

# General Regulatory Powers and Duties Of State and Local Health Authorities

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A SURVEY of State laws, regulations, and practices applicable to the establishment and operation of local health departments is being conducted this year by the Division of State Grants of the Public Health Service to obtain information that may be of use to States in organizing and developing local health departments.

The data obtained on the broad regulatory powers and duties of boards of health, health officers, health departments, and legislative bodies, both State and local, are presented in this report.

Recently published data (1) dealt with sections of the survey pertaining to the appointment and qualifications of local health officers and the establishment of local health units. A future paper will contain data on the phases dealing with staffing and financing of local health departments.

As indicated in the first report, regional office personnel of the Public Health Service, assisted by the Federal Security Agency's regional attorneys, completed a questionnaire on the basis of a review of the State's statutes and regulations. Through interviews, they obtained information from State health officers, or their representatives, on procedures carried out by practice without statute or regulation. In ad-

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dition, State health officers were requested to state their opinions of desirable provisions that should be included in statutes.

This report indicates the various provisions of the States for allocating to State and local legislative and administrative officials the responsibility for prescribing and enforcing rules, regulations, orders, ordinances, and other broad regulatory measures relating to public health.

Data submitted indicate that statutes are more inclusive and explicit with respect to general types of powers and duties than they are on organizing local health departments or staffing or financing them.

In the majority of the States regulatory powers and duties are frequently assigned to both State and local health authorities. Specific powers, such as isolation and quarantine, are often governed by regulation in addition to statute.

## Adoption and Enforcement

The question of who has power to pass laws and ordinances, and to issue regulations, rules, and orders regarding public health activities is of major importance, but the questionnaires indicate that such powers are seldom assumed unless law provides for them. The majority of States have statutory provisions granting both State and local boards of health the power to make rules and regulations, and in about half the States both types of boards of health may also issue orders (table 1). In some States, however, these powers are limited in their application to certain local areas or to specific

**Table 1. Number of States with statutes empowering State and local authorities to issue rules, regulations, orders, and pass ordinances**

Authority	Rules		Regulations		Orders		Ordinances	
	General application	Limited application <sup>1</sup>	General application	Limited application <sup>1</sup>	General application	Limited application <sup>1</sup>	General application	Limited application <sup>1</sup>
State legislature.....	2	-----	2	-----	2	-----	1	-----
State board of health.....	35	4	37	7	21	3	-----	1
State health officer.....	15	7	13	7	13	8	-----	-----
Local legislative body.....	14	7	18	12	4	1	28	14
Local board of health.....	31	9	32	8	28	3	6	5
Local health officer.....	7	7	5	8	22	5	2	1
Local health department.....	2	2	2	2	3	3	-----	-----

<sup>1</sup> Refers to States having statutes applicable only to some types of governmental areas or to specific matters.

matters. Local health officers in slightly more than half the States have authority to issue orders; local legislative bodies in most States may pass ordinances; and in slightly less than half the States the legislative body may also issue rules; in 30 States local legislative bodies may prescribe regulations. The State legislature rarely has the power to issue rules, regulations, and orders pertaining to public health. Likewise, local health departments very seldom have such authority. One State has a regulation which permits the State board of health to

issue rules and orders. One other State permits local health officers to issue orders by practice without any statutory provision.

State and local boards of health and State and local health officers most frequently are charged by law with the enforcement of State laws, regulations, and orders pertaining to public health (table 2). There are a few States in which the enforcement powers of the State board of health and the State health officer extend to local laws, regulations, orders, and ordinances. From half to three-fourths of the

**Table 2. Number of States with statutes empowering State and local authorities to enforce laws, regulations, orders, and ordinances**

Authority	Laws		Regulations		Orders		Ordinances	
	General application	Limited application <sup>1</sup>	General application	Limited application <sup>1</sup>	General application	Limited application <sup>1</sup>	General application	Limited application <sup>1</sup>
<b>State</b>								
State board of health.....	26	2	30	3	20	2	-----	-----
State health officer.....	34	3	31	3	24	1	-----	-----
Local legislative body.....	5	3	5	3	2	2	-----	-----
Local board of health.....	26	7	29	6	22	4	-----	-----
Local health officer.....	33	5	34	9	22	2	-----	-----
<b>Local</b>								
State board of health.....	8	-----	8	-----	8	-----	7	-----
State health officer.....	4	-----	4	-----	5	-----	5	-----
Local legislative body.....	7	7	7	7	6	4	11	9
Local board of health.....	22	4	32	6	23	2	25	7
Local health officer.....	29	2	32	5	31	1	28	3

<sup>1</sup> Refers to States having statutes applicable only to some types of governmental areas or to specific matters.

States permit local health officers or local boards of health to enforce local laws, regulations, orders or ordinances. Local legislative bodies infrequently have powers of enforcement. In many States the matters pertaining to public health are primarily enforced by local police officials and by public prosecutors with the health authorities' only responsibility being that of making the charge or complaint.

### Delegation of Public Health Powers

The majority of States delegate their powers with respect to public health to local areas—at least in some matters (table 3). As many as 32 States delegate powers by statute to local health officers and 27 States make such delegations to local boards of health. Additional States delegate powers by practice without statutory authority. In at least some of the States the delegation of power is limited in that the State board of health or health officer retains supervisory authority. One State law prohibits this delegation of power.

All but two States give the State health authority the power to act in the absence of a local health department, or upon failure of the local health department to take action. In one of the two States without such power, the State assumes this responsibility by practice. In six States, however, this power is restricted to certain areas of responsibility, such as epidemic disease prevention or control.

### Specific Powers of Local Authorities

In only a few States do local health officers and boards of health have power of subpena, or

**Table 3. Number of States delegating public health powers to local health officers, boards of health, and health departments<sup>1</sup>**

Authority delegated power	Power delegated by	
	Statute	Practice
Local health officer.....	32 (7)	2
Local board of health.....	27 (4)	3
Local health department.....	11 (2)	3

<sup>1</sup> Figures in parentheses indicate the number of States included in the tabulation in which provision is applicable only to certain governmental areas or only under certain conditions.

**Table 4. Number of States granting by statute or practice specific powers to local health officers or local boards of health**

Specific powers	General application		Limited application <sup>1</sup>	
	Statute	Practice	Statute	Practice
<i>Local health officers</i>				
Subpena.....	2			
Administer oaths.....	3		1	
Issue injunctions.....	3	1		
Issue licenses.....	4	1	2	1
Conduct hearings.....	5	1	4	
<i>Local boards of health</i>				
Subpena.....	3	1	2	
Administer oaths.....	4		4	
Issue injunctions.....	4		2	
Issue licenses.....	6	3	4	1
Conduct hearings.....	6	5	6	1

<sup>1</sup> Number of States in which power is limited to some governmental areas or to some public health matters.

power to administer oaths, to issue injunctions, to conduct hearings, or to issue licenses. Most generally, authorization for such action is provided by statutes as indicated in table 4. Local boards of health are given such powers about twice as often as local health officers. Frequently these powers are applicable only to certain local governmental areas and occasionally are applicable only with respect to certain public health matters. There are no regulations pertaining to these specific powers.

Table 5 lists several additional specific powers and indicates the number of States in which the State board of health, local boards of health, local health officers, and local legislative bodies are vested with these powers. The power of isolation and quarantine predominantly rests with State and local boards of health and local health officers. Nearly all States have statutory provisions for isolation and quarantine of communicable disease cases, but in some States such statutes are limited in their application to certain areas or may be invoked only under certain conditions. Local legislative bodies in slightly more than one-quarter of the States possess powers of isolation and quarantine for communicable diseases.

In almost all States the State board of health and local health officers have statutory power to make investigations and inspections, and, in at least three-fourths of the States, local boards of health also have such powers. Local legislative bodies in only six States have the statutory power of investigation and inspection with respect to public health matters.

Slightly less than three-fourths of the States have provisions of law permitting State and local boards of health and local health officers to abate public health nuisances. Nearly half the States have statutes granting this power to local legislative bodies, although these statutes are frequently limited to certain types of local areas or to certain types of nuisances.

Nearly three-fourths of the States have statutes which permit the State board of health to forbid gatherings in the interest of public health. More than half the States have laws granting local health officers this power, and nearly half the States grant such power to local boards of health. Local legislative bodies infrequently possess the authority to forbid public gatherings in the interest of public health.

All but two State boards of health have the power to collect vital statistics and disease reports either by statute or by statute and regulation. In Massachusetts the power to collect vital statistics reposes in the office of the secretary of State, and in New York the State health

officer has the power to collect vital statistics and disease reports. In addition, local health officers have power to collect vital statistics in 24 States and disease reports in 34 States. Local boards of health have power by statute to collect vital statistics in 12 States and statutory power to collect disease reports in 23 States with regulations supplementing statutory power in 1 State. These two powers are almost never given to local legislative bodies.

The power to initiate court actions and defend health departments against court actions is given to local health officers in 15 States, to the State board of health in 26 States, to local boards of health in 18, and to local legislative bodies in 6. In addition, this power is exercised by practice by the State board of health in 1 State, local boards of health in 1 State, local legislative bodies in 2, and local health officers in 1.

Judicial review of actions of local boards of health or local health officers is authorized by law in 25 States. It is done by practice in 11 others, and is authorized by practice only for cities in 1 State. Judicial review of the action of health officials is specifically prohibited by law under certain circumstances in 2 States and not commonly done in 9 other States wherein the law is silent on the matter. One State failed to supply information on this item.

**Table 5. Number of States granting certain specific powers by statute or by statute and regulation to the State board of health, local boards of health, local legislative bodies, and local health officers <sup>1</sup>**

Power granted	State board of health		Local board of health		Local legislative body		Local health officer	
	Statute only	Statute and regulation	Statute only	Statute and regulation	Statute only	Statute and regulation	Statute only	Statute and regulation
Isolate and quarantine.....	39 (6)	4 (1)	37 (2)	3 (1)	13 (4)	3 (1)	40 (7)	3
Investigate and inspect.....	40 (6)	3	36 (5)	1	<sup>2</sup> 6 (2)	1	40 (3)	3
Abate nuisances.....	32 (7)	1	34 (3)	1	21 (10)	2 (2)	31 (6)	2
Forbid gatherings.....	33 (8)	1 (1)	<sup>2</sup> 23 (4)	-----	8 (1)	-----	28 (3)	1
Collect vital statistics.....	44 (11)	2 (1)	12 (4)	-----	4 (1)	-----	23 (6)	1
Require disease reports.....	44 (9)	2	22 (2)	1	2	-----	31 (5)	3 (1)
Initiate and defend court action.....	<sup>2</sup> 26 (2)	-----	<sup>2</sup> 18 (3)	-----	<sup>2</sup> 6 (3)	-----	<sup>2</sup> 15 (3)	-----

<sup>1</sup> Figures in parentheses indicate number of States included in the tabulation in which provision is applicable only to certain governmental areas or only under certain conditions.

<sup>2</sup> In one additional State this power is exercised by practice without statutory provision.

## Summary

Data from the survey of State laws, regulations, and practices pertaining to the duties and powers of State and local boards of health, health officers, and health departments indicate that the power to pass public health laws and to issue regulations, rules, and orders generally rests with State and local boards of health and less frequently with State health officers, State or local legislative bodies, or local health officers. Authority to enforce State public health laws and regulations is generally assigned to State and local health officers; the enforcement of local laws and regulations is primarily the legal responsibility of local boards of health and health officers.

States generally delegate their public health powers to local boards of health, health officers, and local health departments. Almost all State health authorities have the power to act in the absence of local health departments, or upon the failure of local authority to take action.

Less than three-fourths of the States provide for judicial review of decisions made by boards of health or health officers.

Local health officers and local boards of health infrequently possess the power of subpoena, power to administer oaths, to issue injunctions, to conduct hearings, or to issue licenses.

Many State boards of health, as well as local boards of health and health officers, have the power to require isolation and quarantine of communicable diseases; to make investigations and inspections; to abate nuisances; to forbid gatherings in the interest of public health; to collect vital statistics; or to require disease reports. On the other hand, fewer of them have the power to institute court action or to defend their actions in the courts.

## REFERENCE

- (1) Greve, Clifford H.: Provisions of State laws governing local health departments. *Pub. Health Rep.* 68: 31-42 (1953).

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## Achievements in World Health

In carrying out its constitutional role as "coordinating and directing authority in international health," the World Health Organization has made notable contributions toward the development of better health everywhere. Outstanding achievements during 1952 were summarized in an information kit, "Health Is Wealth," prepared by the Public Health Service in observance of World Health Day, 1953, as follows:

It gave direct technical aid to more than 100 governments and territories.

It made effective, on October 1, 1952, the new International Sanitary Regulations, designed to facilitate international travel and trade.

It took over, with the United Nations International Children's Emergency Fund,

responsibility for continuing the BCG anti-tuberculosis vaccination programs after the official end of the 1951 international campaign.

It maintained an international epidemic-warning service, continued to coordinate worldwide influenza research activities, and operated a tuberculosis research office and several brucellosis centers.

It provided emergency aid for several governments faced with epidemics and refugee health problems.

It recruited, for the United Nations Reconstruction Agency, a team of experts which visited Korea to work out a long-term plan for improving health and medical care, in addition to the technicians working on civilian health programs in South Korea.