Journal of Law, Medicine & Ethics (2026), **54**, 2, 195–205
doi:10.1017/jme.2026.10249

CAMBRIDGE UNIVERSITY PRESS

Independent Articles

Thinking Practically About How to Amplify Public Input in State Administrative Rulemaking

Maxim Gakh
University of Nevada, Las Vegas, Las Vegas, Nevada, United States

Abstract

Public input can provide state agencies with critical information as they adopt health-shaping rules. However, generating meaningful public input is challenging. State administrative procedure acts set out how state agencies must make rules and establish notice and comment processes to seek input into rulemaking. Notice and comment, though, is not conducive to meaningful public input. To enhance public input into state rules, government entities should not limit their engagement to notice and comment and should deploy, and maybe even amend, rulemaking processes to facilitate public input. Meanwhile, advocates and community members should prioritize state rulemaking, in all its phases, as part of their advocacy efforts.

Keywords: Public health law; State rulemaking; State administrative procedure; Community engagement; Policy engagement; Public input; Public comment

Providing the public with opportunities to influence governmental decisions is an important tenet and value in American democracy. Although participatory democracy is an ancient concept, its contemporary emphasis on public participation in governmental decision making emerged in the late twentieth century and intertwines with open government concepts.[1] Input from members of the public can influence governmental decisions that ultimately impact health; when members of the public speak to influence governmental decisions, their voices can exemplify or create political pressure. But members of the public can urge decision-makers to adopt laws that ultimately turn out to be "good" or "bad" for health — or that impact health in multiple ways that may be difficult to ascertain. For example, when some states expanded or modified — but many more states limited — the authority of executive agencies to address public health threats in the COVID-19 aftermath,[2] North Dakota's legislature overrode its governor's veto[3] to prohibit state-level elected officials, including the state health officer, from requiring people to wear face masks.[4] Legislative committee hearings were flooded with testimony from the public. Some urged legislators to adopt this contraction of power and others implored them to reject it.[5] Proponents and opponents alike relied on values and stories, as well as data and information, however accurate, to make their cases.

Many public health professionals, advocates, and scholars urge input into government decisions with potential health impacts by members of the community through the concepts of *community engagement* and *policy engagement*. The public health sector presupposes that employing *community engagement* and *policy engagement* can bring forward good ideas and relevant information to increase the likelihood that governmental entities, including legislatures and administrative agencies, make health-promoting decisions. However, much about the input of community members into government decisions with health impacts remains uncertain. There is no consensus on how to maximize the influence of community input on governmental decision making or how community input impacts the drivers and determinants of health. There are also no universal protocols for how to seek or provide community input into government decisions. These questions persist because barriers to community input may be contextual and stem, at least in part, from the type of governmental decision-making processes involved. The knowledge gap is especially prominent in understanding community input in the context of *state* rulemaking. Despite this uncertainty, given the potential for state rules to shape health, decision-makers should deliberately structure state rulemaking to encourage meaningful public input, and the public and advocates should prioritize engaging in state rulemaking — both in and outside of conventional notice and comment processes.

State Administrative Rules Influence Health

In the United States, government decisions with health impacts take many forms because the power to govern is shared among levels (e.g., federal, state, and local) and branches (i.e., legislative, executive, and judicial) of government. Therefore, decisions with potential health impacts can originate from a multitude of governmental decision-makers and can be formalized using various legal mechanisms (e.g., legislation, regulation, judicial opinions). Nevertheless, states in the US retain constitutional primacy to protect the public's health through their 10th Amendment police powers, which are shared horizontally between a state's legislative and executive branches and monitored by its judicial branch.

Email: maxim.gakh@unlv.edu

Cite this article: M. Gakh. "Thinking Practically About How to Amplify Public Input in State Administrative Rulemaking," *Journal of Law, Medicine & Ethics*, **54**, 2 (2026): 195–205. https://doi.org/10.1017/jme.2026.10249

© The Author(s), 2026. Published by Cambridge University Press on behalf of American Society of Law, Medicine & Ethics.

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

State executive branches are central to addressing health concerns within their borders. Notably, governors, to whom most state executive branch agencies report, possess tremendous power to influence health,[6] which they exercise both through official orders[7] and less formally. Within state executive branches, administrative agencies can also make decisions with health impacts. Long recognized as important for public health, state administrative agencies, including but not only health departments, are formed and empowered by state statutes.[8] Administrative laws design these agencies, set their leadership structures, establish agency powers and responsibilities, and create oversight mechanisms, such as standards and processes to reverse their decisions.[9]

Administrative agencies have been described as yet another branch of government because, in administrative agencies, mutually exclusive notions of executive, legislative, and judicial functions of government can break down.[10] For instance, state legislatures can vest state administrative agencies with *quasi-legislative* power — to adopt generally applicable regulations, or rules, on particular topics. These rules operate with the force of law.[11] Enabling agencies to adopt rules can make sense, especially in complex or technical areas, because agencies often possess deeper and more extensive subject matter expertise than legislators. Yet a legislature that gives away "too much" of its legislative power to an agency for rulemaking may invite separation of powers criticisms because rules are adopted by executive branch officials who may be straying too far into the domain of democratically elected legislators to "make law."[12]

The rules that state administrative agencies make are critical drivers of health, even though empirically assessing how they impact health is often best done in hindsight and may be complicated. State health department regulations may flesh out requirements and enable implementation in traditional public health areas, such as school-based immunizations[13] and licensing of food establishments.[14] Education, housing, employment, transportation, and other sectors also shape health through decisions that impact the built and natural environments and the social determinants of health.[15] State agencies with jurisdiction over these sectors may therefore impact health through the rules they adopt. For example, state education agencies may flesh out how students may be disciplined in school,[16] while state housing and development agencies may set building standards that impact health and safety.[17] Rules adopted by state agencies may contribute to health inequities, just as laws adopted through other mechanisms can create, reinforce, or exacerbate structural inequities.[18]

At the same time, many processes in which state agencies create rules that shape health are open to input and advocacy. Enhancing community input and advocacy in state rulemaking requires understanding what is known about community input into decisions with health impacts and considering how this body of knowledge aligns with the processes through which state agencies make rules.

Seeking Community Input Effectively

Many in the health sector operate from the premise that improving health and unwinding structural inequities requires meaningful input from community members, especially people who live the inequities, and that community input *can* and *should* drive how inequities are addressed.[19] Community engagement is viewed as a pathway to change environments, behaviors, programs, policies, and practices more effectively;[20] to reduce health inequalities;[21] and to improve public health practices and health outcomes through better communication, new allies, mobilized resources, enhanced community capacity, and greater trust.[22] The centrality of broad-based public health models, including the social ecological model (i.e., recognizing a role for multitudes of factors in shaping health), and the significance of the social determinants of health are used to justify seeking community members' perspectives to improve health.[23]

However, although the community engagement *concept* is pervasive in public health and ascribed with tremendous potential, it can be nebulous. An often-cited definition of community engagement is: "the process of working collaboratively with and through groups of people affiliated by geographic proximity, special interest, or similar situations to address issues affecting the well-being of those people."[24] The World Health Organization (WHO) describes community engagement as both a process and an outcome.[25] Complicated questions persist about the effectiveness of community engagement. Research suggests that — to some degree and at least for a time — community engagement *can* improve certain health drivers and outcomes.[26] But knowledge about community engagement effectiveness seems limited and contextual, and community engagement is difficult to study; we have yet to unearth which community engagement practices are most beneficial, especially in the long run.[27]

It is not always clear how to seek meaningful community input into decisions with health impacts, and many practical challenges can arise. A key challenge is to determine who should speak on behalf of a community. Another is determining how to operationalize community engagement, which can take many forms. For instance, community engagement can involve different levels of integration between the community and those engaging with it. According to the International Association for Public Participation (IAPP) Continuum, the least engaged form is "outreach," where information is shared with communities.[28] "Consultation" and "involvement" are more consolidated and consist of communicating information to the community and then receiving community input.[29] The two most integrated forms of community engagement involve pervasive and genuine "collaboration" and "shared leadership."[30] From outreach to shared leadership along this continuum, communication, involvement, and trust all increase.[31]

Rather than relying on protocols, community engagement typically operates from a set of principles.[32] One principle emanating from community engagement guidance emphasizes *valuing* community engagement.[33] This includes seeing the community as a resource, recognizing that engagement itself functions as a source of community power, and encouraging communities to "own" community problems and solutions.[34] Another principle emerging from community engagement guidance focuses on *building credibility, trust, and buy-in* with community leaders or intermediaries through sustained and dedicated investment in the community; understanding community perspectives thoroughly, humbly, and authentically; and recognizing that "communities" comprise diverse perspectives.[35] A third principle centers on *clarity.* Clarity includes establishing specific engagement objectives and concrete definitions of who constitutes the community;[36] effective communication; and transparent, accountable, accessible, and equity-focused engagement processes.[37]

The public health sector encourages community engagement across public health interventions of various types. But when those interventions are health-shaping policies, the public health sector often emphasizes *policy engagement.* Policy engagement can be defined as "the process by which practitioners, advocates,… and others seek to elevate problems through education and advocacy, and influence policy decisions."[38] Applied to the general public, *policy engagement* echoes the concept of *political participation*,

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

which Fishkin defines as "behavior on the part of members of the mass public directed at influencing, directly or indirectly, the formulation, adoption, or implementation of governmental or policy choices."[39]

Operationalizing *policy engagement*, like operationalizing community engagement, also relies on principles. At a minimum, policy engagement — from a public health perspective — involves (1) understanding the policymaking process; (2) creating a strategy based on the policymaking processes, politics, and engagement objectives (e.g., securing a change in policy adoption or enforcement);[40] and (3) taking specific actions that align with and can help realize the objectives[41] (e.g., providing information, building coalitions, advocating with decision-makers or in the community, deploying communications campaigns, pursuing ballot initiatives or other direct democracy efforts,[42] litigating strategically, influencing regulatory agencies).

Despite both differences and overlap, *community engagement* and *policy engagement* are umbrella terms to capture a range of participants exchanging ideas with a host of decision-makers and other stakeholders through various, collaborative processes. Both envision a long-term time horizon of interactions between decision-makers and those who are "engaging" with them. Community engagement focuses on decision-makers involving members of the public who are impacted by a health problem in solving it; policy engagement allows those inside and outside of a community impacted by a health problem to try to affect policy choices. Both concepts suggest that decisions that are "good" for public health hinge on representatives of communities or the public interacting with those who make health-impacting decisions. Importantly, effective community engagement and effective policy engagement are both highly situation specific.

Public Input in State Rulemaking

Administrative agencies possess tremendous power to shape health.[43] It is critical to engage the public in their decision-making because public input can further both the *process* and *outcome* of health justice, "where the structural positioning of people and communities … does not dictate their health and well-being."[44] When it comes to rulemaking, public input serves several important functions. The broad aims of public input into rulemaking are to enshrine transparency, increase the quality of information accessible to agencies, ensure that agency rules comport with legislative policy choices,[45] support the legitimacy of the resulting rules, ensure accountability of the decision-makers, and enhance access to justice.[46]

However, establishing empirical connections between public participation and these goals remains a challenge.[47] Research, though limited in scope, suggests that those who participate in rulemaking, at least at the *federal* level, tend to be relatively sophisticated and likely to be directly burdened by a proposal.[48] These outcomes are not surprising. The known barriers to public participation in rulemaking include limited awareness and literacy about processes, a glut of existing information, and skepticism about effecting change.[49] Such barriers appear in *state* rulemaking as well.[50] Yet much remains unknown about engagement in state rulemaking, especially by the public and advocates, as opposed to by regulated entities.[51] It is clear, though, that achieving the potential benefits of public participation in rulemaking depends on who is engaging and how.[52]

At the same time, *how* state agencies engage with the public when making rules is often dictated by procedural requirements set in state administrative laws. Notice and comment serves as the primary process. State administrative laws can also establish processes that dictate public input into state rulemaking upstream and downstream from notice and comment. The contents of such procedural requirements drives the amount and type of discretion agencies possess when making rules. Process-creating administrative laws are often described as functioning "to ensure that the agency exercises [its] powers in a fair and democratic manner"[53] and are credited, at least to some extent, with "preserving [agency] legitimacy and discouraging [agency] capture."[54] However, these process-making administrative laws are also subject to criticism. Key critiques of "proceduralism" — or "the formal legal obstacles that an agency must negotiate in order to complete a particular action"[55] — center on the notion that process-making laws can slow down or completely quash important actions of administrative agencies, enshrine the status quo and disincentivize change, drain resources, and contribute to self-perpetuating an ineffective administrative state incapable of acting in the public's interest and solving real-world problems.[56] These criticisms are at the heart of broader arguments that strict, bureaucratic governmental decision-making processes impede governmental actors from effectively resolving contemporary issues.[57]

Administrative law has also been criticized for not treating representation "as a fundamental value on par with other core values such as notice, transparency, and reason-giving."[58] At least at the federal level, "agencies are often far removed from the reach and oversite of ordinary Americans, but closely connected to corporate or other elite interests."[59] Laws themselves can even instill in "super-groups," the members of which share concentrated and aligned interests, disproportionate political power to shape administrative action and other laws.[60] Bringing public input into rulemaking more effectively therefore requires both *building* the power and political capacity of members of the public to influence decision-makers and *breaking* existing structures and processes that impede their power and political capacity to exert influence.[61] It is critical to examine the processes through which state administrative agencies make rules in light of the aims and limitations of these processes.

Notice and Comment, the Principal Method to Seek Public Input into State Rulemaking, Is Not Designed to Integrate Meaningful Community Input into State Rules

Representation in rulemaking traditionally relies heavily on notice and comment processes. This is true even though some more contemporary techniques to seek input, such as "new governance," emphasize less procedural formality and more consensus building,[62] which in state rulemaking may translate to agencies convening stakeholder groups to come up with a negotiated draft of a rule that is then subject to traditional rulemaking processes.[63] However, notice and comment — the primary, formalized process to seek input into state rulemaking — is not conducive to meaningful public input through community engagement and policy engagement.

The Process of Notice and Comment in State Rulemaking

State agencies typically follow prescribed, default processes to adopt rules.[64] These processes are set by statutes referred to as state administrative procedure acts (APAs).[65] State APAs set default rulemaking processes, to which state legislatures can create notable exceptions and exclusions and state executive branches may add

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

additional requirements.[66] State APAs are state-specific and highly variable.[67] It is therefore difficult to generalize about the characteristics of state APAs across jurisdictions. Nevertheless, examples from current state APAs and from the 2010 Model State APA (MSAPA) illustrate a range of state APA approaches to engage the public in rulemaking.[68] The MSAPA was created by attorneys with expertise in state administrative law and adopted by the Uniform Law Commission.[69] It contains model language the Uniform Law Commission encourages state legislatures to enact.[70] Some states have adopted portions of the MSAPA, last revised in 2010, into their statutes — though many adopted pre-2010 versions.[71] In other states, APAs are less aligned with the MSAPA.

Most state APAs require executive agencies to follow an *informal* process when adopting nonemergent, permanent rules. This informal process is often referred to as "notice and comment" and resembles the federal notice and comment process.[72] There are also notable differences between the rulemaking processes in many states and at the federal level. For instance, states often create layers of direct and regular legislative or gubernatorial oversight over agency rulemaking.[73]

Typically, state notice and comment processes require an agency intending to adopt a rule to draft language of a proposed rule, share the draft language with the community, and seek commenter-initiated feedback on the draft language. Forty-eight states (all except New Mexico and Michigan) require agencies to use notice and comment processes to adopt at least some of their rules.[74] State APAs in Minnesota, Delaware, and South Carolina also create *formal* rulemaking processes — which necessitate that agencies hold trial-like hearings to adopt rules.[75]

Informal state rulemaking processes share core ingredients but also differ across states. For instance, under Georgia's informal notice and comment rulemaking process, before an agency can create, repeal, or change a rule, it must provide "at least 30 days' notice of its intended action."[76] This notice must include the proposed rule language and indicate when and where the agency will consider adopting the rule so that "interested persons may present their views."[77] Georgia's APA also requires agencies to provide "all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing" on a proposed rule and to consider such submissions.[78] Upon request, the Georgia agency must hold an oral hearing on the proposed rule.[79] In contrast, New Hampshire[80] and South Dakota[81] require agencies to hold hearings on proposed rules as part of the notice and comment process. After a state rule is adopted in Georgia, and upon request, the agency must summarize the primary arguments for and against the rule and justify why it decided to adopt the rule.[82]

The MSAPA similarly espouses notice and comment rulemaking, except in imminent emergencies[83] or when an agency deems a rule "noncontroversial."[84] Under MSAPA's notice and comment rulemaking, an agency must notify the public of a proposed rule's text and purpose, explain how the public can comment on and request a hearing on the proposal, and summarize "each scientific or statistical study, report, or analysis that served as a basis for the proposed rule" at least 30 days before it plans to adopt the rule.[85] During this "comment period," people may submit written or electronic comments or information about the proposed rule, which the agency *must* consider and incorporate into the official record.[86] The agency may also "consider any other information it receives concerning a proposed rule" but must incorporate it into the official record.[87] It is up to the agency whether to hold a rulemaking hearing.[88] However, if it decides to do so, an agency representative must preside over the hearing that adheres to certain procedural requirements.[89] The agency must either adopt the rule or terminate rulemaking within two years after the end of the comment period, although there is room for extension.[90] The final adopted rule may differ from the proposed rule only to the extent that it "is a logical outgrowth" of the proposal.[91] The agency must also adopt a statement explaining the final rule's purpose, how the final rule and the proposed rule differ, and why the agency rejected any "substantial arguments" articulated during rulemaking.[92] Failing to adhere to these requirements can invalidate an adopted rule.[93]

State Notice and Comment Processes Are Not Designed for Public Meaningful Input

State notice and comment processes like these are ill suited for meaningful public input that impacts decisions about the content of state rules; they are not designed to produce meaningful community input as conceived of in the public health sector. First, the design and deployment of state notice and comment processes undermine the primary aims of public engagement in rulemaking. Like federal notice and comment, state notice and comment processes typically focus on providing *opportunities* for participation, rather than ensuring actual participation. They are structured to inhabit the outreach end of International Association for Public Participation (IAPP) Continuum.[94] Information is communicated to the public, and there is an invitation for input. However, participation in notice and comment requires technical expertise, including the ability to understand and navigate a proposed rule, complex processes and procedures, and existing laws and practices.[95] Actual participants self-select and are not necessarily representative of the community (e.g., they are more powerful — in terms of education, money, expertise, stronger views, special interests),[96] contributing to inequitable rules because important stakeholders are missing.[97] Notice and comment "may be inclusive in intent, [but] its practical effect has been to privilege those well-organized, well-resourced actors who wield greatest market power."[98] It is then not surprising that at least *federal* notice and comment is criticized for being unrepresentative, and, as a result, failing to achieve the aims of integrating public input into rulemaking,[99] and for failing to provide notice, solicit information, and support transparency.[100]

Some states have laws that target barriers to public participation. Ohio, for example, attempts to demystify its rulemaking processes by requiring agencies to publish and maintain "a guide to its rulemaking process that functions generally to assist members of the public who participate, or who may wish to participate, in the agency's rule-making" that explains, among other things, the rulemaking process in the agency and when and how the public can participate.[101] But it is not clear that such provisions can redress inequitable participation in state rulemaking.

Second, a draft rule issued by a state agency for notice and comment often memorializes already-made policy choices. This reduces the possibility that input received during notice and comment, rather than earlier in a rulemaking, will actually influence policy choices.[102] By the time the text of a proposed rule is available for comment, the proposed rule is in the adoption or enactment stage of the policy cycle, rather than in the policy formulation or prioritization stages.[103] At this point, the agency may be less open to influence and to making policy choices based on meaningful, substantive feedback. The proposed rule may thereby anchor and limit policy discussions to the original proposal. This may be especially true in states with APAs that require the final rule to be a direct outgrowth of the proposed rule (e.g., MSAPA).[104]

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

As a result, by the time an agency issues a draft rule, the proposed rule's content may be more difficult to change — even if the agency did not completely understand an issue or all relevant stakeholder perspectives or would have made different policy choices with additional input. Evidence seems to support this position. Researchers have observed that public comments received in state rulemaking do not often change an agency's policy choices.[105] And there is some empirical support that key policy decisions in state rulemaking precede notice and comment,[106] aligning with the prevalence of decisions about policy being made before notice and comment in federal rulemaking.[107] Input during notice and comment is not the same as input provided at earlier policymaking stages, when a problem is identified, framed, and elevated on the agenda; alternatives are weighed; and a potential solution is selected.[108] Therefore, comments submitted during notice and comment may be more likely to affect the content of state rules only marginally.

Public Input into State Rulemaking Upstream and Downstream From Notice and Comment

Notice and comment processes appear infrequently to yield meaningful integration of community perspectives into state rules. It is therefore important to think beyond notice and comment to enhance public input into state rulemaking. Leveraging state rulemaking processes beyond just notice and comment may ensure that public input into state rules has greater impact.

Few recommendations focus on how to enhance public engagement in *state* rulemaking. Instead, most recommendations to improve engagement in rulemaking are general or focus specifically on rulemaking at the *federal* level. They emphasize the importance of engagement upstream and downstream from notice and comment. For instance, general recommendations to improve public participation in rulemaking include moving stakeholder engagement upstream, ensuring that stakeholders are representative of community interests, and focusing on "co-production" in engagement.[109] Suggestions to improve engagement in the *federal* rulemaking context include conducting engagement that: (1) happens before notice and comment; (2) occurs with "trusted intermediaries" who know their communities; (3) remains continuous and sustained; (4) explains why it matters; (5) is designed to solicit input; (6) articulates clearly what input is sought; (7) asks communities how they want to be engaged; and (8) respects the community.[110]

Research and scholarship on *federal* rulemaking emphasize especially the need for upstream and sustained work, or "preengagement."[111] Sant'Ambrogio & Staszewski point out that many important decisions about the content of *federal* regulations are made not during the notice and comment process, but upstream — when an agency sets its agenda, considers specific policy options, and crafts a draft rule.[112] They argue that "democratizing rulemaking" requires enhancing public engagement *before* notice and comment, as a federal agency sets its regulatory agenda and considers specific alternatives to create a draft rule for notice and comment.[113] They find that federal agencies sometimes engage upstream in various ways, such as requests for information, advance notice of proposed rulemaking, and negotiated rulemaking, but this preengagement is often *ad hoc*.[114] Consistent with these observations and arguments, previous federal guidance acknowledged that often "it will be most effective to prioritize *early* engagement with communities, when agencies are still defining regulatory priorities and establishing an overall regulatory program," especially to identify regulatory priorities and alternative regulatory actions.[115]

Like in federal rulemaking, engagement upstream of notice and comment in *state* rulemaking may also be more impactful than engagement during notice and comment. Through the lens of the policymaking process, "upstream" means when a potential rule is in the prioritization and formulation phases. At the same time, however, engagement *after*, or "downstream" from, state notice and comment (when an adopted state rule is implemented and evaluated) may also facilitate more impactful engagement in state rulemaking. Some state APAs provide existing processes for upstream and downstream engagement in rulemaking. Therefore, understanding these upstream and downstream processes may support public input into state rulemaking that is more impactful than engagement during notice and comment. Yet while processes that formalize public input in state rulemaking upstream and downstream provide opportunities for community members to impact state rulemaking, they may not do enough to empower the public. They can also sacrifice transparency and engineer processes that powerful interest groups can exploit to push back on regulations, hindering the effectiveness of agencies.

State Rulemaking Processes Upstream From Notice and Comment

State APAs can create mandatory or discretionary mechanisms for preengagement in state rulemaking upstream from notice and comment.[116] State APAs are also quite jurisdiction specific in this respect. For example, states with "negotiated rulemaking" create a type of preengagement that agencies can opt into to obtain stakeholder consensus on the contents of a draft rule.[117] However, negotiated rulemaking tends to be governed by very specific processes. Under the MSAPA, when an agency actively considers a topic for a proposed rule, it can opt into negotiated rulemaking.[118] This allows the agency to create a balanced committee of interested members of the public to make comments or recommendations about the topic. The agency must disclose the existence of this committee and its membership, and committee meetings must be open to the general public and occur only after sufficient public notice.[119] The committee is required to consult with the agency as it aims to secure "consensus" on the content of a proposed rule. If the committee reaches consensus, it must present this consensus to the agency.[120] Similarly, Nebraska's negotiated rulemaking statute permits agencies to determine when to pursue negotiated rulemaking and provides specific procedures that govern the process if they do. Nebraska's law also empowers individuals to petition an agency to use negotiated rulemaking.[121] The negotiated rulemaking process in Texas similarly empowers agencies to decide whether to pursue negotiated rulemaking.[122] However, a Texas agency's decision must be made with the assistance of a neutral convener, who recommends whether negotiated rulemaking is appropriate and feasible by identifying and engaging parties who may be impacted by a potential regulation to assess (1) their interest in utilizing and participating in negotiated rulemaking in this situation, (2) which issues should be subject to negotiated rulemaking, and (3) who else might be impacted by a potential rule.[123] If a Texas agency determines it would like to use negotiated rulemaking, it must first seek and consider feedback on the decision to initiate "negotiated rulemaking and on the proposed membership of the negotiated rulemaking committee" and explain how those impacted by this process may serve on the committee.[124] Then, if the agency decides to proceed with negotiated rulemaking, it must create and appoint a

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

"balanced" negotiated rulemaking committee and a facilitator to help the committee come to consensus on the text of a proposed rule, though it is up to the committee to define *consensus*.[125] A draft rule developed through negotiated rulemaking in Texas is then subject to regular rulemaking requirements, including notice and comment, under the Texas APA.[126]

Some state APAs create upstream engagement opportunities that are less prescriptive than negotiated rulemaking. Mississippi, for instance, authorizes agencies, before filing an official notice of a proposed rule adoption, which typically contains the proposed rule's text, to appoint committees of members of the public to comment on the subject of a possible rule the agency is actively considering — as long as the membership of the committees is made public.[127] Minnesota also authorizes agencies to create committees to comment on the subject of a potential rulemaking that the agency is considering.[128] In Montana, agencies may appoint advisory committees made of experts, interested parties, or members of the public to advise the agency on a rulemaking it may be considering.[129] MSAPA's negotiated rulemaking provision also clarifies that it does not prevent an agency from receiving information from the public on the topic of a rule in any other way.[130]

The Advance Notice of Proposed Rulemaking (ANPR) process also provides an opportunity for preengagement in some states. The MSAPA authorizes agencies to seek from the public information and comments pertinent to the topic of a potential rulemaking by first publishing an ANPR and specifying how the public may comment.[131] Rhode Island contains a similar provision.[132] It allows agencies to "gather information relevant to the subject matter of a potential rulemaking proceeding" and to seek "comments and recommendations" through an ANPR that includes "where, when, and how persons may comment before the rulemaking process begins."[133] New York's APA also requires many agencies to publish their regulatory agendas "to solicit comments concerning any rule which the agency is considering to propose, but for which no notice of proposed rulemaking has been submitted."[134] The notice must describe the issues the agency is considering for rulemaking and how and to whom related written comments may be submitted.[135] And in Illinois, state agencies must publish a "regulatory agenda" in the state register twice a year "to elicit public comments concerning any rule that the agency is considering proposing."[136] Agencies may adopt rules without first including them in their regulatory agendas, but only with good cause and by adhering to additional procedural requirements.[137] Under Mississippi's APA, similar engagement is discretionary.[138] Before filing an official notice of a proposed rule adoption, which typically contains a proposed rule's text, an agency "may solicit comments from the public on a subject matter of possible rule-making under active consideration within the agency by causing notice to be filed… of the subject matter and indicating where, when and how persons may comment."[139]

Some state APAs also contain other processes for engagement in rule development before notice and comment. To develop rules, Florida's agencies *may* hold "public workshops" facilitated by a neutral third party employing dispute resolution processes.[140] If an affected person requests it, the agency *must* hold a public workshop or explain why a workshop is not necessary.[141] Nevada agencies *must* hold at least one "workshop" open to the public to seek input about a topic related to a proposed rulemaking and may hold the mandatory public hearing required for adoption of the rule only after the workshop is held.[142] Similarly, California *requires* agencies proposing a rule that may be "complex" or involve many proposals to engage those who would be subject to the proposal in public discussions before publishing a notice of proposed regulation "to increase public participation and improve the quality of regulations."[143] The agency must explain noncompliance "with reasonable specificity."[144] Minnesota also requires seeking comments on the subject of a potential rulemaking from the public before the agency moves into the adoption process, highlighting the topic of the potential rule, who is likely to be impacted by it, and processes for providing input.[145]

Some states go further in empowering agencies to engage with the public, with the burden of engagement sometimes on the agency and sometimes on stakeholders. For example, Virginia requires agencies to create and use public participation guidelines to seek input from interested parties when making rules.[146] These guidelines focus on how the agencies will notify people of proposals and seek their input.[147] Vermont's APA creates an executive branch Interagency Committee on Administrative Rules.[148] This committee must work with an agency that prefiles a proposed rule to:

> prescribe a strategy for maximizing public input on the proposed rule. The Committee shall evaluate the current efforts and practices of agencies for including the public in the development of proposed rules, and shall recommend an appropriate process for maximizing public input, based on the Committee's evaluation of current agency practices and the importance of public involvement, given the nature of the proposed rule.[149]

In some instances, states allow members of the public to initiate rulemaking processes. Washington's APA allows anyone to petition agencies "requesting the adoption, amendment, or repeal of any rule" in a process prescribed by its Office of Financial Management, with opportunities to appeal an agency's decision about whether to adopt, amend, or repeal the rule to the joint administrative rules review committee or the governor.[150] Florida similarly permits petitioning agencies to change rules.[151] Maryland provides that an interested party may petition a state agency to adopt a regulation and within 60 days the agency must either begin the regulatory adoption process or deny the request and explain the reason for the denial.[152] Meanwhile, Hawaii authorizes an interested person to request that an agency create, change, or repeal a rule and requires agencies to adopt procedures on how this can be done.[153] Within 30 days of such a request, the agency must either initiate rulemaking or deny the request in writing.[154]

State APAs sometimes make it clear that agencies may also engage in additional processes to seek feedback on proposed rules or topics that may become subjects of rulemaking. Rhode Island's APA clarifies that even though there's an ANPR, it does "not prohibit an agency from obtaining information and opinions from members of the public on the subject of a proposed rule by any other method or procedure."[155] Even more broadly, the MSAPA public participation provisions clarify that the MSAPA does not prevent "an agency from discussing with any person at any time the subject of a proposed rule."[156]

In addition to establishing preengagement opportunities, state APAs can require agencies to conduct specialized analyses of rule proposals or even ideas to supplement the notice and comment process. Such analyses may extend beyond rulemaking agencies to other entities in the state executive branch or even to the legislature. The MSAPA, for example, requires agencies that estimate an economic impact of a potential rule above a threshold amount to create a regulatory analysis that weighs various alternative rules, examines their pros and cons, and justifies its selection of an alternative before the agency can publish a notice of proposed rulemaking.[157] Colorado's APA requires that, when requested, an agency must issue a regulatory analysis of a proposed rule before a hearing on the

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

proposal.[158] This regulatory analysis must examine who will be impacted by the rule, quantitative and qualitative impacts, expected costs of implementation, value through a cost-benefit analysis, less costly ways to achieve the same goals, and other methods the agency considered but rejected.[159] Under Georgia's APA, agencies must select policy alternatives that do "not impose excessive regulatory costs on any regulated person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the statutes which are the basis of the proposed rule."[160]

State Rulemaking Downstream From Notice and Comment

APAs can also set up mechanisms for agencies to engage with the community *after* an agency adopts a rule through the notice and comment process. In Connecticut, agency rules adopted through notice and comment must generally be approved by a bicameral and bipartisan legislative committee.[161] This committee is empowered to "approve, disapprove or reject" any rule or any of its provisions and may "hold public hearings" related to the rule.[162] West Virginia also authorizes its Legislative Rule-Making Review Committee to review rules finalized by an agency, decide whether to hold public hearings related to them, and inform questions like whether the rule is "reasonable" and whether it "could be made less complex or more readily understandable."[163] The committee must then submit its recommendations to the state legislature.[164] It is up to the legislature to decide if the rule may be adopted, in whole or part, and to issue an act authorizing and directing the agency to adopt the final rule.[165]

State APAs can mandate that agencies periodically review rules already on the books. In Utah, agencies must review rules every five years and renew them, or they expire.[166] Through this process, agencies summarize comments received about the rule and explain their decisions.[167] To actually be repealed or amended, a reviewed Utah rule is subject to notice and comment, while renewing the rule requires the agency to justify the rule again and to include information on related comments it received.[168] Similarly, in North Carolina, state rules automatically expire.[169] North Carolina's agencies must review most of their rules every decade; if they do not, then the rules lapse.[170] In this review process, the agency must initially decide whether an existing rule remains necessary, publish on its website the results of such an analysis, "and invite the public to comment on the rules and agency's initial determination" for at least 60 days.[171] The North Carolina agency must review and respond to the public comments received.[172] Furthermore, its determination can be overturned by an executive Rules Review Commission's interpretation of the public comments.[173] The Joint Legislative Administrative Procedure Oversight Committee can then review the Commission's work and recommend that the state legislature order the agency to review the rule again.[174]

Amplifying Public Input Into State Rules

Effectively integrating public input into state rulemaking is complex. It requires legislative and executive government entities that make choices about how state rules are adopted and how input from the community is obtained to configure these processes to encourage meaningful input. It also requires community members and health advocates to choose to prioritize state rulemaking in their advocacy efforts and to engage in complex, multistep, and sometimes procedure-laden rulemaking processes in ways that can maximize their impact on state rules.

How legislatures engineer procedural requirements in state rulemaking notice and comment processes as well as upstream and downstream can impact public input. Their structure can advantage the public interest or special interests and can build or break power for the public to impact rules.[175] Their structure can also affect their ability to perform functions of transparency, representativeness, information seeking, and notice giving.[176] And when these procedural requirements are highly prescriptive, they may be subject to the "proceduralism" critiques of federal rulemaking.[177]

But even with highly prescriptive state rulemaking processes, agencies must still make choices and have some discretion to decide how to most effectively engage with the community. Engaging with the community involves applying principles contextually,[178] rather than using a one-size-fits-all formula. Rulemaking agencies seeking community input must decide, for example, explicitly or implicitly and for each rulemaking endeavor: how to define a community; who should speak for a community; ways to reconcile any conflicting views of community members and any misalignment between community input and data and evidence; how best to elicit representative input; how much input is enough; and how to get and most effectively deploy engagement resources like time and money. How the agency answers questions like these may facilitate or impede meaningful community input into state rulemaking.

State rulemaking agencies can exercise this discretion within existing notice and comment processes to encourage input from the community and help overcome some of the barriers associated with participation in notice and comment. State rulemaking agencies can, for example, attempt to simplify the language of a proposed rule to make it more accessible to the public and use plain language to explain its actions, arguments around the proposed rule, and its decision about the proposal. Agencies can also choose to hold any required or voluntary hearings in the notice and comment process on days and at times when more members of the community might be available to participate (e.g., evenings and weekends), engineer hearings to be family friendly, and make hearings accessible in the primary languages spoken in the community. In addition, when a state's law allows community members to request a hearing during the notice and comment process, agencies may be able to make choices to simplify the processes to do so. And state rulemaking agencies may be able to expand the ways that community members can participate in the notice and comment process by accepting multiple modes of feedback.

However, discretionary choices made by state rulemaking agencies may only go so far to encourage community members to provide input in the notice and comment process. State legislatures may also need to change existing notice and comment processes in state APAs to maximize community participation and representation in the process. For example, state legislation can reform notice and comment processes to allow the public to comment not just on the precise language of a proposed rule but on broader policy concepts and ideas contained in a proposed rule. Processes-oriented simplifications like these may help push back on "proceduralism" critiques,[179] empower greater and more meaningful public input,[180] and increase the abilities of state agencies to provide notice, solicit information, and act transparently and representatively.[181]

State legislatures can also alter state APAs to require rulemaking agencies to consider how proposed rules would impact community members as part of the notice and comment process. In some states, agencies engaged in notice and comment must already analyze potential fiscal, business, or other impacts of proposed rules. Requirements like these, however, are subject to similar criticisms

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

as other heavily procedural requirements — impairing agencies from taking actions that can address problems.[182] State statutes could instead, or also, require agencies to create proposal-specific engagement strategies to enhance feedback during notice and comment. State APAs could embed significant agency discretion into these proposal-specific engagement requirements to ensure agencies have the flexibility to apply community engagement principles without compromising their objectives. Any additional engagement requirements would, of course, need to be coupled with adequate resources (e.g., staff, funding, expertise) to execute them.

But simply reforming a state notice and comment process cannot address the criticism that community input during notice and comment comes too late in the rulemaking process to make a difference. State APAs that formalize aspects of upstream and downstream rulemaking processes create opportunities to integrate community input into rulemaking when agencies may be more open to ideas and feedback and when additional policymakers, outside of the rulemaking agencies, may exert influence over a state rule's content. Public health policy engagement requires devising and executing strategies built around concrete objectives that account for policymaking processes.[183] To maximize impact on the contents of state rules, health advocates and community members must therefore tailor their engagement to leverage rulemaking processes *before* and *after* notice and comment. For example, the policy engagement choices of advocates and the public should be informed by whether their state's APA allows community members to petition an agency to initiate rulemaking, creates additional processes to review and oversee rules before they become effective, and requires rulemaking agencies to periodically assess already adopted rules. Depending on the state APA, effective policy engagement in state rulemaking may also involve actively participating in negotiated rulemaking, agency committees, advance notices of proposed rulemaking, workshops, and other information-seeking processes. Health advocates and community members should engage in state rulemaking upstream and downstream of notice and comment to integrate their input into state rules because information, input, and advocacy are so important in prioritizing, formulating, adopting, implementing, and evaluating state rules.

Modifying existing upstream and downstream rulemaking processes can also maximize input into state rules. For example, preengagement processes formalized in state APAs can give agencies wide discretion to decide whether to pursue preengagement and to decide who is consulted and how. Discretion is important for effective community engagement and may help empower agencies to support community input and counteract "proceduralism" critiques. At the same time, discretion can mean that agencies choose to engage less with the community.[184] Evidence suggests that agencies pre-engage more with special interests, and generally with actors who possess more power, than with communities.[185]

State legislation could therefore enhance opportunities for engagement between agencies and communities upstream and downstream of notice and comment. There is not always clarity or guidance on how to *do* upstream or downstream engagement, either. At the most fundamental level, properly funding and resourcing agencies to *do* upstream and downstream engagement could encourage its use. State APAs can also enhance community input into rulemaking outside of notice and comment by providing more, or in some instances clearer, authority for agencies to engage with the community upstream and downstream or even by requiring such engagement. For example, state APAs could outline concrete and meaningful requirements for agencies to seek input from the community as a precondition to issuing a proposed rule. Since a state rulemaking agency needs discretion to engage the community, and because discretion may in some instances also result in limited engagement with community members and in less transparent engagement practices, state APAs could set broad standards for rulemaking agencies to seek community input into rules outside of the notice and comment process and require agencies to explain how they are meeting these standards. State APAs may also establish entities with community members, like boards, and empower them to have an oversight role in state rulemaking. And state statutes beyond APAs can be used to encourage community input in state rulemaking. For instance, statutes that create and empower state agencies with rulemaking authority can embed engaging with the community into the statutorily created duties and authorities of the agency.

Increasing meaningful community input into state rulemaking is a tall order that requires a multifaceted approach. The challenge for a state legislature that, in good faith, wants agency rulemaking to be meaningfully informed by public input is to set out rulemaking processes that ensure that the public will be engaged transparently and continuously without miring the agency in procedural requirements that incapacitate its ability to act and to solve problems. Giving agencies broad discretion in setting their own engagement procedures that live up to particular standards, coupled with adequate resources, could help address both concerns. Increasing meaningful community input into state rulemaking also requires state agencies to choose to exercise their discretion to make decisions about rulemaking processes in ways likely to encourage community input. In addition to titrated engagement authorities and requirement, this requires governmental organizational cultures committed to community input in state rulemaking and the dedication of significant and sustained time and effort to seek and use community input in state rulemaking. It also requires agency leaders who recognize the value of public input into state rules and manage workforces with the capacities and capabilities to seek and utilize community input effectively at the different stages of state rulemaking. At the same time, maximizing community input into state rulemaking necessitates community members and advocates who recognize the impact that state rules across sectors can have on health, are aware of the intricacies of rulemaking processes in their states, and see the tremendous promise of sustained advocacy throughout the rulemaking process, not just during notice and comment.

State statutes governing rulemaking are highly variable. In some instances, amplifying community input into state rulemaking may require modifying state APAs or other state statutes to change how agencies can or must seek public input into state rules. Doing so in a way that amplifies community input in state rulemaking without incapacitating agencies and sacrificing transparency requires a better understanding of which community engagement processes lead to meaningful community input. Empirically determining how the different elements of existing state APAs that establish both notice and comment processes and rulemaking processes before and after notice and comment relate to measures of community input into state rulemaking can highlight which strategies are more and less promising. Ultimately, such research may allow states to learn from each other how state APA provisions and their implementation impact public input into state rulemaking.

State rules, like other types of laws, can shape health. State rules are also the products of both formalized legal processes and agency discretion. To amplify the voice of the public in state rulemaking,

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

rulemaking agencies and state legislatures must make choices that prioritize meaningful community input throughout the rulemaking process without immobilizing agencies. Community members and health advocates must likewise prioritize and navigate state rulemaking processes in their policy advocacy to impact the contents of state rules. Community members and health advocates should also consider whether to feature rulemaking process reforms in their policy engagement efforts and policy goals.

Acknowledgements. I would like to acknowledge and thank Cadence Ciesielski for her research assistance and UNLV School of Public Health for funding it.

Disclosures. The UNLV School of Public Health provided funding for a research assistant for this project.

Maxim Gakh is an Associate Professor at the University of Nevada, Las Vegas (UNLV) School of Public Health and the Associate Director of the UNLV Health Law Program.

References

1. Alberto Alemanno, "Stakeholder Engagement in Regulatory Policy," in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, ed. Organization for Economic Co-operation and Development (OECD Publishing, 2015): 115, 116, 119, https://www.oecd.org/en/publications/regulatory-policy-in-perspective_9789264241800-en.html.
2. Temple University Center for Public Health Law Research, "Tracking Public Health Authority Changes from 2021 & 2022 Legislative Sessions," *Bill of Health* (blog), Petrie-Flom Center, January 25, 2023, https://blog.petrieflom.law.harvard.edu/2023/01/25/tracking-public-health-authority-changes-from-2021-2022-legislative-sessions/.
3. H. Journal, 67th Leg. Assemb., Reg. Sess. 1856–57 (N.D. 2021), available at https://ndlegis.gov/assembly/67-2021/regular/journals/hr-dailyjnl-71.pdf; S. Journal, 67th Leg. Assemb., Reg. Sess. 1618 (N.D. 2021), available at https://ndlegis.gov/assembly/67-2021/regular/journals/sr-dailyjnl-71.pdf.
4. H.B. 1323, 67th Leg. Assemb., Reg. Sess. (N.D. 2021); see also N.D. Cent. Code § 23-07-12.1 (2023).
5. "HB 1323: Testimony," North Dakota Legislature, last visited January 6, 2026, https://ndlegis.gov/assembly/67-2021/regular/bill-testimony/bt1323.html?bill_year=2021&bill_number=1323.
6. Miriam Seifter, "Gubernatorial Administration," *Harvard Law Review* 131, no. 2 (2017): 486, https://harvardlawreview.org/print/vol-131/gubernatorial-administration/.
7. Maxim Gakh., Jon S. Vernick, and L. Rutkow, "Using Gubernatorial Executive Orders to Advance Public Health," *Public Health Reports* 128, no. 2 (2013): 127, https://doi.org/10.1177/003335491312800208; Maxim Gakh et al., "How Have States Used Executive Orders to Address Public Health?," *Journal of Public Health Management & Practice* 25, no. 1 (2019): 78, https://doi.org/10.1097/phh.0000000000000802.
8. Eleanor D. Kinney, "Administrative Law and the Public's Health," *Journal of Law, Medicine & Ethics* 30, no. 2 (2002): 215, https://doi.org/10.1111/j.1748-720x.2002.tb00388.x.
9. Kinney, "Administrative Law and the Public's Health," 215.
10. Lisa B. Bingham, Tina Nabatchi, and Rosemary O'Leary, "The New Governance: Practices and Processes for Stakeholder and Citizen Participation in the Work of Government," *Public Administration Review* 65, no. 5 (2005): 547, https://doi.org/10.1111/j.1540-6210.2005.00482.x.
11. Kinney, "Administrative Law and the Public's Health," 216.
12. Brian Baugus, Feler Bose, and James Broughel, *A 50-State Review of Regulatory Procedures* (Mercatus Working Paper, 2022), https://www.mercatus.org/research/working-papers/50-state-review-regulatory-procedures.
13. *State School Immunization Requirements and Vaccine Exemption Laws* (US Centers for Disease Control & Prevention, February 2022), https://www.cdc.gov/phlp/docs/school-vaccinations.pdf.
14. "State Retail and Food Service Codes and Regulations by State," US Food & Drug Administration, last visited January 6, 2026, https://www.fda.gov/food/fda-food-code/state-retail-and-food-service-codes-and-regulations-state.
15. Institute of Medicine, *For the Public's Health: Investing in a Healthier Future* (National Academies Press, 2012): 2, 15, 34, https://doi.org/10.17226/13268.
16. *Compendium of School Discipline Laws and Regulations for the 50 States, District of Columbia and the US Territories* (National Center on Safe Supportive Learning Environments, April 2024), https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/School%20Discipline%20Laws%20and%20Regulations%20Compendium.pdf.
17. "California Building Standards Code," California Building Standards Commission, last visited January 6, 2025, https://www.dgs.ca.gov/BSC/Codes.
18. Zinzi D. Bailey et al., "Structural Racism and Health Inequities in the USA: Evidence and Interventions," *Lancet* 389 (2017): 1456–57, https://doi.org/10.1016/S0140-6736(17)30569-X.
19. Leonard E. Egede, Rebekah J. Walker, and Joni S. Williams, "Addressing Structural Inequalities, Structural Racism, and Social Determinants of Health: A Vision for the Future," *Journal of General Internal Medicine* 39, no. 3 (2023): 487, 489, https://doi.org/10.1007/s11606-023-08426-7.
20. *Community Engagement: A Health Promotion Guide for Universal Health Coverage in the Hands of the People* (World Health Organization, 2020): 13, https://iris.who.int/bitstream/handle/10665/334379/9789240010529-eng.pdf?sequence=1
21. Alison O'Mara-Eves et al., "The Effectiveness of Community Engagement in Public Health Interventions for Disadvantaged Groups: A Meta-Analysis," *BMC Public Health* 15, no. 129 (2015): 2, https://doi.org/10.1186/s12889-015-1352-y.
22. Donna Jo McCloskey et al., "Community Engagement: Definitions and Organizing Concepts from the Literature," in *Principles of Community Engagement*, 2nd ed. (US Department of Health and Human Services, 2011): 3, https://ictr.johnshopkins.edu/wp-content/uploads/2015/10/CTSAPrinciplesofCommunityEngagement.pdf; *Community Engagement: A Health Promotion Guide*, 13.
23. McCloskey et al., "Community Engagement: Definitions," 4.
24. *Principles of Community Engagement*, 1st ed. (US Department of Health & Human Services, 1997), 9, quoted in McCloskey et al., "Community Engagement: Definitions," 3.
25. *Community Engagement: A Health Promotion Guide*, 27.
26. *Community Engagement: A Health Promotion Guide*, 3; McCloskey et al., "Community Engagement: Definitions," 3-4; O'Mara-Eves et al., "The Effectiveness of Community Engagement in Public Health," 17.
27. O'Mara-Eves et al., "The Effectiveness of Community Engagement in Public Health," 17.
28. McCloskey et al., "Community Engagement: Definitions," 7–8.
29. McCloskey et al., "Community Engagement: Definitions," 8.
30. McCloskey et al., "Community Engagement: Definitions," 8.
31. McCloskey et al., "Community Engagement: Definitions," 8.
32. McCloskey et al., "Community Engagement: Definitions," 4.
33. McCloskey et al., "Community Engagement: Definitions," 8.
34. McCloskey et al., "Community Engagement: Definitions," 15–16.
35. McCloskey et al., "Community Engagement: Definitions," 3–4.
36. McCloskey et al., "Community Engagement: Definitions," 46.
37. *Community Engagement: A Health Promotion Guide*, 11–12.
38. Katrina Forrest and Shelley Hearne, "Policy Development and Engagement: Turning Evidence into Action," in *Building Strategic Skills for Better Health: A Primer for Public Health Professionals*, ed. Michael R. Fraser and Brian C. Castrucci (2023): 213, 216, https://doi.org/10.1093/oso/9780197744604.003.0017.
39. James S. Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford University Press, 2009): 45.
40. Forrest and Hearne, "Policy Development and Engagement," 216.
41. Forrest and Hearne, "Policy Development and Engagement," 219.
42. Forrest and Hearne, "Policy Development and Engagement," 218.
43. Jamila Michener, "Health Justice Through the Lens of Power," *Journal of Law, Medicine & Ethics* 50, no. 4 (2022): 660, https://doi.org/10.1017/

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

jme.2023.5; Kinney, "Administrative Law and the Public's Health," 212–223.
44. Michener, "Health Justice Through the Lens of Power," 657.
45. Jim Rossi and Kevin M. Stack, "Representative Rulemaking," *Iowa Law Review* 109, no. 1 (2023): 11, https://ilr.law.uiowa.edu/volume-109-issue-1/representative-rulemaking.
46. Michael Sant'Ambrogio and Glen Staszewski, *Public Engagement with Agency Rulemaking: Final Report for the Administrative Conference of the United States* (November 19, 2018): 12–16, https://ssrn.com/abstract=3615830; Alemanno, "Stakeholder Engagement in Regulatory Policy," 121.
47. Steven J. Balla and Susan E. Dudley, "Stakeholder Participation and Regulatory Policy Making in the United States," in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, ed. Organization for Economic Co-operation and Development (OEDC Publishing, 2015): 159–60, https://www.oecd.org/en/publications/regulatory-policy-in-perspective_9789264241800-en.html.
48. Rossi and Stack, "Representative Rulemaking," 23.
49. Alemanno, "Stakeholder Engagement in Regulatory Policy," 116, 133.
50. Deserai A. Crow, Elizabeth A. Albright, and Elizabeth Koebele, "Evaluating Informational Inputs in Rulemaking Processes: A Cross-Case Analysis," *Administration & Society* 49, no. 9 (2017): 1318, 1340, https://doi.org/10.1177/0095399715581040.
51. Deserai A. Crow, Elizabeth A. Albright, and Elizabeth A. Koebele, "Stakeholder Participation and Strategy in Rulemaking: A Comparative Analysis," *State Politics & Policy Quarterly* 19, no. 2 (2019): 209, https://doi.org/10.1177/1532440018821655.
52. Archon Fung, "Varieties of Participation in Complex Government," *Public Administration Review* 66, no. 1 (2006): 66–75, at 67, https://doi.org/10.1111/j.1540-6210.2006.00667.x.
53. Kinney, "Administrative Law and the Public's Health," 215.
54. Nicholas Bagley, "The Procedure Fetish," *Michigan Law Review* 118, no. 3 (2019): 349, https://doi.org/10.36644/mlr.118.3.procedure.
55. Bagley, "The Procedure Fetish," 351.
56. Bagley, "The Procedure Fetish," 351–369.
57. Ezra Klein and Derek Thompson, *Abundance* (Avid Readers Press, 2025).
58. Rossi and Stack, "Representative Rulemaking," 9.
59. Michener, "Health Justice Through the Lens of Power," 660.
60. Matthew Lawrence, "Super-Groups: Legal Empowerment and 'Public Law,'" *Indiana Law Review* 100, no 3 (2025): 1187, https://www.repository.law.indiana.edu/ilj/vol100/iss3/6/.
61. Michener, "Health Justice Through the Lens of Power," 659–60.
62. Bingham, Nabatchi, and O'Leary, "The New Governance," 548.
63. Bingham, Nabatchi, and O'Leary, "The New Governance," 551.
64. Baugus, Bose, and Broughel, *A 50-State Review*, 3–4.
65. Baugus, Bose, and Broughel, *A 50-State Review*, 3–4
66. Baugus, Bose, and Broughel, *A 50-State Review*, 3–4
67. Baugus, Bose, and Broughel, *A 50-State Review*, 3–4
68. See generally *Revised Model State Administrative Procedures Act* (National Conference of Commissioners on Uniform State Laws, 2010), available at https://www.uniformlaws.org/committees/community-home?CommunityKey=f184fb0c-5e31-4c6d-8228-7f2b0112fa42 [hereinafter cited as MSAPA].
69. MSAPA, at 2.
70. See generally MSAPA.
71. MSAPA, at 2.
72. Bingham, Nabatchi, and O'Leary, "The New Governance," 551.
73. Kenneth A. Hansen et al., *Rulewriting Manual for Utah: Rulewriters* (Utah Office of Administrative Rules, n.d.), https://rules.utah.gov/agencyresources/manual-rw/apa.html.
74. Baugus, Bose, and Broughel, *A 50-State Review*, 18.
75. Baugus, Bose, and Broughel, *A 50-State Review*, 18.
76. Ga. Code Ann. § 50-13-4(a)(1) (2025).
77. Ga. Code Ann. § 50-13-4(a)(1) (2025).
78. Ga. Code Ann. § 50-13-4(a)(2) (2025).
79. Ga. Code Ann. § 50-13-4(a)(2) (2025).
80. N.H. Rev. Stat. Ann. § 541-A:11 (2025).
81. S.D. Codified Laws § 1-26-4 (2025).
82. Ga. Code Ann. § 50-13-4(a)(2).
83. MSAPA § 309.
84. MSAPA § 310 (noting that an objection to categorizing a rule as "noncontroversial" reinstates default notice and comment rulemaking).
85. MSAPA § 304.
86. MSAPA § 306.
87. MSAPA
88. MSAPA
89. MSAPA
90. MSAPA § 307.
91. MSAPA § 308.
92. MSAPA § 313.
93. MSAPA § 315.
94. McCloskey et al., "Community Engagement: Definitions," 22.
95. Rossi and Stack, "Representative Rulemaking," 17.
96. Fung, "Varieties of Participation," 67; Rossi and Stack, "Representative Rulemaking," 29.
97. Alemanno, "Stakeholder Engagement in Regulatory Policy," 135.
98. Nikhil Menezes and David E. Pozen, "Looking for the Public in Public Laws," *University of Chicago Law Review* 92, no. 4 (2025): 986, https://lawreview.uchicago.edu/print-archive/looking-public-public-law.
99. Rossi and Stack, "Representative Rulemaking," 3.
100. Rossi and Stack, "Representative Rulemaking," 13.
101. Ohio Rev. Code Ann. § 119.0311 (2025).
102. Shelley D. Golden and Sarah Moreland-Russell, "Public Policy Explained," in *Prevention, Policy, and Public Health*, ed. Amy A. Eyler and Jamie F. Chriqui, (Oxford Academic, 2016): 17, 22–23, https://doi.org/10.1093/med/9780190224653.003.0002.
103. Golden and Moreland-Russell, "Public Policy Explained," 17, 22–23.
104. See MSAPA § 308.
105. Crow, Albright, and Koebele, "Evaluating Informal Inputs," 1320.
106. Crow, Albright, and Koebele, "Evaluating Informal Inputs," 1321.
107. Michael Sant'Ambrogio and Glen Staszewski, "Democratizing Rule Development," *Washington University Law Review* 98, no. 3 (2021): 798, https://openscholarship.wustl.edu/law_lawreview/vol98/iss3/7.
108. Golden and Moreland-Russell, "Public Policy Explained," 23.
109. Alemanno, "Stakeholder Engagement in Regulatory Policy," 147.
110. Archon Fung, Hollie R. Gilman, and Mark Schmitt, *Designing for Community Engagement: Toward More Equitable Civic Participation in the Federal Regulatory Process* (New America, 2021), https://ash.harvard.edu/wp-content/uploads/2021/12/Designing_for_Community_Engagement_2021-12-08_211956.pdf.
111. Fung, Gilman, and Schmitt, *Designing for Community Engagement*, 7.
112. Sant'Ambrogio and Staszewski, "Democratizing Rule Development," 798.
113. Sant'Ambrogio and Staszewski, "Democratizing Rule Development," 798.
114. Sant'Ambrogio and Staszewski, "Democratizing Rule Development," 801.
115. "Broadening Public Engagement in the Federal Regulatory Process," memorandum, July 19, 2023, at 10, https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf.
116. Bingham, Nabatchi, and O'Leary, "The New Governance," 550.
117. See e.g., Neb. Rev. Stat. § 84-921 (2025).
118. MSAPA § 303.
119. MSAPA § 303
120. MSAPA § 303 (b), (c).
121. Neb. Rev. Stat. § 84-921 *et seq* (2025).
122. Tex. Gov't Code Ann. § 2008.051 (West 2023).
123. Tex. Gov't Code Ann. § 2008.052.
124. Tex. Gov't Code Ann. § 2008.053.
125. Tex. Gov't Code Ann. § 2008.054, 2008.055, 2008.056.
126. Tex. Gov't Code Ann. § 2008.058.
127. Miss. Code Ann. § 25-43-3.101 (2025).
128. Minn. Stat. § 14.101 (2025).
129. Mont. Code Ann. § 2-4-304 (2025).
130. MSAPA § 303(d).
131. MSAPA § 303(a).
132. See 42 R.I. Gen. Laws § 42-35-2.5 (2024).
133. See 42 R.I. Gen. Laws § 42-35-2.5 (2024).
134. N.Y. A.P.A. Law § 202-d (McKinney 2025).

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press

135. N.Y. A.P.A. Law § 202-d (McKinney 2025).
136. 5 Ill. Comp. Stat. 100/5-60 (2024).
137. 5 Ill. Comp. Stat. 100/5-60 (2024).
138. See Miss. Code Ann. § 25-43-3.101 (2025).
139. Miss. Code Ann. § 25-43-3.101 (2025).
140. Fla. Stat. § 120.54(2)(c) (2025).
141. Fla. Stat. § 120.54(2)(c) (2025).
142. Nev. Rev. Stat. § 233B.061 (2025).
143. Cal. Gov't. Code § 11346.45(a) (West 2024).
144. Cal. Gov't. Code § 11346.45(c) (West 2024).
145. Minn. Stat. § 14.101 (2025).
146. Va. Code Ann. § 2.2-4007.02 (2024).
147. Va. Code Ann. § 2.2-4007.02 (2024).
148. Vt. Stat. Ann. tit. 3, § 820 (2025).
149. Vt. Stat. Ann. tit. 3 § 820(c) (2025).
150. Wash. Rev. Code § 34.05.330 (2024).
151. Fla. Stat. § 120.54 (2025).
152. Md. Code Ann. State Gov't § 10-123 (LexisNexis 2024).
153. Haw. Rev. Stat. § 91-6 (2024).
154. Haw. Rev. Stat. § 91-6 (2024).
155. 42 R.I. Gen. Laws § 42-35-2.5(d) (2024).
156. MSAPA, § 306(b).
157. MSAPA, § 305.
158. Colo. Rev. Stat. § 24-4-103(4.5) (2025).
159. Colo. Rev. Stat. § 24-4-103(4.5) (2025).
160. Ga. Code Ann. § 50-13-4(a)(5) (2025).
161. Conn. Gen. Stat. § 4-170 (2025).
162. Conn. Gen. Stat. § 4-170 (2025).
163. W. Va. Code § 29A-3-11 (2025).
164. W. Va. Code § 29A-3-11 (2025).
165. W. Va. Code § 29A-3-13 (2025).
166. Utah Code Ann. § 63G-3-305 (2024).
167. Utah Code Ann. § 63G-3-305 (2024).
168. Utah Code Ann. § 63G-3-305 (2024).
169. N.C. Gen. Stat. § 150B-21.3A (2025).
170. N.C. Gen. Stat. § 150B-21.3A (2025).
171. N.C. Gen. Stat. § 150B-21.3A (2025).
172. N.C. Gen. Stat. § 150B-21.3A (2025).
173. N.C. Gen. Stat. § 150B-21.3A (2025).
174. N.C. Gen. Stat. § 150B-21.3A (2025).
175. See Michener, "Health Justice Through the Lens of Power," 656–662.
176. Rossi and Stack, "Representative Rulemaking," 13.
177. Bagley, "The Procedure Fetish," 245–401.
178. McCloskey et al., "Community Engagement: Definitions," 3-4, 8, 15-16, 46; *Community Engagement: A Health Promotion Guide*, 11-12; Forrest and Hearne, "Policy Development and Engagement," 213, 216.
179. Bagley, "The Procedure Fetish," 245–401.
180. Michener, "Health Justice Through the Lens of Power," 656-662.
181. Rossi and Stack, "Representative Rulemaking," 13.
182. Bagley, "The Procedure Fetish," 245–401; Klein and Thompson, *Abundance*, 57.
183. Forrest and Hearne, "Policy Development and Engagement," 216.
184. Crow, Albright, and Koebele, "Evaluating Informal Inputs," 1320.
185. Crow, Albright, and Koebele, "Evaluating Informal Inputs," 1320

https://doi.org/10.1017/jme.2026.10249 Published online by Cambridge University Press