



Health Policymaking in the United States

Beaufort B. Longest, Jr.

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List of Abbreviations

AAFP	American Academy of Family Physicians
AAMC	Association of American Medical Colleges
AARP	American Association of Retired Persons
ACEHSA	Accrediting Commission on Education for Health Services Administration
ACGME	Accreditation Council for Graduate Medical Education
ACHE	American College of Healthcare Executives
ACP	American College of Physicians
ACS	American College of Surgeons
ADA	Americans With Disabilities Act
AFDC	Aid to Families With Dependent Children
AHA	American Hospital Association
AHCPR	Agency for Health Care Policy and Research
AMA	American Medical Association
ANA	American Nurses' Association
AUPHA	Association of University Programs in Health Administration
CBA	Cost-benefit analysis
CBO	Congressional Budget Office
CEA	Cost-effectiveness analysis
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
COBRA	Consolidated Budget Reconciliation Act
CON	Certificate of need
COTH	Council of Teaching Hospitals
DEFRA	Deficit Reduction Act
DHEW	Department of Health, Education, and Welfare (now DHHS)
DHHS	Department of Health and Human Services

DO	Doctor of osteopathy
DOD	Department of Defense
DRG	Diagnosis-related groups
EEOC	Equal Employment Opportunity Commission
EMS	Emergency medical service
EPA	Environmental Protection Agency
EPL	Effective patient life
ERISA	Employee Retirement Income Security Act
ESRD	End-stage renal disease
FAHS	Federation of American Health Systems
FDA	Food and Drug Administration
FMG	Foreign medical graduate
GAO	General Accounting Office
GDP	Gross Domestic Product
GHAA	Group Health Association of America
HCFA	Health Care Financing Administration
HIAA	Health Insurance Association of America
HMO	Health maintenance organization
HSA	Health Systems Agency
ICF	Intermediate Care Facilities
JCAHO	Joint Commission on Accreditation of Healthcare Organizations
MAACs	Maximum allowable actual charges
MD	Medical doctor
MGMA	Medical Group Management Association
NASA	National Aeronautics and Space Administration
NCHSR	National Center for Health Services Research and Technology Assessment
NHSC	National Health Service Corps
NIH	National Institutes of Health
NLN	National League for Nursing
NPRM	Notice of Proposed Rulemaking
NRC	Nuclear Regulatory Commission
NSF	National Science Foundation
OBRA	Omnibus Budget Reconciliation Act
ODA	Orphan Drug Act
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration

PAC	Political action committee
PAR	Participating Physician and Supplier
PhRMA	Pharmaceutical Research and Manufacturers of America
PPRC	Physician Payment Review Commission
PPS	Prospective Payment System
PRO	Peer Review Organization
ProPac	Prospective Payment Assessment Commission
PSRO	Professional standards review organization
PTAC	Professional and technical advisory committees
RBRVS	Resource-based relative value scale
RN	Registered nurse
ROE	Return on equity
SHCC	State Health Coordinating Councils
SHPDA	State Health Planning and Development Agency
SNF	Skilled nursing facility
TEFRA	Tax Equity and Fiscal Responsibility Act
TSCA	Toxic Substances Control Act
VA	Veterans Affairs

Preface

Health policy occupies an unprecedented place on the domestic policy agenda in the United States as the twentieth century winds down. Driven by the intractable problem of escalating costs and continuing inequities in access to health care, the nation appears poised for major reform of its health policy, both at the federal level and in many of the states. Within the decade, we may see for the first time the formulation and implementation of a macro policy regarding health—a policy that seeks to both ensure universal access to health care services and to more rigorously control health expenditures. While the United States has lagged behind the other advanced democracies in developing a macro health policy, it has nevertheless evolved a vast array of policies pertaining to health. It formulates, implements, and modifies these policies within an intricately choreographed process. The purpose of this book is to provide those who have an interest in or a curiosity about health policy with a comprehensive model of this process.

The model of the health policymaking process, which forms the structure of this book, was developed for the benefit of my own health management and policy students. The fact that the model has proved useful as a framework for their consideration of the extraordinarily complicated process of health policymaking has stimulated me to present it to a broader audience through this book. The book will be useful for introductory courses in health policy as a means to provide students with an overview of the policymaking process. The model provides a framework that helps students put the various aspects of policymaking in perspective as they add to their knowledge of the process. Ultimately, it permits them to see the process as a set of highly interrelated phases of activity.

The model may also be useful to others who seek a better understanding of this process outside the classroom. Those involved in providing health care services or in producing resources used to create the

services are directly affected by health policies. So too are those who utilize the services or pay for them. Importantly, a better understanding of the process through which health policies are made permits those affected by them to more effectively influence the policies and to more accurately predict their evolution and impacts. The model may even be useful to certain policymakers who, like all human beings, sometimes lose sight of the larger landscape of their work by becoming so intensely involved in its details.

In Chapter 1, "Health and Health Policy," health is broadly defined and shown to be determined by the physical, sociocultural, and economic environments in which people live; by their lifestyles and genetics; and by the health care system that serves them. Public policies are defined as authoritative decisions made in the legislative, executive, or judicial branches of government—decisions intended to direct or influence the actions, behaviors, or decisions of others. Health policies, in turn, are defined as public policies that pertain to or influence the pursuit of health. The breadth of the determinants of human health means that health policies span a wide range of issues, problems, and opportunities.

Chapter 2, "A Model of Public Policymaking for Health," contains a background explanation of the political market for health policies, including consideration of the demanders and suppliers of health policies in the United States. Power and influence within the political marketplace are explained and the key ethical issues that arise in this market are identified. An overview of the model of the policymaking process is presented in this chapter. The model includes policy formulation, implementation, and modification phases and emphasizes the interrelationships among the phases. These phases are subsequently treated in detail in Chapters 3, 4, and 5.

Chapter 6, "The Other Side of Policymaking," addresses the question of who the policymaking process affects, as well as the implications for them and for the process itself. Specific attention is given to the organizations that provide health care services or resources used in the production of these services as well as to the organizations and associations that represent the service and resource producers. Consideration is also given to the effect of policies on consumer groups and on employers. A common thread running through all of those affected by health policies is their dual concerns of discerning the impacts of policies and of influencing the policies that affect them. Both concerns are addressed in this chapter.

Chapter 7, "Synthesizing the Policymaking Process," introduces a more abstract model of the policymaking process to illustrate how closely intertwined policy formulation, implementation, and modifica-

tion are in reality. In addition, three critical influences on health policymaking in the United States in the years immediately ahead are identified: the goals and objectives of health policy, about which we in the United States have had great difficulty in reaching consensus; the dynamics of the political marketplace, a most fascinating place in which participants pursue such self-interests as economic or political advantage as well as the public interest; and the painful fact that health policy decisions must eventually be made within the context of economic scarcity.

The book concludes with an appendix that lists chronologically the most important federal laws pertaining to health enacted in the United States. Aside from providing synopses of these laws, the chronology also reveals several important characteristics of the nation's health policies. For example, the list clearly shows that many health policies are but modifications of or amendments to previously enacted laws. Incrementalism has indeed prevailed in the development of American health policy. The list also shows that our approach to health policy mirrors the various determinants of health. There are policies to address the environments in which people live, their lifestyles, and their genetics, as well as extensive policies related to the nation's health care system.

I wish to acknowledge the contributions several people made to this book. Some of my colleagues at the University of Pittsburgh critiqued early drafts of the manuscript and were especially helpful in refining the model of the policymaking process presented in this book. George Board, Morton Coleman, Judith Lave, Ray Owen, Margaret Potter, Edmund Ricci, and Louis Tronzo generously provided helpful insights and suggestions. James Morone of Brown University, in his role as editor of the *Journal of Health Politics, Policy and Law*, encouraged me in the development of the book even as he rejected a manuscript on the topic of health policymaking as too long for his journal. John Parascandola, U.S. Public Health Service Historian, kindly reviewed the chronology of federal laws in the appendix of this book and made a number of helpful suggestions. John Fanning of the Office of Health Planning and Evaluation of the U.S. Department of Health and Human Services, also reviewed the chronology and helped me make the chronology more complete. Royall Tyler of the Australian National University in Canberra graciously permitted me to use his translation of a passage from the *Takasago* on the dedication page.

I also wish to acknowledge the contribution to my thinking about the process of policymaking made by two authors. John W. Kingdon's important book, *Agendas, Alternatives, and Public Policies*, has helped many people, including me, to better understand how public policies are made in the United States. Pamela A. Paul-Shaheen developed the first

model of the policymaking process that I found complete enough to enthusiastically share with my students. It can be found in her article, "Overlooked Connections: Policy Development and Implementation in State-Local Relations," *Journal of Health Politics, Policy and Law* 45, no. 4 (Winter 1990): 833–56. My model of the policymaking process, like so much scholarship, draws on, adapts, and extends the work of others. The influence of both Kingdon and Paul-Shaheen can be clearly seen in my model of policymaking and is gratefully acknowledged here.

I appreciate the intellectual environment in which it has been my privilege to work for many years at the University of Pittsburgh. The efforts to establish and foster this environment by Chancellor Dennis O'Connor, by Senior Vice Chancellor for the Health Sciences Thomas Detre, and by the Dean of the Graduate School of Public Health, Don Mattison, are deeply appreciated.

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Finally, I thank my family for their support and help in what I do. Brant, having just entered the world of young adulthood, gives me hope that his generation will do better with health policy, and a lot of other things, than mine. Courtland, on the brink of adolescence, is a constant source of wonderment and joy. It amazes and pleases me that one of his favorite places remains a stool beside my chair. I am especially grateful to my wife, Carolyn, to whom this book is dedicated, for encouraging this project and for her critiques of the book in progress. Her intelligence, style, and wisdom are among my greatest writing allies and they are deeply appreciated.

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1

Health and Health Policy

Health is extensively and tightly interwoven into the social and economic fabric of the United States. It plays a critically important role in the physical, psychological, and economic condition of the American people and of their society. Thus, health receives considerable attention from the nation's policymakers. This book is about the intricate public policymaking process they use to influence our pursuit of health. In this first chapter, some basic and underpinning definitions and concepts will be established. In the next chapter, a general model of the public policymaking process will be described. The various interconnected parts of the model will then be used as the means to organize subsequent chapters. Our exploration of the process through which health policy is established begins with some key definitions.

What Is Health?

Although it is important to every human being, there is no universally accepted definition of health. Health is routinely conceptualized by different people in both negative and positive terms and both narrowly and broadly. Negatively, health is viewed as the minimization, if not the absence, of some variable, as in the absence of infection or the shrinking of a tumor. At the extreme negative end of definitions, health is thought of as the absence of disease. Positively, health is viewed as a state in which some variable is maximized. For example, viewing health positively and broadly, the World Health Organization (1948) has defined health as the state of complete physical, mental, and social well-being, and not merely the absence of disease. This positive and broad definition of health describes an ideal state, not necessarily one that can be attained or, for that matter, fully measured.

Considering the definition of health is important because the way in which a society defines health reflects its values and how far it might

be willing to go toward maximizing health among its members. A society that defines health in negative terms and narrowly, for instance, might choose to intervene only in life-threatening traumas and illnesses. Conversely, a society in which health is defined in positive terms and broadly might obligate itself to pursue a variety of significant interventions in pursuit of health for its members. As the United States has matured as a society, it has moved toward defining health in ever more positive and broader terms. One workable, contemporary definition of health holds that *health* is the maximization of the biological and clinical indicators of organ function and the maximization of physical, mental, and role functioning in everyday life (Brook and McGlynn 1991). This is a positive, and very broad, definition of health.

The consequences for a society that defines health positively and broadly are substantial. In contrast to focusing on treatment of illness or injury so as to minimize an undesired variable, it encourages society to seek proactive interventions aimed at many variables in the quest for health. The enormous range of possible targets for intervention is illustrated by the fact that health in human beings is determined by several synergistically related factors. Among these *health determinants*, perhaps none is more important than the physical, sociocultural, and economic environments in which people live (Blum 1983). In addition, health is strongly influenced by the lifestyles people lead and by heredity.

Health is also affected by the type, quality, and timing of health care services that people receive. *Health care services* are activities undertaken specifically to maintain or improve health or to prevent decrements of health. These services can be preventive, acute, chronic, restorative, or palliative in nature. The *health care system* is the resources (money, people, physical infrastructure, and technology) and the organizational configurations used to transform these resources into health care services. These definitions and considerations of health, health determinants, health care services, and the health care system should be kept in mind in considering policymaking. Ultimately, they help shape the purpose and focus of health policy.

What Is Health Policy?

In view of the desirability of health and the fundamental contribution of health care services to the physical and psychological condition of the citizenry, as well as the role that the quest for health plays in the nation's economy, it is not surprising that government, at all levels, is keenly interested in health affairs. This interest is reflected vividly in the diverse activities that occur within the expansive forum of public policymaking and in the resulting public policies that pertain to our pursuit of health,

including policies affecting the provision and financing of health care services and production of the inputs to those services.

Public policies are authoritative decisions made in the legislative, executive, or judicial branches of government intended to direct or influence the actions, behaviors, or decisions of others. When public policies pertain to or influence our pursuit of health, they become *health policies*. Generally, health policies affect groups or classes of individuals (such as physicians, the poor, the elderly, or children) or types or categories of organizations (such as medical schools, health maintenance organizations, medical technology producers, employers, or nursing homes).

In the United States, health policies are made within a dynamic public policymaking process involving many interactive participants in several interconnected phases of activities. Federal, state, and local levels of government establish health policies. At any given time, the entire set of such policies made at any level of government can be said to form that level's *health policy*.

Policies made through the public policymaking process are distinguished from policies made in the private sector. It is beyond the scope of this book to discuss private sector health policies, such as decisions made by insurance companies about their product lines, pricing, and marketing or decisions made by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), a private accrediting organization, about what criteria to use in their reviews of organizations, as well as the processes through which such policies are made in the private sector. The focus here is restricted to the public policymaking process and the public sector health policies that result from this process. But there are indeed private sector health policies and they play a vitally important role in the health of Americans.

Forms of health policies

Health policy, especially at the national and state levels, is comprised of a very large set of decisions. Some of these decisions are codified in the statutory language of specific pieces of legislation. Others are the rules and regulations established in order to implement legislation or to operate government and its various programs. Still others are the judicial branch's decisions related to health. Examples of health policies include: the 1965 legislation that established the Medicare and Medicaid programs; an executive order regarding operation of federally funded family planning clinics; a court's decision that the merger of two hospitals violates federal antitrust laws; a state government's decisions about its procedures for licensing physicians; a county health department's decisions about its procedures for licensing restaurants; and a city