

Understanding Legal Authority to Address Social Determinants of Health

A Resource for Health Departments



EDUCATION • HEALTH CARE • BUILT ENVIRONMENT • LAW • ECONOMIC STABILITY



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Introduction

Health departments are charged with protecting and advancing the health of residents in their jurisdictions. Improving the conditions and systems in which people live – also known as social determinants of health (SDOH) – is fundamental to this work. Addressing SDOH is critical to eliminating the long-standing health inequities that exist across our nation. Health departments can use their legal authority (also known as legal powers or public health authority) to make our communities safer and healthier for all residents, especially those who face the highest barriers to healthy living.

This guide explains why it is important for state, tribal, local, and territorial health departments (referred to herein as health departments) to know the parameters of their legal authority to address SDOH. First, it describes why SDOH are crucial to community health outcomes and health equity. Then it explains the sources, extent, and limits of legal authority delegated to health departments. Finally, it provides examples of how health departments across the United States have applied their legal authority to address SDOH and reduce health inequities.



Addressing SDOH Is Fundamental to Public Health

Conditions in Our Environments Greatly Affect Our Health

Everyone's health is shaped by the conditions in the places where they are born, grow, live, learn, play, work, and age.^{1,2} Research shows that these conditions have a more significant impact on health than clinical factors.³ These conditions, and the systems and forces that shape them, are SDOH.^{4,5} Conditions in our environment include things such as income, wealth, education, employment, workplace climate, housing, food security, community cohesion, neighborhood safety, transportation, health care, and air and water quality.^{6,7}

The conditions in our environments are not accidental; they stem from political and policy decisions about the distribution of power, money, and other resources.^{8,9} The systems and forces that shape our living conditions include "economic policies and systems, development agendas, social norms, social policies, racism, climate change, and political systems."^{10,11} Laws and policies are both shaped by and affect the distribution of resources.^{12,13} The inequitable distribution of resources across our communities creates health inequities.^{14,15}

According to the World Health Organization, "health inequities are systematic differences in the health status of different population groups" that arise from "unfair" and "unjust" conditions that are "avoidable" and could be reduced through more equitable laws and policies.^{16,17} Predictably, communities that have poorer health outcomes today are often the same communities that for generations have been disproportionately burdened by laws, policies, and practices that afforded and continue to afford them differential access to resources and opportunities (i.e., communities of color and communities with lower levels of income and/or education).¹⁸

For example, while smokefree air laws led to significant public health gains, some laws left certain groups less protected. California's 1994 Smokefree Workplace Act created numerous exemptions for workplaces where workers with lower wages and people of color tend to be overrepresented, such as hotels, long-term health care facilities, outdoor worksites, and private residences used for family daycare.¹⁹ In addition, unequal enforcement at worksites has exacerbated challenges for these groups.²⁰ Unsurprisingly, there are tobacco-related health inequities among workers with lower wages and populations of color, including rates of tobacco use and secondhand smoke exposure.²¹

Improving SDOH Is Critical to Advancing Health Equity

Health departments working to improve health equity by changing conditions and systems are working to improve health equity. "Health equity means that everyone has a fair and just opportunity to be as healthy as possible. This requires removing

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obstacles to health such as poverty, discrimination, and their consequences, including powerlessness and lack of access to good jobs with fair pay, quality education and housing, safe environments, and health care.”²²

The **10 Essential Public Health Services** (EPHS) describe the public health activities that all communities should undertake.²³ According to the Centers for Disease Control and Prevention (CDC), “[t]o achieve equity, the [EPHS] actively promote policies, systems, and overall community conditions that enable optimal health for all and seek to remove systemic and structural barriers that have resulted in health inequities . . . includ[ing] poverty, racism, gender discrimination, ableism, and other forms of oppression.”²⁴

Activities to address SDOH and health equity include the following:^{25, 26}

- Working in multi-sector partnerships
- Collecting and disseminating data related to SDOH
- Researching and evaluating effective strategies to address SDOH
- Developing, promoting, and advocating for better laws, policies, and programs
- Strengthening public health infrastructure
- Ensuring equitable enforcement of laws and policies
- Ensuring community engagement in all SDOH efforts

In addition, the **Public Health 3.0 model** describes public health leaders as Chief Health Strategists who partner with “multiple sectors and leverage data and resources to address social, environmental, and economic conditions that affect health and health equity.”²⁷ The Public Health 2.0 model focused on ensuring access to health care and safety net services; this new model broadens that focus to ensure people have access to the environments and conditions they need to be healthy.²⁸

Finally, the **Public Health Accreditation Board** (PHAB) – which accredits health departments and aligns with the 10 Essential Public Health Services and the **Foundational Public Health Services** recognizes the importance of working on the SDOH to achieve health equity. For example, PHAB requires that a health department’s community health assessment include a description of SDOH that affect health inequities.²⁹ In addition, one domain of assessment focuses specifically on whether a health department is implementing policies, plans, and laws that affect health by working across sectors to “correct historical injustices, and provide fair and just opportunities for all to achieve optimal health.”³⁰ Within this domain, PHAB aims to assess a department’s efforts to address factors that lead to inequities, including “lack of opportunities and resources, economic and political policies, structural racism and other forms of discrimination, and other aspects of a community that impact individuals’ and population’s resilience.”³¹ PHAB notes that it will not accept documentation of things done at the individual or family level; rather, documentation “must illustrate health department use of data, policies, systems, programs, and services to collaboratively improve the health of populations, address social determinants of health, and facilitate health equity.”³²

“Health equity means that everyone has a fair and just opportunity to be as healthy as possible.”

– PAULA BRAVEMAN

Legal Authority of Health Departments to Advance Public Health

Health departments have varying degrees of legal authority to advance public health and safety. Understanding the types of legal authority that a health department has is essential to knowing what actions it can take to improve the health of its communities and help create a more equitable distribution of power, money, and resources.

Legal Authority of State and Local Health Departments

The general authority to take actions that protect public health, safety, and welfare – often called “police power” – is reserved to the states under the 10th Amendment to the U.S. Constitution.^{33, 34} States can share their police power with local governments, and the scope of local governments’ police power varies greatly by state. In some states, local governments may exercise only those powers explicitly granted to them by their state legislature; in other states, local governments are generally authorized to enact laws without relying on a specific grant of power from the state legislature.^{35, 36}

In spite of its name, the police power extends beyond law enforcement and may be used to promote public health, safety, and welfare in a wide variety of areas, such as licensing, inspection, zoning, safety regulations, quarantines, and working conditions.³⁷ Courts play a central role in defining the boundaries of police power because they interpret the law and determine the constitutionality of challenged governmental actions.³⁸ Courts generally uphold state and local government actions as valid exercises of police power as long as these actions are reasonable and the benefits to many people – even entire communities – are appropriately balanced against the rights of affected individuals.^{39, 40}

Health departments’ legal powers are part of the general police power. Health department authority is often delegated to governmental agencies with specialized public health expertise, including state and local health departments. Health departments vary in structure and authority from state to state, but they have many activities in common, including:^{41, 42, 43}

- Collecting and analyzing data to assess community health
- Partnering with the community to identify health challenges and solutions
- Educating the public about health-related issues
- Administering programs and providing services to improve community health
- Investigating and controlling the spread of infectious diseases and environmental hazards
- Responding to public health emergencies
- Creating and/or enforcing health and safety rules and regulations
- Working with community partners and legislative bodies to enact health-promoting policies and legislation

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Legal Authority of Tribal and Territorial Health Departments

Tribes have independent legal authority to govern themselves and create laws and policies to protect the health and safety of their communities. In contrast, territories are under the jurisdiction of the United States and have varying levels of legal authority to affect public health. Even though they have different levels of authority, both tribes and territories often partner with federal and state agencies on public health.

Each one of the 574 federally recognized tribes are distinct political entities and sovereign nations, meaning each tribe governs itself.^{44,45} Given this status, the federal government's relationship with each of the tribes is a government-to-government relationship.⁴⁶ The federal government also has a "trust responsibility" to each tribe.⁴⁷ In signing hundreds of treaties with different tribes, the federal government agreed to respect tribal sovereignty and ensure tribes' well-being in exchange for land.⁴⁸ The trust responsibility means the federal government must keep its treaty commitments.⁴⁹

In the public health context, tribes are increasingly exercising their sovereignty and assuming responsibility for health care and public health services that were previously administered through the federal Indian Health Service,⁵⁰ which has faced challenges related to "a long-standing history of underfunding."⁵¹ The allocation of legal authority varies by tribe; it can reside with entities such as tribal governments, tribal organizations designated by tribal governments, and inter-tribal consortiums.^{52,53}

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In comparison, the five United States territories are all under the jurisdiction of the federal government.^{54,55} Each territory – American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands – has a unique history and legal relationship with the federal government.⁵⁶ Each of them also has a governor, a legislature, and a health department to administer health services in the territory.⁵⁷ As stated above, each territory has varying levels of autonomy when governing their internal affairs, including varying levels of legal authority to affect public health.

Sources of Health Department Legal Authority

Health departments derive their legal authority from different sources. State and local health departments' legal authority is defined in state constitutions and statutes that spell out how their legal authority is allocated and delegated. Local charters and/or ordinances may contain additional provisions defining the authority of local health departments. Tribal health departments' authority may be found in tribes' written legal documents (e.g., treaties, constitutions, charters, tribal codes), as well as in unwritten forms such as customary laws and traditions.⁵⁸ Territorial health departments' authority may be found in each territory's constitutions and statutes. Regardless of where a health department's authority comes from, its legal authority may also be influenced by court cases that interpret the constitutional provisions, statutes, and other sources of legal authority.

Limits on Health Departments' Legal Authority

In reviewing and exercising their legal authority, health departments must be mindful of (1) the need to balance their authority against individual rights as guaranteed by the federal and state constitutions, (2) preemption, and (3) political feasibility.

Does It Balance the Common Good with Individual Rights?

As noted above, courts are most likely to uphold state and local government actions as valid exercises of police power if they are reasonably related to public health and safety and properly balance the common good against constitutionally guaranteed individual rights (e.g., due process, equal protection, and freedom of speech and religion).

In exercising quarantine powers, for example, governments must properly balance the public interest in controlling the spread of disease against individuals' rights to make decisions about their own bodies and movement. In general, the more significant the individual right at stake, the greater the public interest must be for a public health measure to be deemed a valid exercise of police power.⁵⁹

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Constitutional limitations on public health authority are discussed in more detail in the Public Health Law Academy's trainings on [Public Health Law: Past & Present](#) and [Public Health Threats & the U.S. Constitution: What Responders Need to Know About Equity, Law, and Public Health Authority](#). When individual rights may be at issue, it is critical to analyze any constitutional balancing issues.

Is It Preempted?

Preemption is when a higher level of government limits or eliminates the power of a lower level of government to pass a law on a particular issue. Depending on how it is used, preemption can have both positive and negative effects. For example, a state legislature could pass a law prohibiting a local government from passing a law on minimum wage. If the state sets a minimum wage and preempts local governments from enacting a lower minimum wage, that can positively affect people in communities that would otherwise set lower minimum wages. However, if the state preempts local governments from enacting a higher minimum wage, or if the state fails to establish a minimum wage and preempts localities from doing so, that can negatively affect people and communities.

According to a 2021 report, state legislatures are increasingly using preemption to prevent local governments from taking actions to improve SDOH.⁶⁰ These limitations on local legal authority have health equity implications. For example, in addition to minimum wage preemption, some state legislatures have preempted localities from passing their own paid sick leave, rent control, affordable housing, and environmental laws.⁶¹

Local health departments often work with local legislative bodies to enact policy change. They need to be aware of preemption-related issues in their states so they can make informed decisions about how best to direct their activities to improve SDOH. For example, if there is preemption of local minimum wage ordinances, the health department could educate local businesses about the beneficial relationship between higher wages, health, and the economy to encourage them to increase wages voluntarily.

The [Local Solutions Support Center](#) (LSSC) and [The Policy Surveillance Program](#), with support from partners under the [Act for Public Health](#) initiative, track preemption legislation across states and work to limit the spread of harmful preemption. LSSC has developed a [messaging guide](#) that health departments can use to talk about preemption with different audiences.

Is It Politically Feasible?

The political environment can affect health departments' powers. Mayors and governors can use their executive authority to change some of these powers or require health departments to take certain actions.^{62, 63} The political environment can also affect the likelihood of a lawsuit being filed against a health department action and whether a state legislature will pass a law preempting local action.

To improve political feasibility with policymakers, health departments can learn how the policymaking process works, develop relationships with policymakers, and communicate issues in terms that resonate with them. Developing relationships is

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critical to ensuring that both health departments and policymakers understand the values, criteria, and evidence that shape each other's decisions. The way that health departments communicate about issues is also important. In making decisions, policymakers often rely on constituent and partner input, economic impacts, and the speed with which an intervention will have an effect.⁶⁴ Health departments can tailor their messaging to explain how public health interventions can have significant economic benefits or how the general public supports more investment in prevention, a key tenet of public health.^{65, 66}

Developing strong relationships with the community is also critical to political feasibility. Community members and organizations can advocate and lobby for change with policymakers. Many different sectors in the community work on issues affecting public health and SDOH, including education, health care, business, and communications. To work effectively with policymakers and the community, it is critical that health departments train staff in how to conduct advocacy and community engagement.^{67, 68}

Most health department staff cannot lobby policymakers, yet they can engage in many non-lobbying activities to educate policymakers about and advocate for their work. To learn more about these activities, see ChangeLab Solutions' **Public Health Advocacy: The Basics**. To improve communication and framing skills, health department staff can consult the Berkeley Media Study Group's report on **Championing public health amid legal and legislative threats** and the FrameWorks Institute's **Framing 101 resources**.

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Applying Legal Authority to Improve SDOH

The laws that define the scope of health departments' legal authority vary from place to place, both in specificity and in style. For example, some jurisdictions have laws that reflect more traditional views of public health, while others have updated laws to align with frameworks for modernized public health systems. These frameworks – including the revised **10 Essential Public Health Services**, **Foundational Public Health Services**, and **Public Health 3.0** – center priorities such as community engagement, equity, policy development, and data modernization as the most effective tools for achieving long-term public health goals.

Below are some examples of how health departments have worked within their legal authority and functions to create a fairer distribution of power, money, and other resources that affect SDOH. This section also highlights funding, enforcement, collaboration, and data strategies that health departments can adopt to improve SDOH and community health.

EXAMPLE 1:
Modernized public health laws may specifically identify SDOH work as a health department function.

MULTNOMAH COUNTY HEALTH DEPARTMENT

Application to SDOH (putting legal authority into practice)

The Multnomah County Health Department promotes safe and healthy neighborhoods through **participation in city and county urban planning efforts**. For example, in an effort to reduce heat-related illness and improve air quality, health department staff have provided data on heat vulnerability and urban heat island effect to help planning staff implement tree planting and other greenspace efforts in the communities most affected by these issues.

Legal Authority

As part of a **statewide public health modernization process** initiated in 2013, Oregon Revised Statutes § 431.413 requires local health departments to work toward developing certain foundational capabilities and programs listed in §§ 431.131 and 431.141, including a “[p]olicy and planning” capability and “[e]nvironmental public health programs.” These terms are defined in the **guidance document** referenced in the Oregon Health Authority’s **implementing regulations**. By definition, the “policy and planning” capability includes working with partners and policymakers to enact evidence-based policies, “including those that address the social determinants of health,” and “environmental health” programs involve “understand[ing] and participat[ing] in local land use and transportation planning processes.”

EXAMPLE 2:

Even if the law does not specifically reference SDOH by name, health departments' powers and functions may be defined broadly enough to encompass SDOH work.

RHODE ISLAND DEPARTMENT OF HEALTH

Application to SDOH (putting legal authority into practice)

The Rhode Island Department of Health creates, funds, and supports Health Equity Zones (HEZs). These **community-led collaboratives** identify and implement place-based SDOH interventions. Successful examples from the past include **HEZ initiatives** that used solutions such as Complete Streets policies, workforce development programs, and temporary rental assistance during the COVID-19 pandemic.

Legal Authority

General Laws of Rhode Island § 23-1-1 broadly defines the health department's authority and functions to include investigating the effects of all "conditions and circumstances on the public health" and adopting measures to prevent and control "conditions detrimental to the public health."

BRAIDED FUNDING STRATEGIES

Rhode Island's HEZ initiative is funded through a braided funding model. Braiding and blending (or layering) are innovative financing methods that bring together different funding streams and can improve outcomes, enable greater flexibility and efficiency, and reduce program fragmentation and overlap. To learn more about braiding, blending, and other innovative financing strategies, see the Centers for Disease Control and Prevention's **Public Health Finance and Infrastructure Support** website.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS HEALTH DEPARTMENT

Application to SDOH (putting legal authority into practice)

The Little Traverse Bay Bands of Odawa Indians Health Department administers a **program** that improves community health by increasing access to locally grown produce. Program activities have included providing community members with locally grown fresh produce at no cost, organizing events where they harvest their own food at local farms, and providing classes and workshops for them to learn about food preservation techniques.

Legal Authority

Waganakising Odawa Tribal Code of Law § 6.3004 broadly defines the health department's authority and duties to include providing "services and programs that increase health and wellbeing."

EXAMPLE 3:

Existing laws related to traditional health department functions or specific populations may provide avenues for integrating SDOH work in new ways.

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

Application to SDOH (putting legal authority into practice)

The San Francisco Department of Public Health initiated [pilot projects](#) that leverage traditional health-permitting powers to promote compliance with state and local labor laws and regulations. For example, the department experimented with requiring food businesses to show proof of workers' compensation as part of the permitting process, checking that businesses posted information about labor laws during routine health inspections, and suspending the health permits of businesses that failed to pay minimum wage or provide workers' compensation.

Legal Authority

California Health and Safety Code §§ 113715 and 114405 authorize local health departments to suspend food facility permits for failure to comply with "all applicable local, state, and federal statutes, regulations, and ordinances."

EQUITABLE ENFORCEMENT STRATEGIES

As San Francisco's example shows, agency enforcement proceedings and administrative penalties can be important tools for protecting public health. Such penalties usually involve administrative fines or revocation or suspension of a license or permit. However, enforcement can also create, reinforce, or worsen inequities if disproportionate effects are not considered. For example, the same administrative fine may have a much greater financial impact on a small business than on a larger, more profitable corporation. To learn more about equity implications and best practices for public health enforcement, see ChangeLab Solutions' [Equitable Enforcement to Achieve Health Equity](#).

LOUISIANA DEPARTMENT OF HEALTH

Application to SDOH (putting legal authority into practice)

The Louisiana Department of Health administers a [permanent supportive housing program](#) for individuals with qualifying disabilities. The program provides participants with subsidized rental housing and integrated support services to help them achieve housing stability and live successfully in the community.

Legal Authority

Louisiana Revised Statutes § 36:258 authorizes the department's Office of Aging and Adult Services to administer programs and functions "related to the long-term care of the elderly and the protection and long-term care of persons with adult-onset disabilities."

CROSS-SECTOR COLLABORATION STRATEGIES

Louisiana's permanent supportive housing program is a partnership between the state's health and housing agencies. Cross-sector collaboration between various governmental agencies and other partners, such as health systems and community-based organizations, can help break down traditional silos that impede community health improvement. To learn more about cross-sector partnerships, see the National Academy for State Health Policy's report [Five States Break Down Interagency Silos to Strengthen their Health and Housing Initiatives](#).

MINNESOTA DEPARTMENT OF HEALTH

Application to SDOH (putting legal authority into practice)

The Minnesota Department of Health [collects and analyzes state-based health, demographic, and economic data](#). It also [publishes reports and white papers](#) to inform policy relating to employment, housing, transportation, education, and other SDOH. For example, the department's [Advancing Health Equity in Minnesota: Report to the Legislature](#) and its [White Paper on Income and Health](#) informed the legislative debate surrounding the state's minimum wage increase in 2014.

Legal Authority

In defining the health department's authority and functions, Minnesota Statutes § 144.05 empowers it to "conduct studies and investigations, collect and analyze health and vital data, and identify and describe health problems."

PUBLIC HEALTH DATA STRATEGIES

As Minnesota's example shows, data collection and analysis are powerful public health tools that can be used to expand understanding of SDOH and inform policy changes that advance SDOH and health equity. To learn more, read the Minnesota Health Department's [Conducting a Health Equity Data Analysis \(HEDA\): A Guide for Local Health Departments in Minnesota](#). It advances a health assessment process that engages communities experiencing health inequities – and it reframes data activities traditionally focused on individual lifestyle behaviors to also identify larger structural conditions that affect health.

Conclusion and Next Steps

Addressing SDOH is critical to advancing the health of our communities and eliminating inequities. As health departments explore ways to incorporate SDOH into their work, a critical first step is reviewing applicable laws in their jurisdictions to determine the scope of their legal authority.

Numerous individuals and organizations can assist health departments in identifying and interpreting their legal authority. Governmental attorneys at the state, tribal, local, and territorial levels can help. Some jurisdictions have an attorney(s) specifically assigned or hired to work with the health department who may have specialized knowledge of legal issues relating to public health. Health departments can also reach out to external sources for assistance, such as public health associations, the Centers for Disease Control and Prevention's **Public Health Law Program**, the **Association of State and Territorial Health Officials**, the **National Association of County and City Health Officials**, **ChangeLab Solutions**, the **Public Health Law Center**, the **Network for Public Health Law**, and the **Local Solutions Support Center**.

Health departments that have limited authority, that are provided narrow interpretations of their authority, or that face political hurdles to exercising their authority can still engage in local work to improve SDOH. They can support the work of community groups and other organizations in sectors that affect public health by leveraging complementary powers, resources, and assets (e.g., funding, staff time, data, technical expertise, knowledge of local context, and community connections). For example, health departments can affect SDOH by working with their communities' housing, food, and economic development organizations in the public, nonprofit, and private sectors. The **Act for Public Health** initiative can also assist health departments that want more information about what to do in the face of limited public health authority. Moreover, health departments can improve political feasibility by engaging with policymakers and the community. Health department staff can advocate for their work and the health of their communities without violating laws against lobbying.

People's lives are significantly impacted and affected by the environments and conditions in which they live. Improving SDOH is necessary to improve the distribution of power, money, and resources across the country and to eliminate inequities. Health departments can use their legal authority to improve SDOH and make our communities healthier.

Health departments can use their legal authority to improve SDOH and make our communities healthier.

Additional Resources

Here is a list of resources to further explore the topics discussed in this guide:

- The **Public Health Law Academy**, from the Centers for Disease Control and Prevention and ChangeLab Solutions, offers free online trainings for state, tribal, local, and territorial public health professionals to learn about topics such as public health law, preemption and public health, and administrative law and health equity.
- **Social Determinants of Health at CDC** is the agency's statement on SDOH and links to data, resources, research, programs, policies, and tools for action.
- **Strategies for Equitable Policymaking: Applying Law & Policy Frameworks to Improve Health** is a guide from ChangeLab Solutions. It expands on equitable policymaking frameworks and concepts – the drivers of health inequity, community engagement, equitable enforcement, preemption, and more – and grounds those concepts in real-world examples.
- **Help Ensure That Public Health Professionals Can Continue to Protect Community Well-Being** is a fact sheet from ChangeLab Solutions and the Act for Public Health partnership. It explains how communities can identify, understand, and resist potential legislative and other legal limitations on public health powers.
- **Social Determinants of Health and Healthy People** is a collection of tools and resources from the National Association of County and City Health Officials to help health departments address SDOH and the Healthy People 2030 framework.
- **Untapped Potential: Public Health Department Authority to Address the Fallout from the Pandemic, Structural Racism, and Other Public Health Crises** is a document from the Local Solutions Support Center for health departments and officials interested in using their legal authority to address SDOH.
- **State & Local Public Health: An Overview of Regulatory Authority** is a resource from the Public Health Law Center that provides common questions and answers about the role of state and local public health departments and boards of health in public health regulation.
- The Berkeley Media Studies Group is a nonprofit organization that develops **messaging and framing resources** to help advocates and public health professionals use the power of media to advance healthy public policy.
- The FrameWorks Institute is a nonprofit organization that develops **messaging and framing resources** to help mission-driven organizations build public will for progressive change.

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