



Mega Concept: Professional Nursing

Category: Care Delivery

Concept Name: Health Care Law

Concept Definition:

Decisions by governmental bodies and private organizations aimed at directing and influencing actions and decisions of organizations and individuals in the health care system.

Scope/Categories/Types:

Health policy needs to be differentiated from social policy and institutional policy. Health policy is a type of public policy that happens as the result of public decision making by a legitimate authority that uses an established political process to integrate public values with a given health policy goal. The scope of health policy is broad and encompasses a variety of concerns related to access, quality, and resources. Health policy decisions are made by a variety of public authorities; therefore, one way to categorize them is according to levels of government, that is, federal, state, and local decision making bodies. For example, the broad authority for monitoring outbreaks of infectious disease at the national level is given to the U.S. Centers for Disease Control and Prevention (CDC). The CDC is a national regulatory agency that issues rules and regulations related to health policies in the United States. However, the CDC must be able to collaborate closely with state and local departments of public health, as well as regulatory agencies, in tracking and trending data about potential or actual epidemics of infectious diseases.

Another way to categorize health policy is to consider decisions that are made by divisions of government in the United States. Broadly speaking, state and federal government systems are organized into three divisions or “branches”:

- *Executive:* Regulatory agencies make many important health policy decisions that affect health care delivery
- *Legislative:* Health programs receive major funding from the legislative branch of government, the U.S. Congress. The Congress also writes the laws that authorize the operations of executive agencies that make health policy decisions.
- *Judicial:* The judiciary or court systems evaluate the laws that are developed and implemented by the other two branches.



NMNEC Concept: Health Policy

Attributes/Criteria:

Health policies address a health concern or issue and are meant to address a public policy goal. For example, the Patient Protection and Affordable Care Act (PPACA) has several policy goals, the most important being expanding access to care through health insurance reform and ensuring quality and value in the delivery of health care services.

- **Major Attributes:**

- Decisions are made by authorized government institutions.
- The decision-making process is subject to public review and input.
- Health policies address a public policy goal.

The PPACA is the result of the collaboration among the executive branch, the Congress, and numerous health care stakeholders, such as professional nursing organizations. The Congressional actions, such as hearings and the work of subcommittees, is public record. Testimonies by members of professional nursing groups on the role of advanced practice nurses are a part of public record. The intent of the legislation is to meet a public policy goal to expand access and ensure the quality of care, all of which is explained in the published U.S. Code.

- **Minor Attributes:**

- Health policies are subject to ongoing review by governing agencies and the public.
- Health policy goals change according to changes in political and social values, trends, attitudes.

Enacted public laws are deliberately broad and require further refinement in the implementation stage. This refinement of law occurs through the rulemaking authority of the agency responsible for enactment. Once the PPACA was enacted as law, the responsibility for implementing the law was given to a public agency, in this case, the U.S. Department of Health and Human Services. Many health policy decisions related to the PPACA are being made at the agency level through agency rulemaking and are subject to public scrutiny. It is within the rulemaking stage that many interested groups, such as professional nursing organizations, are able to affect policy decision making. Rulemaking at the agency level is a relatively malleable process sensitive to the views and opinions of affected stakeholders; therefore, rules can change more quickly than changes in the law itself. The PPACA as law will not change at this level, but how the law is implemented and maintained through rules can and will change related to changes in political and social circumstances.



NMNEC Concept: **Health Policy**

Theoretical Link:

A simple step-wise process model can be used to develop a conceptual understanding of how health policy is created (Anderson, 2013).

- Agenda setting: In this step, a health policy issue is identified and framed for discussion.
- Policy formulation: Once an issue is defined, policy proposals and solutions are suggested and considered.
- Policy adoption: After consideration, including public input, a proposed policy intervention is selected.
- Policy implementation: The chosen intervention is carried out.
- Policy evaluation: The results of the policy intervention are evaluated in terms of the policy goal.

This process model is useful as a beginning framework for understanding how health policy is created but it is not able to truly reflect the dynamics of the complex health policy decision making that occurs within a system of divided government with multiple levels of authority. To begin to appreciate how the constant interactions of multiple government authorities, along with the public nature of health policy decision making, combine to result in the health policies that affect the delivery of health care on a daily basis, it is necessary to look at some additional theoretical links.

Intergovernmental Relationships: “State constitutional authority bears a more direct relationship to health care than the federal powers and influences areas such as public health and public safety” (Austin, 2017, p. 533). The U.S. Constitution provides for a divided and limited government. For example, negotiating treaties with foreign governments is reserved exclusively for the national government. Except for these constitutionally specified powers, all other policy decision power is reserved for state governments. Professional licensing is a state power; therefore, there is no national licensing law for nurses or other health professionals. The actual practice of decision-making power between federal and state governments is not, in practice, as distinct as theoretically implied. In reality, there is a dynamic state of power sharing between the states and the federal government related to health policy matters that are explained as the result of *federalism*. The concept of *federalism* describes the power-sharing relationships in democratic systems where there is a central or national authority and a set of separate, sovereign governments tied together as a federation. In these relationships, the forces of power shift, sometimes to the central authority or sometimes it is devolved to the federated states in the system.

Since 1965, the federal government has assumed more responsibility for the funding of health care services and for oversight of the provision and regulation of those services through federal



NMNEC Concept: **Health Policy**

agencies such as the CDC and the Food and Drug Administration. This increased federal responsibility has resulted in more regulation and, probably more importantly, more funding for health programs at the national, state, and local levels. When power and authority flow to the central or national government through the ties created by funding or by the implementation of new laws, power shifts to the central government. The converse is true; if there is no federal funding or federal law that addresses a health policy issue, the sovereign governments of the states could assume decision-making power for that issue. For example, health policy decisions related to physician-assisted suicide are largely a matter of state jurisdiction.

Participative Governance: In the United States, federal and state constitutions are based on the principle that governments operate through the *consent of the governed*. The power of any government is limited to that allowed by the citizens of the political unit, whether it is a nation, a state, or the local school board. Citizens are expected to pay attention to and participate in the activities of the various governments. The most common tool for citizen participation in the government decision-making process is through the act of voting. Participation is not limited to voting, and U.S. citizens have a range of channels through which they might influence health care policy. Attendance at public forums, participation in petition drives, joining political campaigns, and testifying before legislatures and regulatory bodies are examples of a variety of ways that all citizens, including nurses, can participate in health policy decision making.

Values: The United States is a pluralist society, meaning there is a diversity of values that must be negotiated in a political process for effective health policy decision making. It is through the integration of these diverse values that equitable health policies are most likely to be developed. Even if a given policy is initially less than equitable, the public scrutiny and multiple policy pressure points created when decision authority is spread across levels of government means that the policy will be reviewed and possibly revised according to prevalent social and political values.

Dynamic Tension: Federalism, participative governance, and the negotiation of diverse values create a dynamic among competing health policy interests over the central issues of cost, quality, and access. Policy goals are most often focused on these three issues, with subsequent health policy decisions made based on the relative importance of each issue in the political and social environment. Health care costs become important concerns when government budgets are under consideration, but cuts to health care services will result in protests from agencies and special interest groups concerned with access to health care. Tying the quality outcomes of



NMNEC Concept: **Health Policy**

health care organizations to Medicare and Medicaid reimbursements can threaten the existence of small health care organizations without the necessary resources to comply with the regulatory demands of these large, public insurers. If smaller organizations, perhaps located in impoverished or rural regions, limit services because of cuts in revenue, then access to care in these areas is affected. This dynamic tension among cost, quality, and access is always a consideration in health policy decision making,

Context of Nursing/Health Care:

The effects of health policy are evident in all domains of nursing practice environments. The most readily apparent effect on nursing practice is that of state licensing laws that describe the scope of practice for all levels of nursing. Nurse practice acts generally define the levels of practice for nurses and describe the privileges and responsibilities for each level, as well as professional performance standards. The state practice act is then turned over to a state agency for implementation and further refinements through rulemaking. Most often, this agency is a body of politically appointed professional members who are usually, but not always, professional nurses. The responsibility of these government boards is to ensure that the intent of the practice act is carried out and that the safety of the public is ensured by maintaining adequately prepared and competent nursing workforce for state.

Closely related to the laws that govern licensing are the health policies that result from state laws that cover professional negligence, or malpractice. Professional negligence occurs when the actions of the nurse are judged to be substandard to the expected performance of a “reasonable and prudent” nurse in the same situation. The determination of professional negligence would be partially determined by performance standards set by the state board of nursing regulation and also by other relevant state or federal laws that might apply in the situation.

Health policies that affect nursing practice are also everyday realities for most practicing nurses. Health policies that affect the insurance market, such as the PPACA, will have an impact on the number of individuals who are able to access health care services. The increase in demand for health care services will be seen across all levels and types of health care services, including hospitals, clinics, home health agencies, and the multitude of health care organizations that employ nurses. Health policies that affect reimbursements for care provided will influence staffing decisions in most organizations, including the number and type of licensure for nurses to be employed. Provisions of the PPACA that promote the use of advanced



NMNEC Concept: **Health Policy**

practice nurses will increase the need to prepare more nurses in advanced-practice specialties to meet the anticipated increased demand for services by the newly insured.

Knowledge, Skills, & Attitudes (KSAs):

Knowledge	Skills	Attitudes
Describe frameworks for health policy advocacy	Demonstrate communication skills that advocate for a policy direction, goal, or change Effectively identify a point in the policy process to advocate for a policy change	Appreciate the individual's role as an advocate to effect health policy
Examine the role of health care regulation in professional nursing practice	Demonstrate knowledge of state licensing requirements	Appreciate the role of the Board of Nursing in ensuring public safety

Interrelated Concepts:

Health policy is best understood as related to but also distinct from other similar concepts.

- **Advocacy:** Nurses support their patients and their profession through advocacy. Advocacy for the purpose of ensuring access and promoting quality of care is a professional responsibility that compels nurses to prepare themselves to participate in health policy decision making as an act of advocacy.
- **Health Care Economics:** The U.S. health care services sector accounts for approximately 18% to 20% of the U.S. economy. The federal and state governments provide about 45% of the financing for health care in the United States. The economic actions of these governments will have wide-ranging effects across the health services sector.
- **Ethics:** The focus of health policy ethics is social justice and how to achieve equitable distribution of health care resources.
- **Health Care Law:** Legislative action may create a health policy, establish an agency to implement a law or regulate health care, and control funding of agencies and benefits.

Exemplars:

New Mexico Nursing Education Consortium (NMNEC) Required Exemplars:

- Regulatory Agencies
 - Center for Disease Control (CDC)
 - National Institutes of Health (NIH)



NMNEC Concept: **Health Policy**

- Institute of Medicine (IOM)
- Occupational Safety and Health Administration (OSHA)
- Centers for Medicare & Medicaid Services (CMS)
- World Health Organization (WHO)
- Robert Wood Johnson Foundation (RWJF)
- Policies
 - Healthy People 2020
 - Future of Nursing
 - State regulations

Optional Exemplars:

- Federal
 - The Emergency Medical Treatment and Labor Act of 1986 (EMTALA)
- State
 - State regulations related to the management of infectious disease
- Local
 - City or county fire codes and occupancy limits for health care facilities
 - City or county ordinances that govern facility maintenance, signs, utilities, parking, and traffic control around health care facilities



NMNEC Concept: Health Policy

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