Equity Assessment Framework for Public Health Laws and Policies

Example – New Mexico Institutional Racism Bill

Amid growing declarations of racism as a public health crisis, policymakers are looking for strategies to address the different levels of racism that create inequities for people of color. Legislation requiring state agencies to address institutional racism has been introduced in New Mexico and, while it has not been successfully enacted, it may serve as a model for other jurisdictions considering their options.

1. **What is the issue and how does the law or policy address it?**

   Institutional racism is a form of racism that is embedded in organizational policies and practices. It can lead to discrimination against employees or job candidates, and can influence processes, attitudes, and behaviors of employees toward each other or toward external stakeholders (consumers, collaborators, members of the public). New Mexico House Bill 15 (and its companion bill, Senate Bill 7) from the 2020 Special Session in New Mexico defines institutional racism as "actions that result in differential access to the goods, services and opportunities of society due to the existence of institutional programs, policies and practices that intentionally or unintentionally place certain racial and ethnic groups at a disadvantage in relation to other groups." One way to address institutional racism is to implement policies that ensure workforce diversity, require organizational self-assessment, and require education and training to recognize and address racism.

   A bill to address institutional racism has been introduced every year in the New Mexico legislature since 2011. A version of the bill, Senate Bill 269 (2017) passed but was vetoed by then Governor Susana Martinez. With the recent increase in cities and counties declaring racism a public health crisis, and state level initiatives to address racial equity, legislation addressing institutional racism is one strategy to consider.

2. **How are community voices included in identifying and defining the issue and deciding what law or policy approach to take?**

   State agencies and the public have opportunities for feedback on a proposed law through the legislative process. However, prior to introduction, states considering similar legislation should incorporate an assessment of the need for such legislation, including: data on workforce diversity with a breakout of management/leadership demographics; surveys of agency interest or perception of institutional racism and the need for policy intervention; reports from agencies on personnel actions and discrimination claims; and other relevant data. It will also be important to use tools like surveys and community listening sessions to gather consumer or constituent feedback on how they perceive services, supports and interactions, including language access, disability services, and how other needs are addressed. This assessment or analysis might best be suited for presentation to an interim legislative committee or a task force that can issue recommendations.

   Ultimately, state agencies would be responsible for implementing the legislation, so it is important to have key agency representation in discussions about the bill, implementation strategies, and costs.

3. **What is the historical context of the issue?**

New Mexico House Joint Memorial 32 (2011) - *Encouragement to Address Institutional Racism Policy*, articulated some of the reasons for legislative action to promote racial and social equity. These reasons included laws such as the Civil Rights Act of 1964 and the New Mexico Human Rights Act; data indicating that institutional racism results in disparities in health, education, criminal justice, employment, housing, and other key indicators; and the need for state agencies to improve fairness and extend opportunity in state government and in the delivery of state services. Such reasoning has continued to inform subsequent iterations of the bill, and the recent attention to racism in the wake of Black Lives Matter protests and disparities due to COVID-19, along with the creation of Governor Michelle Lujan Grisham's Advisory Council for Racial Justice may drive continued interest in enacting this piece of legislation.

4. **How does the law or policy impact different population groups?**

According to a comprehensive analysis of U.S. Equal Employment Opportunity Commission Enforcement and Litigation Statistics across all 50 states, New Mexico:
*   Is in the top five states for employment discrimination complaints per 100,000 people.
*   Led the country in age and national origin discrimination complaints (tied with Alabama).
*   Came in second in equal pay discrimination complaints.

Of note, sex discrimination was the top complaint in all but 8 states. A law requiring anti-institutional racism policies and training has the potential to impact a large number of groups vulnerable to discrimination in employment. Employment discrimination affects job satisfaction, performance, retention and turnover. These effects can be felt by consumers of public services. It is important to also gauge how consumers feel about their interactions with state agencies.

One way that institutional racism can be manifested is through inadequate language translation and interpretation services, which has particular significance in healthcare. The New Mexico Department of Health conducted a Cultural and Linguistic Competence Assessment in April 2017 to assess whether staff felt equipped to provide culturally and linguistically appropriate services (CLAS) based upon the National CLAS Standards. Some key findings from that assessment included:
*   Nearly 75 percent of employees agreed or strongly agreed that their program recruited and promoted staff reflecting the cultural diversity of the community served.
*   About 60 percent of staff felt that agency leadership made health literacy an important part of the agency's mission, structure, and operations.
*   A majority of respondents agreed or strongly agreed that their program collaborates with community-based organizations to address the needs of diverse groups.

This assessment also identified the top languages spoken by clients and the frequency of staff interaction with non-English or limited English proficient speakers. A series of recommendations was issued as a result of this assessment. Data like those presented here should inform future legislation.

5. **What are the known or expected outcomes of a given law or policy?**

A Harvard Business Review article entitled "Why Diversity Programs Fail" explores some of the challenges to addressing workplace discrimination and some strategies that work. Among the challenges are that mandatory diversity training is perceived as being negative and can activate

biases. Other challenges include discrimination in hiring tests and performance reviews, and grievance procedures that don't change the culture. Some successful approaches that organizations should consider include voluntary training and cross-training, mentoring, activities like recognizing holidays and events for underrepresented populations, , and diversity task forces or diversity managers as a way to improve organizational accountability.

It is clear that organizations need to assess and implement successful, evidence-based strategies, but there is nothing in the bill as drafted that would require agencies to do anything different than what is already common under a broad umbrella of anti-discrimination laws.   This bill might be stronger if it included language encouraging or requiring implementation of evidence-based or best practice strategies.

There are some accountability measures in the bill, including annual reports on steps taken to address institutional racism and documentation of annual training, as well as requiring development of a "data infrastructure" to track progress, although it is unclear what that might look like.

6. **What other options can achieve the same or similar outcome?**

State agencies already have broad rulemaking authority. The State Personnel Office (or equivalent office in other states considering a similar measure) could revise its regulations to take a different approach to a number of labor issues while remaining compliant with workplace discrimination laws. Organizational policies and associated trainings can also be updated, and agencies can voluntarily implement strategies like workforce assessments and task forces without the need for legislation. State legislatures can also request agency updates on anti-racism efforts in committee hearings.   Finally, agencies can create or repurpose a position to address diversity issues and health departments can empower their offices of health equity or minority health to take the lead on anti-institutional racism efforts.

7. **Can the solution be successfully sustained?**

Absent legislation, there may not be motivation for state agencies to take the requested actions to address institutional racism. Updating policies, conducting annual assessments, providing and documenting annual training, and creating a data infrastructure will all require staff time and financial resources. To be implemented successfully, similar legislation should consider whether appropriations should be included. Fiscal Impact Reports of New Mexico's institutional racism bill from the 2017 Session and the 2020 Special Session indicate likely increased but undetermined costs for agencies, and note that agencies with fewer than 50 employees may lack the resources to fulfill the requirements of the bill. States may also want to consider how (or if) agencies can be held accountable for compliance with the law.