

What Legal Powers Do Health Departments Have? Overview of Administrative Law: Part 1

Full Script

Introduction & Presentation Overview

Slide 1

Welcome to the Public Health Law Academy's training called **What Legal Powers Do Health Departments Have?** This training – Part 1 in a three-part series on administrative law – is tailored from a training that was developed by ChangeLab Solutions and the Public Health Law Program at the Centers for Disease Control and Prevention.

You might be asking, “Why do I need to take this course?” If so, we would ask, “Do you work in or with a health department? Are you involved in retail licensing, lead paint inspections, outbreak response, tobacco control, or eligibility requirements for public benefits?” This training focuses on the laws governing the everyday practice of public health, and it can benefit you no matter what area of practice or what types of regulatory activities you engage in. It's critical for public health practitioners to understand this area of law – which is called *administrative law* – because it touches nearly every aspect of modern life, and public health practitioners encounter it every day.

Slide 2

Before we begin, one of the content developers, ChangeLab Solutions, wants me to remind you that the information provided in this training is for informational purposes only and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

Slide 3

Furthermore, the other content developer, the Centers for Disease Control and Prevention, wants me to remind you that while every effort has been made to verify the accuracy of these materials, legal authorities and requirements may vary from jurisdiction to jurisdiction. The contents of this presentation have not been formally disseminated by the Centers for Disease Control and Prevention and should not be construed to represent any agency determination or policy. Always seek the advice of an attorney or other qualified professional on any questions you may have regarding a legal matter.

Slide 4

Before you take this course, we encourage you to watch **Structure of Government: Exploring the Fabric and Framework of Public Health Powers**, another training offered by the Public Health Law Academy. Much of what we'll discuss in this training builds on a foundational understanding of the structure and functions of government.

This script was published in August 2022.

Slide 5

As I mentioned earlier, this is Part 1 of a three-part series on administrative law in public health practice.

Today, we'll explore the legal powers of health departments.

- First, we'll set the context by defining what administrative law is and providing some examples.
- Then, we'll connect today's conversation to health equity principles and provide context for how health departments can work within the guidelines of administrative law to shape equitable health outcomes.
- Next, we'll explore core concepts to help illustrate what administrative agencies are, what they do, and what legal powers they have.
- We'll then discuss why administrative law is important for health departments and population health outcomes.
- And finally, we'll explore the limits on health departments' powers.

The concepts discussed today will lay the foundation for the second and third parts of this series, which take a deeper dive into how administrative law plays out in practice in state and local health departments.

Part 1: What is administrative law?

Slide 6

To get started, let's briefly define *administrative law*.

Slide 7

When we refer to *administrative law*, we mean the legal doctrines that govern the organization and activities of administrative agencies, such as health departments. We'll explore the roles and responsibilities of agencies shortly.

Administrative law deals with the legal principles that guide administrative agencies when they carry out their authority – the duties and responsibilities delegated to them. The source of agency authority is legislative bodies – either via an enabling act that creates the agency or through subsequent legislation. Administrative law also establishes the *procedures* that agencies must use when they are acting on those delegations of authority. These procedures describe how to develop rules and regulations, implement legislation, and enforce laws. Administrative law also governs how courts will review regulations and other agency actions if they are legally challenged.

Put simply, administrative law acts as the guardrails for the activities of public health agencies that we will talk about later in this training. These guardrails have many sources, including constitutional principles, legislation, judicial decisions, and regulations.

As we mentioned at the beginning of this training, administrative law governs many aspects of public health practice.

Slide 8

For example, for food safety, state and local health departments are the first line of defense. But they must follow certain legal and constitutional requirements when they are writing food safety regulations, monitoring compliance with those regulations, conducting health inspections, or responding to outbreaks.

Slide 9

Similarly, health departments play an important role in protecting public health through retail licensing programs that reduce youth access to harmful substances such as alcohol or tobacco. Administrative law ensures that state and local health agencies follow proper procedures when they are issuing retail licenses and enforcing the regulations related to specific licenses.

Slide 10

The same is true when agencies are creating and enforcing environmental policy – for example, when regulating pollution, monitoring air quality, or banning or limiting the use of certain chemicals. Again, administrative law governs the procedures that federal, state, and local health agencies must follow when developing and implementing policies.

Slide 11

Federal, state, and local health agencies also play a crucial role in preparing for, responding to, and recovering from emergencies that threaten the health and safety of residents. During a pandemic, for example, state and local health officials may issue orders requiring physical distancing, isolation, or quarantine to mitigate the spread of disease.

Administrative law includes key constitutional principles, which provide an important safeguard to ensure that any mandatory screening, quarantine, or vaccination order is reasonable (that is, effective in preventing the spread of disease) and does not unduly infringe on individual liberties.

We explore what responders need to know about the law when preparing for and responding to public health emergencies in another Public Health Law Academy training, **Public Health Threats & the US Constitution: What Responders Need to Know About Equity, Law, and Public Health Authority**. We encourage you to check it out if you're interested in learning more about this topic.

We've touched on just a few examples of how administrative law is important for public health agencies. Soon, we'll talk more about why administrative law matters for public health.

Slide 12

As the preceding examples show – and as many of you probably know from firsthand experience – the regulatory authority of state and local health departments encompasses a broad array of areas.

This list is from the 2019 National Profile of Local Health Departments, published by NACCHO – the National Association of County and City Health Officials. The list illustrates the range of regulatory areas that local health departments cover. They license and inspect food service establishments, schools and day care centers, septic systems, and more.

Part 2: How is administrative law connected to health equity?

Slide 13

Now that we have a fundamental understanding of what administrative law is, let's take a moment and connect today's conversation to health equity principles.

Health departments play many roles: employer, regulator, data collector, service provider, educator, funder, to name just a few. Everything that a health department does can be used to advance health equity. As we talk about administrative law and how it shapes everyday public health practice, it's critical that we also think about how agencies can work to advance health equity within the guardrails of administrative law.

Slide 14

What is health equity? There are many definitions. One frequently cited definition that captures the complex nature of health and health equity is from Dr. Paula Braveman, one of the nation's leading experts on health equity and health disparities. She and her colleagues explain, "Health equity means that everyone has a fair and just opportunity to be as healthy as possible. This requires removing 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." Health equity means that everyone has access to the resources and opportunities they need to thrive, regardless of characteristics like race, ethnicity, gender, or sexual identity. At the core of equity is a focus on fairness, justice, and opportunity.

Having a shared understanding of health equity is critical. We can't improve health for everyone without taking an equity approach. And how organizations and teams talk about inequities will shape the approaches they use to advance health equity. It's important to note that a project explicitly designed to improve health equity through approaches focusing on specific populations might take a very different direction from one that's designed to more generally improve health for everyone via a universal approach.

Slide 15

As we'll discuss today, one of the key principles of administrative law is fairness. Equity and equality are strategies we can use to try to produce fairness. But there are important differences between equity and equality.

This slide illustrates the difference. The image at the top depicts equality. An intervention focused on equality would apply the same, one-size-fits-all solution to everyone, regardless of need. Here, equality is illustrated by giving four individuals the same bicycle. That sounds pretty good. But take a closer look. The bicycle might be a good fit for the two individuals in the middle, but what about the child in the wheelchair on the left? And how about the girl on the right, who struggles to reach the pedals? In this scenario, we can see how an equal approach – even a well-intentioned one – doesn't necessarily benefit everyone equally. The two individuals in the middle might be well on their way, while those on either side are left behind.

An *equitable* approach, on the other hand, means we're focused on ensuring that people have what they need to thrive. Beyond that, equity acknowledges the reality that everyone doesn't start at the same place. What one person or population needs might be different from what another needs.

When we fail to design projects or interventions with equity in mind, there is potential for efforts – again, even well-intentioned ones – to maintain inequities or even, in some cases, to widen them. We can see in the illustration of equality that providing the same bike to everyone will give the two individuals in the middle the means to take off, while those on either side will be left behind.

Slide 16

Achieving health equity requires eliminating the drivers of health inequities – such as structural discrimination and especially structural racism, which law professor Ruqaiijah Yearby has described as “the way our systems are structured to advantage the group in power and disadvantage racial and ethnic minorities.” Other drivers of health inequity include income inequality and poverty, disparities in opportunity, disparities in political power, and governance that limits meaningful participation.

We have a lot of ground to cover in today's training, so we won't go into detail on each of these drivers of inequity. The point we want to address is that laws and policies have been central to creating today's health disparities. Laws and policies made resources scarce for many people and created unhealthy environments.

Because of inequitable laws and policies, good health is nearly impossible to achieve for many people. Across the country, the burden of poor health – from preventable chronic conditions to diseases of despair, such as substance misuse – falls disproportionately on people with low income, individuals with a low level of education, people with disabilities, and Black people, Indigenous people, and other people of color. Yet laws and policies can also be used to create positive change – which is why researchers and public health scholars have identified the law as a key determinant of health.

Slide 17

You may now be thinking about various avenues for promoting health equity. In today's training, we encourage you to reflect on how concepts of health equity fit within administrative law and the work of health departments. And throughout this training series, we'll offer equity practice tips. These tips illustrate key opportunities for health departments to promote health equity within the guardrails of administrative law.

As a starting point, we encourage you to think about how the following strategies can be baked into the concepts, policies, and practices that we'll discuss today.

- Engaging community members
- Building partnerships
- Inviting varying perspectives
- Considering how you use data to identify inequities or track unintended consequences
- Equitably directing resources
- Promoting systems thinking
- Evaluating outcomes and being accountable for decisions that affect the public

One of the key themes of this training is ensuring that public health regulations advance rather than inhibit health equity. This effort requires engaging, listening to, and amplifying voices from the communities that will be most affected throughout all the steps of the regulatory process. At the heart of administrative law is public participation. We'll talk about some of the ways that this concept relates to health departments' regulatory activities in Part 2 of this training series, when we discuss notice-and-comment rulemaking and opportunities for community members to weigh in on proposed regulations.

Slide 18

Before moving on to the next section, let's pause for a true-or-false question:

True or false? Core elements of health equity include fairness and opportunity.

Slide 19

If you picked "True," you're right! Remember, while you and your partners may have different ways of describing health equity, the main goal is to share the same basic understanding of its core principles, which include fairness and opportunity to reach one's full health potential. Fairness is also one of the key principles of administrative law and will be a recurring theme in this three-part series.

Part 3: What are administrative agencies?

Slide 20

Now let's spend a few minutes exploring and answering a question that is central to the rest of this training: What are administrative agencies?

Slide 21

In this section, we'll deepen our understanding of administrative law by answering three central questions related to administrative agencies:

- What is an administrative agency?
- How are administrative agencies created and funded?
- What do administrative agencies do?

Slide 22

Before diving into these questions, I want to provide a quick refresher on separation of powers, a recurring theme in today's conversation and a principle that is central to public health agencies' ability to shape health outcomes.

Remember that the US Constitution establishes three branches of government – the legislative branch, the executive branch, and the judicial branch – each with its own functions and set of responsibilities. As you might recall from our **Structure of Government** training, separation of powers ensures a system of checks and balances, so that no single branch has too much power.

Slide 23

An administrative agency is a government body that sits within the executive branch and has authority to implement certain legislation. Public health departments are one type of administrative agency, encompassing the Department of Health and Human Services at the federal level as well as state, tribal, local, and territorial departments of health.

Note that some federal agencies are referred to as *independent agencies* because they have a bit more independence from executive control. We won't get into the nuances of this distinction, but it's important to understand that agencies are situated in the executive branch of government. This fact is fundamental to understanding the unique roles and responsibilities of agencies, as well as the limits on their authority.

Slide 24

Let's pause for a quick multiple-choice question:

Administrative agencies sit within which branch (or branches) of government?

- A. Legislative
- B. Executive
- C. Judicial
- D. Legislative and executive
- E. Legislative, executive, and judicial

Slide 25

If you picked B, you are correct. As I mentioned in the definition of *administrative agencies* – and as we'll discuss further in a moment – agencies sit within the executive branch of government.

Slide 26

So when we talk about administrative law, we're really talking about a body of law that applies to the executive branch. This concept is true at federal, state, and local levels.

This slide is important in helping us understand one of the primary purposes of administrative law, which is to ensure that administrative agencies don't infringe on the powers of other branches of government or exceed the scope of their authority when engaging in everyday activities. This idea leads to a key question: What is the scope of agency authority?

Slide 27

To understand an agency's scope of authority, we need to look at how agencies are created and funded.

Slide 28

Public health agencies are created by enabling legislation that defines their general powers and the matters they oversee. After an agency has been created through legislation, a legislative body – such as a state legislature or a city council – may pass additional legislation to expand the agency's duties or to delegate authority to the agency to do specific things.

The enabling act typically spells out the agency's

- Purpose,
- Powers,
- Organization, and
- Funding sources.

Slide 29

In 1869, Massachusetts became the first state to pass legislation to create a state board of health (now known as the Department of Public Health). The agency was created to "take cognizance of the interests of health and life among the citizens of this Commonwealth." Since then, the Massachusetts legislature has passed other laws that refine the department's general powers and give it authority to regulate specific activities ranging from use of laser equipment and licensing of mammography facilities to sanitation of public beaches.

Slide 30

Just as a legislature is responsible for creating agencies through legislation, it also establishes agency budgets through appropriations bills. This structure means that the legislative branch can shape agencies' priorities through the money it allocates for different agency functions.

Slide 31

It's also important to note some of the structural differences in governmental public health authority – that is, how the different levels of government use their powers to ensure the public's health. We discuss this in more depth in our **Structure of Government** training and won't get too far into the details here, but we do want to point out some high-level distinctions.

First, although this training series focuses primarily on state and local health departments, it's worth noting that tribal and territorial health departments have governmental structures that are distinct from health departments in the states and the District of Columbia. For example, as sovereign nations, American Indian and Alaska Native tribes have inherent powers to govern themselves, which include promoting public health. Tribal health agencies often work with federal and state agencies to provide public health services, as do the five US territories and three freely associated states. However, the tribes and territories have independent authority to address public health concerns in their communities. In this respect, they are similar to states.

The degree to which local agencies can act autonomously varies greatly. One reason for this variation is that some states have local boards of health in addition to local health departments. Local boards of health often have substantial control over the public health department – including, for example, recommending or approving the agency budget. Local boards of health might also have authority to create new regulations, whereas the authority of local health departments might be limited to implementing the regulations that boards of health create. Again, we discuss these distinctions in our **Structure of Government** training.

Another reason for variation among local agencies is that they get their powers from their state. Some state health departments control local departments, while in other states, local health departments are highly independent.

Slide 32

To give you a sense of just how much states vary in how they're structured, here are some 2016 data from the Association of State and Territorial Health Officials:

- Almost 30% of states have a centralized or largely centralized governance structure – which means that local health units are primarily led by *state* employees, and the state has primary authority over most decisions related to budget, issuing public health orders, and financing.
- More than half of states have a decentralized or largely decentralized system in which local health units are led by employees of *local* governments.
- 10% of states have a mixed structure – that is, some local health units are led by state employees, and some are led by local government employees.
- And 8% of states have a shared governance system in which state or local government employees lead local health agencies. If they are led by state employees, then local government has the authority to make fiscal decisions or issue public health orders. If, on the other hand, they are led by local employees, then the state has that authority.

Understanding the structure of public health governance in your jurisdiction is important because it can affect how administrative law is enforced and how revenue is allocated.

Slide 33

Now that we have discussed what administrative agencies are and how they are created, let's take a closer look at what they do.

Slide 34

Agencies engage in a wide range of activities – from making laws to implementing and enforcing them.

Slide 35

Parts 2 and 3 of this series on administrative law will provide more details on each of these activities, but we want to spend a few minutes now to discuss the first item on this continuum: creating regulations, which is part of agencies' rulemaking authority.

Slide 36

A regulation is a law created by an administrative agency. You might sometimes hear the term *rule* in addition to *regulation*. These terms mean the same thing and can be used interchangeably. In this training, we'll use the term *regulation*.

We'll talk more about how agencies make regulations in Part 2, but right now, we want to touch on what regulations are – and what they aren't.

Slide 37

It's important to note that a regulation is *not* the same as legislation. Although both have the effect of law, they differ in several key ways.

Slide 38

First, legislation is a law introduced and finalized by a legislative body such as Congress, a state legislature, a city council, or a county board of supervisors. At the federal and state levels, finalized legislation is known as a *statute*. At the local level, finalized legislation is known as an *ordinance*.

Regulations, on the other hand, are drafted by administrative agencies that have relevant subject matter expertise.

Slide 39

Agencies' expertise is needed for regulations because while legislation sets the broad parameters – the big picture – for what the legislative branch wants to happen, it's often up to administrative agencies to fill in the details. Regulations specify, for example, how enforcement will work, and they often clarify ambiguities.

Slide 40

For example, in a public health context, legislatures might not have the technical skills, knowledge, or frontline experience to develop health-based standards for contaminants in drinking water or sanitation standards for food establishments. For this reason, legislatures might delegate authority to experts in public health agencies so that they can fill in the details of complex public health legislation.

Slide 41

We've just given you a very high-level overview of the differences between legislation and regulations. If you're interested in examples or want to take a deeper dive, we encourage you to check out the Public Health Law Academy's training called **Structure of Government**.

The key thing to remember here is that regulations created by administrative agencies have the effect of law, just like legislation, and can be enforced against individuals and private businesses.

Slide 42

Some of you might be thinking, "Wait, but I thought only the legislative branch was authorized to make laws!"

If so, you're right . . . to some extent.

Slide 43

That's because the US Constitution expressly grants "all legislative Powers" to Congress. Thus, only Congress has the authority to make federal laws.

The same is true at the state level. State constitutions typically grant the power to make laws to the state legislature.

At the local level, the authority to make laws might come from several sources, including the state constitution, state statutes, and municipal charters. Cities and counties get their powers from their state.

Slide 44

However, a legislative body can *delegate* its power to make laws to administrative agencies in the executive branch of government. Remember, administrative agencies do not have any inherent power to make laws. Therefore, an agency – such as a health department – can make regulations *only* when a legislative body has given the agency that authority.

This delegation of authority is typically spelled out in a particular piece of authorizing legislation or in a foundational document, such as a constitution or municipal charter.

Slide 45

Here's an example from New York City's Smoke-Free Air Act, which grants specific authority to the city's department of health and mental hygiene to create rules needed to implement and carry out the provisions of the act.

While this is an example of an express grant of authority, note that in many jurisdictions, local health departments do not have the power to make regulations at all. Because the structure and responsibilities of local health departments can vary widely, it's important for local health officials to consult with their legal team to confirm their regulatory authority and the best practices and procedures to use – *before* conducting any regulatory activities.

Slide 46

Let's use a couple of quick questions to review what we've discussed so far.

First question: State and local health departments may create regulations only when which branch (or branches) of government have given them this authority?

- A. Legislative
- B. Executive
- C. Judicial
- D. Legislative, executive, and judicial
- E. It depends

Slide 47

The answer is A – the legislative branch. Remember, only the legislative branch has the inherent power to create laws, but it can *delegate* its power to make laws to administrative agencies in the executive branch of government.

Slide 48

Now for a second question:

Which of the following are regulations?

- A. Laws created by Congress
- B. Laws created by a state legislature
- C. Laws created by a city council
- D. Laws created by an administrative agency, such as a local health department
- E. Laws created by Congress, laws created by a state legislature, and laws created by a city council

Slide 49

If you picked D, you are correct. As we've just learned, laws created by administrative agencies pursuant to their delegated authority are known as *regulations*.

Slide 50

As we mentioned earlier, in addition to making laws, some administrative agencies are responsible for implementing or enforcing those laws by

- Writing policies and guidance documents;
- Issuing permits and licenses;
- Conducting investigations and inspections; and
- Interpreting and enforcing public health laws.

We'll revisit these activities in Parts 2 and 3 of this training and highlight examples for each activity, but the point to emphasize here is that agencies engage in a broad spectrum of activities. That's one reason why administrative law – including the limits it imposes on agency authority – is important for public health practitioners to understand.

Slide 51

Let's pause here and refer back to the discussion of equity at the beginning of this training. How might we infuse health equity across agencies' spectrum of activities?

One way is to have health departments make sure that their processes of making, implementing, and enforcing laws and policies put the people who will be most affected at the center.

Many of the communities that public health departments serve have suffered intergenerational disinvestment, discrimination, and disenfranchisement. For many people, dealing with ongoing poverty, racism, and other forms of systemic and institutional discrimination is traumatic. Creating inclusive community partnerships is one way to begin to remedy these harms and offer community members the opportunity to exercise self-determination, which can positively affect health.

Partnering with communities also makes public health work more likely to succeed. Community members bring valuable experience and insight about what is needed, what works, and how people are already navigating complicated issues and systems. Involving community members in the policymaking process early and often can also make it easier for health departments to get buy-in for effective policy change.

In Parts 2 and 3 of this series, we will explore in greater detail how agencies can engage community members and promote health equity while carrying out their broad range of regulatory activities.

Slide 52

We encourage you to incorporate people-centered community engagement in your public health activities. In addition, when you are thinking about the potential equity implications of a particular agency action – whether it's making, implementing, or enforcing a law – it's important to think through some initial guiding questions:

- First, ask yourself, Who is the individual or community that has been harmed?
- Second, ask, Who stands to benefit from a particular policy, and how exactly would they benefit?
- Finally, ask, How can we prevent future harm?

Of course, this is a simple exercise that cannot capture all the nuances or replace community voices. But these questions can provide a helpful starting point, and asking them can help ensure that public health efforts do not cause unintended negative consequences or worsen health disparities.

We offer this exercise as an equity practice tip; keep these questions in mind as you apply the concepts from this training to your work.

Slide 53

Let's pause again for another quick review question:

Administrative agencies can do which of the following?

- A. Make laws
- B. Implement laws
- C. Interpret and enforce laws
- D. Make and implement laws
- E. Make, implement, interpret, and enforce laws

Slide 54

If you picked E, you're correct! Agency activities range from making laws to implementing, interpreting, and enforcing them.

Slide 55

Before moving on, let's recap – because we have covered a lot so far. At the beginning of this training, we provided a foundational definition of administrative law. We also talked about the roles, responsibilities, and powers of administrative agencies, so we could begin to understand that administrative law spells out the specific *procedures* that public health agencies must follow when engaging in the everyday activities we've just discussed. In this way, administrative law acts as guardrails for administrative actions and helps to ensure appropriate separation of powers.

Part 4: Why is administrative law important for public health?

Slide 56

Now that we have a foundational understanding of what administrative law is and what administrative agencies do, let's take a step back and highlight some of the reasons why understanding administrative law is so important to public health.

Slide 57

We'll use the hypothetical example of Jackie, an environmental health inspector who works in the local health department in the City of Innovation. As we go through this example, see if you can identify the points where an understanding of administrative law would be important.

Recently, a community-based organization working with immigrants with low income reached out to the health department's director about poor occupational conditions faced by immigrant restaurant workers in the community. The director asked Jackie to convene a community-based research collaborative to examine the issue. The collaborative included members of the community-based organization, health department staff, and researchers and doctoral students from a local university. The collaborative examined the pervasiveness of wage theft and labor violations among low-wage and immigrant restaurant workers.

Slide 58

Through online research and interviews with immigrant restaurant workers, the collaborative found that a number of administrative, political, and economic forces had helped weaken local labor standards, disproportionately affecting the economic security, health, and wellness of immigrant workers and their families. The research and interviews revealed that immigrant and low-wage workers in the community faced high rates of wage theft and poor working conditions.

For example, of the restaurant workers the collaborative surveyed,

- Half reported making less than minimum wage;
- Almost all (95%) did not receive a living wage;
- Nearly half (48%) had experienced burn injury; and
- Only 3% of workers had employer-provided health care.

Slide 59

These working conditions and economic inequities were directly contributing to high rates of stress, mental health issues, substance use, and occupation-related injuries. So Jackie's health department decided to use its regulatory authority to address the inequitable and unhealthy labor practices. In the following section, we'll discuss whether doing so would be outside the scope of the health department's regulatory authority.

This example highlights three key reasons that an understanding of administrative law is important to public health practice.

Slide 60

First, as we have discussed, health departments themselves are administrative agencies that engage in a wide range of regulatory activities, so they are subject to the administrative law doctrines adopted in their jurisdictions. Remember, administrative law acts as guardrails that shape what health departments and other administrative agencies can do, and it affects how public health officials operate on a day-to-day basis. These guardrails are particularly important in public health actions, in which the fundamental principle is to balance the rights of affected individuals against protection of the common good. That balancing can be very complex and is further explored in our trainings **Public Health Threats & the US Constitution: What Responders Need to Know About Equity, Law, and Public Health Authority** and **Public Health Law: Past & Present**. The point we want to make here is that administrative law can help public health practitioners understand this balance.

So, in Jackie's case, an understanding of administrative law is important to ensure that her health agency works within the guidelines set by administrative law and does not exceed the scope of its authority. Keep this point in mind when we talk about limits on agency authority in the next section.

Slide 61

Next, let's look at the second key reason that administrative law is important to public health practice: public health work relies on a wide range of agencies *other than* health departments. For example, at the local level, agencies that commonly affect public health include parks and recreation, housing, planning, and public works.

Knowing those agencies and what they do is important for coordination and collaboration. Understanding administrative law can help practitioners in health departments identify how they can influence or participate in the regulatory process of other agencies (for example, by supplying data, evidence, advice, or assistance to agencies that are dealing with issues that affect community health). This understanding can also help health departments collaborate directly with other agencies through a Health in All Policies framework or an interagency work group. Administrative law doctrines affect other agencies just as they affect a health department. Recognizing this fact – and understanding what those agencies can and can't do – can help health departments create more empathetic and functional partnerships.

Slide 62

Jackie's case is a great illustration of how collaboration with other regulatory agencies – as well as with community-based organizations – can be an effective, efficient, and resourceful way to advance shared equity goals.

In the City of Innovation, enforcing labor laws can be time-consuming and costly and might require civil litigation. To avoid this problem, the local office of labor standards asked Jackie's health department to use its permit authority to help support compliance with local labor laws. Specifically, the office of labor standards asked the health department to suspend the permits of certain restaurant owners who had refused to pay wages owed to their workers. In such a situation, an understanding of the scope and limits of an agency's regulatory authority is very important. We'll talk about these limits shortly.

We should also note that community-based organizations are key partners in advancing public health and health equity. Their efforts to educate both the public and decision makers can help to identify and solve health problems as well as pull in new partners and resources.

Slide 63

Finally, here is the third key reason that administrative law is important in public health practice: individual health agencies' actions can profoundly affect public health in the entire nation. When one health department successfully navigates the administrative law guardrails, the implemented policy can be taken up by other agencies and become more widespread. The impact can be on higher or lower levels of government or on other agencies at the same level; and any of those impacts can result in a policy that spreads throughout the state or nation.

Slide 64

In fact, many public health innovations have stemmed from local agency action. Consider, for example, innovations in tobacco control – one of public health's 10 greatest achievements.

In Massachusetts, local boards of health in Boston and other municipalities throughout the state issued rules banning the sale of cigarettes in pharmacies. In West Virginia and Michigan, public health agencies used their rulemaking authority to expand the scope of their states' smoke-free workplace laws to cover all indoor public places. These are a couple examples of regulations that have since been replicated in other states and localities across the nation.

So, state and local health departments can help advance healthy changes not only in their own jurisdictions but sometimes in other states or even the entire nation. For instance, the federal Tobacco 21 law developed from state and local laws that raised the minimum legal age for sales of tobacco products to 21. Tobacco 21 became the law nationwide in 2019, so it is illegal for retailers to sell tobacco products to anyone under the age of 21.

Slide 65

Understanding how agencies can work within the guardrails of administrative law can help health departments move their efforts upstream to address the social determinants of health – for example, employment and economic security – a shift that is critical to achieving community health and equity.

Part 5: What are the limits on agency actions?

Slide 66

As we have discussed, public health agencies play a powerful role in shaping population health outcomes through a wide range of public health interventions. However, there are important limits on their power. We've talked about one of the reasons why limits are important: to ensure appropriate separation of powers (that is, to ensure that agencies do not exceed the scope of their delegated authority). And we alluded to another reason when we mentioned the importance of balancing individual rights against the public good.

Let's explore the limits on public health agencies' actions by looking at some of the key administrative law doctrines that public health agencies must follow when engaging in the types of regulatory activities we've just discussed.

Slide 67

To explore those limits, let's continue with our case example about Jackie. Can Jackie's health department use its regulatory authority to address inequitable and unhealthy labor practices?

Slide 68

To determine whether her health department can address the labor violations and occupational health hazards that have been brought to its attention, what should Jackie do first?

- A. Let the public know that the local health department will be regulating wage theft and occupational health disparities
- B. Draft the text of a regulation prohibiting wage theft
- C. Consult her legal team or city attorney to make sure the health department has been granted the appropriate authority to take the actions it is considering
- D. Answers A (let the public know) and B (draft the text of a regulation)
- E. None of the above

Slide 69

If you picked C, you're right! Remember that state and local health departments may engage in regulatory activities only if they've been granted the authority to do so by a legislative body. As we'll discuss further in a moment, it's wise for state or local health departments to confirm that they've been granted the authority to regulate in a particular issue area *before* engaging in any regulatory activities. Consulting a local attorney can be helpful.

Slide 70

Jackie starts by reading the local food code to see whether her agency has any authority to prevent wage theft. She identifies several relevant provisions supporting health department authority to ensure compliance with existing labor laws. She then seeks legal counsel from the city attorney's office to confirm her interpretation of the law.

The city attorney's office confirms that according to the local food code, the local health department can suspend or revoke a restaurant's health permit if the restaurant violates any local, state, or federal law. Therefore, the health department can revoke or suspend a restaurant's license not only when it demonstrates unsafe food practices but also when it violates existing labor laws.

Now that she has confirmed her agency's authority to address this issue, Jackie must continue working with her legal team and with the local office of labor standards to determine what steps come next. This stage is where an understanding of administrative law is particularly important.

Slide 71

Generally, agencies must follow basic administrative procedures at federal, state, and (in some cases) local levels. These laws put guardrails or limits on agencies' regulatory authority. There is no single source of administrative law. Instead, it's an amalgamation of many different legal sources, including constitutional principles, legislation, judicial decisions, and regulations.

As we'll discuss, there are many similarities between procedural requirements at federal and state levels. There is significant variation, however, at the local level.

Slide 72

One major difference is that many local health departments operate without any mandatory, overarching legislative guidance on how to carry out their regulatory activities – from making regulations to issuing or revoking permits or otherwise enforcing public health laws. In fact, several large cities – including Chicago, Los Angeles, Houston, and Phoenix – lack an ordinance that governs administrative procedures.

Slide 73

If Jackie lives in a city or county without such administrative procedures, she should work with her legal team to learn what procedures and best practices they typically follow. Often, jurisdictions without overarching procedural legislation follow federal and state administrative requirements, which are designed to promote transparency, accountability, and fundamental fairness – also known as *due process*. Following is a snapshot of how federal and state administrative requirements promote these principles, which are part of the backbone of administrative law.

Slide 74

We'll start at the federal level, with the US Constitution. If you've taken any of the trainings in our Introduction to Public Health series, you might recall that the US Constitution determines the scope and limits of the federal government's authority, including federal administrative agencies' authority.

Slide 75

We've already talked about one of the ways that the Constitution limits agency authority – through the separation of powers. Separation of powers means that agencies in the executive branch can't infringe on the responsibilities of other branches of government – the legislative branch and the judicial branch (which runs the courts).

The separation of powers doctrine has important implications for agencies' involvement in regulatory activities – at all levels of government – for two reasons. First, agencies can engage in regulatory activities, such as creating regulations or conducting inspections, *only* if those activities are within the bounds of a specific delegation of authority from a legislative body. For example, if a local ordinance gives an agency the authority to create regulations that implement the locality's smoke-free air act, that agency probably could not write regulations for, say, banning the sale of flavored tobacco products. Regulation of flavored tobacco products would likely be outside the scope of the legislative body's delegation of authority, unless there was an additional or broader grant of authority.

Slide 76

The other way that the Constitution limits agency authority is due process. Under the Fifth and Fourteenth Amendments of the US Constitution, the government cannot deprive individuals of life, liberty, or property without due process of law.

Due process of law . . . what does that mean? Due process looks at the fairness and reasonableness of government actions that may affect life, liberty, or property – such as revoking a license, imposing a fine or penalty, or shutting down a business due to a health or safety violation.

Slide 77

Another important guardrail is the federal Administrative Procedure Act (APA). Congress enacted the APA in 1946 to make sure that agencies act in alignment with the constitutional principles we just described. The APA ensures relative uniformity among federal agencies and spells out the procedures they must use when developing regulations or conducting other administrative actions and proceedings.

Note that the federal APA applies only to federal agencies, not state and local agencies.

Slide 78

It's also important to look at federal legislation that defines or expands a particular agency's powers, to understand the scope and limits of the agency's regulatory authority. For example, the federal Clean Air Act gives the Environmental Protection Agency – the EPA – authority to regulate motor vehicle emission standards for “any air pollutant . . . which may reasonably be anticipated to endanger public health or welfare.” So, although the EPA may regulate motor vehicle emission standards, it must (under the Clean Air Act) adequately demonstrate that the pollutant it seeks to regulate could cause or contribute to air pollution that endangers public health.

This requirement ties back to the scope of an agency's powers and enabling legislation, which we talked about earlier.

Slide 79

Finally, sometimes the scope of agency authority is vague and requires a court to interpret whether an agency has exceeded its authority. Once the judiciary makes a determination and issues a ruling, the court's interpretation is usually binding on the agency and on other parties throughout the jurisdiction. This type of law is called *case law*.

Slide 80

Let's pause again for a quick question:

True or false? The federal APA does *not* apply to state and local agencies.

Slide 81

If you picked "True," you're correct! The federal APA applies only to federal agencies, not state and local agencies.

Slide 82

So, while Jackie is at the local level and the federal APA does not apply to her, she can still use federal constitutional concepts – such as separation of powers and due process – to guide her actions.

Slide 83

Let's say Jackie receives a phone call from a resident who is complaining about food safety practices at a local restaurant. The health department can't permanently close the restaurant solely because of the phone call. The health department would generally need to conduct an inspection, find a violation, notify the owner that the restaurant is violating food safety laws, and then give the owner an opportunity to fix the issue or appeal the finding of a violation. These additional steps are all part of what we call *procedural due process*, which ensures fairness to regulated people and businesses.

Note that the owner could legally challenge any failure to follow proper administrative procedures. For example, the owner could challenge the health department's notice of an alleged violation or whether the health department provided an opportunity to respond to or remedy the issue. So it's important to understand the legal requirements in the relevant administrative law doctrines for your state.

Slide 84

Let's turn to state administrative law, which is generally analogous to the federal doctrines we've just discussed. For example, state constitutions must be in sync with the US Constitution and spell out how state and sometimes local administrative agencies are organized and operated. Some state constitutions establish the agencies themselves. State constitutions may also establish due process requirements that are similar to those in the federal Constitution.

Slide 85

State legislatures typically adopt legislation very similar to the federal APA. Like the federal APA, state APAs establish the rules for how state agencies operate, how they are allowed to regulate, and how they should conduct hearings and appeals. State APAs even get down to the details of how agencies make rules and turn them into binding law.

Slide 86

Finally, we want to mention state statutes and judicial decisions, which also carry the force of law. It's important to look at relevant state legislation or statutes that define or expand a particular state agency's powers.

And as we mentioned earlier, sometimes it's up to the courts to figure out whether an agency has exceeded its delegated authority. Judicial decisions made by state courts are an important source of administrative law. For example, in Jackie's case, she should be aware of any decisions interpreting the laws pertaining to her local health department's regulatory authority. She should know what those decisions say and whether they affect the department's ability to ensure compliance with existing labor laws. Connecting with her agency's attorney or legal team to explore this issue might also be helpful.

Slide 87

To learn more about how administrative law works in your state, visit the website for your state's government or secretary of state. Many states have an office of administrative law, an administrative law division, or an administrative law court division that provides information about rules, rulemaking, and the public meeting calendar.

Also, USLegal.com is a free online resource that provides links to states' administrative procedure acts.

Slide 88

Before we conclude, let's review what we've learned with a quick question.

True or false? Without a local ordinance establishing administrative procedures, local health departments may not engage in regulatory activities.

Slide 89

The answer is "False." As long as the health department has been delegated the authority to engage in a regulatory activity – from creating regulations to conducting inspections or otherwise enforcing public health laws – it may do so, following best practices and procedures that ensure transparency, accountability, and fundamental fairness, or due process. Often, the procedures used in jurisdictions without overarching procedural legislation follow federal and state administrative requirements, which are designed to promote transparency, accountability, and due process. Again, working with a local attorney to understand legal requirements and best practices is important.

Slide 90

The hypothetical example about Jackie that we've been discussing is based on a real case study from the San Francisco Department of Public Health, which is highlighted in [HealthEquityGuide.org](https://www.healthequityguide.org), a project of Human Impact Partners. Using its regulatory authority, the health department was able to help the San Francisco Office of Labor Standards Enforcement enforce local labor laws related to wages, paid sick days, and employer-required health care contributions.

We highlighted this example for a couple of reasons. First, it illustrates how health departments can use one of their bread-and-butter regulatory activities – restaurant permits and inspections – to address the social determinants of health and health equity. This example also demonstrates the importance of understanding the limits on agency authority and how agencies can work to advance health equity within administrative law's guardrails.

Finally, the case study demonstrates the equity practice tip we discussed at the beginning of this training. It exemplifies how an agency's public health efforts can incorporate strategies for promoting health equity, including

- Robust community engagement through participatory action research;
- Partnership building and interagency collaboration; and
- Inviting varying perspectives to address the physical, social, and economic health and well-being of community members.

Final Takeaways & Acknowledgments

Slide 91

In closing, here is a recap of what we discussed:

We began with a fundamental definition of administrative law.

Next, we grounded the conversation in health equity and provided the context for how health departments can shape equitable health outcomes – a recurring theme in this training.

Then, we defined administrative agencies and explored core concepts to help illustrate the legal powers of health departments.

We also discussed why understanding administrative law and the legal powers of health departments is important for achieving health and equity, using Jackie’s case as an example.

Finally, we examined the limits on health agencies’ powers.

We encourage you to watch the second and third parts of this training series on administrative law, which explore how health departments create regulations and how they implement and enforce laws.

Slide 92

Individuals who work as public health practitioners, lawyers, and policy experts in state, tribal, local, and territorial health departments need measurable skills to move their careers forward. CDC’s Public Health Law Program developed the Public Health Law Competency Model to help guide practitioners in their career trajectories. This module of the Public Health Law Academy covers the four competencies listed on this slide, to build skills in public health law for public health practitioners. We want to note that these are not the objectives for this course but are general public health law competencies suitable for public health professionals at all career levels, from students to entry-level staff to supervisors and executive-level managers.

The four competencies are

- Defining basic constitutional concepts that frame the everyday practice of public health;
- Describing public health agency authority and limits on that authority;
- Identifying legal tools and enforcement procedures available to address day-to-day (non-emergency) public health issues; and
- Distinguishing public health agency powers from those of other agencies, legislatures, and the courts.

Slide 93

This training was supported by the Centers for Disease Control and Prevention of the US Department of Health and Human Services – or HHS – as part of a financial assistance award totaling \$210,000 with 100 percent funded by CDC/HHS. The views expressed in written materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services, nor does the mention of trade names, commercial practices, or organizations imply endorsement by the US Government.

Slide 94

<End>