

SENATE BILL 1857
TEXAS 76TH LEGISLATURE



Barriers to Binational Cooperation in Public Health
between Texas and Mexico

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**In Fulfillment of
Senate Bill 1857, Texas 76th Legislature**

The Texas 76th Legislature passed Senate Bill 1857 requiring the Texas Department of Health to conduct a study of the federal and state laws inhibiting the: (1) exchange of information on disease and epidemiological reporting between Texas and the United Mexican States; and (2) cross-border exchange of equipment and personnel to provide technical assistance and to enhance the capacity of Texas and the United Mexican States to obtain and exchange the information.

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Introduction

This report has been written in response to Senate Bill 1857 (Chapter 164, 76th Legislature) which requires that the Texas Department of Health (TDH) study federal and state laws inhibiting the:

- (1) exchange of information on disease and epidemiological reporting between Texas and the United Mexican States; and
- (2) cross-border exchange of equipment and personnel to provide technical assistance and to enhance the capacity of Texas and the United Mexican States to obtain and exchange the information.

While the North American Free Trade Agreement opened doors for improved trade in many products, trade in services, particularly health services, has been a complex issue requiring further development. The patent laws and intellectual property laws as well as industry regulations and professional training requirements of each country may differ to the extent that trade is inhibited.¹ It is not uncommon for Mexico's health services to be sought out by U.S. residents and vice versa. A review of studies examining cross-border utilization of medical services reported that 12-44% of U.S. border residents traveled to Mexico for medical care. Utilization of dental services is even higher (63%) in selected border areas. The preference of Mexico's health services by some Mexican-Americans on the U.S. side due to the cultural familiarity that it provides creates a trade advantage for Mexico.²

Even more complex than trade of health services is binational collaboration in public health where outcomes are often less easily recognizable in the short-term and where resources for improvement may be more scarce than in the private sector. In his book *NAFTA and Trade in Medical Services between the U.S. and Mexico* (1997), David Warner noted "Although liberalization of public health sectors was not a part of NAFTA discussions, officials in Mexico have grown increasingly aware that the public health system in Mexico...needs to embrace liberalization in order to better meet the health care needs of a population becoming

increasingly disaffected by the current level and quality of services provided in the public health sector.”³

Although Senate Bill 1857 requires a study of the barriers that are legal in nature, the scope of this report has been broadened to illustrate the complexity of binational cooperation between Texas and Mexico. Steps toward improving binational cooperation in public health requires that prior models of cooperation be learned from while considering those issues that are unique to public health.

This report is a collaborative effort of the Office of General Counsel and the Office of Border Health of the Texas Department of Health. The first section focuses on the laws that affect the working relationship between the State of Texas and Mexico. A survey of laws affecting binational cooperation was conducted by the Office of General Counsel and is presented in table format. The second section of this report is a review of non-legal barriers. Interviews conducted with people who work on public health issues of the border indicated that non-legal obstacles may be inhibiting the exchange of information and equipment to the same extent as or more than any relevant federal and/or state laws. This section includes a compilation of those barriers listed by interviewees. Identified barriers are related to agency-specific policies as well as to a lack of awareness and understanding of the cultural differences between the two countries. Several models of binational cooperation, both at the national level and state level, are discussed in the third section followed by recommendations based on the various components of these models.

Barriers to Binational Cooperation

Laws that Affect Relationship between Texas and Mexico

A survey of laws that affect the relationship between Texas and Mexico was conducted by the Office of General Counsel of the Texas Department of Health (Table 1). Primary findings indicate that federal law prohibits states from entering agreements with foreign countries. United States Constitution Article I, ' 10, clause 3 states *“No State shall, without the consent of Congress, . . . Enter into any Agreement or Compact with another State, or with a foreign Power . . .”* and United States Constitution Article I, ' 8, clause 3 (the commerce clause) states *“Congress has the power . . . to regulate Commerce with foreign nations and among the several States.”*

In apparent conflict with federal constitutional authority, local and state regulations exist that do, in fact, allow for contractual agreements between Texas agencies, counties, and municipalities. Local Government Code Chapter 370 Sec. 001 regarding “Health Contracts in Border Municipalities or Counties” states that *“The governing body of a municipality or county that has a boundary that is contiguous with the border between this state and the Republic of Mexico may contract with a border municipality or state in the Republic of Mexico to provide or receive health services.”* Also, Senate Bill 77 (Chapter 1165) passed in the 76th Legislative Session, grants state agencies the authority to enter into agreements with Mexico or Mexican states, *“to the extent permitted by federal law.”*

Table 1 summarizes the above-mentioned laws and other laws related to public health that pertain to relations between the U.S. and Mexico and raises questions or areas that require further research. Possible action steps to be taken are also listed.

Table 1. Survey of Laws that Affect Relationship between the State of Texas and Mexico

The application of these provisions will depend on what activity or service is undertaken or provided. Most programs of the Texas Department of Health have program specific statutes and rules.

FEDERAL LAWS

Provision in Federal Law	Summary	Questions/Further Research	Possible Actions
<p>United States Constitution Article I, ' 10, clause 3. ANo State shall, without the consent of Congress, . . . Enter into any Agreement or Compact with another State, or with a foreign Power . . . @</p>	<p>AStates can sustain no public relation whatever to foreign countries, and, under express provisions of the federal Constitution, participation by the states in international affairs, such as . . . entering into agreements or compacts with foreign powers without the consent of Congress, is prohibited.@(C.J.S. AStates@ ' 34)</p>	<p>1) May Congress, by legislation allow states to enter into agreements, or must it approve of each one? 2) Is the prohibition as strict on state-to-state agreements (versus state-to-nation)?</p>	<p>Consult federal (state department) lawyers to obtain their interpretation.</p>
<p>United States Constitution Article I, ' 8, clause 3 (the commerce clause). ACongress has the power . . . To regulate Commerce with foreign nations and among the several States.@</p>	<p>Denies states regulatory authority over interstate and foreign commerce only if Congress acts. But if Congress does act conflicting state laws are pre-empted.</p>	<p>The commerce clause of the Constitution is well understood because of many Supreme Court cases construing it.</p>	<p>Congress, by legislation could explicitly recognize the right of states to regulate certain health and safety concerns and enter into agreements with foreign nations to give them effect.</p>

Provision in Federal Law	Summary	Questions/Further Research	Possible Actions
8 U.S.C. ' ' 1601 <i>et. seq.</i> , part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996	Restricts the provision of federal, state or local public benefits to certain aliens. Generally the restrictions apply to services provided to an individual or family unit, not to broader population-based services.		
North American Free Trade Agreement (NAFTA) Implementation Act: P.L. 103-192, 19 U.S.C. ' ' 3301-3473 (USCCAN, pp. 2552-2915)	The House Committee report is blunt: A[I]f there is a conflict; the Agreement prevails over inconsistent State of local law.@But the act itself is less clear: ANo State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement except in an action brought by the United States for the purpose of declaring such law or application invalid.@(19 U.S.C. ' 3312(b)(2))	NAFTA is a lengthy, detailed agreement, but does make allowances for state regulation of health and safety. Specific research depends on specific state action.	

Provision in Federal Law	Summary	Questions/Further Research	Possible Actions
42 U.S.C. ' 242l International Cooperation@	AFor the purpose of advancing the status of the health sciences in the United States (and thereby the health of the American people) the secretary [of Health and Human Services] may participate with other countries in cooperative endeavors in biomedical research, health care technology, and the health services research and statistical activities authorized by 242k [National Center for Health Statistics] and by subchapter VII of this chapter [Agency for Health Care Policy and Research].@	It is unclear what Acooperative endeavors@ have been started under this provision. The related ' 242k calls for Federal-State cooperation in developing all types of health data collection, so states could and should be made partners in the Acooperative endeavors@ permitted by ' 242l.	Urge HHS to take advantage of this provision and make states full partners.
Title 22 (“Foreign Relations and Intercourse”): Chapter 7 (“International Bureaus, Congresses, Etc.): Subchapter XXIX (“United States-Mexico Border Health Commission”)	Authorizes the President Ato conclude an agreement with Mexico to establish a binational commission to be known as the United States-Mexico Border Health Commission.@ U.S. and Mexican members are to be appointed. They are to study and issue reports on border health problems.	This legislation was passed in October 1994. U.S. Section members were appointed in 2000. The commission is also authorized to support investigations and research; conduct a binational surveillance; and support efforts to resolve these problems.	Support full implementation of this legislation.

STATE AND LOCAL LAWS

Provision in State Law	Summary	Questions/Further Research	Possible Actions
Texas Local Government Code ' 370.001, AHealth Contracts in Border Municipalities or Counties@	AThe governing body of a municipality or county that has a boundary that is contiguous with the border between this state and the Republic of Mexico may contract with a border municipality or state in the Republic of Mexico to provide or receive health services.@	Allows local governments to contract with local or state Mexican governmental entities.	
<i>State v. P.U.C. of Texas</i> , 883 SW2d 190, 194 (Tex. 1994)	Administrative agencies have only the powers granted by the legislature in clear and express language, and certain (implied) additional powers necessary to fulfill the obvious intent of the regulatory scheme.	Many other cases are cited in RONALD L. BEAL, TEXAS ADMINISTRATIVE PRACTICE AND PROCEDURE ' 1.2.3 (1997 & 1999)	
Texas Health and Safety Code ' 11.002, APurpose of Board and Department@	AThe Texas Board of Health and the Texas Department of Health are established to better protect and promote the health of the people of this state@		
Texas Health and Safety Code ' 87.065 (ABirth Defects: Central Registry@ ACoordination with Mexico@	AIn developing the central registry and conducting research in areas of this state that border Mexico, the department shall make every effort to coordinate its efforts with similar efforts and research	An unusual statute because it actually requires the department to cooperate with Mexico.	

Provision in State Law	Summary	Questions/Further Research	Possible Actions
	programs in Mexico.@		
Texas Government Code Chapter 792, International Cooperation Agreements@ (SB 77, 76 th Legislature)	<ul style="list-style-type: none"> ' 792.001 Definitions ' 792.002 Grants agencies the authority to enter into agreements with Mexico or Mexican states, to the extent permitted by federal law. ' 792.003 Allows agreements only A . . . for the accomplishment of a function that the agency . . . is authorized to perform under another law.@ ' 792.004 Grants authority to: acquire and dispose of property; use funds not otherwise dedicated; use equipment; and, agree to A . . . other terms that are not prohibited under state or federal law.@ ' 792.005 Allows the issuance of bonds. ' 792.006 Agreement under this chapter requires approval of governor and the Legislative Budget Board 	Grants agencies broad authority to the extent allowed by federal statutes or constitution.	
Chapter 164, 76 th Leg., 1999 (SB 1857, not codified)	Directs the Texas Department of Health to A . . . study federal and state laws inhibiting the (1) exchange of information on disease and epidemiological reporting between Texas and the United Mexican States; and (2) cross-		

Provision in State Law	Summary	Questions/Further Research	Possible Actions
	border exchange of equipment and personnel to provide technical assistance and to enhance the capacity of Texas and the United Mexican States to obtain and exchange the information.@ The legislation allows the appointment of an advisory committee.		
Texas Health and Safety Code ' 12.071, AOffice of Texas-Mexico Health and Environmental Issues@	The department shall establish and maintain an office in the department to coordinate and promote health and environmental issues between this state and Mexico. Now known as the Office of Border Health.	Other provisions of this Subchapter, relating to an interagency council on environmental issues, were repealed in 1997.	
Confidentiality Statutes. See Texas Health and Safety Code ' ' 81.046, 81.103, 87.002, 88.002, 108.013, 109.064, 161.0213,	These statutes all make sensitive medical or epidemiological confidential. Many others could be cited. Typically, they make the information confidential then name exceptions, for instance each of the cited statutes allow release of epidemiological information to the Centers for Disease Control and Prevention, and most allow release to the local health authority, but not to other governmental entities.		Such statutes should be modified to allow release of information to comparable public health agencies in other states and countries for cooperative efforts at disease control.

Non-legal Barriers to Binational Cooperation in Public Health

The following are some of the barriers and recommendations identified through research and interviews with border health experts in the United States and Mexico. Interviews were conducted between October and December 1999 with more than 25 public health officials and employees of the public health sector with knowledge and experience in border health issues.

This section on non-legal barriers is divided into two sub-sections: “Agency-Related Barriers” and “Barriers Related to Cultural Differences.” The barriers stated in the interviews were generally related to agency-specific policies and procedures. These are categorized according to the governmental level of the agency.

Agency-Related Barriers

Federal

- Inconsistencies in U.S. and Mexico Customs procedures – Interviewees stated that fees applied to the transport of specimens and equipment from Texas to Mexico have been inconsistent. The effects of this barrier on public health programs may range from delaying patient treatment to placing prohibitive cumulative expenses on program budgets. This has been historically problematic for the Binational Tuberculosis Programs and the Border Infectious Disease Surveillance (BIDS) Project. Both of these programs require frequent transport of biological specimens in a timely manner. In addition, transporting loaned or donated equipment to Mexican health departments or programs has often been prohibitively difficult and expensive. Exchange of computers and other high-technology products would aid the health departments in Mexico in tracking diseases and, thus, have beneficial public health ramifications for both sides of the border.
- CDC-related limitations – Limitations on where Centers for Disease Control and Prevention (CDC) funds can be expended were also listed as a barrier by interviewees. The existence of such a policy is unclear since CDC funds are frequently used at the international level; however, it is important to note that interviewees perceive this as a barrier. If such a policy does exist, it creates barriers at numerous levels. Barriers to treatment of Mexican tuberculosis patients in Mexico, for example, could delay the

initiation of treatment. Consequently, cost of treatment may be higher as a more advanced disease is treated and problems in tracking highly mobile patients may arise. In the interim, the problem of infection control may escalate. To facilitate effective management of the projects, clear guidance on the use of federal funds should be provided. Clear guidelines would improve communication within the binational programs and clarify expected outcomes for both partners.

Another CDC-related barrier stated by interviewees was the requirement of permits for the exchange of biological specimens. Interviewees stated that this requirement has often precluded Mexican participation.

- INS protocols – Interviewees also reported occasional interruption of medical treatment by INS officials when undocumented patients are removed from health facilities for deportation. Interviewees reported that this has sometimes been done without the knowledge of the patients’ doctors or the local health department.
- Lack of inter-agency communication – A general lack of communication and cooperation between federal agencies was also cited as a barrier. This barrier leads to waste in resource management and creates inconsistencies that delay or interrupt treatment of ill patients and delivery of specimens or equipment. Interviewees noted that underlying problems are rarely addressed; instead, solutions are approached in a piece-by-piece, compartmentalized manner. Hence, agencies do not learn from each other how particular problems were solved and how to avoid future occurrences.

The compartmentalization carries on to the federal government’s perspective of what constitutes “the border,” according to the interviews. Interviewees stated that the federal government views the “border” as 32 separate counties of Texas when, in terms of a public health reality, the border exists as a single geographical unit.

State

- Exchange of data - The public health systems of Texas and Mexico often differ in their practices of collection and measurement of disease occurrence. This limits the extent and value of information to be shared. Differences in laboratory procedures and equipment set time constraints and limit the usefulness of data collected by either partner. The Binational Infectious Disease Surveillance (BIDS) project is attempting to standardize data collection and to establish a binational sentinel surveillance system in order to rectify this problem for infectious diseases. TB projects would likewise benefit from standardization of procedures for collecting data.

A common assumption of Texas public health workers is that quarantine laws are non-existent in Mexico's public health system, further complicating and interfering with binational efforts in tracking infectious patients. However, quarantine policy does exist in Mexico; patients who are actively infectious are kept hospitalized in isolation until no longer categorized as contagious. These patients are reported to the Jurisdicción Sanitaria where follow up of the patient's progress and treatment compliance is made. Questions remain regarding Mexico's capacity to enforce its quarantine policies.

- Maintaining data confidentiality - The issue of maintaining patient confidentiality must be included in any plans to enhance data sharing. Confidentiality issues, stemming from both legal and cultural restrictions, often inhibit the sharing of information between Mexico and Texas. Restrictions of Texas' Confidentiality Statutes are stated in the Health and Safety Code. As summarized by OGC in the section of this report titled "Survey of Laws," these statutes *"make sensitive medical or epidemiological information confidential. Typically, they make the information confidential then name exceptions, for instance each of the cited statutes allow release of epidemiological information to the Centers for Disease Control and Prevention, and most allow release to the local health authority, but not to other governmental entities."*

Strict laws pertaining to the release of confidential data also exist on the Mexican side. According to interviewees requesting data from local Mexican public health institutions has often caused considerable delays. Mexican policies for releasing epidemiological data are contained in a federal policy agreement that has been signed by all Mexican health care institutions. The Mexican Federal Policy Agreement, the Norma Oficial Mexicana, NOM-017-SSA2-1998, for Epidemiological Surveillance, was officially published November 17, 1994, in “El Diario Oficial de la Federación” [Federal Official Diary]. The Norma Oficial Mexicana (NOM) for Epidemiological Surveillance established the diseases and the disease risks that are subject to notification or investigation, as well as the frequency of these investigations.

The activity of the Mexican Epidemiological Surveillance is supported by the Sistema Nacional de Vigilancia Epidemiológica (SINAVE) [National System of Epidemiological Surveillance] . SINAVE is composed of all the institutions that participate in Mexico’s National Health Care System. SINAVE’s operational procedures and criteria guidelines for diseases, events and emergent situations that may affect or risk public health are specifically outlined in NOM-017. Additionally, NOM established the bases for the agreement of the Sistema Unico de Información para la Vigilancia Epidemiológica (SUIVE) [Data Collection Sole System for Epidemiological Surveillance]. Emergent diseases are regulated by NOM and by the different institutions of the Sistema Nacional de Salud (SNS) [National Health System] through the Comité Nacional de Vigilancia Epidemiológica (CONAVE) [National Committee of Epidemiological Surveillance].

Two features of the Mexican public health system that may be viewed as creating barriers to the exchange of epidemiological data at the local level are:

- 1) data generated by SINAVE can not always be made available at the request of U.S. public health departments data due to strict confidentiality guidelines; and
- 2) official communication to the public referent to SINAVE data must be validated by the Secretaría de Salud, Mexico’s Secretary of Health.

Consequently, requests for public health data may be delayed, as local public health departments must comply with the regulations of a centralized system, based in Mexico City.⁴

Modification of confidentiality laws on both sides of the Texas-Mexico border could eliminate reluctance to cooperate in the binational exchange of data. Data sovereignty has been a point of contention, especially in the case of a recent dengue outbreak. In general, however, binational programs such as the Binational Tuberculosis Program and the Border Infectious Disease Surveillance Project (BIDS) have contributed to a sense of collaboration between both sides of the border. Possible actions outlined by the Office of General Counsel in this report are that the Confidentiality Statutes of the Health and Safety Code “be modified to allow release of information to comparable public health agencies in other states and countries for cooperative efforts at disease control.”

- Disparities in technological capacities – The lack of technological resources (i.e., video conference equipment and venues, e-mail, Internet access, dependable access to phone lines, computers, fax, laboratory equipment, personnel) in Mexico prevents public health personnel from making use of state-of-the-art technology such as tuberculosis identification techniques. While efficient electronic communications exist primarily for the partners on the U.S. side, the disparity with Mexico means excessive time, effort, and expense must be devoted to mailing materials to Mexico.
- Restrictions on transfer of equipment – Attempts to ameliorate the disparities in technological capacities have been met by cumbersome agency restrictions pertaining to the donation, sale or lending of equipment to Mexico. The case of the Binational Tuberculosis Program computers (below) illustrates how this barrier interfered with and delayed TB program activity.
- Interaction between local health departments and state health department -- Some border communities in Texas do not have local public health agencies (unlike the Mexican side). In these areas, TDH becomes the “default” local health department. The experience of

Mexican public health agencies has primarily been through working with their Texan partners at the local level. An observation has been made by interviewees that local Mexican public health agencies are not comfortable sharing information at the state level. Consequently, Texas border towns lacking a local health department suffer from limited availability of binational data. On both sides of the border, the exchange of epidemiological data is hindered and community-to-community binational relationships are not strengthened.

- Restrictions on travel - Special permission is currently required for Texas public health personnel to travel to Mexico. The permission requirement creates a time constraint because public health personnel working on border health issues travel to Mexico routinely. TDH employees are concerned about potential liability issues that might result from their activities in Mexico. It is not clear that they would enjoy the same legal protections they have within Texas.
- Travel expenses for Mexican public health officials - Difficulties in paying for the travel expenses of Mexican public health officials in order for them to attend multi-state meetings called by TDH often lead to their exclusion in important processes. Without the participation of representatives from both sides of the border the effectiveness of programs is diminished.

Combined barriers

The combined effects of two or more of the above-stated barriers can have long-term implications for public health programs. An example of a program affected by more than one barrier when trying to ameliorate another barrier is that of the Binational Tuberculosis Program. Recognizing the difference in technological capacity with their Mexican counterparts, the TB program began making arrangements for computers to be donated or lent to their Mexican partners in the project beginning in 1997. Assisting Mexico's public health departments in tracking TB cases would have beneficial public health ramifications for both Mexico and the United States. Multiple barriers surfaced when TDH attempted to donate the much-needed computers to their counterparts. Three shipments of computer hardware were

designated for Mexico in 1997, 1998, and in April 1999. The initial barrier was the State agency policy regarding the donation of equipment. As the process was changed to accommodate agency policy, other barriers began to surface including observance of software copyright laws and maintenance of the computers' hardware. In order to observe copyright laws, software had to be removed from the computers thereby rendering them useless. Finally, barriers related to the policies of Mexico's Customs department and policy changes in Mexico's Secretaría de Salud have left portions of each of the shipments sitting in Laredo. To date, greater than 50% of the computers have not reached their destination.

Barriers Related to Cultural Differences

A lack of cultural awareness and understanding can strain existing relationships across the border and imperil future binational programs. In particular, paternalistic attitudes sometimes harbored by U.S. public health workers may endanger participation by Mexican counterparts. Dr. Nuria Homedes of University of Texas – Houston, School of Public Health and Dr. Antonio Ugalde of University of Texas – Austin, Department of Sociology conducted interviews with more than 80 border health “experts” in 1999, and are in the process of analyzing their data. More than half of their interviewees were Mexican officials. Homedes and Ugalde note that “most binational programs are programs conceived in the U.S. to be implemented in Mexico. Mexicans often feel treated as objects of interventions instead of equal partners; further exacerbating their sentiment of being colonized by the U.S.”⁵

Related to the lack of understanding of the Mexican system of public health is the frustration of U.S. public health employees with the high turnover among Mexico's health officials. Participants in the interviews conducted by TDH stated that this has contributed to discontinuity and time delays in binational relations. Although solutions to this are outside of the purview of the Texas legislature, it could perhaps be overcome with some concerted action on the part of the State of Texas. Basic knowledge and understanding of the regulations and practices of the Mexican public health system would be beneficial to binational program planning and implementation as well as the development of public policy on binational cooperation.

Models of Binational Cooperation

There are several models that illustrate the various ways that binational cooperation can occur between the U.S. and Mexico or between a U.S. state and a Mexican state. Below are models that have developed as a consequence of various historical events ranging from the signing of NAFTA to issues regarding national boundaries and water treaties from over a century ago. Brief descriptions of the functions of the commissions as well as descriptions of their functional structure are included. Information on sources of funding is included where it was available.

Pan American Health Organization Field Office in El Paso

The Pan American Health Organization (PAHO) is an international public health agency that has existed for almost 100 years. Based in Washington, D.C., PAHO serves as the Regional Office for the Americas for the World Health Organization. The Pan American Health Organization established the El Paso Field Office in 1942. Initially established to investigate and provide treatment for sexually transmitted diseases among military personnel, the Field Office has become a lead facilitator in binational public health work between the U.S. and Mexico. The Field Office serves all 10 states along the 2,000-mile-long region promoting health activities of mutual interest to both Mexico and the U.S. It functions as a neutral party in discussions between the two nations about health and environmental issues. The PAHO Field Office facilitates dialogue between binational partners, coordinates binational activities, promotes forums for binational discussions and problem solving, and develops and disseminates information on border health. PAHO also provides guidance on technical issues and mobilizes resources to address specific public health issues and institutional development for U.S.-Mexico border health. PAHO also serves as the secretariat for the U.S.-Mexico Border Health Association.⁶

NAFTA Environmental Side Agreements

Agreements parallel with NAFTA were developed for concerns related to the environment. Commissions and collaborative efforts between already existing state agencies address environmental concerns of the region through:

- Identification and development of projects through Border Environment Cooperation Commission (BECC);
- Financing of projects through North American Development Bank (NAD Bank) and other sources;
- Enforcement of provisions through the Commission for Environmental Cooperation (CEC); and
- Strategic planning through regional partnerships.

Border Environment Cooperation Commission

Created as a side agreement of NAFTA, the Border Environment Cooperation Commission (BECC), “identifies, assists with, evaluates and approves environmental improvement projects for financing consideration by the NADBank, or other sources.”⁷ The secretariat of the BECC is situated in Ciudad Juarez, Mexico but serves both the U.S. and Mexico. Management of the secretariat is conducted by a general manager and a deputy general manager. The activity of the commission is determined by a Board of Directors. Both the general manager and the deputy general manager positions serve three-year terms with one officer being from Mexico and one from the U.S., alternately, in order to equally represent each country. Both positions are appointed by the board of directors. Community involvement in BECC activity and decision-making process takes place through local steering committees, public meetings, and public access to information. Community participation is one of the BECC’s criteria for project certification.⁸ Matching federal appropriations from the U.S. and Mexico fund the BECC. Its operating budget was \$2,900,000 based on a 1996 audit.

Commission for Environmental Cooperation

The purpose of the Commission for Environmental Cooperation (CEC) is to address environmental concerns and promote the enforcement of the environmental provisions of NAFTA. The CEC is composed of a Council, a Joint Public Advisory Committee (JPAC), and a Secretariat. The Council is the governing body of the CEC and is composed of the three environment ministers from the U.S., Mexico and Canada. Alternate representatives, one for each Council member, along with general standing committees complete the Council branch of the CEC. The JPAC is composed of 15 appointed positions, five from each country. The function of JPAC members is to provide the Council members with advice. The JPAC Chair serves a one-year term and is alternated among the members of each of the three countries. The Secretariat consists of professional staff responsible for the implementation of initiatives and conducting research. The Secretariat is located in Canada and has a liaison office in Mexico. Its role is to provide technical and operational support to the Council and its committees.⁹

Strategic Environmental Plans for Texas and Mexican States

The Texas Natural Resource Conservation Commission (TNRCC) and Mexico's Secretariat for Urban Development and Ecology (SEDUE) formalized their binational cooperative efforts through Strategic Environmental Plans designed for the partnerships between Texas and each of the four bordering Mexican states. As an outcome of the *Ten State Retreat: A Regional Approach to the U.S.-Mexico Border Environment* held in 1996, the plans establish frameworks that outline strategies and action steps of both partners. Appointed liaisons from SEDUE and TNRCC are responsible for the implementation of the plans. Progress on the plans is presented at the annual U.S.-Mexico Border Governors Conference as well as an annual meeting of the two agencies. Separate plans were created for the partnerships between Texas and each of the four bordering states of Mexico.

Strategies of the plans include:

- To exchange information;
- To facilitate technical exchange;
- To coordinate activities and programs; and
- To support existing mechanisms for addressing local priorities and work cooperatively with counterparts in the border region.¹⁰

IBWC (International Boundary and Water Commission)

The structure of the IBWC consists of two secretariats, each representing the two countries. The Mexican section is located in Ciudad Juárez and the U.S. section is located in El Paso. A joint international commission is located on the border. More than 100 years old, the IBWC was developed to oversee the adherence to international water treaties. Its jurisdiction extends throughout the U.S.-Mexico border and inland where international projects may be located. The IBWC operates from within the U.S. State Department. It is, in effect, an entire agency operating as the secretariat counterpart of this binational commission. The IBWC operating costs, as stated in the 1999 S&E Allotment Summary, were \$4,400,524.

Arizona-Mexico Commission

Established as the Arizona-Sonora West Coast Trade Commission, the Arizona-Mexico Commission (AMC) was created to address economic and cultural relations between Arizona and the Mexican state of Sonora. Its sister commission is the Comisión Sonora-Arizona. Their partnership has been in existence for more than 40 years. The AMC is composed of 13 committees serving various issues ranging from agribusiness to tourism. Each of the committees is co-chaired by representatives from Arizona and Sonora. The AMC is managed from within the Arizona Governor's Office. The Governor of Arizona chairs the AMC. The operating budget of the AMC is \$300,000, in-kind expenses not included.

One of the thirteen committees of the AMC is the Health Services Committee. In Plenary Sessions of Fall and Summer 1999, the Committee recommended:

- the establishment of a medical school in Sonora that may offer a curriculum which enables its graduates to practice medicine on both sides of the border;
- continuing support of a binational study on the health needs of the border area;
- endorsement of the U.S.-Mexico Border Health Commission with a revision of Article 3.3; and
- that policy makers and the business sector address the issue of access to medical services.¹¹

Binational Tuberculosis Projects

The Texas Department of Health initiated binational tuberculosis elimination projects in 1993. Memoranda of Understanding as well as a history of collaboration on an informal basis were useful in the development of the three Texas-Mexico binational projects. The first of these three projects, the “Juntos” Project, was started in El Paso/ Ciudad Juarez.

Over the next two years similar projects were initiated in two other Texas-Mexico border areas, “Los Dos Laredos” in Laredo/ Nuevo Laredo and “Grupo Sin Fronteras” serving Brownsville/ Matamoros and McAllen/ Reynosa. The three projects coordinate binational efforts to eliminate tuberculosis through sharing of data on cases and contacts, providing treatment and improving access to medication. Additionally, the projects provide health care professionals opportunities to collaborate on TB prevention and control on both sides of the border.

Summary

In recent years the infrastructures of the environmental and the public health sectors of the border region have been challenged by rapid industrialization and rampant population growth. Implemented in 1994, NAFTA initiated a process of dismantling barriers to trade between the North American countries but barriers in the trade of services have proved to be more complex. Anticipating the challenges of rapid growth in the border area that NAFTA would produce, the environmental sector established a framework for binational cooperation that includes:

1. a legal foundation in the form of side agreements to NAFTA;
2. international and interstate attention is placed on the broad issue of environment;
3. specific issues receive both state and federal level attention;
4. written strategic plans designed for the collaboration between each of the bordering states have been formally instituted;
5. strategic plans include a follow up component for annual evaluations to be conducted by both the involved agencies and the governors of the respective states;
6. efforts are served by a binational commission, the BECC, which receives federal appropriations from the U.S. and Mexico and which makes funding available through the NAD Bank or other sources; and
7. a separate binational commission, the CEC, oversees enforcement of NAFTA environmental provisions.

Considering that the public health priorities of a developing country like Mexico are vastly different from those of the U.S., it is imperative that the diverse needs of each party be addressed. The public health sector can implement steps similar to those of the environmental sector in addressing the health needs of a dynamic and culturally diverse region. A replication of the environmental sector's model of binational cooperation would improve the exchange of information and facilitate technical exchange. The recommendations listed in the following section are based on replication of the environmental sector's framework.

Recommendations

1. Development of an agreement or treaty that specifically addresses *health* issues of mutual concern to the U.S. and Mexico, including elimination of legal and institutional barriers. This framework should be analogous to the authority of the 1993 North American Free Trade Agreement (NAFTA) and the accompanying environmental side agreements, BECC and the NAD Bank, which created the management and financial structures. Such a framework would provide appropriate attention from the federal levels of both countries and ensure compliance. Federal level support is necessary in order for federal agencies to cooperate on public health issues generally and case-by-case. For example, this could apply to fees placed by Customs on equipment crossing the border or INS policies affecting the treatment of Mexican nationals. Also, federal attention would improve the possibility that the private sector will participate in improving technological disparities between the two countries.
2. The already existing U.S.-Mexico Border Health Commission (USMBHC) is the appropriate vehicle for implementation of a public health international agreement. Aside from serving as a communication and outreach venue for border states and communities to address priority health issues on the border, it has also been expected that the Commission would provide financial support to binational, public-private efforts. The USMBHC can serve as the advisory board providing an international and interstate perspective. The USMBHC would identify current issues and funnel federal funds to appropriate public health projects. The USMBHC, with its close ties to border state governors, is in a convenient position to garner support at the state level.
3. The USMBHC would ensure that the scope of projects is binational. Through its international and interstate membership, the USMBHC is in a convenient place to ensure that the interests of each country and state are represented.
4. Prioritization of projects and development of strategies and action steps would be conducted by the state health departments in cooperation with their Mexican counterparts. Strategic plans must be personalized to ensure that action steps are outlined in a manner

that maximizes the assets of each partner and are innovative in the utilization of both outside resources and those contained in the border.

Until the issues of binational cooperation in the public health sector are addressed through federal laws, improvements in inter-agency communication between U.S. federal agencies and between federal and state agencies can alleviate many of the problems presently experienced in binational public health. The INS-related barriers could be remedied through open channels of communication between INS and CDC and, at the state level, between INS and state public health departments. Based on the interviews conducted by the Office of Border Health, some of the issues that should be addressed are:

- interagency exchange of patient information while maintaining confidentiality;
- interagency policies that provide guidance and consistency in binational exchange of equipment and epidemiological data;
- establishment of a system of interagency patient referral thereby ensuring that affected patients receive proper diagnosis and treatment.

Also remaining to be determined is the practicality of two legal provisions permitting local and state level binational agreements. While Article I, Section 10 of the United States Constitution prohibits states from entering into agreements with foreign countries without the consent of Congress, Senate Bill 77 of the 76th Texas Legislature grants agencies broad authority to enter into agreements with Mexico or its states to the extent allowed by federal law. Local Government Code '370.001 on "Health Contracts in Border Municipalities or Counties" allows local governments to "contract with a border municipality or state in the Republic of Mexico to provide or receive health services." In the absence of federal side agreements to NAFTA, the usefulness of these two laws needs further exploration. Improved communication between federal agencies in conjunction with testing these two laws could provide an initial solution to the barriers to binational cooperation in public health. In addition, modification of the Health and Safety Code Confidentiality Statutes should be considered so that release of confidential information is permitted to "comparable public health agencies in other countries for cooperative efforts at communicable disease control."

NOTES

¹ David C. Warner, NAFTA and Trade in Medical Services between the U.S. and Mexico (Austin, TX: The University of Texas at Austin, 1997), 1-6.

² Katherine Albro and Kindra Norton, “Cross-Border Collaboration in Medical Practice,” in NAFTA and Trade in Medical Services between the U.S. and Mexico, Project Director David C. Warner, (Austin, TX: The University of Texas at Austin, 1997), 191.

³ *Ibid.*, 190.

⁴ Comité Consultivo Nacional de Normalización de Prevención y Control de Enfermedades de la Secretaría de Salud, “Norma Oficial Mexicana,” Ley Orgánica de la Administración Pública Federal (Mexico: November 17, 1994), 15-18.

⁵ Nuria Homedes and Antonio Ugalde, draft paper “Binational Cooperation”, (2000).

⁶ Web page of Pan American Health Organization, <http://www.paho.org/>

⁷ Border Environment Cooperation Commission, “1996 Annual Report”, (1996), 5.

⁸ *Ibid.*, 15.

⁹ Web page of North American Commission for Environmental Cooperation, <http://www.cec.org/>

¹⁰ Texas Natural Resource Conservation Commission (TNRCC) and Mexico’s Secretariat for Urban Development and Ecology (SEDUE), “Texas-Tamaulipas Strategic Environmental Plan: A Framework for Cooperation”, (August 10, 1999).

¹⁰ Web page of the Arizona-Mexico Commission, <http://www.azmc.com>