

The ABC's of *Administrative Law* in Public Health Practice

Part 1



ChangeLab Solutions

Law & policy innovation for the common good.

NACCHO

National Association of County & City Health Officials



Centers for Disease Control and Prevention
Office for State, Tribal, Local and Territorial Support

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Healthy communities for
all through equitable
laws & policies



ChangeLab Solutions

CDC's Public Health Law Program

- **What we do**
 - Advance the use of law as a public health tool
- **How we do it**
 - Legal Epidemiology: legal mapping and legal evaluation
 - Workforce Development: webinars, trainings, training materials, fellowships, internships, and externships
 - Partnerships and Outreach
- **Whom we serve**
 - CDC programs and state, tribal, local, and territorial (STLT) communities

To submit a request or learn more about public health law, visit us at: www.cdc.gov/phlp

Our Mission



NACCHO is comprised of nearly **3,000** local health departments across the United States.

Our mission is to serve as a **leader**, **partner**, **catalyst**, and **voice** with local health departments.

Our Work



Advocacy



Partnerships



Funding



Training and education



Networking



Resources, tools, and technical assistance

ChangeLab Solutions

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Public Health Law

Competencies

- 1:** Define basic constitutional concepts framing the practice of public health
- 2:** Describe public health agency authority and limits on that authority
- 3:** Identify legal tools and enforcement procedures to address day-to-day public health issues
- 4:** Distinguish public health agency powers from those of other agencies, legislatures, and courts

What we'll DISCUSS:



What is administrative law?



What are the sources and limitations on agency power?



Why is administrative law important to public health?



What is
**administrative
law?**

Administrative law

Governs the organization and activities of administrative agencies, including public health agencies.



What is an administrative agency?

An organization within the executive branch of government, with the authority to implement and administer legislation.



Separation of powers

LEGISLATIVE

Create laws



Federal

Congress



State

State
Legislature



Local

City Council

EXECUTIVE

Enforce laws

President

Governor

Mayor

JUDICIAL

Interpret laws

Federal Courts

State Courts

Municipal
Courts

Separation of powers

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What do administrative agencies do?

- Adopt rules and regulations





A regulation
is a law adopted
by an administrative
agency.

LEGISLATIVE

Create laws



Federal

Congress



State

State
Legislature



Local

City Council



Wait, I thought
only the
legislative
branch could
create laws?



The U.S. Constitution: Article I, Section 1

All legislative powers
herein granted shall
be vested in a
Congress of the
United States, which
shall consist of a
Senate and House of
Representatives.

Delegation of Authority

Legislature



Executive Agencies



Legislation

vs.

Regulation

- Drafted by a legislative body
- Sets the big picture

- Drafted by administrative agencies
- Fills in the details



Both have the effect of law

*Multiple
Choice*



**Which of the following
are regulations?**

- A. Laws adopted by Congress
- B. Laws adopted by a state legislature
- C. Laws adopted by a city council
- D. Laws drafted by an administrative agency, like a local health department
- E. Answers A, B, and C

*Multiple
Choice*



Which of the following
are regulations?

- A. Laws adopted by Congress
- B. Laws adopted by a state legislature
- C. Laws adopted by a city council
- D. Laws drafted by an administrative agency, like a local health department – CORRECT ANSWER!
- E. Answers A, B, and C

What do administrative agencies do?

- Adopt rules and regulations
- Issue licenses and benefits
- Conduct investigations and inspections
- Initiate enforcement actions against people and businesses





Food safety



Retail licensing



Environmental Protection Standards



Emergency preparedness

*Open-
ended
question*



**What kind of
regulatory activities
does your local
health department
do?**

1. Food service establishments (79%)	6. Body art (60%)
2. Schools/daycare (74%)	7. Private drinking water (60%)
3. Recreational water (68%)	8. Children's camps (59%)
4. Septic systems (67%)	9. Hotels/motels (58%)
5. Smoke free ordinances (65%)	10. Lead inspection (53%)

What are LHD's most common regulatory activities?

Recap:

What is Administrative Law?



- ✓ Governs the organization and activities of administrative agencies, including public health agencies
- ✓ Serves as “guardrails” for administrative actions
- ✓ Helps to ensure appropriate separation of powers



What are the
limitations on
agency action?



Meet Jackie!

Delegation of Authority



New York City Smoke-Free Air Act:

Section 17-513

“The commissioner shall promulgate rules in accordance with the provisions contained in this chapter, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this chapter.”

*What steps must
Jackie follow*
when adopting
smoke-free
workplace
regulations?



Limitations on agency authority



Federal

- The U.S. Constitution
- Administrative Procedure Act (APA)
- Federal statutes
- Judicial decisions



State

- State constitution
- State Administrative Procedure Act
- State statutes
- Judicial decisions



Local

- State and local legislation



Limitations on agency authority



Local

- State and local legislation



How do local laws (of the lack thereof) apply to Jackie?



Federal

- The U.S. Constitution

Limitations
on agency
authority

Separation of powers

LEGISLATIVE

Create laws



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Due Process



According to the 5th & 14th amendments, the government cannot deprive people of life, liberty, or property without due process of law.

Cheese + ham 2.75
Tuna melt 2.95
3.95 each
95 cent
2.05 each

PANINI'S
Tuna melt

Cheese
Beans
Coleslaw
Tuna melt
Sauce
Honey mustard

For example ...



Limitations on agency authority



Federal

- The U.S. Constitution
- **Administrative Procedure Act (APA)**



Limitations on agency authority



Federal

- The U.S. Constitution
- Administrative Procedure Act (APA)
- **Federal statutes**



Limitations on agency authority



Federal

- The U.S. Constitution
- Administrative Procedure Act (APA)
- Federal statutes
- **Judicial decisions**



- ✓ Separation of powers?
- ✓ Due process?



Do federal constitutional concepts apply to Jackie?



Limitations on agency authority

State

- State constitution
- State Administrative Procedure Act
- State statutes
- Judicial decisions



RULES REGULATIONS

Home > Rules & Regulations

Rules & Regulations

The Administrative Procedures Act, ACA 25-15-201 et. seq., requires state agencies, boards and commissions to file with the Secretary of State a copy of each rule adopted by the filing group. ACA 25-15-218 requires the Secretary of State to publish all state agency rule notices, emergency rules, adopted rules, proposed rules and financial impact statements on the Secretary of State website.

For questions about Administrative Rules email register@sos.arkansas.gov.

- [Search Arkansas Administrative Rules](#)
- [State Agency Public Meeting Calendar](#)
- [Agency Rule Filing Instructions](#)
- [Bulk Data Download](#)
- [Register Transmittal Sheet](#) (To be filed with State Agency FINAL rule filings)

Administrative Rules are filed by state agencies, boards, or commissions. Agency Rules "...interprets, or prescribes law or policy, or describes the organization, procedure, or practice of any agency...". Administrative Rules do not concern the internal management of the agency, and are **only filed by state agencies, boards or commissions**. Administrative Rules are NOT filed by for-profit / non-profit businesses, property owners associations, or an entity not involved in state government.

Rules & Regulations

Administrative Rules Search

Arkansas Register

Bulk Data Download



Secretary of State > Administrative Law

Administrative Law Division



Rule-Making Deadlines

The rule-making deadlines for the 2019 Legislative session have passed. All of the Legislative rules that have been proposed will be reviewed by the Legislative Rule-Making Committee (LRMC). If the Committee recommends changes to a rule, the agency should file the modified rule within ten (10) days of the LRMC meeting.

The deadline dates for future years is now much easier to calculate. With the passage of SB522, beginning in 2019, the deadline for agency approvals will be the last Friday in July. In 2020 and every four years after, the last Friday in August. This makes the public comment period deadline 30 days prior. For the 2020 Legislative session, all proposed Legislative rules must be put out for public comment by Wednesday, June 26, 2019. Agency approvals must be filed by Friday, July 26, 2019.

New Online Meeting Notice Procedures

After a thorough review of the provisions of the Open Governmental Proceedings Act (W. Va. Code §6-6A et seq.), the Secretary of State's office is planning some changes to the procedures for submitting a meeting notice as well as the way they are displayed online. One of the proposed changes is adding a field called "Governing Body" intended to be the name of the group having the meeting. Another significant change would be in lieu of marking a meeting notice "compliant" or "not compliant", the date and time the meeting notice is accepted will be displayed allowing for easy calculation of the required five (5) business days.

In order to provide notice of these changes, we have proposed procedural rule, 153CSR41, explaining the details. This rule and the changes will become effective on Monday, February 4, 2019.

Executive Records

As the keeper of the Governor's official papers, there are many documents filed here. Aside from Executive Orders, Proclamations, and Appointments of State Officials there are some miscellaneous records as well.

Each year, the Secretary of State's office sends reminders to each of the County Commissions in West Virginia reminding them of the requirement to send a list of the Public Service Districts located in their county. Those lists and many other records are available in the Executive Records Search.

ADMINISTRATIVE LAW SERVICES



Rules

Search for Rules
Electronic Filing of Rules
Proposed Rules



State Register

Register Search
West Virginia State Register



Rule-Making

About Rule-Making
Legislative Rule-Making Steps
Legislative-Exempt, Procedural, and Interpretive Rule-Making Steps
Emergency Rules



Executive Records

Search Executive Records
Executive Journal
Executive Records
Other Documents and Miscellaneous Records



Open Governmental Meetings

Add Meeting Notice
Search Meetings Database
Meeting Notices Information
About WV Open Meeting Law



Programs and Information

Board of Public Works
West Virginia State Seal



How does this work in my state?



Why is
administrative law
important for
public health?

1

Administrative law doctrines act as *guardrails* that shape what health departments and other administrative agencies can do.



2

Advancing the social determinants of health and public health work relies on many other agencies other than health departments, so it is important to know which those are and what they do.



Example:
School Nutrition
Standards



3

Together, STLT and other administrative actions profoundly impact the *nation's health*.





Consider local
innovations in
tobacco control

And also ...
*food retail
regulations*



RECAP: What we discussed



What is administrative law?



What are the sources and limitations on agency power?



Why is administrative law important to public health?



Questions?

Webinar 2: The ABC's of
Administrative Law in Public
Health Practice: Part 2

Date: Thursday, March 26, 2020

Time: 3:00–4:00 pm EDT

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Thank you!

Additional questions?

Interested in learning more?

Visit: www.publichealthlawacademy.org

Email us at: phlacademy@changelabsolutions.org

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