Advocating for Impact

Navigating the Executive Branch and the Regulatory Process

Colorado Health Foundation
That across Colorado each of us can say: “We have all we need to live healthy lives.”
Webinar Goals

• What are the legal parameters for nonprofit engagement during the regulatory and rule-making process?

• What is the process for Colorado state agencies to promulgate rule and regulations?

• How can engaging in the regulator process advance an organization's mission?

• What are effective strategies and tactics for influencing the regulatory and rule-making process?
Quick Note on 501 (c)3 Legal Constraints

• 501(c)(3) tax status does not restrict a nonprofit organization’s engagement in regulatory advocacy

• Regulatory advocacy is not lobbying. “Lobbying” is attempting to influence specific legislation (e.g. bills introduced in the state legislature and ballot measures)
Today’s Presenters

**Sarah Stachowiak**  
CEO  
ORS Impact

**Suzanne Staiert**  
Deputy Secretary of State  
Colorado

**Bill Jaeger**  
Vice President  
Early Childhood Initiatives  
Colorado Children’s
Beyond the Win: Theory and Practice in Policy Implementation Advocacy

Sarah Stachowiak
CEO, ORS Impact
The Policymaking Lifecycle

1. Agenda Setting
2. Policy Formulation
3. Policy Adoption
4. Policy Implementation
5. Policy Evaluation

Revision arrows connect each step, indicating the iterative nature of the process.
Unique Characteristics of Policy Implementation Advocacy

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Venues Can Change And Impact Implementation
Unique Characteristics of Policy Implementation Advocacy

- Technical Expertise Matters—A Lot
- Implementation Stakeholders Have Different Motivations
- Who’s Interested Differs Post-Policy Adoption
- Oppositional Approaches Are Often Less Useful
- Venues Can Change And Impact Implementation

It’s Not A “Pivot”!
Three Types of Advocacy

- Administrative Advocacy
- Implementation Advocacy
- Ongoing Capacity Maintenance
Top-Down Theory

Programmed Implementation
Successful policy implementation requires:

- Clear and consistent **objectives** based on adequate causal theory
- A legally structured process to enhance **compliance**
- Committed and **skilled** implementing officials
- Support from **interest groups** and sovereigns
- Prioritization of **political support or causal theory** over changes to account for socio-economic conditions
Bottom-Up Theory

Adaptive Implementation
Successful policy implementation considers:

- The interaction of policy and local context with regard to resources, access, power, and social capital
- Flexible policies that can be adapted at the local level
- Direct engagement with those most impacted by the policy
Conflict Ambiguity Framework

- High Conflict, Low Ambiguity
- High Conflict, High Ambiguity
- Low Conflict, Low Ambiguity
- Low Conflict, High Ambiguity
When you think about a legislative campaign’s theory of change, have you thought of ways you can use administrative, implementation, or ongoing capacity maintenance strategies early on in the policymaking lifecycle?
Beyond the Win: **Five Considerations** for Policy Implementation Advocacy

**When you think about a legislative campaign’s theory of change, have you thought of ways you can use administrative, implementation, or ongoing capacity maintenance strategies early on in the policymaking lifecycle?**

**Are you thinking about how your advocacy tactics will differ between legislative campaign activities and implementation activities?**
Beyond the Win: **Five Considerations** for Policy Implementation Advocacy

When you think about a legislative campaign’s **theory of change**, have you thought of ways you can use **administrative**, **implementation**, or **ongoing capacity maintenance strategies** early on in the policymaking lifecycle?

Are you thinking about how your **advocacy tactics will differ** between legislative campaign activities and implementation activities?

Have you thought about **who the main implementation actors** are or will be and their motivations?
Beyond the Win: **Five Considerations** for Policy Implementation Advocacy

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Have you thought about **who the main implementation actors** are or will be and their motivations?

Have you considered if and how you will **include stakeholders and beneficiaries** in your advocacy efforts to inform rulemaking?
Beyond the Win: **Five Considerations** for Policy Implementation Advocacy

- **When you think about a legislative campaign’s theory of change**, have you thought of ways you can use **administrative**, **implementation**, or **ongoing capacity maintenance strategies** early on in the policymaking lifecycle?

- Are you thinking about how your **advocacy tactics will differ** between legislative campaign activities and implementation activities?

- Have you thought about **who the main implementation actors** are or will be and their motivations?

- Have you considered if and how you will **include stakeholders and beneficiaries** in your advocacy efforts to inform rulemaking?

- Have you considered how you can **reflect and learn** from past experiences or current efforts to continue to refine your policy implementation related work?
Visit ORSIMPACT.COM to download
Beyond the Win: Pathways for Policy Implementation
Colorado Deputy Secretary of State
Suzanne Staiert

State Rulemaking Training
October 16, 2017
When the legislature passes laws, it may provide authority for state agencies to adopt administrative rules that interpret, implement, and enforce those laws.

The rulemaking process is governed by the State Administrative Procedure Act (“APA”), which imposes requirements for notice and public comment.

The rulemaking process is legislative in nature, so the agency can communicate directly with stakeholders during the process.

- Different from other types of hearings under the APA, which are quasi-judicial in nature.
Published twice monthly, on the 10th and 25th of the month.

Official publication for state agency rulemaking filings, including:
- Notices of rulemaking hearings.
- Proposed, new, and amended rules.
- Attorney General opinions.

Also publishes annual departmental regulatory agendas.

May include other public notices.

Includes a calendar of hearings.
Individuals can sign up to receive email notices when an agency publishes in the register:
Select as many individual agencies as desired, or choose “all”:
An eDocket is created when an agency files its notice of rulemaking hearing.
- Can search eDockets by tracking number (published with the notice in the Register) or by agency:
Provides a real-time log of agency filings for that rulemaking:

**Code of Colorado Regulations eDocket**

Official Publication of the State Administrative Rules (24-4-103(11) C.R.S.)

**Details of Tracking Number 2016-00596**

**CCR details**

- **Tracking Number**: 2016-00596
- **Type of Filing**: Permanent Rule
- **Department**: 2505, 1395 Department of Health Care Policy and Financing
- **Agency**: 2505 Medical Services Board (Volume 6, Medical Assistance, Children’s Health Plan)
- **CCR Number**: 10 CCR 2565-10 B 290
- **CCR Title**: MEDICAL ASSISTANCE - SECTION 8.200

**Proposed rule**

- **Notice Filled with SOS**: 11/18/2016
- **Rule**: ProposedRuleAttach2016-00596.doc
- **Statutory Authority**: 25.5.1-381 through 383 (CRS 2018)
- **Description of Subjects/Issues**: see attached
- **Purpose/Objective of Rule**: see attachment
- **Submitted in response to issues raised by COLS/OLS?):** No
- **Is this rule adopted in response to recent legislation?**: No
- **Hearing Date**: 01/13/2017
- **Hearing Time**: 09:00 AM
- **Hearing Location**: 303 East 17th Avenue, 11th Floor, Denver, CO 80203
- **Contact Name**: Chris Sykes
- **Contact Title**: Medical Services Board Coordinator
- **Contact Telephone**: 3038664416
- **Contact email**: chris.sykes@state.co.us

**Adopted rule**

- **Adopted Rules**: AdoptedRules12016-00596.doc
- **Redline**: Redline2015-00596.pdf
Rulemaking Timelines: Permanent Rules

- Agency files a notice of rulemaking hearing.
  - Publishing deadline: 15th or end of month.

- Notice is published in the Colorado Register.
  - 25th of same month or 10th of next month.

- Agency holds rulemaking hearing.
  - Statutory minimum: 20 days after publication.

- Agency adopts rules.
  - Statutory maximum: 180 days after last hearing.

- Agency requests AG opinion.
Rulemaking Timelines: Permanent Rules

- AG issues opinion.
- Agency files adopted rules with SOS and OLLS.
  - Statutory deadline: 20 days after adoption.
  - Publishing deadline: 15th or end of month.
- Rules published in Register.
  - 25th of same month or 10th of following month.
- Rules become effective.
  - Statutory minimum: 20 days after publication.
- Rules published in the Code of Colorado Regulations.
  - Generally on effective date.
Temporary or emergency rules may be adopted if the agency finds that immediate adoption is imperatively necessary:

- To comply with a state or federal law or federal regulation; or
- For the preservation of public health, safety, or welfare, and compliance with permanent rulemaking timeline would be contrary to the public interest.

The agency findings must be made on the record and published with the rule.
Rulemaking Timelines: Emergency Rules

- Agency adopts rules.
- Agency requests AG opinion.
- AG issues opinion.
- Agency files adopted rules with SOS and OLLS.
  - Statutory deadline: 20 days after adoption.
  - Publishing deadline: 15th or end of month.
- Rules published in Register.
  - 25th of same month or 10th of following month.
Rulemaking Timelines: Emergency Rules

- Rules become effective.
  - Statutory minimum: adoption date. Agency may choose later date.

- Rules published in CCR.
  - As close to effective date as possible.

- Rules are removed from CCR after expiration unless replaced by further rulemaking.
  - Statutory deadline: emergency rules expire 120 days after adopted date (exceptions for PUC and WQCC).
Public Comments

- At the hearing, the agency must allow the public to submit data, views, or arguments, in writing or orally.

- Written comments:
  - Generally, may be submitted after the notice and up to the hearing date.
  - Details on how to submit are often provided in the notice of hearing.
  - Become part of the official record.

- In person comments:
  - Depending on the hearing and agency, providing oral testimony may allow opportunities for questions and discussion between agency staff and constituents.
  - Hearings are recorded and become part of the record.
The 3 Rs of Regulatory Advocacy

• Research
  – Policy levers for positive change

• Relationships
  – Agency leaders
  – State Board members

• Rallying
  – Public comment
  – Testimony
Regulatory Policy Change Examples

• Colorado Child Care Assistance Program
  – Prompted by HB 14-1317
  – 2 Years of Stakeholder engagement, 3 separate rules packages

• Child Care Center & School-Age Rules
  – Existing statute, periodic review
  – Healthy eating & active living priorities
Follow-up

Bill Jaeger
Vice President, Early Childhood Initiatives
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bill@coloradokids.org

Thank you!
**Additional Resources**

- **Webinar and additional resources at**
  - [www.coloradohealth.org/advocating-impact](http://www.coloradohealth.org/advocating-impact)

- **Serving on a board or commission**
  - Colorado Office of the Governor Boards and Commissions
    - [https://www.colorado.gov/governor/boards-commissions](https://www.colorado.gov/governor/boards-commissions)
  - City and County of Denver Boards and Commissions
  - Montrose County Boards and Committees