PUBLIC HEALTH LAW 101

OCTOBER 7, 2026

MICHIGAN PREMIER PUBLIC HEALTH CONFERENCE

CARRIE WAGGONER CONSULTING, LLC



CARRIE WAGGONER CONSULTING, LLC

Carrie Waggoner Consulting, LLC is a boutique consulting firm specializing in public health law and policy. I provide support and capacity to public health departments, government agencies, non-profits, and other organizations seeking to improve data sharing and health outcomes.

Areas of expertise include the intersection of HIPAA, FERPA, Part 2, and state privacy laws, as well as state public health law and policy.

Services include providing legal technical and regulatory compliance assistance, designing trainings and workshops, creating practical tools to translate complex legal concepts to a lay audience, developing template data use agreements, and managing complex projects.

LEARNING OBJECTIVES

Achieve a greater understanding of:

- The foundations of public health law and ethics
- General and routine public health powers
- Common legal tools used to address critical public health issues
- Decision-making considerations while navigating issues of overlapping authority

AGENDA

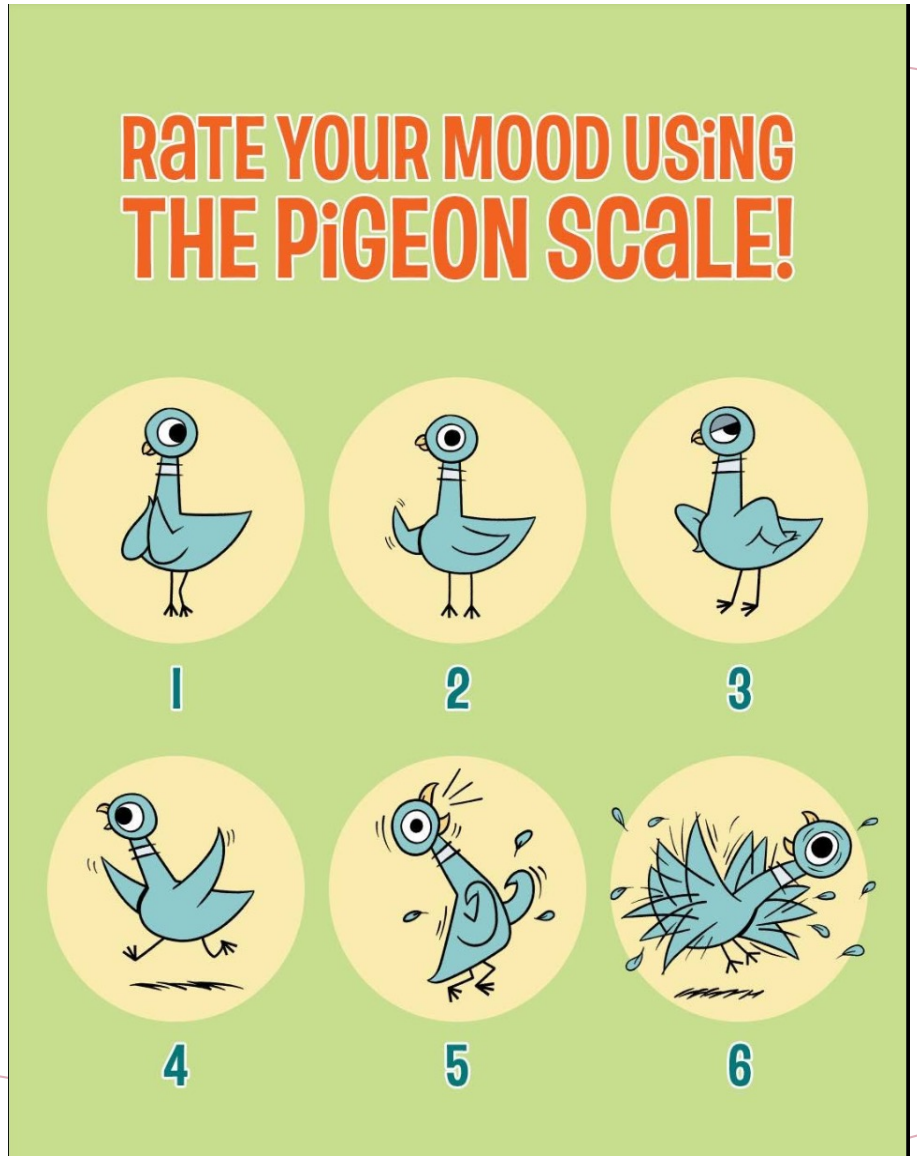
- Foundational Concepts
- Michigan's Public Health Code
- Exercising Authority/Navigating Overlapping Authority
- Panel Discussion
- Wrap up & Adjourn

DISCLAIMER

This presentation is for informational purposes only.

It is not intended as a legal position or legal advice.

For legal advice, consult with your attorney.



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FOUNDATIONAL CONCEPTS



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FOUNDATIONAL CONCEPTS

Sources of Public Health Authority

- Many sources of law
  - (i) U.S. & state constitutions; (ii) statutes; (iii) administrative rules; (iv) local counterparts; and (vi) court opinions
- Executive Orders
  - Signed, written, and published directive from the President
  - Implements law and policy; manages executive branch operations
  - Not legislation, but binding on executive agencies
  - Subject to judicial review

FOUNDATIONAL CONCEPTS

Exercise of Executive Authority

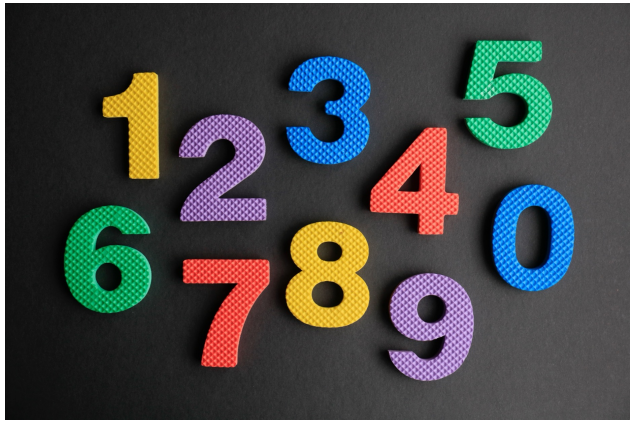
Executive Orders CAN:	Executive Orders CANNOT:
• Require agencies to follow guidance or promote policies • Have influence outside of federal agencies and workforce	• Violate the U.S. Constitution • Override legislated enactments (i.e., federal law) • Change judicial interpretation of law

(re)Source: Executive Orders & Public Health Implications Webinar

FOUNDATIONAL CONCEPTS

Key legal concepts

- Federalism
  - 10th Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
- Police Powers
  - "Public safety, public health, morality, peace and quiet, law and order – these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs."
    - Berman v. Parker, 348 U.S. 26 (1954)



FOUNDATIONAL CONCEPTS

Key legal concepts

- Separation of powers
  - Checks & balances between branches of government
  - Executive branch: govern, implement the law, rulemaking
  - Legislative branch: make laws; appropriate funds (with strings)
  - Judicial branch: determine meaning and application of laws, boundaries of authority, protect rights





PREEMPTION

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FOUNDATIONAL CONCEPTS

Key Legal Concepts

- Preemption
  - Higher level of government can supersede actions of lower level
    - Congress can reserve power to the federal government (as permitted by the Constitution)
    - State government can override local municipalities
  - Floor vs Ceiling Preemption



FOUNDATIONAL CONCEPTS

How Michigan Courts Analyze Preemption

- Direct Conflict
  - Local regulation directly conflicts with state law
- Field Preemption
  - State law completely occupies the field that a local regulation attempts to regulate
  - Four Guidelines
    1. State law expressly preempts
    2. Field preemption is implied by legislative history
    3. Pervasiveness of state regulatory scheme
    4. Nature of subject demands exclusive state regulation

See Rental Prop. Owners Ass'n of Kent Co. v. Grand Rapids, 455 Mich 246 (1997); People v. Llewellyn, 401 Mich. 314 (1977).

FOUNDATIONAL CONCEPTS

RFP Oil v. Genesee County, 330 Mich. App. 533 (2019)

- Court found:
  - County's T21 ordinance prohibited the sale of any tobacco product or paraphernalia to anyone under 21 years of age
  - Held ordinance was preempted by State's Age of Majority Act
    - MCL 722.52(1): ". . . [A] person who is at least 18 years of age . . . Is an adult of legal age for all purposes whatsoever . . . "

FOUNDATIONAL CONCEPTS

The Role of the Judicial System

- Decides constitutionality of laws, resolves disputes, interprets and applies law in individual cases
- Provides a check on other branches of government
- Creates "common law"
- Protects individual rights



FOUNDATIONAL CONCEPTS

- Historically, courts have upheld reasonable exercises of police power to protect public health:
  - Jacobson v. Mass., 197 US 11 (1905)
  - McNeil v. Charlevoix Cnty., 484 Mich. 69 (2009)
  - People ex rel. Hill v. Bd of Edu. of Lansing, 224 Mich. 388 (1923)

- COVID-19 and its aftermath have seen challenges to how broadly public health and other authority can be interpreted and applied:
  - In re Certified Questions, 506 Mich. 332 (2020)
  - Iron Pig litigation
  - T&V Associates, No. 361727 (Mich. Ct. App. Jun. 29, 2023)

FOUNDATIONAL CONCEPTS

- Jacobson v. Massachusetts, 197 U.S. 11 (1905)
  - Reverend Jacobson objected to City of Cambridge smallpox vaccination mandate
  - Legal issue before the court:
    - "Is this statute . . . inconsistent with the liberty which the Constitution of the United States secures to every person against deprivation by the State?"



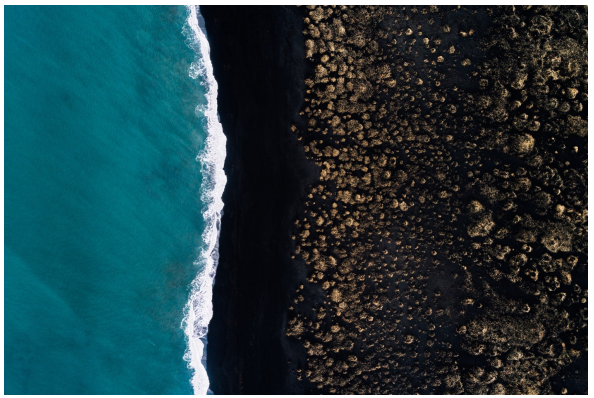
FOUNDATIONAL CONCEPTS

- Jacobson v. Massachusetts, 197 U.S. 11 (1905), con't
- Federalism
  - "The safety and the health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government."



FOUNDATIONAL CONCEPTS

- Jacobson v. Massachusetts, 197 U.S. 11 (1905), con't
- Separation of Powers
  - "It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain."



FOUNDATIONAL CONCEPTS

- Jacobson v. Massachusetts, 197 U.S. 11 (1905), con't
- Limitations to protection of individual liberty interests
  - "[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good."



FOUNDATIONAL CONCEPTS

McNeil v. Charlevoix County, 484 Mich. 69 (2009)

- Court found:
  - Law is to be liberally construed to protect public health (MCL 333.1111)
  - LHD has power to adopt rules (MCL 333.2441)
  - Regulation was consistent with LHDs general and routine authority (333.2435 & 333.2441)
  - Did not matter that LHD does not have explicit power to regulate smoking; court looked to its general powers, which include power to adopt rules to protect the public's health

FOUNDATIONAL CONCEPTS

Limitations on Exercise of Public Health Authority

Broad & Flexible Authority ≠ Unlimited or Unchecked Power

FOUNDATIONAL CONCEPTS

Constitutional Limitations on Exercise of Public Health Authority

Liberty	Due Process
Equal Protection	Freedom of Speech & Association
Freedom of Religion	Protection Against Unreasonable Searches & Seizures
Just Compensation	

FOUNDATIONAL CONCEPTS

Jurisdictional Limitations on Exercise of Public Health Authority

Separation of Powers	Allocation of Power
Territorial Limits	Statutory Limits
Assignment of Authority to Agencies	Preemption

PUBLIC HEALTH ETHICS



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FOUNDATIONAL CONCEPTS

Law defines what an agency can do / Ethics define what an agency should do

- Autonomy = respect for individual's right to make own choices
- Non-maleficence = first, do no harm
- Beneficence = do good
- Justice = treat all people equally and equitably

FOUNDATIONAL CONCEPTS

Public Health Ethics Considerations

- Precautionary principle
- Population-level utility
- Public health necessity / efficacy
- Fairness of goals and strategy
- Transparency / accountability
- Political feasibility and community acceptance

See Baum et al., *Looking ahead: Addressing Ethical Challenges in Public Health Practice, 35* J. Law, Med., & Ethics 657 (2007), doi: 10.1111/j.1748-720X.2007.00188.x; Gostin et al., *Ethical and Legal Challenges Posed by Severe Acute Respiratory Syndrome,* 290 JAMA 3229 (2003), doi:10.1001/jama.290.24.3229.

INTRODUCTION TO MICHIGAN'S PUBLIC HEALTH CODE



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MICHIGAN'S PUBLIC HEALTH CODE

- 150+ years!
- 1837 – Governor Bagley signed law creating state board of health
- 1927 – county boards of supervisors given authority to establish LHDs
- 1963 – MI constitution declares public health matter of primary public concern; legislature must pass suitable laws to protect and promote the public health
- 1978 – after five years of work, Michigan's Public Health Code signed into law
  - *See,* Commentary on the PHC

https://co.muskegon.mi.us/DocumentCenter/View/1630/History-of-Public-Health-in-Muskegon-County-PDF
https://www.michigan.gov/mdhhs/inside-mdhhs/sesquicentennial
First 100 Years.pdf
Timeline-PDF.pdf

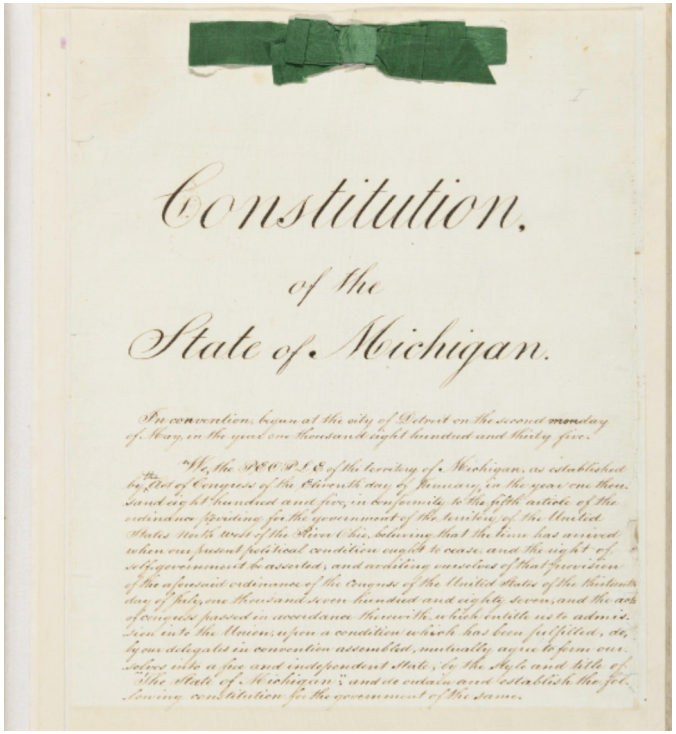
MICHIGAN'S PUBLIC HEALTH CODE

MI Const. 1963, Art. IV, § 51

Public health and general welfare:

"The **public health and general welfare** of the people of the state are hereby declared to be **matters of primary public concern**. The legislature shall pass suitable laws for the protection and promotion of the public health."

Eff. Jan. 1, 1964


Constitution.
of the
State of Michigan.

Source: michigan.access.preservica

MICHIGAN'S PUBLIC HEALTH CODE

- 1978 – most functions within MI Department of Public Health
- Today – MDHHS and LHDs exercise general and routine powers and are responsible for core public health functions
- Today – other state agencies oversee regulatory programs to protect the public:

LARA
LICENSING AND REGULATORY AFFAIRS

EGLE
MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

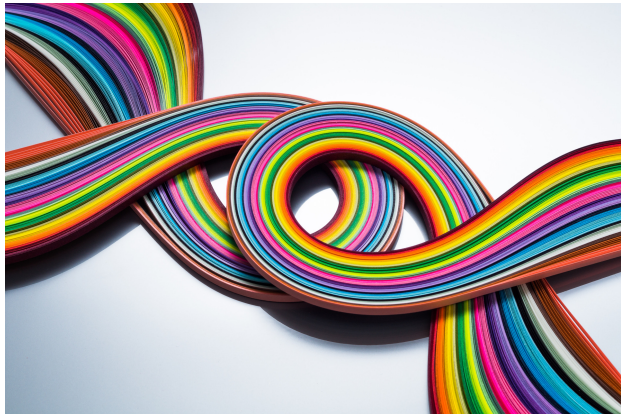
Michigan Department of AGRICULTURE & Rural Development

MiLEAP
Michigan Department of Lifelong Education, Advancement, and Potential

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC OPPORTUNITY

MICHIGAN'S PUBLIC HEALTH CODE

- MCL 333.1114 Prohibited Construction of Code
  - (1) This code shall not be construed to vest authority in the [MDHHS] for programs or activities otherwise delegated by state or federal law or rules to another department of state government.



MICHIGAN'S PUBLIC HEALTH CODE

- Courts will try to ascertain and give effect to the legislative intent

- MCL 333.1111 - Intent & construction of the code
  - (1) This code is intended to be consistent with applicable federal and state law and shall be construed, when necessary, to achieve that consistency.
  - (2) This code shall be liberally construed for the protection of the health, safety, and welfare of the people of this state.
    - *See,* McNeil v. Charlevoix County, 484 Mich. 69 (2009)

GENERAL & ROUTINE AUTHORITY



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MICHIGAN'S PUBLIC HEALTH CODE

Parallel Duties & Authorities	
MDHHS	**LHDs**
• Continually & diligently endeavor to: • Prevent disease, prolong life, protect public health through organized programs	• Same
• Make investigations/inquiries re: prevention & control of: • Causes of disease, causes of morbidity and mortality, causes/prevention/control of environmental health, nuisances, and sources of illness	• Same

• Has authority to:
  • Enter into agreements;
  • Exercise authority and promulgate rules
  • Accept gifts
	• Same

MICHIGAN'S PUBLIC HEALTH CODE

MDHHS – Role & Responsibilities

- Promote an adequate system of local health services
- Endeavor to develop and establish arrangements and procedures for the effective coordination and integration of all public health services

MCL 333.2224



MICHIGAN'S PUBLIC HEALTH CODE

MDHHS – Role & Responsibilities

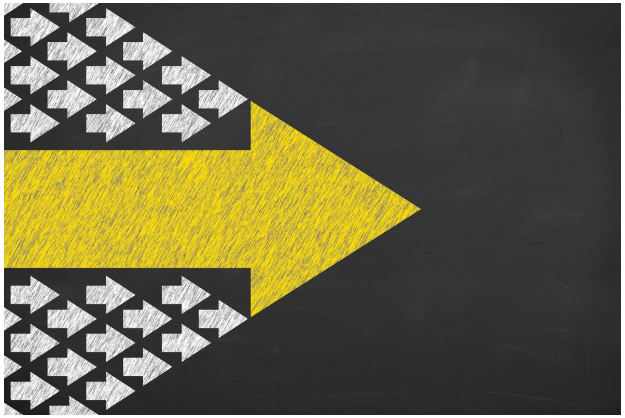
- Must consider LHDs as primarily responsible for the organization, coordination, and delivery of services and programs within LHD's jurisdiction
- MDHHS can take control under certain circumstances

MCL 333.2235

MICHIGAN'S PUBLIC HEALTH CODE

MDHHS – Role & Responsibilities

- In general, MDHHS's role is to provide leadership and specialized services
- May make sense for MDHHS to step in or act when an issue crosses multiple jurisdictions or is statewide



MICHIGAN'S PUBLIC HEALTH CODE

MDHHS – General Duties & Authorities

- MDHHS has general rulemaking authority
  - May promulgate rules necessary or appropriate to implement and carry out the duties and functions vested in it by law



MCL 333.2233

MICHIGAN'S PUBLIC HEALTH CODE

- Administrative rules are:
  - Agency's written regulation, statement, standard, policy, ruling, or instruction
  - Implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure or practice of the agency
- Rulemaking process defined by Administrative Procedures Act, MCL 24.201, et. seq.
- Properly promulgated rules have the force and effect of law

https://ars.apps.lara.state.mi.us/AdminCode/AdminCode



MICHIGAN'S PUBLIC HEALTH CODE

Example: State Rule Empowering LHDs

Procedures for control of actual or suspected case of communicable disease

- LHO may:
  - Institute appropriate isolation or other barrier precautions; advise attending physician of appropriate measures
  - Initiate exclusion of a student or individual from school or group programs
  - Exclude any individuals from school or group programs who lack documentation of immunity to disease until LHO deems that further risk of disease spread is unlikely

R. 325.175

MICHIGAN'S PUBLIC HEALTH CODE

Local Health Departments – General Duties & Authorities

- "**The director** [of MDHHS] . . . **shall consider a local health department** which meets the requirements of Part 24 **to be the primary organization responsible** for the organization, coordination, and delivery of those services and programs **in the area served by the local health department**."

MCL 333.2235(2)



MICHIGAN'S PUBLIC HEALTH CODE

Local Health Departments – General Duties & Authorities

- An LHD shall ***continually and diligently*** endeavor to:
  - ***Prevent disease, prolong life, and promote the public health***
    - **Through organized programs**, including:
      - Prevention and control of environmental health hazards;
      - Prevention and control of diseases;
      - Prevention and control of health problems of particularly vulnerable population groups;

MCL 333.2433(1)

MICHIGAN'S PUBLIC HEALTH CODE

Local Health Departments – General Duties & Authorities

- An LHD ***shall***:
  - (a) Implement and enforce laws for which responsibility is vested in the LHD.
  - (b) Utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health.
  - (c) Make investigations and inquiries as to:
    - The causes of disease and especially of epidemics.
    - The causes of morbidity and mortality.
    - The causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.
    -

MCL 333.2433(2)

MICHIGAN'S PUBLIC HEALTH CODE

Local Health Departments – General Duties & Authorities

- An LHD ***shall***:
  - d) Plan, implement, and evaluate health education through the provision of expert technical assistance, or financial support, or both.
  - e) Provide or demonstrate the provision of required services as set forth in MCL 333.2473(3).
  - f) Have powers necessary and appropriate to perform the duties and exercise the powers given by law to the local health officer and which are not otherwise prohibited by law.
  - g) Plan, implement, and evaluate nutrition services by provision of expert technical assistance or financial support, or both.

MCL 333.2433(2)

MICHIGAN'S PUBLIC HEALTH CODE

Local Health Departments – General Duties & Authorities

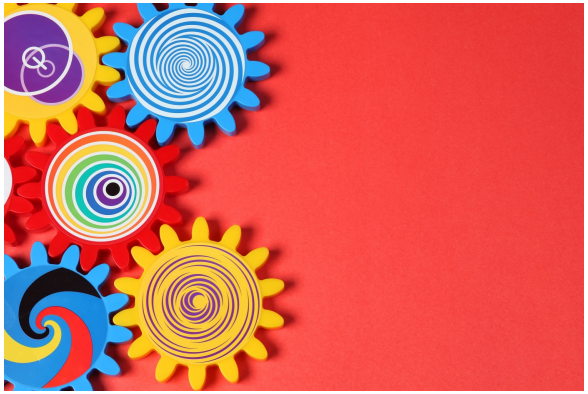
- LHD may:
  - Enter into agreements to assist the LHD in carrying out its duties and functions
  - Adopt regulations to properly safeguard the public health
  - Perform a delegated function unless otherwise prohibited by law



MCL 333.2435

MICHIGAN'S PUBLIC HEALTH CODE

Local Health Departments – General Duties & Authorities



- Adopt regulations that are necessary and proper
- Must be approved by governing body
- Must be at least as stringent as similar state requirements
- LHD regulations supersede conflicting local ordinances

MCL 333.2441, 333.2442

MICHIGAN'S PUBLIC HEALTH CODE

Review

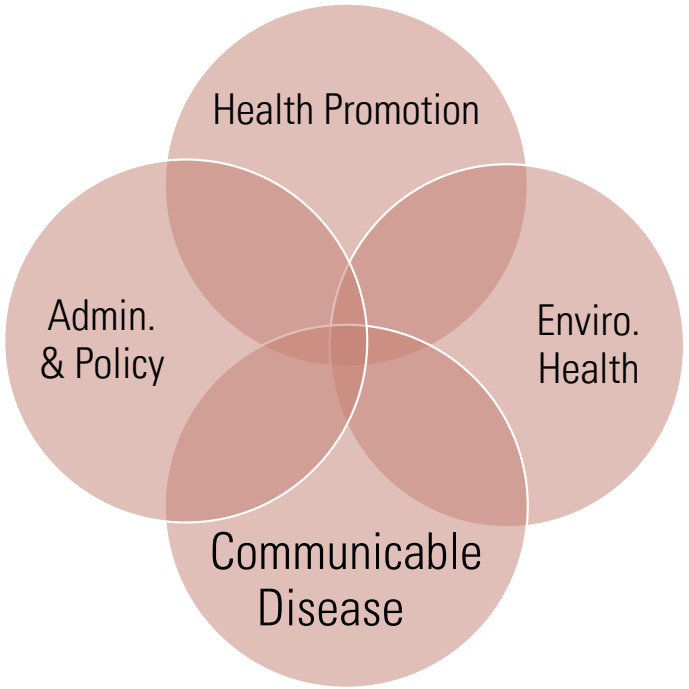
- LHD: primarily responsible for health and people within its jurisdiction
- MDHHS & LHD: parallel powers & responsibilities
- MDHHS: provides leadership and specialized services; can take action on local matter if LHD unable or unwilling to respond; can respond to imminent danger or nuisance anywhere in the state
- MDHHS: may take full charge of administration of state and local laws to address conditions that are a menace to public health

MCL 333.2221, 333.2224, 333.2235, 333.2251, 333.2437

BREAKOUT DISCUSSION

<u>General & Routine Authority in Context of Your Work</u>

- How does it apply in your day-to-day?
- Are there existing collaborations across programs or agencies?
- Any opportunities for new or increased collaboration?



ROLE OF LOCAL HEALTH OFFICERS



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ROLE OF LOCAL HEALTH OFFICERS

Local Health Officer's Role & Responsibilities

- Local Health Officer:
  - is the individual in charge of a local health department or their authorized representative
  - is the "administrative officer" of the board of health and the local health department
  - Takes actions and makes determinations to carry out LHD's functions to protect public and prevent disease
- LHD must have a full-time LHO appointed by the local governing entity or district board of health
- LHO must possess the professional qualifications prescribed by MDHHS
  - See R. 325.13001 et. seq.

MCL 333.1105, 333.2428, 333.2433

LHO ROLES & RESPONSIBILITIES

Local Health Officer's Role & Responsibilities

- Health Officer makes determinations:
  - That an imminent danger to the health or lives of individuals exists in the area served by the LHD (MCL 333.2451)
  - That control of an epidemic is necessary to protect the public health (MCL 333.2453)
  - That a building or condition is a nuisance, unsanitary condition, or cause of illness (MCL 333.2455)
  - That an individual is a "carrier" and a "health threat to others" (MCL 333.5203)
- Combines facts, science, and law to issue orders or take other action

ROLE OF LOCAL HEALTH OFFICERS

Medical Director Role & Responsibilities

- Qualifications:
  - Must be a physician (M.D. or D.O.) licensed in Michigan who complies with one of the following:
    - Board certified in preventative medicine or public health; or
    - Has an MPH or MSPH degree and not less than 2 years of full-time public health practice.
- Role & Responsibilities:
  - Medical expertise and discretion
  - Practice of medicine
  - Duties delegated by LHO

R. 325.13001 et. seq.

ROLE OF LOCAL GOVERNING ENTITY



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LGE ROLE & RESPONSIBILITIES

Local Governing Entity – What is it?

Local Health Department Structure	Local Governing Entity
Single County Health Department	County Board of Commissioners
District Health Department	County Boards of Commissioners for the counties in the District
Single City Health Department	Mayor and City Council
County Health Department within which a City Health Department also exists	County Board of Commissioners elected from the districts served by the County HD

MCL 333.2406

LGE ROLE & RESPONSIBILITIES

Local Governing Entity – Role & Responsibilities

- Provides for LHD; can unite to form a district health department
- Submits plan of organization to MDHHS
- Appoints LHD's board of health
- Appoints health officer
- Approves public health regulations (*not orders*)
- Fixes and requires fees for county health department services
- May adopt schedule of civil monetary penalties for violations of specified sections of Code, public health regulations, or LHO's orders
  - Must provide appeals process
- Receives local public health funding; must comply with state requirements for local public health services
- Appropriates funds for LHD

LEGAL TOOLS FOR RESPONDING TO PUBLIC HEALTH ISSUES



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PUBLIC HEALTH LEGAL TOOLS

Parallel Legal Tools For Responding to Public Health Issues	
MDHHS	**Local Health Departments**
• Imminent Danger Order	• Imminent Danger Order
• Epidemic Order	• Epidemic Order
• Nuisance Order	• Nuisance Order
• Injunctive Actions	• Injunctive Actions

PUBLIC HEALTH LEGAL TOOLS

Examples of Public Health Legal Action

- Orders to exclude students from schools due to chickenpox or measles outbreaks
- Orders to remedy vapor intrusion into buildings
- Orders addressing COVID-19 threat to the public's health
- Orders address a variety of circumstances that are a danger to public health and require immediate action
- Injunctive Actions
- Civil Fines & Penalties*



*Not covered today

PUBLIC HEALTH LEGAL TOOLS

Non-legal Responses to Protect the Public Health

- Education
- Request voluntary compliance (e.g., home quarantine or cease harmful practices)
- Advisories and warnings (e.g., boil water, fish, vaccination)
- Providing health care services



PUBLIC HEALTH LEGAL TOOLS

Authority for Public Health Legal Action

- **Imminent danger order** requires (MCL 333.2251, 333.2451):
  1. Determination that imminent danger to health or lives of individuals exists, THEN
  2. Immediately inform individuals affected AND
  3. Issue an order which must be delivered to person authorized to avoid, correct, or remove the imminent danger OR be posted at or near the imminent danger

PUBLIC HEALTH LEGAL TOOLS

Authority for Public Health Legal Action

- Imminent danger order must incorporate:
  1. Findings of MDHHS or LHD (e.g., facts and science)
  2. Immediate action(s) necessary to avoid, correct, or remove the imminent danger
     - Including action to be taken and/or prohibition of the presence of individuals in locations or under conditions where the imminent danger exists, except where needed to avoid, correct, or remove the danger

PUBLIC HEALTH LEGAL TOOLS

Authority for Public Health Legal Action

- **Epidemic Order** requires MDHHS or LHO to determine (MCL 333.2253; 333.2453):
  - Control of epidemic is necessary to protect the public health
- Order must incorporate:
  - Declaration of epidemic determination
- Order may prohibit:
  - Gathering of people for any purpose and establish procedures to be followed by persons during the epidemic to ensure continuation of essential public health services and enforcement of health laws. Emergency procedures not limited to the PHC.

EXERCISING LEGAL AUTHORITY

Where Does Epidemic Order Authority Stand after COVID-19 Litigation?

- T&V Assocs. v. Dir. of HHS, 12 N.W.3d 594 (2024)
  - Challenging MDHHS authority to issue COVID-19 orders under 333.2253
  - MI SC reversed Court of Appeals and held case was moot
- Iron Pig v. HDNW MI
  - 46th Circuit Judge found 2453 to be an unconstitutional delegation of legislative authority
    - Held 333.2451 (imminent danger) was constitutional
    - Declined to rule on MCL 333.2455, 333.5201, and 333.5203
  - Court of Appeals reversed and held the case was moot
- Bottom line
  - MDHHS authority under 2253 remains
  - LHD authority under 2453 remains (stay tuned – 46th judicial circuit)
  - LHD authority under 2451 remains

PUBLIC HEALTH LEGAL TOOLS

Authority for Public Health Legal Action

- **Nuisance Order** requires MDHHS or LHO to determine (MCL 333.2455):
  - A building or condition exists that violates health laws or which the Director or LHO reasonably believes to be a nuisance, unsanitary condition, or cause of illness.
- Upon such determination, may order owner to avoid, correct, or remove, at owner's expense
- In event of non-compliance, may:
  - Cause nuisance to be removed and seek warrant for such purpose at owner's expense
  - Seek court order to remove or abate the nuisance at owner's expense

PUBLIC HEALTH LEGAL TOOLS

Enforcing the Exercise Public Health Authority

- **MDHHS or LHD may seek an injunction (MCL 333.2255, MCL 333.2465)**:
  - To restrain, prevent, or correct a violation of law, rule or order which the Department or LHD has the duty to enforce or to restrain, prevent, or correct an activity which the Department or LHD believes adversely affects the public health
- Enforcement may include cooperation with other entities, such as other state or local agencies and AG's or local prosecutor's office



PUBLIC HEALTH LEGAL TOOLS

Interference with MDHHS or LHD Prohibited

- "A person shall not willfully oppose or obstruct MDHHS representative, health officer, or any other person charged with enforcement of a health law in the performance of that person's legal duty to enforce that law." (MCL 333.1291)
- Violation of MDHHS / LHD rule or order is a misdemeanor (MCL 333.2261, 333.2443)
  - Punishable by imprisonment for not more than 6 months or fine of not more than $200, or both.

EXERCISING AUTHORITY



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WHEN TO EXERCISE AUTHORITY?

- What decisions are you making? With what information? What are the various considerations?
- Most often exercising your professional judgment
- Important to understand what the law requires or authorizes
  - Duties & responsibilities
  - Specific authority to take particular actions
- What should you do? When? How?



WHEN TO EXERCISING AUTHORITY?

- What are the policy considerations?
  - Resources, feasibility, impact(s), priorities, population health (vs. private disputes), public opinion/trust, politics (relevant?), relationships
- Are you setting a precedent?
  - Uniformity, consistency, proportionality
- Doing nothing should be an informed choice!



WHEN TO EXERCISING AUTHORITY?

Informed Choice vs Abuse of Discretion

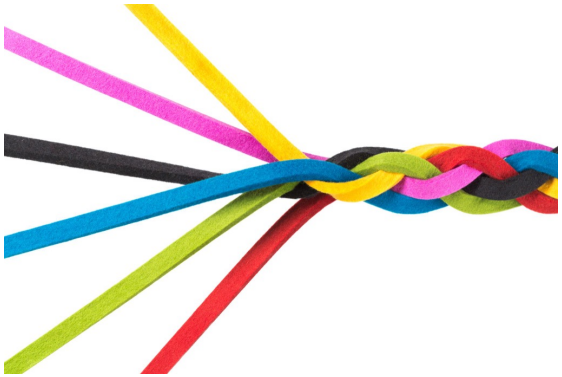
- Considerations:
  - Facts, law, and principles
  - Can you articulate the basis for your decision(s)? Justification for public health intervention?
  - Demonstrate you considered and weighed alternatives?
  - Does the decision make sense? Is it reasonable?
- Not Arbitrary or Capricious
  - Arbitrary = not considered, ignores the facts, whimsical
  - Capricious = impulsive and unpredictable

Executive Decision-Making Framework (Network for Public Health Law)

PARTNERING WITH ATTORNEYS

Working with Attorneys

- Attorney should be an integral part of your team
- Considerations:
  - Proactively build relationship and educate
  - Come prepared with needed factual information and update as needed
  - Bring attorney in early -- "this is what we want to do . . . how do we best accomplish our goal?"



NAVIGATING OVERLAPPING LEGAL AUTHORITY



PHL 101 – MPPHC, Oct. 2026

NAVIGATING OVERLAPPING LEGAL AUTHORITY

LARA
LICENSING AND REGULATORY AFFAIRS

EGLE
MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

Michigan Department of
AGRICULTURE
& Rural Development

MiLEAP
Michigan Department of Lifelong
Education, Advancement, and Potential

MICHIGAN DEPARTMENT OF
LABOR & ECONOMIC
OPPORTUNITY

Plus: Counties, Cities, Townships, School Districts

NAVIGATING OVERLAPPING LEGAL AUTHORITY

Considerations:

Statutory Language	Specific vs General Powers
Tradition	Best able or suited to address
Agreement among agencies	Non-legal actions

NAVIGATING OVERLAPPING LEGAL AUTHORITY

- *People ex rel. Hill v. Bd of Edu. of Lansing, 224 Mich. 388 (1923):*
  - MI SC upheld a local board of health resolution excluding from school anyone unvaccinated for smallpox
    - School board had issued contrary resolution in response

"When we consider that one child may innocently communicate the disease to all its playmates in school and realize how quickly the scourge spreads unless restrained, it becomes evident that **courts ought not to stay the hands of an administrative board seeking to protect the public health unless clearly convinced that the board is acting arbitrarily and in abuse of discretion.**" 224 Mich. at 400-401.

NAVIGATING OVERLAPPING LEGAL AUTHORITY

Overlapping Authority: Examples

LHD vs School Board

- MCL 380.11a, 380.401a, 380.601a, and 380.382 authorize schools:
  - To provide for the safety and welfare of students while at school or at school sponsored events, including en route to or from
- Schools also have authority under the Public Health Code:
  - To monitor compliance with immunization requirements (MCL 380.1177; R 325.176)
  - To exclude students reasonably suspected to have a communicable disease (R 325.175)

PANEL DISCUSSION



Q&A WRAP-UP



LEARNING OBJECTIVES

Achieve a greater understanding of:

- The foundations of public health law and ethics
- General and routine public health powers
- Common legal tools used to address critical public health issues
- Decision-making considerations while navigating issues of overlapping authority

THANK YOU!!

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