health data utility to take effect October 1 in Maryland](#)

EHR Intelligence (09/28/2022) Hannah Nelson

[Editor’s note: [Read the legislation](#) and learn more about [electronic health records](#).]

New York: [How one New York county went from fighting measles to battling polio](#)

Politico (10/01/2022) Shannon Young

[Editor’s note: Learn more about [polio](#) and [vaccination laws](#).]

Pennsylvania: [Naloxone orders expanded to combat overdoses](#)

Observer-Reporter (10/10/2022) Karen Mansfield

[Editor’s note: Learn more about the [opioid overdose epidemic](#) and [naloxone](#).]

Tribal: [IHS announces funding allocation to address Alzheimer’s disease in Indian Country](#)

Indian Gaming (09/22/2022)

[Editor’s note: Read the [press release](#) and learn more about [Alzheimer’s disease](#).]

Global Public Health Law News

United Kingdom: [First UK-approved body for medical devices since Brexit](#)

eeNews Europe (10/03/2022) Nick Flaherty

[Editor’s note: Learn more about [medical devices](#) in the United States.]

Court Filings & Opinions

Hawai'i

The Supreme Court of Hawai'i held that environmental impact reports under the Hawai'i Environmental Policy Act (HEPA) must analyze secondary impacts of proposed projects and may not segment an analysis of a project from related projects unless each of the projects would occur independently.

The Department of Water, County of Kaua'i (the Department) proposed to install a water transmission line. Kia'i Wai o Wai'ale'ale (Kia'i Wai), an unincorporated community organization, challenged the Department's proposal under HEPA. Although the Department had found in its environmental impact report that the project would have no significant impact, Kia'i Wai contended that the report (1) did not analyze how the water line would bring about greater water withdrawals and impact nearby streams, and (2) improperly "segmented" the water line from other related development projects that should have been analyzed together. An environmental court granted summary judgment for the Department, but the Supreme Court of Hawai'i reversed, holding that (1) the report did not analyze "secondary impacts" as required by HEPA and its administrative rules, and (2) the report may have improperly segmented the water line analysis because, to lawfully analyze the impacts of multiple related projects separately, the Department must first determine that the projects would still occur in the absence of one another.

[Kia'i Wai v. Department of Water](#)  [PDF – 548 KB] [↗](#)

Supreme Court of Hawai'i

No. SCAP-20-0000487

Decided September 23, 2022

Opinion by Justice Sabrina S. McKenna

Illinois

The Supreme Court of Illinois held that a health care power of attorney does not supersede a valid court order for involuntary administration of psychotropic medications under Illinois law.

In 2013, Craig H. executed an Illinois statutory short form power of attorney for health care that appointed his mother as his agent. At the time, Craig H. was 49 years old and had been diagnosed with mental illness for about 24 years. In 2016, Craig H. was hospitalized at a mental health hospital after he was charged with burglary and found unfit to stand trial. In 2018, a psychiatrist at the hospital filed a petition seeking to involuntarily administer psychotropic medications to Craig H., which was permitted by an Illinois statute. At a hearing regarding the petition, the psychiatrist testified that Craig H. displayed violent and hypersexual behavior and that his mother had a history of stopping or declining consent for any type of medications based on her belief that they caused brain damage.

Craig H. challenged the petition, alleging that the court lacked authority to order involuntary treatment because medical decisions rested with his agent. The trial court rejected this argument, and the appellate court affirmed. The Supreme Court of Illinois agreed with the lower courts and held that the trial court did not err in ordering the involuntary treatment under Illinois law. The court reasoned that the state's Mental Health Code displayed a clear legislative intent to provide an exception to a health care agent's authority to make health care decisions. Further, the statute afforded protection for patients by requiring a high standard of proof to support an order for involuntary treatment.

[In re Craig H.](#)  [PDF – 83.1 KB] [↗](#)

Supreme Court of Illinois

Docket No. 126256

Decided September 22, 2022

Opinion by Justice Robert L. Carter

Federal

The Eighth Circuit upheld a preliminary injunction preventing the state of Arkansas from enforcing its recently enacted ban on gender transition procedures for individuals under the age of 18.

In 2021, the Arkansas state legislature enacted Act 686 (the Act), which prohibited health care professionals from providing or making referrals for gender transition procedures to anyone under the age of 18. A transgender youth (minor plaintiffs), their parents, and two health care professionals (physician plaintiffs) filed a complaint against the state of Arkansas seeking declaratory and injunctive relief. The complaint challenged the Act on three constitutional grounds, alleging that it violated (1) the Equal Protection Clause of the Fourteenth Amendment because it discriminated against the minor plaintiffs and the physician plaintiffs' minor patients on the basis of sex and transgender status, (2) the Due

Process Clause of the Fourteenth Amendment because it limited plaintiff parents' fundamental right to seek and follow medical advice for their children, and (3) the First Amendment because it limited what the physician plaintiffs could say and what the minor plaintiffs and their parents could hear. The plaintiffs then moved for a preliminary injunction. The United States District Court for the Eastern District of Arkansas granted the preliminary injunction, finding that the plaintiffs showed a likelihood of success on the merits of each of their claims and a likelihood of irreparable harm.

In affirming the district court, the United States Court of Appeals for the Eighth Circuit considered the plaintiffs' first constitutional claim. The court found that the Act discriminated on the basis of sex because a minor's sex at birth determined the legality of certain medical care: for example, a minor born as a male could lawfully be prescribed testosterone and have breast tissue surgically removed, but a minor born as a female could not. The Eighth Circuit upheld the district court's finding that Arkansas failed to meet its burden of providing an "exceedingly persuasive justification" to support the law because the prohibited treatment conformed with the recognized standard for adolescent gender dysphoria and was supported by rigorously studied medical evidence. Further, the Eighth Circuit upheld the district court's finding of a likelihood of irreparable harm because the minor plaintiffs would be denied access to hormone treatment, undergo the irreversible process of endogenous puberty, and suffer heightened gender dysphoria.

[Brandt v. Rutledge](#)

The United States Court of Appeals for the Eighth Circuit

No. 21-2875

Decided August 25, 2022

Opinion by Circuit Judge Jane Kelly

Federal

The United States District Court for the Northern District of Texas held that self-funded health plans and insurers are not required to cover preventive care recommended by the US Preventive Services Task Force (USPSTF) or pre-exposure prophylaxis (PrEP) drugs to prevent HIV infection under the Patient Protection and Affordable Care Act (ACA).

The ACA contains provisions requiring health insurers to provide coverage for preventive care recommended by certain federal agencies, including USPSTF. USPSTF's recommendations included PrEP drugs. Braidwood Management, Inc. (Braidwood), purchasers of health insurance, brought an action against the United States, the Secretary of Health and Human Services (HHS), the Secretary of the Treasury, and the Secretary of Labor, alleging that the ACA provisions mandating coverage for USPSTF recommendations violated the Appointments Clause of the Constitution and the Religious Freedom Restoration Act (RFRA).

Braidwood's Appointment Clause challenge to USPSTF's coverage directives was based on an argument that USPSTF members are "principal officers" who must be appointed by the President and confirmed by the Senate under the Constitution. The district court agreed and held that the manner of appointing USPSTF members—"convening" by the Director of the Agency for Healthcare Research and Quality—was unconstitutional. Accordingly, insurers were not required to provide coverage based on USPSTF recommendations.

Additionally, the district court found that the PrEP mandate violated RFRA because it substantially burdened the religious exercise of Briarwood's owners. The court reasoned that the mandate required Briarwood's owners to choose between a substantial monetary penalty for not providing PrEP coverage and their sincerely held belief that providing coverage of PrEP drugs facilitates and encourages homosexual behavior, intravenous drug use, and extramarital sexual activity in violation of biblical tenets.

[Braidwood Mgmt., Inc. v. Becerra](#) [\[PDF - 416 KB\]](#)

United States District Court, Northern District of Texas

Civil Action No. 4:20-cv-00283-O

Decided September 7, 2022

Opinion by Judge Reed O'Connor

Oklahoma

The determinative question presented is whether Senate Bill 658, codified as 70 O.S. Supp. 2021 Ch. 15, §§ 1210-189 and 190, is an unconstitutional restriction of the ability of public schools to exercise local control of the health and welfare of students. We hold that 70 O.S. Supp. 2021 Ch. 15, § 1210-189 and 190 are an unconstitutional delegation of legislative authority in violation of art. 4, § 1 of the Oklahoma Constitution only to the extent that they require the Governor to declare an emergency before local school districts may make decisions regarding local health matters. We strike the offending provision and the remainder of the statutes remain upheld.

[Ritter v. State](#) 

Supreme Court of Oklahoma

No. 119840

Decided September 20, 2022

Opinion by Justice Yvonne J. Kauger

Last Month's Quiz Answer

Question: What is the [Environmental Justice Index \(EJI\)](#)  ?

Answer: The EJI uses data from the US Census Bureau, the Environmental Protection Agency, the Mine Safety and Health Administration, and CDC to rank the cumulative impacts of environmental injustice on health for every census tract. The EJI delivers a single environmental justice score for each community so that public health officials can identify and map areas at risk for the health impacts of environmental burden.

Quote of the Month

"As lawyers who care about public health, we hope for sound public health law and policy that is based on robust epidemiological evidence. But often the reality is a patchwork of provisions based on compromise, or no law at all. Compromise in public health lawmaking is often inevitable and even desirable in a democratic society. But is it ethically problematic to support a policy that the public believes is in place because it is protective when the evidence doesn't support that conclusion? As public health lawyers, should we be satisfied that at least something is being done or remain firm in our support that only proven or effective policies should be passed?"

[Editor's note: This quote is from the above article [When Is "Good Enough" Not Good Enough? Making Public Health Policy in Politically Contentious Times](#) , The Network for Public Health Law (10/05/2022) Kerri McGowan Lowrey.]

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