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Public Health Law News

July 2022



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

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Announcements

There's still time! Join us at the 2022 Public Health Law Practitioners Convening | In-Person Event

Engage with us and future colleagues, share ideas, and gain new skills that can help you improve the public's health through law and policy at the 2022 Public Health Law Practitioners Convening. The theme for this practice-based convening is "Law, Policy, and Equity in Public Health Practice: Learn, Lead, and Leverage." This event is hosted by CDC and the National Association of County and City Health Officials and will be held **in-person August 17–19 in Chicago**. Continuing Legal Education (CLE) will be offered. [See the line-up of speakers](#) and [register](#).

The 2022 Public Health Law Summit | In-Person Event

Registration is open for the 2022 Public Health Law Summit, organized by The Network for Public Health Law. The theme is "Navigating the Fast-Changing Landscape of Equity and Cannabis Law and Policy." The event is scheduled to be held **in-person September 13–14 in Baltimore**. [Register today](#).

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

Registration is open for the 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](#).

Job Opening | National Director, The Network for Public Health Law

The Network for Public Health Law [↗](#) is seeking an experienced nonprofit leader with deep knowledge of the public health field to increase the reach and impact of public health law. The national director serves as a leader to the national public health community, developing and overseeing a strategic plan and diversifying funding sources. [Learn more and apply](#) [↗](#).

Job Opening | Executive Director, The Public Health Law Center

The Public Health Law Center is seeking nominations and applications for its next executive director. Founded in 2000, the Center partners with tribal health leaders, federal agencies, national health advocacy organizations, state and local governments, planners, researchers, attorneys, community coalitions, and individuals working on public health issues to create healthier and more equitable communities across the country. [Learn more and apply](#) [↗](#).

Tribal Announcements

2nd National Conference on American Indian/Alaska Native Injury and Violence Prevention | Virtual Event

Join the Indian Health Service and CDC **virtually July 26–28** for the 2nd National Conference on American Indian/Alaska Native Injury and Violence Prevention to learn more about best practices and efforts around injury and violence prevention in Indian Country. This year's theme is "Reconnecting to Promote Health Equity and Advance Practice and Science." [View the agenda](#) [📄 \[PDF – 370 KB\]](#) [↗](#) and [register today](#) [↗](#).

Creation of the Not Invisible Act Commission

The US Department of the Interior announced the creation of the Not Invisible Act Commission, in partnership with the US Department of Justice. The commission was created as part of the implementation of the Not Invisible Act of 2019, which aims to increase intergovernmental coordination to identify and address violent crime against American Indian and Alaskan Native people. The commission includes law enforcement, tribal leaders, federal partners, service providers, family members of missing and murdered individuals, and survivors. [Learn more](#) [↗](#).

Podcast Series | "Keeping Us Whole: Preventing Missing and Murdered Indigenous People"

For generations, American Indian, Alaskan Native, and Native Hawaiian people have faced an ongoing crisis of violence, human trafficking, and an epidemic of Missing and Murdered Indigenous People (also known as MMIP). Episodes in this series include interviews with a variety of speakers—including tribal leadership, federal partners, advocates, members of grassroots organizations and Native athletes—who have joined together to raise awareness of the MMIP epidemic and identify ways we can focus on prevention. [Listen to the series](#) [↗](#).

Legal Tools & Training

New Journal Article | The Differential Impact of Reopening States With and Without COVID-19 Face Mask Mandates on County-Level Consumer Spending

Public Health Reports recently published an article discussing the effects on consumer spending in states reopening with and without face mask mandates. (Some staff members from CDC's Public Health Law Program are authors.) [Read the journal article](#) [↗](#).

Resource | COVID-19-Related Opinions and Orders from the US Supreme Court

This resource is a comprehensive table with full Opinions and Orders issued by the US Supreme Court related to, or connected with, the COVID-19 pandemic from February 2020 to January 4, 2022. [View or download the resource](#) [↗](#).

Public Health Law Academy Training | Part 3 Now Available

The [Public Health Law Academy](#) [↗](#) offers a three-part series on creating, implementing, and enforcing public health laws. All trainings are now available:

- [What Legal Powers Do Health Departments Have?](#) [↗](#)
- [How Do Health Departments Create Regulations, Policies & Guidance Documents?](#) [↗](#)

- [How Do Health Departments Implement & Enforce the Law? !\[\]\(7e19807c61da14f515588e95cd49886c_img.jpg\)](#)

Interview Recording | Legal Strategies to Improve Community Health Outcomes

ChangeLab Solutions CEO Sarah de Guia discussed the intersection between structural discrimination and health inequities, exploring innovative legal strategies for health systems, providers, and policymakers to improve community health outcomes during [Health Law Week 2022 !\[\]\(c507f772dba2b921f86777f01218e570_img.jpg\)](#) in June. [Watch or listen to the interview !\[\]\(a75296508989caaa77a08d26cfccd4e5_img.jpg\)](#).

Webinar Recording | Establishing an Environmental Exposure Registry: Operational and Legal Lessons from the Flint Registry

The Network for Public Health Law recently hosted a webinar about the creation and operation of the Flint Registry, a community-based, nongovernmental, and environmental-exposure registry created in response to the Flint, Michigan, water crisis. The registry monitors community health, connects people to services, and promotes an understanding of how the water crisis affects Flint. The presenters shared legal resources for communities to establish similar registries. [Watch the recording !\[\]\(cbe80b694ebd74fcfe136a095b608235_img.jpg\)](#).

Webinar Recording | Building Your Brand as a Public Health Leader

The [Population Health Exchange !\[\]\(cbe2492b119e39e02a1dab2af4a4b296_img.jpg\)](#) partnered with Boston University to release the webinar “Building Your Brand as a Public Health Leader.” Speaker Emily Barbo, who is assistant director for the Boston University School of Public Health Activist Lab, discusses the benefits and process for curating a personal brand in the field of public health, as well as how to connect that brand to your personal and professional goals. [Watch the recording !\[\]\(2f36c159ea3670f7a62f64a4f1cf5c05_img.jpg\)](#).

Top Story

National: [Medicaid clawback ruling threatens to dash personal injury suits](#)

Bloomberg Law (6/10/2022) Christopher Brown, Ian Lopez

Story Highlights

A Supreme Court ruling now allows state Medicaid programs to acquire a greater share of personal injury awards. This change will possibly discourage beneficiaries from filing lawsuits in the first place. Under the Medicaid Act, states are required to seek reimbursement from third parties that are liable for a Medicaid recipient’s care, including jury awards and settlements from third parties.

However, this requirement excludes claims against the property of beneficiaries, generally meaning that “the state could recover from jury awards for medical expenses, but not for lost wages or pain or suffering.” This ruling allows states to tap into future medical expenses as well, reducing incentive to bring personal injury lawsuits.

The original dispute focused on the state of Florida’s share of an \$800,000 settlement awarded to the parents of a child left in a “permanent vegetative state” after being hit by a truck while exiting a school bus. Florida claimed to be entitled to 37.5%, or \$300,000, which is the percentage set by Medicaid for past and future medical expenses. The child’s parents countered that the state could only tap into money allocated for past expenses, but the Court held that the state could take money from an award for future medical expenses.

Paul Cannon, a shareholder with Simmons Fletcher PC, a Houston personal injury firm, stated that “[t]his ruling will definitely have a chilling effect... Not necessarily on cases as big as [the Florida case] ... But most cases are much smaller, and that’s going to be a strong disincentive to take cases where Medicaid is involved.”

[Editor’s note: Read [Gallardo v. Marsteller \[PDF – 189 KB\] !\[\]\(2bae76de5ebbd5c4d7d47162f1673734_img.jpg\)](#) and learn more about [coordination of benefits and third party liability !\[\]\(c8d5e2ee847d658b2a7eb88bf9ce84ac_img.jpg\)](#).]

Briefly Noted



California: [Single-use plastic waste is getting phased out in California under a sweeping new law](#)

CNN (07/01/2022) Rachel Ramirez

[Editor’s note: Learn more about [plastic pollution !\[\]\(5d954b3e270654ad8ab0d5913161c03c_img.jpg\)](#).]

Colorado: [Colorado enacts first 'right to repair' law, but only for wheelchairs](#) 

PEW (06/03/2022) Elaine S. Povich

[Editor's note: Details of the [bill](#)  [\[PDF - 143 KB\]](#)  can be found here. Learn more about [community preventive services and disability inclusion](#).]

Florida: [Florida law to allow counties to restrict smoking on the beach](#) 

Fox 35 (06/29/2022) Dave Puglisi

[Editor's note: Read [CS/HB 105](#)  and learn more about [smoking and tobacco use](#).]



Georgia: [Georgia 'co-responder' program to help law enforcement handle mental health calls](#) 

13WMAZ (06/28/2022) Raime Cohen

[Editor's note: Learn more about [mental health](#).]

Indiana: [Indiana department of health awards \\$35 million to address critical health challenges](#) 

Indiana Public Media (06/14/2022) Brandon Smith

[Editor's note: Details of the [bill](#) . Learn more about the [intersection of state health departments and policy](#).  [\[PDF - 911 KB\]](#)]

West Virginia: [Judge rejects claim distributors fueled W.Va. community's opioid crisis](#) 

Washington Post (07/04/2022) Meryl Kornfield, Scott Higham, and Sari Horwitz

[Editor's note: Learn more about [opioids](#).]

National: [4 states extend Medicaid coverage for a year after childbirth](#) 

PEW (05/31/2022) Christine Vestal

[Editor's note: Read the press release [here](#) . Learn more about [pregnancy-related deaths](#).]

National: [EPA announces \\$60 million from bipartisan infrastructure law for nutrient pollution reduction in the Mississippi River/Gulf of Mexico watershed](#) 

EPA (06/10/2022)

[Editor's note: Learn more about [water contamination](#).]

National: [Juul, FDA suspend court case while e-cigarette ban on hold](#) 

Associated Press (07/06/2022) Matthew Perrone

[Editor's note: Learn more about [electronic cigarettes](#).]

Global Public Health Law News

Canada: [Canada to fight poor diet with labels for sugar, salt, saturated fat](#) 

Reuters (06/30/2022) Ismail Shakil

[Editor's note: Learn more about [healthy eating](#).]

South Africa: ['Day Zero' water crisis in Gqeberha on South Africa's eastern cape](#) 

The Washington Post (06/19/2022) Ryan Lenora Brown

[Editor's note: Learn more about [healthy water](#).]

Court Filings & Opinions

Illinois

The Appellate Court of Illinois, First District, Fourth Division reversed a circuit court opinion finding that Abbott Industries, Inc., is not entitled to judicial estoppel or judgment as a matter of law because the Plaintiff did not claim sole

responsibility to any party that would cause preclusion of another, and there is conflicting evidence whether Abbott could be a proximate cause of the injuries that would be best resolved through a trial. (Judicial estoppel is a doctrine that prevents a litigant from arguing facts that are directly contrary to or inconsistent with claims the litigant has made in prior court proceedings.)

In 2012, the Muhammads brought their first legal action for medical negligence against Northwestern Memorial Hospital and their physician for prescribing Depakote, knowing she could become pregnant and the drug could cause birth defects. In that case, the Muhammads were awarded \$18.5 million. In June 2019, they reopened a separate action filed against Abbott alleging that Abbott failed to provide adequate warnings of Depakote's risk of birth defects.

Initially, the circuit court granted Abbott summary judgment finding that the Muhammads alleged a position against Abbott that was contrary to a previous position taken for the preceding medical claim against Northwestern. Thus, the Court concluded that judicial estoppel precluded the Muhammads' claim. Additionally, the court found that the Muhammads could not prove Abbott's failure to warn was a proximate cause of the injuries to the child and granted judgment as a matter of law. Muhammad appealed and the Appellate Court of Illinois reversed these decisions.

In the Northwestern case, the Muhammads claimed that the physician's negligence caused the child's injuries. In this case, the Muhammads are alleging that Abbott's insufficient warnings of birth defects were another cause of injuries. In both cases, the Muhammads did not allege sole responsibility to either party for injuries; therefore, the statements are not inconsistent with one another, and the invocation of judicial estoppel is declined.

Additionally, the court finds that Abbott is not entitled to judgment as a matter of law. The physicians' testimony and expert opinions differ on the issue of whether Abbott's attempt to provide greater warnings would have led physicians to make different prescribing decisions. As such, there is an issue of material fact, and a trial is proper.

[Muhammad v. Abbott Laboratories, Inc](#) .

Appellate Court of Illinois, First District, Fourth Division

No. 1-21-0478

Decided June 23, 2022

Opinion by J. Martin

South Carolina

The South Carolina Court of Appeals ruled that broilers in South Carolina, considered concentrated animal feeding operations (CAFOs), are still required to obtain a permit for no potential discharge from the National Pollutant Discharge Elimination System (NPDES) even if they receive a no discharge permit from the Department of Health and Environmental Control.

NPDES regulations require permits for the "discharge of pollutants" from any "point source." A point source includes CAFOs. NPDES states a CAFO owner does not need to seek a permit if it has received a determination that it has "no potential to discharge."

Historically, the Department has provided a no-discharge permit prohibiting broilers from discharging pollutants. However, the permit does not consider the potential for any CAFO manure, litter, or process wastewater and acts more as a prohibition than a permit that requires assessment. The courts find the permit prohibiting discharge does not mean "they had no *potential* to discharge pollutants" within the meaning of the NPDES regulation. To meet the NPDES requirements, the Department must evaluate for potential discharge for a case-specific determination. Therefore, the court finds the Administrative Law Court erred in finding that broilers are not required to apply for NPDES permits because of the no discharge permit because it does not constitute a determination for no potential discharge.

[Blackmon v. S.C. Dep't of Health & Env'tl. Control](#) .

Court of Appeals of South Carolina

No. 2017-002598

Decided May 25, 2022

Opinion by J. James E. Lockemy

North Carolina

The US District Court, Middle District of North Carolina orders the North Carolina State Health Plan for Teachers and State Employees to reinstate insurance coverage for “medically necessary services for the treatment of gender dysphoria.”

In the past, the plan excluded treatment related to gender transformation. In 2017, the plan included “medically necessary services for the treatment of gender dysphoria.” However, the plan reinstated exclusions a year later.

Here, the court found that the plan’s exclusion of treatments facially discriminates based on sex and transgender status. The defendants claimed the reason for exclusion was because some gender dysphoria treatments are ineffective. However, this reasoning does not meet the burden to prove exclusion protects members from ineffective treatment, compared to if the plan had an exclusion more defined to not cover “medically unnecessary” treatments of gender dysphoria. Thus, the defendants did not meet their burden and the plaintiffs were granted summary judgment on their claim that the exclusions violated their Equal Protection rights.

Additionally, the court granted one plaintiff’s summary judgment for a Title VII claim. The Department of Public Safety provided the insurance plan to the plaintiff and assisted with implementing the plan. The court found that even if the Department did not create the plan, the Department was a “but-for cause” because if they did not provide the discriminatory health insurance, the injury would not have occurred. Even though state law required the Department to provide the insurance, state law is not a defense to a federal violation as state laws are pre-empted when federal and state regulations conflict.

[Kadel v. Folwell](#)  [PDF – 315 KB] 

United States District Court, Middle District of North Carolina

No. 1:19-cv-00272

Decided June 10, 2022

Opinion by J. Loretta C. Biggs

COVID-19 Court Filings & Opinions

New Jersey

These six back-to-back appeals arising from Law Division orders in two vicinages have been consolidated for the issuance of a single opinion. They require us to consider an issue of first impression—whether in the context of Rule 4:6-2(e) motions to dismiss with prejudice, insurance policies issued by defendants did not cover business losses incurred by plaintiffs that were forced to close or limit their operations as a result of Executive Orders (EOs) issued by Governor Philip Murphy to curb the COVID-19 global health crisis.

[Mac Prop. Grp. LLC v. Selective Fire & Cas. Ins. Co.](#) 

Superior Court of New Jersey Appellate Division

No. A-0714-20



Decided June 20, 2022

Opinion by J. Sumners, Jr.

Wisconsin

The Milwaukee Journal Sentinel made public records requests to the Department of Health Services (DHS) for certain documents related to the COVID-19 pandemic. After learning that DHS planned to respond by releasing a list of “all Wisconsin businesses with over 25 employees that have had at least two employees test positive for COVID-19 or that have had close case contacts that were investigated by contact tracers” and the number of such tests or contacts at each business, Wisconsin Manufacturers and Commerce and two other trade associations (WMC) brought an action seeking declaratory and injunctive relief to stop the release. The issue is whether the public records law’s general prohibition on pre-release judicial review of decisions to provide access to public records bars WMC’s claims. See Wis. Stat. § 19.356(1) (2019-20). We conclude that it does, and therefore affirm the court of appeals’ decision.

Wisconsin Manufacturers and Commerce v. Evers

[Supreme Court of Wisconsin](#)  [PDF – 304 KB] 

No. 2020AP2081-AC

Decided June 7, 2022
Opinion by J. Dallet

Quiz Question: July 2022

Question: When is the [American Public Health Association's \(APHA\) Annual Meeting and Expo](#) ?

Last Month's Quiz Answer

Question: What is the theme of the [Public Health Law Practitioners Convening](#) ?

Answer: The theme is "Law, Policy, and Equity in Public Health Practice: Learn, Lead, and Leverage." And there's still time to register. This event is hosted by CDC and the National Association of County and City Health Officials and will be held in-person August 17–19 in Chicago. Continuing Legal Education (CLE) will be offered.

Quote of the Month

"Our kids deserve a future free of plastic waste and all its dangerous impacts, everything from clogging our oceans to killing animals—contaminating the air we breathe, the water we drink, and the food we eat," said California Governor Gavin Newsom in a statement. "No more."

[Editor's note: This quote is from the above article [Single-use plastic waste is getting phased out in California under a sweeping new law](#) , CNN (07/01/2022).]

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