

YEAR IN REVIEW



REVENGE OF THE BIRDS

- Defining the terms of Flu
- State law changes in Isolation and Quarantine (I/Q)
 - Minnesota & Indiana new I/Q laws
 - Emergency Vaccine Administration and Legend Drug Dispensing
 - Use of Force



STATE AND LOCAL PLANNING AND RESPONSE

- Changes in State's Surveillance of communicable diseases
 - Active
 - Passive
 - Syndromic
- <http://pandemicflu.gov/>



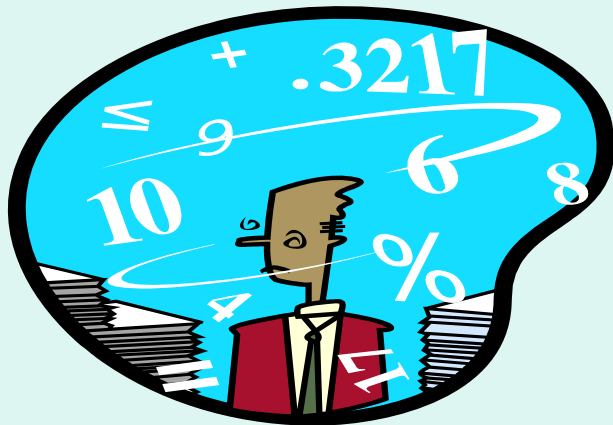
Flu Vaccine: What are your Priorities?

- Planning;
- Non-licensed volunteers or healthcare workers from other jurisdictions;
- Emergency tasks outside of standard job descriptions;
- Mandatory vaccinations allowed?



STOCKPILING ANTIVIRALS: STATES AND FEDERAL MATCH

- Why needed?
- How are Antivirals distributed?
- When will Antivirals be distributed to States?
- Arkansas by Act allowed for purchase.



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?”

- WHO - Ten things you need to know about pandemic influenza
- 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

- 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

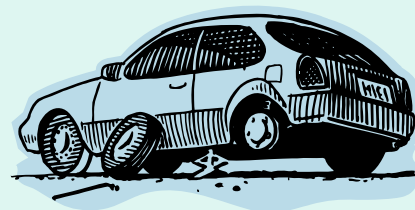
- Why Health Insurance is a *Public Health Law* Problem
 - Impact on State Public Health Agencies
 - Impact on Public Health/Preparedness
 - Law as a Low-Cost Alternative?



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



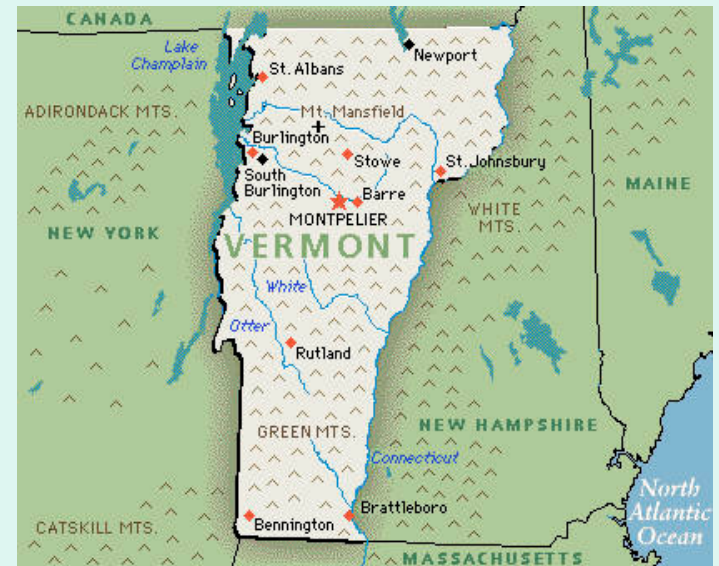
States (& Cities) Step In

- 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 (Suffolk County lawsuit).



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.

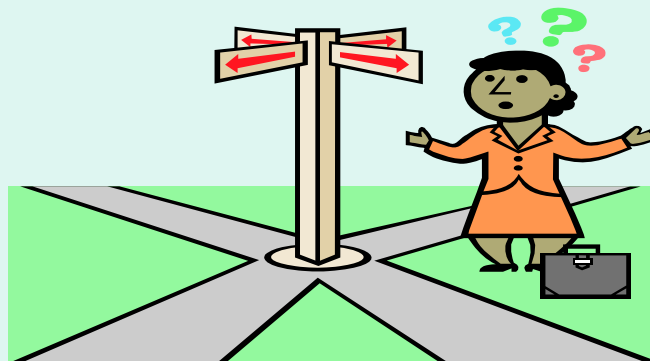
Transitional Woes– Confused Seniors,
Angry Pharmacists, Public Health
Problems

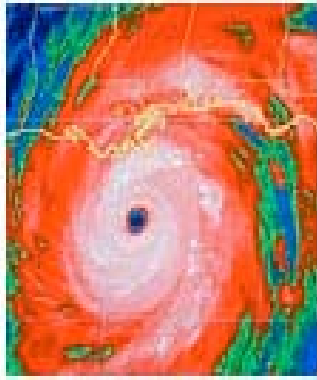
- States Step in With Emergency \$\$\$\$
- The (Successful) Battle for Reimbursement
- Battles Remain...



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

Tracking the
storm and
its aftermath



HURRICANE KATRINA AFTERMATH: LESSONS LEARNED THE HARD WAY



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.
- House of Representatives Report - *A Failure of Initiative.*

KATRINA: LESSONS LEARNED THE HARD WAY

- Direct Federal Assistance v. EMAC?
- Does the Federal Government have authority to override decisions of the governor of a state?
- What is the role of the National Guard, working for the Federal Government or the Governor?



KATRINA: LESSONS LEARNED THE HARD WAY

- Private Sector Integration
 - Fuels
 - Health care services
 - Supply chain
 - Volunteer services
- Federal Emergency Authorities were not invoked to handle problems from Katrina.



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?



Stafford Act?

ABA Report

KATRINA: LESSONS LEARNED THE HARD WAY

- Should National Incident Management System (NIMS) be Integrated into the Stafford Act?
- Should the National Response Plan (NRP) be Integrated in the Stafford Act?



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 tenant who smokes.
 - *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.



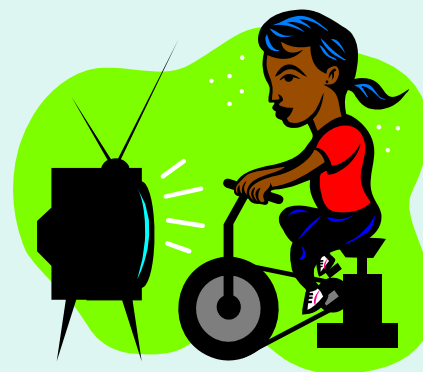
The Obesity Epidemic Becomes A Legal Issue



- 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

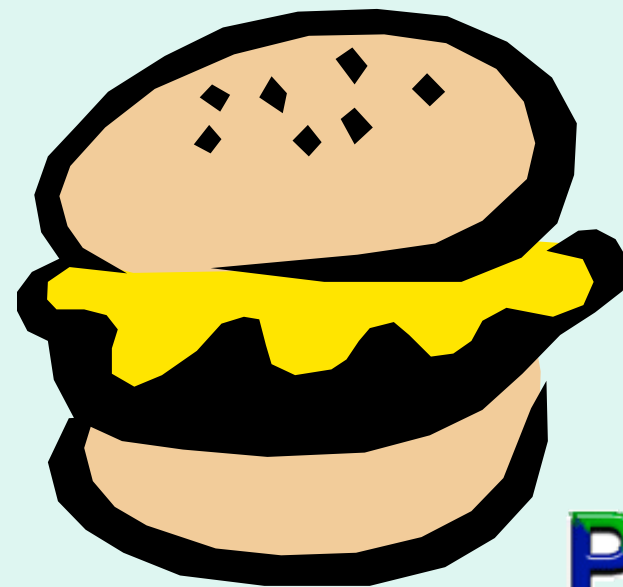
Marketing to Kids

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

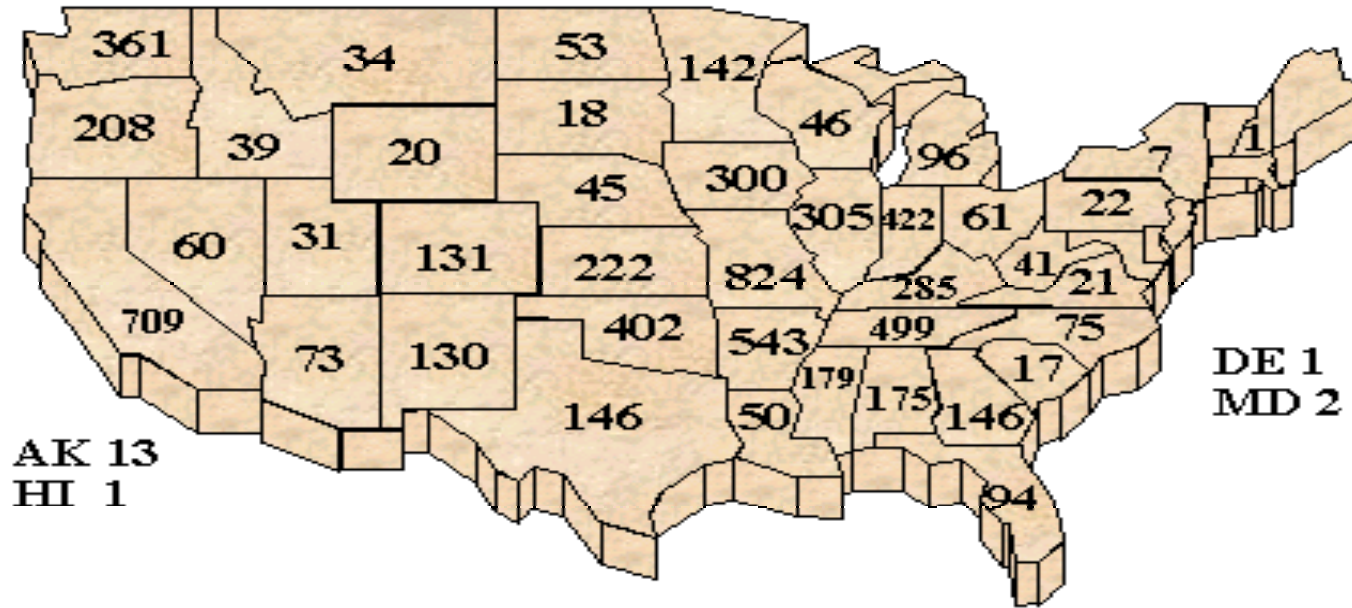


Obesity Litigation

- 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**

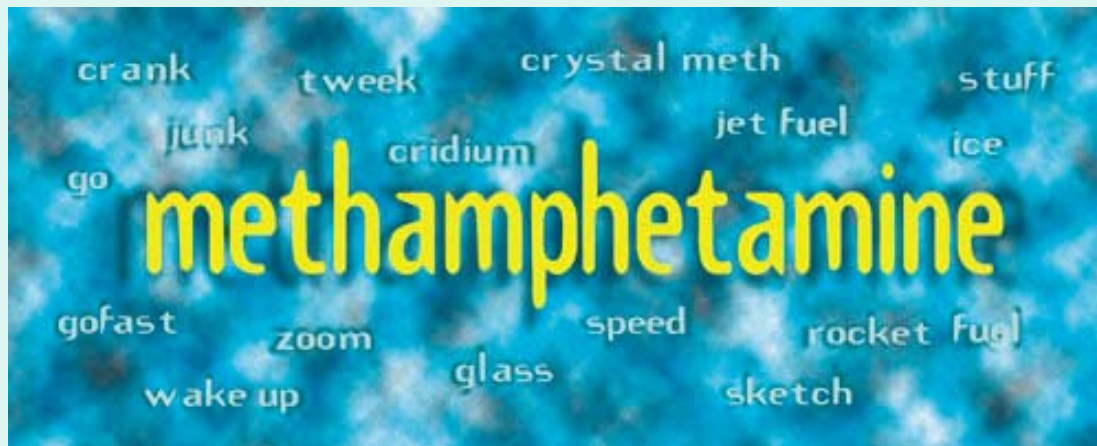


Source: National Clandestine Laboratory Database
Total: 7,050 / 44 States Reporting
Dates: 01/01/03 to 12/31/03

METHAMPHETAMINE EPIDEMIC

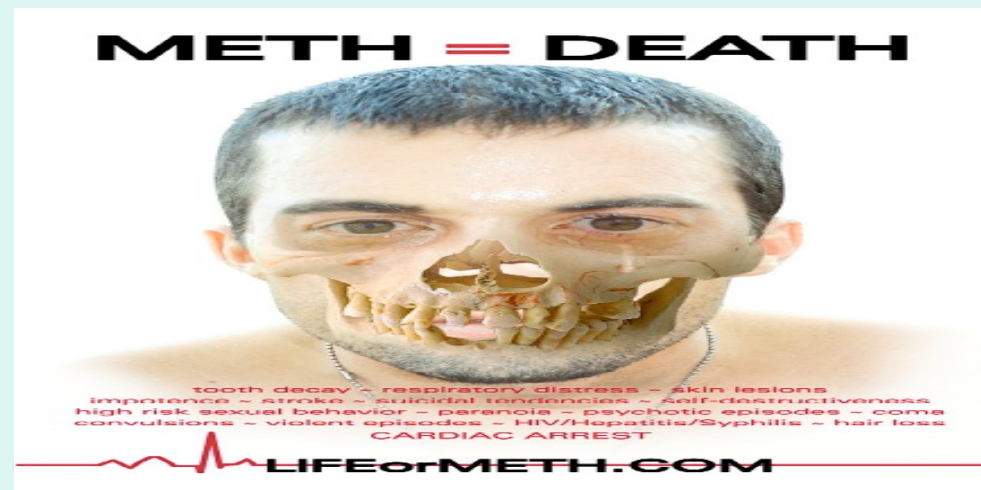
METHAMPHETAMINE

- Federal Combat Methamphetamine Act of 2005.
 - Successful strategies for controlling meth.
 - Demographics of meth use.
 - Trends in rural meth use.
 - Gender differences in interventions.



METHAMPHETAMINE

- State laws
 - Regulating precursors used to cook meth.
 - Utilization of Nuisance laws to clean up meth labs.
 - Environmental Impact and Clean-up cost of meth labs.



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 and DRUGS

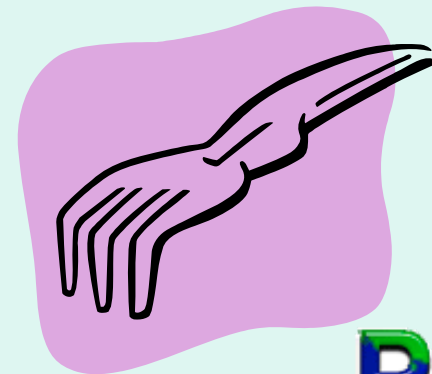
- Risk-Contribution Theory
 - *Thomas v. Mallett*
- CDC/HUD/EPA Agreements regarding lead-risk assessment reports and HIPAA
 - *The State EX REL. Cincinnati Enquirer v. Daniels*

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 Air 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

- Who Ever 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



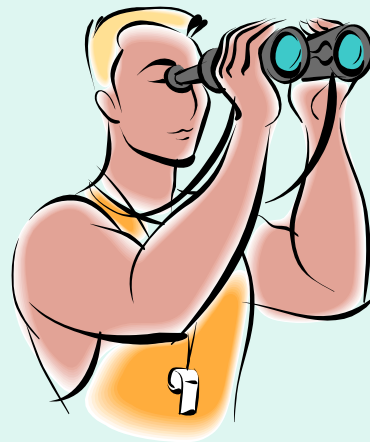
INJURIES

- Update on State laws
 - Seatbelts and child protector seats
 - Helmet laws
 - Graduated licenses
 - Incentive grants to states that pass laws requiring safeguards to prevent drowning, drain entrapment and entanglement in swimming pools and spas.



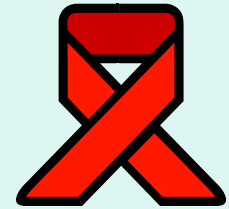
Surveillance: Using the Law to Know What's Going on— And Doing Something About It!

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



HIV Reporting

- A New Climate
- California and Mass. opt for named reporting
- NY seeks to use reported information



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?

