



# Public Health Professionals Gateway

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## Public Health Law News

January 2021



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

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### Announcements

#### Call for APHA Abstracts and Reviewers

The Law Section of the American Public Health Association (APHA) is accepting abstracts about public health law issues, with a focus on the 2021 Annual Meeting & Expo theme of *Strengthening Social Connectedness*. The deadline to submit abstracts is **March 21**. [How to submit your abstract and register as a reviewer](#) .

#### Sixth International Conference on Law Enforcement & Public Health

On **March 22–24**, join this virtual, action-focused conference that will address the complex and diverse intersections of law enforcement and public health. Learn about a broad array of **initiatives and lessons learned** through research, practice, and policy development. [How to register](#) .

#### Third Annual Anti-Human Trafficking Conference

This virtual, all-day event on **January 29** will center around laws on human trafficking and feature sessions exploring the role of various sectors involved in reducing human trafficking, including anthropology, sociology, policy, law enforcement, and substance abuse. [Register and purchase tickets today](#) .

### Accepting Applications: CDC's Public Health Associate Program (PHAP)

PHAP, managed by CDC's Center for State, Tribal, Local, and Territorial Support, is a great opportunity for recent graduates to receive two years of paid public health training. The program equips recent graduates with hands-on experience and training needed to work in the field of public health. Applications will be accepted **January 20–27**. [Learn more, apply, and share this notice with others.](#)

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### Accepting Applications: ORISE Fellowship in CDC's Division of Violence Prevention (DVP)

If selected for the Oak Ridge Institute for Science and Education (ORISE) fellowship, you will be on DVP's Policy and Partnerships Team, which provides leadership to promote violence-prevention **intervention strategies** through synthesizing, translating, and applying policy, partnership, and communication principles targeted to specific audiences, including partners and policymakers. [Be sure to apply by March 5.](#) [↗](#)

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## Tribal Announcements

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### Webinar: Tribes Are Public Health Authorities—Protecting Tribal Sovereignty in Times of Public Health Crisis

Sponsored by the Great Lakes Inter-Tribal Epidemiology Center, this Zoom webinar will cover the **public health authority of tribes** and explore how tribes exercise this authority in the context of public health crises. [How to register](#) [↗](#).

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### First Year of Operation Lady Justice: Activities & Accomplishments

In November 2019, [Executive Order 13898](#) [↗](#) established the Task Force on Missing and Murdered American Indians and Alaska Natives, designated **Operation Lady Justice**. A status report on major activities and accomplishments from the first year of the operation has been released. [Read the report](#) [↗](#).

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## Legal Tools

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### Governors' Use of Executive Orders and Proclamations in Hurricane Response, 2006–2018

This recent study examines the characteristics of recent executive orders and proclamations issued by US governors in response to hurricanes in order to inform state-level preparedness and response. Findings include: 468 relevant executive orders and proclamations, 14% of which were issued, at least in part, to benefit a jurisdiction other than the issuer's state. Also, executive orders and proclamations were most commonly used to direct government response or recovery (32%), handle and administer government resources (31%), and suspend legal requirements perceived to inhibit response (27%). [Read the article](#) [↗](#).

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### How Transgender Protection Laws Vary by State

While there are some laws in place at the federal level that recognize and protect transgender rights, protections for housing, employment, medical treatment, and the ability to adopt children vary by state. Stacker, a research company, recently analyzed state transgender protection laws from data compiled by the [Movement Advancement Project](#) [↗](#). [View the findings](#) [↗](#).

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## Top Stories

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### National: [Walmart is latest big-name company embroiled in opioid crisis](#) [↗](#)

NPR (12/23/2020) Brian Mann

#### Story Highlights

The Department of Justice (DOJ) filed a civil complaint against Walmart for its opioid dispensing and distributing practices that the DOJ claims helped fuel the opioid crisis. The DOJ alleged that Walmart's acts resulted in hundreds of thousands of violations of the [Comprehensive Drug Abuse Prevention and Control Act of 1970](#) [↗](#) [PDF – 10.8 MB] [↗](#). In DOJ's [press release](#) [↗](#), the agency claimed that Walmart filled “thousands of invalid prescriptions at its pharmacies” and did not “report suspicious orders of opioids and other drugs placed by those pharmacies.” If successful, the DOJ believes Walmart could pay billions of dollars in penalties.

Walmart defended against the allegations in a [public statement](#) , adding that the company stands behind its pharmacists when they refuse to fill problematic prescriptions. The company also claimed that the DOJ's "invented legal theory" puts pharmacists "between a rock and a hard place" by coming between patients and their doctors, who are approved by the Drug Enforcement Administration (DEA). Aware of the investigation, Walmart filed a [preemptive countersuit](#) against the DOJ and DEA in October, seeking a declaration that it is not a pharmacist's responsibility to come between the doctor-patient relationship and police prescribing activities.

Both cases are pending in federal courts.

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

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**Connecticut:** [New law requiring emergency insulin and diabetes prescription supplies taking effect Jan. 1](#) [↗](#)

NBC Connecticut (12/21/2020)

### Story Highlights

On January 1, 2021, a new Connecticut state law took effect that requires pharmacists to dispense a 30-day emergency supply of diabetes-related drugs and devices. Patients will be able to inform their pharmacist if they have less than one week's supply of diabetes-related medication or supplies. The pharmacist may issue the drugs or supplies after consulting the state's emergency drug monitoring program and exercising their professional judgment.

By January 1, 2022, CT House Bill 6003 will also cap the cost of insulin to \$25 for a 30-day supply for individuals with a state-regulated health insurance policy, and limit the cost for diabetes-related supplies (pumps, blood sugar meters, etc.) to \$100.

### Briefly Noted

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**California:** [Authorities investigate series of Thursday overdoses](#) [↗](#)

Lake County News (1/9/2020) Elizabeth Larson

[Editor's note: Read [Colorado's new housing discrimination act](#) [📄](#) [PDF - 207 KB] [↗](#) .]

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**Georgia:** [Surprise medical billing protection law in Georgia takes effect Friday](#) [↗](#)

The Center Square (12/31/2020) Nyamekye Daniel

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**Michigan:** [Governor Whitmer signs bipartisan jail reforms into law](#) [↗](#)

WKZO (1/4/2021) Will Kriss

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**Minnesota:** [2021 brings new laws on sexual assault kits, prior authorization by health insurers](#) [↗](#)

St. Cloud Times (12/27/2020) Norah G. Hertle

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**Minnesota:** [Slate of new Minnesota laws poised to take effect Jan. 1](#) [↗](#)

Crookstone Times (12/28/2020)

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**National:** [New US dietary guidelines include recs for babies and toddlers for first time](#) [↗](#)

CNN Health (12/30/2020) Ashley Strickland & Andrea Diaz

[Editor's note: Read [the new guidelines](#) [↗](#) .]

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**National:** [Surprise billing law covers contract disputes, price transparency](#) [↗](#)

Healthpayer Intelligence (1/6/2021) Kelsey Waddill

[Editor's note: Read the [No Surprises Act](#) [↗](#) .]

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**National:** [Many health plans now must cover full cost of expensive HIV prevention drugs](#) 

Kaiser Health News (1/5/2020) Michelle Andrews

## Global Public Health Law News

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**South Asia:** [Exposure to dirty air in the world's most polluted region linked to pregnancy loss, study finds](#) 

CNN (2/6/2021) Helen Regan

**United Kingdom:** [New pathway for approval of medicines in the UK](#) 

Health Europa (1/4/2021)

## Public Health Law Feature: Interview with Katie Hannon Michel, JD, MELP, ChangeLab Solutions

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**Title:** Senior Attorney

**Education:** JD and Master of Environmental Law and Policy, Vermont Law School; BA, UC Santa Cruz

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**Public Health Law News (PHLN):** Please describe your path to your current position.

**Michel:** Before I went to law school, I worked for a number of years with various organizations focused on food access and sustainable agriculture—I apprenticed on a small farm, managed farmers' markets, coordinated food access programs, and helped to conserve farmland with a small agricultural land trust. I went to law school because I wanted to sharpen my understanding of how to use law and policy for social change, especially with respect to food and the environment. My academic background was in literature and linguistics, and I knew if I wanted to advance in the field I was working in, I would need to be more literate in law and policy. During law school, I deepened my focus on food by working in Vermont Law School's Food & Agriculture Clinic where I helped create user-friendly legal tools for small farms, food businesses, and advocates. I went on to work as a law clerk for the Maine Supreme Judicial Court for a few years, and then I decided I wanted to return to the San Francisco Bay Area to be closer to my family. I knew about ChangeLab Solutions from my previous work in the Bay Area and I had used—or at least read—many of the organization's resources related to food access and sugary drinks. I knew I wanted to work in public interest law and policy, and ChangeLab seemed like a good fit given my experience. Luckily enough they hired me as a legal fellow, and here I am three years later.

**PHLN:** What do you do in your day-to-day role at ChangeLab Solutions?

**Michel:** I provide technical assistance and legal research to public health lawyers and their clients—including health departments, governments, community organizations, and anchor institutions across the country—to improve public health and health equity. Although I work across all our portfolio areas, I maintain a strong focus on food security and environmental health and justice, including issues related to clean air, safe drinking water, and lead prevention. I create legal tools like model laws and policies; develop in-person and web-based trainings; and work in teams to draft resources and journal articles, all grounded in best practices and designed to translate complex legal and policy concepts into actionable solutions.

**PHLN:** How did you become interested in law and public health?

**Michel:** I didn't have any specific training in public health or public health law before working at ChangeLab Solutions. It's been a steep learning curve! Three years ago, I hadn't even heard the term "social determinants of health," and now it's the foundation of my day-to-day work. Marice Ashe, ChangeLab's founder and former CEO, left a copy of Lawrence O. Gostin and Lindsay F. Wiley's "Public Health Law: Power, Duty, Restraint" on my desk soon after I started. I took it home and read bits and pieces every night before going to bed, hoping that at some point I would sound like I knew what I was talking about! I've enjoyed learning about public health at a time when the field is deepening its commitment to equity and social justice. And it has been interesting to apply a public health lens to subjects that I've focused on for a long time—e.g., food and the environment.

**PHLN:** What is administrative law?

**Michel:** To understand what administrative law is, it's helpful to start with a definition of an administrative agency. An agency is a government body within the executive branch that has authority to administer certain laws. One type of administrative agency is public health departments—including the US Department of Health & Human Services at the

federal level, as well as state and local departments of health.

Administrative law deals with the legal principles that guide administrative agencies when they are carrying out their day-to-day duties and responsibilities—from developing regulations to implement legislation, to issuing licenses and inspecting facilities to assure compliance with the law. Administrative law also governs how courts will review regulations and other agency actions if they are legally challenged.

Ultimately, administrative law principles act as guardrails that define the scope of and limitations on agency authority. These guardrails are crucially important. Agencies—including public health departments—exercise extensive powers vis-à-vis individuals and private entities. For that reason, it's important for public health practitioners to understand key administrative law principles and procedural rules, which help ensure that individual rights are protected and promote transparency and accountability to the public, which are key elements of "good governance." Following these principles also promotes health equity by reducing disparities in political power and governance that can limit meaningful participation.

**PHLN:** What does administrative law look like in public health?

**Michel:** As mentioned, health departments are themselves administrative agencies that engage in a wide range of regulatory activities, and they are, therefore, directly subject to administrative law doctrines adopted in their jurisdictions. These doctrines can affect many aspects of public health practice. For example, state and local health departments are the first line of defense in ensuring that our food is safe to eat. But there are certain legal and constitutional requirements environmental health inspectors must follow when carrying out their work. Let's say a health department receives a phone call complaining about food safety practices at a local café. The health department couldn't just permanently close the café based solely on the phone call. The health department would need to conduct an inspection and collect evidence of a food safety violation, notify the café owner about the specific issue, and then give the café owner an opportunity to fix the issue or contest the violation. These procedural steps are the guardrails that administrative law sets out for health departments and other administrative agencies. Note that members of the public can legally challenge a health department's failure to follow proper administrative procedures. Having an increased understanding of potential legal challenges—and best practices for avoiding them—can help health departments reduce their legal liability and better ensure that the rights of the public are being served and protected.

**PHLN:** How do regulations relate to administrative public health law?

**Michel:** A regulation—sometimes called a rule—is a law created by an administrative agency. Regulations have the force and effect of law and set requirements that are binding on private individuals and businesses. Public health regulations affect nearly every aspect of modern American life—from food and water safety to housing conditions, occupational safety, pharmaceuticals, and hospital licensing. Most public health regulations are carefully designed to serve the public. However, public health agencies should exercise caution and follow proper administrative procedures when making regulations to protect people's rights and retain public trust in the agency's work.

In addition to promulgating regulations, public health agencies are also often responsible for implementing, enforcing, or assuring compliance with those regulations by issuing licenses and benefits; conducting investigations and inspections; and issuing fines or imposing other types of penalties when violations are discovered. These activities are typically referred to as an agency's "regulatory" activities or responsibilities.

**PHLN:** How are regulations different from legislation?

**Michel:** Legislation is a law introduced and finalized by a legislative body such as Congress, a state legislature, or a city council or county board of supervisors. Regulations, on the other hand, are drafted by administrative agencies who have subject matter expertise. To address concerns about agencies making regulations behind closed doors without any citizen participation, Congress and all state legislatures have adopted administrative procedures acts (APAs). APAs establish procedures that federal and state agencies must follow when creating regulations, including providing the public with notice of proposed regulations and an opportunity to comment. Procedures like these help to make the regulatory process more democratic.

Another important limitation is that agencies aren't free to create whatever regulations they want. Rather, public health agencies can make regulations only when a legislative body has given them authority to do so in a piece of enabling legislation. For example, New York City's Smoke-Free Air Act gives the city's Department of Health and Mental Hygiene authority to "promulgate rules in accordance with the provisions contained in this chapter, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this chapter." Regulations often fill in the details of legislation and act on the broad-brush proposals put forward by legislative bodies.

Note that rulemaking procedures and other administrative requirements for localities, tribes, and territorial governments can vary, so it's important to consult with an attorney licensed to practice in the relevant jurisdiction to confirm what requirements apply.

**PHLN:** How can administrative law be used to improve public health equity?

**Michel:** Administrative law sets out the basic procedures that public health agencies must use when carrying out their day-to-day duties and responsibilities. But agencies can almost always go above and beyond these basic procedures to better serve their communities and to ensure that underserved groups—such as people with lower incomes and people of color—are not adversely impacted by regulatory actions. For example, although most state APAs do not require it, public health agencies can consider using an equity assessment tool to analyze the potential negative impacts of regulation on underserved communities before the regulation becomes final or to evaluate a regulation after it has been implemented. Or, agencies can publish user-friendly guidance documents on their websites in multiple languages and in formats that are accessible to people with disabilities, to help businesses and members of the public comply with regulatory requirements. This can reduce the number of enforcement actions in the long run and can have a positive effect on health equity.

**PHLN:** How can people learn more about administrative law?

**Michel:** Read ChangeLab Solutions' blog post on [Public Health Regulations: 4 Common Legal Challenges](#), and listen to our free webinar on the ABC's of Administrative Law in Public Health Practice, which ChangeLab Solutions developed in partnership with CDC's Public Health Law Program (PHLP) and the National Association of County and City Health Officials (NACCHO).<sup>\*</sup> In addition, ChangeLab Solutions and PHLP are developing new Public Health Law Academy trainings on administrative law, which are forthcoming in 2021.

**PHLN:** What is the Public Health Law (PHL) Academy?

**Michel:** The PHL Academy, supported by CDC, provides a deeper understanding of the use of law and policy to improve population health outcomes. Developed in cooperation with ChangeLab Solutions, the free and easy-to-use online trainings offered by the PHL Academy are essential for all public health professionals. The trainings provide a clear understanding of our legal system and how public health challenges can be addressed using legal and policy solutions.

**PHLN:** Do you have any hobbies?

**Michel:** I really like being outdoors, especially hiking. My annual summer backpacking trip in the Sierra Nevada is the highlight of every year. When I've lived in rural areas, I have enjoyed vegetable gardening, but I have been too busy to keep that up recently.

**PHLN:** Is there anything else you would like to add?

**Michel:** On the one hand, administrative law is important for public health practitioners to understand because it can help to reduce health departments' legal liability and ensure public rights are protected. Stated differently, however, administrative law is about helping health departments to provide great service and use the tools at their disposal to improve health for everyone, and especially for people who have been subjected to historical and ongoing structural discrimination and racism. I think that's the takeaway message.

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## Court Filings and Opinions

**Washington, DC:** A federal appellate court upheld a federal rule implementing a portion of the Affordable Care Act that requires hospitals to make available to the public a list of "standard charges." The plaintiffs contested the definitions of "standard charges" and "a list," in addition to advancing arguments that the act violates the Administrative Procedures Act (APA) in its feasibility and administrative burdens, that the rule will not provide the intended benefit of cost transparency, and that the rule violates the First Amendment.

The plaintiffs objected to the requirement that they publish multiple costs for five categories of patients, contending that the various categories negated the plain meaning of a "standard list," and that the requirement to publish both machine-readable and consumer-friendly versions was not compatible with the requirement to produce "a list." Citing context and congressional intent, the court upheld the rule's definition of "standard list" and further reasoned that the consumer-friendly list was only a subset of the machine-readable version.

The court also found the rule was compatible with the APA, reasoning that the court's role was not to insert its own judgment in lieu of the agency's, but it instead stated that "when an agency's decision is primarily predictive, our role is limited; we require only that the agency acknowledge factual uncertainties and identify the considerations it found persuasive." *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1105 (D.C. Cir. 2009).

Lastly, the court denied the plaintiff's First Amendment challenge, relying on settled case law finding certain types of disclosures allowable "as long as [they] are reasonably related to the State's interest in preventing deception of consumers" and "are not unduly burdensome . . . by chilling protected commercial speech." *Zauderer*, 471 U.S. at 651-512 [↗](#).

[American Health Association v. Azar](#) [↗](#)

United States Court of Appeals, District of Columbia

Case No. 20-5193

December 29, 2020

Tatel, Circuit Judge

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**Michigan:** The Michigan Supreme Court ruled that the state could reimburse private education institutions for costs associated with state mandates that protect health, safety, or welfare.

Historically, the Michigan Constitution and statutes prohibited the state from providing funds to non-public schools for educational purposes. However, the legislature changed the statutory scheme in 2016, allowing reimbursement to nonpublic schools with a monetary cap and limited only to reimbursement for the actual cost of compliance with state health, safety, or welfare requirements, creating a potential conflict between the state's constitution and legislation.

The court deadlocked in a 3-3 decision, which upheld the statute, finding that the law did not provide funds for *educational* services, but that the funding was a valid exercise of the state's police powers "to which all educational institutions and all students are generally entitled."

[Council of Organizations and Others for Education About Parochial v. Michigan](#) [📄](#) [PDF – 394 KB] [↗](#)

Michigan Supreme Court

Docket No. 158751

December 28, 2020

Opinion by Markman, J.

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## Quiz Question: January 2021

**Question:** When does "surprise billing" occur in the healthcare context?

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## Last Month's Quiz Answer

**Question:** Which regulatory agency is responsible for ensuring safe and healthful working conditions for working men and women by setting and enforcing standards?

**Answer:** Occupational Safety and Health Administration

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## Quote of the Month

"It's unconscionable that anyone should have to limit or go without a common and widely available life-saving drug on an emergency basis in America in 2021."—Derek Slap, Connecticut State Senator

[Editor's note: This quote is from the above article [New law requiring emergency insulin and diabetes prescription supplies taking effect Jan. 1](#) [↗](#), NBC Connecticut (12/21/2020).]

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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