Government 101: How an Idea Becomes Law

JAMES T GRIFFITH

The passing of a law is frequently accompanied by media attention and citizen apathy. In today's healthcare delivery situation, we should understand how a bill becomes law and what happens to the idea that engenders that process.

Laws arise from the recommendations of ordinary citizens, but the recommendations follow a complicated process developed by the writers of our constitution to prevent abuses. Laws begin as ideas, they become bills considered by the legislature, they are expanded and enforced by the executive branch, and they are further interpreted by the judiciary branch. The laws governing healthcare issues are particularly complex, as most arise from the state legislatures.

INDEX TERMS: federal government; law; legislative action.

Clin Lab Sci 2006;19(1):50

James T Griffith PhD CLS(NCA) *is Chancellor Professor and Chairperson; Department of Medical Laboratory Science at the University of Massachusetts Dartmouth*

Address for correspondence: *James T Griffith PhD CLS(NCA), Department of Medical Laboratory Science, University of Massachusetts Dartmouth,285 Old Westport Road, Dartmouth Massachusetts 02747-2300. (508) 999-8328, (508) 999-8418 (fax). JGriffith@UMassD.edu*

Susan Leclair PhD CLS(NCA) *is the* ***Focus: Government Regulations*** *guest editor.*

Focus Continuing Education Credit: *see pages 58 and 59 for test questions and application form.*

The Focus section seeks to publish relevant and timely continuing education for clinical laboratory practitioners. Section editors, topics, and authors are selected in advance to cover current areas of interest in each discipline. Readers can obtain continuing education credit (CE) through P.A.C.E.® by completing the tearout form/examination questions included in each issue of Clin Lab Sci and mailing it with the appropriate fee to the address designated on the form. Suggestions for future Focus topics and authors, and manuscripts appropriate for CE credit are encouraged. Direct all inquiries to the Clin Lab Sci Editorial Office, IC Ink, 858 Saint Annes Drive, Iowa City IA 52245. (319) 354-3861, (319) 338-1016 (fax). ic.ink@mchsi.com

"What were 'they' thinking of when 'they' passed this law?" How often has one heard this question? In fact, every law represents considerable thought, and many begin with citizens' recommendations. Where do laws come from? Virtually all laws begin as individual ideas, but often the citizen who started the idea may say, "How did my idea end up looking like *that*?"

The US republic has at its base the Greek concept of *democros*—the people. This means:

- no people, no government.
- no participation, no good government.
- no informed people, no great government.

In the end, whether we are to be a country reflective of the ancient Roman meaning of *democros*—the *mob*—or of Thomas Paine's "the great populist wellspring of common sense" is up to us, or up to *you*.[1] Moving through this system is both our duty and opportunity, as decreed in the 1641 Massachusetts Bay Colony Body of Liberties. The colony's founders saw the intimate connection between the citizen and the government.

THE OBSTACLES

There haven't always been laws, so the first question, important and perhaps not so obvious, is "What is law and why do we have it?" Civilization, such as it was, first wrote its laws down with *Hammurabi's Code of Laws*, 1780 BCE. An uneven experience with law followed: good ideas for getting along interspersed with some bad stuff. Then came lawmaking by monarchs, religious sects, the power of the sword, and other less-than-reliable mechanisms. The American experience follows all of this with thinkers responding to what they knew from the past. The founders put barriers or protections in the path of ideas becoming laws, John Adams in particular.[2] The protections kept lawmaking from becoming capricious and necessitated that government pay attention to the people. As a result, two concepts set the US government apart.

- In many parliaments, the executive arises from the House leadership, but the US executive branch and legislature are elected separately.

- The executive and legislature oversee separate issues. Each is limited by the constitution and the powers of the other branches, particularly in the execution of law.

The Adams/Jefferson model is, by its nature ponderous; unable to quickly effect widespread change—an intentional check intended to limit abuses like those of King George III. Examples of these abuses include the *Currency Act* of 1764, the *Stamp Act* of 1765, the *Quartering Act* of 1765, the *Tea Act* of 1767, and the *Writs of Assistance* of 1767.

HEALTHCARE AND THE CONSTITUTION

Article I, Section 8, the powers of Congress, and Section 9, the limits on Congress, do not address healthcare. Consequently, the delivery of health services is the responsibility of states or the private sector except in narrowly defined circumstances, reflecting Amendment X (1791): "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" This means most hospitals, medical schools, and health departments operate outside the control of the federal government. Public health services and licensure of agencies and health practitioners typically fall within the *police* power of the state government.

Despite constitutional limitations, many health-related bills have made their way through Congress, the branch that writes the laws and provides the appropriations. How is the federal government involved in healthcare? Many healthcare delivery systems, such as for-profit hospital companies and reference laboratories, are national. Consequently, the constitution extends to marginally involve the national government in healthcare. If you are getting a taste of why healthcare legislation can seem a bit convoluted, you are on the right track.

CATEGORIES OF LAW

There are several kinds of laws and several agencies that affect clinical laboratories.

The judiciary and judicial law

Case or *judicial law* is that set of legal principles developed by the judiciary through series of decisions arising from specific disputes. Court decisions are reported in official and unofficial publications; respectively, *US Reports* and *Supreme Court Reports*. Examples include Brown vs. Board of Education and Roe vs. Wade. These, plus state and regional reports, are available at most public libraries or US publication depositories such as university libraries, and they are easily accessed and understood.

The legislature and statutory law

The legislature enacts the bulk of law in the form of *statutory* laws. Statutory laws are the legal framework within which government-sanctioned affairs are conducted, and may be public or private. Public laws affect all and are published in either chronological or codified forms. An example of a chronological form is the Professional Standards Review Organization law found as Section 249F of PL 92-603. The title means the 603rd public law of the 92nd Congress. The same law in codified form is found in the US Code as sections 1320c through 1320c-19 of Title 42 or 42USC 1320c to 1320c-19.

Private laws affect small groups. For example, there is a law that prevents prisoners of war from being prosecuted by the IRS for failing to file income tax returns while in captivity. Private laws name the affected parties and are not always published in chronological or codified form.

The executive and administrative law

Executive or administrative law derives as a rule from statutory law. Statutory laws contain provisions that grant power to administrative agencies to issue implementing regulations for oversight and budgetary review. It is through such a process that the executive brand (in part) regulates interstate commerce through regualations that fall under jurisdiction of the FDA.

It is temporally difficult and politically unfeasible for legislators to develop specific details, thus they write provisions that give power to the executive to shape the effect of a piece of legislation. Regulations written by the executive branch are as strong as the statute upon which they are based, and it is possible for either laws or regulations to be individually ruled unconstitutional.

Administrative law may arise from disputes between persons or corporations and the government over regulations and clarifies a particular executive agency's interpretation. An agency or person may petition for "relief", citing conflicting or burdensome regulations. Cases are made and rulings rendered by an administrative law judge rather than a jury.

Citizens have attempted to limit arbitrary power since the *Magna Carta* was pried from King John at Runnymede in 1215. The *Mayflower Compact* succeeded as a mechanism for societal organization, but failed as a blueprint for government by the governed.[4] The subsequent Council for New England was no great improvement.[5] In 1644 the first bicameral legislature

in North America, formed in Massachusetts, provided the semblance of government "of the people".

While our system has a bumpy history, uneven aspects, and imperfect success, it is important for us to first understand, then use our system of lawmaking to improve healthcare for the patients we serve.

AN EXAMPLE OF THE US LAWMAKING PROCESS

The following example illustrates the federal lawmaking process. Generally, the federal principles of access, notice, and participation apply at all levels, although the steps differ among states, counties, parishes, and municipalities.

Idea generation

Anyone can think of a logical step to improve our system. Just ponder some aspect of how clinical laboratory science is or is not effectively delivered, and imagine how it might be appropriately and effectively enhanced. Then draft the words.

Introducing the bill

Once a person has a well-grounded concept of how an idea could make its mark, that person would contact an appropriate legislator—municipal, state, or federal. The legislator's job is to listen, and if persuaded, to convert the idea into a *draft* bill and enter it into the political system. The legislator becomes the sponsor. There are quite a few ways to enter a bill, but the usual is to have it formally introduced before the deliberative body, for example the city council, state legislature, or US Congress. The bill is filed with the clerk and assigned a number like HR 1066 (House of Representatives). Next the presiding officer (House Speaker) assigns a level of first review and sends it to a committee.

During this initial phase, the author and sponsoring member pay close attention to all aspects of protocol, such as format, deadlines, and language of the bill, and how the bill will relate to all other laws and political realities.

Committee consideration

If the bill goes to the wrong committee, it may become a lost cause and die. If appropriately filed, and if the substance of the bill is new, the committee will probably take testimony. Assuming that more than just the author testify, the bill is rewritten, a process called mark-up. This means someone on the committee is interested enough to move it along. While the marked-up bill is in the hands of the committee it may be approved, amended, allowed to die, tabled for a short period, or favorably reported. If acceptable, the bill is sent to another committee or the floor. Sending to another committee is usually a bad sign, indicating someone is trying to bury the bill without voting against it. The committee assigns oversight if the bill becomes law.

Floor action

If the bill reaches the floor, it goes on the *calendar* for debate or to the *rules committee* for format review. Either is good news. If it is not acted on, it dies at the end of the legislative session and the process starts anew. If the bill gets to the *active* calendar—yes, there are several calendars in any legislative body (don't ask)—debate takes place, followed by a vote. Debate is common in the US Congress, less common in state legislatures, and virtually guaranteed in municipalities. Voting occurs by:

- *voice.* Yelling the loudest can work in some state legislatures.
- *division standing.* A presiding officer makes a visual estimate of yeas and nays.
- *teller*. Two members count a procession of yeas and nays.
- *roll call.* This is the sole procedure in which individual votes are counted and the total vote recorded.

If, after all of this, the bill in some form or other is successful, it goes to the other chamber and the sequence is repeated. It is likely the bill will pass both chambers in slightly different forms. It then goes to a *conference committee* where it may be reshaped to reach an agreeable form. Then back to both chambers for another vote, not assured if the committee has changed much.

Engrossment

If the bill passes it is formally "engrossed" and goes to the president, governor, or appropriate executive, who signs it, vetoes it, or "forgets" to sign it during the ten days before the legislature goes out of session, a ruse called a *pocket veto.* Most executives have some form of pocket veto.

The afterlife: rulemaking

When the final version becomes law, it is "the will of the people", the official descriptor of the product of any legislative body. Now the statute is preserved for posterity—well, not exactly. Actually, it is next translated into *regulations* by which the executive branch may carry out its principles. This is a dangerous time, since the regulations may not perfectly reflect the original intent. Further, it is inevitable for regulations to change over time to reflect realities.

Here is an example. The Medicare Catastrophic Coverage Act of 1988 (PL 100-360; HR 2470), signed into law July 1 of that year, expanded Medicare coverage of inpatient care and appeared to limit beneficiary out-of-pocket expenses. The act expanded skilled nursing facility benefits to 150 days and allowed spouses of Medicaid nursing facility patients to retain higher levels of income and assets. In implementation, the act came to be a bad idea because working people and elders had to pay a higher fee. It was gutted (distinguishing components repealed or neutralized) in 1989 as part of a tax-cutting initiative.

THOUGHTS BEFORE US

Should the legislative process be this cumbersome?

The process is designed to provide fairness and balance. One attractive alternative is the benevolent dictator, "*choosing a good leader who does the right thing*". Regrettably, given human nature, the "good guy" often wants to pass on the position to heirs, thereby forming a hereditary monarchy and creating a system that inevitably needs shoring up when some grandson or granddaughter makes mistakes.

Is there another way?

Other approaches were sorted out by advocates of contending systems in the Western world of the 16th and 17th centuries. The systems under dispute were the classical traditions of Greece and Rome vs. the religious orders of the European Roman Catholic church. For American colonists, neither system seemed to work, and our architects created a republic. As Alexis de Tocqueville correctly summarized, we have "*rule in the name of people*", not "*rule by the people*" nor "*of the people*".[6] Our system has aspects of monarchy embodied in the presidency; aristocracy in the electoral college, Senate, and Supreme Court; and democracy in the House of Representatives, state legislatures and most city councils.[7] In the end there is probably more than one way, but this is how we have construed it.

So are we fated to steer an idea through this maze?

Yes, but we can do it individually and collectively. Though the clinical laboratory is not the biggest fish in the pond, healthcare is important to our country. Healthcare is the largest employment block; according to the Bureau of Labor Statistics, one in 10 US residents works directly or indirectly in healthcare.[8] Table 1 provides a clear picture of the workforce issues connected with the healthcare delivery system.

To the extent that the provision of healthcare is important and that clinical laboratories provide the most objective, verifiable medical information, all this is worth doing. If the ASCLS Government Affairs Committee and any number of constituent society counterparts are any example, we have indeed done it. Continuation of this effort is mandatory by responsibility. After all is said and done, fair laws are the most durable. **Now, what was that idea you had?**

REFERENCES

1. Paine T. Common sense. Philadelphia PA: William and Thomas Bradford; 1776.
2. Frothingham LA. A brief history of the constitution and government of Massachusetts. Cambridge, MA: Harvard University; 1916.
3. Dalton C, Wirkkala J, Thomas A. Leading the way: a history of the Massachusetts general court 1629-1980. Boston. MA; Office of the Massachusetts Secretary of State, 1984.
4. Mayflower Compact, Cape Cod MA, November 11, 1620.
5. Palfrey JG. History of New England, Vol. 1-5. Boston: Little-Brown; 1858-1980.
6. de Tocqueville A. About democracy in America, Vol I: 1835, Vol II 1840, Henry Reeve translation. Paris, France, 1839.
7. Lukacs J. Democracy and populism: fear and hatred, New Haven CT; Yale University Press, 2005.
8. Occupational employment and wages 2001. Washington (DC): US Department of Labor, Bureau of Labor Statistics. Available at: http://www.bls.gov/OES/. [Accessed 2005 15 Aug].

Table 1. Numbers of health care workers in the US workforce (Bureau of Labor Statistics 2001)

	Health professionals	Other professionals	Total
Health service setting	8,642,749	4,098,331	12,741,080
Other work setting	2,167,418	126,649,685	128,817,103
Total	10,810,167	130,748,016	141,558,183

The US health workforce (health professionals in healthcare or other settings and other professionals in healthcare settings) totals 14,908,498. This is 10.5% of the total US civilian labor force.