

Equitable Rulemaking in Washington State

In 2023, the Washington State Department of Health (WA-DOH) began implementing changes to their rulemaking process to make it more accessible to communities that are economically and/or socially marginalized. The COVID-19 pandemic displayed the health disparities present in the state and WA-DOH recognized that existing policies could disproportionately impact certain communities. In addition, enacting [Healthy Environment for All \(HEAL\) Act](#) in 2021 and [Executive Order 22-04](#) in 2022 directed state agencies to integrate both environmental justice and equity into their administrative processes.

WA-DOH was already allocating resources to expand capacity for equity and engagement initiatives, as well as implementing a cloud-based system to streamline workflow. The department also learned from agency staff about challenges and successes when engaging affected communities in state policy. WA-DOH transformed its rulemaking process with a thorough review of the rulemaking process, collaboration from agency staff, and technology to make it more equitable and inclusive so residents can better affect the systems that determine their health and well-being.

Roadmap to Equitable Rulemaking

In April 2022, WA-DOH formed an Equitable Rulemaking Workgroup/ Action Team to enhance the current process in a way that promotes health equity and eliminates health disparities. Over the next year, the group held meetings with the agency's Executive Offices for Equity, Policy, and Strategic Partnerships to discuss how to meet the goals, objectives, and purpose of equitable rulemaking. They held a listening session with rules managers, equity and social justice managers, and rules staff from across the department to identify challenges, best practices, and available resources in the current rulemaking process:

- There was difficulty identifying affected communities whose voices are not engaged or elevated in rulemaking and developing outreach strategies to address this issue.
- It is crucial to engage and repair trust with historically marginalized communities and strengthen their capacity to effectively participate through education and skill development.
- There are limited resources for staffing or funding services that aid historically marginalized communities (e.g., translation, other accessibility services).

The workgroup learned how WA-DOH staff worked to overcome these challenges by leveraging existing resources and changing how they interacted with interested parties.

To identify effective strategies and relevant health equity principles from across the agency, the workgroup engaged divisional equity staff as well as boards and commissions involved in rulemaking. They described their inclusive outreach strategies, such as improved communication with affected communities, transparency, using “plain talk” and respectful word choices, engaging and collaborating with affected communities throughout the rulemaking process, and elevating the personal stories of impacted individuals (with their permission) in materials and during workshops.

WA-DOH Equitable Rulemaking Workgroup/ Action Team Members

- Executive Office for Public Affairs and Equity (OPAE)
- Executive Office for Policy, Planning, and Evaluation (OPPE)
- Executive Office of Strategic Partnership (OSP)
- Division of Environmental Public Health (EPH)
- Division of Disease Control and Health Statistics (DCHS)
- Division of Health Systems Quality Assurance (HSQA)

Considering Equity and Community in Policymaking

During the rulemaking process, WA-DOH uses two state-mandated assessments to promote environmental justice and reduce health disparities, ensuring that health benefits are more fairly distributed. They also ensured all Washingtonians would have their voices heard by improving upon current state standards of communication.

Environmental Justice

The HEAL Act requires six state agencies (including WA-DOH) and one regional partnership to comply with specified requirements to include environmental justice in their policies, including: incorporating environmental justice into strategic plans, creating engagement plans with overburdened communities and tribes, and conducting environmental justice assessments when a significant agency action, such as rulemaking, is initiated. As part of its rulemaking process, WA-DOH instituted its [Environmental Justice Assessment](#). This two-step process begins with an initial screening that helps agency staff determine if the proposed rule would have an environmental impact on individuals, overburdened communities, and/or vulnerable populations as defined by the [Revised Code of Washington](#). If staff determine there may be an environmental impact, they then conduct an in-depth assessment, where agency staff identify impacted communities and populations and document their engagement process and how the information they gathered informed their decision-making. Staff are also required to document their consultation with the tribes located in the state and plans for further collaboration if the rule would impact tribal rights or resources.

Health Equity

Executive Order 22-04 directed all state agencies to implement the Office of Equity's [Pro-Equity Anti-Racism \(PEAR\) Plan & Playbook](#). The playbook calls for state agencies to transform government by integrating equity into agency work, including policies (e.g., budgets, rulemaking), community and tribal engagement, and organizational capacity. WA-DOH is working to improve its rulemaking assessment tools to identify potential negative health and equity impacts of a proposed rule with a focus on structural drivers of inequities and the social determinants of health (e.g. built environment, education, and economic stability). Staff will determine the specific benefits or harms of the proposed rule, identify communities and populations that could be affected and how, and document engagement strategies for affected tribal governments and communities. This information will allow health and equity concerns to be considered in policies that may fall outside the traditional purview of public health.

Cultural and Linguistic Accessibility

In addition, WA-DOH worked to expand its products and services to state residents for whom English is not a primary language. Under the state's [Administrative Procedure Act](#) (the act that governs the way state agencies can propose and establish regulations), state agencies are required to inform residents of rulemaking activities. However, the law only provides minimum standards for notification. While it requires agencies to maintain a website with all proposed, emergency, or permanent rules available, it does not require rules be translated into languages other than English and does not require translation services for public hearings. The [Migration Policy Institute](#) estimates that at least 8% of the state's population are English language learners and speak at least one of 35 different languages at home. While lack of language access can lead to [poorer health outcomes](#), WA-DOH took the opportunity to address the problem as part of the transformation plan and make policymaking more accessible by cultivating services that were culturally and linguistically appropriate, such as implementing guidelines for translation services throughout the rulemaking process, including American Sign Language.

Engaging Tribal Nations and Community

Using information gathered from the meetings and listening sessions, the WA-DOH Rulemaking Workgroup/Action Team developed a more equitable rulemaking process and published a playbook for agency staff in April 2023. This process centers on promoting meaningful community engagement and using technology to coordinate rulemaking across the agency while fostering collaboration and accountability between department staff.

To improve communication with community partners, WA-DOH is developing an online communication platform that informs communities and tribes of agency projects, topics, or other relevant information, and allows communities to have their voices better heard in rulemaking. This effort aims to expand the agency's network of community partners, and establish relationships between the agency and additional communities, particularly those facing the greatest health inequities. WA-DOH created a video for communities describing the rulemaking process, how they could receive notification of opportunities to participate, and how the agency would use their input in rulemaking. Once operational, communities will be invited to "opt-in" to the agency's listserv and self-select the types of notification they would receive based on the topics (e.g. maternal and child health, environmental health) and projects (e.g. rulemaking, notice of public comment) that were of importance to them. When the state begins work on a particular public health topic, whether it is rulemaking or other opportunities for participation, a message is sent to all community partners that opted into the specific parameters, informing them of the opportunity for involvement. This allows agency staff to build a network of interested parties to draw on for additional opportunities and demonstrates a commitment to transparency and open communication with communities to ensure their voice is elevated during rulemaking and other agency activities.

At present, there are [29 federally recognized tribal nations in Washington State](#). WA-DOH takes special consideration to inform, consult, and collaborate with sovereign tribal nations in the state during the policy development and rulemaking process in honor of the state's government to government relationship with tribal nations and in compliance with Chapter 43.376 RCW and the Washington State 1989 Centennial Accord. As part of this collaborative work, WA-DOH sends all tribes notice of priority policy actions and proposals as well as rulemaking activity at all phases of the process. These reports are sent with an invitation welcoming Tribal Leaders to ask questions or seek collaboration or formal consultation. The agency also made a toolkit available to staff that guides any rulemaking that impacts the population health of a sovereign tribal nation and helps make sure affected tribal nations are consulted during all steps of the rulemaking process.

Rulemaking is often initiated by legislation. WA-DOH has added questions to the agency's bill analysis guide that asks if there would be communities possibly impacted, identifying those communities, and whether it was likely the bill would reduce or increase health disparities. With that information, agencies can identify possible affected communities and use structural interventions to reduce health disparities by sharing with the legislature how rulemaking could affect health disparities and budget resources to accommodate rulemaking engagement (e.g., translation services).

The agency continues to work towards breaking down silos and improving staff knowledge of rulemaking. Before implementing their Equitable Rulemaking Playbook, sometimes programs within WA-DOH did not fully coordinate with each other during their respective rulemaking processes, leading to decreased awareness of what the agency was implementing or developing outside of that program. Recognizing the need for changes to agency staff processes and protocols, WA-DOH moved to monthly agency rulemaking steering committee meetings comprised of representatives from across the agency to promote cross-agency awareness of proposed or finalized rules, coordination and implementation of uniform approaches to equitable rulemaking, and sharing best practices. The agency also developed a rulemaking training series for staff with modules on equity, community engagement, and environmental justice—and where they intersect.

While still early in their efforts to conduct assessments for all rulemaking, WA-DOH staff reported they have seen positive and meaningful community and tribal engagement with the rules they applied this process to so far, which enabled them to address concerns and incorporate ideas and suggestions into rule language. More specifically, in the rulemakings where the agency invested early and consistently in community engagement and Tribal consultation and collaboration, WA-DOH has seen more nuanced, thoughtful, accessible, and equitable outcomes reflected in both the rule language and implementation.

Leveraging Technology to Streamline Rulemaking

Using multiple data systems and siloed processes to support rulemaking activities across the agency has its challenges. The agency's shift to remote, and later hybrid, working environments during the COVID-19 pandemic highlighted the need for an agency-wide system to coordinate rulemaking processes and allow for collaboration. WA-DOH selected a vendor with a cloud-based platform to streamline the department's regulatory process. The implementation of this platform allows the agency to have all rulemaking information in the same place, providing a space for collaborative, transparent rulemaking across the agency and increased productivity. It also facilitates accountability, allowing for a more linear workflow process across the agency and documenting the completion of each step, which gives them the ability to monitor overdue tasks.

Using technology to streamline the rulemaking process also provides agency staff the opportunity to evaluate current rules for efficacy and efficiency. Under state law, WA-DOH must review agency rules every five years to reduce duplicity of rules, simplify processes and procedures, and reduce regulatory burdens on businesses while still promoting public health and safety. The software platform shows when rules were last updated, giving agency staff the ability to create timelines for evaluating rules and making any necessary updates. Currently, the agency is developing processes for evaluating rules using quantitative and qualitative methods, which will help make evidence-based decisions in collaboration with interested party input. WA-DOH will also be able to evaluate current rules in the near future to see the broader impact of community engagement and see whether rules are being administered more equitably.

With an eye toward continuous process improvement, WA-DOH is gathering staff input on the system to inform future improvements to the data system. One of these planned improvements is to centralize health equity assessments so they are more accessible and can inform rulemaking activities. In addition, they plan to add steps to the agency rulemaking workflow within the system to operationalize activities related to culturally and linguistically appropriate services and inclusive community engagement.



Considerations for States

Allocating State Resources

State health agencies, particularly agency departments tasked with other policy assessments, may have limited staff or resources to support meaningful community engagement activities such as translation services and technical assistance. In addition, agencies may have to meet timelines for legislative inquiries (e.g., fiscal notes or health equity/environmental justice assessments) that could take time away from meaningful community engagement. State health agencies may find it useful to collaborate with legislative partners and relevant agencies to allocate resources in a manner that addresses statutory deadlines while still engaging community partners in meaningful ways that enhance rulemaking activities. If a state health agency has an Office of Health Equity or equity and social justice managers, staff can leverage these resources to help identify and engage community partners affected by rulemaking.

Breaking Down Agency Silos

Within WA-DOH, while the process under the Administrative Procedure Act is consistent across the agency, integrating inclusive community engagement strategies with health equity and/or environmental justice considerations is not. As a result, the public can have different user experiences with awareness of rulemaking opportunities, ability to equitably access rulemaking activities, and whether they feel they meaningfully contributed. State health agencies can consider solutions such as regular meetings with all rulemaking staff to ensure proper community engagement across the agency, streamlining the rulemaking process, and finding ways to increase collaboration across agency departments.



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