# State Law Alternatives for Medicaid Enforcement: Issue Brief 2 – State Administrative Procedure Acts

Steven Schmidt

## I. Introduction

Recent decisions from the U.S. Supreme Court have continued to maintain the high hurdle that plaintiffs must clear to enforce various requirements of the Medicaid Act through 42 U.S.C. § 1983.[1] Some federal courts have also grown increasingly hostile to impact litigation that seeks to hold states accountable for the unlawful administration of their social services programs.[2] This environment presents an opportunity for advocates to examine whether legal claims in state courts can provide an avenue to enforce and improve access to health care for low-income and underserved individuals.

This issue brief series examines various state law legal claims that advocates may want to pursue to strengthen their state's Medicaid program. The **first issue brief** in this series covered writs of mandamus. This issue brief will discuss state Administrative Procedure Act (APA) claims. Future issue briefs will examine state constitutional claims and state anti-discrimination law claims.

Before deciding whether to pursue a state APA claim, it is important to note that state APA statutes can differ significantly depending on the state. Thus, not all concepts discussed in this issue brief will be applicable in every state. The goal of this brief is to provide a general overview of the legal concepts at issue, as well as highlight potential Medicaid-related claims that advocates may pursue. Advocates should thoroughly research their own state's laws before pursuing a state APA claim.

[1] *See, e.g.*, *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 385 (2025) (holding 42 U.S.C. § 1396a(a)(23) is not privately enforceable through § 1983).
[2] *See, e.g.*, *Jonathan R. v. Morrisey*, 768 F. Supp. 3d 756, 759 (S.D.W. Va. 2025) *appeal docketed* No. 25-1239 (4th Cir. Mar. 13, 2025) (dismissing case *sua sponte* because of judge's view that "[c]onstitutional limits prevent the court from crafting public policy and administering state agencies").

## II. State Administrative Procedure Act Claims

### A. Background

All states have some form of an APA.[3] Many states have adopted a form of the Model State APA drafted by the Uniform Law Commission. The Model State APA was first drafted in 1946, and then revised in 1961, 1981, and 2010.[4] State APAs are often similar to the federal APA, a law passed in 1946 that governs federal administrative agencies.[5] When a state APA "roughly mirrors" the federal APA, interpretation of the federal APA "offers useful guidance."[6]

The purposes of state APAs are to:

(1) provide oversight of powers and duties delegated to administrative agencies;
(2) increase public accountability of administrative agencies;
(3) ensure a uniform minimum procedure;
(4) increase public access to governmental information;
(5) increase public participation in the formulation of administrative rules;
(6) increase the fairness of agencies in their conduct of contested case proceedings; and
(7) simplify the process of judicial review of agency action as well as increase its ease and availability.[7]

State APAs set forth a "standard framework of fair and appropriate procedures for agencies that are responsible for both administration and adjudication of their respective statutes."[8] In other words, the state APA establishes a two-fold framework for judicial review— one for the state Medicaid agency's quasi-judicial decision-making, and one for its rulemaking functions.

---

[3] *See* Ballotpedia, *State administrative procedure acts*, (last visited May 27, 2026), **https://ballotpedia.org/State_administrative_procedure_acts** (providing links to state APAs).
[4] *See* Model State Administrative Procedure Act §§ 1-101 - 5-205 (2010).
[5] *See* 5 U.S.C. §§ 500-596; 5 U.S.C. §§ 701-706.
[6] *Me. Sch. Admin. Dist. No. 27 v. Me. Pub. Emps. Ret. Sys.*, 983 A.2d 391, 395 (Me. 2009).
[7] *See*, *e.g.*, Ala. Code § 41-22-2*;* Minn. Stat. § 14.001.
[8] *Bragunier Masonry Contractors, Inc. v. Md. Com'r of Lab. & Indus.*, 684 A.2d 6, 9 (Md. Ct. App. 1996).

### B. Potential Medicaid-related State APA Claims

There are multiple potential state APA claims that advocates may consider bringing to strengthen their state's Medicaid programs.

Quasi-judicial actions: Many Medicaid-related APA claims are brought as appeals of state fair hearing decisions. Medicaid enrollees are entitled to state Medicaid fair hearings in numerous circumstances, including when their services are denied, terminated, reduced, suspended, or their applications for benefits are not acted upon with reasonable promptness.[9] These hearings are typically conducted by the state Medicaid agency, or an entity that contracts with the Medicaid agency, and must be held in accordance with federal regulations.[10] An adverse hearing decision by the Medicaid agency is considered a final agency action.[11] With Texas passing a law in 2007, every state in the U.S. and the territories now provides for state court review of adverse Medicaid fair hearing decisions.[12] In most states, "[t]he Administrative Procedure Act [APA] governs the standard of review of an administrative agency's decision."[13] However, advocates should research the standard of review in their state, as some states have exempted contested case hearings for public assistance from their state's APA.[14]

Rulemaking actions: In addition to appeals of state fair hearings, advocates may challenge agency rules directly through a private cause of action in state court. "[T]he APA permits prospective challenges to agency rulemaking and does not require that an affected party comply with the rule at his peril in order to obtain standing to challenge the rule."[15] Consequently, plaintiffs may be able to file a declaratory judgment action in state court seeking to declare a rule unlawful because it does not comply with the state's APA.[16] Advocates considering filing an APA claim directly in state court, however,

---

[9] 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.220.
[10] *See* 42 C.F.R. §§ 431.200 - 431.250.
[11] *See* 42 C.F.R. § 431.244.
[12] *See, e.g.*, Tex. Gov't Code Ann. § 545.0154.
[13] *Joyner v. N. Car. Dep't of Health & Hum. Servs.*, 715 S.E.2d 498, 501 (N.C. Ct. App. 2011).
[14] *See, e.g.*, *J.S. ex rel. S.N. v. Hardy*, 728 S.E.2d 135, 137 (W. Va. 2012) (noting the West Virigina APA does not apply "to contested cases involving the receipt of public assistance" and thus a writ of certiorari "is the proper means for obtaining judicial review of a decision" of the state Medicaid agency).
[15] *Pro. Firefighters of Fla., Inc. v. Dep't of Health & Rehab. Servs.*, 396 So. 2d 1194, 1195 (Fla. Dist. Ct. App. 1981).
[16] *See, e.g.*, *Long Term Care Pharm. All. v. Tex. Health & Hum. Servs. Comm'n*, 249 S.W.3d 471, 473 (Tex. Ct. App. 2007); *Emergency Med. Care Facilities, P.C. v. Div. of Tenncare*, 671 S.W.3d 507, 510 (Tenn. 2023).

should be mindful of exhaustion and primary jurisdiction defenses that the agency may raise. These defenses are discussed in more detail below.

### 1. Adopted with Improper Procedures

State APAs require that rules be adopted in accordance with proper rulemaking procedures, which typically require the agency to publish notice of the rule and allow for public comment.[17]

"When an agency promulgates a rule without complying with the proper rule-making procedures, the rule is invalid."[18] Similarly, "informal agency action that is de facto rulemaking will be voided for failing to comply with the APA rulemaking procedures."[19] Consequently, advocates may challenge both written and unwritten policies governing Medicaid programs if those policies were not adopted according to proper rulemaking procedures.

The success of these types of challenges will often depend on whether the policy at issue meets the state APA's definition of a "rule." The model state APA defines a "rule" as "the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes law or policy or the organization, procedure, or practice requirements of an agency and has the force of law."[20] "[W]here an agency's efforts effect substantive changes binding on persons outside the agency, the agency's policy constitutes a 'rule' that must be promulgated pursuant to the APA."[21] However, in many states, APA rulemaking requirements generally "do[] not apply to interpretive rules or statements of general policy."[22] "An "interpretive rule" is a statement or policy "promulgated by an administrative agency to interpret, clarify or explain the statutes or regulations under which the agency operates."[23] Some states, however, require both

---

[17] *See* Model State Administrative Procedure Act §§ 301-318 (2010).
[18] *El Paso Hosp. Dist. v. Tex. Health & Hum. Servs. Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008); *see also Walker v. Dep't of Transp.*, 630 S.E.2d 878, 884 (Ga. Ct. App. 2006) ("Failure to comply with [state APA] procedures will invalidate an amended rule.").
[19] *Besler & Co. v. Bradley*, 824 A.2d 289, 290 (N.J. Super. Ct. App. Div. 2003).
[20] *See* Model State Administrative Procedure Act § 102(30) (2010).
[21] *Bel Air Assocs. v. N.H. Dep't of Health & Hum. Servs.*, 910 A.2d 1232, 1237 (N.H. 2006) (quotations omitted); *see also Andrews v. D.C. Police & Firefighters Ret. & Relief Bd.*, 991 A.2d 763, 771 (D.C. 2010) ("When an agency exercises its authority to supplement [a statute], not simply to construe it, it makes new law and thereby engages in substantive or legislative rulemaking.") (quotation omitted).
[22] *Schlapp ex rel. Schlapp v. Co. Dep't of Health Care Pol'y & Fin.*, 284 P.3d 177, 185 (Col. Ct. App. 2012).
[23] *Young v. S.C. Dep't of Highways & Pub. Transp.*, 336 S.E.2d 879, 882 (S.C. Ct. App. 1985).

legislative and interpretative rules to be promulgated according to formal rulemaking procedures.[24]

State courts have frequently examined whether a state's policy governing the Medicaid program constitutes a "rule" that must be adopted in accordance with the state's APA. For example, the Washington State Supreme Court held that the state's Medicaid reimbursement schedule for prescription drugs "constituted an order, directive, or regulation of general applicability relating to a benefit conferred by law and, thus, are rules."[25] Therefore, the state's decision to change those schedules unilaterally without going through proper rulemaking procedure was invalid.[26] The North Carolina Court of Appeals determined that a policy change related to provider eligibility "interpret[ed] Medicaid eligibility by defining those services [plaintiff] is eligible to receive under the Waiver program," and thus is a "rule pursuant to the North Carolina APA."[27] Because the state did not adopt the provision through proper rulemaking procedures, the state could not rely on the waiver to deny provider reimbursement.[28] Recently, courts in Pennsylvania recognized that policies related to home and community-based waiver services were "rules" because they were "very concrete and not subject to any interpretation and must be followed to the letter."[29]

Courts have also examined whether needs assessment tools are "rules" that must be promulgated pursuant to the state's APA. For example, the Wisconsin Court of Appeals held that an instruction for a needs assessment for long-term care services was a "rule" because "it announce[d] the general policy and the specific criteria to be employed

---

[24] *See, e.g.*, *Eng'g Mgmt. Servs., Inc. v. Md. State Highway Admin.*, 825 A.2d 966, 978 (Md. 2003) ("Under the Maryland APA, an agency's organizational rules, procedural rules, interpretive rules and statements of policy all must go through the same procedures as required for legislative rules.").

[25] *Failor's Pharmacy v. Dep't of Soc. & Health Servs.*, 886 P.2d 147, 151 (Wash. 1994).

[26] *Id.; see also Savient Pharms., Inc. v. Ca. Dep't of Health Servs.*, 53 Cal. Rptr. 3d 689, 697 (Cal Ct. App. 2007), *as modified* (Feb. 6, 2007) (holding a drug formulary is a regulation subject to APA rulemaking requirements).

[27] *McCrann ex rel. McCrann v. Dep't of Health & Hum. Servs., Div. of Mental Health, Developmental Disabilities & Substance Abuse Servs.*, 704 S.E.2d 899, 905 (N.C. Ct. App. 2011).

[28] *Id.; see also Emergency Med. Care Facilities, P.C*, 671 S.W.3d at 510 (holding a reimbursement cap was a "rule" that needed to be promulgated in accordance with the state APA).

[29] *Dunkelberger v. Dep't of Hum. Servs.*, --- A.3d. ---, No. 1236 C.D. 2024, 2026 WL 1205876, at *8 (Pa. Commw. Ct. Feb. 17, 2026); *see also Errickson v. Dep't of Hum. Servs.*, --- A.3d. ---, No. 1237 C.D. 2024, 2026 WL 1205886, at *5 (Pa. Commw. Ct. Feb. 17, 2026) (same).

when entering information on fluctuating levels of functional ability for all applicants."[30] Recently, the North Dakota Supreme Court determined that the assessment and scoring rubric for its Family Paid Caregiver Program were "rules" because they "establish the Program's eligibility requirements" and therefore "are statements of general applicability implementing the Program."[31]

### 2. Abrupt or Unexplained Changes in Policy

Advocates may also consider pursuing a state APA claim when a state Medicaid agency abruptly changes a rule or policy without sufficient justification. These actions may be considered "arbitrary or capricious" and thus unlawful under a state's APA. An act "is arbitrary or capricious if the agency entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[32] While agencies are allowed to change their Medicaid policies, the "change in policy must be explained and the reasons therefor articulated."[33] "An agency cannot change its standards at the personal whim of a bureaucrat."[34]

Advocates have successfully challenged abrupt changes in policy under state APAs when the Medicaid agency did not provide a reasoned justification for its action. For example, in Florida, a court determined that a policy change related to eligibility for companion services was "contrary to law" because it was made "without rule-making or an explication of the new policy during the hearing process."[35] Recently, the Mississippi Supreme Court ruled that a "significant change in [a] long-standing policy" related to

---

[30] *Cholvin v. Wis. Dep't of Health & Fam. Servs.*, 758 N.W.2d 118, 125 (Wis. Ct. App. 2008).

[31] *Ferderer v. N.D. Dep't of Health & Hum. Servs.*, -- N.W.3d ----, 2026 WL 1090469 (N.D. April 22, 2026). *But see E.D. v. Horizon NJ Health*, No. A-4246-16T1, 2018 WL 6424136, at *4 (N.J. Super. Ct. App. Div. Dec. 7, 2018) (holding an assessment tool for personal care assistance services was "informal agency action" that did not need be promulgated through formal rulemaking).

[32] *Miss. Dep't of Envtl. Quality v. Weems*, 653 So.2d 266, 281 (Miss.1995); *see also Peckham v. Calogero*, 911 N.E.2d 813, 816 (N.Y. 2009) ("An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts.").

[33] *Cmty. Care Centers, Inc. v. Ind. Dep't of Pub. Welfare*, 523 N.E.2d 448, 451 (Ind. Ct. App. 1988).

[34] *Courts v. Agency for Health Care Admin.*, 965 So. 2d 154, 159 (Fla. Dist. Ct. App. 2007); *see also Goodwin v. Gleidman*, 463 N.Y.S.2d 693, 703 (N.Y. Sup. Ct. 1983) ("An agency may not justify significant changes in policy by an unsupported assertion that it had always meant something entirely different.").

[35] *Courts*, 965 So. 2d at 160.

rate calculations "was arbitrary and capricious and warranted notice under 42 C.F.R. § 447.205(a)."[36]

### 3. Agency Rules and Actions Contrary to Law

Under state APAs, an agency action may be held unlawful if the agency's action is "not in accordance with law."[37] "If an agency misconstrues a statute, there is no reasonable basis for the agency's ultimate action. Therefore, the trial court is required to reverse the agency's action as being arbitrary and capricious."[38] Moreover, "[i]f an enabling statute does not authorize a particular regulation, either expressly or by necessary implication, that regulation must be declared invalid despite its practical necessity or appropriateness."[39] In addition, "an administrative agency may not violate or ignore its own rules, and where it fails to follow the rules which it has promulgated, its orders are unlawful."[40] As a result, advocates may pursue a state APA claim that asserts that an agency is violating provisions of federal law including the Medicaid Act, violating provisions of state law, or violating the agency's own rules that govern the Medicaid program.

Multiple states courts have interpreted provisions of the federal Medicaid Act in state APA claims and have held that agency actions that do not comport with the law's requirements are unlawful.[41] For example, reviewing courts have held that agency rules or actions are unlawful because they conflict with the Medicaid Act's comparability

---

[36] *Hattiesburg Med. Park Mgmt. Corp. v. Miss. Div. of Medicaid*, --- So.3d ----, No. 2024-SA-00253-SCT, 2025 WL 3239207, at *13 (Miss. Nov. 20, 2025).

[37] *See, e.g.*, Wyo. Stat. Ann. § 16-3-114(c)(ii)(A).

[38] *Noland v. Ind. Fam. & Soc. Servs. Admin., Div. of Disability, Aging & Rehab. Servs.*, 743 N.E.2d 1200, 1206 (Ind. Ct. App. 2001), *adhered to in part on reh'g sub nom. Noland v. Fam. & Soc. Servs. Admin., Div. of Disability, Aging, & Rehab. Servs.*, 750 N.E.2d 401 (Ind. Ct. App. 2001).

[39] *In re Impoundment of Chevrolet Truck, WA License No. A00125A ex rel. Registered/Legal Owner*, 60 P.3d 53, 60 (Wash. 2002) (quotation omitted).

[40] *Murphy v. Nelson*, 921 P.2d 1225, 1230 (Kan. 1996).

[41] Advocates should be mindful that states may attempt to remove these types of claims to federal court, arguing that they require "resolution of substantial questions of federal law" under the "well-pleaded complaint" rule. The "well-pleaded complaint" rule and strategies to avoid removal are discussed in Part II.D in **the first issue brief** of this series.

requirement,[42] the reasonable standards requirement,[43] the free choice of provider provision, [44] and the EPSDT requirements.[45] Multiple courts have determined that state policies related to Medicaid financial eligibility rules violated federal law.[46] In addition, advocates may raise violations of other federal laws, such as the Americans with Disabilities Act, through a state APA claim.[47] This method of challenge continues to be critical, given the high standard for pursuing a federal private cause of action through 42 U.S.C. § 1983 for a violation of the Medicaid Act.[48]

Advocates have also effectively challenged state Medicaid regulations because those regulations conflict with state law.[49] Challenges to state Medicaid agency actions when

---

[42]*Samantha A. v. Dep't of Soc. Servs. & Health Servs.,* 256 P.3d 1138, 1141 (Wash. 2011) (holding that a rule that reduced service payments solely because children lived at home violated the comparability requirement); *Jenkins v. Wash. State Dep't of Soc. & Health Servs*., 157 P.3d 388, 388-89 (Wash. 2007) (holding that a rule that reduced benefits for people with live-in caregivers violated the comparability requirement).
[43] *Conley v. Dep't of Health*, 287 P.3d 452, 470 (Utah 2012) (holding that a policy denying speech augmentative communication devices to non-pregnant adults violated the reasonable standards requirement).
[44] *Dube v. N.H Dep't of Health & Hum. Servs.,* 97 A.3d 241, 248 (N.H. 2014) (holding that a rule requiring a mental health care provider to maintain an inter-agency agreement with a community mental health care program violated the free choice of provider provision).
[45] *See Freeman v. State, Dep't of Soc. & Health Servs*., 295 P.3d 294, 305 (Wash. 2013) (noting that the state district court overturned the agency's determination that EPSDT services did not include personal care).
[46] *Hegadorn v. Dep't of Hum. Servs. Dir*., 931 N.W.2d 571, 574 (Mich. 2019) (holding that the manner that Michigan calculated trust assets for Medicaid eligibility conflicted with federal law); *Ark. Dep't of Hum. Servs. v. Schroder*, 122 S.W.3d 10, 17 (Ark. 2003) (holding Arkansas' method of computing a person's assets did not comply with federal law).
[47] *See, e.g.*, *Myers v. S.C. Dep't of Health & Hum. Servs.*, 795 S.E.2d 301, 310 (S.C. Ct. App. 2016) (reversing agency decision because appellant showed that a reduction in services would put him at "substantial risk of institutionalization" in violation of *Olmstead v. L.C.*, and the ADA).
[48] *See, e.g.*, *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 385 (2025) (holding 42 U.S.C. § 1396a(a)(23) is not privately enforceable through § 1983). *See generally* Molly Teague, *Propping Open the Court House Door: State Administrative Law as a Means of Private Medicaid Enforcement*, 100 Tul. L. Rev. 329 (2025) (discussing ways that state APAs can be used to enforce Medicaid law).
[49] *See, e.g.*, *Davio v. Neb. Dep't of Health & Hum. Servs.*, 786 N.W.2d 655, 670 (Neb. 2010) (declaring regulation that set forth condition upon which Medicaid could be terminated was invalid because it was not authorized by state statute); *G.C. v. Div. of Med. Assistance & Health Servs.*, 262 A.3d 1195, 1210 (N.J. 2021) (holding that

the agency does not comply with its own regulation are also a possibility.[50] In sum, a state APA claim may provide an avenue to challenge agency actions that are contrary to state or federal law.

### C. Limits on Judicial Review

While state APAs offer opportunities to challenge unlawful agency actions, advocates should be mindful of various defenses and legal doctrines that will typically arise in these cases.

#### 1. Exhaustion

Prior to challenging agency action directly in state court, advocates should consider whether the exhaustion of administrative remedies is required. The "exhaustion requirement generally refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate."[51] "The basic purpose of the exhaustion doctrine is to allow an administrative agency to perform functions within its special competence to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies."[52] Exhaustion is a common law doctrine, but numerous state APAs also contain statutory exhaustion requirements. [53]

"[W]here an agency prescribes an administrative process for resolving disputes, the parties must exhaust those administrative remedies before seeking court intervention."[54] Nevertheless, courts in some states have recognized exceptions to the exhaustion requirement. Specifically, some state courts have not required exhaustion when

(1) the question raised is one of interpretation of a statute,

---

regulation governing income eligibility for Medicaid program was invalid because it conflicted with state law); *Md. Dep't of Health & Mental Hygiene v. Brown*, 466, 935 A.2d 1128, 1143 (Md. Ct. App. 2007), *aff'd,* 959 A.2d 807 (2008) (holding that correct standard for Medicaid waiver eligibility was set forth in state statute, not agency regulation).

[50] *See, e.g.*, *Lazzell v. Ind. Fam. & Soc. Servs. Admin*., 775 N.E.2d 1113, 1119 (Ind. Ct. App. 2002) (reversing eligibility determination because agency used gross income rather than net income, as was required by state agency rule).

[51] *Darby v. Cisneros*, 509 U.S. 137, 144 (1993) (quoting *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City,* 473 U.S. 172, 193 (1985)).

[52] *Hyning v. Univ. of Alaska*, 621 P.2d 1354, 1355-56 (Alaska 1981) (quoting *Parisi v. Davidson*, 405 U.S. 34, 37 (1972)).

[53] *See e.g.*, *Goral v. Dart*, 181 N.E.3d 736, 745 (Ill. 2020) (noting the "well established" common law doctrine of exhaustion has been incorporated into state statute).

[54] *Sorensen v. Halling*, 561 P.3d 1241, 1245 (Wyo. 2025).

(2) the action raises only questions of law and not matters requiring administrative discretion or an administrative finding of fact,
(3) the exhaustion of administrative remedies would be futile and/or the available remedy is inadequate, or
(4) where there is the threat of irreparable injury.[55]

Moreover, some courts have recognized that exhaustion may not be required when challenging the constitutional validity of a statute, "because agencies cannot decide issues of statutory validity."[56] Therefore, whether the exhaustion requirement will apply will likely depend on the nature of the challenge, whether and how the exhaustion requirement is spelled out in statute, and whether the issues are purely legal or require development of a factual record.

### 2. Primary Jurisdiction Doctrine

Similar to exhaustion, agencies may assert that the "primary jurisdiction" doctrine precludes direct review of agency action in state court. The "primary jurisdiction" doctrine provides that "[i]f a court concludes that a dispute brought before the court is within the primary jurisdiction of an agency, it will dismiss the action on the basis that it should be brought before the agency instead."[57] The doctrine may apply "whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body. . ."[58] Courts invoke the primary jurisdiction doctrine under the rationale that "the interests of justice are best served by permitting the agency to resolve factual issues within its peculiar expertise."[59] However, "[t]he doctrine does not apply where a pure question of law is at issue."[60] Consequently, if plaintiffs pursue claims where factual questions related to Medicaid are unresolved, courts may rely on the primary jurisdiction doctrine to send the case back to the agency; however, legal questions should remain under the jurisdiction of the state court.[61]

### 3. Final Agency Action

State APAs typically require that an agency action be "final" before judicial review. "An agency action is final when it imposes an obligation, denies a right, or fixes a legal

---

[55] *Ex parte Lake Forest Prop. Owners' Ass'n*, 603 So. 2d 1045, 1046–47 (Ala. 1992).
[56] *Tindal v. Norman*, 427 N.W.2d 871, 873 (Iowa 1988).
[57] *The Country Vintner, Inc. v. Louis Latour, Inc.*, 634 S.E.2d 745, 750 (Va. 2006).
[58] *Travelers Ins. Co. v. Detroit Edison Co.*, 631 N.W.2d 733, 741 (Mich. 2001).
[59] *McDowell v. Napolitano*, 895 P.2d 218, 222 (N.M. 1995).
[60] *In re Int. of Battiato*, 613 N.W.2d 12, 18 (Neb. 2000).
[61] *See Morris Cnty. v. Dep't of Hum. Servs.*, No. A-1906-19, 2021 WL 3160464, at *7 (N.J. Super. Ct. App. Div. July 27, 2021).

relationship as a consummation of the administrative process."[62] "An order is deemed to be final when there are no substantive issues remaining to be litigated in the case."[63] Whether letters, policy statements, and other agency actions that are not agency orders constitute "final agency action" will normally depend on whether the action establishes legal obligations or if further action is contemplated.[64] Courts have rejected advocates' attempts to seek judicial review of agency decisions when state fair hearing proceedings, including requests for reconsideration, are still ongoing.[65]

#### 4. Deference to Agency Interpretations

Advocates should also be aware of the state's approach to agency deference, particularly given recent changes in United States Supreme Court precedent. For over 40 years, federal courts would defer to a federal agency's interpretations of ambiguous statutes under the test announced in *Chevron U.S.A. Inc. v. Nat'l Res. Def. Coun., Inc*.[66] However, in *Loper Bright Enterprises v. Raimondo,* the U.S. Supreme Court overruled *Chevron*, holding that federal "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."[67]

Prior to *Loper Bright*, numerous state courts adopted some type of *Chevron* deference to a state agency's interpretation of a statute.[68] The *Loper Bright* decision, however, applied only to the federal APA and did not directly change any state laws. Since the

---

[62] *Evergreen Wash. Healthcare Frontier LLC v. Dep't of Soc. & Health Servs.*, 287 P.3d 40, 48-49 (Wash. Ct. App. 2012) (quotation omitted).

[63] *Ga. Interfaith Power & Light, Inc. v. Ga. Power Co.*, 835 S.E.2d 656, 659 (Ga. Ct. App. 2019) (quotation omitted); *see also Henry v. Sec. Com'r for State,* 659 N.W.2d 869, 871 (N.D. 2003) (holding that administrative agency decision is "final . . . if it terminates the issue, leaving the agency with nothing more to decide") (quotations omitted).

[64] *Compare Evergreen*, 287 P.3d at 48-49 (determining that a rate setting letter was final agency action because it "fixed" the Department's payment obligation) *with Kroll v. Dep't of Motor Vehicles*, 590 N.W.2d 861, 863 (Neb. 1999) (holding that a letter from the agency was not reviewable because it contemplated further action by the parties and was not a "final, appealable administrative order").

[65] *See, e.g.*, *Pentskiff Interpreting Servs. v. Dep't of Health, Div. of Medicaid & Health Fin. Off. of Formal Hearings*, 305 P.3d 218, 220 (Utah Ct. App. 2013); *see also Ford v. Ag. for Persons with Disabilities Dist. 15, St. Lucie*, 932 So. 2d 294, 296 (Fla. Dist. Ct. App. 2005) (determining that denial of a motion to transfer was not final agency action subject to judicial review).

[66] 467 U.S. 837 (1984).

[67] 603 U.S. 369, 412 (2024).

[68] *See, e.g.*, *Appalachian Power Co. v. State Tax Dep't of W.V.*, 466 S.E.2d 424, 441 (W. Va. 1995); *Cobb v. Bd. of Counseling Pros. Licensure*, 896 A.2d 271, 275 (Me. 2006).

*Loper Bright* decision, state courts have wrestled with the question of whether *Chevron* style deference should still be applied under state law. Intermediate appellate courts have recognized that only the state supreme court can overturn a state's version of *Chevron* deference.[69] When state supreme courts have examined whether *Chevron* style deference should still apply, they have reached different results.[70] As a result, advocates will need to be mindful of potential changes in standards governing agency deference in state courts.

Additional questions regarding deference arise when state agencies interpret regulations as opposed to statutes. Many courts "will defer to an administrative agency's rational interpretation of its own regulations in its area of expertise."[71] Some courts have extended this deference to a state agency's interpretation of federal regulations, holding that "when a state agency is charged with the day-to-day responsibility for enforcing and administering a federal regulation, courts should give deference to the agency's interpretation of that regulation."[72] On the other hand, some courts have concluded that a state agency's interpretation of federal regulations is not owed deference, "as there is no basis for assuming that Congress delegated any authority to local agencies to propound authoritative interpretations of" those regulations.[73] In sum, questions regarding deference will be state specific, and advocates should research the issue to determine what standards will apply before commencing litigation.

## III. Conclusion

State Administrative Procedure Acts provide another avenue for advocates to challenge unlawful actions by state Medicaid agencies. NHeLP is available to provide technical assistance to help advocates frame, plead, and litigate state Administrative Procedure Act claims. Please reach out to us if you are considering such a claim.

---

[69] *See, e.g.*, *Co. Educ. Ass'n v. Co. State Bd. of Educ.*, 574 P.3d 279, 284 (Colo. Ct. App. 2025); *Brookston Res., Inc. v. Dep't of Nat. Res.*, 243 N.E.3d 1127, 1138 (Ind. Ct. App. 2024), *transfer denied,* 253 N.E.3d 521 (Ind. 2025).

[70] *Compare Rosehill Tr. of Linda K. Rosehill Revocable Tr. dated Aug. 29, 1989 v. State*, 556 P.3d 387, 405 (Haw. 2024) (holding that Hawaii state courts will continue to apply *Chevron* style deference despite *Loper Bright*) *with Savage v. N.C. Dep't of Transportation*, 919 S.E.2d 144, 149 (N.C. 2025) (disavowing *Chevron* deference following *Loper Bright*).

[71] *See Peckham v. Calogero*, 911 N.E.2d 813, 816 (N.Y. 2009).

[72] *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*, 731 N.W.2d 502, 513 (Minn. 2007).

[73] *Eldridge v. D.C. Dep't of Hum. Servs.*, 248 A.3d 146, 155 (D.C. 2021) (quotation omitted).