

SUMMARY OF CONVERSATIONS WITH RULEMAKING EXPERTS

# Colorado's Policymaking Processes: Administrative Rulemaking

JUNE 2023




The Colorado Health Foundation™



"We can't keep passing innovative policy but then implement at departments under old bureaucracy – a Tesla doesn't run on a Model T body."

– State agency contractor



# Summary of Conversations with Rulemaking Experts

**WHAT COULD IT LOOK LIKE FOR OUR STATE GOVERNMENT TO OPERATE DIFFERENTLY, TO SHIFT ITS POLICYMAKING PROCESSES AND PROCEDURES TOWARD A MORE INCLUSIVE, EQUITABLE, AND JUST SYSTEM?**

## INTRODUCTION

The Colorado Health Foundation (CHF) is the state’s largest private foundation and works across every corner of the state to bring good health and well-being within reach for everyone who calls Colorado “home.” So much of our health is not only based on individual choices and the conditions of our neighborhoods, but also on the public policies that govern our lives. We believe all Coloradans should have the tools and opportunities to be healthy where they live and should have a voice in the decisions that impact them.

The COVID-19 pandemic forced organizations, including government institutions, to adapt and adjust how they operate. In light of this opportunity for innovation, CHF staff leaned into learning what these changes could teach us about reimagining the ways we could lift up the voices of Coloradans to better inform how public policy decisions are made - to shift power to those most impacted by these policy decisions that make leading a healthy life a reality.

In 2021, CHF policy staff began exploring not just **what** specific policies become law in Colorado, but also the underlying **how**. How do Colorado’s state government institutions operate? What are some of the pain points where people feel excluded, confused, or unwelcome in the ways in which policy is currently made in our state? Exactly what is it about the procedures of introducing, crafting and implementing policy decisions that influences who participates in the process? We wanted to better understand where and how these “rules of the game” affect which voices tend to have the greatest influence on policy decisions in our state.

## METHODOLOGY

Because consideration of the policymaking process itself has been a relatively under-explored area of focus for CHF’s policy engagement in the past, we looked to other organizations and individuals entrenched in Colorado policymaking to help us deepen our perspective on how state government could operate differently to make the processes and procedures more inclusive, equitable and racially just. We completed interviews with 25 organizations that engage in advocacy work and 19 current and former legislators, legislative staff and lobbyists to gather perspectives on what works well and where there could be opportunities to change processes to be more inclusive and equitable. The results of these conversations are available in our [February 2022](#) and [February 2023](#) reports.

The initial investigation delved into the operations of Colorado’s state legislature, administrative processes, statewide ballot measures and the judicial system. While a range of barriers and opportunities for greater inclusion surfaced in each of these categories, CHF decided to further investigate opportunities to improve state legislative and administrative rulemaking processes following a series of conversations with advocacy partners and internal analyses.

The first two rounds of interviews were not exclusively focused on state rulemaking procedures; however, they did surface ideas from advocacy organizations and policymakers on meaningful opportunities to improve rulemaking efficiency, engagement, and accessibility. Reflections from these initial conversations are included in **Appendix A** for reference.

In March and April of 2023, CHF completed a third round of conversations with 17 additional individuals with deep experience within state rulemaking. These conversations included current and former representatives from state agencies and rulemaking boards, as well as others outside of state government whose roles frequently require them to interact with the rulemaking process. While this sample was by no means comprehensive, it represents a range of perspectives on Colorado rulemaking activity that can be a starting point for further exploration and inquiry. These respondents reflected on formal rulemaking processes from state boards and commissions as well as other actions taken by the Governor and/or state agencies to implement bills and budget items passed by the legislature.

Respondents were asked to reflect on their experiences interacting with rulemaking activity to understand:

1. What currently works well and allows a broad range of voices and perspectives to be heard during the rulemaking process?
2. What makes it difficult to engage in the process or potentially stacks the deck in favor of only certain perspectives or interests being heard?
3. If you had a magic wand, what changes would you make to the rulemaking process to make it more inclusive, equitable and just?

CHF staff analyzed what we heard in these conversations for key themes and potential opportunities for further exploration. Those themes are presented in the following sections in **alphabetical order**. The number of times each issue was mentioned is included in parentheses, **though the quantity of mentions does not necessarily represent the level of importance**.

*The contents of these reports are reflective of the viewpoints and experiences of the interviewees, and are not to be taken as a recommendation, opinion, or viewpoint from CHF. CHF is ready to work with partners across the state to advance meaningful reforms in service of all Coloradans.*

## **Administrative Rulemaking (N=17)**

In Colorado, rulemaking occurs across a broad range of boards and commissions. No two processes are the same and experiences largely depend on the composition and practices of individual boards and agencies. With this acknowledgment in mind, respondents were asked to reflect on strengths, challenges and best practices that could potentially be broadly applied.



*“Today we are not in a place where it is generally easy to understand what it takes to participate [in rulemaking] but I think that is changing.”  
– State agency staff member*

### **WHAT WORKS WELL?**

When thinking about what works well in Colorado’s rulemaking processes, respondents mentioned the following strengths:

- **Accessibility and accommodations (5):** Remote testimony at rulemaking hearings opens up participation opportunities for a greater portion of the population, including greater geographic

representation of those testifying. Additionally, translation and interpretation services are available upon request for participants and audience members at some boards and commissions.

- **Community liaison/ombudsperson models<sup>1</sup> (3):** Some agencies have dedicated staff to engage constituents deliberately around rulemaking. These community liaison or ombudsperson models help bridge the gap between communities and stakeholders impacted by state agency rules and the decision-makers at those agencies by providing an opportunity for reciprocal dialogue about the issues most relevant to those communities.
- **More deliberate community connections (3):** Some state agencies have intentionally recruited board and staff members from diverse demographics and geographies across the state and ensured that agencies conduct effective engagement strategies for impacted communities.
- **Opportunities for community engagement (12):** Although imperfect, there are systems in place to receive notifications of upcoming rulemaking, sign up for public comment, and request cost-benefit analyses of new or amended rules. Rulemaking represents an opportunity for the public and subject matter experts to refine how policy is implemented in the state. Respondents shared examples from multiple boards that are soliciting community feedback on new and amended rules through inclusive stakeholder processes, publicly available information, and co-creation of state rules with community members, counties, and state agencies. In general, there is broad interest and support within boards and agencies to hear directly from community members.
- **Strong partnerships possible (2):** Some advocates maintain good working relationships with boards and have cultivated experience on effectively engaging in rulemaking spaces.

## WHAT ARE THE BARRIERS?

When asked about barriers that make it challenging to engage in the rulemaking process, a range of issues were discussed. Respondents highlighted the following issues:

- **Broad scope of boards (4):** Boards often cover wide-ranging issues, making it challenging for board members to feel equipped to make informed decisions and for stakeholders to track issues of interest.
- **Difficult for stakeholders to engage (5):** Rulemaking is highly technical – both in process and often in topics being decided – making it challenging for the general public to engage effectively. One respondent described the process as “intimidating and formal.” Other barriers cited included the length of time it takes to conduct rulemaking, and respondents noted the difficulties faced by advocacy organizations and members of the general public in staying abreast of processes that can take 12-18 months, in some cases, to conclude.
- **Inconsistencies across boards (4):** The statutory language that provides state agencies direction on how to conduct rulemaking is broad, which results in a lack of standardization in boards’ practices and processes.
- **Inequitable practices in the procurement process (3):** While not directly related to rulemaking, some respondents cited the state procurement process as an example of inequity in action. Procurement is the process by which state agencies establish contracts with external vendors for goods and services necessary to carry out a wide range of government functions and

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<sup>1</sup> Ombudsperson roles are responsible for investigating individuals’ complaints or concerns about how government programs and policies are administered, and they take different forms in Colorado’s state government. There are three standalone ombudsman offices addressing the issues of child protection, behavioral health, and long-term care across the state. In addition, the Colorado Department of Public Health and Environment has its own Environmental Justice Ombudsperson position that was created through the Environmental Justice Act of 2021. Some other state agencies employ community liaisons, who are tasked with ensuring there are open lines of communication between the agency and the people they serve. Both role types are intended to strengthen the relationships and communication between members of the public and their state government.

programs. Respondents named the reimbursement payment model a huge barrier, especially for smaller organizations that do not have the budget to sustain up to 6 months of debt before being reimbursed by the state. The length of time, and the overall bureaucracy of the current procurement process were also mentioned as specific barriers that particularly disadvantage smaller and more rural organizations, further perpetuating inequities in our state.

- **Inside game (5):** Respondents highlighted that cultivating effective relationships and navigating complex systems is essential to engaging in rulemaking. This poses a barrier for members of the public and smaller, grassroots advocacy organizations that may not have the staff time and resources to track activities of multiple rulemaking bodies.
- **Lack of board independence (7):** There is a sense that boards do not operate with enough independence from their respective state agencies or individual members, with respondents noting that board agendas appear to be driven by agency staff or individual board members' interests.
- **Lack of collaboration between levels and branches of government (4):** Feedback was twofold:
  - Legislators do not consistently see state agency staff as key stakeholders when crafting bills. This can result in a perceived disconnect between legislative intentions and what is actually designed during rulemaking and implementation.
  - State agencies do not always see county and other local-level implementers as key stakeholders when crafting and amending rules.
- **Lack of language support (2):** Although some language support is available at some boards, improvement in interpretation, translation and closed captioning services is needed to increase accessibility of the rulemaking process.
- **Less focus on and support for rulemaking and implementation processes (6):** Respondents noted that although there is a great deal of public time, attention and funding available when trying to get legislation passed, this decreases substantially during the rulemaking process. This lack of attention and resources makes it difficult to engage with the advocacy community effectively and to have adequate funding during implementation – which can lead to gaps between the original vision of the legislation and how it takes shape in practice.
- **Low staff and financial capacity (5):** Respondents reported a lack of staff capacity and financial resources dedicated to rulemaking in state and local government, that decreased these entities' ability to engage in the process thoroughly.
- **Misalignment between vision and execution (3):** Many processes at state agencies are overly bureaucratic, antiquated or not implemented effectively, which often results in rulemaking outcomes that differ significantly from the original policy vision of the legislature. For example, challenges with state agency procurement, staffing, financial resources and other factors can lead to differences between the initial program goals and how they are actually implemented after the rulemaking process.
- **Politicization of boards (3):** Some boards are perceived to operate in an overtly politicized manner that determines who is heard and who can exert influence in the rulemaking process.
- **Poor accountability to public input (6):** Respondents listed several ways they see a lack of board and state agency accountability to public input, including:



*“Legislation is more like low-hanging fruit – the true test is if you can stay with it through the implementation process and really be a translator for folks with lived experience who want and need to stay involved.”*

*– Rulemaking advocate*

- Public testimony being mostly “pro forma” with no structures in place to ensure that agencies even read the comments, much less act on them
- Tokenization of advocates and individuals with lived experience
- Difficulties in finding and retaining individuals from the community to serve on boards and commissions.
- **Poor communication to the public (3):** Communication with the public has complications regarding the how and the what. Websites and materials are often inaccessible in language and layout. Respondents also mentioned how difficult it is to convey how different rules will impact community members and the overall poor understanding of how multiple agencies may be involved in regulating the same entity or issue (creating capacity issues for the public and advocacy organizations to know where to target their attention).

## WHAT WOULD MAKE THE RULEMAKING PROCESS MORE EQUITABLE, INCLUSIVE AND JUST?

Respondents were given a “magic wand” and asked what they would change about rulemaking processes to make it more inclusive, equitable and just. The following ideas were offered:

- **Consolidate boards (1):** Streamlining and consolidating boards would make it much easier to follow issues through the rulemaking process.
- **Create centralized, independent coordinating bodies to support public access and standardized practices to rulemaking (5):** Suggestions included:
  - Community liaison/ombudsperson roles provide a lifeline between communities and state government entities, laying the groundwork for increased trust and opening critical lines of communication and understanding. Additional resources could be dedicated to expanding these roles across state government, including for rulemaking bodies.
  - Create and fund a paid “intervener” program to reduce barriers to public participation in rulemaking activities. Under this program, some individuals or organizations that participate in rulemaking proceedings could apply for “intervener” status, making them eligible to request compensation for reasonable costs incurred due to their participation in the proceedings.
  - Create an office of public participation so there is a centralized contact available for the public to engage in the rulemaking process.
  - Designate a neutral entity solely focused on overseeing and monitoring state rulemaking activities and implementation – helping ensure adequate funding and that the final product stays aligned with the original vision.
- **Education, training and outreach for the public on rulemaking (10):** Suggestions included:
  - Educating the public on the importance and impact of rulemaking
  - Creating informational materials about boards and commissions
  - Conducting public trainings on how to engage in rulemaking proceedings to demystify the process
  - Ensuring that public policy curricula emphasize the importance of rulemaking.
- **Increase accessibility and consistency of rulemaking entities (7):** Standardize rulemaking processes by creating a centralized online portal to access rulemaking information, simplifying the language used, creating a “master calendar” of relevant rule-related dates early in the process, and making board meetings more accessible for public participation through clear communication about what to expect and how to engage.
- **Increase accountability between branches and levels of government (6):** Respondents focused on the need for greater co-creation and feedback loops between legislators and state agencies and between state agencies and local governments. Ideas included requiring legislators to consult with agencies when writing bills, boosting legislator understanding of what

state agencies do, and vetting legislative ideas alongside local governments to create realistic funding and implementation strategies.

- **Increase independence of boards (7):** Increasing the independence of boards from their associated state agencies would pave the way for more equitable practices in how board agendas are set, with the hope for greater public involvement and development of policies that benefit a wider range of communities and interests.
- **Increase support for nonprofits to navigate rulemaking processes (3):** Create a coordinating entity to act as “connective tissue” between state agencies and nonprofits seeking to navigate rulemaking proceedings. Support the creation of coalitions to increase grassroots organizations’ ability to engage in rulemaking work.
- **Membership and operation of boards (2):** Membership of boards should include people with lived experience in the programs being regulated. Additionally, special focus should be given to supporting board members to work in collaboration rather than opposition to each other.
- **Reform state procurement process (3):** Minimize bureaucracy in the procurement process and provide state funding up-front instead of solely on a reimbursement basis, which typically prevents rural nonprofits and smaller organizations from applying due to inadequate financial reserves. One respondent suggested creating a short-term revolving loan fund for nonprofits to access as part of the procurement process.
- **Require intentional outreach to communities impacted by rulemaking (6):** Boards and state agencies should prioritize regular, proactive and reciprocal engagement with communities directly affected by rulemaking to build trust, increase accountability to input from the public, and ensure that a broad range of perspectives are considered. Respondents specifically noted that fostering shifts in an internal agency culture that further prioritize equitable community engagement practices is a foundational component of effective engagement and accountability.
- **Strengthen rulemaking standardization and equitable engagement through improved statutory guidance (2):** Respondents suggested several reforms, including:
  - Updating the Administrative Procedure Act (APA) by adding a statutory requirement for rules to be vetted by a “lived experience panel”
  - Providing clearer guidance for implementation and associated rulemaking when crafting legislation (e.g., explicitly including all impacted boards in rulemaking)
  - Creating a playbook to support innovative community engagement during rulemaking proceedings.
- **Training and support for board members (4):** There is a need for more targeted training and support for board members as well as a need to focus on recruiting and supporting people with lived experience particularly – ideas included offering childcare, stipends, transportation support, etc. Respondents also suggested adding research staff to support boards and commissions.

## Conclusion

Administrative rulemaking is one of the most consequential – and complex – policymaking processes in Colorado. Whereas legislation often provides a broad outline for a particular policy, rulemaking is where the specific contours of that policy truly take shape. As such, robust collaboration and communication between rulemaking bodies and the individuals and communities most impacted by rules is essential. The ideas and suggestions captured in this report present an opportunity for our state to assess the status quo of how administrative rulemaking is conducted and consider changes that could make the process more equitable, to the benefit of all Coloradans.



# Acknowledgements

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## Appendix A: Reflections on Rulemaking from Advocates and Legislative “Insiders”

In 2021 and 2022, CHF policy staff completed interviews with 25 organizations that engage in advocacy work and 19 current and former legislators, legislative staff and lobbyists. While these initial conversations were not exclusively focused on rulemaking procedures, they did surface suggestions from advocacy organizations and policymakers on meaningful opportunities to improve state rulemaking efficiency, transparency and accessibility. Some of the themes related to administrative rulemaking have emerged to date include the following.

### **WHAT WORKS WELL?**

- **Better resourced than legislature:** It was noted that state rulemaking boards have dedicated, paid staff which is helpful with research and outreach.
- **More deliberate community connections:** The current administration has been more hands-on with connecting to community during rulemaking processes.
- **Strong partnerships possible:** The advocacy community is involved in the rulemaking process.
- **Strengths of different boards:** Some departments do rulemaking well; it was observed this is usually dependent on the staff in charge of the department.

### **WHAT ARE THE CHALLENGES?**

- **Difficult to engage constituents:** The public is generally unaware of rulemaking procedures and the process is not set up for meaningful community engagement.
- **High volume of rulemaking activity:** Multiple respondents reflected that the legislature passes too many laws without considering the implementation, resulting in a logjam of rulemaking requests that do not receive adequate time and attention.
- **Inconsistencies across boards:** The lack of standardization of processes across boards – including significant variations in websites, meeting rules and formats, treatment of public

comment, and notification and posting of materials makes it time-consuming and challenging to track rulemaking activities.

- **Inside game:** Administrative rulemaking was described as bureaucratic, lobbyist-dependent and deeply politicized. Respondents emphasized the importance of having relationships in place to know how to engage in or influence the rulemaking processes.
- **Lack of accountability:** Lack of accountability between branches of government was highlighted as a serious issue in Colorado. “There is no avenue for the legislature to question the implementation of a law,” one respondent stated.
- **Lack of transparency:** The rulemaking process was frequently described as “opaque.” The lack of data, visibility and access makes it impossible to empower advocates to engage effectively. As one respondent put it, “If we had better data, we could be having more meaningful policy discussions and get more diverse perspectives into the mix.”
- **Little community representation:** Staff and board members are not perceived as being broadly representative of community members.
- **No equity standards or expectations:** While a process exists to request fiscal cost/benefit analyses of proposed rules, there is no equivalent process to request an analysis of the equity impact of rules as they are being developed.

#### **WHAT WOULD MAKE RULEMAKING PROCESSES MORE EQUITABLE?**

- **Better enforce existing public meeting law requirements:** There should be stronger requirements around notifying the public about rulemaking activity and hearings.
- **Consolidate boards:** Consolidation of boards would help keep track of activity.
- **Create a singular access point for advocacy partners to access regulatory expertise:** Creating a “one-stop shop” clearinghouse for regulatory expertise and advocacy that nonprofits or other actors could utilize was suggested as a possible resource to support advocates working in the rulemaking space.
- **Improve community engagement and equity work:** Several respondents specifically mentioned that there should be dedicated staff for equity and engagement work. Agencies, commissions and task forces should consider hiring and working with individuals from the communities served.
- **Increase accountability between branches of government:** Ideas included incorporating some legislative oversight and evidence-based notice and comment during the rulemaking process and creating a reminder system that tracks the bills that have passed and the rulemaking associated with them that has taken place, in addition to others.
- **Increase transparency and consistency across agencies, departments and task forces:** Clear contacts, schedules, materials and timelines should be displayed consistently. There should also be more transparency in decision-making, budget development and data sharing processes.
- **Provide translation services:** Laws impact everyone in our state, so participation in the implementation process should not be limited to English speakers.
- **Reduce bureaucracy:** Engage the Governor to discuss reform of departmental bureaucracy.
- **Require intentional outreach to communities impacted by rulemaking:** It was suggested that listening tours, community conversations and standards in notifying communities impacted by rulemaking activity would be an advantage.

## About the Colorado Health Foundation:

The Colorado Health Foundation is bringing health in reach for all Coloradans by engaging closely with communities across the state through investing, policy advocacy, learning and capacity building. For more information, please visit [www.coloradohealth.org](http://www.coloradohealth.org).



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