Families in Society: The Journal of Contemporary Social Services
1–11

DOI: 10.1177/10443894251323446
journals.sagepub.com/home/fis


Federal Rulemaking: An Untapped Arena for Social Work Policy Education and Practice

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Abstract

Administrative advocacy, including federal and judicial rulemaking, is an important yet underutilized tool for social work policy practice and advocacy. In June 2024, the Supreme Court overturned the Chevron doctrine through its ruling on two landmark cases. Chevron gave precedence to federal agencies to use federal rulemaking to interpret legislation. Overturning Chevron shifts power to the judiciary and has important consequences for social workers, who are trained in both direct practice and policy implementation. This policy brief offers two case examples to illustrate how the rulemaking process affects individuals and families with whom social workers interact. It concludes with recommendations for social work educators to address administrative advocacy and prepare practitioners to participate in this form of policy practice.

Keywords

advocacy, policy, modes of practice, democracy, government, social work education, professional issues, immigration and refugee issues, subjects of practice, poverty

Manuscript received: October 2, 2024; Revised: February 6, 2025; Accepted: February 7, 2025

Disposition editor: Cristina Mogro-Wilson

Social work policy practice pedagogy has traditionally focused on the legislative processes that lead to policy making and implementation (Hoefer, 2013; Weiss-Gal, 2016). Social work policy courses often teach students how to track bills, contact their legislators, analyze, and evaluate policy. A less examined curricular component is the impact of administrative advocacy, the process of executive rulemaking, and its influence on shaping policy implementation (Beltran et al., 2022). During recent administrations, executive actions have often been pivotal in reshaping who has access to social benefits, how they are prioritized, and which groups may be excluded. As Parrott (2025) put it, "The decisions that policymakers make—possibly starting early in the year and through both legislation and executive action—could leave

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many millions of people much worse off while extending and increasing tax breaks for wealthy households and profitable businesses" (p. 1). Thus, it is critical that social work education incorporate, alongside the focus on legislative processes, administrative and judicial aspects of policymaking in generalist and specialized practice.

A key domain of administrative advocacy relevant to social work is the federal rulemaking process, which was established through the Administrative Procedure Act (1946). The federal rulemaking process was further strengthened through the 1984 Supreme Court decision *Chevron v. Natural Resources Defense Council*, which established precedence that courts should defer to federal agency interpretation of established regulations (*Chevron v. Natural Resources Defense Council*, 1984). In 2024, the Supreme Court overruled this decision in two landmark cases, leading to uncertainty about the future of federal rulemaking authority (*Loper Bright Enterprises v. Raimondo*, 2024; *Relentless Inc. v. Department of Commerce*, 2024). Due to the end of Chevron deference, social workers who engage in administrative advocacy must be prepared to contribute well-informed public comments to have their input considered. They may also need to develop interprofessional alliances with lawyers and other advocates to support impact litigation, particularly if courts are empowered to play a greater role in overturning or supporting unjust regulatory measures by the executive branch.

Social workers are trained in skills including policy analysis and implementation and macro social workers, in particular, develop advanced skills in policy practice. As professionals they should engage in the federal rulemaking process, including submission of public comments to participate in administrative advocacy. Such social workers are also uniquely positioned to reflect the needs of vulnerable communities, making them pivotal actors in these processes. Moreover, they need to be aware of the increasingly important role of the judiciary in the rulemaking process. This policy brief examines the importance of the rulemaking process for social workers and the consequences of the Chevron ruling, including implications for social work education, policy, and practice. Rulemaking regularly impacts social work in all spheres of practice, including regulations related to licensure, reimbursement, and program implementation for communities served by social workers (Beltran et al., 2022; Lens, 2024). Two examples of how federal rulemaking impacts social work practice are examined: the Temporary Assistance for Needy Families (TANF) and policy guidance regarding noncitizens' access to public benefits ("public charge" rule).

An Overview of the Federal Rulemaking Process

While many are familiar with how a bill becomes a law, how laws are implemented through federal regulation is lesser known. Through the authority of the Administrative Procedure Act (1946), Congress has passed laws that permit federal agencies such as the Department of Health and Human Services (DHHS) and the Environmental Protection Agency (EPA) to implement specific policies under their purview. This is called the federal rulemaking process, which gives these federal agencies the authority to regulate activities within the programs they administer, without requiring congressional approval (Office of the Federal Register, 2011). While Congress passes laws, legislators often write in vague language as they do not have the time or subject matter expertise to include specific language about policy implementation choices. The federal rulemaking process can be used when new legislation is passed to inform policy implementation decisions. In addition, under the Administrative Procedure Act (1946), nonstatutory tools such as the rulemaking process can also be used to make decisions on the implementation of existing policies within the designated agency's purview (Bolton, 2022). Agencies staffed with subject matter experts can outline regulations that implement specific policies which helps to circumvent bureaucratic

delays and allows dedicated agency specialists to design rules that are then proposed to the public for feedback.

This rulemaking process begins with informal discussions regarding the current implementation of policy through rules and regulations. If a new rule or change to a rule is desired, the agency designated with statutory authority for policy implementation will publish a *notice of proposed rulemaking* (NPRM) or *proposed rule* in the Federal Register (Carey, 2016). The Federal Register is known as the "government's newspaper" and is a public domain in which anyone can access information about the status of regulations, executive orders, and notices (Bunk, 2011, p. 55). As of 2008, the Federal Register is available online for easier public access. This proposed rule has a period for public comment for typically up to 60 days, where any member of the public can comment on the proposed implementation choices. The agency then reviews these comments and decides to terminate the rule, continue with the changes, or create a supplemental proposed rule if significant changes are made to the original proposed rule. A summary of these public comments and the agency's response are also public documents and are published online.

Upon implementation of the final rule, individuals and organizations may contest the decision in court. However, unless considered unconstitutional, arbitrary, capricious, or a misinterpretation of the law, the rule could still be implemented (Office of the Federal Register, 2011). Since the overturning of two landmark Supreme Court cases which ended what is known as the Chevron doctrine, the judiciary may play a more significant role in federal rulemaking as there is now more latitude in challenging these administrative rules (Zurcher et al., 2024).

The Chevron Doctrine

The Chevron doctrine, established through the 1984 Supreme Court decision *Chevron v. Natural Resources Defense Council*, dictated that courts must generally defer to executive agency interpretations of legislation. It specified that if the statute in question was written in ambiguous language, then the agency interpretation of the law through agency rules stands, "as long as it is 'reasonable'" (Merrill, 2022, p. 2). The Chevron doctrine gave considerable policy-making authority to executive agencies and reflected a long-standing tension between executive and judicial branches in interpreting and implementing policy. In practice, it meant that executive agencies were empowered to implement legislation through the rulemaking process with the knowledge that the courts would generally defer to their interpretations (Merrill, 2022). Prior to the establishment of the Chevron doctrine, executive agencies still interpreted and implemented policy in accordance with the Administrative Procedure Act (1946), but the courts had more input and power in shaping those interpretations through judicial rulings. Some argue that the doctrine allowed executive agencies to "reinterpret existing law" through regulations as a mechanism for policy change (Merrill, 2022, p. 3). Others posit that the doctrine gave the necessary deference to subject matter experts in federal agencies to adjust rules and regulations based on changes that legislators could not have predicted when they wrote a bill. With rapid changes in technology, for example, vague language is often necessary to avoid the need for constant new legislation (Lens, 2024).

In June 2024, the Supreme Court overturned the Chevron doctrine in its ruling in two cases: *Relentless Inc. v. Department of Commerce* (2024) and *Loper Bright Enterprises v. Raimondo* (2024). The ruling ended the deference of the courts to executive agency interpretations of legislation through rulemaking. The full impact of this decision is difficult to define because of its extent. The end of Chevron directly and immediately changes the way the judicial branch decides cases involving executive rulemaking, giving the courts independent authority to interpret legislation. The ruling also indirectly impacts how executive agencies will make rules to guard against litigation. This indirect impact will be difficult to assess in the immediate aftermath of the end of Chevron, though there are several likely consequences for social

work practice. This includes the extent to which social work voices and the constituencies upon whose behalf they often speak are taken into consideration in the rulemaking process.

First, the decision could shift the balance of power in administrative policymaking from the executive branch to the judicial branch. As the Department of Commerce argued in *Relentless Inc. v. Department of Commerce* (2023), federal judges are not elected and have no constituency, which removes accountability through voting by the public when they disagree with a policy choice. Second, it could limit the ability of social workers and the public to impact regulations through public comments. Since the overturning of Chevron, executive agencies may be more judicious when considering public comments to ensure that proposed rules clearly align with the statutory authority of the federal agency (Pestaina et al., 2024). Social work voices may not carry as much weight in the public comment process if they do not directly align with the power of a designated federal agency to implement the law into federal regulation (Hunter, 2018). Despite their subject matter expertise implementing social policies and experience working directly with communities affected by these proposed agency rules, public commentary from social workers may be overlooked if they do not demonstrate clear policy and legal expertise. Given that social work practice is regularly impacted by federal rulemaking, overturning the Chevron doctrine may also mean that social workers will increasingly need to support interprofessional efforts to challenge rule changes and or decisions of the courts about rules that amount to judicial policymaking, when decisions are harmful or unjust.

Impact of Rulemaking on Social Work Policy and Practice

Proponents of the rulemaking process consider it to be an efficient way of modifying agency rules by leveraging the expertise of individual administrations and avoiding the gridlock often found in the legislative process. Critics consider this a diminution of democracy, whereby government agencies can implement or change rules based on priorities within the current administration, circumventing other branches of government (Yackee, 2019).

Inherently, rulemaking is not good or bad. However, to be used effectively, the leaders of the executive branch must operate ethically and in a democratic manner. The federal rulemaking process regularly affects social work practice via its influence on economic and social policy. While limited by the overturning of Chevron, social workers can play a critical role in this process by providing evidence via the public comment process of how policies directly affect individuals, families and children. Given social worker's training in both direct practice and policy implementation, this is a critical arena that connects policy with a person's lived experience. We offer two examples to illustrate this related to rule changes affecting policy for clients and constituents.

Temporary Assistance for Needy Families

Following a robust body of research demonstrating that Temporary Assistance for Needy Families (TANF) is not serving poor families well (Albert, 2016; Brooks et al., 2018; Meyer & Floyd, 2020; Seefeldt, 2017), the Administration for Children and Families (ACF) proposed a rule on October 1, 2023, to limit how states spend their TANF grant (Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program, 2023). This proposed rule initiated a public comment period, which closed on December 1, 2023, and led to the submission of 7073 public comments.

Except for minor program changes and continued funding resolutions, TANF has received little attention from Congress since its creation in 1996 (Congressional Research Service, 2024). Currently, TANF is structured as a block

grant to states with very few spending requirements. States must submit a TANF plan outlining how they will spend their grant every 3 years, but there are no requirements that the money must be spent on specific programs, on families below a certain income level, or even that it must be spent at all (Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 1996). The proposed rule placed a ceiling on the definition of "needy" families at 200% of the federal poverty level and more clearly defined what the grant can and cannot be spent on. ACF noted that they were invoking their regulatory authority because "a review of state spending patterns suggests that it is the appropriate time to regulate. . .to ensure that the statutory goals of the program are being met" (p. 67699). They went on to cite examples of state programs serving families up to 500% of the federal poverty guidelines, noting that this was not the intent of Congress when creating TANF.

In addition, ACF noted that states are spending their grant on programs unrelated to TANF's purpose, including an estimate of over $1 billion on college scholarships for adults without children and almost $2 billion on state child welfare system operating costs, which falls outside the scope of an antipoverty support program. Social work did not have a robust presence in the 7,073 comments submitted to this rule, though there were comments from advocacy organizations often aligned with social work. Organizations like the Center on Law and Social Policy and the National Alliance to Homelessness, as well as a few individual researchers who identify as social workers, submitted comments broadly supporting the rule change while offering additional suggestions for improvements.

This rule change could have ensured that a crucial social welfare funding stream would reach its intended recipients at a time when Congress is unlikely to pass legislation to enhance cash supports for families. On January 14, 2025, the Biden Administration withdrew this rule, stating:

> The Department continues to recognize the importance of rulemaking to ensure that TANF funds are used in a manner consistent with statutory requirements. However, the Department has determined that it could benefit from additional public input and consideration on a set of issues relating to allowable TANF spending before adopting a final rule. (Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program; Withdrawal, 2025, p. 3131)

While this rule has been withdrawn, it does illustrate the potential of the executive branch to respond to the needs of families in poverty in a climate where there is little political will to act through legislation.

Immigration and the "Public Charge" Rule

Major immigration legislative reform has been stalled in Congress for more than three decades (Meissner, 2019). Critical questions of immigration policy have been addressed either through the executive branch, the courts, or at the state level, though in the absence of major Congressional action, the executive branch has taken on an outsized role in regulating immigration. Since the Immigration Act of 1882 the United States has taken measures to bar "paupers" or "persons likely to become a public charge" from entry into the United States or for removal before being granted permanent residence (Pillai & Artiga, 2022). Under "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds" (1999) a public charge is considered "someone who is likely to become primarily dependent on the federal government as demonstrated by the use of cash assistance programs for income maintenance or government-funded institutionalized long-term care, such as mental health or nursing home care" (Pillai & Artiga, 2022).

In 2019, the Trump administration's U.S. Department of Homeland Security passed a new rule titled "Inadmissibility on Public Charge Grounds" (2019), which expanded the grounds on which one could be deemed a public charge to include accessing Medicaid benefits, which are considered "in kind" benefits.

The proposed rule had more than 64,000 public comments, including a small proportion of comments that were submitted by social work educators, students, and practitioners (Inadmissibility on Public Charge Grounds, 2018). One public comment by an MSW student, Maria Smaldone, at the University of Maryland, Baltimore exemplifies how social workers can bring their practice experience to bear as part of administrative advocacy:

> One of my clients, a single mother of four who was recently injured in a work accident, literally survives on essential benefits like SNAP and Medicaid in order to feed and take care of her boys, as well as the meager income brought in by her teenage son. She has been able to obtain asylum for herself and her children, but their green card applications are still in-process. The proposed regulation gives immigrant families like that of my client a Sophie's Choice: they can apply for benefits that they are legally eligible to receive in order to survive, but they will then be punished for receiving these same benefits by being denied permanent residency or asylum. It pushes these families even further into dire economic straits, and worsens their health and well-being as they are forced to rely on non-governmental food and health aid, which is less consistent and less accessible. Even more fiscally concerning is the high cost of emergency care that undocumented immigrants will rely on if consistent, holistic medical care is not covered through Medicaid. (Regulations.gov, 2018)

This rule was blocked by the judiciary (Pillai & Artiga, 2022). Despite never being implemented, the 2019 proposed rule and ensuing legal process had a "chilling effect" among immigrant populations seeking health care assistance. Many newcomer immigrants, regardless of immigration status, feared the measure could be reintroduced when the administration changed and thus jeopardize their legal status in the future. For example, the client mentioned by the MSW social work student above would have been exempt from the public charge rule due to their asylum status. Even families who had members with permanent resident or citizenship status expressed fears about future deportation on the grounds of using public benefits (Bernstein et al., 2020; Gonzalez et al., 2024; Pillai & Artiga, 2022). These effects during the COVID-19 pandemic—the most significant public health emergency related to a virus in more than a century—endangered not only those who feared seeking health care but also their families and communities (Babey et al., 2021).

As a result, the Biden administration finalized its own rule in 2022, which in essence restored the understanding of the 1999 "Field Guidance." The rule clarified that the federal government "will only consider cash assistance programs, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families, and state, local, and Tribal cash assistance to pay for basic needs such as rent, food, and utilities" (Pillai & Artiga, 2022; Public Charge Ground of Inadmissibility, 2022b). Long-term government assistance for institutionalization, if supported by Medicaid, would also be included in the decision, but home and community services through Medicaid or short-term institutionalization or rehabilitation would not be grounds for deportation. The Department of Homeland Security highlighted that the rule would enact "a more faithful interpretation of the statutory concept of 'likely at any time to become a public charge'; avoid unnecessary burdens on applicants, adjudicators, and benefits-granting agencies; and mitigate the possibility of widespread 'chilling effects' with respect to individuals disenrolling or declining to enroll themselves or family members in public benefits programs for which they are eligible, especially by individuals who are not subject to the public charge ground of inadmissibility" (Public Charge Ground of Inadmissibility, 2022a, p. 10571).

Throughout the Trump and Biden administrations, social workers have had a direct stake in the outcome of these rules, as the standards for being deemed a "public charge" entail limiting access to health care for newcomer immigrants not exempted from the rule. The implications of excluding immigrants, regardless of legal status, from seeking care during the COVID-19 pandemic were particularly profound and the "chilling effect" following the introduction of the 2019 ruling was imme-

diately noted by frontline public health and social workers (Pillai & Artiga, 2022; Public Charge Ground of Inadmissibility, 2022a). The second Trump administration, which took office on January 20, 2025, has made clear that it plans to introduce the most draconian immigration policies to detain and deport up to 11 million noncitizen immigrants (Watson & Zars, 2024). Many of these efforts will be enacted through regulatory changes and executive orders, in concert with a judiciary that the incoming administration feels is much more amenable to such actions than between 2016–2020. Illustrating this trend to use executive power to make and remake policy, following Trump's inauguration on January 20, 2025, the new administration established a "regulatory freeze" on any pending orders (U.S. White House, 2025). We anticipate executive action—either through an executive order or proposed regulatory change—that reverses the Biden rule interpreting who can be deemed a public charge. Executive action will be a major lever of power for the Trump administration in its second term, not only regarding immigration, but also nearly every aspect of policy (social, economic, foreign, etc.).

In light of overturning Chevron, social workers should be prepared to contribute to reform litigation efforts across the country, as they seek to overturn harmful immigration policies introduced by the Trump White House. Social workers must be apprised of the current statutory and legal bases for any proposed rule and to join interprofessional teams, likely led by legal advocates, to raise their voices in channels that are still available to express opposition to policies and programs that run contrary to social work values, including expanding the grounds for inadmissibility related to the public charge rule, but also possible efforts to criminalize acts of social workers, health providers, lawyers, faith leaders, and other community members who provide support for those who may be slated for arbitrary detention and deportation. This means being prepared to work with the National Immigration Law Center, American Civil Liberties Union, and Southern Poverty Law Center, among other organizations to oppose policies that run counter to human rights and social justice.

Policy Recommendations and Practice Implications

The examples we have provided here concerning TANF cash assistance and the public charge rule, as well as our discussion of the implications of the Supreme Court cases related to Chevron, highlight the importance of administrative and judicial policymaking at the federal level and its impact on social policy. Social workers must understand how administrative and judicial policymaking affect social and economic issues (Stein, 2004). Increasing social workers' knowledge is imperative so that when cases like *Loper* and *Relentless* are brought to the Supreme Court, they understand the impact these judicial rulings may have on their clients and practice. We recommend finding trusted advocacy organizations who monitor state and federal policy landscapes to stay informed about administrative and judicial policymaking (e.g.: Center for Law and Social Policy and the Center on Budget and Policy Priorities). And, in an increasingly polarized democracy, where branches of government may be less responsive to input from civil society actors, social workers should contribute their insights directly or in collaboration with lawyers and advocates to support rule changes that advance social work values and oppose those that harm the lives and human rights of those social workers engage in their practice. As the regulatory landscape shifts under a Trump Administration known for aggressively leveraging executive rulemaking, social workers must be prepared to monitor and, when necessary, challenge administrative decisions that shape policy.

Social workers must also be aware of the different avenues for policymaking to improve the education of future practitioners. Building administrative advocacy and judicial policymaking content into social policy courses is critical so social workers can participate and more actively engage themselves and their

clients in administrative advocacy and any impact litigation efforts that may be necessary (Lens, 2024). Survey research with Supplemental Nutrition Assistance Program (SNAP) applicants, for example, found that many participants had strong opinions about the program but lacked access to share these opinions via avenues of administrative advocacy (Hertel-Fernandez, 2024). Armed with knowledge of administrative advocacy, social workers can act as catalysts to share this information with their clients, empowering them to advocate for themselves.

The rulemaking arena can be a contentious place, but it still offers the promise of moving policy forward. After Chevron was overturned, power shifted to the judiciary branch, with Justice Kagan predicting this ruling will cause a "massive shock to the legal system" (*Loper Bright Enterprises v. Raimondo*, 2024, p. 24). This shock comes with a likely increase in partisanship in the rulemaking process. Research has shown that the Chevron doctrine reduced partisanship in judicial decision-making in cases involving federal agency rulemaking (Barnett et al., 2018). Relatedly, others have found a recent increase in partisan decision-making in the federal appeals courts, demonstrating the growing importance of judicial party affiliation (Devins & Larsen, 2021). Importantly, Devins and Larsen (2021) find a significant increase in partisan decision-making between 2018 and 2020, coinciding with the first Trump Administration. Specific examples they cite to support this include "a September 2020 Eleventh Circuit ruling upholding limits on felon voting in Florida and a November 2020 Fifth Circuit decision holding that Medicaid beneficiaries may not challenge rulings excluding coverage for abortion providers" (p. 1389).

These findings, coupled with the end of Chevron deference, lead to the conclusion that rulemakers may increasingly rely upon partisan values rather than expert opinion, at least in the near term (Lens, 2024). In response, the Stop Corporate Capture Act (SCCA) was introduced by Senator Elizabeth Warren and others. This bill proposes to codify the Chevron doctrine into federal law and strengthen the rulemaking process, including creating an Office of the Public Advocate which would increase the function of public participation in the rulemaking process (Warren, 2024). Although it is highly unlikely that the SCCA will be passed in a Trump Administration with a fully Republican Congress, this is a theoretical example of how Congress can act to strengthen the rulemaking process.

There are significant concerns about the health of U.S. democracy (Breen, 2024). The political polarization of administrations, Congress, and the judiciary at all levels, has led to a weakening of democracy in recent decades (Mickey et al., 2017). Despite this polarization, federal rulemaking is a pivotal lever for administrative advocacy. Social workers can ultimately support a healthier democracy by participating in the political process. One way of doing this is by voting for strong leaders in Congress who will work to pass legislation like the SCCA, resulting in a more transparent mode of policymaking and less nonstatutory rulemaking by executive administrations via federal rulemaking and executive orders (Bolton, 2022; Warren, 2024). A second way social workers can support a healthier democracy is by staying up to date on existing legislation like the SCCA and asking their elected officials to support these bills. Finally, social workers can participate in the political process by running for office themselves. Social workers make excellent elected officials given their dedication to a formal code of ethics and expertise in advocacy (Lane et al., 2018; Miller et al., 2021). In the long run, what is needed is not more power residing in the judiciary, but measures consonant with macro social work practice—engaging in robust voter registration and education, fostering knowledge and skills in community organizing and policy practice, and participating in political action at the local, state, and federal levels, to foster a healthier democracy that responds to the interests and claims of its constituents (Berkowitz, 2023; Hylton et al., 2023; Pritzker, 2024). Social workers can play a key part in this transformation to a more responsive and just democracy.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

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