

Fluoridation Law

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Fluoridation: Ongoing Need, Great Value, Underutilization

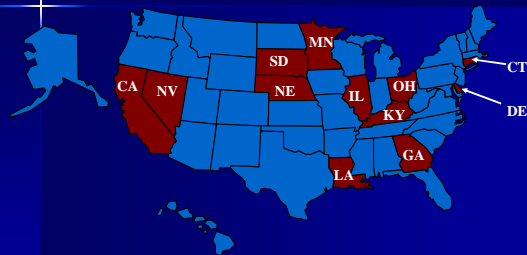
- Dental decay is a serious chronic oral health problem
- Dental decay rates measured before and after water fluoridation had a median decrease of 29.1%
- For every dollar spent on community water fluoridation \$38 is saved in treatment costs, totaling an estimated \$4.6 billion annually
- 30% of U.S. population on community water supplies does not have optimally fluoridated water

* <http://www.thecommunityguide.org/oral/fluoridation.html>

Fluoridation Law Overview

- State statutes relating to fluoridation
 - Scope of State Statutes
 - Mandatory Fluoridation Statutes
 - Recommendations
- Case law
 - Court Review
 - Substantive Issues
 - Procedural Issues
 - Recommendations
- Future opportunities

State Statutes



State Statutes

Mandatory Fluoridation Laws

- 12 States currently have fluoridation mandates: CA, CT, DE, GA, IL, KY, LA, MN, NE, NV, OH, and SD

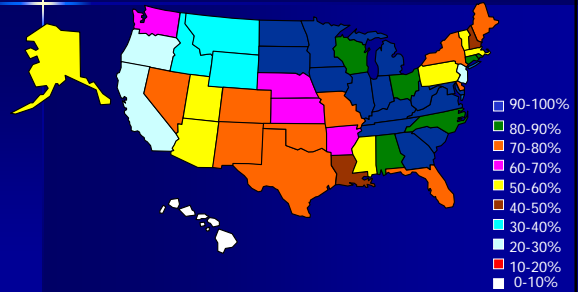
Other Fluoridation Laws

- 5 States delegate the authority to make the decision to fluoridate to local governing bodies or the water bureau
- 4 States mandate a vote by the population

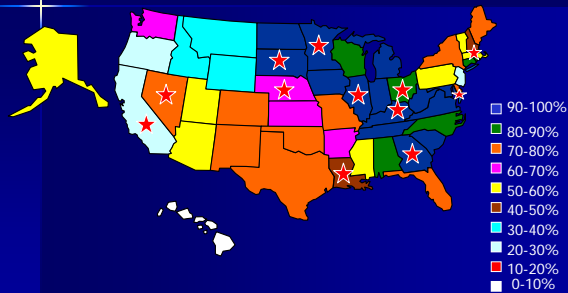
Mandatory Laws

District of Columbia	1952
Connecticut	1965
Kentucky	1966
Illinois	1967
Minnesota	1967
Ohio	1969
South Dakota	1969
Georgia	1973
Nebraska	1973, 2008
California	1995
Delaware	1998
Nevada	1999
Louisiana	2008

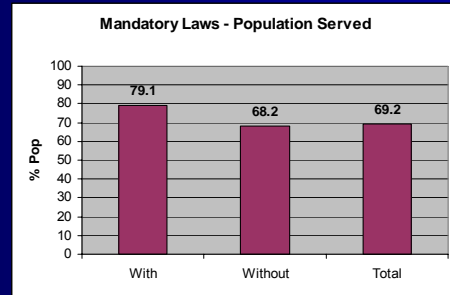
Mandatory Laws



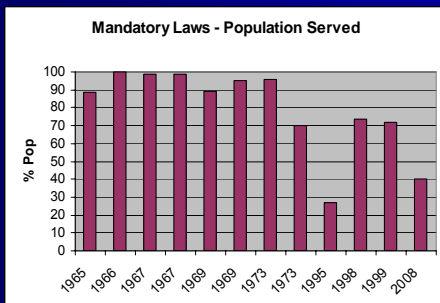
Mandatory Laws



Mandatory State Statutes



Mandatory State Statutes



Scope of State Statutes

- Statutes vary from state to state
 - California's statute is very comprehensive and includes provisions:
 - Relating to the maintenance of equipment, testing and record keeping;
 - Requiring registered civil engineer to estimate costs of installing fluoridation equipment; and
 - Temporarily exempting communities that cannot raise the funds from private sources to fluoridate.

Cal. Health & Safety Code §116409, §116410, and §116415.

Scope of State Statutes Cont'

- Kentucky's statute is quite a bit different requiring:
 - All community water systems serving a population of 3,000 or more to adjust fluoride;
 - Written approval by the Cabinet for Human Resources demonstrating that the requesting water treatment facility will provide adequate control, supervision, record keeping; and
 - Compliance with administrative regulations prior to fluoridating.

902 KAR 115:010(1)

Scope of State Statutes Cont'

Several of the Mandatory State Statutes include an "opt out" provision:

- Louisiana: Allows registered voters served by public water systems that have never been fluoridated to submit a petition of at least 15% of the registered voters served by the water system to request a vote

LSA-R.S. 40:5-11B.(1)

Scope of State Statutes Cont'

- Georgia: With a petition of 10% of registered voters in the community served by the public water system can call for a public vote
- Nebraska: If a city or village is not fluoridating by Jan. 1, 2008, the voters of the city or village may adopt an ordinance between April 18, 2008 and June 1, 2010 to call for a public vote to prohibit the addition of fluoride to the water

GA Code Ann., §12-5-175(a)
Neb. Rev. St., §71-3305

Recommendations

- Consider the reason for the Opt Out Clause
 - If it is an unfunded mandate – provide a temporary out only until funding is identified
 - Try to avoid a blanket opt out option
- Require funding to be accepted if available to fund fluoridation equipment/start up costs
- Try to add a provision to avoid tactics that may lead to inflated fluoridation cost estimates

Court Review



Court Review

- The court will apply different levels of scrutiny in reviewing a statute
- Statutes inhibiting fundamental rights such as Free Speech, Religious Freedom, and so on... are reviewed with a strict scrutiny and presumed void if fundamental rights are inhibited

Court Review

- Statutes that do not inhibit fundamental rights are reviewed based on a 'rational review'— in other words, is there a rational relationship between the statute and the purpose the state is trying to accomplish?

Court Review

- There is no fundamental right to pure water and therefore the courts review any statute relating to fluoridation on a rational basis review

Substantive Law

- Issues that have been considered:
 - Legality of use of police power to fluoridate
 - Freedom from forced or mass medication
 - Privacy
 - Unauthorized practice of medicine, dentistry and pharmacy
 - Pure water relating to the safety and health effects of community water fluoridation

Substantive Law

- All Courts reviewing state actions relating to fluoridation have upheld the decision to fluoridate
- Fluoridation is a legitimate exercise of the State's Police Power promoting the health of the population

Procedural Law

- Deals with whether or not the proper process or procedures were followed in determining whether to fluoridate
- Several communities have not been able to fluoridate due to errors in
 - authority
 - not carefully following the correct process

Procedural Law

- For example:
 - *Parkland Light and Water Co. v. Tacoma Pierce Board of Health*, 151 Wash. 2d, 428 (Wash. 2004)
 - Board of Health passed a resolution to fluoridate; however, authority to decide fluoridation was a Water District decision.
 - *Balke v. City of Manchester* 150 NH 69 (NH 2003)
 - City voted and approved a measure to fluoridate, water municipality served several surrounding communities and those communities had not voted for fluoridation; therefore, court held that each community would need to approve fluoridation.

Recommendations

- Ensure that all of the partners are at the table, including the local water authority and the state water bureau
- Thoroughly review state laws relating to fluoridation
 - if none exist, check for local ordinances
 - may want to consider seeking legal guidance in reviewing state and local laws and obtaining legal opinions or counsel about possible legal interpretations

Future Opportunities

- Explore ways to increase fluoridation through public health law (e.g., mandatory statutes)
- Support practical research, such as exploring association between Medicaid expenditures and fluoridation
- If a definitive link is established, there may someday be the opportunity to look at federal spending clause legislation
 - For example, linking the allocation of Medicaid funds to the fluoridation status of communities

Future Opportunities

- This has been done on the federal level with other public health measures such as:
 - Drinking age mandates tied to federal highway funds (23 U.S.C.A. §158) ; and
 - Youth tobacco distribution laws tied to federal preventive block grants (42 U.S.C.A. § 300x-26).

Summary and Conclusions

- Carefully consider the Opt Out Clause
- Require funding to be accepted if available
- Try to add a provision to avoid tactics involving inflated fluoridation costs
- Ensure that all of the partners are at the table
- Thoroughly review state and local laws relating to fluoridation/seek legal opinions
- Continue researching possible ways to link fluoridation to decreased state/federal expenditures

Questions?

