

Chapter 3

Powers and Responsibilities of Government

KEY TERMS

Food and Drug Administration (FDA)

Health education

Injury

Nongovernmental organization (NGO)

Parts per million (ppm)

Surgeon General

Governments ultimately have the responsibility of making the organized community efforts necessary to protect the health of the population, although many other organizations and community groups are also important participants. Government's role is determined by law; that is, government's public health activities must be authorized by legislation at the federal, state, or local levels. The public health law is further defined by decisions of the courts at the various levels of government. The broad decisions of the legislative and judicial branches of government are worked out in detail by the executive branch, usually the agencies which issue regulations and carry out public health programs. The ultimate authority that allows the laws to be written is the constitution or charter, whether federal, state, or local. Thus the body of public health law is massive, consisting of all the written statements relating to health by any of the three branches of government at the federal, state, and local levels.

Many **nongovernmental organizations (NGO)** play an important role in public health, especially through educational programs and lobbying. In recent years, stimulated in part by the Institute of Medicine's *The Future of Public Health*,¹ there has been increasing emphasis on community involvement in public health planning and in generating support for and

participation in public health activities. This process expands the concept of the public health system to include, for example, hospitals, businesses, and charitable and religious organizations.

Federal Versus State Authority

The U.S. Constitution does not mention health. Because the Tenth Amendment states that “the powers not delegated to the United States by the Constitution . . . are reserved to the States respectively,” public health has been a responsibility primarily of the states. Most state constitutions provide for the protection of public health, and the original states already had laws concerning health before the Constitution took effect.²

All states have laws such as mandates to collect data about the population, to immunize children before they enter school, to regulate the environment for purposes of sanitation, and to regulate safety. To a varying extent, responsibility for some public health activities may be delegated by the state to local governments. (FIGURE 3-1), an organization chart of a small state health department, shows public health activities typically provided for in state law.

The Constitution, in the Preamble, includes among the fundamental purposes of government, “to promote the general welfare.” It gives the federal government authority to regulate interstate commerce and to “collect taxes . . . to pay the debts and provide for the common defense and the general welfare.” These powers are the basis for the federal role in public health.

The interstate commerce provision, for example, justifies the activities of the **Food and Drug Administration (FDA)**, which oversees extensive federal regulation of foods, drugs, medical devices, and cosmetics, most of which are distributed across state lines. It is obviously more efficient and economical for the industries that produce these products to be bound by uniform national rules rather than having to comply with 50 different sets of state regulations.

The power to tax and spend is a way for the federal government to achieve goals that it may lack the authority to achieve directly. It can provide funds to the states subject to certain requirements. For example, in 1967 the federal government mandated that, as a precondition for receiving highway construction funds, states must pass laws requiring motorcyclists to wear helmets. The effectiveness of the mandate was demonstrated by the fact that, by 1975, 47 states had passed such laws, with the result that motorcyclist deaths declined by 30 percent in these states.³ Another example of federal influence over state health programs is the Medicaid program of providing health care for the poor. The federal government provides 50 to 80 percent of the funding for Medicaid. States and counties administer the Medicaid program, providing the remaining funds, and must follow the guidelines established by Congress.²

Since World War II, the federal government has used these powers to steadily widen its role in public health, among other matters. That trend began to reverse in the 1980s. In a political climate hostile to government, especially the federal government, there was a strong movement in Congress and the Supreme Court to cut government regulation and return more powers to the states. In an early example of the reversal, in 1976 Congress

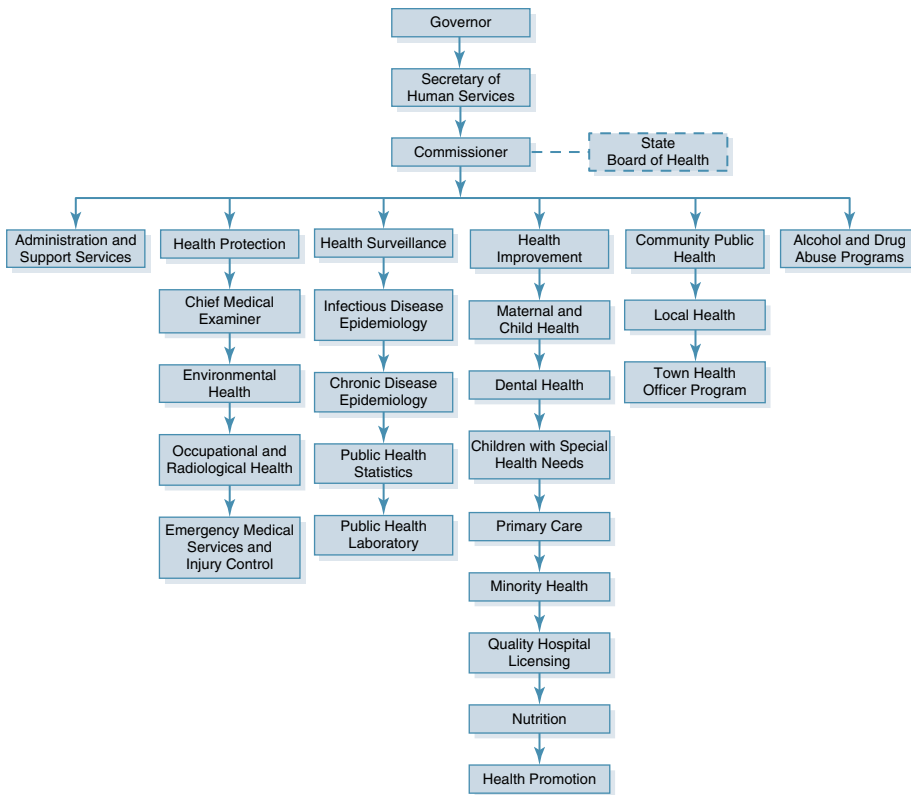


FIGURE 3-1 Organization Chart of a State Health Department

removed the financial penalty for lack of motorcycle helmet laws. By 1980, 27 states had repealed their helmet laws, and motorcycle deaths rose in those states by 38 percent.³ The Medicaid program, which has grown enormously expensive since it was established in 1965, has also been a target of Congress, which for some time threatened, without success, to hand it over to the states entirely.

In the 1990s, the U.S. Supreme Court under Chief Justice William Rehnquist began a trend known as the new federalism, which limited Congress's powers and returned authority to the states. For example, in 1995, the Court struck down a law making gun possession within a school zone a federal offense, rejecting the argument that gun possession was a matter of interstate commerce.⁴ In 2001, it decided that the Americans with Disabilities Act could not be enforced against a state, ruling that a woman who was fired from her state job because she had breast cancer could not sue the state of Alabama.⁵ However, the new federalism lost much of its momentum after 9/11 when, as *New York Times* reporter Linda Greenhouse noted, "suddenly the federal government looked useful, even necessary." In 2003, Rehnquist "gave up and moved on," writing the majority ruling that state governments could be sued for failing to give their employees the benefits required by the Family and Medical Leave Act.⁶ In 2005, the Supreme Court affirmed the priority

of federal law over state law in a controversial decision ruling that patients in California could be criminally prosecuted by federal authorities for using marijuana prescribed by a physician according to California's medical marijuana law.⁷

How the Law Works

Governments have broad power to act in ways that curtail the rights of individuals. These police powers of governments are basic to public health, and are the reason why public health must ultimately be government's responsibility.⁸ Police powers are invoked for three reasons: to prevent a person from harming others; to defend the interests of incompetent persons such as children or the mentally retarded; and, in some cases, to protect a person from harming himself or herself.⁹

Laws have been used to enforce compliance in health matters for over a century. In 1905, a precedent was set for the state's police power in the area of health when the Massachusetts legislature passed a law that required all adults to be vaccinated against smallpox. A man named Jacobson refused to comply and went to court, arguing that the law infringed on his personal liberty. The trial court found that the state was within its power to enforce the law. Jacobson appealed his case all the way to the U.S. Supreme Court. He lost: The Supreme Court upheld the right of the state to restrict an individual's freedom "for the common good."⁴

The public health law has become more complex over the years, but it follows the same pattern. At any level of government, a legislature, perceiving a need, passes a statute. The statute may be challenged in court and the decision of the court may be appealed to higher courts. Generally, on issues of constitutionality, a state court may overturn a local law or court decision, and a federal court may overturn a state law or court decision.

Since public health increasingly involves complex technical issues, legislatures at the several levels of government generally set up administrative agencies to perform public health functions. The legislature, recognizing that it lacks the necessary expertise, authorizes these agencies to set rules that define in detail how to accomplish the purpose of the legislation. The courts may then be called on to interpret the authority of the agencies under the laws and to determine whether certain rules or decisions of an agency are within its legal authority.

As an example of the interplay of legislation, agency rule making, and the role of the courts, consider the Occupational Safety and Health Act, passed by Congress in 1970. The legislation stated that "personal injuries and illnesses arising out of work situations impose a substantial burden upon . . . interstate commerce," and thus used the federal government's authority over interstate commerce to pass a public health statute.^{10(p.180)} The law established the Occupational Safety and Health Administration (OSHA) within the Department of Labor. OSHA was authorized, among other things, to set standards regulating employees' exposure to hazardous substances. Representatives of industry challenged the constitutional authority of Congress to pass the law but were unsuccessful.

Industries that feel economically harmed by OSHA's standard setting have used other routes to weaken the agency's power. One of the substances that OSHA decided to regulate

was benzene, which caused a variety of toxic effects among workers in the rubber and petrochemical industries. In 1971, OSHA set a standard limiting benzene exposure to 10 **parts per million (ppm)** in air, averaged over an 8-hour period. Epidemiologic evidence indicated, however, that exposure to lower concentrations of benzene over time might increase the risk of leukemia, and there was laboratory evidence to support those studies. Therefore, in 1978, OSHA lowered the standard to 1 ppm over an 8-hour period. Representatives of the affected industries appealed the new regulations in court, claiming that evidence that benzene causes leukemia was not sufficiently strong, and that complying with the new standard would be too expensive. The court, in a ruling upheld later by the Supreme Court, agreed that OSHA did not have sufficient evidence to support the need for the new standard and thus had exceeded its authority in issuing the regulation.¹⁰ The standard remained at 10 ppm until 1987, when evidence for the carcinogenicity of benzene was deemed convincing enough to justify the lower value.¹¹

The courts did not rule on whether the cost of complying with a standard should be considered in the process of setting it. The act had specified that standards should ensure the health of workers “to the extent feasible.”^{10(p.180)} Industry argued that OSHA should have done a cost–benefit analysis before issuing the regulation. This issue was decided in another case, in which the courts determined that a formal cost–benefit analysis was not required in the law.¹⁰ Usually, the expected cost of implementing regulations is considered together with the potential benefits when decisions are made. However, there is plenty of room for controversy over the relative magnitudes of the costs and benefits.

Since regulatory activities of federal and state governments are so fundamental to public health, they will often be discussed throughout this text.

How Public Health Is Organized and Paid for in the United States

Local Public Health Agencies

The organization of public health at the local level varies from state to state and even within states. The most common local agency is the county health department. A large city may have its own municipal health department, and rural areas may be served by multicounty health departments. Some local areas have no public health department, leaving their residents to do without some services and to depend on state government for others.

Local health departments have the day-to-day responsibility for public health matters in their jurisdiction. These include collecting health statistics; conducting communicable disease control programs; providing screening and immunizations; providing health education services and chronic disease control programs; conducting sanitation, sanitary engineering, and inspection programs; running school health programs; and delivering maternal and child health services and public health nursing services. Mental health may or may not be the responsibility of a separate agency.

In many states, laws assign local public health agencies the responsibility for providing medical care to the poor. While this task may be considered part of the assurance function defined in *The Future of Public Health*,¹ the Institute of Medicine found that this role tends to consume excessive resources and distract local health departments from performing

their assessment and policy development functions. The provision of medical services by public health clinics has often been a source of friction with the medical establishment. Functions of a typical county health department are shown in the organizational chart (FIGURE 3-2).

The source of funds for local health department activities varies widely among states. Some states provide the bulk of funding for local health departments while others provide very little. The federal government may fund some local health department activities directly, or federal funds may be passed on from the states. A portion of the local health budget usually comes from local property and sales taxes, and from fees that the department charges for some services. The extent to which local health departments are responsive to mandates from the state and federal government is likely to depend on how much of the local agency's budget is provided by these sources. When the bulk of a local health department's budget is determined by a city council or county legislature, the local agency's capacity to perform core functions may depend on its ability to educate the legislative body about public health and its importance.

State Health Departments

The states have the primary constitutional responsibility and authority for the protection of the health, safety, and general welfare of the population, and much of this responsibility falls on state health departments. The scope of this responsibility varies: Some states have separate agencies for social services, aging, mental health, the environment, and so on. This may cause problems, for example, when the environmental agency makes decisions that impact the population's health without consulting the health agency, or—in one example described by the Institute of Medicine—when the Indian Health Service, the state health agency, and the state mental health agency argued about which was responsible for adult and aging services.¹ Some state health departments are strongly centralized, while others delegate much of their authority to the local health departments. State health departments depend heavily on federal money for many programs, and their authority is thus limited by the strings attached to the federal funds.

State health departments define to varying degrees the activities of the local health departments. The state health department may set policies to be followed by the local agencies, and they generally provide significant funding, both from state sources and as channels for federal funds. The state health department coordinates activities of the local agencies and collects and analyzes the data provided by the local agencies. Laboratory services are often provided by state health departments.

State health departments are usually charged with licensing and certification of medical personnel, facilities, and services, with the purpose of maintaining standards of competence and quality of care. An organization chart of a typical state health department is shown in Figure 3-1.

People who lack private health insurance are generally the concern of state health departments, although many states pass this responsibility on to localities. Some of these people are covered by Medicaid, the joint federal–state program for the poor. States have significant—though not total—flexibility in how to administer the Medicaid program,

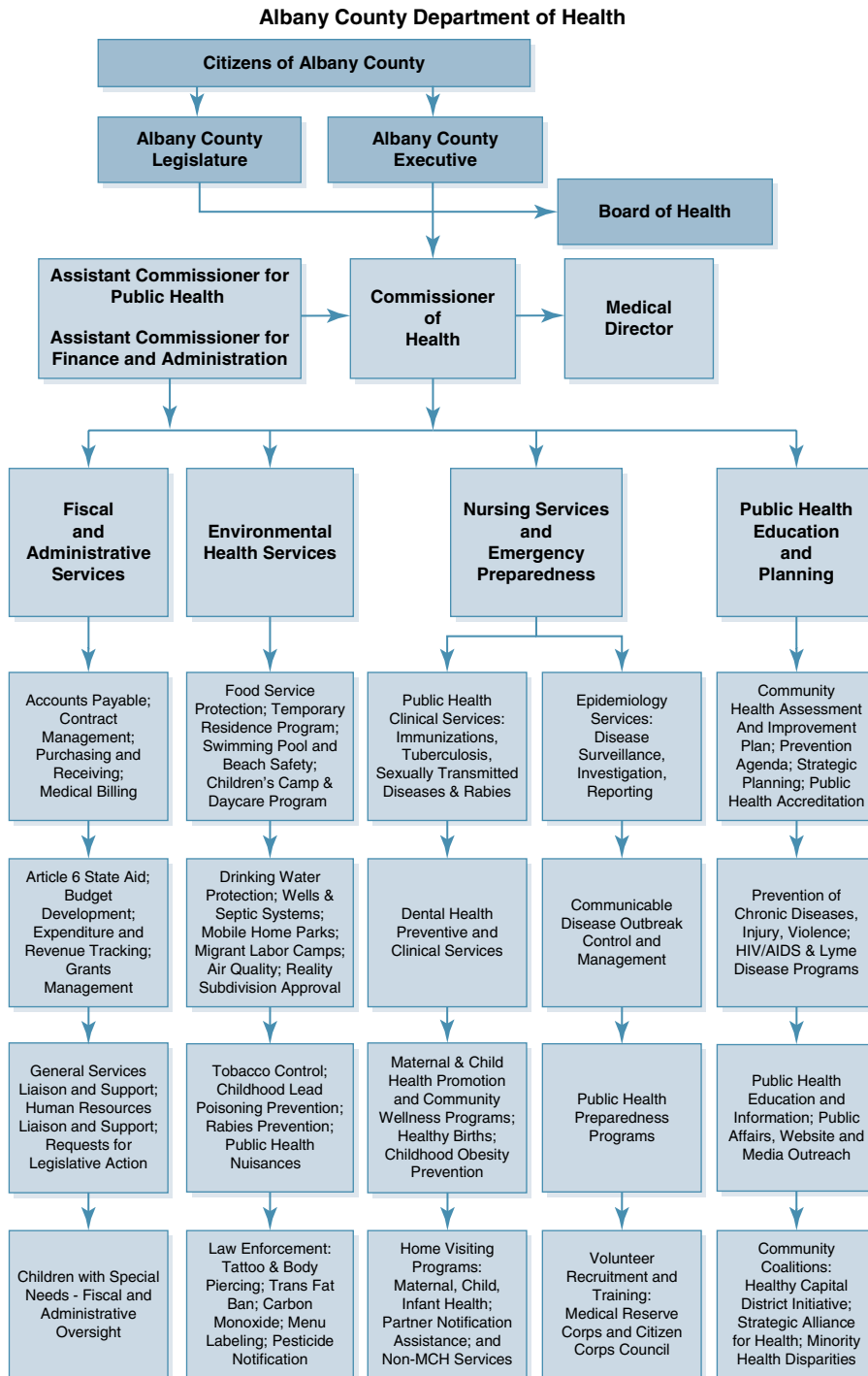


FIGURE 3-2 Organization Chart of a County Health Department

Courtesy of the Albany County Department of Health, Albany, NY, March 2015.

determining eligibility rules for coverage as well as setting payment amounts for the doctors, hospitals, and other providers of medical care. Most states also provide some kind of funding to hospitals to reimburse them for treating uninsured patients who arrive in the emergency room and must be treated.

Funding for state health department activities comes mostly from state taxes and federal grants.

Federal Agencies Involved with Public Health

Most traditional public health activities at the federal level, other than environmental health, fall under the jurisdiction of the Department of Health and Human Services (HHS). The organization chart of the HHS is shown in (FIGURE 3-3). The predominant agencies are the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the FDA. The **Surgeon General** is the nation's leading spokesperson on matters of public health. The position does not in itself carry much direct line authority, but it became very visible in the 1980s when C. Everett Koop spoke out with great courage and moral authority on the politically controversial subjects of AIDS and tobacco.

The CDC is the main assessment and epidemiologic agency for the nation. The mission of the CDC is, as its name implies, to control and prevent human diseases. Traditionally, the CDC focused on infectious diseases and was therefore crisis-oriented. In contrast, the NIH holds the longer view of a research agency. The CDC is staffed with epidemiologists who travel throughout the country and the world to detect outbreaks of disease, to track down the causes of epidemics, and to halt their spread. It also has laboratories at its headquarters in Atlanta, where biomedical scientists study the viruses and bacteria linked with the epidemics. One of the 12 centers, institutes, and offices in the CDC is the National Center for Health Statistics, which is the national authority for collecting, analyzing, and disseminating health data for the United States.

The CDC has expanded its mission over recent decades to include chronic diseases, genetics, **injury** and violence, and environmental health. The CDC's change in focus is justified by the argument that infectious diseases no longer are the leading causes of death and disability in the United States and that these other problems must be addressed in order to make further progress in preventing and controlling disease. However, the CDC's involvement in programs to prevent noninfectious diseases, injury, and violence is more controversial politically, in that it embroils the agency in discussions of health-related behavior, as well as of industries, such as tobacco and firearms, that have supporters in Congress.

(FIGURE 3-4) shows the organization chart of the CDC. The CDC issues a weekly publication called *Morbidity and Mortality Weekly Report (MMWR)*, which is widely distributed in print and electronically via the Internet. *MMWR* reports on timely public health topics that the CDC deals with, such as outbreaks of infectious diseases and new environmental and behavioral health hazards. The first published report that heralded the onset of the AIDS epidemic appeared in *MMWR* on June 4, 1981.¹² The CDC's journal *Emerging Infectious Diseases*, published in print and online, discusses new infectious disease threats that occur naturally as well as potential bioterrorist threats.

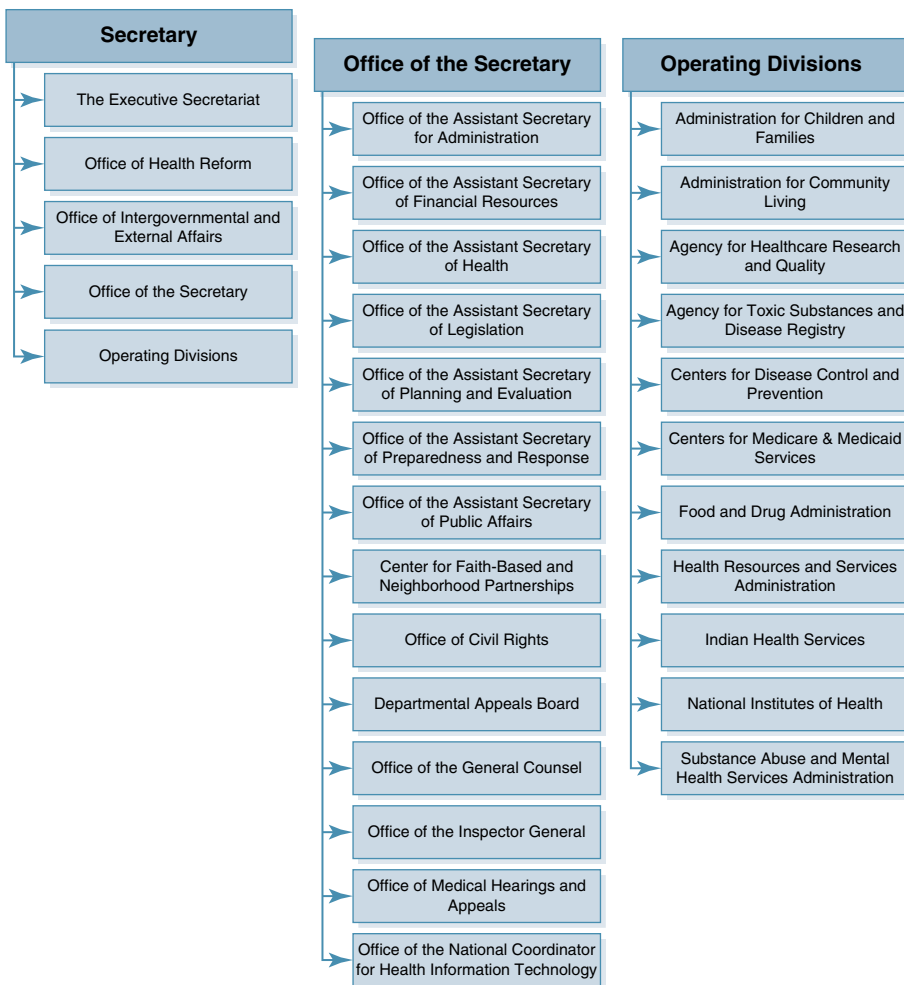


FIGURE 3-3 HHS Organizational Chart

Reproduced from U.S. Department of Health and Human Services, Organizational Chart, www.hhs.gov/about/agencies/orgchart/index.html, accessed September 12, 2015.

The NIH is the greatest biomedical research complex in the world, with its own research laboratories, most of which are located in Bethesda, Maryland, as well as a program that provides grants to biomedical scientists at universities and research centers throughout the United States. The NIH supports research ranging from basic cellular processes to the physiological errors that underlie human diseases. The NIH's Clinical Center in Bethesda is a research hospital where medical researchers test experimental therapies. The NIH also includes the National Library of Medicine, which serves as a reference library for medical centers around the world. Its computerized bibliographic service can be accessed on the Internet. The NIH's institutes, centers, and offices are listed in (BOX 3-1).

NIH has enjoyed strong Congressional support over the years. Research aimed at curing human diseases is a popular cause and, for the most part, is generally agreed to be

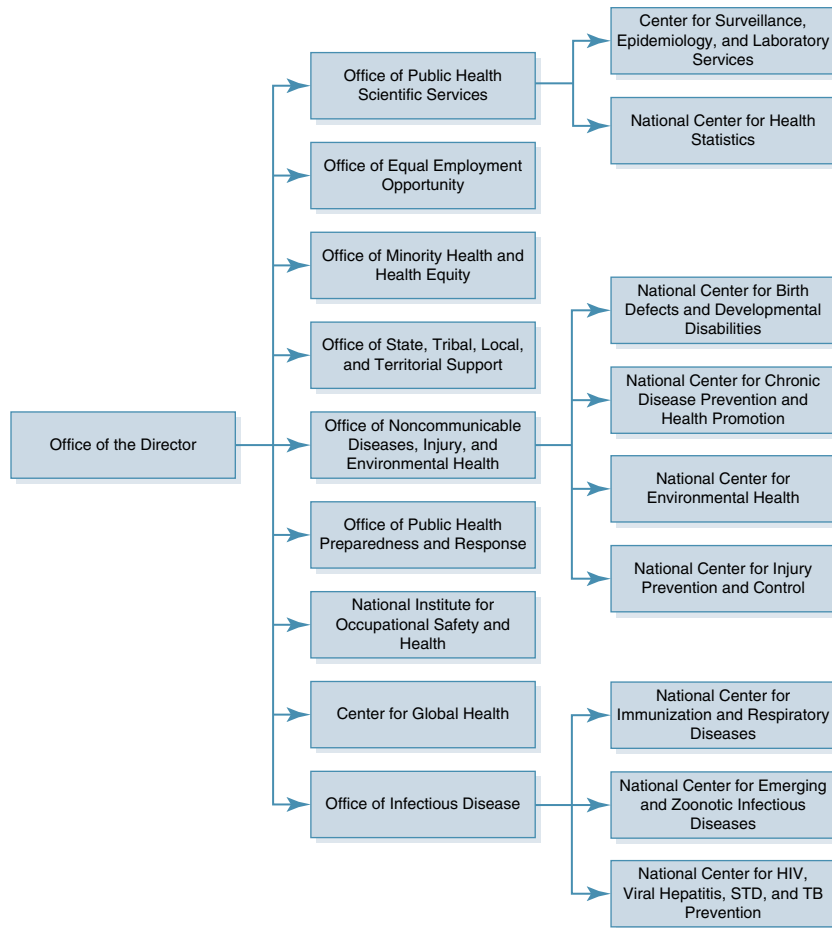


FIGURE 3-4 CDC Organizational Chart

Reproduced from the Centers for Disease Control and Prevention, Organizational Chart, www.cdc.gov/about/pdf/organization/cdc-photo-org-chart.pdf, accessed September 12, 2015.

a proper activity for the federal government. States and private companies could not afford to do biomedical research, except to a limited extent, and until recently the prospects for corporate profit in this field were not great. Even periodic budgetary constraints have usually spared NIH the worst of the axe.

Regulation of the food and drug industries has been difficult and controversial since Massachusetts passed the first American pure-food law in 1784. As recently as the late 19th century, milk was commonly watered down, then doctored with chalk or plaster of Paris to make it look normal.¹³ The Pure Food and Drugs Act of 1906 was opposed by the food-canning industry, drug and patent medicine manufacturers, whiskey interests, and, of course, the meatpacking industry. That law was passed soon after the publication of Upton Sinclair's best selling novel, *The Jungle*, an exposé of brutal and filthy conditions in the Chicago stockyards.

Box 3-1 National Institutes of Health: Institutes, Centers, and Offices

- Office of the Director
- National Cancer Institute
- National Eye Institute
- National Heart, Lung, and Blood Institute
- National Human Genome Research Institute
- National Institute of Allergy and Infectious Disease
- National Institute on Aging
- National Institute on Alcohol Abuse and Alcoholism
- National Institute of Arthritis and Musculoskeletal and Skin Diseases
- National Institute of Biomedical Imaging and Bioengineering
- Eunice Kennedy Shriver National Institute of Child Health and Human Development
- National Institute on Deafness and Other Communication Disorders
- National Institute of Dental and Craniofacial Research
- National Institute of Diabetes and Digestive and Kidney Diseases
- National Institute on Drug Abuse
- National Institute of Environmental Health Sciences
- National Institute of General Medical Sciences
- National Institute of Mental Health
- National Institute on Minority Health and Health Disparities
- National Institute of Neurological Disorders and Stroke
- National Institute of Nursing Research
- National Library of Medicine
- Center for Information Technology
- Center for Scientific Review
- Fogarty International Center
- National Center for Complementary and Alternative Medicine
- National Center for Advancing Translational Sciences
- NIH Clinical Center

Modified from National Institutes of Health, www.nih.gov/icd, accessed August 25, 2015.

The modern FDA was established in 1931, and the current law provides for the agency, in addition to ensuring that the food supply is safe and nutritious, to evaluate all new drugs, food additives and colorings, and certain medical devices, approving them only if they are proven safe and, in the case of drugs, effective. The agency also regulates vaccines and diagnostic tests, animal drugs, and cosmetics. Because FDA regulations affect major segments of the U.S. economy, it is frequently under attack, either for being too restrictive or, when an approved product is found to cause harm, too lenient.

Other components of the HHS include the Centers for Medicare and Medicaid Services and the Agency for Healthcare Research and Quality, which supports research on healthcare quality and cost. The Indian Health Service operates hospitals and health clinics for Native Americans.

Responsibility for environmental health is scattered throughout the federal government, including the CDC's Center for Environmental Health and the NIH's National Institute of Environmental Health Sciences. The prime agency for the environment is the Environmental Protection Agency (EPA), established in 1970 to carry out programs dealing with water pollution, air pollution, toxic substances control, and other issues of environmental contamination. The EPA is one of the most controversial federal public health agencies. It has often been attacked by Congress and its policies were often watered down by the George W. Bush White House.

Many other federal agencies have public health responsibilities. For example, although meat safety concerns were a major factor in the establishment of the FDA, standards of meat safety are the province of the Department of Agriculture. The Department of Agriculture also oversees food and nutrition programs, including food stamps and school lunches. The Department of Education supervises **health education** and school health and safety programs. Among the responsibilities of the Department of Transportation is traffic safety, the purview of the National Highway Traffic Safety Administration, which has had great success in reducing deaths caused by motor vehicles. The Department of Labor has OSHA, which is concerned with occupational health and prevention of occupational injury. The Department of Veterans Affairs administers its own health and medical services. The Department of Defense, which provides medical care for the armed forces, has long had to deal with public health concerns relating to threats from infectious diseases in foreign climates as well as health effects from toxic chemicals and radiation. The Department of Homeland Security was created in 2003 to protect the public from acts of terrorism, natural disasters, and other emergencies.

Nongovernmental Role in Public Health

While government bears the major responsibility for public health, many nongovernmental organizations play important roles, especially in education, lobbying, and research. Organizations that focus on specific diseases, such as the American Heart Association, the American Cancer Society, the Alzheimer's Disease and Related Disorders Association, and the American Diabetes Association, lobby Congress for resources and policies to benefit their causes. They also conduct campaigns to educate the public and may sponsor research concerned with their disease. Professional membership organizations, such as the American Public Health Association, the American Medical Association, and the American Nurses Association also are active in lobbying Congress in support of public health issues such as research related to the health effects of smoking. However, the American Medical Association is also known for its opposition to some public health-related programs such as President Clinton's universal healthcare proposal of 1994 and the possibility of a government-sponsored insurance option in President Obama's 2009 health reform plan (both of which failed). Other organizations that will play an important role in defining the future of public health include the National Association of City and County Health Officers, the Association of State and Territorial Health Officers, and the Association of Schools of Public Health.

Several major philanthropic foundations provide funding to support research or special projects related to public health. For example, the Rockefeller Foundation focuses on world population issues; the Robert Wood Johnson Foundation on providing health care to the poor as well as on AIDS, alcoholism, and drug abuse; the Pew Charitable Trusts on health, AIDS, and drug abuse; the Kaiser Family Foundation on health and public policy; and the Commonwealth Fund also on health and public policy, especially concerning minorities, children, and elderly people. Bill Gates of Microsoft has endowed the Bill and Melinda Gates Foundation, the mission of which is to improve global health.

Consumers groups organized around specific issues have sometimes had a major impact on national or regional policy related to public health. For example, Ralph Nader's traffic safety campaign in the 1960s forced Congress to pass legislation requiring the automobile industry to build safer cars. The Gay Men's Health Crisis played a critical role in the 1980s in starting up community health services for AIDS victims in New York City.

One of the lessons of the Institute of Medicine report was that governments alone cannot achieve the objectives of public health. Organized community efforts to prevent disease and prolong life must involve all sectors of the community, including providers of healthcare services, local business, community organizations, the media, and the general public. In the words of one public health leader, "Public health, unlike virtually all other important social efforts, is dependent on its ability to obtain the participation of other agencies to solve its problems."^{14(p.399)} Thus, public health leaders must be adept at negotiation and coalition building.

Some efforts—led by the federal government with the participation of other governmental and nongovernmental organizations—of the past decades are discussed elsewhere to develop a framework for public health planning and action that involves all sectors of the community at the local, state, and national levels.

Conclusion

As an organized community effort, public health is primarily the responsibility of government, although a successful public health enterprise must involve all sectors of the community. Because the U.S. Constitution does not mention health, the states have the primary legal responsibility for public health. In turn, local governments, as the level of government closest to the people, provide the bulk of public health services. Despite the lack of explicit constitutional authority, the federal government has established a significant presence in public health. Federal agencies establish and enforce laws and regulations on issues that need a national scope. Through its authority to tax and spend, the federal government leads and assists state and local governments in providing public health services.

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