

CDC PUBLIC HEALTH GRAND ROUNDS

Public Health Law: A Tool to Address Emerging Health Concerns



December 13, 2016



U.S. Department of
Health and Human Services
Centers for Disease
Control and Prevention

Public Health Law in the Twenty-first Century



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Public Health Law Program, Office for State, Tribal, Local and Territorial Support



U.S. Department of
Health and Human Services
Centers for Disease
Control and Prevention

CDC Public Health Law Program Founded in 2000

- **Mission is to advance the use of law as a public health tool**
- **Public health law now increasingly recognized as a vital and essential component of public health practice**
- **Public Health Law Program is part of a network of partners**
 - Representatives from federal, state, and local governments
 - Academic and private organizations
 - Focus on implementing public health law strategies

September 11, 2001



Public Health Law Program's Mission



To advance the understanding
of law as a
public health tool

Legal history reveals both the
POWER and **LIMITATIONS** of
government authority to
protect the public's health



Early Example of a Legal Public Health Intervention



Outbreak of cholera in London, 1854

Caused 616 deaths

Effort led by Dr. John Snow, resulted in local council deciding to remove the pump handle

The **Broad Street** pump handle, Soho neighborhood in London, England

New York City Before Sanitation Reform: Varick Street in 1890s

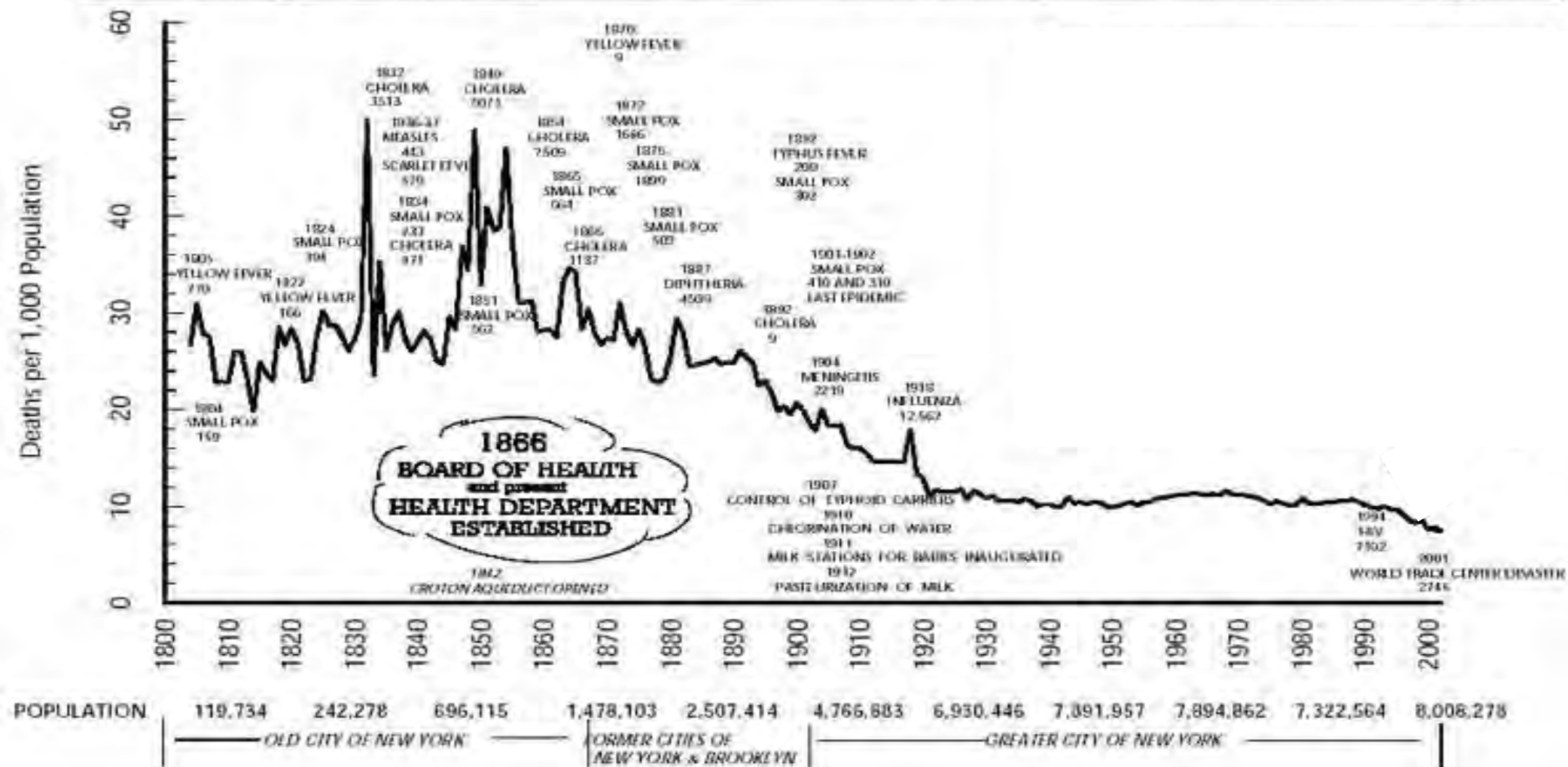


New York City After Sanitation Reform



The Conquest of Pestilence in New York City

...As Shown by the Death Rate as Recorded in the Official Records of the Department of Health and Mental Hygiene.



Legal Support for Government to Intervene through Law and Regulation to Protect the Public's Health

“There are manifold restraints to which every person is necessarily subject for the common good.”

Jacobsen vs. Massachusetts:

A 1902 smallpox outbreak in Massachusetts that made it to the United States Supreme Court



Key Holdings in *Jacobsen vs. Massachusetts*

- 1. Use of police powers for public health concerns**
- 2. Delegation of certain authorities to health agencies and other government subdivisions**
- 3. Use of actions limiting individual liberty for well-established public health interventions**
- 4. Provides constitutional support for spectrum of contemporary public health laws**

The Role of Law in Selected Public Health Achievements of the Last Century

Health Achievement	Laws Associated with Public Health Achievement
Vaccination	School vaccination laws Childhood vaccination programs Vaccine Adverse Event Reporting System
Control of infectious diseases	Sanitary codes, drinking water standards, food inspection Quarantine and isolation laws Mosquito and rodent control
Decline in heart disease and stroke	Education and information programs Food labeling Bike and walking paths
Recognition of tobacco as a health hazard	Sales tax and restrictions on sale to minors Smoke-free laws Lawsuits leading to settlement agreements



**Who has the power to shape public
policy to improve public health?**

Federal Government Has Limited Public Health Authority



Article 1, Section 8 of the U.S. Constitution

States Have Primary Responsibility for Public Health



The 10th Amendment gives states the primary responsibility for public health

Legal Concept of Police Power



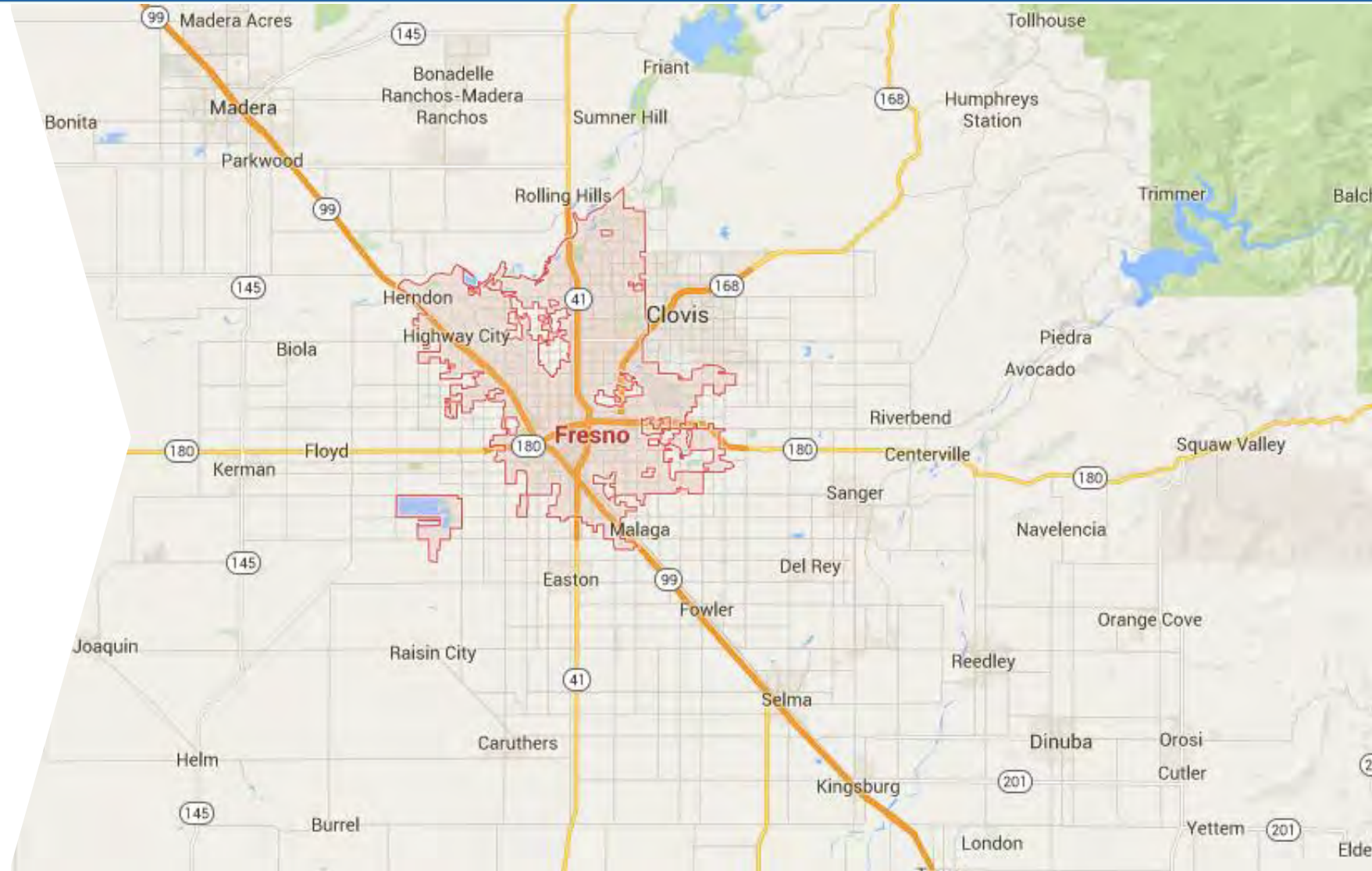
Promotes the public health, safety, and the general well-being of the community

Ability to enact and enforce laws for general welfare

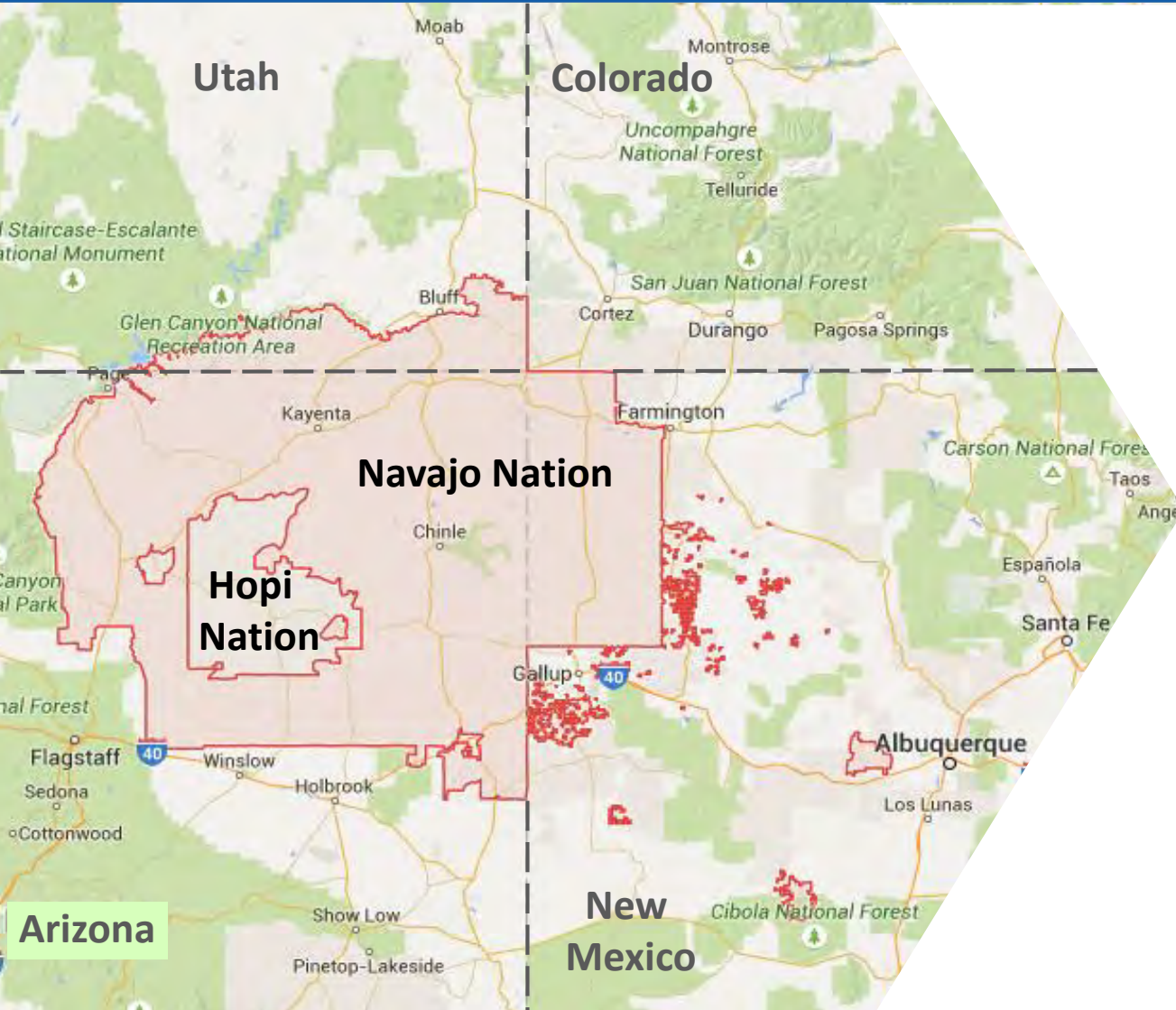
Regulates private rights in the public interest

Balancing State and Local Public Health Authority In California

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”




Public Health Law on Tribal Lands



What about tribal sovereignty?

**Tribes can create laws
and regulations that
protect health and safety**



**How can law be used
as a tool
to improve public health?**

Federal Authority Can Be Used to Shape Public Health



Federal regulations can provide incentives for local action

1984 Minimum Drinking Age Act withheld highway funding from states with drinking age under 21

Upheld by Supreme Court in 1987

Federal or State Authorities Can Also Prohibit Action by Lower Levels of Government

- **Preemption by higher levels of government can sometimes impede public health action**
- **The federal government can preempt state action**
- **States can preempt local government action**
 - For example, states can forbid cities or counties from passing smoke-free ordinances

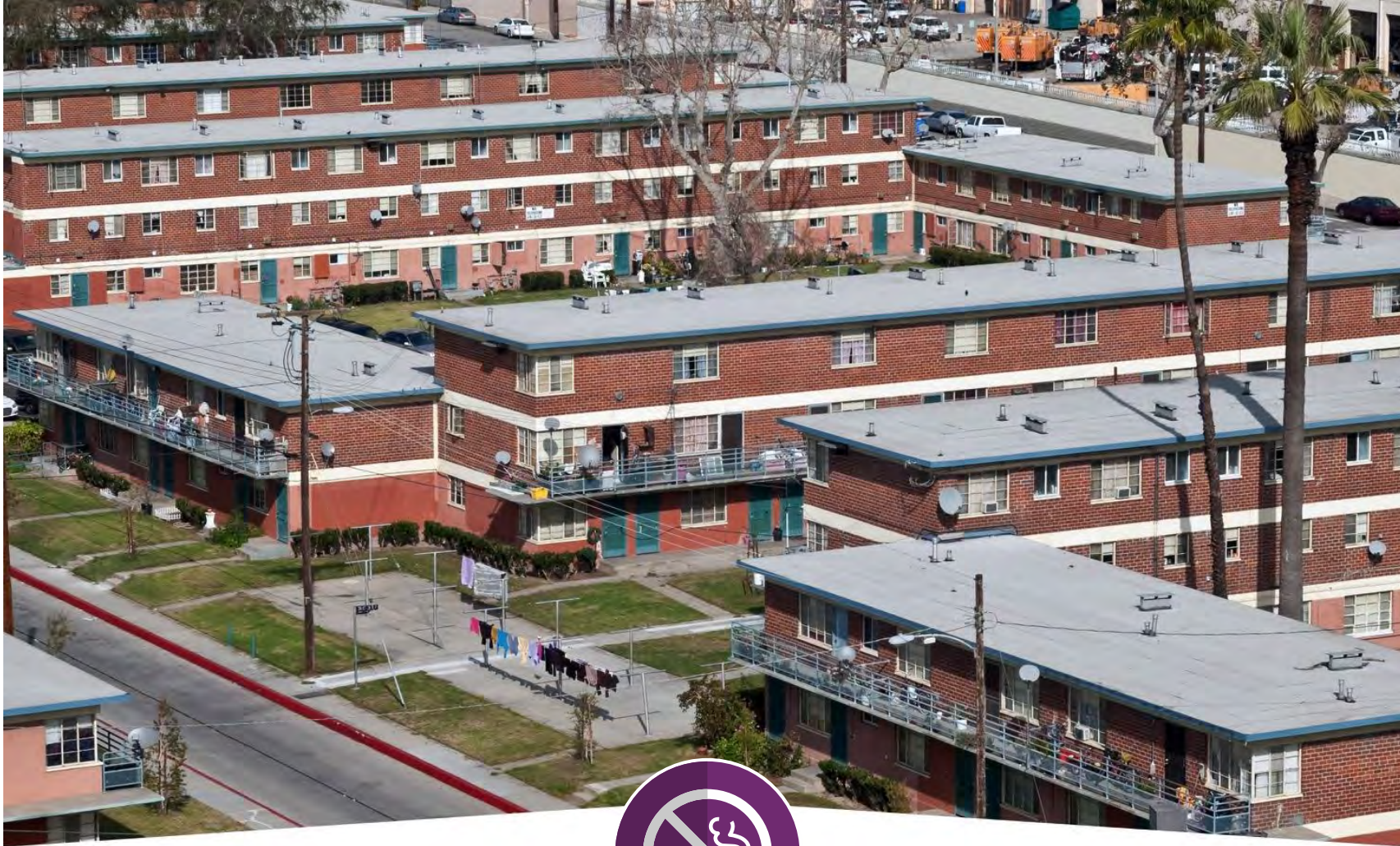


State and **local governments** can ...

Investigate Disease Outbreaks (Common) Isolate or Quarantine (Rare)



Ban Smoking in Multi-unit Housing, But Not Single-Occupancy Homes



Create Zoning for Farmer's Markets

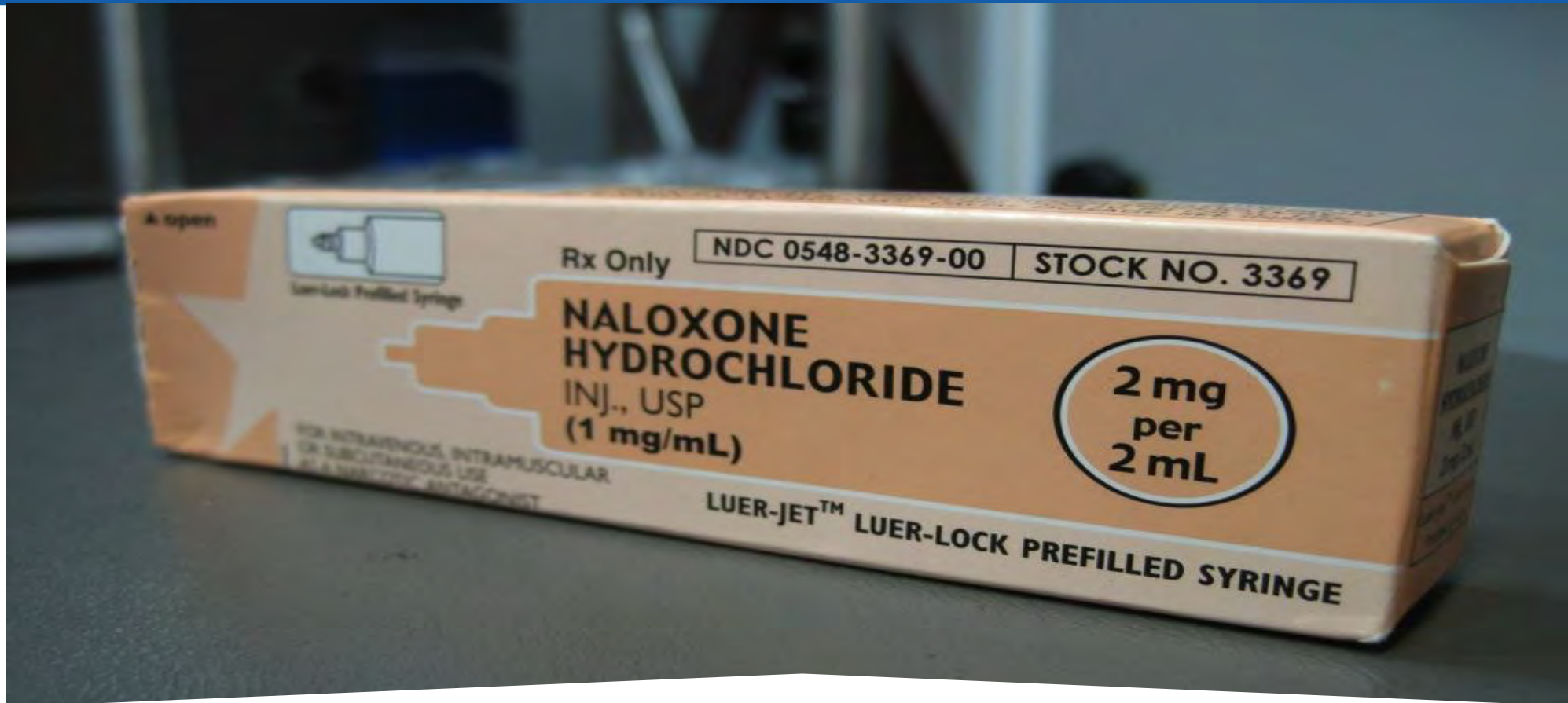


Require Kids to Wear Helmets



22 state-wide laws
201 local ordinances

Prevent Drug Overdose Deaths



Increase access to naloxone and use of prescription drug monitoring information

Prepare For And Respond To Emergencies

Examples:

Emergency declarations

Emergency Use Authorizations

Social distancing laws



Public Health Law Past and Present

- **Over the past century and a half, laws and rules have been increasingly used as tools to promote and protect the public's health**
- **In the United States, legal authority for public health resides primarily at the state, local, and tribal level**
- **Governments can provide incentives and disincentives for actions at lower levels of government**
- **Legal interventions can promote prevention of infectious, chronic, and injury-related diseases**

Using Law to Improve Public Health Practice



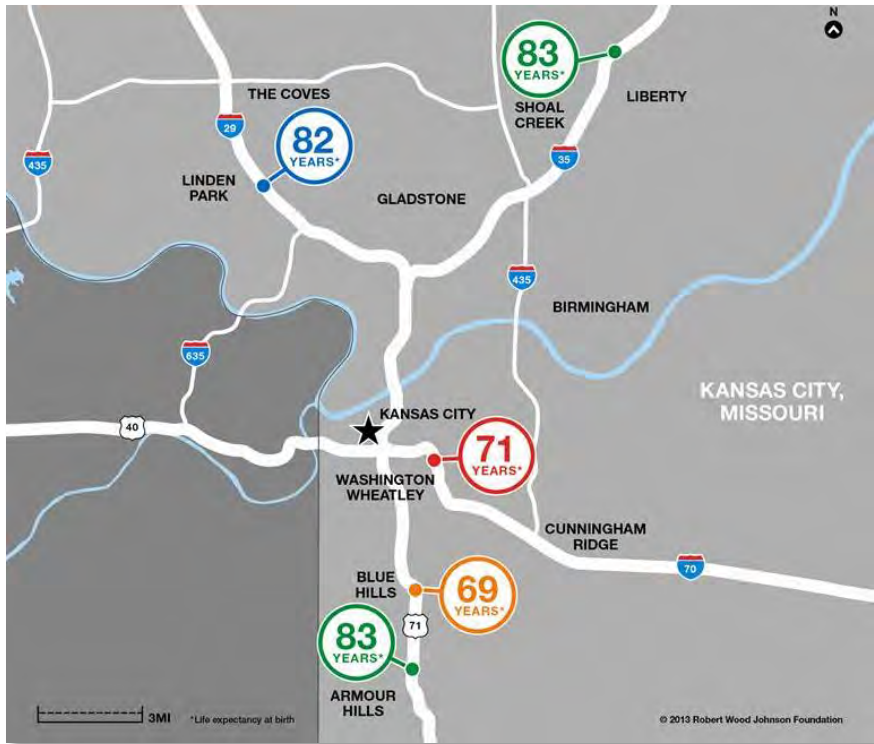
Matthew Penn, JD, MLIS

Director, Public Health Law Program

Office for State, Tribal, Local and Territorial Support

Social Determinants of Health

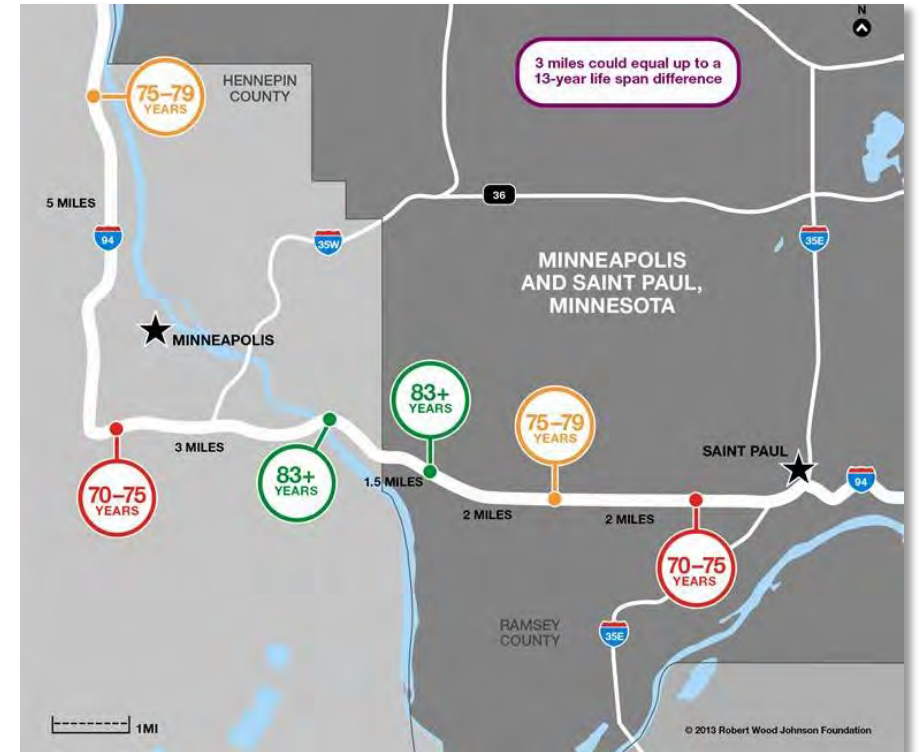
3 miles could equal up to 13-year life span difference



Kansas City, Missouri

69 YEARS*

Life Span
for Given
Location



Minneapolis and St. Paul, Minnesota

Maintaining healthy housing



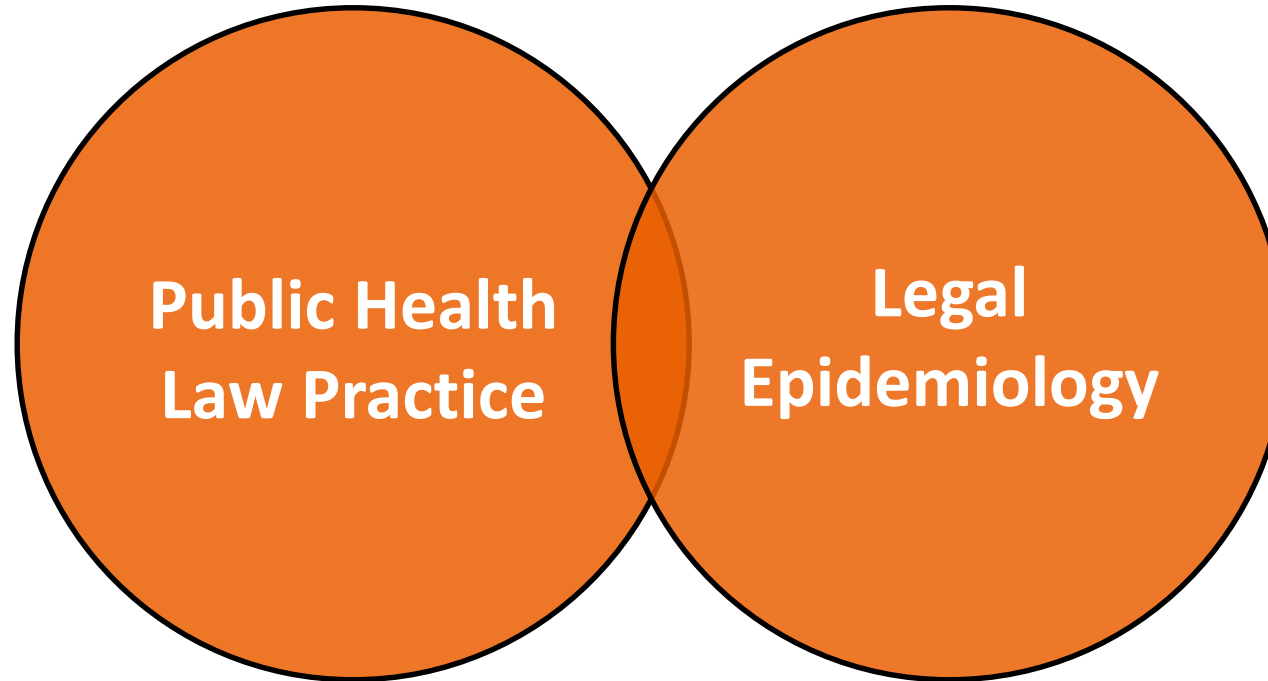


Creating transportation infrastructure



**Promoting social
and cognitive
development
through
educational laws
and policies**

Law As a Social Determinant of Health



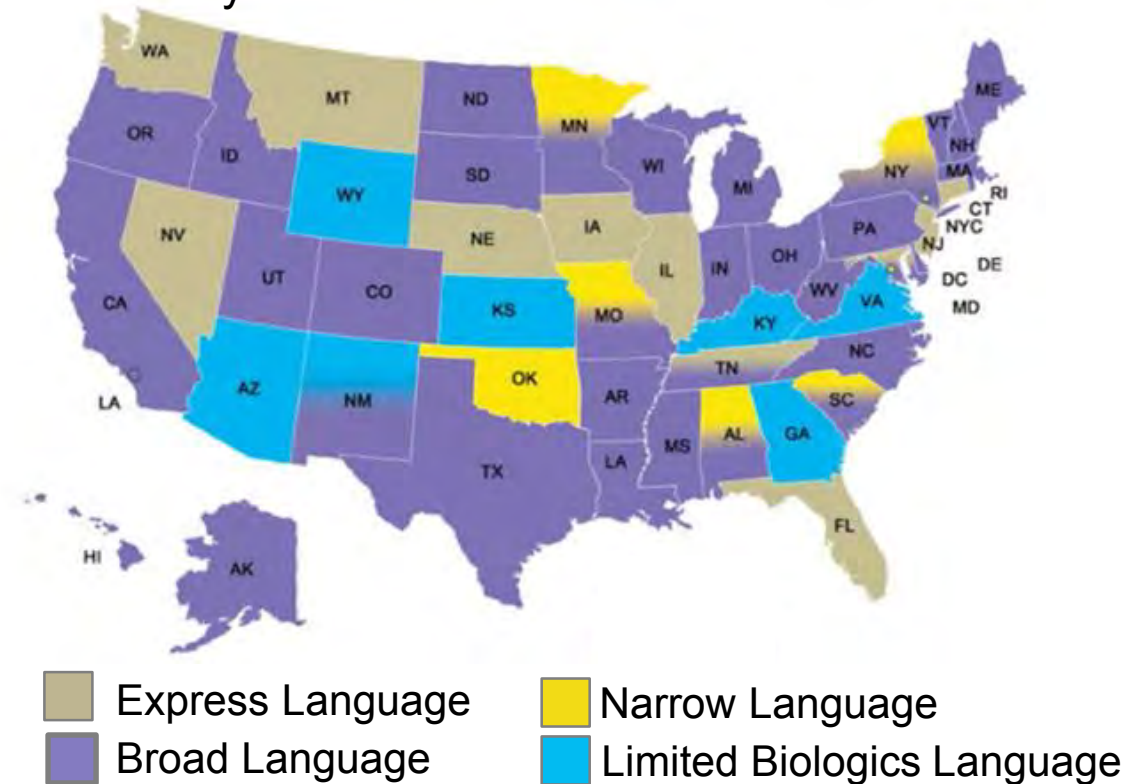
Legal epidemiology is the study of law as a factor in the cause, distribution, and prevention of disease and injury in a population

Legal Epidemiology

➤ We use legal epidemiology to

- Understand trends in law
- Study the impact and effectiveness of laws on health
- Inform and support best practices
- Develop an evidence base of what works

Legal Language Authorizing Involuntary Decontamination in Emergency Response to Radiological Incidents, by U.S. State and Select Cities



Legal Mapping

Legal Evaluation

Legal Assessments

What do laws say
across jurisdictions
on a topic?

Policy Surveillance

How do laws
across jurisdictions
change over time?

Association Studies

Do trends in law
relate to trends
in health?

Investigation Studies

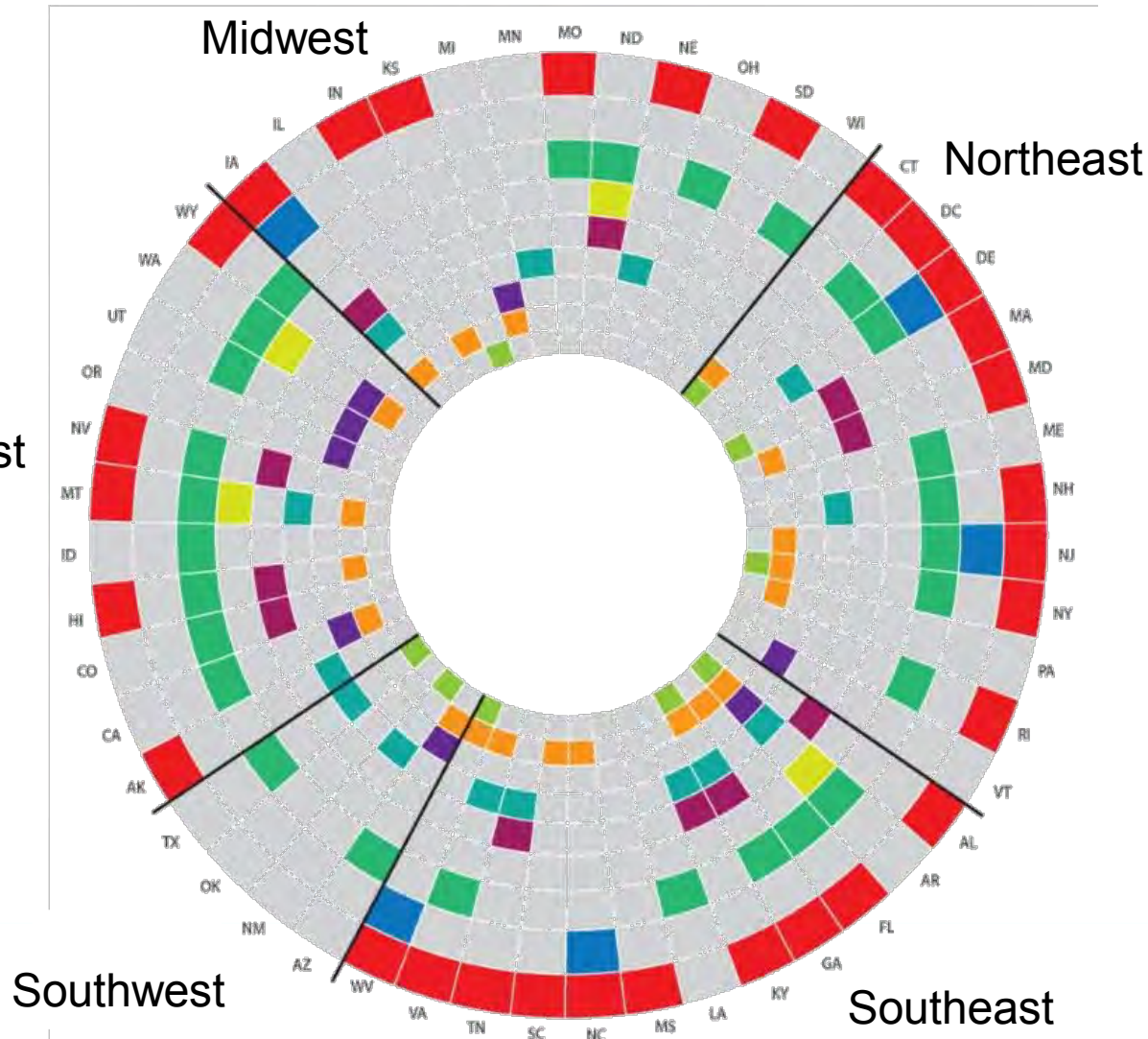
What impact does
the law have on health,
cost, and
the health system?

Legal Mapping

Comparing provisions in law and policy across jurisdictions or over time

Legal Assessments in Practice: School Vaccine Exemptions Laws

➤ This polar graph shows a cross-sectional analysis of vaccination exemption laws by state

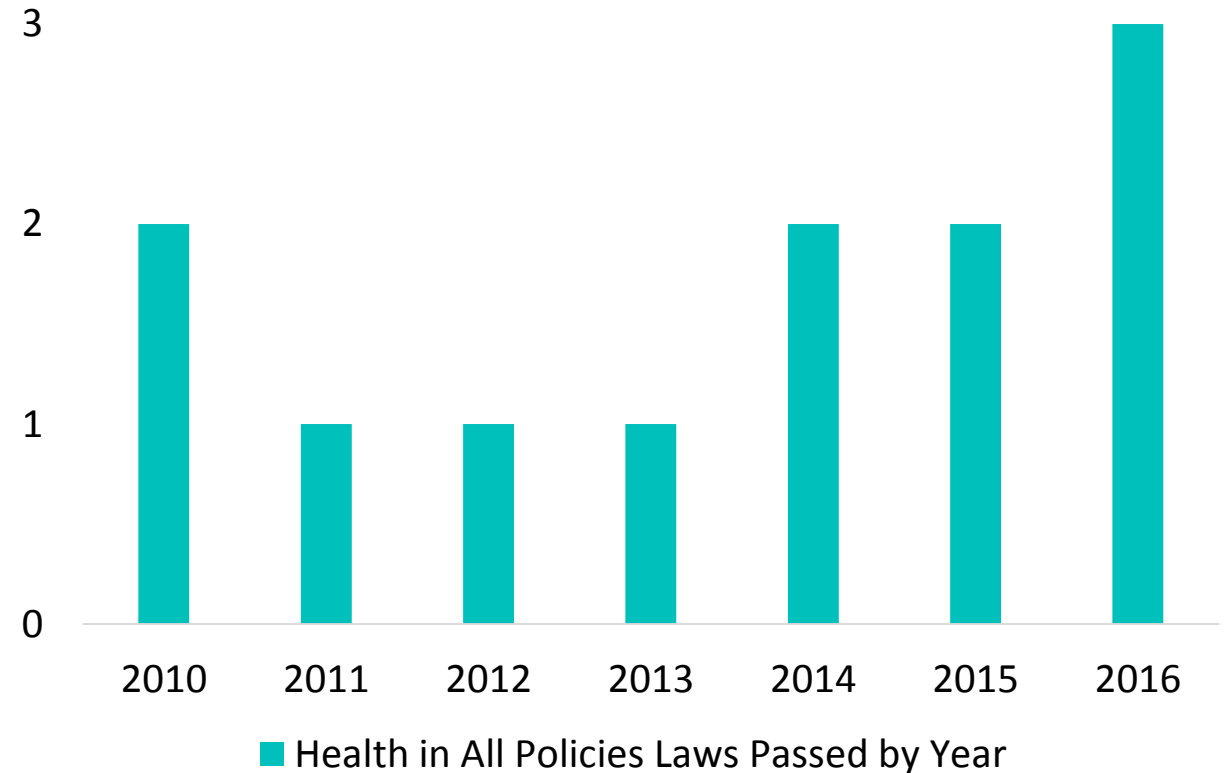


- Medical or religious exemptions only
- Philosophical exemptions expressly excluded
- Exempted student exclusion during outbreak
- Parental acknowledgement of student exclusion
- Exemptions not recognized during outbreak
- Parental notarization or affidavit required for exemptions
- Enhanced education for exemptions
- Medical exemptions expressly temporary or permanent
- Annual healthcare provider recertification for medical exemptions

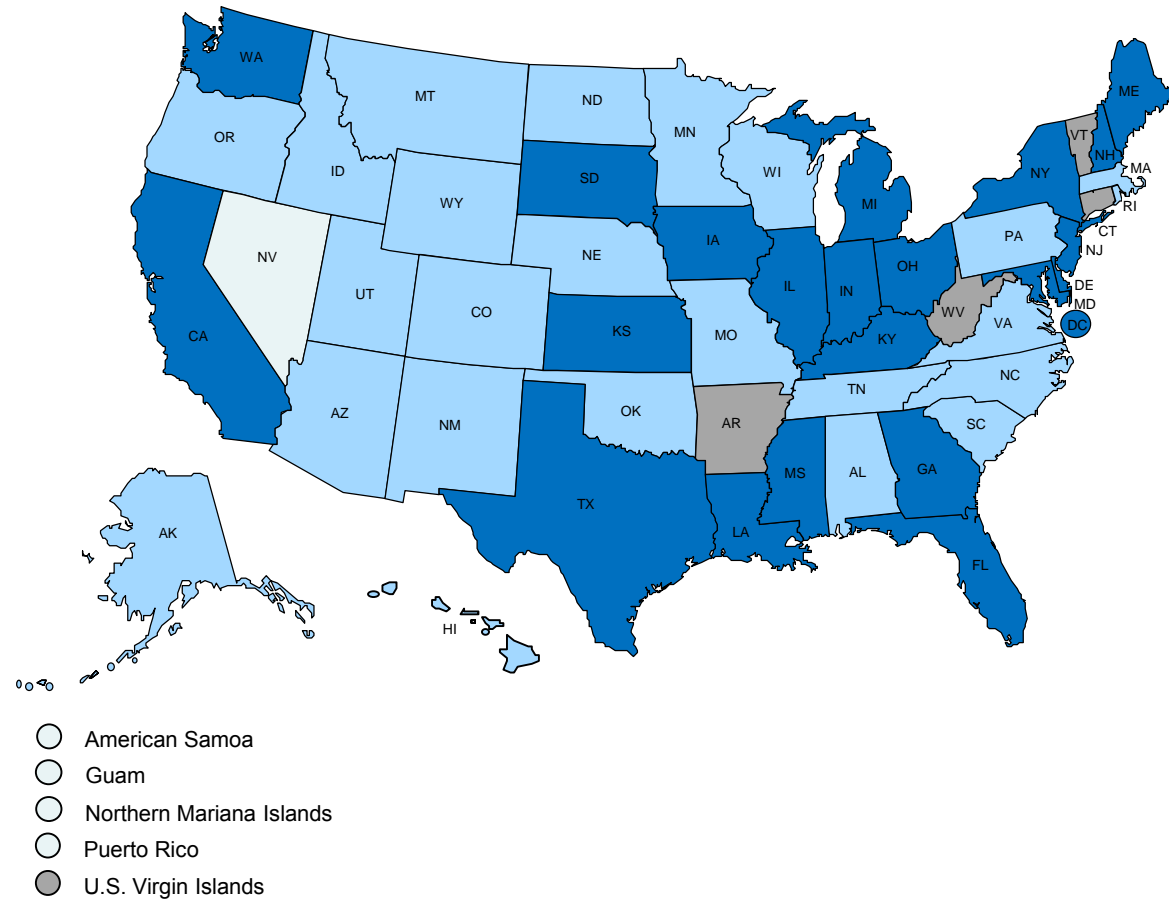
Policy Surveillance Compares Changes in Laws Over Time

- **Ongoing, systematic collection, analysis, interpretation, and dissemination of information about a given body of public health law and policy**
 - Useful for comparing historical or longitudinal public health data, such as morbidity and mortality, costs, and system performance

U.S. State Laws Impacting Social Determinants of Health, 2010–2016



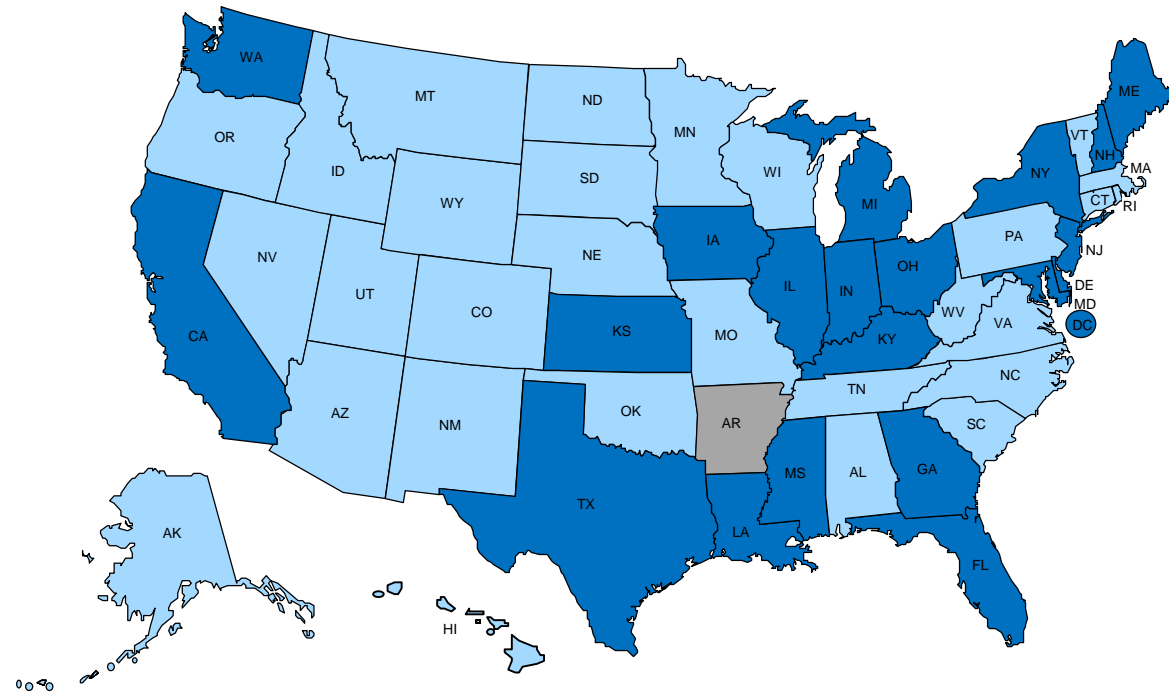
Ebola Screening and Monitoring Policies for Asymptomatic Individuals



Ebola related policies as of December 18, 2014

Policy as compared to CDC guidance:

Ebola Screening and Monitoring Policies for Asymptomatic Individuals



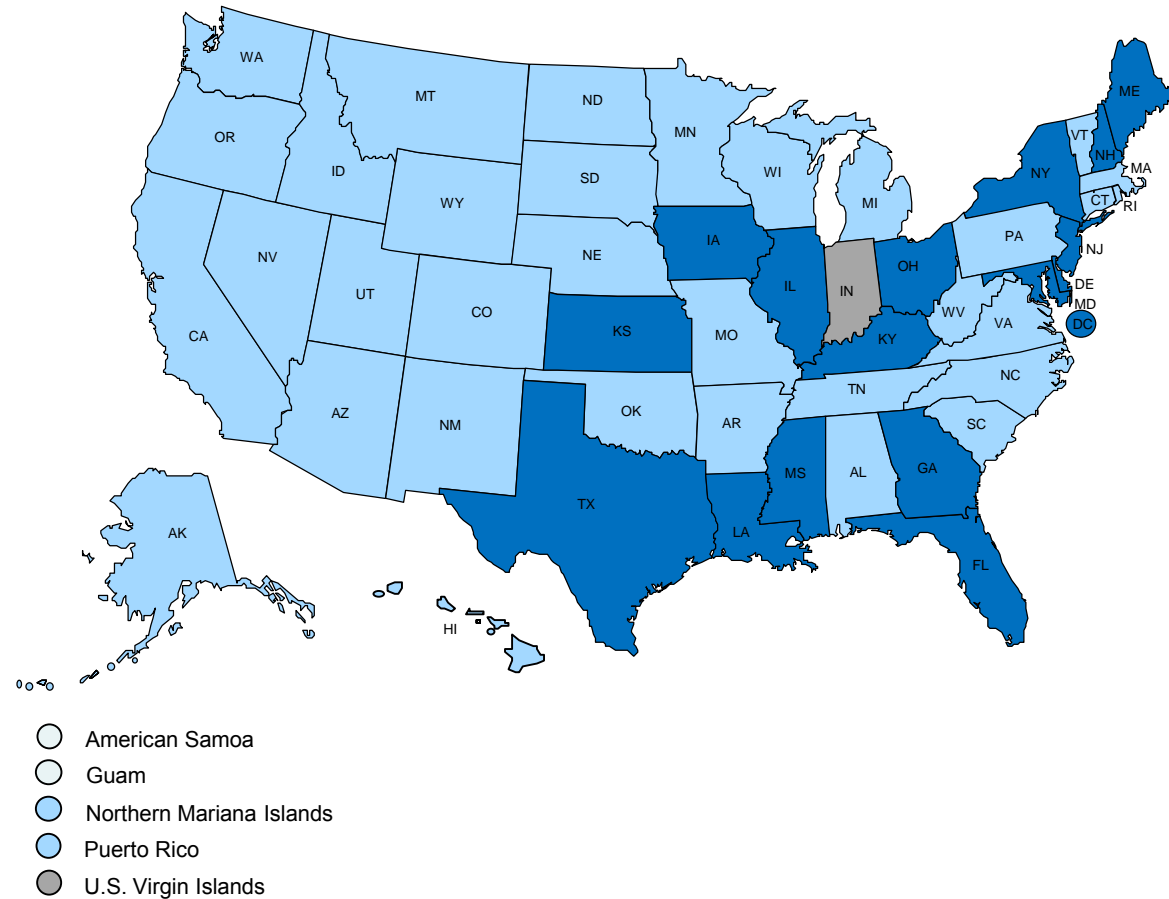
Ebola related policies as of January 21, 2015

Policy as compared to CDC guidance:

- More restrictive
- Equivalent
- Less restrictive
- Unclear if more, equivalent, or less restrictive
- No policy found

- American Samoa
- Guam
- Northern Mariana Islands
- Puerto Rico
- U.S. Virgin Islands

Ebola Screening and Monitoring Policies for Asymptomatic Individuals

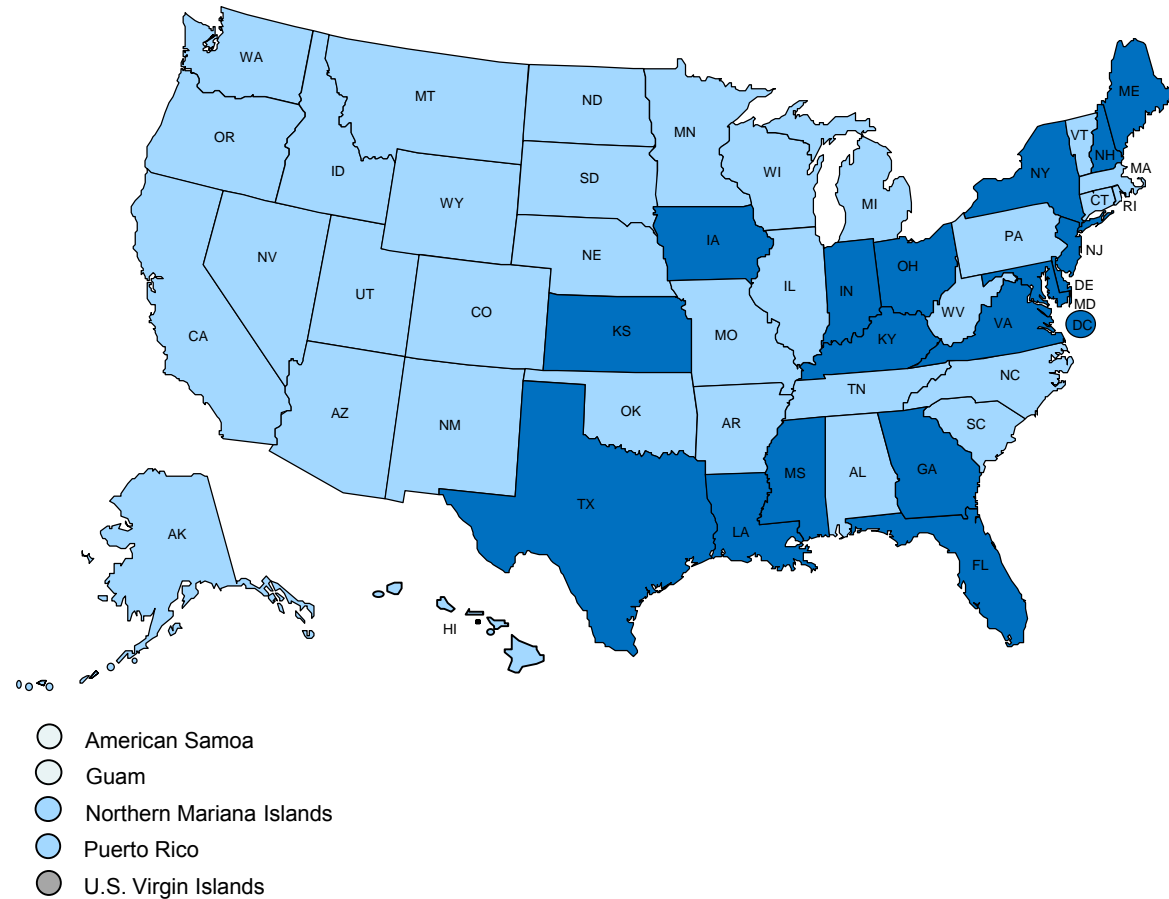


Ebola related policies as of February 2, 2015

Policy as compared to CDC guidance:

- More restrictive
- Equivalent
- Less restrictive
- Unclear if more, equivalent, or less restrictive
- No policy found

Ebola Screening and Monitoring Policies for Asymptomatic Individuals



Ebola related policies as of August 31, 2015

Policy as compared to CDC guidance:

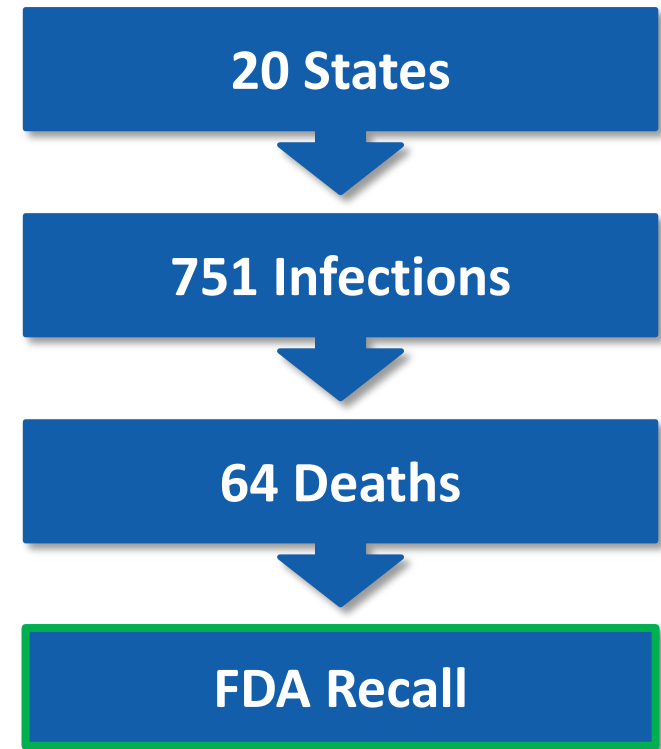
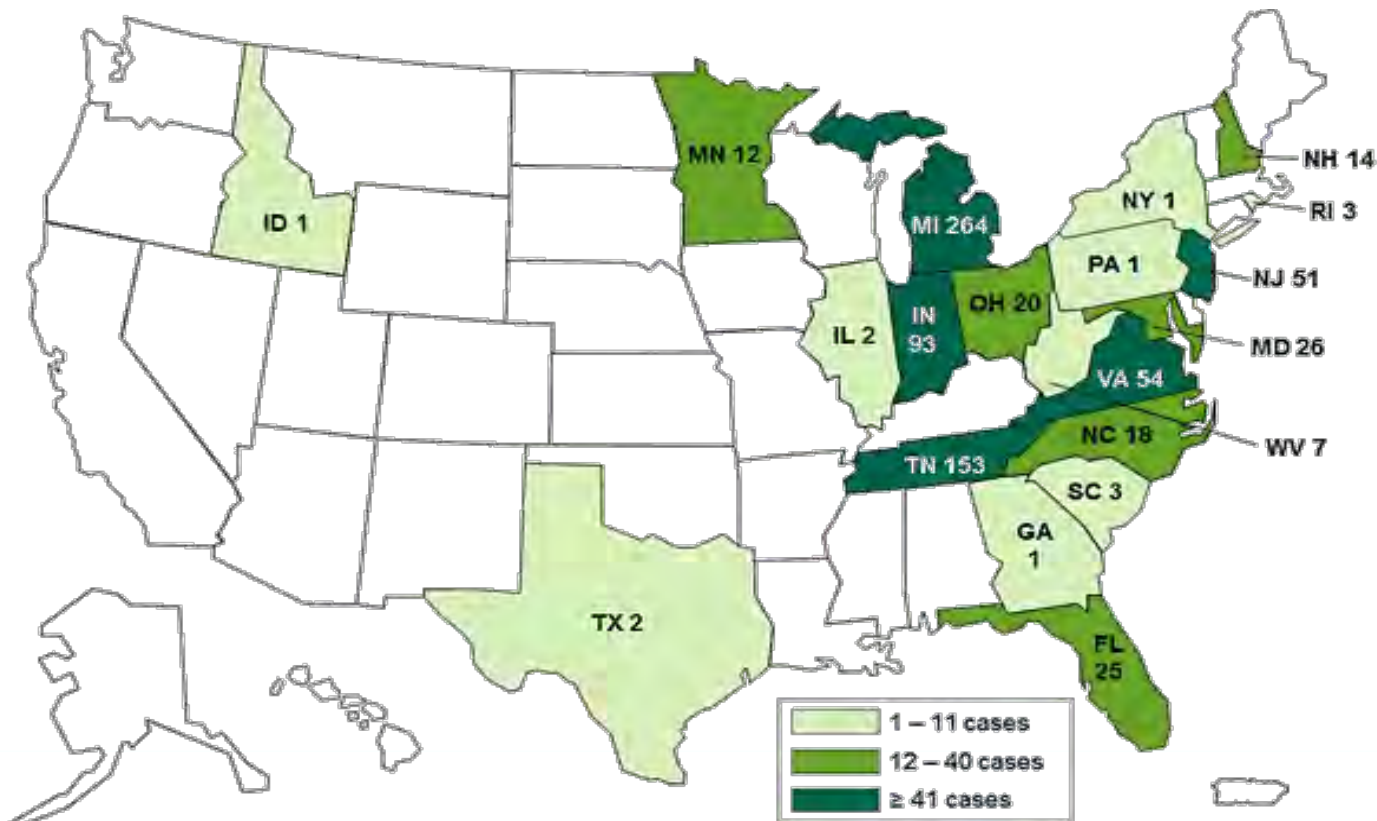
- More restrictive
- Equivalent
- Less restrictive
- Unclear if more, equivalent, or less restrictive
- No policy found

Legal Evaluations

Measuring the impacts of law and policy on health, and vice versa

2012 Fungal Meningitis Outbreak Due to Contaminated Injectable Steroids

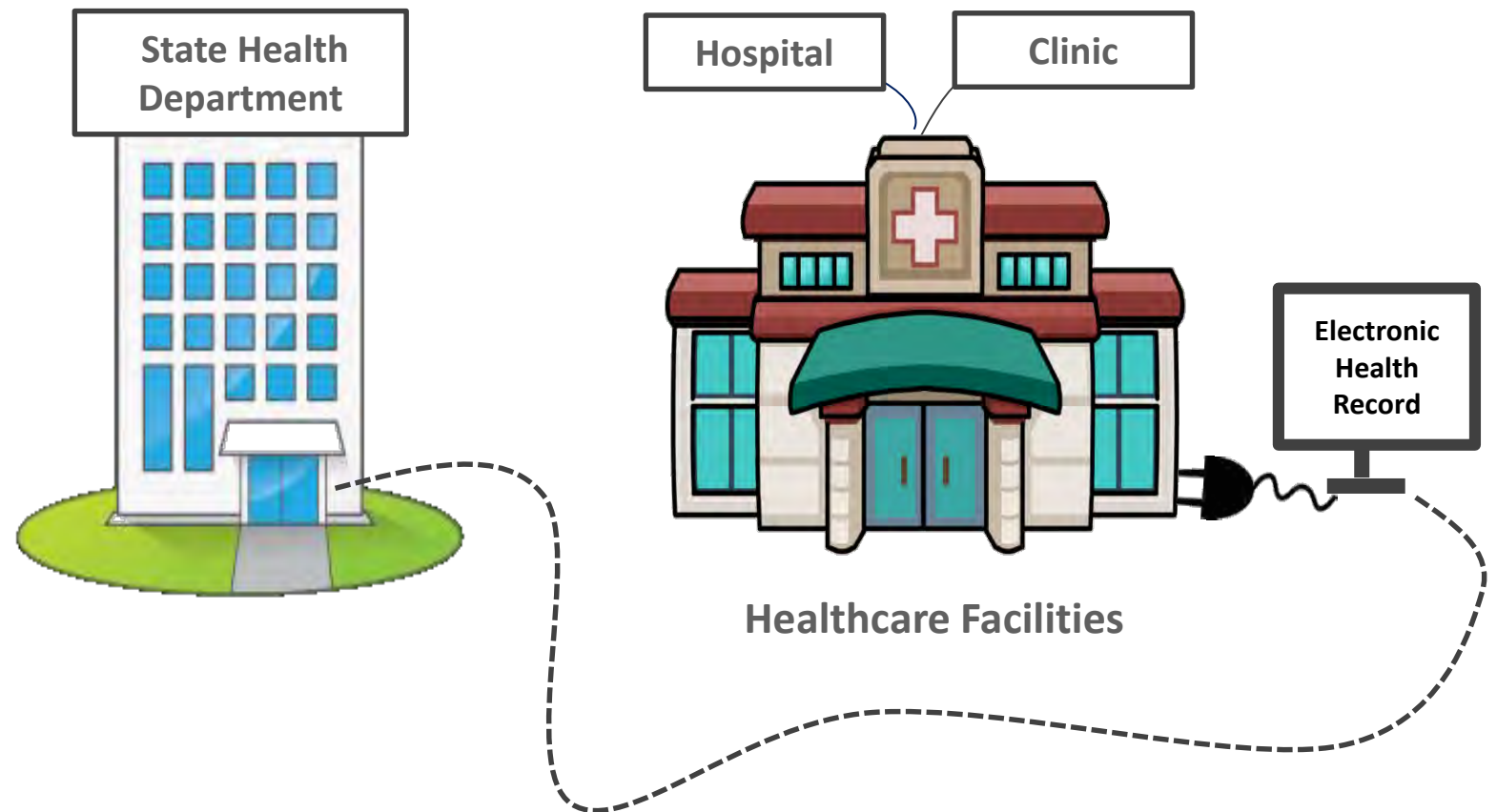
PROBLEM: Contaminated steroid given to many patients in hospitals and pain clinics across the United States



Evaluated Public Health Access to Electronic Health Records

➤ Interviews with health departments generated

- List of barriers
- Suggestions to overcome barriers
- Highlight best practices and policies
- Practical tools



Perceived Legal Barriers vs. Actual Legal Prohibitions

- **Many perceived legal barriers to data use and release**
 - Not all are actual legal prohibitions
- **Overcoming perceived barriers**
 - Apply conservative data use policies
 - Identify legal solutions
 - Identify technologic solutions

Developed Toolkit on Accessing Electronic Health Records

- **Worked with ASTHO to develop toolkit for health departments for perceived and actual barriers to EHR during outbreaks**



Best Practices for Access and Use of EHRs



Build and Sustain Good Relationships with Healthcare Facilities Before, During and After Outbreaks



Evolving National Efforts and Resources to Improve Information Exchange



Address Patient Privacy, Authority and Security Concerns

How Do We Use Law To Affect Social Determinants of Health?



Developing and Implementing Local Laws that Enhance Community Health: A Case Study and Model for Public Health 3.0



Karen DeSalvo, MD, MPH, MSc

Assistant Secretary for Health (Acting)

U.S. Department of Health and Human Services

A major health challenge for New Orleans: 25 year gap in life expectancy



Health Issues not caused by Hurricane Katrina



August 29, 2005

Katrina created opportunity in tragedy: Health Care System Crippled



FORCED TO CHANGE

Charity Hospital, an icon in trauma treatment and teaching, will never be the same after Katrina



WARNING 1 Caution tape warns people away from Charity Hospital. Damage from Hurricane Katrina has left the hospital unusable, teeming with not only mold but also potentially lethal bacteria. (2005 PHOTO BY NAIT BEAL)

By Keith Darce and John Pope
GMAJ writers

The debate had raged for years over whether to revamp Charity Hospital or tear down the art deco building on Tulane Avenue and replace it with a smaller facility better attuned to economic reality in an era of increasingly market-driven medicine.

Katrina ended the debate and may even have framed a decision on the hospital's future.

For most of New Orleans' history, Charity Hospital was at the epicenter of the city's medical community, as a center for treating victims of trauma and grave disease — especially the poor and uninsured — and as the training ground for most of Louisiana's doctors.

That tradition ended in August. Post-Katrina floods inundated the basement, wrecked wiring and plumbing and trashed medical equipment.

See **HOSPITAL**, A-7

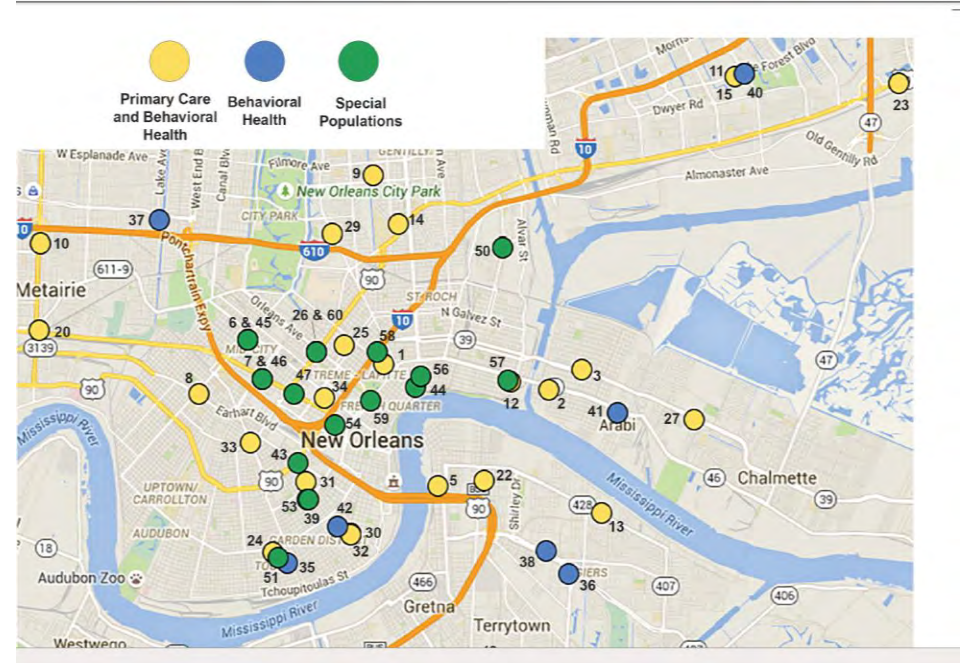


WARNING 2 Floodwater surrounds Charity Hospital, just days after Hurricane Katrina inundated the city. Basement flooding wrecked wiring and plumbing and trashed medical equipment, much of which was so old that replacement parts aren't made anymore. (2005 PHOTO BY ALEX SPAGNON)



Delivery System Successfully Reformed

1. Grounded in community health infrastructure
2. Focused on improving quality
3. Digitized to improve individual care and allow for population health efforts
4. Financing focused on value and coverage expanded to include everyone



Better Care: Necessary But Not Sufficient

A major health challenge for New Orleans: 25 year gap in life expectancy



Three Buckets of Prevention

Prevention and Population Health Framework



Auerbach, John. (2016). The 3 Buckets of Prevention. *The Journal of Public Health Management & Practice*, 22(3), 215–218.

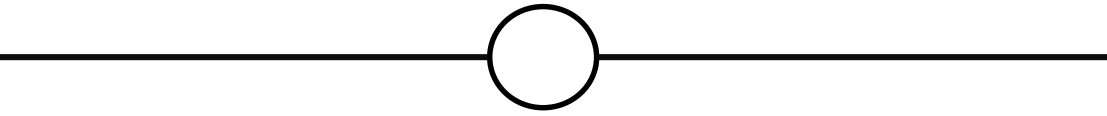
Social Determinants Obvious



200,000 Households flooded.
And the surrounding social infrastructure of
churches...schools...friends...family...libraries...Not just health care.

The Hurricane Katrina Writing Group, JGIM, 2007; Grumbach, JAMA, 2002; Gelberg, Am J Public Health, 1997; Kim, et al, HSR 2006; DeSalvo, et al, J Urban Health, 2007

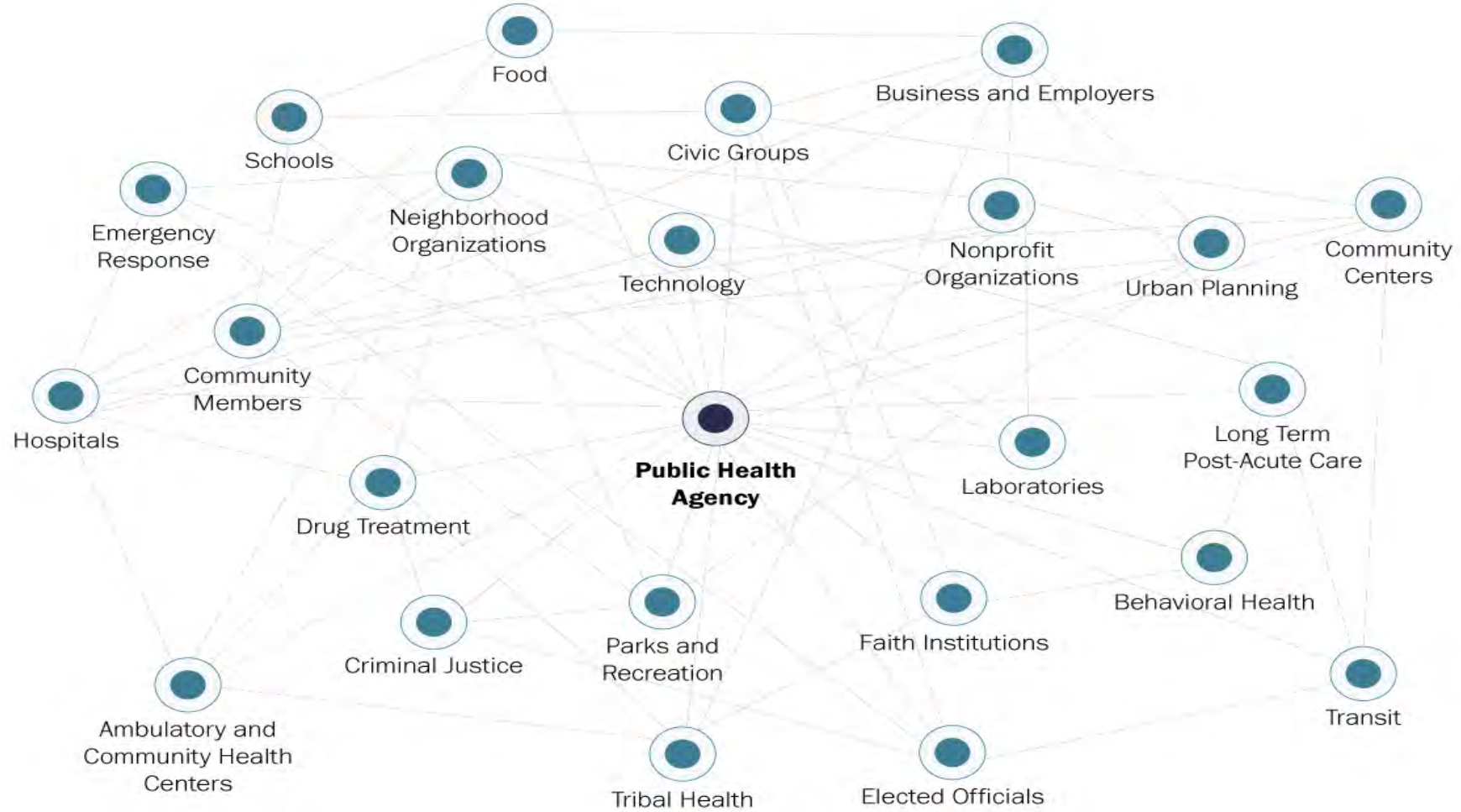
PUBLIC HEALTH



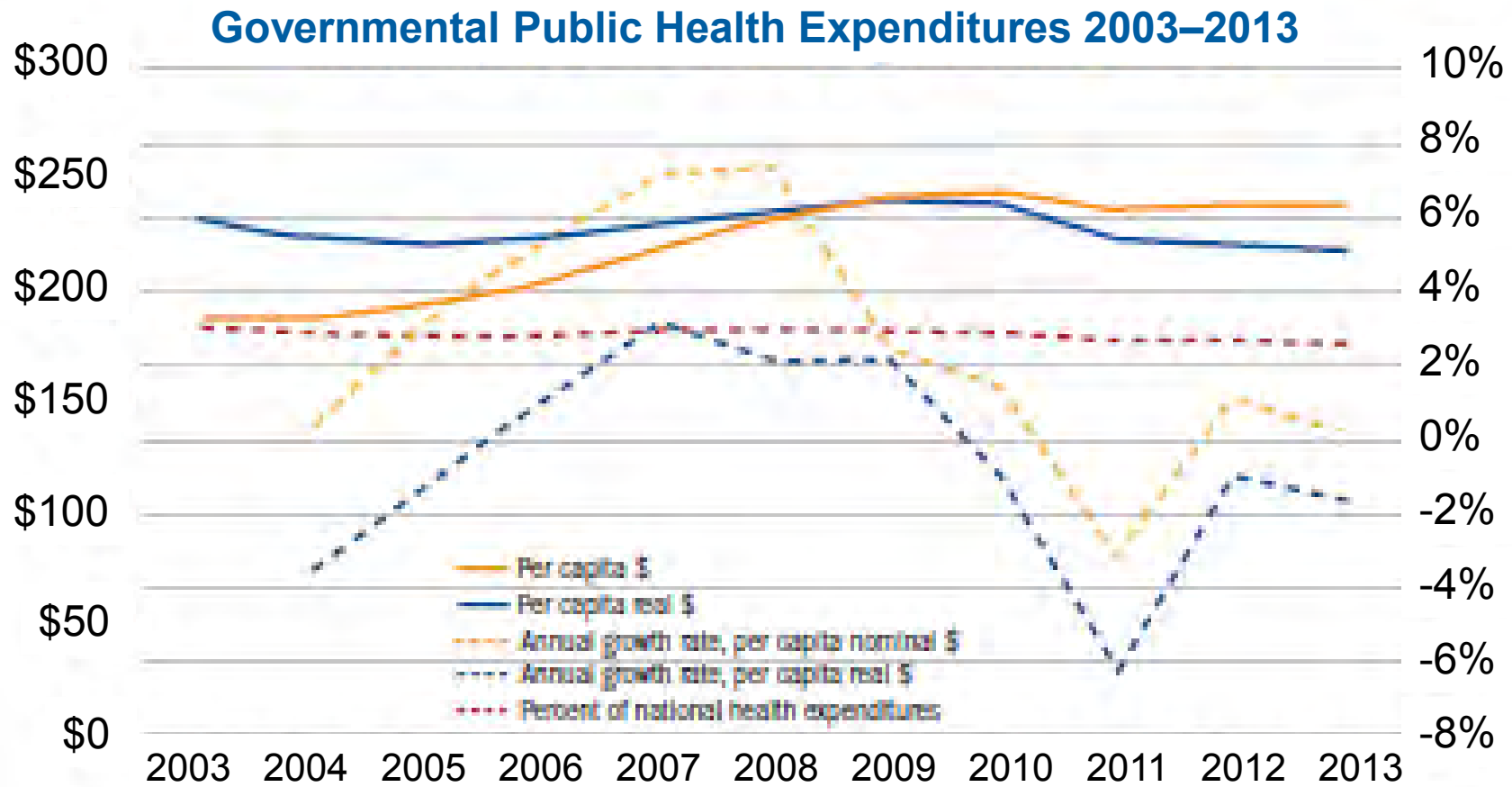
What we do together as a society to ensure the conditions in which everyone can be healthy.

PUBLIC HEALTH 3.0

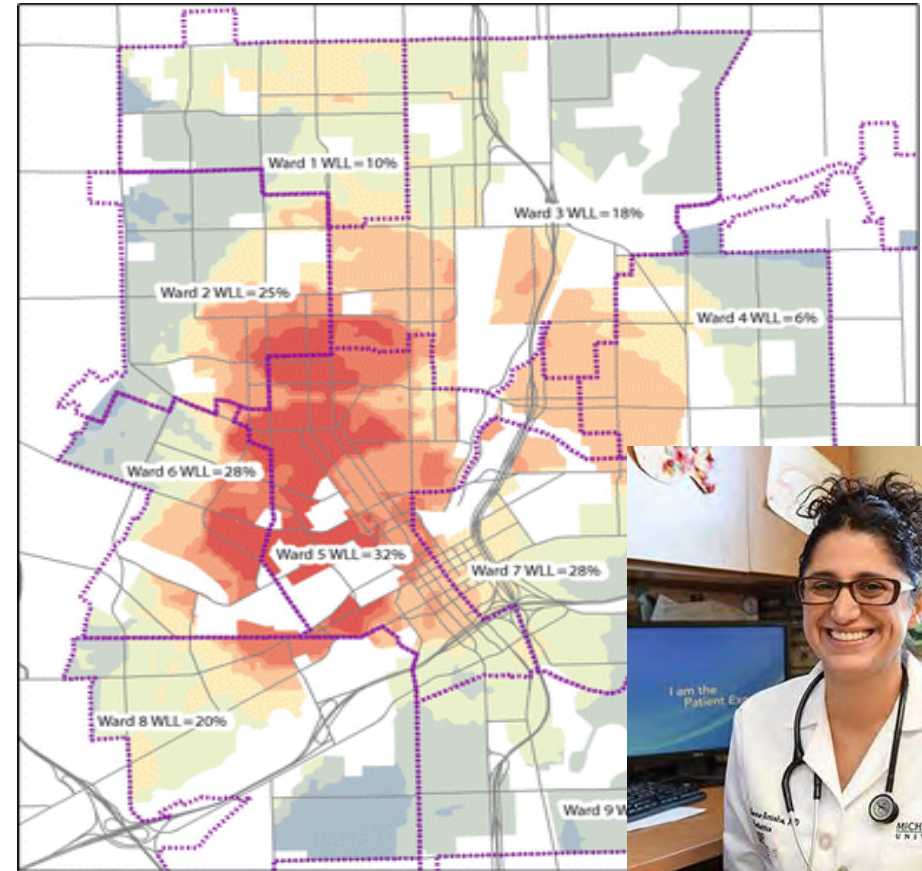
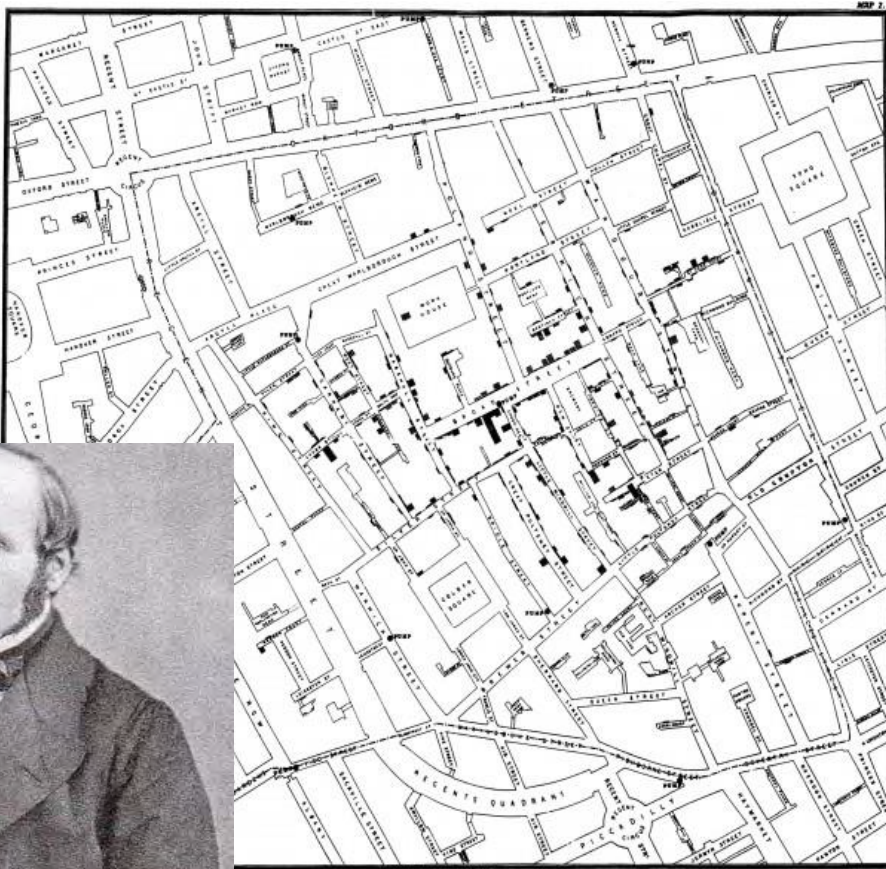
SYSTEMS



Public Health Pressures



Public Health Pressures



Local Public Health: Statutory Responsibility & Opportunity

- **Build strong infrastructure – capable in disaster and everyday**
 - Accreditation as the roadmap
- **First advice – look to statutory roles and responsibilities**
 - Identify gaps where new legislation may impact health
 - CDC OSTLTS and Public Health Law group
- **Review**
 - Framework: required; allowed; not authorized
 - Antiquated? Pigs and Fowl regulation in the French Quarter
 - Allowed and also not authorized: Smoking

PUBLIC HEALTH 3.0: Blueprint



A significant upgrade in public health practice to a modern version that emphasizes **cross-sectorial** environmental, policy- and systems-level actions that directly affect the **social determinants of health**.

Local Public Health Leaders
as the **Chief Health Strategist**

PUBLIC HEALTH 3.0

TIMELINE



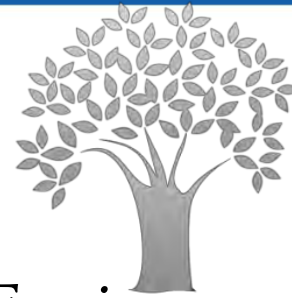
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Economic
Opportunity



Housing



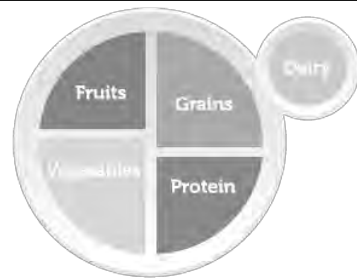
Environment



Education

Social Determinants of Health

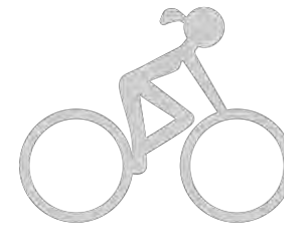
are the conditions in which people are born, live, work and age.



Food



Safe Neighborhoods



Transportation

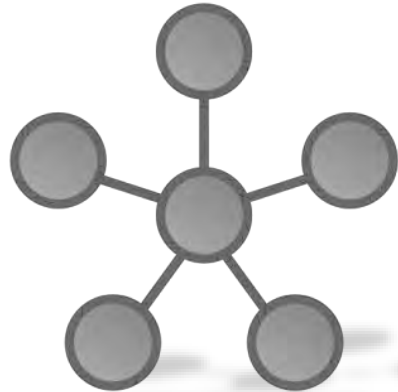
PUBLIC HEALTH 3.0

KEY COMPONENTS



**LEADERSHIP &
WORKFORCE**

**ESSENTIAL
INFRASTRUCTURE**



**STRATEGIC
PARTNERSHIPS**

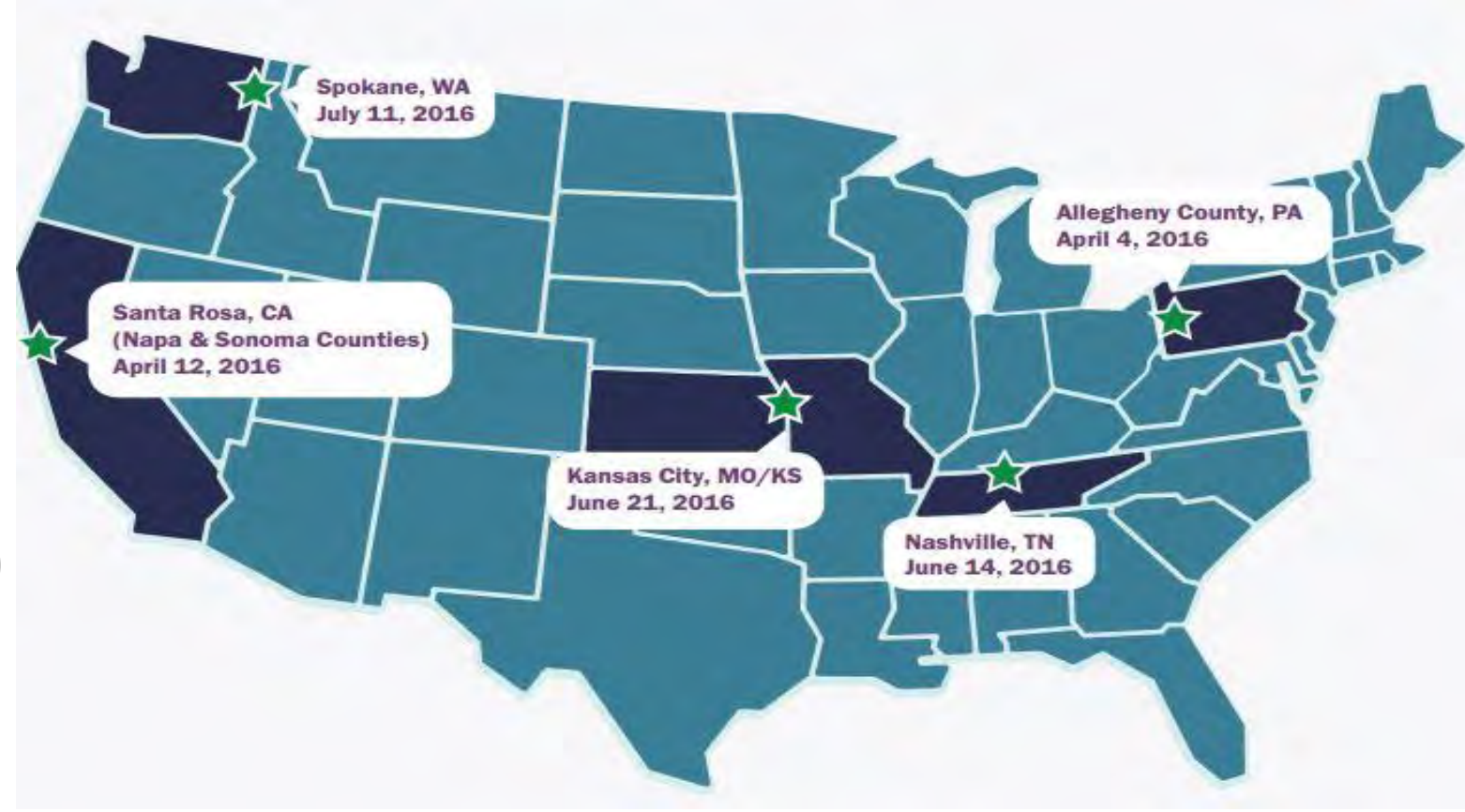
**DATA,
ANALYTICS &
METRICS**



**FLEXIBLE &
SUSTAINABLE
FUNDING**

PUBLIC HEALTH 3.0

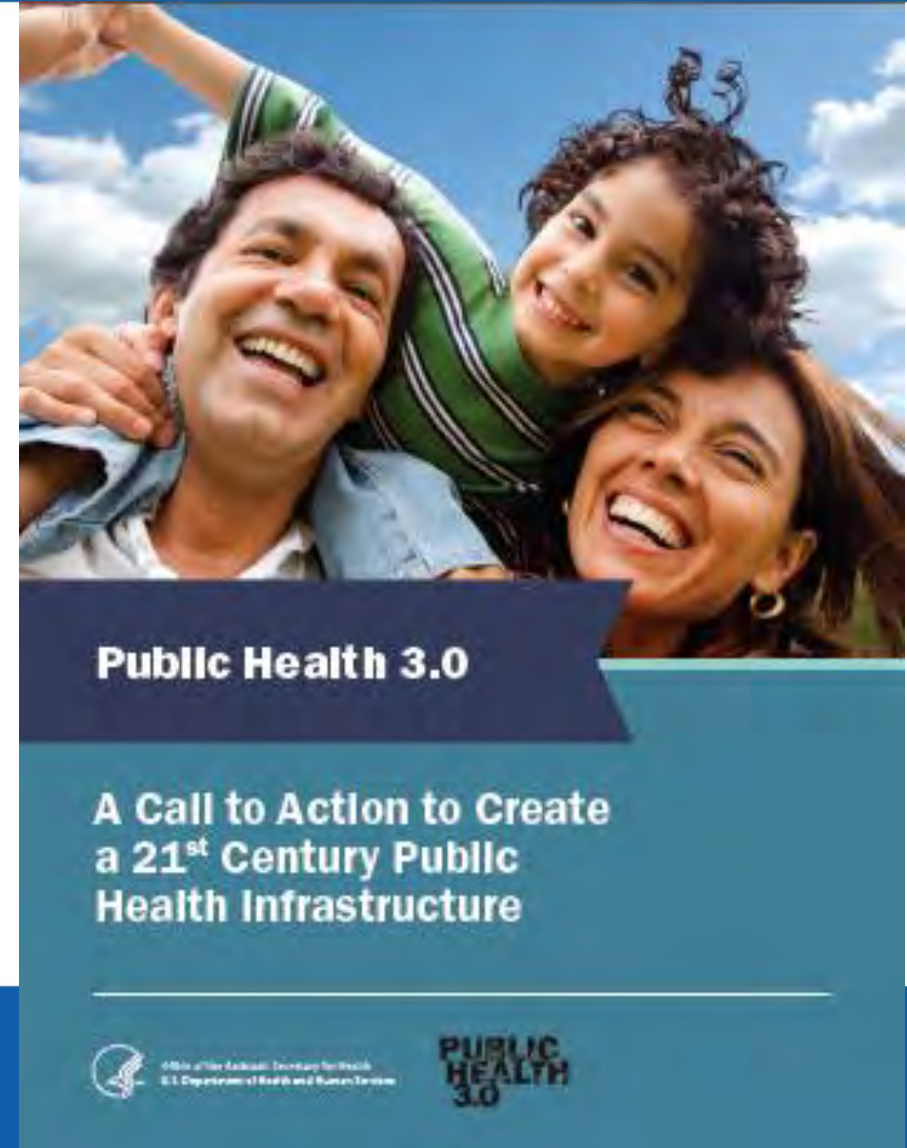
LISTENING TOUR



Our recommendations reflect **what we heard** across the country.

We propose **five key recommendations** that define the conditions needed to support health departments and the broader public health system as it transforms.

www.healthypeople2020.gov/ph3



1. Public health leaders should embrace the role of **Chief Health Strategist for their communities**—

working with all relevant partners so that they can drive initiatives including those that explicitly address “upstream” social determinants of health.

Specialized Public Health 3.0 training should be available for those preparing to enter or already within the public health workforce.

2. Public health departments should engage with community stakeholders—from both the public and private sectors—to form vibrant, **structured, cross-sector partnerships** designed to develop and guide Public Health 3.0-style initiatives and to foster shared funding, services, governance, and collective action.

3. Public Health Accreditation Board (PHAB) criteria and processes for department **accreditation should be enhanced** and supported so as to best foster Public Health 3.0 principles, as we strive to ensure that every person in the United States is served by nationally accredited health departments.

4. Timely, reliable, granular-level (i.e., sub-county), and **actionable data** should be made accessible to communities throughout the country, and clear **metrics** to document success in public health practice should be developed in order to guide, focus, and assess the impact of prevention initiatives, including those targeting the social determinants of health and enhancing equity.

5. **Funding for public health should be enhanced and substantially modified**, and innovative funding models should be explored so as to expand financial support for Public Health 3.0–style leadership and prevention initiatives. Blending and braiding of funds from multiple sources should be encouraged and allowed, including the recapturing and reinvesting of generated revenue. Funding should be identified to support core infrastructure as well as community-level work to address the social determinants of health.

PH 3.0: Community Health and the Law in New Orleans

- **Public Health Law is a major non-medical determinant of health**
- **Powerful tool to affect change at the system level**
- **Affordable Care Act ensured ongoing access to value focused care**
- **HITECH Act supports health IT efforts for care and for public health**
- **Leading causes of morbidity and mortality**
 - Complete streets
 - City-wide smoking ban

Creating Healthier Communities: Who's Doing It, and How?

A look at places that have charted a "roadmap to health."

By RACHEL POMERANCE

March 14, 2013

Here's a riddle for you. How do you make a public health example out of New Orleans? That's right, the city known for po' boys and partying and a flavor all its own—one that's very often fried and fatty. And that's the sunnier side of the story. New Orleans has suffered one scourge after another: Hurricane Katrina, which flooded 80 percent of the city, killing 1,000 people and leveling homes and beloved landmarks; notorious levels of corruption (Ray Nagin, the mayor during the catastrophe, was recently indicted for fraud, bribery, money laundering and other federal charges); and some of the nation's highest rates of poverty, obesity and crime.

But New Orleans is remaking itself. The health department's "Fit NOLA" campaign has employed a range of sectors and civic groups, and public-private partnerships to envision a city that's among America's 10 healthiest by 2018, New Orleans' tricentennial. The program has earned New Orleans recognition as one of six U.S. communities awarded the Roadmaps to Health prize, a new initiative from the Robert Wood Johnson Foundation (RWJF), which funds public health programs and, in this case, \$25,000 to each community. The other prize winners, announced last month, are: Cambridge, Mass.; Falls River, Mass.; Manistique, Mich.; Minneapolis, Minn.; and Santa Cruz County, Calif. (To learn more about these efforts and see the video clips on each community, visit the foundation's [website](#).)



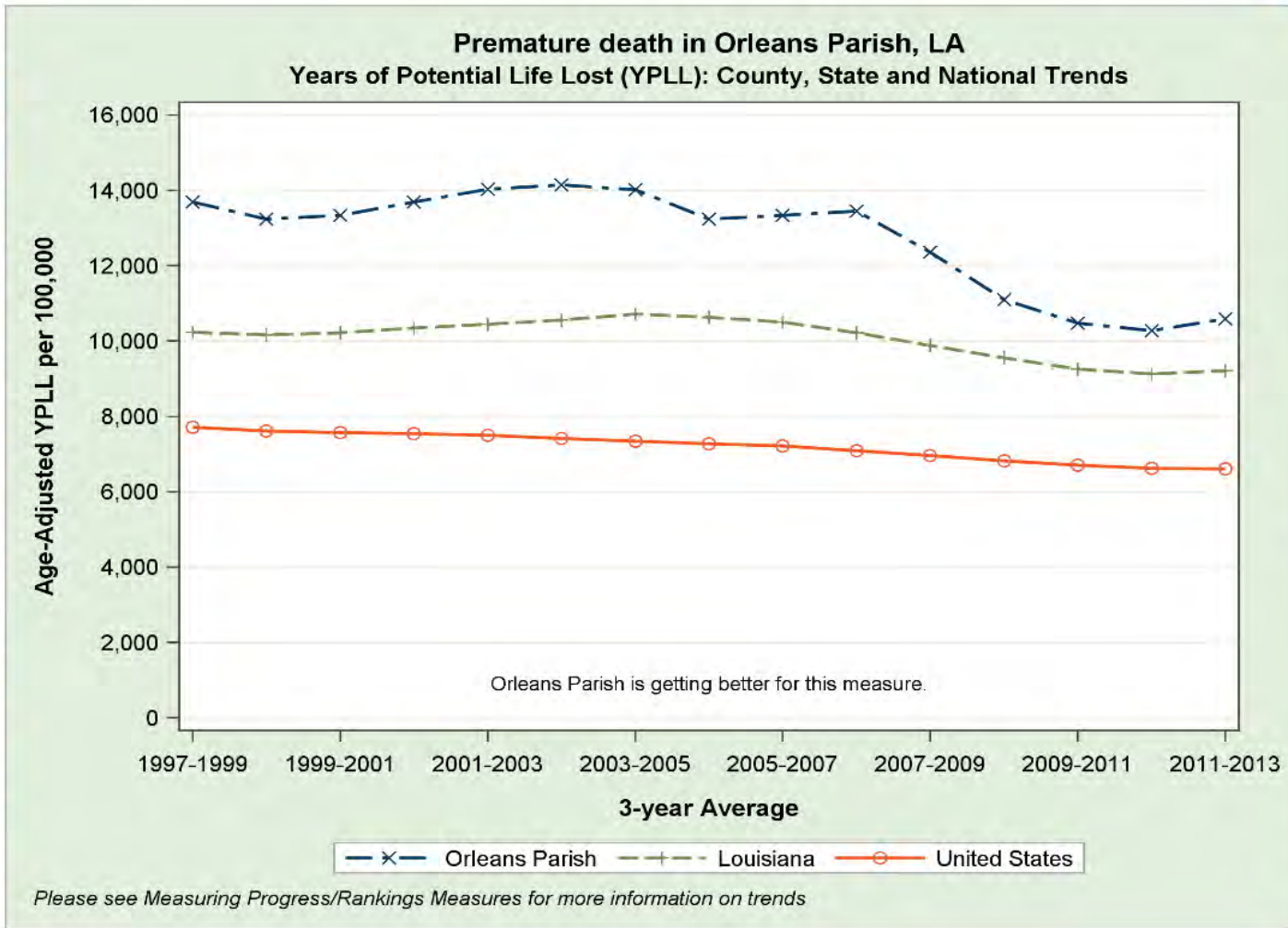
[← Back To Main](#)

Select a Ranking

HEALTH OUTCOMES
OVERALL PERFORMANCE

Rank ▼ County

1	Cameron
2	St. Tammany
3	Ascension
4	Lafayette
5	Plaquemine
6	St. Charles
7	Bossier
8	West
9	Vernon
10	Lafourche
11	Jefferson
12	Livingston
13	Vermilion
14	Allen



areas of strength

Louisiana Rank (of 64)

46

49

47

9,200

21%

4.3

4.0

11%

PUBLIC HEALTH 3.0

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