

YEAR IN REVIEW




REVENGE OF THE BIRDS

- State law changes in Isolation and Quarantine (I/Q)
 - Minnesota, Illinois, New Jersey & Indiana new I/Q laws
 - Minnesota law provides:
 - Emergency Vaccine Administration and Legend Drug Dispensing
 - Use of Force




Flu Vaccine: What are your Priorities?

- Planning;
- Non-licensed volunteers or healthcare workers from other jurisdictions;
- Emergency tasks outside of standard job descriptions.




STOCKPILING ANTIVIRALS: STATES AND FEDERAL MATCH

- Why needed?
- How are antivirals distributed?
- Arkansas Act 19 of 2006 of the special session allowed for purchase of antivirals.



Somebody stepped in something



National Strategy for Pandemic Influenza

- Pillars of the *National Strategy*
 - Preparedness and Communication
 - Surveillance and Detection
 - Response and Containment
- Roles and Responsibilities



HHS Pandemic Influenza Plan

- Surveillance and containment measures
- Stockpiling of antivirals and vaccines
- Network of federal, state and local preparedness, including increasing health care surge capacity; and
- Legal preparedness checklist.



FEDERAL PLANNING AND RESPONSE

CDC NPRM Proposes to:

- Expand reporting of ill passengers;
- Require air carriers to be able to contact passengers for 60 days;
- New due process procedures for federal quarantine;
- Explicit authority to offer vaccination and drugs for persons exposed.



WHO: "Why'd the chicken cross the border?"

- Strategic actions based on opportunity to intervene
 - Phase I Pre-Pandemic
 - Phase II Emergence of Pandemic Virus
 - Phase III Pandemic Declared and Spreading Internationally



WHO: Revisions to International Health Regulations (IHR)

- IHR (2005) reaction to SARS experience
- Speeds disease reporting channels
- WHO can use alternate reporting sources
- WHO can make “recommendations” w/o prior consent of countries



It's The \$\$\$, Stupid!! Health Insurance & Public Health Law

- Why Health Insurance is a *Public Health Law* Problem
 - Impact on State Public Health Agencies
 - Impact on Public Health/Preparedness
 - Law as a Low-Cost Alternative



More Uninsured

- Between 2000 and 2004, the number of nonelderly uninsured grew by 6 million.*
- As of 2004, 45.5 million Americans were uninsured.*
- Employers facing global competition are cutting benefits (think GM) and courts are letting them!

* Kaiser Family Foundation



States Step In

- The Massachusetts Approach – The Grand Compromise
- Individual Responsibility
- Subsidized Coverage
- Employer Responsibility
- Will it work? Will the ##s add up?



The Vermont Way

- Catamount Health
- State-funded program to be offered by private insurers
- State subsidies
- Employer assessments



The Maryland Way The Fair Share Health Care Fund Act

- Going After Wal-Mart
 - Maryland is no “shrinking violet!”
 - Companies with more than 10,000 employees must spend at least 8 % of payroll on health benefits or contribute to the state.
 - Only one company affected. Guess who?



Wal-Mart Fights Back Better Benefits & Litigation

- Retail Industry Leaders Assoc. files a federal lawsuit
- Claims under ERISA & Equal Protection Clause
- Why it matters?
 - 33 other states thinking about similar laws
 - Guidance on ERISA and state mandates.



Medicare D: Federal Solution/State Problem?

- Medicare Part D rolled out January 1
- What Part D does
 - Coverage
 - Choices
 - Federal/state interplay



Medicare D cont'd.

Transitional Woes– Confused Seniors,
Angry Pharmacists, Public Health
Problems

- States Step in With Emergency \$\$\$\$
- The (Successful) Battle for Reimbursement
- Battles Remain...



Where are We Now?

- Congress (again) contemplates health insurance reform
- The numbers of un- and underinsured keep growing
- Public health practitioners continue to fill gaps and face the consequences





HURRICANE KATRINA AFTERMATH: LESSONS LEARNED THE HARD WAY



KATRINA: LESSONS LEARNED THE HARD WAY

| | |
|--------------------------|--------------|
| • Deaths by State | |
| 1. <u>Alabama</u> | 2 |
| 2. <u>Florida</u> | 14 |
| 3. <u>Georgia</u> | 2 |
| 4. <u>Kentucky</u> | 1 |
| 5. <u>Louisiana</u> | 1,577* |
| 6. <u>Mississippi</u> | 238 |
| 7. <u>Ohio</u> | 2 |
| Total | 1,836 |
| Missing | 1,840 |

*Includes out of state evacuees counted by Louisiana



KATRINA: LESSONS LEARNED THE HARD WAY

- **Arkansas Experience**

- Estimated number of evacuees
 - 70,000 overall
 - 20,000 registered for services in Arkansas
- Children 18 and under - 4,500
- Pregnant women - 16
- Children with special health care needs - 600



KATRINA: LESSONS LEARNED THE HARD WAY

- **Katrina Task Force Subcommittee Report
February 2006, ABA**

- Federalism and Constitutional Challenges
 - Confusion between Federal, State and local leaders.
 - Who is in charge? "Principal Federal Official."
 - Perceived lack of ability of Federal Agencies to act.



KATRINA: LESSONS LEARNED THE HARD WAY

- **Private Sector Integration**

- Fuels
- Health care services
- Supply chain
- Volunteer services



ABA Report



KATRINA: LESSONS LEARNED THE HARD WAY

- What extent should Congress expand statutory authorities to target and promote broad private sector involvement?
 - Single civil defense?
 - Amend Homeland Security Act?
 - Communication infrastructure?
 - Expand Stafford Act?



ABA Report



KATRINA: LESSONS LEARNED THE HARD WAY

- House of Representatives Report - *A Failure of Initiative*.
 - FINDINGS:
 1. State and local officials failed to order mandatory evacuations in a timely manner.
 2. Critical elements of the **National Response Plan** were executed late, ineffectively, or not at all.

H. Res. 437



Prevention, Environmental, and Chronic Disease Developments

- Some old battles and some new ones



Prevention, Environmental, and Chronic Disease Developments

The Never-Ending Tobacco War

- Amidst all the new problems, one public health struggle continues – and with law’s help, makes slow progress.



Regulating Indoor Air*

- More cities, states and nations ban smoking in restaurants and bars.
 - 4 new states; 74 new cities in 2005
 - 13 states now have “strong” indoor air laws
 - Foreign countries include: Uruguay, Italy, Ireland, England, Sweden and Bhutan

*<http://www.tobaccofreekids.org/reports/shs/>



Litigating Indoor Air

- Massachusetts Cases
 - Housing Court affirms eviction of tenants who smoke.
 - *American Lithuanian Naturalization Club, Athol v. Board of Health*, Supreme Court affirms cities may extend smoking bans to private clubs.
- *N.J. Hospitality Coalition for Fairness v. N.J.*: Federal court rejects TRO against N.J. law banning smoking in bars and restaurants but not casinos.



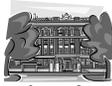
Other Tobacco Developments

- *U.S. v. Philip Morris*, Federal RICO Litigation continues – S.Ct. refuses review of Appeals Court decision.
- *People v. R.J. Reynolds*, Calif. S.Ct. holds federal law permits state to ban distribution of cigarette samples.
- AGs reach agreement with tobacco companies and delivery companies to cease selling contraband cigarettes interstate.
- States sue tobacco companies for more \$ under the MSA.



The Obesity Epidemic Becomes A Legal Issue

- In the Schools
 - Child Nutrition and WIC Authorization Act of 2004
 - More states and cities enact “junk food bans” – Conn., Illinois, and California
 - Agreement between industry, American Heart Association & Clinton Foundation



Marketing to Kids

- FTC opts for self-regulation
- Center for Science in the Public Interest (CSPI) demand letter against Kellogg and Viacom



Obesity Litigation

- Lots of Talk – Not Much Action
- Cheeseburger Laws – More States Enact Laws Making it Difficult to Sue
- Congress considers “Commonsense Consumption Act”



Total of All Methamphetamine Laboratories Including Labs Only, Meth Only Calendar Year 2003



Source: National Clandestine Laboratory Database
 Total: 7,059 / 44 States Reporting
 Dates: 01/01/03 to 12/31/03

METHAMPHETAMINE EPIDEMIC



METHAMPHETAMINE

- State laws
 - Regulating precursors used to cook meth.
 - Illinois meth laws
 - Environmental Impact and Clean-up cost of meth labs. *United States v. Lachowski* (405 F.3d 696, 8th Cir. 2005)



METHAMPHETAMINE

- Federal Combat Methamphetamine Act of 2005.
- Lawsuits filed against manufacturer's and retailers of cold medicines.



LEAD LITIGATION



LEAD

- Rhode Island public nuisance litigation against lead paint industry.
 - Jury finds lead paint industry liable in Rhode Island, *Whitehouse v. Lead Industries Association, Inc.*.
 - California Court reinstates litigation after Rhode Island jury verdict, *County of Santa Clara v. Atlantic Richfield Co.*



LEAD

- CDC/HUD/EPA Agreements regarding lead-risk assessment reports and HIPAA
 - *The State EX REL. Cincinnati Enquirer v. Daniels*



Federalism – The Continuing Saga

- Part I: The Commerce Clause
- Is Congressional power broader than we thought?
 - Maybe - *Gonzales v. Raich* (a.k.a. the medical marijuana case)
 - Don't know yet – *U.S. v. Rapanos* (the Clean Water Act case)
- But what about Oregon?
 - *Gonzales v. Oregon* (all things equal; assume health regulation belongs to the states).



The Power to Tax & Spend And the No Commandeering Rule

- Where We Are:
 - South Dakota v. Dole*: Follow the \$
- The Challenge:
 - Texas v. Leavitt*: The Battle Over the Clawback



State Immunity & The 11th Amendment

- The Rise and Fall of State Immunity
- Congressional Power to Abrogate
- The Latest Installment inmate can sue State under ADA: *U.S. v. Georgia*



Preemption

- Whoever mentioned States' Rights?
- Continuing Tales of Federal Preemption by Regulation:
 - CPSC and mattresses
 - NHTSA and car roofs
- Before Congress:
 - Food safety
 - Health Insurance Mandates – or ERISA Redux



Potpourri for 50

- A mixed bag of public health law delights



INJURIES

- Update on State laws
 - Seatbelts
 - Child protector seats
 - Arkansas smoke free law with child in the car protector seat
 - Other State laws regarding Injuries



Surveillance: Using the Law to Know What's Going on – And Doing Something About It!

- Developments in the Big Apple
 - AIC Initiative- Keeping Tabs of Diabetes



HIV Reporting

- A New Climate
- California and Mass. opt for named reporting



Due Process & Rights to Life-Saving Medication

- *Abigail Alliance for Better Access to Developmental Drugs v. Esenbach*
U.S. Court of Appeals for the Dist. of Columbia holds that terminally ill patients have a fundamental right to investigational drugs that have completed Phase I trial.
- Any broader impact on drug or public health regulation?