

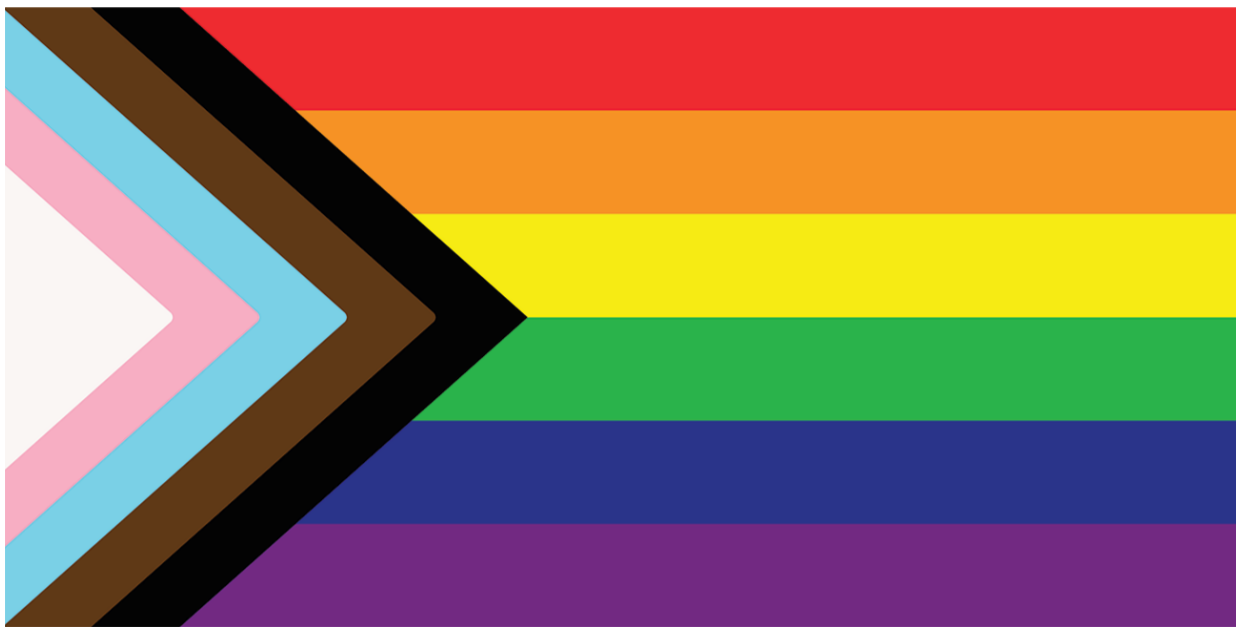


## Public Health Professionals Gateway

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# Public Health Law News

June 2021




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


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### Announcements


#### 39th Annual Conference on LGBTQ Health

*Health Professionals Advancing LGBTQ Equality* (previously known as the *Gay & Lesbian Medical Association*, or GLMA) will host its 39th annual conference virtually on **September 22–25**. The conference theme, *Closing the Gaps*, focuses on strategies to reduce and eliminate LGBTQ health inequities through expanding access to care and developing leadership of LGBTQ community members and professionals who belong to multiple minority groups. [Register for the conference](#) .


#### Call for Abstracts

The Society for Public Health Education (SOPHE) is accepting proposals for virtual oral presentations or skill-building workshops for their 23rd virtual Annual Advocacy Summit, *Health Education: Advancing Health Equity at Every Level*. The Summit will take place on **October 13–14**. Abstracts must be submitted by **June 25**. [Learn more](#) .

#### Balancing Client Privacy with First Amendment Rights in Local Health Department Clinics


This document, published by the Network for Public Health Law, considers **complex and contestable legal claims** that lack clear precedent through the lens of competing privacy and First Amendment claims. [View the document](#) .

## NACCHO 360 Conference Registration Open

The virtual 2021 NACCHO 360 Conference will be held **June 29–July 1**. Local public health professionals and partners will have the opportunity to interact with leaders in the industry, develop partnerships, and share innovative solutions to issues affecting communities across the nation. [Learn more and register](#) .


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## 2021 Public Health Law Conference Registration Open

The 2021 Public Health Law Conference is scheduled to be held in **Baltimore** on **September 21–23**. The conference, hosted by the Network for Public Health Law, will provide an opportunity to learn how the strategic use of legal and policy tools can address fundamental drivers of inequity, promote health and well-being, and save lives. (Current cancellation policy allows for a full refund if pandemic conditions do not improve by fall.) [Learn more and register](#) .

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## Public Health Law Academy Certificate


CDC and ChangeLab Solutions created the Public Health Law Academy to bridge the learning gap between formal public health and legal training and practice. The Academy now offers a certificate track for its **free on-demand trainings**. To earn the certificate, you must complete seven trainings in core competencies that all public health practitioners need. [Get started](#) .

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## Legal Tools


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### Legal & Policy Strategies for Health Care & Food System Partners

ChangeLab Solutions presents this framework for food system collaborations, plus legal and policy considerations for **three types of food system interventions**: 1) addressing food insecurity for individuals through connections to nutrition assistance programs; 2) establishing a new business model in which institutions embrace healthier food purchasing choices; and 3) creating strategies to invest in local food production and retailers. [Learn more](#) .

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### A Guide to Understanding Mental Health Systems and Services in Texas

This guide, published by the Hogg Foundation for Mental Health, aims to support navigation of Texas mental health systems and services. The guide also provides information for policy and law makers. [Learn more](#) .

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## Top Story

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### National: [Biden Administration restores rights for transgender patients](#)

The New York Times (5/10/2021) Michael D. Shear and Margot Sanger-Katz

### Story Highlights

President Biden has announced that healthcare providers who receive federal funding are prohibited from discriminating based on sexual orientation and gender identity. The announcement comes after President Biden pledged commitment to the [Equality Act](#) , which expands civil rights to the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community. President Biden's secretary of Health and Human Services (HHS), Xavier Becerra, says, "Fear of discrimination can lead individuals to forgo care, which can have serious negative health consequences. It is the position of the Department of Health and Human Services that everyone — including LGBTQ people — should be able to access health care, free from discrimination or interference, period."

This new policy is the first step in reversing the Trump-era HHS policy that said antidiscrimination provisions of the Affordable Care Act do not apply to transgender people. The new interpretation does not fully reverse the former administration's interpretation but invites people who may have experienced discrimination to file complaints with the federal government. Further plans include more robust civil rights provisions under Section 1557 of the Affordable Care Act, such as specifying the types of institutions and services that are subject to the provisions.

The move is not without critics. Roger Severino, leader of HHS's Office for Civil Rights under the Trump Administration, says, "Many people of good will who are scientists and doctors believe sex is a biological reality. This action is attempting to impose a contrary view."

The Biden announcement conflicts with recent state legislative activity, increasing controversy around the medical treatment of transgender adolescents. [More than ten states](#) are considering or have already passed bills that prohibit medical providers from offering certain medications, hormones, or surgeries to transgender teens. Medical providers in these states risk criminal penalties if they treat transgender youth, but they risk federal discrimination penalties if they do not.

[Editor's note: Read CDC's information on [LGBT health](#), [LGBT youth resources](#), and [transgender persons](#)]

## Briefly Noted

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**Colorado:** [Fatal drug overdoses surged 59% in Colorado last year as overall deaths rose during the pandemic](#)

The Denver Post (5/30/2021) Jessica Seaman

[Editor's note: Learn more about [drug overdose deaths](#).]

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**Kansas:** [Kansas swimming pools facing shortage of qualified lifeguards](#)

Kansas Public Radio (5/31/2021)

[Editor's note: Learn about [water safety](#) and read the [Model Aquatic Health Code](#).]

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**Maryland:** [Maryland governor signs Jordan McNair Act into law](#)

247 Sports (5/23/2021) Kevin Flaherty

[Editor's note: Read the [Jordan McNair Safe and Fair Play Act](#) and learn about heat-related injuries. Learn more about [heat-related illness](#).]

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**Texas:** [Analysis: The Texas electric grid and the improvements that didn't come](#)

The Texas Tribune (6/7/2021) Ross Ramsey

[Editor's note: Read [Never again: How to prevent another major Texas electricity failure](#) .]

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**Vermont:** [Vermonters could have curbside alcohol pickup for at least two more years](#)

VT Digger (5/31/2021) Kit Norton

[Editor's note: Learn more about [alcohol and public health](#).]

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**National:** [Big Candy is angry](#)

New York Times (5/22/2021) Valeriya Safronova

[Editor's note: Learn more about the US Food and Drug Administration's [regulation of cannabis and cannabis-derived products](#) and read the US Drug Enforcement Administration's [Marijuana—Cannabis Fact Sheet](#) .]

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**National:** [Menopause is having a moment](#)

VOX (6/3/2021) Anna North

[Editor's note: Learn [how regulation of dietary supplement products and dietary ingredients differs from regulation of "conventional" food and drug products](#) .]

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## Global Public Health Law News

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**China:** [Confronted by aging population China allows couples to have 3 children](#)

NPR (5/31/2021) Emily Feng

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**European Union and Latin America:** [EU will back up Latin America in climate, digitization and health](#)

Prensa Latina (6/7/2021)

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**Peru: Femicide and criminal policy** [↗](#)

Pressenza (6/1/2021) Raúl Allain

[Editor's note: Learn more about [intimate partner violence](#).]

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**Turkey: 'Sea snot': Turkish minister announces plan to tackle slimy scourge** [↗](#)

The Guardian (6/7/2021)

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## Court Filings and Opinions

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**Alabama:** The Mobile County Board of Health and the Family Oriented Primary Health Care Clinic (Mobile Health) filed a complaint in Mobile Circuit Court against Abbott Laboratories (Abbott) for Abbott's marketing of the prescription opioid OxyContin. Mobile Health asserted claims of negligence, wantonness, unjust enrichment, fraud and deceit, civil conspiracy, and public nuisance in the form of an opioid epidemic. Abbott filed a motion to dismiss all the claims based on the 20-year common law rule of repose and the applicable statute of limitations. The Mobile Circuit Court denied Abbott's motion to dismiss. Subsequently, Abbott petitioned the Supreme Court of Alabama for a writ of mandamus to direct the Mobile Circuit Court to dismiss all of Mobile Health's claims.

The Supreme Court of Alabama held that the applicable statute of limitations barred Mobile Health's claims and granted Abbott's petition for a writ of mandamus. The applicable statute of limitations for Mobile Health's claims of negligence, wantonness, fraud and deceit, civil conspiracy, and public nuisance is two years. The applicable limitation for unjust enrichment is either two years or six years. Abbott last actively marketed OxyContin in 2002 and last received payments for promoting OxyContin in 2006. Mobile Health filed a complaint in 2019.

The Alabama Supreme Court explained that Mobile Health's arguments asserting a continuous tort, fraud, and ignorance of the torts did not toll—or extend—the statute of limitations. Mobile Health first argued the public nuisance is a continuing tort because Abbott's marketing scheme continued to persuade doctors and patients that opioids should be used for chronic pain. The Supreme Court rejected this argument because Mobile Health's complaint did not specifically allege any conduct by Abbott after 2006. Next, Mobile Health argued that Abbott's fraudulent concealment tolled the running of the statute of limitations. The Supreme Court rejected this argument because Mobile Health's complaint provided no details of fraud by Abbott that prevented Mobile Health from discovering alleged Abbott misconduct before 2019. Finally, Mobile Health argued that the statute of limitations should not apply because Mobile Health could not have known about Abbott's alleged misconduct. The Supreme Court rejected this argument because a plaintiff's ignorance of a tort does not postpone the running of the statute of limitations. Therefore, the Supreme Court granted Abbott's petition for a writ of mandamus.

**Ex parte Abbott Labs. v. Fisher** [↗](#)

Supreme Court of Alabama

No. 1191001

Decided May 28, 2021

Opinion by Brady E. Mendheim, Justice

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**Washington:** The Washington Court of Appeals affirmed the decision of a trial court and denied the plaintiff's request to remove discriminatory language in a now-void protective covenant from the public record for property the plaintiff had purchased. The court held that that an existing order striking a void covenant under [RCW 49.60.227\(1\)\(b\)](#) [↗](#) is self-executing and that there is no additional need to physically alter existing records.

RCW 49.60.227 allows for removal of language in real estate documents that is "repugnant to many property owners and diminishes the free enjoyment of their property." The property that the plaintiff, May, owned had once had a protective covenant that said it could be sold only to a White person. This language did not appear on the deed when May purchased the property, but it could still be found in the public record. The plaintiff stated that under RCW 49.60.227(1)(b), the original public record with the protective covenant should be physically edited, removing the discriminatory provision.

The court, examining the statutory language, held that a court order was sufficient to remove the discriminatory provision. The court stated that the word "strike" can be interpreted to mean "removed from future documents," and that it did not require the physical removal of the provision from all public records.

## [May v. Spokane County](#)

Court of Appeals of Washington, Division 3

No. 37179-4-III.

Decided: February 23, 2021

Opinion by Pennell, C. J.

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**Federal:** The Food and Drug Administration (FDA) regulates homeopathic drugs under the Food, Drug, and Cosmetic Act (FDCA). In 1988, FDA published a guidance document that outlined the FDA's discretion to limit enforcement of the FDCA against homeopathic drugs. In 2019, FDA withdrew the 1988 guidance document and imposed an import alert against MediNatura's injectable homeopathic products. MediNatura sought a preliminary injunction to stop the withdrawal of the 1988 guidance document and to prevent the enforcement of the import alert. The district court denied injunctive relief.

The DC Circuit Court affirmed the district court, holding that MediNatura failed to meet the preliminary injunction requirements. To obtain a preliminary injunction, plaintiffs must show that they are likely to succeed on the merits, that they are likely to suffer irreparable harm without preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest. The court explained that MediNatura was unlikely to succeed on the merits. FDA adequately explained the decision to withdraw the guidance document even though the homeopathic industry and consumers relied on the document. Also, the court said FDA reasonably considered alternatives before withdrawing the guidance document. The court also explained that MediNatura did not meet any of the other preliminary injunction requirements. MediNatura did not demonstrate any direct harm from FDA's withdrawal of the guidance document. The public interest and balance of equities also weighed against equitable relief since the public has a strong interest in the enforcement of the FDCA to protect public health.

The DC Circuit Court also allowed FDA's import alert because it was non-final agency action. Under the Administrative Procedures Act, only final agency actions are reviewable. The Court explained that the import alert was not a final agency action because it was not the consummation of FDA's decision-making process. Therefore, FDA's import alert against MediNatura was not reviewable.

## [MediNatura, Inc. v. Food & Drug Admin.](#)

United States Court of Appeals, District of Columbia Circuit

No. 20-5341

Decided May 28, 2021

Opinion by Karen Lecraft Henderson, Circuit Judge

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**Federal:** The Eighth Circuit Court affirmed a district court's decision that a requirement to complete a form to claim an exemption from mandatory immunization for school children was not a violation of the First and Fourteenth Amendments.

The plaintiffs were children enrolled in the Missouri public schools and their parents, all of whom held sincere religious objections to immunization. The Missouri Department of Health requires exemptions to be filed with a specific form, Form 11, which contains a section stating the Department of Health "strongly encourages you to immunize your child" and has further information about the benefits of immunizations. The plaintiffs did not complete the form and instead wrote a statement objecting to the immunization policy. Plaintiffs were then notified that the children could not attend public school until Form 11 was completed.

The plaintiffs claimed that Form 11 violated their freedom of speech, freedom of religion, and equal protection rights—stating the form conditioned their speech, effectively making them sign a form they did not agree with. The Eighth Circuit held that this form did not violate these rights. Instead, the court said, the form was a necessary piece of administration that was neutral in that it did not target anyone's religious beliefs or violate any rights to equal protection. Any parent claiming an exemption for any reason must complete Form 11. The Court also stated that the plaintiffs' speech would not be compelled or limited by completing Form 11, and that the plaintiffs could submit supplemental information with the form, like the statement they wrote, to further explain their stance on the immunization policy.

## [BWC v. Williams](#)

Court of Appeals, 8th Circuit

No. 20-1222, No. 20-2207.

## Quiz Question: June 2021

**Question:** Which state recently passed a law requiring measures to protect athletes from heat-related injuries?

## Last Month's Quiz Answer

**Question:** What is the name of the first regional environmental agreement in Latin America and the Caribbean?

**Answer:** The "Escazú Agreement"

## Quote of the Month

"We are focused on honoring Jordan's legacy so that his death was not in vain. This includes protecting student athletes of all levels of competition, increasing awareness, education, and prevention of all heat related illnesses, empowering student athletes, and introducing legislation nationwide so that no parent should have to wait this long for closure where their child has been treated unfairly or unjustly." — Joint statement about the signing of the Jordan McNair Safe and Fair Play Act from Tonya Wilson and Marty McNair. Wilson and McNair are the parents of Jordan McNair, a University of Maryland football player who died of heat stroke following football practice in 2018.

[Editor's note: This quote is from the above article [Maryland governor signs Jordan McNair Act into law](#) , 247 Sports (5/23/2021).]

## About *Public Health Law News*

CDC's Public Health Law Program (PHLP) works to improve the health of the public by performing research, creating tools, and providing training to help practitioners understand and make law and policy decisions. Every month, PHLP publishes the *Public Health Law News* with announcements, legal tools, court opinions, job openings & more.

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