Key Chapter Questions...

- What is the scope of Health Law, Policy, and Ethics?
- What legal principles underlie public health and affordable health care?
- What is meant by health policy?
- How do the philosophies toward the role of government affect various health policies?
More Questions...

- Do we have a right to receive Health Care?
- How does Public Health balance the rights of individuals and the needs of society?
- How can we apply the bioethical principles in protecting individuals who participate in research studies or clinical trials?
The Role of Government

The CDC reports that the country is facing an unprecedented epidemic of obesity in all regions. It indicates that it is doing everything within its legal authority to address the epidemic. Unfortunately, it concludes there is little more that the federal government can do to fight obesity. Why, you wonder. Is the federal authority to address health problems so limited?
Participation in Clinical Trials

You hear an advertisement about participating in a new research study. It sounds like you are eligible so you check into it. You are surprised to find that even if you participate you may not receive the new drug and won’t even be told which treatment you are receiving. Despite your willingness to take your chances, you are told that you are not eligible for the study due to conditions that put you at increased risk of developing side effects. Why can’t you participate if you are willing to take the risks?
## What are the Components of Health Law, Policy, and Ethics?

<table>
<thead>
<tr>
<th>Component</th>
<th>Scope</th>
<th>Examples of issues</th>
</tr>
</thead>
</table>
| Health care | Access, quality, and cost of health care  
Organizational and professional structures for the delivery of care | Rules governing Medicare and Medicaid, as well as laws governing private insurance, Hospital governance and professional licensure |
| Public health | Population health and safety, including governmental efforts to provide services to entire populations, as well as vulnerable groups | Food and drug laws and procedures, environmental laws and procedures, regulations for control of communicable diseases |
| Bioethics | Application of individual and group values and morals to controversial areas | End-of-life care, stem cell research, abortion, protection of research subjects |

Table 5.1, p. 98
Key Definitions....

- Bioethics
- Rights
- Negative constitution
- Authoritative Decision
- Market justice
- Social justice
The Four Types of Law

1. **Constitutional**
   - Constitutions written by the U.S. and/or by each state
   - Responsibilities for health lie in the hands of each state (e.g. may limit the Federal control of health care)

2. **Legislative**
   - Statutes are written by local legislative bodies
   - Includes many public health policies ranging from restaurant health inspections to non-smoking areas.
The Four Types of Law

3. **Administrative**
   - Produced by executive agencies in order to implement legislative statutes
   - Laws apply to vast array of public health issues from septic tanks to required immunizations

4. **Judicial**
   - Decisions made by the “higher” courts when applying any of the above laws.
   - Supreme Court’s ruling that penalties for non-compliance to purchasing health care insurance is constitutional.
What Legal Principles Underlie Public Health and Health Care?

- The U.S. Constitution is a fundamental document that governs the issues of public health and healthcare law.
  - However, it does not mention health.

- **Negative constitution**—the U.S. Constitution allows, but does not require, governments to act to protect public health or to provide healthcare services.
What Legal Principles Underlie Public Health and Health Care?

- Police power—allows states to pass legislation and take actions to protect the common good
  - Limited by the rights afforded to individuals
- Interstate Commerce Clause of the U.S. Constitution is the major source of federal authority in public health and health care
  - Can tax, spend, and regulate interstate commerce
  - Authority exerted through incentives to the states
What Legal Principles Underlie Public Health and Health Care?

- The U.S. Constitution grants individual rights
  - Inferred rights are often the basis for individuals’ protections in public health and health care
  - Existence of rights implies that state and/or federal courts are expected to uphold and enforce the right
What Do We Mean by Health Policy?

- Health in all policies approach
  - Private and public entities work towards common goals to achieve improved health for all while reducing health inequities

- Health policies can be made by:
  1. Private groups
  2. Commercial trade associations
  3. Government organizations
How Are Public Health Policy Priorities Established?

- *Healthy People* prioritizes the issues that affect the health of the U.S. population
  - Collaboration of private and public organizations to set evidence-based national objectives aimed at improving the health of the population
  - 1,200 objectives organized into 42 topic areas
  - Leading Health Indicators—high-priority health issues and actions throughout the decade
# Healthy People 2020 Leading Health Indicators

<table>
<thead>
<tr>
<th>Topic</th>
<th>Indicators</th>
</tr>
</thead>
</table>
| Access to health services          | • Persons with medical insurance  
|                                    | • Persons with a usual primary care provider                                                                                              |
| Clinical preventive services       | • Adults who receive a colorectal cancer screening based on the most recent guidelines  
|                                    | • Adults with hypertension whose blood pressure is under control  
|                                    | • Adult diabetic population with a A1c value greater than 9%  
|                                    | • Children aged 19-35 months who receive the recommended doses of DTaP, polio, MMR, Hib, hepatitis B, varicella, and PCV vaccines |

Table 5.2  p. 102
# Healthy People 2020 Leading Health Indicators

<table>
<thead>
<tr>
<th>Topic</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental quality</td>
<td>• Air quality Index (AQI) exceeding 100</td>
</tr>
<tr>
<td></td>
<td>• Children aged 3-11 years exposed to secondhand smoke</td>
</tr>
<tr>
<td>Injury and violence</td>
<td>• Fatal injuries</td>
</tr>
<tr>
<td></td>
<td>• Homicides</td>
</tr>
<tr>
<td>Maternal, child, and infant health</td>
<td>• Infant deaths</td>
</tr>
<tr>
<td></td>
<td>• Preterm births</td>
</tr>
<tr>
<td>Mental health</td>
<td>• Suicides</td>
</tr>
<tr>
<td></td>
<td>• Adolescents who experience MDEs</td>
</tr>
</tbody>
</table>
# Healthy People 2020 Leading Health Indicators

<table>
<thead>
<tr>
<th>Topic</th>
<th>Indicators</th>
</tr>
</thead>
</table>
| Nutrition, physical activity, and obesity  | • Adults who meet current federal physical activity guidelines for aerobic physical activity and for muscle-strengthening activity  
• Adults who are obese                      |
<p>|                                            | • Children and adolescents who are considered obese                                                                                       |
|                                            | • Total vegetable intake for persons age 2 years and older                                                                               |
| Oral health                                | • Persons aged 2 years and older who used the oral health care system in the past 12 months                                               |
| Reproductive and sexual health             | • Sexually active females aged 15-44 years who received reproductive health services in the past 12 months                                     |
|                                            | • Persons living with HIV who know their serostatus                                                                                 |</p>
<table>
<thead>
<tr>
<th>Topic</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social determinants</td>
<td>• Student who graduate with a regular diploma 4 years after starting 9th grade</td>
</tr>
<tr>
<td>Substance abuse</td>
<td>• Adolescents using alcohol or any illicit drugs during the past 30 days</td>
</tr>
<tr>
<td></td>
<td>• Adults engaging in binge drinking during the past 30 days</td>
</tr>
<tr>
<td>Tobacco</td>
<td>• Adults who are current cigarette smokers</td>
</tr>
<tr>
<td></td>
<td>• Adolescents who smoked cigarettes in the past 30 days</td>
</tr>
</tbody>
</table>
What Bioethical Principles Are Used to Address Public Health Issues?

A code of ethics has been prepared through the Public Health Leadership Society to guide public health practitioners when making decisions and taking action.
The 12 Principles of the Ethical Practice of Public Health

1. Public health should address principally the fundamental causes of disease and requirements for health, aiming to prevent adverse health outcomes.

2. Public health should achieve community health in a way that respects the rights of individuals in the community.

3. Public health policies, programs, and priorities should be developed and evaluated through processes that ensure an opportunity for input from community members.
Principles of the Ethical Practice of Public Health

4. Public health should advocate and work for the empowerment of disenfranchised community members, aiming to ensure that the basic resources and conditions necessary for health are accessible to all.

5. Public health should seek the information needed to implement effective policies and programs that protect and promote health.

6. Public health institutions should provide communities with the information they have that is needed for decisions on policies or programs and should obtain the community’s consent for their implementation.
Principles of the Ethical Practice of Public Health

7. Public health institutions should act in a timely manner on the information they have within the resources and the mandate given to them by the public.

8. Public health programs and policies should incorporate a variety of approaches that anticipate and respect diverse values, beliefs, and cultures in the community.

9. Public health programs and policies should be implemented in a manner that most enhances the physical and social environment.
Principles of the Ethical Practice of Public Health

10. Public health institutions should protect the confidentiality of information that can bring harm to an individual or community if made public.

11. Public health institutions should ensure the professional competence of their employees.

12. Public health institutions and their employees should engage in collaborations and affiliations in ways that build the public’s trust and the institution’s effectiveness.

How Can Bioethical Principles Be Applied to Protecting Individuals Who Participate in Research?

• *The Belmont Report* defines the rights of research subjects and outlines three basic ethical principles:

  1. Respect for persons—autonomy, protect those with diminished autonomy

  2. Beneficence—do no harm, maximize possible benefits and minimize possible harms

  3. Justice—fairness in distribution
Institutional review boards (IRBs) must approve most human research before it can begin. They are created to ensure ethical conduct of research and use the framework set forth by the Belmont Report to review research proposals.
How Do Philosophies Toward the Role of Government Affect Health Policies?

- The types of health policies favored depend greatly on one’s philosophies about the role that public and private institutions should play in public health and health care.
  - The appropriate role of government is often controversial.

- Social justice vs. market justice.
## Characteristics of Market and Social Justice

<table>
<thead>
<tr>
<th>Market justice</th>
<th>Social justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Views health care as an economic good</td>
<td>Views health care as a social resource</td>
</tr>
<tr>
<td>Assumes free market conditions for health services delivery</td>
<td>Requires active government involvement in health services delivery</td>
</tr>
<tr>
<td>Assumes that markets are more efficient in allocating resources equitably</td>
<td>Assumes that the government is more efficient in allocating health resources equitably</td>
</tr>
<tr>
<td>Production and distribution of health care determined by market-based demand</td>
<td>Medical resource allocation determined by central planning</td>
</tr>
<tr>
<td>Medical care distribution based on people’s ability to pay</td>
<td>Ability to pay inconsequential for receiving medical care</td>
</tr>
<tr>
<td>Access to medical care viewed as an economic reward for personal effort and achievement</td>
<td>Equal access to medical services viewed as a basic right</td>
</tr>
</tbody>
</table>

## Implications of Market and Social Justice

<table>
<thead>
<tr>
<th>Market justice</th>
<th>Social justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual responsibility for health</td>
<td>Collective responsibility for health</td>
</tr>
<tr>
<td>Benefits based on individual purchasing power</td>
<td>Everyone is entitled to a basic package of services</td>
</tr>
<tr>
<td>Limited obligation to the collective good</td>
<td>Strong obligation to the collective good</td>
</tr>
<tr>
<td>Emphasis on individual well-being</td>
<td>Community well-being supersedes that of the individual</td>
</tr>
<tr>
<td>Private solutions to social problems</td>
<td>Public solutions to social problems</td>
</tr>
<tr>
<td>Rationing based on ability to pay</td>
<td>Planned rationing of health care</td>
</tr>
</tbody>
</table>

Is There a Right to Health Care?

- In 1948, a right to health care was incorporated into the *Universal Declaration of Human Rights and the Constitution of the World Health Organization (WHO)*

- A right to health care in the United States has not been generally established
  - It can be created within a state via its constitution or throughout the country by legislative action
  - This issue has not been definitively settled
How Does Public Health Balance the Rights of Individuals With the Needs of Society?

- Focus of responsibility differs by the type of risk

  - **Self-imposed risk**—risk an individual knowingly and willingly takes on through his or her own actions
    - Wearing a helmet on a motorcycle
  
  - **Imposed risk**—risk to individuals and populations that is out of their direct control
    - Exposure to environmental toxins from a factory
The End

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Videos

- HHS: Preparing for the Next Decade: A 2020 Vision for Healthy People
- Paul Farmer: I Believe in Health Care as a Human Right
- NBC Nightly News: Nation’s fastest road opens in Texas
- CBS News: The Gift of Immortal Cells
- Tuskegee Syphilis Experiment