Enforcing Public Health Laws

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Presenters:

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Allen County Health Department

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Objective:
Participants will be able to understand approaches to effectively enforcing and promoting public health related regulations, executive orders, statutes, and other types of public health laws.

National Public Health Accreditation Board Standards and Measures, Version 1.5
Public Health Accreditation Domain 6: Enforcing Public Health Laws

DOMAIN 6 INCLUDES THREE STANDARDS:

6.1: Review Existing Laws and Work with Governing Entities and Elected/Appointed Officials to Update as Needed Standard

6.2: Educate Individuals and Organizations on the Meaning, Purpose, and Benefit of Public Health Laws and How to Comply Standard

6.3: Conduct and Monitor Public Health Enforcement Activities and Coordinate Notification of Violations among Appropriate Agencies
The Law and Local Health Department Accreditation

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Public Health Accreditation Board
Standards and Measures:

Domain 6: Public Health Laws
Enforce public health laws

**Standard 6.1**: Review Existing Laws and Work with Governing Entities and Elected/Appointed Officials to Update as Needed

**Standard 6.2**: Educate Individuals and Organizations On the Meaning, Purpose, and Benefit of Public Health Laws and How to Comply

**Standard 6.3**: Conduct and Monitor Public Health Enforcement Activities and Coordinate Notification of Violations among Appropriate Agencies
What we’re talking about when we’re talking about “law”

- Statutes
- Regulations
- Rules
- Ordinances
- Executive Orders
- Case Law
- Codes
What we’re talking about when we’re talking about “public health”

May not have enforcement responsibilities, but do have responsibility to be active in education and in encouraging adoption of sound public health policies (PHAB)
Standard 6.1:
Review existing laws & work with governing entities & elected/appointed officials to update as needed

Keep laws current with evidence-based public health knowledge, practices, & emerging concerns

Ensure local health departments have legal capacity to review & assess laws
Standard 6.1 (cont’d)

6.1.1. Review of public health laws or laws with public health implications to see if they need revision

1. Health department must document its evaluation of its laws for their public health implications
   ◦ “This is a program review and does not require the review by a lawyer”
     a. Consider “evidence-based practices, promising practices, or practice-based evidence.” If law has effect on health equity, must also consider.
     b. Use model public health laws, checklists, templates, and/or exercises in reviewing law
     c. Solicit input from key stakeholders on proposed and/or reviewed laws
     d. Collaborate with other levels of health departments when laws impact them

2. Access to legal counsel documented via, e.g., MOU, contract, statement by government attorney’s office that they provide counsel to dep’t.

6.1.2. Feedback to governing entity &/or elected/appointed officials concerning needed updates/amendments to current laws or new laws
Standard 6.2:
Educate individuals and organizations on the meaning, purpose, and benefit of public health laws & how to comply.

Outreach could include schools, civic organizations, human service organizations, medical community.

Education efforts need to be culturally and linguistically appropriate to audience.

Sounds simple enough, but what this is really...
6.2.1 Staff education on public health law

How well is department maintaining up to date knowledge of its employees on how laws support public health practice & ensuring consistent application of laws?

Documentation of:

1. Staff training in laws supporting public health interventions & practice
2. Efforts to ensure consistent application of public health laws (e.g., consistent application of food safety laws, clean indoor air laws, etc.)
6.2.2 Make sure public health laws & permit/license application requirements are accessible to the public

6.2.3 Info or education provided to regulated entities regarding how to maintain compliance with public health laws (e.g., provision of info to schools on immunization requirements, reporting of records)
Standard 6.3
Conduct and monitor public health enforcement activities and coordinate notification of violations among appropriate agencies

Measure 6.3.1 Written procedures & protocols for conducting enforcement actions (standardized steps, criteria, & actions)

1. Document authority to conduct enforcement activities
2. Procedures, protocols, processes (eg decision trees) for achieving compliance or enforcement actions

Measure 6.3.2 Inspection activities of regulated entities conducted & monitored according to mandated frequency &/or a risk analysis method that guides frequency/scheduling of inspections

1. Show protocol/algorithm for scheduling inspections of regulated industries
2. Show doing the inspections
Standard 6.3 (cont’d)

6.3.3 Enforcement activity/complaint follow up procedures & protocols followed for both routine & emergency situations
   1. Document actions taken in response to complaints
   2. Communications with regulated industries re: complaint/compliance plan

6.3.4 Patterns or trends ID’d in compliance from enforcement activities & complaints
   1. Annual reports from enforcement programs summarizing complaints, enforcement activities, or compliance
   2. Formal feedback on evaluation/enforcement process improvement received
Section 6.3 (cont’d – last one, I promise)

Measure 6.3.5 Coordinated notification of violations to the public (as req’d) & coordinated sharing of info among appropriate agencies re enforcement, follow-up, trends & patterns

1. Document communication protocol for interagency notifications
2. Protocol for notification of public of enforcement activities
3. Notifications of enforcement actions & other sharing of info (e.g. post on website, minutes from public meeting, press release, emails showing you’re sharing info on enforcement activities)
NACCHO Domain 6 Documentation Examples

http://www.naccho.org/topics/infrastructure/accreditation/domain-6-examples.cfm
To follow up further:

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The Practice of Public Health Law in Indiana

Presented by
Mindy Waldron, BS, REHS, CFSP
Administrator, Fort Wayne-Allen County Department of Health
Let’s talk about:

• HOW TO REVIEW THE LAWS -- WHAT are we tasked with doing and how do we familiarize ourselves with the rules? (PHAB Standard 6.1)

• HOW do we educate others on what we are required to do and how they can assist/comply? (PHAB Standard 6.2)

• HOW do we educate the legislature or other elected officials when a change in law/ordinance is needed? (PHAB Standard 6.1)

• HOW do we achieve compliance (what does effective enforcement look like)? (PHAB Standard 6.3)
Federal Rules: Rules that are put forth by the Federal Government. (EX: HIPAA or VGBA for Pools) — Usually “trump” state/local rules

State Statutes: A written law enacted by a legislative body. (“The Law”). They outline authorities.

State Administrative Rules: Rules that are promulgated by an entity that have the force and effect of law. Usually they elaborate on the statutes which give the authority for them. (“The Food Code” or “The Onsite Sewage System Rule”)

Local Ordinances: A local “law” enacted by a municipal entity or the executive body of a locality.
WHERE DO I FIND ALL THE RULES FOR WHICH WE ARE RESPONSIBLE??

**INDIANA State Statutes:**
https://iga.in.gov/legislative/laws/2014/ic/

**State Administrative Rules:**
http://www.in.gov/legislative/iac/

**Local Ordinances:**
Each City/County has their own set of ordinances on a variety of subjects
Indiana Administrative Code

Latest Update: April 22, 2015
Rules filed before March 28, 2015.

Certificate of Authenticity

Title 10 Office of Attorney General for the State
Title 11 Consumer Protection Division of the Office of the Attorney General
Title 15 State Election Board
Title 16 Office of the Lieutenant Governor
Title 17 Office of Community and Rural Affairs
Title 18 Indiana Election Commission
Title 20 State Board of Accounts
Title 25 Indiana Department of Administration
Title 30 State Personnel Board
Title 31 State Personnel Department
Title 33 State Employees' Appeals Commission
Title 35 Board of Trustees of the Indiana Public Retirement System
Title 40 State Ethics Commission
Title 42 Office of the Inspector General
Title 45 Department of State Revenue
Title 50 Department of Local Government Finance
Title 52 Indiana Board of Tax Review
Title 55 Indiana Economic Development Corporation
Title 58 Enterprise Zone Board
Title 60 Oversight Committee on Public Records
Title 62 Office of the Public Access Counselor
Title 65 State Lottery Commission
Title 68 Indiana Gaming Commission
IN GENERAL, WHAT RULES ARE LHDs IN INDIANA RESPONSIBLE FOR ENFORCING?
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<th>Statutes</th>
<th>Admin. Rules</th>
<th>Allen County Local Ord.</th>
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<td>Yes</td>
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<tr>
<td>Control of Disease</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Food Protection</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Pollution Control</td>
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<td>Childhood Lead Poisoning</td>
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<td>Railroad Camp Cars</td>
<td>Yes</td>
<td>Yes</td>
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<td>Swimming Pools</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Tattoos/Body Piercing</td>
<td>No</td>
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Meetings with community/elected officials

Health Board Meetings

Presentations at schools, social service agencies, Lion’s Club-type entities, neighborhood association meetings, and to other county/city government offices

Health Fairs, your website, education documents

Annual Reports or other reports you distribute.
Easy access FOR ALL to existing rules and ordinances when needed:

- Website
- Promote
- Know them!

How do we educate others on what we are tasked with doing?
How do we educate the Legislature and others when change is needed to a law?

- **Start Local:**
  - Your Board Members, Your Elected Officials (Mayor, Commissioners, County Council, etc.)
  - Your Health Officer, your staff
- **Then reach out to colleagues to build support**
  - Local Health Department Mgr’s Association (LHDMMA)
  - Indiana State Department of Health (ISDH)
  - Indiana Environmental Health Association (IEHA)
  - Indiana Public Health Association (IPHA)
  - Association of Indiana Counties (AIC)
- **Research Best practices on the issue at hand**
  - NACCHO, Other LHDs in other states, web research, etc.

Also, IVCA, IVRA, etc!
How do we educate the Legislature and others when change is needed to a law?

- If a change does seem needed/warranted:
  - Develop some draft language that outlines the problem & suggested amendment language
  - Reach out to legislators in your region to find someone supportive who may author a bill and promote your change request
  - Educate as many legislators as possible on the needed change (YOU HAVE TO CALL & EMAIL THEM!)
  - Be prepared to testify at the State House
  - Actively pay attention to the Legislative Session!
How do we educate the Legislature and others when change is needed to a law?

- **SOME “MUST DOs” for success:**
  - Have concrete **examples** of why the change is needed (“Poster Child Story”) – make it matter!
  - Gather pertinent **data** that supports your need for change
  - Explain things in **simple** terms and in ways legislators can relate to (must be **relevant**!)
How do we educate the Legislature and others when change is needed to a law?

- Be prepared for change and ready for compromise – as long as it meets your end goal, be open to other ideas
- Seek support as needed (colleagues, a subject matter expert, other practitioners, etc.)
- STAY ON TOP OF WHAT IS GOING ON DURING THE LEGISLATIVE SESSION!

AND MOST IMPORTANTLY –
Realize it may take several attempts/years to be successful!
How did LHDs achieve success recently on a legislative issue??

- Realized a change was needed ("Log Cabin Rule" on septic systems)
- Gathered support over time (LHDs, ISDH, AIC, Local Officials, Legislators, Industry, Legal folks, other Assn’s)
- Worked to develop acceptable language changes
- Testified at State House for 2 years.
- Spoke to local elected officials who finally made it part of their legislative platform.
- Continued to work with ISDH and they finally made it part of their legislative platform (AND IT PASSED!)
What does proactive and successful ENFORCEMENT look like for LHDs?

1. **Clear understanding of your responsibilities**
   - Which Statutes/Admin Rules apply to your county?
   - What local ordinances are in effect in your county?
     - Are local ordinances up-to-date? Enforceable?
   - Do you understand how to apply all of the above?
   - For instance, have you thought through what things like “sanitary”, “clean”, “nuisance”, “Imminent health hazard” mean and how to legally ensure you have the ability to require something?
   - **CONSISTENCY IS KEY**...and having defined rules and guidelines internally will assist in communication.
What does proactive and successful ENFORCEMENT look like for LHDs?

2. Clear understanding of your abilities & authorities

   - What “powers of enforcement” do you have in your county? DON’T GUESS OR ASSUME! Be prepared.
     - Fines? Closure? Ability to Condemn? Revocation of permit?
     - Orders? Developed and easy to use?
     - Letters? Process to ensure Due Notice and Proof of Delivery?
     - Administrative Hearings? Designated Hearing Officer? Appeals? Process for all of these? “NO TRESPASSING?”
     - County Attorney / Prosecutor / Court processes?

ENSURE YOU FILL YOUR ENFORCEMENT TOOLBOX WITH THINGS YOU CAN USE AND KNOW HOW TO USE THEM!
What does proactive and successful ENFORCEMENT look like for LHDs?

COUNTY ATTORNEY?

– What is your relationship?
– How often are they available to you?
– Do they agree with your methods of inspection, enforcement, etc.? You must follow their lead!
– What role will he/she play?
– If not working well, do you have other options?

It is critical that you are all on the same page!
What does proactive and successful ENFORCEMENT look like for LHDs?

HEALTH OFFICER’S ROLE?

– Have their finger on the pulse of what is occurring “under their name” (orders, suits, etc.)

– May need to testify or present on some issues in court or to others

– In general, most local public health activities are carried out in the name of the Health Officer as “their designee” or “authorized representative”. This means they are ultimately responsible – so ensuring support of your processes is critical (especially is challenged or appealed)!
3. Clearly developed Standard Operating Procedures (SOPs) and education on use:

- Step by step processes for inspections/complaints, documentation and orders, who is to do what, what to do if, etc.
- Think through all possibilities and ensure your county attorney agrees with your processes.
- Educate all staff on how to use these in advance.
- Amend at any time new information is available.
- ENSURE they are followed each time!

What does proactive and successful ENFORCEMENT look like for LHDs?
What does proactive and successful ENFORCEMENT look like for LHDs?

**IN OTHER WORDS....**

**Ordinances and Laws**
These state **WHAT** must or must not be done

**SOPs & Guidelines**
These state **HOW** to go about enforcing the above and define what to do to make the case “stick”! Gives staff a process day-to-day.

**Strong Enforcement Program**
What does proactive and successful ENFORCEMENT look like for LHDs?
It is critical to be able to demonstrate that you have properly informed what the rules are, how to comply, what will occur if they do not — AND ENSURE IT WAS UNDERSTOOD!
5. Training on the need for & skill of good documentation ("If it isn’t documented, it didn’t happen!")

- DOCUMENT EVERYTHING!

- You must be able to “paint a picture” of any case by referring to all of its documented steps and dates.
  - Info on complaint received
  - Inspection documents
  - Orders issued
  - Warning Letters sent (documenting receipt is key!)
  - Any communications/calls and discussions with property owner
  - Hearing outcomes and expectations….and FOLLOW-UP on them!
  - PICTURES! PICTURES! PICTURES!
I always say “How would I convince a Judge to uphold my order”?

SO WHICH IS MORE CONVINCING?

Judge/Atty/Commissioner: “Well how bad could that food establishment really be? The property owner says he cleaned it up! Is anyone really going to become ill?”

YOU: “Oh yes, Mr. Judge….it’s just terrible. There are pests and trash everywhere. The food temp’s are very unsafe. It’s real bad!”

THIS DOES NOTHING TO PUT THE TRUE SCOPE OF THE PROBLEM IN VIEW FOR THE JUDGE/Atty/Comm TO MAKE A THOUGHTFUL DECISION?
I always say “How would I convince a Judge to uphold my order”?

SO WHICH IS MORE CONVINCING?

Judge/Att'y/Commissioner: “Well how bad could that food establishment really be? The property owner says he cleaned it up! Is anyone really going to become ill?”

YOU: “Let me show you!” ........................
EXAMPLE OF ENFORCEMENT PROCESS

RULES PROVIDED upon **Food Establishment** Opening

**INSPECTIONS** (routine OR complaints)

- In Compliance
  - Mandatory Education Prog. ($)
    - Action Plan Required
      - Re-Inspection
        - Not in Compliance
          - Mandatory Discussion Meeting
            - Action Plan Required
              - Re-Inspection
                - Not in Compliance
                  - Administrative Hearing for possible permit suspension or revocation
                    - Orders Issued
                      - Re-Inspection, OR Permit Suspended/Revoked & Facility Closed

- Not in Compliance
  - Follow-up Inspection(s)
    - Not in Compliance
      - Mandatory Discussion Meeting
        - Action Plan Required
          - Re-Inspection
            - Not in Compliance
              - Administrative Hearing for possible penalties
                - Orders Issued
                  - Re-Inspection
                    - Not in Compliance

NOTES:
- Housing & Septic complaints sometimes involve admin hearings, sometimes directly to court
- Idea is to work with them and try to gain compliance at each step to avoid the next step!
“KEYS” to SUCCESSFUL ENFORCEMENT PROCESS

• Documentation and Due Process!

• Consistency EACH TIME

• Following through in a timely manner

• Informing the person from the start on what is required and ensuring understanding, clarity on the written timeline, and the consequences of not complying.

• Having your process laid out in advance with approval.

And did I mention Documentation is important?? 😊
If you considering taking enforcement actions, know your local options for enforcement in advance!

- **Speak with your County Attorney**;
- **Review your local ordinances**;
- **Review pertinent statutes**:
  - RE: Involvement of Prosecuting Attorney for County
  - Obtaining Inspection Warrants if needed
  - Fines/Penalties (as each rule is different)
Measuring the success of enforcement isn’t an exact science, so you have to consider several things (among others):

- Did a judge agree and grant your enforcement request? ✓
- If dealing w/ a licensed facility for which you provide inspections routinely, are inspections improving? ✓
- When you go inspect, do you get a feeling of better understanding? ✓
- Are you hearing that word has spread to others on an enforcement action you recently took? ✓
- Are other external indicators seemingly improving over time (water tests, amount of complaints received, etc.?) ✓
LESSONS LEARNED (sort of random!)

• Developing an effective enforcement process for septic system compliance is the most difficult (DOABLE, but difficult)! WHY?
  – $$$$$!!!
  – Everyone knows an elected official willing to ask you to leave them alone
  – For the most part, no one really cares about properly disposing of sewage! 😊
  – AND...every single situation is different.
In all of these cases – *it is what it is*, we cannot control it, and we simply must work within the confines of what Indiana Public Health Laws and local rules allow or work to change them over time!
LESSONS LEARNED (sort of random!)

- Don’t ever take the word of another person if you are the person responsible for making a decision on closure, orders, suing, etc. DO YOUR OWN RESEARCH, look at pictures, visit the site, and ensure everything has been documented appropriately! (Civil liberties)

- Data speaks volumes. Compile it!

- Speak in general terms in orders, don’t use “lingo” and you must be extremely CLEAR!

- Don’t get discouraged! It takes time to develop successful local enforcement procedures!
A process of enforcement for:

- General nuisance issues not covered in the statutes
- Septic System and Sewer Issues (all sorts – and all the way through the court system w/ 4 successful suits)
- Food Establishments issues such as:
  - Recurrent pest problems (decision-making tool)
  - Certified Food handler violations (fining decision tool)
  - How to move a problematic food est. through enforcement
- Administrative hearings with fines/penalties/closure
- 😞 I even now have cell phone #’s for 1 judge in case I have after hours non-compliant TB isolation patients requiring court-ordered steps 24/7!
Enforcement of Indiana public health laws is difficult at best as they are not written in the most enforceable manner (some lack penalties for non-compliance).

Enforcement really happens at the local level, so get to know your local “system” and ensure you have support.

DO YOUR BEST, BE CONSISTENT, and reach out to others for advice! GOOD LUCK!
Any Questions?

Thank you!
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<td>Public Health Accreditation Board (PHAB)</td>
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<td>Library of sample documentation per domain</td>
<td><a href="http://www.astho.org/accreditation-library/">http://www.astho.org/accreditation-library/</a></td>
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Save the Date!

Please join us on October 30 for Promote Strategies to Improve Access to Health Care with Eric Coulter and Joan Duwve.