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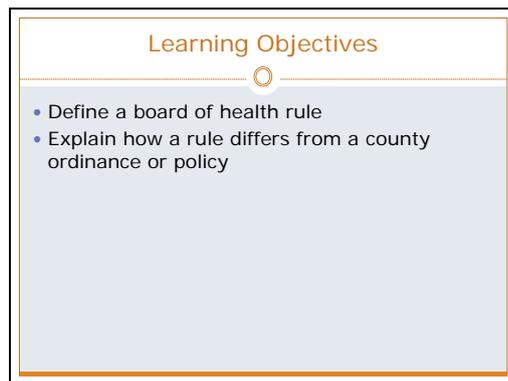


Welcome to section 1 of the Board of Health Rulemaking Authority training module. My name is Jill Moore and I am a faculty member with the School of Government at UNC Chapel Hill.

This module was originally developed and recorded by my colleague Aimee Wall. I've updated the content, but I'd like to give credit to Professor Wall for developing the original content and for providing the outline for the topics that we'll be covering.

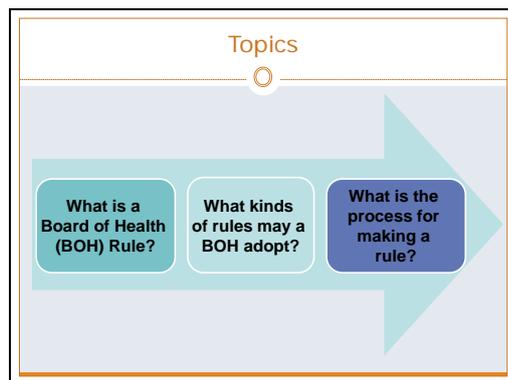
This first section of the module addresses the question, what is a board of health rule?

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During this section, we will define a board of health rule and explain how a rule differs from a county ordinance or a policy.

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Before we answer that question, I'd like to introduce the content of the module, and then say a word about the different types of boards of health we have in North Carolina.

This slide illustrates the module, which is designed to provide an overview of the authority that North Carolina local boards of health have to adopt public health rules.

During this module, we are going to answer three fundamental questions about board of health rules.

- We will first talk about what a BOH rule is and how it compares to other types of local laws, such as ordinances.
- In the second section, we will answer the question: What kinds of rules may a board of health adopt? We will address the board’s authority to make rules as well as the limitations on the authority.
- In the third and final section, we will develop a checklist for the rulemaking process, and review some legal requirements that apply to rulemaking procedures.

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Local Boards of Health

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- Board of health
  - County
  - District
- Consolidated human services board
- Public health authority board
- Board of county commissioners

Now, a word about the types of boards that may exercise board of health rule-making authority. First, we have the ones simply called boards of health—these are local groups of citizens that are appointed by county commissioners to serve as a board of health for the county, or in some cases a multi-county district. These boards represent different professions that are relevant to public health and are composed of residents of the county or multi-county district. Most North Carolina counties have either a county or district board of health.

However, in some North Carolina counties, a consolidated human services board or public health authority board is responsible for public health. Those boards have the same rule-making authority as a board of health, so the information in these modules apply to them too. The last bullet point refers to boards of county commissioners. Every county in North Carolina has a board of commissioners and in most counties the board of health is a

separate body. However, in some counties the commissioners have chosen to assume the powers and duties of the board of health, and that's why it's on our list here. When a board of county commissioners has assumed the powers and duties of a board of health, then in that county, the board of commissioners is the body that may adopt the public health rules described by these modules. Boards of county commissioners also have the authority to adopt ordinances for their counties. We'll talk later about the differences between an ordinance and a board of health rule, but for now, please just keep in mind that they are different things. When regulating public health matters, boards of county commissioners that have taken on board of health powers and duties will want to consider whether an ordinance or health rule better suits their needs.

Another thing to note when the board of county commissioners has assumed board of health powers and duties, it is required to appoint an advisory committee, sometimes called an advisory board, that's composed of residents representing the same professions you would see on a county board of health. The advisory board may recommend rules to the board of commissioners, but the commissioners themselves comprise the board that is authorized to exercise the rule-making authority that's described in this module.

For the remainder of this module, when I use the term “local board of health,” I mean the local board that is responsible for public health in one or more counties. The term encompasses county and district boards of health, consolidated human services boards, public health authority boards, and even in some cases boards of county commissioners that have assumed board of health authority.

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What is a BOH rule?

“A [BOH] shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.”

G.S. 130A-39

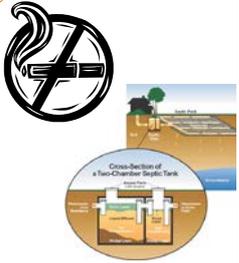
Now we are ready for our main topic for Section 1: What is a board of health rule?

On this slide I’ve quoted a North Carolina General Statute, which is abbreviated G.S. I wanted to point that out because you’ll see that abbreviation several times during this module. G.S. 130A-39 is the state law that says that local boards of health have the responsibility to protect and promote the public health, and the authority to adopt rules necessary for that purpose.

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What can a BOH rule do?

- Prohibit citizens from doing something or
- Require citizens to do something



So, a BOH has the authority to adopt rules, but what are these “rules”? And, more specifically, “what is the legal effect of a BOH rule?”

A board of health rule is basically a directive that is adopted by a local board of health. A rule can prohibit citizens from doing something or require citizens to do something. For example, a board of health rule can prohibit smoking in certain public places. Or a board of health rule can require a citizen to follow a certain procedure if she wants to install a new septic system on her property.

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**Is a BOH Rule a Law? YES!**

Enforcement Tool	Consequence
Criminal	Misdemeanor
Civil	Injunction
Administrative	Fine



Are these rules actually “laws”? Yes, indeed they are.

If a board of health rule is properly adopted, it has the force of law. By this, I mean that individuals within the board’s jurisdiction are required to comply with the rule, and the rule may be legally enforced against those who do not comply. For example, for most local rules, an individual who does not comply may be charged with a Class 1 misdemeanor – which is a criminal offense. Local smoking rules are an exception to this—violation of a smoking rule is not a misdemeanor. But violation of any other local board of health rule may be prosecuted as a misdemeanor.

Board of health rules may also be enforced by civil actions. For example, a county attorney may seek an injunction against a local rule violator. An injunction is a court order that, in this context, would likely direct the individual to come into compliance with the local rule.

In some limited situations, people can also be fined for violating local rules. For example, if the board of health has adopted local rules governing on-site wastewater systems, the local health director has the authority to assess fines for violations of those local rules.

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Rules = Regulations	
Level of Government	Rulemaking Body
Federal	U.S. Department of Health and Human Services
State	Commission for Public Health Environmental Management Commission
Local	Local Board of Health Consolidated Human Services Board Public Health Authority Board Board of County Commissioners

A brief word about terminology. We call laws adopted by boards of health “rules,” but we could use the term “regulation” instead. The terms are interchangeable. Rules and regulations are a type of law that is adopted by an administrative body – such as a federal, state or local agency.

County health departments and consolidated human services agencies are agencies of the county, which are, in turn, a part of the state. Other types of health departments, such as public health authorities or multi-county district health departments are separate from county government but are also local agencies. Each of these local agencies has a board responsible for exercising board of health powers and duties. The state has authorized these local boards to create administrative laws as necessary to protect the public health in their local jurisdictions.

As we noted earlier, in some counties the board of county commissioners has assumed the powers and duties of a local board of health. Boards of county commissioners are elected bodies, not administrative agencies, but when they exercise the rule-making authority of a board of health they too are developing local administrative laws. Again we call those rules or regulations.

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**BOH Rule versus County Ordinance**

1. Scope of authority
  - o BOH limited to health
  - o County authority includes health but is not limited to health



So, how is a board of health rule different from a county ordinance? Both are local laws but there are three basic differences to keep in mind.

First, a Board of Health rule may address only matters related to health. Issues that are not related to health are outside the scope of a board of health’s authority. In contrast, a county ordinance can address a variety of issues affecting a county, including issues related to health.

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**BOH Rule versus County Ordinance**

2. Elected versus appointed
  - o Elected officials have more expansive authority



Second, a fundamental difference between the board of commissioners and a board of health is that the commissioners are elected, whereas the board of health members are appointed. As an elected, legislative body, the commissioners are able to make some decisions and adopt some laws that boards of health may not be able to. This concept – the difference in authority between an elected and an appointed body – will come up again later in this module.

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**BOH Rule versus County Ordinance**

3. BOH rules apply to entire county
  - o Ordinances do not apply to municipalities (unless municipality so chooses)



The final noteworthy difference between a BOH rule and a county ordinance is that a BOH rule applies throughout the entire county, including within the limits of municipalities. In contrast, a county ordinance usually does not govern the municipalities that are in the county unless the governing boards of those municipalities agree to it. They do that by adopting a resolution agreeing to be governed by the county ordinance. But in the absence of that type of resolution, the county

ordinance does not apply inside municipal limits.

What about those counties where the board of commissioners has abolished the appointed board of health and directly assumed board of health powers and duties? In those counties—and only in those counties—the board of commissioners who wants to regulate a public health matter appears to have the choice of enacting an ordinance or adopting a health rule. The different territorial jurisdiction of an ordinance versus a rule may affect which one they choose.

Let me give you an example. Suppose a board of county commissioners that has assumed board of health powers and duties wants to regulate smoking in parks, local government buildings, or other places where local regulation of smoking is allowed. And they would like that regulation to be consistent throughout the county, including in the county's cities or towns. If the board of commissioners adopts a county ordinance regulating smoking, the territorial jurisdiction of that ordinance is limited to the unincorporated areas of the county. In other words, it doesn't apply in city limits, unless the city agrees to it. But if the board of commissioners decides to adopt a public health rule regulating smoking instead, then the rule applies throughout the county, including in the cities. This is because a board of health's territorial jurisdiction includes cities and towns. Again, the only boards of county commissioners who may adopt public health rules are those that have assumed the powers and duties of a board of health.

**BOH Rule versus Policy**

- BOH rule is a law
- Policy is not a law
- A rule is enforceable against the general public



How is a board of health rule different from a policy? Basically, a BOH rule is a law and a policy is not. That sounds simple, but the distinction sometimes becomes confusing in practice. So, how do they differ for practice purposes?

The board of health is the policy-making body for the health department, and a board of health may adopt a number of different kinds of policies. But those policies have to do with the programs or operations of the health department – and as such, they’re often mostly of concern to employees. A policy for a department doesn’t impose requirements on the general public the way that a law does (and remember a rule is a type of law).

Policies also aren’t enforced the way that laws are. A health department policy may be enforceable against the department’s employees – but any enforcement would probably take the form of an employment action. It wouldn’t be a misdemeanor charge or one of the other methods that’s used to enforce public health rules. In addition, BOH policies are not enforceable against the general public the way that BOH rules are.

Some boards of health have tried to adopt “policies” in areas where they don’t have the legal authority to adopt a “rule.” I strongly advise against doing this.

We’ll talk more about the scope of BOH authority in the sections that follow.

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**Discussion Questions**

1. What are some of the political issues that might come into play when deciding whether to adopt a rule rather than an ordinance?
2. Do you have any BOH rules in your jurisdiction? If yes, then what are they?
3. What is an example of a BOH policy in your jurisdiction?

In each section of this module, I have some discussion questions for you. If you're working through the module with a group, I hope your group will take some time to talk about these questions among yourselves. If you're working on your own, please take a moment to think about them.

Here are a few questions to consider in light of what you've learned so far:

First, what are some of the political issues that might come into play when a board is deciding whether to adopt a rule or pursue an ordinance to achieve a local public health goal?

Second, are you aware of any BOH rules in your jurisdiction? What are they?

And third, what is an example of a BOH policy in your jurisdiction?

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**Summary**

- Boards of Health include:
  - County or district boards of health
  - Consolidated human services boards
  - Public health authority boards
  - Boards of county commissioners that have assumed BOH powers and duties
- BOH rule can require or prohibit actions affecting health

In this section, we discussed the different types of bodies that can exercise BOH rulemaking authority in North Carolina. We used the general term "board of health" to refer to all of these, including county or district boards of health, consolidated human services boards, public health authority boards, or boards of county commissioners that have assumed BOH powers and duties.

We defined board of health rule and discussed how rules can prohibit citizens from doing something, or require citizens to do something related to public health.

**Summary, continued**

- BOH rule differs from a county ordinance
  - Limited to rules related to health
  - Usually adopted by appointed (not elected) body
  - Applied throughout the entire county
- BOH rule differs from policy

Finally, we discussed the differences between BOH rules, county ordinances, and policies.

Three important differences between BOH rules and county ordinances are:

1. A BOH rule may address only matters related to health, while a county ordinance may encompass a variety of issues including some that are health-related;
2. BOH members are appointed rather than elected. Their authority is more limited than that of an elected, legislative body, such as a board of county commissioners. (Having said that, let's not forget that in some counties, the board of county commissioners has assumed board of health powers and duties. In those counties the commissioners must have an appointed committee or board that advises them on health, and the commissioners themselves need to be familiar with board of health rule-making authority, as they are the ones who may exercise it.)
3. A BOH rule applies throughout the entire county, including within municipalities, while a county ordinance does not govern municipalities unless the municipalities adopt a resolution agreeing to be governed by the ordinance.

And finally our last bullet point, a BOH rule differs from a BOH policy. They are distinct things.

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**Resources**

- Additional information available at [www.ncphlaw.unc.edu](http://www.ncphlaw.unc.edu)
  - Law outlines
  - Law bulletins
  - FAQs



For additional information on board of health rule-making and other issues in public health law, visit the UNC School of Government's North Carolina Public Health Law website at [www.ncphlaw.unc.edu](http://www.ncphlaw.unc.edu). There you will find links to law outlines, law bulletins, and in some cases webinars, presentations, and handouts. The information is organized by topic.

This concludes section 1. In section 2, we will look at what kinds of rules a BOH may adopt, as well as boards' authority to make rules and limitations on that authority.