Drafting Effective Public Health Policies

October 5, 2011
How to Use Webex

If you can hear us through your computer, you do not need to dial into the call. Just adjust your computer speakers as needed.

If you need technical assistance, call Webex Technical Support at 1-866-863-3904.

All participants are muted. Type a question into the Q & A panel for our panelists to answer. Send your questions in at any time.

This webinar is being recorded. If you arrive late, miss details or would like to share it, we will send you a link to this recording after the session has ended.
Public Health Policy Change Webinar Series

• Providing substantive public health policy knowledge, competencies & research in an interactive format
• Covering public health policy topics surrounding Tobacco, Obesity, School and Worksite Wellness, and more
• Two Wednesdays a month from 12:00 p.m. to 1:30 p.m. Central Time
• Visit http://publichealthlawcenter.org/ for more information
Introductions

Natasha Frost
Staff Attorney, Public Health Law Center
Introductions

Debbie Hornor
Community Obesity Policy Manager,
American Heart Association
Introductions

Mary Marrow
Staff Attorney, Public Health Law Center
Introductions

Warren Ortland
Staff Attorney, Public Health Law Center, Tobacco Control Legal Consortium
Drafting Effective Public Health Policies

Webinar Objectives

• Learn what makes public health policies effective
• Recognize and respond to challenges in policy drafting
• Learn about available policy drafting tools
Our 2020 Impact Goal

“By 2020, to improve the cardiovascular health of all Americans by 20% while reducing deaths from cardiovascular diseases and stroke by 20%.”
Founded in 1924 by Drs. Lewis A. Connor and Robert H. Halsey of New York; Paul D. White of Boston; Joseph Sailor of Philadelphia; Robert B. Preble of Chicago and Hugh D. McCulloch of St. Louis.

Since 1949, the AHA has spent more than $3.3 billion on research to increase our knowledge about cardiovascular diseases and stroke.

The AHA currently funds about 2,500 scientists around the United States.

The AHA is second only to the federal government in funding cardiovascular and stroke research.
Founded in 1924 by Drs. Lewis A. Connor and Robert H. Halsey of New York; Paul D. White of Boston; Joseph Sailor of Philadelphia; Robert B. Preble of Chicago and Hugh D. McCulloch of St. Louis.

Since 1949, the AHA has spent more than $3.3 billion on research to increase our knowledge about cardiovascular diseases and stroke.

The AHA currently funds about 2,500 scientists around the United States.

The AHA is second only to the federal government in funding cardiovascular and stroke research.
Our research programs have contributed to many important scientific advances, including the first artificial heart valve, techniques and standards for CPR, implantable pacemakers, treatment for infant respiratory distress syndrome, cholesterol inhibitors, microsurgery.

The AHA has funded the winners of 11 Nobel Prizes.

Early 1980’s – Focused efforts to translate the science of cardiovascular disease and stroke into meaningful public policy.
American Heart Association

Planning and Stakeholder Development
(Defining the Problem)

Policy Analysis
(Identify Solutions)

Legislative Campaign Implementation

Regulatory Campaign Implementation

Policy Implementation

Evaluation

- An issue is identified as an Association-wide priority where policy and systems change is needed to advance the priority.
- Advocacy staff convene cross-functional internal teams to develop strategic plan to address policy. Stakeholders group of internal and external experts/partners may be convened as well for input and guidance.
- Public policy opportunities and barriers are identified and legislative and regulatory options are explored.
- Policy analysis is led by state advocacy staff and could include analysis of the following:
  - Current statutory and regulatory law.
  - Political and economic feasibility of solution.
  - Potential public policy solutions that could address the problem.
- Policy solution chosen and identified as a state advocacy priority by State Advocacy Committee.
- Decision is made to pursue legislative or regulatory route.
- Decision is made on outcome measures for subsequent evaluation.
- Either through this proactive process or in reaction to legislation that is introduced, state advocacy staff take the lead developing strategic campaign plans to advance public policy.
- Utilizing a cross-functional team for both planning and implementation (internal and external partners as appropriate to the issue), legislation is shepherded and passed.
- If enabling legislation, policy opportunities next turn to the regulatory realm.
- If regulatory action is needed, state advocacy staff develop strategic regulatory campaign plans to advance our regulatory priorities.
- Utilizing a cross-functional team for both planning and implementation, advocacy staff work closely with internal and external partners to monitor the regulatory advocacy process.
- Advocacy staff take the lead on lobbying tactics as well as providing expert advice and guidance.
- Once legislation and/or regulation is passed, advocacy staff monitor and influence the development of the program so that it is aligned with AHA guidelines and policies.
- Advocacy staff take the lead on development of evaluation plan related to agreed upon outcome measures.
- Evaluation may be completed using internal or external resources and partners.
- Outcomes are evaluated and reported.
Advocacy Nutrition Opportunities

- Menu labeling in restaurants
- Nutrition standards in schools (competitive foods and school meals)
- Procurement standards for foods purchased by employers and government agencies
- Trans fat bans in restaurants and schools
- Farm-to-school programs, community/school gardens
- Local school wellness policies
Advocacy Physical Activity Opportunities

- **PE in Schools** – Frequency and Quality Standards
- **Safe Routes to Schools**
- **Shared use agreements** that allow community groups to use schools’ physical activity facilities when school is not in session
- **Creating Walking Trails/Bike Paths/Recreational spaces**
The Public Health Law Center
The Public Health Law Center

Services include:

- Legal research
- Policy development
- Publications
- Training
Tobacco Control Legal Consortium

A national legal network supporting tobacco control policy change

Public health advocacy organizations and community coalitions

Public health officials

Elected officials

City and county attorneys

Private attorneys and individual citizens
Tobacco Control Legal Consortium
Drafting Effective Public Health Policies

What is a policy?

- Any plan or course of action designed to influence and determine decisions
Drafting Effective Public Health Policies

What is an effective policy?

- Written
- Easy to understand and follow
- Able to enforce
- Accomplishes goals
Essential Policy Elements

- Findings
- Purpose
- Definitions
- Restrictions/requirements
- Exemptions
- Implementation
- Enforcement
- Severability
Essential Policy Elements: Findings

Whereas, fear of liability among school administrators is a key perceived barrier to allowing community access to school sport and recreational facilities after-hours.

Essential Policy Elements: Purpose

The purpose of this legislation is to make school property available to community members outside of the school day for recreational activities to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community support for public schools.

Proposed American Heart Association Model School Recreational Use Statute
Essential Policy Elements: Findings

BACKGROUND

The City of Chula Vista recognizes community gardens as a valuable recreation activity that can provide community members access to fresh, nutritious produce, and low-intensity physical activity. Community gardens can also foster environmental awareness, positive social interaction, and community education, all while bringing added food security to the community through the development of local food sources. The City has the ability to foster the creation of community gardens by permitting the establishment of such gardens on its vacant lands.

City of Chula Vista, California, Community Gardens Policy
PURPOSE
This policy provides to the City Manager or his designee the authority and guidance to implement and approve the use of city-owned vacant land, not including parks, to establish community gardens. This policy further details the procedure and requirements for the establishment of community gardens on city-owned vacant land.

City of Chula Vista, California
Community Gardens Policy
Essential Policy Elements: Definitions

Soft drinks means “nonalcoholic beverages that contain natural or artificial sweeteners.” Soft drinks “do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.”

Colorado legislation in 2010 (now repealed)
“Food containing trans fat” means, except as provided in paragraph (2) of this subsection, any food that: (i) is labeled as containing vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil; (ii) lists vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil as an ingredient; or (iii) contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil.

Council Bill 08-0034, § 6-507. TRANS FATS

Baltimore, Maryland
Essential Policy Elements: Restrictions / Requirements

Restrictions:

Tobacco products shall not be distributed in vending machines…

Requirements:

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age.

**Essential Policy Elements:**

**Requirements**

Employees approved for participation in the Wellness Program shall receive a maximum of 30 minutes release time per day for approved wellness activities on the Sam Houston State University campus only. Release time may not be granted for participation in wellness activities off the Sam Houston State campus. Release time is paid time and does not have to be made up. For documentation and tracking purposes, employees will check in/out at the Recreational Sports facility using their university I.D. when participating in the program. Participation reports will be available upon request.

Sam Houston State Worksite Wellness Policy
(I) IN GENERAL.—Subclauses (i) through (vi) do not apply to...(bb) daily specials, temporary menu items appearing on the menu for less than 60 days per calendar year, or custom orders...

Essential Policy Elements: Implementation

Complete Streets

“The City will develop implementation strategies that may include evaluating and revising manuals and practices, developing and adopting network plans, identifying goals and targets, and tracking measures such as safety and modal shifts to gauge success.”

Support for Nursing Mothers in the Workplace

“Staff Support: Supervisors are responsible for alerting pregnant and breastfeeding employees about the county’s worksite lactation support program, and for negotiating policies and practices that will help facilitate each employee’s infant feeding goals. It is expected that all employees will assist in providing a positive atmosphere of support for breastfeeding employees.”

Le Sueur County, Minnesota
Lactation/Breastfeeding Policy
Essential Policy Elements: Enforcement

The Healthy Options Coordinating Committee shall review the findings of an assessment and inventory of beverage points of purchase and distribution subject to the Healthy Options Beverage Standards, including an analysis of existing contracts and policies, the results of which will be distributed to City departments along with other resources to assist with the implementation of this order.

Boston Order Relative to Healthy Beverage Options
Essential Policy Elements: Severability

If any provision of this chapter, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this chapter, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Drafting Effective Public Health Policies

“Do’s”

- Written
- Clear & concise
- Consistent
- Practical
- Anticipate Challenges
Written

- Compliance
- Uniformity
- Enforceability
- Sustainability
Clear and Concise

- Use definitions appropriately
- Eliminate unnecessary words
- Keep language simple
- Be precise
Clear and Concise: Use definitions appropriately

1.12 DEFINITIONS AND RULES OF CONSTRUCTION

- **Following.** The term "following" means next after

- **Month.** The term "month" means a calendar month

- **Property.** The term "property" includes real property, personal property and **mixed** property.
Clear and Concise: Eliminate Unnecessary Words

(E) Owners, managers, operators, or employees of establishments regulated by this Ordinance shall inform persons seen violating this Ordinance of the requirements of this Ordinance. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked. Failure of the person directed to extinguish his/her item shall result in the violator being directed to leave the premise.

1. In the event the person [or persons] violating this Ordinance complies with this directive, no violation shall exist for the owner, manager, operator or employee witnessing the violation. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance and fails to immediately direct the person [or persons] in violation to extinguish the item being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.

2. In the event the person [or persons] violating this Ordinance fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person [or persons] violating this Ordinance shall take immediate and reasonable steps to obtain the removal of the person [or persons] from the premises. As an example of the reasonableness required, if there is a person violating the ordinance who, the owner, manager, operator or employee of an establishment regulated by this Ordinance is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, in this event the owner, manager, operator or employee reasonably determine to allow the person violating this ordinance to remain on the premises until appropriate arrangements may be made for the person’s removal.

In the event the person [or persons] violating this Ordinance is timely removed from the premises; no violation shall exist for any owner, manager, operator or employee related to the establishment in which these events occurred. In no event is an owner or agent of the premises to forcibly remove the person violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises follows these steps.

An employee who observes a person[s] violating this Ordinance may immediately notify the owner, manager or supervisor of the violation in satisfaction of the employee’s responsibility under this Ordinance. The failure of the owner, manager, or supervisor to take the steps required by this subsection in response to the employee’s notice shall not constitute a violation on the part of the employee.

If an owner, manager, operator, or employee of an establishment regulated by this Ordinance observes a person[s] violating this Ordinance, he or she shall immediately ask the person[s] in violation to stop smoking. If the person[s] violating the Ordinance does not stop smoking, the owner, manager, operator, or employee shall immediately ask the person[s] to leave the premises. If the person[s] in violation refuses to leave the premises, the owner, manager, operator, or employee shall call the police or other appropriate enforcement agency.

In no event is an owner or agent of the premises to forcibly remove the person[s] violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises follows these steps.
(b) Date Described- The date described in this subsection is the first day of the first fiscal quarter following the initial 2 consecutive fiscal quarters of fiscal year 2010 for which the Secretary of Health and Human Services has collected fees under section 919 of the Federal Food, Drug, and Cosmetic Act (as added by section 101).

*Family Smoking Prevention and Tobacco Control Act (2009)*
Clear and Concise: Be Precise

Tobacco

- “the term tobacco includes, but is not limited to, any form, compound, or synthesis of the plant of the genus *Nicotiana*, or the species, *N. Tabacum*”
Be Consistent

- Focus on policy objectives
- Within a specific policy
- Within an organization
- External
Be Consistent: Focus on Policy Objectives

The Board of Sample Homeowners’ Association adopts the policy below to protect the residents of the association from the health risks of exposure to secondhand tobacco smoke.

The policy is also adopted to prevent the risks of injury to residents from fires associated with smoking.
Be Consistent: Within a Specific Policy

All grocery stores licensed under this chapter must offer for sale food for home preparation and consumption, on a continuous basis, at least three (3) varieties of qualifying, non-expired or spoiled, food in each of the following four (4) staple food groups, with at least five (5) varieties of perishable food in the first category and at least two (2) varieties of perishable food in all subsequent categories:

(1) Vegetables and/or fruits.
(2) Meat, poultry, fish and/or vegetable proteins.
(3) Bread and/or cereal.
(4) Dairy products and/or substitutes.
Be Consistent: Within an Organization

Enforcement steps for employees

Staff

i. The first violation shall result in a verbal warning to the staff member, and an offer of a referral to cessation services.

ii. The second violation shall result in a written warning to the staff member with a copy placed in his or her district personnel file, and an offer of referral to cessation services.

iii. The third violation shall be considered insubordination and shall be dealt with accordingly based on established policies and procedures for suspension and/or dismissal of staff.
Be Consistent: External

“A local ordinance or other rules, laws, or policies adopted under this section may not restrict or prohibit smoking in the following places:

- A private residence”

North Carolina Statutes, sec. 130A-498(b1)
Be Practical

- Know your community
- Cost
- Effective dates
- Ability to follow policy
Anticipate Challenges

- Political
- Bureaucratic
- Legal
Anticipate Challenges: Legal

- Liability Issues
- Equal Protection
- Due Process
Drafting Effective Public Health Policies

“DON’Ts”

✓ don’t forget your homework
✓ don’t draft by “Xerox®”
✓ don’t draft in isolation
✓ don’t misuse exemptions
Don’t Forget Your Homework

- Involve stakeholders
- Review sample policies
- Involve legal assistance
- Identify deal breakers
Don’t simply do what’s been done before – it may not work for you
Don’t Draft in Isolation
Don’t Draft in Isolation

You are not alone

- Stakeholders
- Legal assistance
- Other grantees

Your policy is not an island

- Existing laws & policies
- Local, state and national trends
Don’t Overuse Exemptions
Don’t Overuse Exemptions

- Weaken objectives
- Make interpretation, implementation & enforcement difficult
- Inspire challenges
# Drafting Effective Public Health Policies

## Checklists

**Policy Drafting Checklists**

July 2010

Drafting effective public health policies is a critical component of achieving policy outcomes and environmental change. The purpose of the following checklist is to provide useful tools to assist in the policy drafting and review process. The first checklist contains steps in policy planning and drafting. The second checklist contains the elements that should be included in a policy. The final checklist contains questions for review of the policy to ensure that it is effective and comprehensive. Not every item will be relevant to every policy, but all should be considered. The order in which each item is listed may vary, and some items may need to be adjusted.

### Policy Planning / Drafting Process Checklist

- Identify and clarify the issue that the policy is addressing
- Determine if the organization has authority to enact the policy
- Identify person(s) responsible for drafting the policy
- Identify and involve key stakeholders
- Identify sample or model policies
- Draft policy (use Policy Elements Checklist)
- Review policy (use Policy Review Checklist)
- Check for conflicts with existing policies or laws
- Review draft policies with stakeholders
- Review draft policies with legal counsel or legal technical assistance
- Review and finalize policy
- Complete the approval process for the policy
- Publicize and implement the policy

### Policy Elements Checklist

**Policy**
- Purpose: The purpose is a statement that explains the goals(s) the policy is intended to achieve.
- Definitions: The definitions are detailed explanations of the key terms in the policy.
- Main policy provisions: The main policy provisions state the prohibitions and/or requirements of the policy and identify the parties to whom the provisions apply.
- Exceptions / Exemptions: This section contains any exceptions or exemptions to the prohibitions or requirements that are necessary to achieve the purpose of the policy.
- Enforcement: The enforcement section identifies the parties responsible for enforcement, outlines the enforcement procedures, any penalties or fines that may be imposed, and any appeal process.
- Implementation: The implementation section states the effective date for the policy and the steps to disseminate and publicize the policy.

### Policy Review Checklist

- Structure
  - Are all the key elements included?
  - Are the elements in order?
- Findings
  - Are the findings evidence-based?
  - Are the findings supported by the data?
- Purpose
  - Does the purpose explain the goals of the policy?
- Definitions
  - Are all the key terms defined?
  - Are any unnecessary terms defined?
  - Do the definitions anticipate new concepts or products?
- Main Policy Provisions
  - Are all the requirements and prohibitions necessary?
  - Do the provisions address the purpose?
- Exceptions
  - Are the exceptions consistent with other policies and laws?
  - Are the exceptions clearly stated?
  - Is it clear why the policy applies or does not apply?
- Enforcement
  - Does the policy specify who is responsible for enforcing the policy?
  - Does the policy specify appeal procedures?
- Stylistic Considerations
  - Are the same terms used for the same concepts consistently throughout the policy?
  - Is the policy clear and concise?
  - Is the tone consistent?
  - Is the layout consistent?
  - Is the tone consistent?
Next webinar in the series

Promoting Recreational Use of School Property After-Hours

October 19th, 12:00 -1:30 p.m. Central

More information at www.publichealthlawcenter.org
Drafting Effective Public Health Policies

Questions & Answers

publichealthlaw@wmitchell.edu

www.publichealthlawcenter.org