
Legal Basics for Health and Human Services Directors and Administrators

Introduction to Law

1. Who makes law?

- Judges (Federal and State)
- Elected legislators (Federal, State, and Local)
- Regulatory agencies (Federal, State, and Local)

2. Characteristics of judge-made law

- Judges make law by deciding cases. They do not initiate lawmaking. They decide cases only when people file lawsuits, and they are bound by precedent – that is – the rules set out in previous cases.
- Judicial decisions involve two main types of legal issues: common law matters and requiring interpretation of statutes and constitutions.
- The “common law” refers to judge-made law developed by courts over time, based on fairness and applying rules and standards that have been applied by judges in similar cases. Contract law and the law of negligence are examples of common law areas that have almost entirely developed from judicial rather than legislative decisions.
- Judges also decide cases that involve interpretations of statutes or regulations. When deciding these cases, judges defer to and attempt to determine and implement the intent of the elected legislators.

3. Characteristics of legislation

- Elected legislators make policy decisions and are bound only by constitutional limitations when enacting laws.
- The federal constitution lists the types of matters about which congress may legislate, and creates rights of citizens that cannot be abridged.
- States have inherent authority, but are subject to the supremacy/preemption of federal laws. State constitutions create rights of citizens that cannot be abridged.
- Local governments are created by states and have only those powers delegated by the state. Their authority to legislate is subject to the supremacy of both state and federal laws, and the state and federal constitutions.

4. Characteristics of regulations

- Regulatory agencies at the federal and state level are part of the executive branch. They implement laws made by legislators.

- Regulations cannot exceed the scope of laws they are designed to implement.
- A challenge to a regulation, or to enforcement of a regulation, may be initially addressed in an administrative hearing, and eventually may be appealed to a judge.

5. Hierarchy and relationships among sources of law

- Federal law (within the scope of Congressional authority) is the supreme law of the land; federal law preempts state and local law.
- Local governments are created by states, and derive all their power from the state; State law preempts local law.
- Legislators can override common law with statutes, and can override a court's interpretation of a statute by amending the statute, limited only by the state and federal constitutions.
- State and federal constitutions limit the powers of elected legislators.
- The United States Supreme Court and the North Carolina Supreme Court, respectively, have the final say on interpretations of the federal and state constitutions.

6. Informal Sources/Interpretations

- Attorney General Opinions
- School of Government Blogs
 - Coates' Canons Local Government Law
 - NC Criminal Law
 - The Civil Side