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## Priorities in Public Health Law: A Practice-Based Analysis of Trends in the Legal Needs of Public Health Professionals

Caty Schmitter\* and Jennifer A. Bernstein\*\*

### I. INTRODUCTION

The field of public health law has rapidly expanded since the publication of Lawrence Gostin's seminal text, *Public Health Law: Power, Duty, Restraint*, fourteen years ago.<sup>1</sup> The tone of Gostin's first edition in 2000 may have reflected the field's lack of public visibility at the time in highlighting a "need to assert the relevance of public health law to the new millennium."<sup>2</sup> Today, it is difficult to conceive of public health law as obscure. Even those unaware of it as a professional discipline are often familiar with its hot-button issues. From the Affordable Care Act to taxes on soda, public health legal interventions are more widely publicized and discussed now than ever before.<sup>3</sup>

Despite the general societal shift, marked by an increased use of legal and policy tools as public health interventions<sup>4</sup> and a growing pool of young

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1. LAWRENCE O. GOSTIN, *PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT* (2000).

2. Elizabeth Weeks Leonard, *Public Health Law for a Brave New World*, 9 HOUS. J. HEALTH L. & POL'Y 181, 182 (2008).

3. See e.g., Heather Knight, *S.F. soda tax plan raises city's high cost, opponents say*, S.F. CHRON., Feb. 1, 2014, <http://www.sfgate.com/bayarea/article/S-F-soda-tax-plan-raises-city-s-high-cost-5197049.php>; Karen Tumulty, *Making History: House Passes Health Care Reform*, TIME, Mar. 23, 2010, <http://content.time.com/time/politics/article/0,8599,1973989,00.html>; Erika Check Hayden, *Anti-Tobacco Efforts Have Saved Millions of Lives Worldwide*, SCI. AM., Jan. 9, 2014, <http://www.scientificamerican.com/article/anti-tobacco-efforts-have-saved-millions-of-lives-worldwide>; Emily Wagster Pettus, *Miss. House, Senate pass bill on youth concussions*, KAN. CITY STAR, Jan. 27, 2014, <http://www.kansascity.com/2014/01/27/4779359/mississippi-enacting-youth-concussion.html>.

4. See generally, T. L. Schmid, M. Pratt, & E. Howze, *Policy as Intervention: Environmental and Policy Approaches to the Prevention of Cardiovascular Disease*, 85 AM. J. PUB. HEALTH 1207 (1995); see also Rickard A. Goodman et al., *Law and Public Health at CDC*, 55 MORBIDITY & MORTALITY WKLY. REP. 29-33 (2006), available at [www.cdc.gov/mmwr/preview/mmwrhtml/su5502a11.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/su5502a11.htm) (discussing the changing scope of public health

people eager to pursue careers in the field,<sup>5</sup> the collaboration between public health and law is far from seamless. Public health officials who attempt to navigate the myriad of legal issues that underlie any agency's duties often lack the resources necessary to effectively incorporate legal and policy considerations.<sup>6</sup> Legal guidance, whether regarding the authority of an agency to undertake a certain action, how best to craft new policy to address a pressing health issue, or what specific requirements of a federal regulation apply to state and local agencies, is both commonly needed and commonly unavailable.<sup>7</sup>

Bridging the gap between public health practice and policy will require the commitment of numerous stakeholders to the pursuit of strategic approaches to expand the legal resources and infrastructure accessible to those on public health's front lines. Whether or not these stakeholders can meet the needs of the professionals working at the nations' vast array of public health entities will depend on how effectively they can identify the most important priorities for resource development as well as streamline resource delivery. The burgeoning public health law community can play an important role in informing this process of resource development and infrastructure building. Any number of organizations that work to address public health legal issues may be able to contribute relevant information gained through their program activities. The Network for Public Health Law (Network) is one such organization—through its activities assisting public health professionals with legal questions, it has compiled a considerable amount of data on the needs of these professionals. This report summarizes the results of a detailed analysis of this data and identifies trends among requests submitted to the Network from public health professionals in an effort to build on past reviews of Network activities, identify opportunities for further analysis and contribute to the expanding body of research that will inform public health law's priorities moving forward.

This report presents details related to this study in several sections. Section II provides background on the Network, including its purpose and activities, its relevance to a discussion of the legal needs of public health professionals and several limitations in the Network's existing data set which have prevented more complex analysis. Section III lays out the goals of a new study of Network data. Section IV describes the methods which were used to collect, prepare and analyze data for the purposes of this study. Sec-

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as a field); MACHAEL A. STOTO & LEON E. COSLER, *EVALUATION OF PUBLIC HEALTH INTERVENTIONS* 495, 518 (6th ed. 2008).

5. See generally, Kumanan Wilson & Jennifer Keelan, *Coping with Public Health 2.0*, 180 CAN. MED. ASSOC. J. 180 (2009).

6. INST. OF MED., *FOR THE PUBLIC'S HEALTH: REVITALIZING LAW AND POLICY TO MEET NEW CHALLENGES* 45 (2011).

7. *Id.*

tion V describes the results of the study and highlights trends in requests submitted to the Network across a number of factors. Section VI discusses potential explanatory factors and implications for several key trends. Section VII concludes the report by introducing potential next steps for further research on these issues.

## II. BACKGROUND ON THE NETWORK FOR PUBLIC HEALTH LAW

### *A. History, Goals and Activities of the Network*

The Robert Wood Johnson Foundation (RWJF) established the Network for Public Health Law as part of its effort to address the increased need for legal expertise among public health professionals.<sup>8</sup> RWJF's goals in creating the Network included the creation of "a field of scholarship and practice that will" result in a "robust public health legal infrastructure" as well as the increased use "of laws that protect and promote population health."<sup>9</sup> The Network supports public health practice through several primary activities, including responses to requests for legal technical assistance from public health professionals, the development of legal resources, and efforts to engage and connect the public health legal community in the hopes of establishing a true "network" of professionals.<sup>10</sup> These activities are carried out at five regional centers, each of which is staffed by a group of public health legal experts.<sup>11</sup> Each regional center specializes in one or more public health law topics and responds to requests for assistance from a cluster of states that constitute a particular region.<sup>12</sup>

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8. Press Release, Robert Wood Johnson Found., Robert Wood Johnson Foundation and Partners Launch New Public Health Law Initiative (Sept. 21, 2010), <http://www.rwjf.org/en/about-rwjf/newsroom/newsroom-content/2010/09/robert-wood-johnson-foundation-and-partners-launch-new-public-he.html>.

9. Marjorie A. Gutman et al., *Evaluation of the Robert Wood Foundation Public Health Law Initiative* (2d Interim Report 2013), <https://www.astho.org/Research/Data-and-Analysis/Evaluation-of-Robert-Wood-Johnson-Foundation-s-Public-Health-Law-Initiative/>.

10. NETWORK FOR PUB. HEALTH LAW, ANNUAL REPORT 2012, *available at* [https://www.networkforphl.org/\\_asset/17rwxk/annual-report-2012-1.pdf](https://www.networkforphl.org/_asset/17rwxk/annual-report-2012-1.pdf) (last visited Apr. 1, 2014).

11. *Id.* (stating that the Network's five regional centers include: the Northern Region, which is located at William Mitchell College of Law in St. Paul, Minnesota and serves eight neighboring states; the Mid-States Region, which is located in Ann Arbor, Michigan and serves nine neighboring states; the Eastern Region, which is located at the University of Maryland Francis King Carey School of Law in Baltimore, Maryland and serves twelve neighboring states; the Southeastern Region, which is located jointly at the University of North Carolina Gillings School of Global Public Health and the National Health Law Program in Chapel Hill, North Carolina and serves thirteen neighboring states; and the Western Region, which is located at Arizona State University's Sandra Day O'Connor College of Law in Tempe, Arizona and serves eleven neighboring states).

12. *Id.*

*B. Requests for Legal Technical Assistance*

Among all of the Network's primary activities, its responses to requests for legal technical assistance are most relevant to a discussion of the legal needs of public health professionals. The Network responds to requests on a range of public health legal topics and provides an array of services and resources to assist requesters. A wide variety of individuals and organizations submit requests to the Network. Many are "on the ground" working at health agencies, but significant numbers of others are non-profit organizations working on public health issues, academicians teaching and/or writing on public health law, private businesses whose services relate to public health, and students studying law and/or public health, among others.

Data on all requests received by the Network is entered in into a centralized database, accessible only by Network staff members and designated consultants. From the Network's inception to April 21, 2014, over 1600 requests for legal technical assistance have been logged in the Network's database, making it one of the largest data sets available on legal issues faced by public health professionals. This data set affords the Network a unique opportunity to evaluate needs among public health professionals for legal expertise and resources.

*C. Limitations of the Network's Data Set*

While the Network's data set is clearly promising as a starting point for analysis, its potential for trend identification is limited by the nature of the data entry process. Requests for assistance are summarized in large swaths of text, making it difficult to summarize key aspects of the thousands of questions the Network has responded to. While some information related to a request is entered through standardized drop-down lists, few lists are used consistently enough to allow for a meaningful quantitative analysis.

These limitations complicate the Network's ability to closely analyze its data. Past reports have provided valuable insight into the Network's activities, but have remained general in their focus. In a 2013 report on Network activities, a group of Network staff members described major trends in "public health law and practice." The conclusions were based on a review of over 1200 requests that the Network had responded to as of May 15, 2013 as well as the authors' experiences in the field. This analysis provided a valuable perspective on the most important issues in public health law in the past several years. It also highlighted the potential for further analysis of the Network's data.

**III. STUDY GOALS**

Building on the 2013 Network report on major trends in public health law, we, the authors, undertook a study of requests submitted to the Net-

work with the goal of providing more detailed information on the needs of public health professionals. Specifically, we aimed to provide a more focused and descriptive analysis than has previously been available on the nature of questions submitted to the Network, the manner in which requests are resolved and the types of public health entities which ask for assistance. We reviewed and analyzed a sample of requests for technical assistance submitted to the Network using qualitative and quantitative analysis techniques and identified several trends in requests across topical, geographic and jurisdictional factors.

#### IV. METHODS OF DATA COLLECTION AND ANALYSIS

The initial study data originates from the Network's database on all requests for legal technical assistance that were logged between September 21, 2010<sup>13</sup> and December 5, 2013. This sample of 1477 requests was further refined to isolate only those requests from individuals working most directly on public health initiatives which, for the purposes of this study, we defined as individuals working at government entities. The final sample of 504 requests submitted by government employees was then prepared for analysis: the data set was scrubbed of inaccurate or duplicate information, key data points were updated as much as possible to ensure that near-comprehensive data was available for analysis, and new information was added to the data set. Finally, the sample was analyzed in order to identify potential trends.

The following sections provide greater detail on the processes of adding additional information to the data set and analyzing the sample for trends.

##### *A. Adding Information on Types of Government Entities which Requested Assistance*

We developed and applied an additional data point – entity type – in order to further describe the government entity from which each request within the final sample originated. We developed the values for this data point through a review of all 504 requests. As we reviewed requests, we categorized each one with an entity type, by either creating a new value or applying a relevant value that was previously created to categorize another request. We decided how to categorize each request through an assessment of the jurisdiction, structure and purpose/function of the requester's listed employer.

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13. This date denotes the first request for legal technical assistance received by the Network – thus, the study period comprises all Network requests submitted as of December 5, 2013.

### B. Adding Data on Request Background and Deliverable

We developed two additional data points to describe the nature of the requestor's question and the Network's response to that question.

- (1) *Background*: The aspect of the requestor's agency duties that his or her request related to.<sup>14</sup>
- (2) *Deliverables*: The legal or other service that the requestor asked that the Network provide and/or that was ultimately provided in response to the request.

We developed and applied values for these data points to the sample of requests using qualitative analysis techniques.<sup>15</sup> Through a review of the sample we coded the requests, or labeled them with one or more text segments summarizing either the request background or deliverable. We developed and applied individual codes (informed in part by background sources) as we reviewed any and all relevant data recorded for each request, including, but not limited to, text of the requestor's question and email exchanges attached to request records.

We generally used two or more pieces of data to decide on code for a request background or deliverable. This was necessitated by the varying amount of data available for each request; for many requests, the description of the requester's question did not include enough information to decide on a particular code and so another piece of information, such as an email exchange, was reviewed.<sup>16</sup>

As new codes were developed, the code list was refined and the data re-evaluated. Codes were either removed or added based on their similarity in scope to other codes. Codes which were narrower in focus than most others were combined into broader codes. Some codes were removed after the initial review of the sample because they were so broad that they were applied to almost all requests.

Through this process of refinement, we eventually developed a final list of codes for both request background and deliverable (see Figure 1) and applied one or more values from both lists to every request which included enough information to complete an assessment. Deliverable codes were applied to all but two requests in the final sample. Background codes were

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14. See *infra*, figure 1, for a list of codes.

15. See RUSSELL K. SCHUTT, INVESTIGATING THE SOCIAL WORLD: THE PROCESS AND PRACTICE OF RESEARCH 325 (7th ed. 2011).

16. This fact represents a limitation of the study, since the process of deciding on a code based on multiple pieces of information required more interpretation than would have been necessary if coding had been possible based on one consistent piece of data.

applied to seventy-eight percent of all requests.<sup>17</sup>

Figure 1 List of Identified Values for Request Background and Deliverable

Background Values	Deliverable Values
AOSFS: Agency organization, structure, functions and staff member roles	GDP: Guidance on a paper/project
CER: Evaluation and assurance of compliance with existing regulations/laws	IDEXISTINGREGS: Identification of existing regulations affecting the requestor's identified issue.
COMM: Communication with other agencies or agency partners and/or the development of communication tools	INFSPECREG: Information on specific law/regulation/legislation
DSP: Direct service provision	LACLARREG: Clarification on provision/detail of specific law/regulation
ENF: Enforcement	LAILDI: Identification of key legal issues related to requestor's concern(s).
FGA: Funding, grants administration	LAIIDPLS: Identification of legal/policy strategies
IAMOU: Development of inter-agency agreements/memorandums of understanding	LAIMP: Analysis of implications of potential/new policy on agency(s)
PD: Policy development	LAREQPROC: Identification of/information on specific requirements when carrying out a particular public health process/procedure
PE: Public/community education	LAREV: Review of materials
PHS: Provision of health services	LARLPHAP: Legal analysis of re-

17. The difference in the overall number of requests that we were able to apply deliverable codes to vs. background codes to is explained by the fact that the application of background codes generally required more information than the application of deliverable codes.



	sponsibility/liability of public health agencies/professionals
PI: Policy implementation	LASPAC: Legal analysis regarding specific action
PL: Permits/Licensing	MRDEVUP: The development/update of or assistance with the development/update of materials/resources (including both Network materials/resources and agency materials/resources).
PPC: Purchasing, procurement and contracts	MRPCTEM: The provision of examples, models, templates and/or checklists.
PPG: Planning and development of procedures, policies and guidelines	OSL: Information on policy efforts, laws, regulations or strategies in other states/localities
RE: Research and evaluation	PHLASPI: Interpretation of public health legal authority
RM: Rulemaking	REFGEN: Referral to a contact/expert outside the Network
SIR: Surveillance, investigation and reporting	
TR: Development/implementation of training or training resources as well as communications with agency staff and partners to ensure that public health policies are well understood and correctly implemented.	

The coding process was limited by a number of factors, one of which was the varying amount of data available on Network requests. Another limitation was the subjective nature of the review process and the fact that codes were applied based on one author's assessment. While all requests were reviewed in detail, the process of creating codes to describe data is inherently subjective and a data set as specific as the Network's request data is prone to errors in categorization when reviewed by a single person. Future studies of a similar nature could be improved by implementing a more

extensive coding process, including multiple coders with significant expertise in the content.

### *C. Trend Analysis*

Once all additional information had been added to the data set, we analyzed the data quantitatively in order to identify trends.

First, we calculated how common each data point value was for all requests. For example, after totaling the number of requests which were labeled with a particular government entity type value, we were able to view how often each type of government entity submitted requests to the Network. We identified frequencies of values for all key data points in this manner, including:

- Requester's entity type
- Requester's jurisdictional level
- Requester's state of origin
- Request topic
- Request background
- Request deliverable

Next, we calculated frequencies of values for a smaller sub-set of requests, and compared these frequencies to those for other sub-sets. For example, we isolated requests by the jurisdictional level of the requester's organization and then, for each sub-set of requests, we calculated the frequencies of topic values. After doing so, we compared the topic values for requests at each jurisdictional level to one another in an attempt to identify trends in the subject matter of requests based on whether the requesting entity was a federal, state or local entity.

In this manner, we isolated and compared the data set in a number of ways. The most common data point used as a basis to divide and compare requests was jurisdictional level, however we also used a number of factors, including geographic origin and entity type. The limited amount of data and the specificity of several data points was a frequent limitation in our ability to identify trends. Ultimately, we did identify several trends in requests across jurisdictional, geographical and topical factors. The most notable of the trends identified through these comparisons are summarized in the Results section.

## V. RESULTS

The analysis yielded valuable information on potential trends among the requests submitted to the Network by government entities. The study results are presented in several parts: (1) information on the jurisdictional levels

and types of government entities which have requested assistance from the Network, (2) topical trends in requests, (3) geographic trends in requests, and (4) trends in the request background and deliverables.

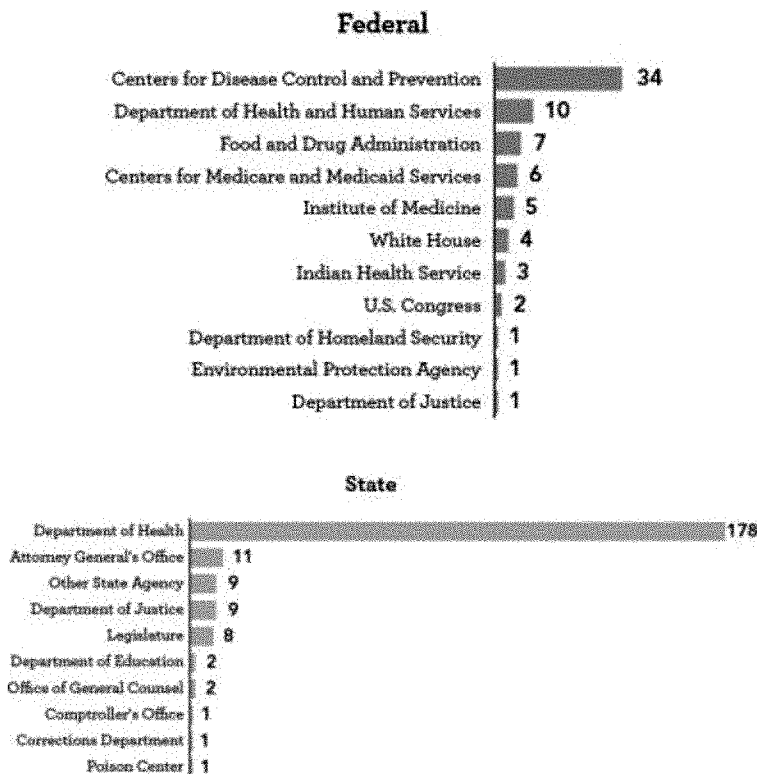
#### *A. Detail on the Types of Government Entities that Requested Assistance*

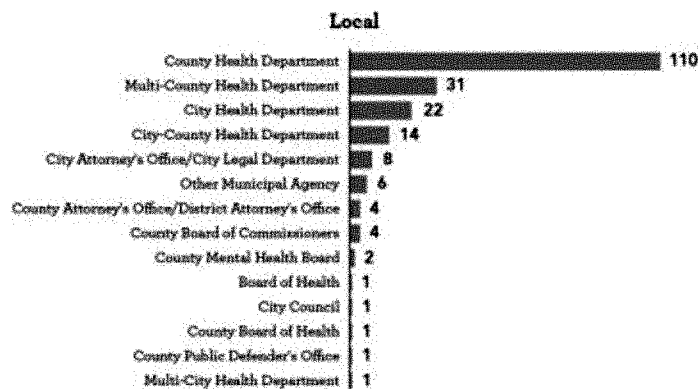
We categorized all requests in the study sample with an entity type value in order to further describe the types of government entities which have requested assistance from the Network. We also updated all requests with a jurisdictional level based on the requester's organization. Quantitative analysis of the frequency of each value for entity type and jurisdictional level highlights trends in the organizations that have requested assistance from the Network.

Eighty-five percent of requests came from state and local agencies. Federal agencies requested most of the remaining fifteen percent of requests, with only three requests originating in tribal agencies. Across all jurisdictions, the two most common types of entities to contact the Network were state and county health departments.

The charts below display the trends in the types of government entities that requested assistance at each jurisdictional level. Each chart displays the total number of requests submitted by each entity, ordered from most requests to least

Figure 2 Total Requests per Government Entity – Federal, State and Local Jurisdictions





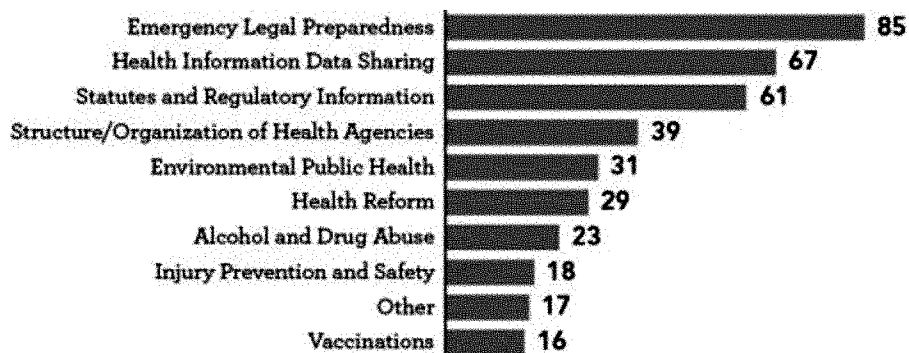
### B. Topical Trends

We identified several topical trends through analysis of the request data, including: (1) trends in requests overall, (2) trends in requests submitted by government entities vs. non-government entities, (3) trends in requests submitted by entities of different jurisdictional levels and (4) trends in requests over time.

#### 1. Trends in Requests Overall

The final study sample included requests on an array of public health legal topics. Figure 3 lists the ten topic areas which government requests most frequently addressed. Common themes include emergency legal preparedness, health information data sharing, statutes and regulatory information, and the structure/organization of health agencies.

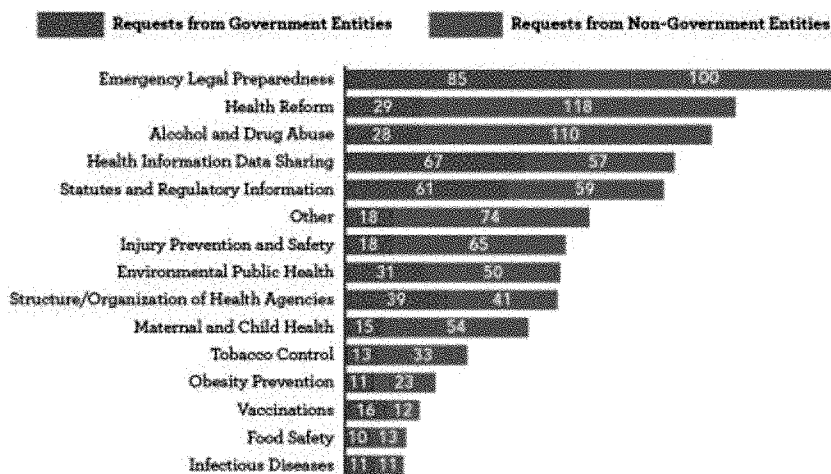
Figure 3 Requests from Government Entities by Topic – Ten Most Common Topics



## 2. Comparing Topical Trends in Government Requests vs. Non-Government Requests

Requests submitted by government organizations varied in common topical themes compared to requests from non-government organizations. We examined this difference by isolating the top fifteen most common topics for all 1392 government and non-government requests combined, then highlighting the proportion of requests which originated from government and non-government organizations for each topic. As Figure 4 indicates, health reform, alcohol and drug abuse, maternal and child health, and injury prevention and safety are significantly more common topics among non-government requests. In contrast, government entities asked more questions on health information data sharing, statutes and regulatory information, structure/organization of health agencies and vaccinations.

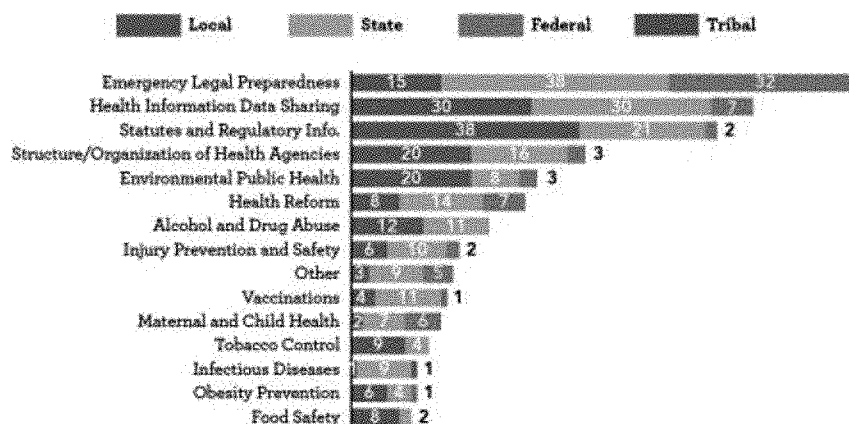
Figure 4 Topical Trends– Government vs. Non-Government Requests



## 3. Topical Trends in Requests from Government Entities Across Jurisdictional Levels

Topical themes in governmental requests also vary across jurisdictional levels. Figure 5 displays the top ten most frequent topics for requests from government entities and indicates what portion of each topic's request was submitted by local, state and federal entities. Emergency legal preparedness requests were largely submitted by federal and state entities, whereas local entities submitted larger portions of requests related to statutes and regulatory information, structure/organization of health agencies and environmental public health and state entities submitted a larger portion of the requests related to health reform, injury prevention and safety and vaccinations.

Figure 5 Topical Trends in Requests across Jurisdictional Levels



#### 4. Topical Trends in Government Requests Over Time

Analysis of the requests received from government entities over time may be indicative of trends in the needs of government officials in the past several years. While many major topic areas have comprised a consistent proportion of requests submitted throughout the Network's history, some topics have changed in frequency over the thirty-seven month study period. For example, requests related to maternal and child health, health reform and alcohol and drug abuse have all significantly increased in frequency. In contrast, requests related to injury prevention and safety declined in overall frequency.

#### C. Geographic Trends

Requests submitted by employees of government entities originated in 48 different states. Requests from government entities tended to reflect the same patterns in terms of geographic frequency as the larger pool of requests; more requests tended to come from states where Network regional centers were located as well as from hubs for public health work.<sup>18</sup> These factors, as well as the limits imposed on data analysis by the relatively small pool of total requests, complicate any attempt to identify national trends based on Network data. However, we did identify potential trends in two geographic analyses: (1) topical differences in requests from varying Network regions and (2) geographic trends in requests across state and local jurisdictions.

18. Such as Georgia, headquarters of the Centers for Disease Control and Prevention and Washington, D.C., where numerous federal agencies are located.

### 1. Topical Differences across Network Regions

Analysis of the ten most frequent topics for requests originating in each Network region indicates that several topics were common amongst all regions and a few were unique to specific regions. Emergency legal preparedness, health information data sharing, and alcohol and drug abuse ranked in the top ten requested topics in at least four out of five regions. In comparison, tobacco control and obesity prevention were included in the top ten only in the Southeastern region, food safety only in the Mid-States region, and farm and nutrition laws only in the Northern region.

### 2. Geographic Trends in Requests across State and Local Jurisdictions

A comparison of the most common states from which state agencies submitted requests versus the most common states from which local agencies submitted requests indicates several trends. Local agencies in North Carolina, Illinois, Nebraska, New York, Ohio and Iowa requested significantly more assistance than the corresponding state agencies in those states. In contrast, the number of requests from state agencies was significantly higher than those from local agencies in New Mexico, Washington, Oregon, Vermont and Arkansas.

#### *D. Trends in Values for Request Background and Deliverable*

We developed and applied two new data points in order to further describe requests and Network responses. The request background attempts to capture what aspect of the requester's job as a public health professional his or her question related to. The deliverable describes what specific items the requester asked the Network for and/or the Network provided in order to resolve the request. Through analysis of the frequencies of values for these data points and comparison with other data points, we identified several trends, including: (1) themes in background values for all requests, (2) trends in background values across jurisdictional levels, (3) themes in deliverable values for all requests, and (4) trends in deliverable values across jurisdictional levels.

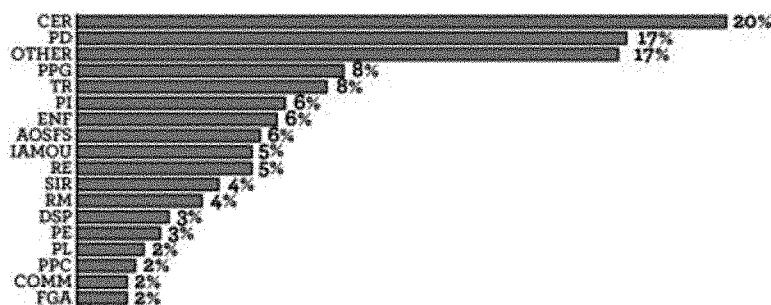
#### 1. Overall Themes in Values for Request Background

Quantitative analysis of the frequency of each value for the request background highlighted themes in the job duties that public health professionals most commonly asked the Network for assistance on. Because background is a new data point, these themes are the first time information of this nature has been available on Network requests.

Figure 6 displays all background values for the entire data set and notes the percentage of requests each was applied to. The top five most common background values associated with all requests included (in order from most

to least common): (1) evaluation and assurance of compliance with existing regulations/laws (CER); (2) policy development (PD); (3) planning and development of procedures, policies and guidelines (PPG); (4) development/implementation of training or training resources as well as communications with agency staff and partners to ensure that public health policies are well understood and correctly implemented (TR); and (5) policy implementation (PI).

Figure 6 Overall Themes in Values for Request Background



## 2. Trends in Values for Request Background across Jurisdictional Levels

When we compared the frequencies of background values for requests submitted by federal, state and local entities, we identified several trends based on the jurisdictional level of the government entity that requested assistance. Figure 7 displays all background values applied to requests from federal, state and local entities. Each chart notes the percentage of requests that each background value was applied to.

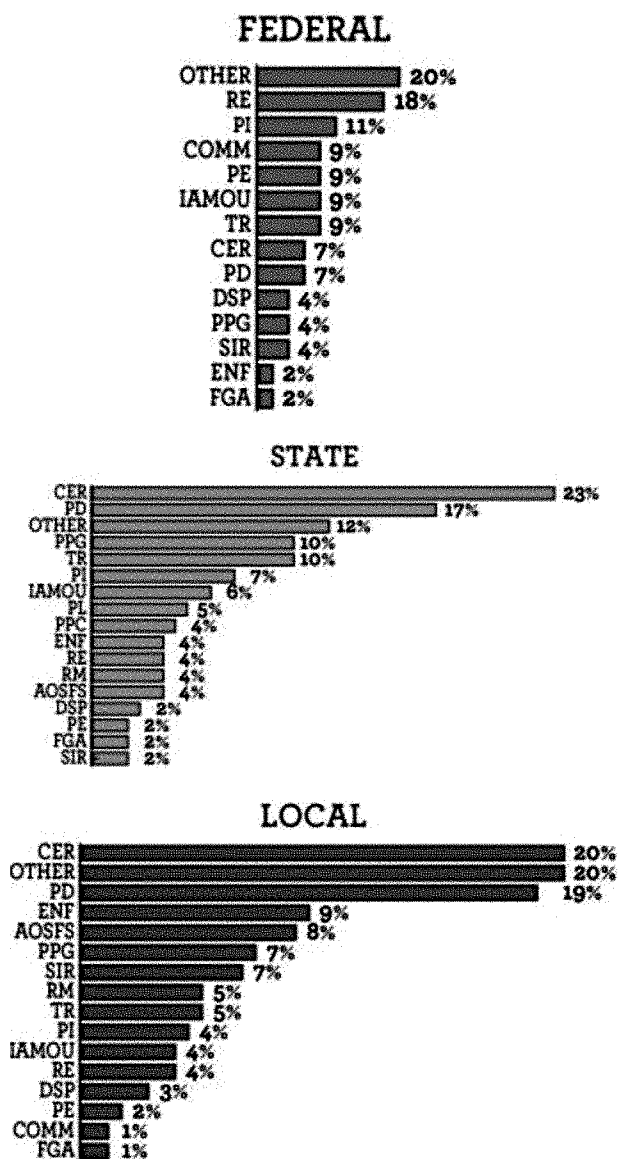
Requests from federal entities were more likely to relate to: (1) research and evaluation (RE); (2) communication with other agencies or agency partners and/or the development of communication tools (COMM); and (3) the provision of education and information to the public (EI).

Requests from state entities were more likely to relate to: (1) permits/licensing (PL); and (2) purchasing, procurement and contracts (PPC).

Requests from local entities were more likely to relate to: (1) tasks and decisions related to agency operations, structure, functions and staff member roles (AOSFS); (2) surveillance, investigation and reporting (SIR); and (3) enforcement (ENF).



Figure 7 Trends in Values for Request Background – Requests from Federal, State and Local Entities



Generally, requests from state and local entities were both frequently related to several background job duties. These included: (1) evaluating and ensuring compliance with existing regulations (CER), (2) policy development (PD), (3) the development of plans, procedures and guidelines (PPG), (4) development and provision of training for agency staff (TR), and (5) the development of inter-agency agreements and memorandums of understand-

ing (IAMOU).

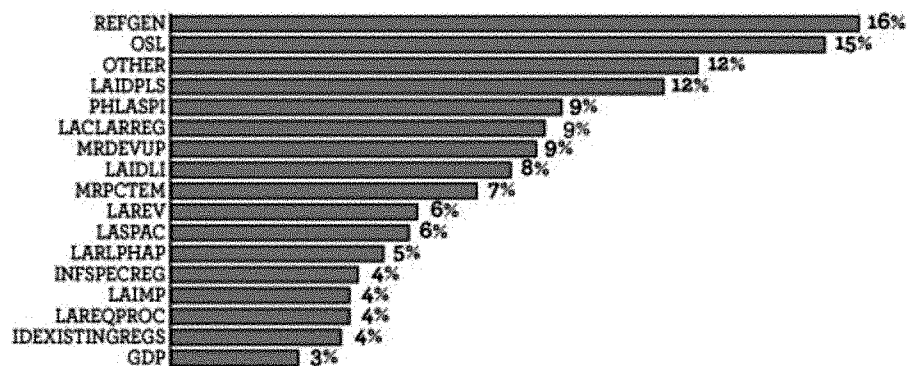
Policy development among state and local government entities included more general policy development, such as brainstorming and general discussion, as well as tasks related to the actual consideration of a particular policy. Requests from state entities working on items related to a proposed or potential policy were almost entirely related to state legislation. Seventy-five percent of requests from local entities considering a proposed or potential policy related to a local regulation or ordinance.

### 3. Overall Themes in Values for Request Deliverable

Quantitative analysis of the frequency of each value for the deliverable data point highlighted themes in the items and/or services that requesters most frequently asked the Network for and/or that the Network most frequently provided in order to resolve the request. Similar to the results of analysis of the background data point, the themes among deliverable values which are presented in this section represent new information on Network requests.

Figure 8 displays all deliverable values for the entire data set and notes the percentage of requests each was applied to.<sup>19</sup> Overall, the top five most common deliverable values associated with requests included (in order from most to least common): (1) Referral to a contact/expert outside the Network (REFGEN); (2) Information on policy efforts, laws, regulations or strategies in other states/localities (OSL); (3) Identification of legal/policy strategies (LAIDPLS); (4) Interpretation of public health legal authority (PHLASPI); and (5) The development/update of or assistance with the development/update of materials/resources (MRDEVUP).

Figure 8 Deliverable Values for Entire Data Set and Percentage of Requests

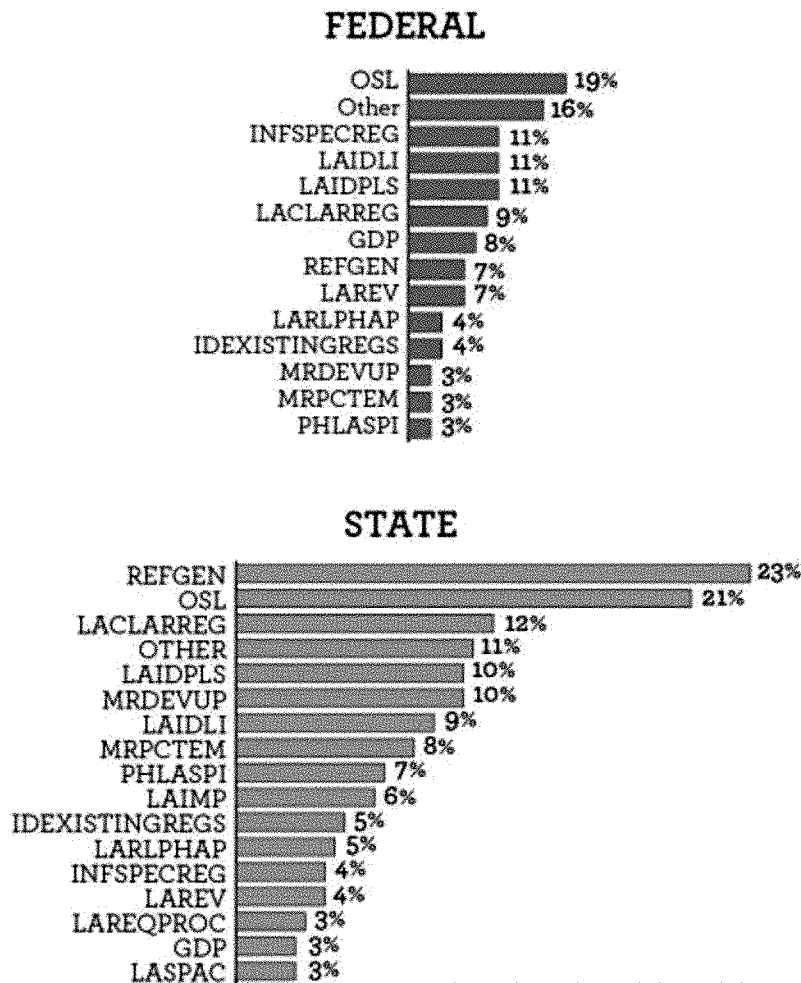


19. The percentage values total to greater than one hundred percent because more than one code could be applied to each request.

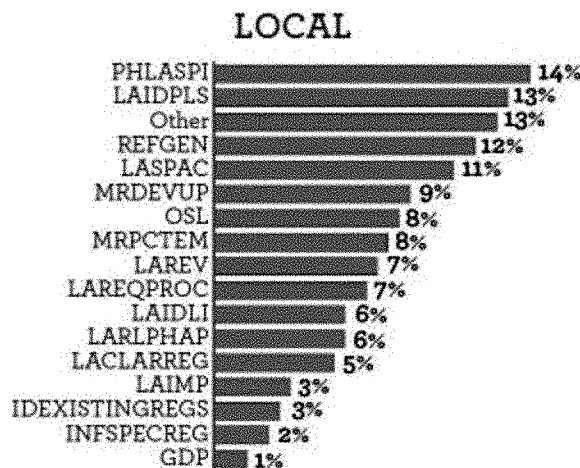
## 4. Trends in Values for Request Deliverable across Jurisdictional Levels

When we compared the frequencies of deliverable values for requests submitted by federal, state and local entities, we identified several trends based on the jurisdictional level of the government entity that requested assistance. Figure 9 displays all deliverable values applied to requests from federal, state and local entities. Each chart notes the percentage of requests that each background value was applied to.<sup>20</sup>

Figure 9 Trends in Values for Request Deliverable - Requests from Federal Entities



20. The percentage values total to greater than one hundred percent because more than one code could be applied to each request.



Requests from federal entities tended to include similar deliverables to requests from state and local entities, although a higher proportion of federal requests asked for information on the existence or status of policy efforts or laws on a particular issue across the country (OSL). Requests submitted by federal entities were also more likely to ask for information on a specific regulation (INFSPECREG) than requests submitted by state or local entities.

Requests submitted by state entities were more likely to include the following deliverables: (1) referrals to contacts/experts outside the Network (REFGEN), (2) information on policy efforts in other states (OSL), (3) clarifications on particular provisions of laws and regulations (LACLARREG), and (4) analysis regarding the liability of public health agencies or professionals (LARLPHAP). A notable trend in deliverables among requests from state entities was the provision of information on and/or guidance from other state entities or officials who had dealt with issues similar to the requestor's concerns. This deliverable was often expressed in the original request submitted to the Network (e.g., "what have others done on this?") but was also suggested by Network attorneys in response to more general inquiries. Thirty-seven percent of all deliverables provided to state entities that were classified as referrals involved a Network attorney referring the requestor to an official at an agency in another state for guidance. Other kinds of referrals included referrals to officials at federal entities and even referrals to an official within the requestor's own state entity.<sup>21</sup>

Requests from local entities were more likely to include the following

21. Such referrals were generally provided by a Network attorney with considerable experience in that particular state health agency.

deliverables: (1) the interpretation of public health legal authority in regards to a particular issue (PHALSPI), (2) the identification of policy and legal strategies in response to a particular issue or situation (LADIPLS), (3) analysis of the legality of a specific action (LASPAC), (4) review of materials (LAREV), and (5) legal analysis regarding requirements when completing a particular public health process or procedure (LAREQPROC). Material review specifically included the review of potential or proposed regulations or ordinances, the review of potential or proposed state legislation, the review of reports, the review of draft inter-agency agreements or memorandums of understanding, the review of agency guidelines and the review of public information materials.

Several deliverables were common in requests submitted by entities of all jurisdictions, including: (1) the identification of policy and legal strategies related to a particular issue (LAIDPLS), (2) information on policy strategies and/or the status of policy efforts in other states or localities (OSL), and (3) the provision of examples, models, templates and/or checklists (MRPCTEM). Most deliverables classified as the provision of examples, models, templates and/or checklists (MRPCTEM) fell into a few categories—including a large portion of requests for examples or models of laws and regulations, a significant number of requests for examples or templates of policy and procedure documents, and a significant number of requests for examples or models of inter-agency agreements and memorandums of understanding.

## VI. DISCUSSION

Though this is not a scientific survey of the legal concerns facing federal, state and local public health entities, it is a unique opportunity to observe trends in the legal technical assistance requests made by governmental entities to the Network for Public Health Law over the course of three years. These requests comprise the largest collection of modern practice-based data on public health legal issues from governmental entities at all levels of jurisdiction.<sup>22</sup> These trends represent experiential knowledge that is important to the development of public health legal preparedness and can help inform our understanding of the everyday practice of public health law and the legal issues attorneys, practitioners and officials are facing at the various jurisdictional levels of public health law practice.<sup>23</sup>

The individuals seeking assistance through the Network self-selected by submitting their requests. They likely have had some interaction with the

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22. James G. Hodge et al., *Major Trends in Public Health Law and Practice: A Network National Report*, 41 J.L. MED. & ETHICS 737, 738 (2013).

23. Jennifer A. Bernstein, *Beyond Public Health Emergency Legal Preparedness: Rethinking Best Practices*, 41 J.L. MED. & ETHICS 13, 13-16 (2013).

Network prior to their request for assistance, whether at a conference, through social media or some other means. Such outreach measures help the Network foster new relationships, inform target audiences about the services provided by the Network and help build the field of public health law. Individuals seeking assistance may have some previous experience with public health law and see the value of using law within the public health context to improve health.

The number of requests coming from the three jurisdictional levels reinforces the existing understanding of the legal infrastructure of public health and one of the key reasons for which the Network was created. Federal entities submitted the fewest requests for assistance, while state and local entities requested a much larger proportion. The majority of local public health entities have limited access to legal counsel with public health law expertise, which requires a wide range of legal knowledge.<sup>24</sup> Many local entities access legal counsel through the city or county attorney's office, which may or may not have specialized knowledge in public health law. Other jurisdictions have attorneys from private firms on retainer. Finally, some jurisdictions may seek legal counsel from the state attorney general's office or a state department of health attorney, depending on the state and local governance structure.<sup>25</sup> These models all discourage the development of productive working relationships around the use of law as a tool to protect and promote public health and instead encourage public health agencies to seek legal assistance reactively rather than proactively.<sup>26</sup> The Network was created in large part to address the needs of local public health agencies by providing a reliable and neutral source of legal assistance that could be accessed at any stage.

The topics that were most commonly requested for assistance among the three jurisdictional levels seem to reflect the realities of legal practice and available resources at each level. At the federal level, requests on emergency legal preparedness comprise more requests than all of the other top ten most frequent topics combined. This reflects the large role of federal entities in addressing national efforts to ensure emergency preparedness and the increasing importance of public health law in emergency preparedness.

In contrast, state entities submitted a larger portion of the requests related

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24. Diane E. Hoffmann & Virginia Rowthorn, *Building Public Health Law Capacity at the Local Level*, 36 J.L. MED. & ETHICS 6, 6-9 (2008).

25. Nancy Kaufman et al., *Using Public Health Legal Counsel Effectively: Beliefs, Barriers and Opportunities for Training*, 41 J.L. MED. & ETHICS 61, 61 (2013).

26. *Id.* at 62. ("In many health departments where resources for legal services are limited, the ability of managers to make educated decisions while conducting routine public health activities — in essence understanding legal boundaries and operating in accordance with them — makes their legal counsel's time available for dealing proactively with emerging threats to the public's health and authority to act.").

to health reform, injury prevention and safety and vaccinations. Though a federal initiative, health reform under the Affordable Care Act is being implemented largely on a state-by-state basis. As new implementation measures continue to roll out, public health legal questions and challenges related to health reform will emerge. Additionally, the increase in communicable disease outbreaks due to a decrease in child immunization rates has prompted many states to seek assistance regarding vaccinations laws, including ways to enforce mandatory vaccinations laws or tighten standards for obtaining vaccination exemptions.

Unsurprisingly, local entities submitted larger portions of requests related to statutes and regulatory information, the structure and organization of health agencies and environmental public health. Much of public health at the local level is based on statutes, regulations and ordinances, which local public health agencies must interpret, apply and enforce. Local entities were also the most likely of requesters at any jurisdictional level to request assistance analyzing the authority granted to an agency or official, both generally and in relation to specific situations. Without access to legal counsel, it may be difficult for local officials to understand the extent of and limitations on their public health authority under state and local law. Additionally, understanding the structure and organization of health agencies, which can vary greatly from state to state, is important to understanding the relationship between and powers of various public health entities, such as state health departments, local health departments and local boards of health.

It is important to note that these trends do not mean that these topics are necessarily the most pressing for public health attorneys and officials. It could mean that the Network is doing a better job reaching out to those with a special interest in these legal topics, through conference presentations, webinars and social media. It could also mean that legal resources for dealing with these topics are scarce, unhelpful or too technical for requesters to fully comprehend. Additionally, each of the public health legal topics used to categorize the subject matter of requests can be broken down further to reveal a large variety of sub-questions. This analysis did not include consideration of these sub-questions but rather broadly categorized requests based on the list of major topics. It is important to note that both the breadth and depth of technical assistance requests is not fully captured by this method of broad categorization.

Analysis of the top ten most common states from which requests originate from local government employees versus state government employees indicates that local entities in North Carolina, Illinois, Nebraska, New York, Ohio and Iowa have requested significantly more assistance than the corresponding state entities. There are a number of possible reasons. The Network may be doing a better job of providing outreach to local entities in these states. These states may also have more active public health agencies

that encourage the use of law as a tool to protect and promote public health. Finally, of these five states, all are home rule states except for North Carolina.<sup>27</sup> In home rule states, local governments are free to pass laws and ordinances as they see fit to further their operations, within the bounds of the state and federal constitutions. These states may not have the same access to legal assistance through state resources that non-home rule states have.<sup>28</sup>

When data on the structure of the state's public health system is included, analysis of the number of requests originating from state and local entities across the country indicates that requests from local entities originate in states with decentralized public health systems more frequently than requests from state entities.<sup>29</sup> Ninety percent of requests from local entities come from states with decentralized public health systems, whereas sixty-five percent of requests from state entities originate in decentralized states. Additionally, requests from state entities originate in a larger number of states with centralized public health systems than requests from local entities; twenty-one percent of state requests originate in centralized states whereas one percent of local requests come from centralized states. This may be indicative of the varying needs among entities with different public health systems; in decentralized states, local entities are granted greater authority in decision-making and may accordingly have greater need for legal guidance on matters such as analyzing their public health legal authority, developing policies through administrative rulemaking or ensuring compliance with existing regulations.<sup>30</sup>

## VII. CONCLUSION

This study's analysis of trends among requests submitted to the Network by government entities is a small step towards the goal of developing a broader base of practice-based research. This research can complement other efforts in public health law research and identify priorities for the development and delivery of legal resources to public health professionals.

The Network's collaboration with requesters across the country provides a unique opportunity to examine the needs of state and local entities in prac-

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27. It is important to note that the Southeastern Region of the Network is housed in North Carolina and may account some increase in legal technical assistance requests from this state.

28. See Hoffman, *supra* note 24.

29. See Ass'n of State & Territorial Health Officials, *State Public Health Agency Classification: Understanding the Relationship Between State and Local Public Health* 17-19 (2012), <http://www.norc.org/PDFs/Projects/Classification%20of%20State%20Health%20Agencies/ASTHO%20NORC%20Governance%20Classification%20Report.pdf> (listing public health system structure for every U.S. state).

30. See *id.* at 9 (defining traits of decentralized public health agency).



tice. Continued research on the activity of the Network and others providing similar services can help the public health law community streamline resource development to be as effective as possible, in terms of the content, methods of delivery and target audiences. Such research can also play a part in bridging the gap between public health law research and public health systems and services research. This integration holds immense promise in its ability to identify strategies for the effective use of law by public health professionals.<sup>31</sup>

This review of Network responses to requests for technical assistance also makes clear that the Network's national focus and emphasis on connecting public health law professionals can play an important part in providing assistance to and building knowledge among local entities— if a Network staff member does not have expertise in a specific locality, he or she is often able to refer the requester to a contact who does. By building upon current knowledge to continue to better target resource development, expand outreach and more systematically and efficiently rely upon the expertise of contacts within the public health law community, the Network and its partners can make even greater strides in the effort to support and inform public health professionals. As a result, these professionals will be more able to make use of law and policy to promote the public's health.

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31. See Scott Burris et al., *Moving from Intersection to Integration: Public Health Law Research and Public Health Systems and Services Research*, 90 MILBANK Q. 395 (2012).

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