



## Public Health Professionals Gateway

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# Public Health Law News

March 2021




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


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### Announcements

#### Webinar: Legal and Policy Approaches to Preventing Housing Instability

In this **March 25** webinar hosted by the Network for Public Health Law, learn about key state and legislative approaches to addressing eviction and housing instability and how these issues are public health problems. [Register today](#) .

#### 2021 Health Law Scholars Workshop


Saint Louis University's Center for Health Law Studies is hosting a Health Law Scholars Workshop on **September 30–October 2**. This collegial forum offers faculty new to health law and bioethics the opportunity to present works-in-progress and receive feedback from scholars in the field. Abstract submissions are due by **April 5**. [Learn more](#) .

#### Association of State-Issued Mask Mandates and Allowing On-Premises Restaurant Dining with County-Level COVID-19 Case and Death Growth Rates

A new CDC *Morbidity and Mortality Weekly Report (MMWR)* finds that **state-issued mask mandates** are associated with the slowing of COVID-19 cases and deaths. [Read the MMWR](#).

#### Differences in Rapid Increases in County-Level COVID-19 Incidence by Implementation of Statewide Closures and Mask Mandates

An article in the *Annals of Epidemiology* finds counties in states with **statewide mask mandates** were 43% less likely to

have rapid increases in COVID-19 cases during the summer of 2020. Nonmetropolitan counties were 67% less likely. [View the journal article](#) .


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#### **LinkedIn Resource: CDC's Center for State, Tribal, Local, and Territorial Support (CSTLTS)**

CSTLTS recently created a social space on LinkedIn for the public health community to **engage and connect** with CDC and interact with public health colleagues. [Follow CSTLTS on LinkedIn](#).


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#### **Legal Literacy for Public Health Practitioners**

A paper recently published in *Public Health Reports* highlights the importance of understanding law and policy for **public health research and practice**. The structure and sources of health laws, as well as their impact on public health, are explored with a focus on the principles of public health legal literacy. [Read the paper](#) . (Subscription required.)


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#### **A Multi-Sector Approach to Removing Legal and Policy Barriers to Opioid Agonist Treatment**

A new paper by the Network for Public Health Law takes a multi-sector look at **legal and policy barriers** to opioid agonist treatment. The authors highlight several ways to increase access to this life-saving, yet underused, treatment. The paper was written in collaboration with the Drug Policy Alliance and with support from the Robert Wood Johnson Foundation. [Read the paper](#) .

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#### **Hiring: Mitchell Hamline School of Law (St. Paul, MN)**


The Public Health Law Center at Mitchell Hamline School of Law is looking to hire a **staff attorney/senior staff attorney** to join the Commercial Tobacco Control Program. The Center strongly encourages people from groups that have been marginalized and underrepresented to apply. [Review the desired qualifications and apply](#) .

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### Tribal Announcements


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#### **Grant Opportunity: Violence Against Women Grants to Indian Tribal Governments**

The Office on Violence Against Women within the US Department of Justice is offering a grant opportunity with an **April 7 deadline**. The grant provides tribal governments assistance with their response to community domestic violence, dating violence, sexual assault, sex trafficking, and stalking. Federally recognized Indian Tribes are eligible to [apply](#) .

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#### **Medicaid's Role in Healthcare for American Indian and Alaska Native (AI/AN) Populations**


This brief by the Medicaid and CHIP Payment and Access Commission details the federal government's role in providing healthcare to **AI/AN populations** through Medicaid. Topics covered include disparities in coverage, special rules and protections for AI/AN Medicaid beneficiaries, and suggestions for improving Medicaid's provision of healthcare to these populations. [View the brief](#) .

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### Legal Tools


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#### **Map: United States Racism Declarations**

The American Public Health Association has created an interactive map that shows declarations of **racism as a public health crisis** or emergency across the United States. Currently, more than 170 declarations are featured, and this tool will be updated with new declarations. [View the map](#) .


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#### **Legal Interventions to Reduce Overdose Mortality: Naloxone Access Laws**

Naloxone is a drug that been effective in reversing opioid overdoses with timely administration and emergency care. State laws related to **increasing naloxone access** are summarized in this resource by the Network for Public Health Law. [Read the laws](#) .

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#### **Legal Cases and State Legislative Actions Related to the Patient Protection and Affordable Care Act (ACA)**

The National Conference of State Legislatures has compiled the **important court cases and state laws** related to the ACA since its passage in 2010. Legal cases and legislation both supporting and challenging the ACA are included. [Learn more](#) .

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## State Palliative Care Laws and Appropriations

Palliative care is a type of specialized, team-based care for people suffering from a serious illness. The National Academy for State Health Policy, with support from the John A. Hartford Foundation, created an **interactive map** that tracks recent state-level palliative care legislation and budget initiatives. [View the map](#) .

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## Top Stories

### National: [Baby food lawsuits keep piling up after heavy metals report](#) [↗](#)

Bloomberg Law (2/12/2021) Julie Steinberg

#### Story Highlights

Campbell Soup Company has become one of five baby food companies facing a consumer lawsuit after a [House subcommittee report](#) [📄 \[PDF – 2.01 MB\]](#) [↗](#) found that seven brands of baby food have dangerous levels of heavy metals. The [class action complaint](#) [↗](#) filed in the US District Court for the District of New Jersey alleges that Campbell's Plum Organics brand does not inform consumers of the heavy metals in its products and that the labeling is "deceptive and misleading." The suit also claims that Campbell Soup Company "refused to cooperate with the Subcommittee" in the panel's investigation of heavy metal levels in Campbell's products. Other companies facing lawsuits are [Nurture Inc.](#) [↗](#), [Gerber Products Co.](#) [📄 \[PDF – 7.15 MB\]](#) [↗](#), [Beech-Nut Nutrition Co.](#) [📄 \[PDF – 4.83 MB\]](#) [↗](#), and [Hain Celestial Group Inc.](#) [📄 \[PDF – 924 KB\]](#) [↗](#)

In its [response to the report](#) [📄 \[PDF – 163 KB\]](#) [↗](#), Campbell asserts that its products do not exceed heavy metal levels "deemed acceptable by independent authorities" and says there is a "lack of specific FDA guidance on baby food." Further, Campbell spokesperson Amanda Pisano maintains the company's confidence in its products and says Campbell intends to "defend this case vigorously."

The exposure to dangerous levels of heavy metals, including arsenic, lead, cadmium, and mercury, can lead to adverse pregnancy outcomes and endanger brain development, as stated in the complaint.

[Editor's note: Read [more about exposure to heavy metals.](#)]

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### Texas: [Family of 11-year-old boy who died in Texas deep freeze files \\$100 million suit against power companies](#) [↗](#)

ABC News (2/21/2021) Bill Hutchinson

#### Story Highlights

A historic snowstorm last month left more than 4 million Texans without heat and electricity as temperatures dropped to sub-freezing levels. Deaths related to the storm are reported across the state, including from hypothermia and carbon monoxide poisoning due to people using cars and generators to keep warm. In one of the first wrongful death lawsuits resulting from the storm, the mother of 11-year-old Cristian Pineda accuses Texas power providers Electric Reliability Council of Texas (ERCOT) and Entergy Corporation of gross negligence.

According to the [complaint](#) [📄 \[PDF – 305 KB\]](#) [↗](#), Pineda was found dead in the family's mobile home, sharing a bed and blankets with his 3-year-old brother to stay warm. An official cause of death is pending an autopsy, but the family suspects that the cause of death is hypothermia, as the home was without power and heat for two days with temperatures as low as 10 degrees. The lawsuit claims that "ERCOT and Entergy failed to take any preemptory action that could have averted the crisis and were wholly unprepared to deal with the crisis at hand." The suit alleges that the power companies misled consumers about the blackout's expected length, preventing the Pineda family from preparing or leaving the area.

ERCOT, the manager of the electric grid, maintains it is "confident that our grid operators made the right choice to avoid a statewide blackout" and has not yet released a response to the lawsuit. Entergy has stated it is "deeply saddened by the loss of life in our community" and says it is "unable to comment due to pending litigation."

[Editor's note: Read [HHS's public health emergency declaration](#) [↗](#) and [CDC's resources on severe winter weather](#). For a more in-depth discussion of the lawsuit and Texas jurisprudence, read [A family is suing Texas' power grid operator after their son died from suspected hypothermia. But ERCOT may be shielded from lawsuits](#) [↗](#), Texas Tribune (2/22/2021), by





Reese Oxner.]



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**Tribal:** [Cherokee Nation strikes down language that limits citizenship rights 'by blood'](#) 

NPR (2/25/2021) Mary Louise Kelly & Farah Eltohamy

**Story Highlights**

In a [ruling](#)  [\[PDF - 1.5 MB\]](#)  by the Cherokee Nation Supreme Court, the words “by blood” will be removed from the Nation’s [constitution](#)  [\[PDF - 322 KB\]](#)  and other legal doctrines. The “by blood” amendment was added to the constitution in 2007 and has been used to exclude the descendants of Freedmen from receiving full Cherokee Nation citizenship rights. The Freedmen are Black people whose ancestors were enslaved by the tribe; approximately 8,500 enrolled Cherokee Nation members are descended from Freedmen.

The decision follows a [2017 ruling](#)  [\[PDF - 464 KB\]](#)  that the Cherokee Nation violated an 1866 treaty signed with the US government when it excluded Freedmen from citizenship. Despite this ruling, the constitution’s “by blood” language limited full citizenship rights of descendants of Freedmen, including access to tribal healthcare and housing. According to Graham Lee Brewer, a citizen of Cherokee Nation, the Cherokee Nation healthcare system is the only healthcare option for many descendants of Freedmen. This ruling will also allow descendants of Freedmen to hold office and run for tribal council or chief.

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**Briefly Noted**

**National:** [Johnson & Johnson sets aside almost \\$4 billion for talc verdict, filing shows](#) 

Reuters (2/22/2021)

[Editor’s note: Read the [regulatory filing](#) [\[PDF - 1.4 MB\]](#)  and learn more about [talc in cosmetic products](#) .]

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**Georgia:** [Lawmaker proposes declaring racism a public health crisis in Georgia](#) 

Fox 5 Atlanta (2/9/2021)

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

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**Hawaii:** [Bristol-Myers, Sanofi ordered to pay Hawaii \\$834 million over Plavix warning label](#) 


Reuters (2/15/2021) Tina Bellon and Nate Raymond

[Editor’s note: Read the [court order](#) [\[PDF - 572 KB\]](#) .]

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**New York:** [Surrogacy legal in NY: What this means for New Yorkers](#) 



New York Post (2/16/2021) Doree Lewak

[Editor’s note: Read the [law](#) .]

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**North Carolina:** [Bill would increase access to autism treatment in NC](#) 

WRAL (2/23/2021) Laura Leslie and Matthew Burns

[Editor’s note: Read the [bill](#)  [\[PDF - 199 KB\]](#) . Learn more about [treatment and intervention services for autism spectrum disorder](#).]

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**Utah:** [New regulations for the state’s ‘troubled teen’ industry win final legislative approval](#) 



The Salt Lake Tribune (3/2/2021) Taylor Stevens

[Editor’s note: Read the [bill](#) .]

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**Virginia:** [Virginia lawmakers pass legislation that would legalize marijuana in 2024](#) 

NBC News (2/28/2021) Chloe Atkins

[Editor’s note: Read the [bill](#) . Learn about marijuana or cannabis under the [Controlled Substances Act](#) .]




**France:** [Medical data of 500,000 French patients leaked online](#) 

The Local France (2/24/2021)

**Myanmar:** [UN independent experts 'appalled' by deportation of migrants to Myanmar, in defiance of court order](#) 

UN News (2/24/2021)

[Editor's note: Read the [UN statement](#) .]

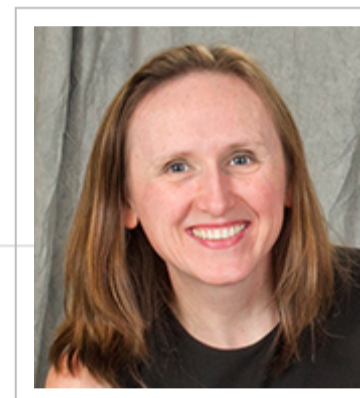
**Norway:** [Norway proposes easing of drugs law in bid to help addicts](#) 

Reuters (2/19/2021) Terje Solsvik

## Profile in Public Health Law: Sheila Fleischhacker, PhD, JD, RDN

**Title:** Adjunct Professor, Georgetown University Law Center



**Education:** RDN, Iowa State University; JD, Loyola University Chicago School of Law; PhD, Nutritional Sciences, Penn State University; BS, Food and Nutrition/Dietetics, Loyola University Chicago




**Public Health Law News (PHLN):** What sparked your interest in public health law?

**Fleischhacker:** Living and working in Philadelphia in 2002, I grew a greater appreciation for how legal training could help me more effectively contribute to the growing interest in using law and policy to promote healthy eating and address diet-related health disparities.

**PHLN:** Please describe your career path.

**Fleischhacker:** I was interested in sports nutrition throughout high school and college and wanted to pursue a PhD in nutritional sciences to better understand the Female Athlete Triad. During my early stages of graduate school, I transitioned to focus on child nutrition and health disparities and learned very quickly how underused but needed using law and policy would be to better address the growing childhood obesity epidemic and diet-related health disparities. I then garnered legal training and further experience across government, non-government, and academic sectors to advance the use of law and policy to promote healthy eating and reduce health disparities. I have integrated teaching at Georgetown so I can help the next generation of change agents in nutrition law and policy and then after having [Professor Jill Morrison](#) , director of Women's Law and Public Policy Fellowship at Georgetown, as a student, we worked together to co-create a [novel course](#)  focused on the role of law and policy in improving the first 1,000 days of a child's life (pregnancy through a child's second birthday).

**PHLN:** How is law related to nutrition and public health outcomes?

**Fleischhacker:** As detailed in a [report](#)  I worked on that focuses on strengthening national nutrition research, diet-related illnesses are the leading source of poor health in the United States. Nearly 3 in 4 American adults are overweight or obese and 1 in 2 have diabetes or prediabetes—and these rates continue to rise. Poor nutrition further contributes to cardiovascular diseases, several cancers, poor gut health, and many other disorders. Diet-related diseases create enormous strains on productivity, healthcare spending, and health disparities. Our food system also strains our natural resources. In the first 1,000 days of a child's life, nutrition plays a crucial role in physical, social, emotional, and cognitive development.

**PHLN:** How do law and policy relate to the “it takes a village” mindset to raising a child?

**Fleischhacker:** Professor Morrison and I developed the First 1,000 Days course at Georgetown to highlight throughout this period how law and policy affect a child's ability to grow, learn, and thrive and affect a country's health and prosperity. This course approaches this period with a reproductive justice lens, emphasizing health disparities resulting from historic and ongoing discrimination and inequality. Throughout the world, factors such as race, language, income, education, immigration status, ability, gender identity, and sexual orientation affect one's ability to carry a healthy pregnancy to term, and the opportunities babies have to grow and thrive. Only by addressing these factors can societies maximize outcomes during the 1,000 days period. This course focuses on policies, programs, and practices across the globe—at the national, tribal, state, and local levels—that improve or hinder family well-being. Students examine the evidence informing these courses of action, along with the historical and contemporary legislative, regulatory, and judicial aspects. Throughout the first 1,000 days, the students see how law and policy designed to foster the “it takes a village” mindset has the greatest potential to have positive impacts on children, families, and communities.

**PHLN:** What led you to create this “First 1,000 Days: Global Health Law & Policy from Gestation to Age Two” course?

**Fleischhacker:** I had the good fortune to have Professor Morrison as a student in the Nutrition Law and Policy [course](#) I teach at Georgetown while she was pursuing her LLM, or master of laws studies, and she invited me to lecture in her Reproductive Justice course. Through her questions and exposure to her class and just the growing needs and opportunities around the first 1,000 days, we discussed developing a course focused on those first 1,000 days. We have co-taught this course the last two fall terms and the 30 students who have taken the course to date have rated it very highly.

**PHLN:** What is the value of having a health equity and reproductive justice lens for this course and subject area?

**Fleischhacker:** Using a health equity lens and a reproductive justice framework have been invaluable to more effectively assess the role of and potential of law and policy for accelerating progress in supporting women who are pregnant and lactating, along with infants through their first 24 months and beyond. In various jurisdictions, policymakers enact courses of action, regulatory measures, laws and policies, and allocate resources with direct or indirect effects on providing the essential building blocks for families during the 1,000-day window of opportunity. This course applies the reproductive justice framework to an area that has primarily been viewed as one of public health. In doing so, we build a deeper understanding of the social factors and inequities that impede public health initiatives and widen health disparities. We also better equip the next generation of change agents with tools to build multi-disciplinary approaches to developing more effective laws and policies in this space.

**PHLN:** What key law and policy approaches are seen across the globe that have the potential to support healthy growth and development during the first 1,000 days?

**Fleischhacker:** Our course examines approaches used across the globe that have been used or have the potential to support healthy growth and developing during the first 1,000 days. Using a comparative law approach, we are able to better understand the role of a reproductive justice framework in advancing maternal and child health and how racism, economic inequalities, and all forms of discrimination (especially in the United States) have resulted in policies that do not advance maternal and child health and lead to racial health disparities. Topics and themes include preconception care, infertility, assisted reproductive technology, maternal and infant mortality disparities, newborn screening, immunizations, family leave policies, breastfeeding relevant policies and practices, dietary and physical activity guidance, social assistance programs, food and nutrition labeling, childcare supports, and other environmental and policy strategies to support maternal and child health. We lift up comprehensive approaches to raising a child and highlight the significant role policymakers play in enacting courses of action, regulatory measures, laws and policies, and resource allocations with direct and indirect effects on providing the essential building blocks for families during the 1,000-day window of opportunity. This includes pandemic-related responses to teleworking caregivers while children are home due to school and childcare closures.

**PHLN:** What kind of policies could be implemented in the United States to better support families during the first 1,000 days?

**Fleischhacker:** After decades of uncertainty, the United States now has an [official maternal mortality rate](#) (17.4% deaths per 100,000 births in 2018). Investments in data are fundamental to helping us develop effective intervening approaches. In the United States, we must develop more comprehensive approaches to reduce our maternal and infant mortality disparities. This will include stronger investments in social assistance programs. Childcare supports are also crucial and will play a tremendous role in our ability to reinvigorate women of color in the workplace who have been displaced by the pandemic and have experienced the associated economic ramifications. Unlike most developed countries, the United States lacks a nationwide paid leave law, which has been significantly associated with positive birth outcomes. The first 1,000 days offers a critical window for opportunity or vulnerability. This period has been shown to set the stage for positive child development and chronic disease prevention. Evidence suggests that countries that fail to invest in this period have higher healthcare costs and lower economic productivity.

**PHLN:** Do you think the United States is moving toward a more “it takes a village” approach, with more support for the first 1,000 days?

**Fleischhacker:** Yes, the United States seems to be moving in that direction. Obesity research spotlighted the growing need to set children and their moms off on the pathway for success, among other health, economic, and social factors to investment in these life stages. We now have *Dietary Guidelines for Americans* that target women who are pregnant and/or lactating and infants through the first 24 months. These new guidelines will likely have tremendous implications on new and reformulated products for these populations. Another example is the use of peer modeling within the US Department of Agriculture Special Supplemental Program for Women, Infants, and Children (WIC) to help increase breastfeeding initiation and duration. WIC also made significant changes in their food package that benefited these populations but also made WIC authorized stores throughout the country better places for all Americans to shop.

**PHLN:** What are the challenges to implementing more robust laws and policies supporting the first 1,000 days?

**Fleischhacker:** We need stronger efforts to reprioritize children and the families and communities that raise them. We too often don't have moms or children at the table where decisions are made about what's in their best interest. We just lost [2.5 million women](#) in the workforce during the pandemic. We need national solutions to affordable and accessible childcare, along with workforce development efforts targeting working mothers. Our economy works best when women fully participate in our workforce. We need laws and policies that lift up women, which in turn helps lift up families and our communities.

**PHLN:** What career advice do you have for young public health and public health law practitioners?

**Fleischhacker:** Be yourself—we have tremendous public health issues to tackle now and going forward. We need you to be your best self and focus on the key law and policy levers to make meaningful and lasting changes. Be humble but bold. We need you to listen and observe the individuals, families, and communities you aim to serve—lift up their stories. And always remember when you lift up others, we rise together. *Carpe diem*—Latin for “seize the day.”

## Court Filings and Opinions

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**New York:** A New York appellate court affirmed a decision by the state Workers' Compensation Board to grant a request to cover the cost of the plaintiff's medical marijuana. The plaintiff, Daniel Quigley, was an East Aurora, New York, police officer who sustained severe work injuries. He developed chronic pain and was classified as permanently partially disabled. To seek relief from the pain, the plaintiff initially took Oxycontin and Oxycodone but later requested a switch to medical marijuana. East Aurora and its workers' compensation insurance carrier denied the request and appealed upon reversal, contending that the federal Controlled Substances Act criminalizes manufacturing, distributing, or possessing a Schedule I drug, including marijuana. The court, however, held that the workers' compensation insurance carrier is not “funding” a criminal activity when it reimburses a claimant for the cost of medical marijuana. In addition, the court said a denial of medical marijuana reimbursement does not advance the Act's mission to reduce substance abuse. The court also held that workers' compensation carriers are not subject to the coverage exemption provided under Public Health Law § 3368 (2) because the law doesn't directly reference the Workers' Compensation Law. Moreover, the court explained that workers' compensation carriers are “insurers” due to their functional equivalency to other insurance carriers, mooting the defendant's argument that it is not statutorily required to cover treatments. Therefore, the court concluded that the New York State Workers' Compensation Board made a reasonable decision to grant the request for medical marijuana reimbursement.

[Matter of Quigley v. Village of E. Aurora](#)

Appellate Division of the Supreme Court of New York, Third Department

2021 NY Slip Op. 1174

February 25, 2021

Opinion by Judge John C. Egan, Jr.

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**Federal:** A US District Court granted in part and denied in part a defendant's motion to dismiss, finding that the plaintiffs have stated a claim under the Prevent All Cigarette Trafficking Act of 2009 (PACT Act) and can seek a declaratory judgment that the defendant violated the Act. The court also found, however, that the plaintiffs' lack standing to bring their claim and that the court lacks jurisdiction to compel the defendant to comply with the PACT Act because the PACT Act provides an adequate remedy to their complaint.

Several states and one city filed this lawsuit against the US Postal Service (USPS) and the Postmaster General, alleging that the USPS has violated its obligations under the PACT Act. The PACT Act is intended to prevent cigarette traffickers from shipping cigarettes through the mail to evade state and federal law. The PACT Act states that the USPS “shall not accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains any cigarettes.” 18 U.S.C. § 1716E(a)(1). The plaintiffs alleged the defendant “delivers large international shipments of cigarettes across the United States and . . . follows the Return to Sender Program instead of seizing and destroying cigarette shipments,” which has “hampered [plaintiffs'] efforts to collect taxes and safeguard public health.”

[City of New York v. US Postal Service](#)

US District Court, Eastern District. New York

Case No. 19-cv-5934 (BMC)

February 15, 2021

Opinion by Judge Brian M. Cogan

**Federal:** A US District Court granted the defendants' motion to dismiss a putative class action because there was "no possibility of discrimination based on the alleged policy of declining to sell opioids."

This putative class action, on behalf of chronic pain patients, was filed against Walgreens and Costco pharmacies regarding the pharmacies' distribution of opioid drugs. The plaintiff claimed that the pharmacies violated federal discrimination statutes and California law by interfering with her—and other chronic pain sufferers'—access to opioids. Citing personal experiences when picking up her opioid prescriptions, the plaintiff alleged that she faced "discrimination, ridicule, and outright harassment" by the pharmacists at Costco and Walgreens. She said the pharmacies have "gone too far in their efforts to prevent the unlawful sale of opioids" and that their prescription fulfillment practices discriminate on the basis of disability.

The court found that the purported class of chronic pain and acute pain patients who fill their opioid prescriptions at the two pharmacies are not clearly "disabled" under federal law. The claims against Costco were dismissed with prejudice and the claims against Walgreens were dismissed without prejudice. (Editor's note: Dismissal with prejudice means the plaintiff may not bring another lawsuit alleging the same facts against the same defendant in the same court.)

[Smith v. Walgreens Boots Alliance, Inc.](#) 

US District Court, Northern District of California

No. 20-cv-05451-CRB

February 3, 2021

Opinion by Judge Charles R. Breyer

## Quiz Question: March 2021

**Question:** What is the only state with a law that requires therapists to be supervised by a specialized psychologist?


## Last Month's Quiz Answer

**Question:** What is mental health parity?

**Answer:** In the context of mental health, parity means that mental health and substance abuse services are covered by the insurer to the same extent as medical and surgical coverage.

## Quote of the Month

"There are a lot of decisions that were made a long time ago that led to the death of this young man. That is unacceptable." — Tony Buzbee, Attorney

[Editor's note: This quote is from the above article [Family of 11-year-old boy who died in Texas deep freeze files \\$100 million suit against power companies](#) , ABC News (2/21/2021).]

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