

Adoption Of NAIC Model Regulations By The States

Kerry Krantz
Florida Office of Insurance
Regulation

Stephen Neill
Texas Department of Insurance

Ahmad Kamil
California Department of
Insurance

Warning!!!

- We have tried to collect accurate information, especially with regard to states other than our own.
- We are not perfect and may have made mistakes, even with regard to our own state. We are here today representing ourselves, and not necessarily our employers.
- You should rely only on the actual statutes and regulations of the state in whose rulemaking process you wish to participate.

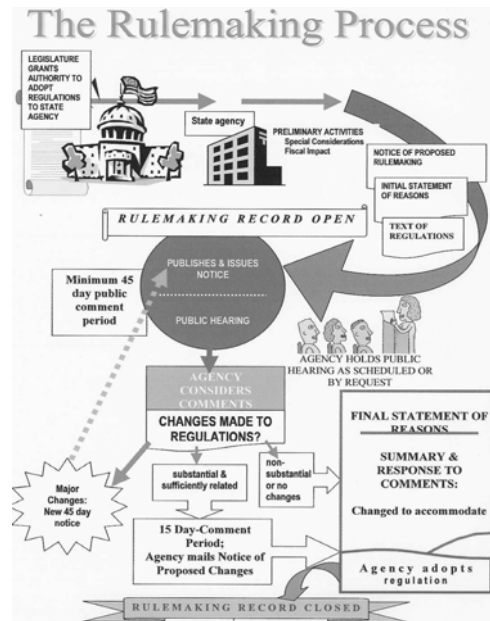
Introduction

- The panel will discuss the rule development process in our states and some states that responded to a survey
- The objective is introduction to the rulemaking process, and to the involvement of interested parties.
- We welcome anyone who has an experience to share.

Overview

- States must have legislative authority to adopt a rule.
- Some states have long detailed steps to follow, others follow a menu of steps.
- Steps require public notice (for specific periods) to interested parties for comments & input.
- Typically the regulation text is based on a new or amended NAIC Model.

California



Legislation

Florida:

- Administrative Code (FAC)
- Joint Administrative Procedures Committee
- Financial Services Commission

California:

- Administrative Procedure Act (APA)
- Office of Administrative Law (OAL)

Texas:

- Texas Administrative Code - Title 28
- Texas Government Code - Title 10

Initial Steps: Florida

- Senior Management approval for rule
- Underlined/Crossed-out regulation text from NAIC Model
- Document published in FL Administrative Weekly announcing workshop
- Draft Statement of Estimated Regulatory costs (if required)
- Preparation of Notice
- Agenda available upon request (7 days)
- Workshop held (records open for 10 days)

Initial Steps: California

- Senior Management approval for rule
- Underlined/Crossed-out regulation text from NAIC Model
- Public pre-notice workshop
- “Initial Statement of Reasons” for adoption
- “Economic & Fiscal Impact” statement
- Preparation of Notice

Initial Steps: Texas

- Senior Management approval for rule
- Underlined/Crossed-out regulation text from NAIC Model
- Informal discussions with industry and consumer groups as needed
- Draft Fiscal Impact, Cost/Benefit statements and specific statutory authority

Initial Steps: Connecticut

- Draft Regulations, Statement of Purpose, Fiscal Note, Certifications Page
- Approval of Agency Head

Initial Steps: Louisiana

- The sponsor generally discusses the R or R with Insurance Department management. For actuarial R or R the actuary needs to make management aware of how the promulgation of the document will affect the overall Department objectives. At this stage the process is either continued, modified or closed
- Given satisfaction of the above, the sponsor of the R or R submits a request to legal for the assistance of an attorney
- The sponsor and the attorney jointly make any changes deemed necessary to the thrust of the document and the attorney adjusts the document for legal conformity

Initial Steps: North Carolina

- The Actuarial Services Division reviews the model and prepares the text of the new or revised rule, in underline / cross-out format
- The proposed rule is then sent to the Legislative Counsel's Office (within the Department of Insurance) for legal review

Initial Steps: Oregon

- Agency identifies likely issues and sets scope of assessment
- Agency or convenor (if retained) identifies parties and meets with them to discuss process, issues, and willingness to participate
- Agency okays process, selects committee members, and informs them of proposed agenda
- Committee negotiates a proposed rulemaking action and agrees on proposal

Initial Steps: Pennsylvania

- Review by program area
- Submit to the regulatory coordinator to start tracking procedures
- Request an attorney be assigned to the regulation
- Provide the attorney with a "Keystone-ize" version of the NAIC model specifying the changes to be made
- Sign off by Chief Counsel, then the Commissioner or it does not proceed

Initial Steps: Washington (State)

- Should Rule-making be pursued?
- Before working on or developing the idea. Do we need a rule?
- Prior to Issuing a CR-101
- ISSUES
 - Internal discussion. Does the proposal impact other divisions? Have the affected deputies and divisions been contacted?
 - Rules Coordinator will discuss with AG if necessary. Start with an oral discussion. Do we have authority? Any issues? Any questions we or the AGs would like considered?
 - What are costs? Impacts on small business? How are they going to be calculated? Can they be mitigated?

Notice Publication: Florida

- Notice published in Florida Administrative Weekly, announcing a public hearing
 - Memo mailed to contact person
 - Rule package filed with Joint Administrative Procedures Committee
 - Rule published in Florida Administrative Weekly (10days)
- Last day to:**
- Request public hearing
 - Rule challenge
 - Provide lower cost alternative

Notice Publication: California

- Notice filed with Office of Administrative Law (OAL)
- Rulemaking file now open
- OAL publishes Notice in California Regulatory Notice Register
- DOI mails out Notice
- Public comment & input period begins (minimum of 45 days)

Notice Publication: Texas

- Notice published in the Texas Register
- 30 day period for written comments
- Public hearing may be requested

Notice Publication: Connecticut

- Approval of Agency Head
- Publish Notice of Intent in the Connecticut Law Journal

Notice Publication: Louisiana

- The response to the survey did not include information about publication

Notice Publication: North Carolina

The text of the proposed rule is published in the North Carolina Register.

Notice Publication: Oregon

- Notice published in the Oregon Bulletin
- Notice Includes
 - Date, time, and place of hearing, if scheduled
 - Rule or summary of rule
 - Statutory authority
 - Statute or law the rule is intended to implement
 - Statement of need
 - Documents relied upon
 - Fiscal impact statement
 - Explanation if advisory body not appointed

Notice Publication: Pennsylvania

- If the AG and GPO approve the proposed rulemaking, it is submitted to the Pennsylvania Bulletin for a 30-day public comment period, the Standing Committees (for Insurance) in the House and Senate and to the Independent Regulatory Review Commission who reviews the rulemaking and comments on needed corrections needed to make sure the rule is not in conflict with statutory rulemaking requirements

Notice Publication: Washington (State)

- CR-101, CR-102, and CR-103
- Industry will have been contacted regarding a hearing
- (They will have been mailed and possibly e-mailed the CR-101 and CR-102) – are any other notifications desired?

Public Comment: Florida

Hold Public Hearing (21 days exposure period)

- Last day to file challenge after hearing
- Last day to file Notice of Change or FSC Hearing
- Notice of Change filed with SOS

Public Comment: Florida

- Notice of FSC Hearing published in FAW (10 days)
- FSC approval packages sent to cabinet aides
- Cabinet aides meet (5 days)
- FSC hearing (21 days – including 14 days and 7 days included for items preceding FSC hearing)

Public Comment: California

- Hold Public Hearing – records comments (45 days exposure period)
- Comments & input considered, both verbal & written
- Make changes to Regulation, if needed
- Change triggers another public comment period (15 days for minor changes, 45 days for major)

Public Comment: California

- Prepare “Final Statement of Reasons”
- Prepare “Summary & Response to Comments”
- Prepare & deliver Rulemaking File to OAL

Public Comment: Texas

- Notice of Public Hearing filed with the Texas Register
- Public Hearing held
- Summarize comments and agency responses
- Prepare adoption notice

Public Comment: Connecticut

- After approval of Agency Head Notice of Intent published
- Allow for Public Comment (minimum 30 days)

Public Comment: Louisiana

- A public hearing is held so as to invite industry response to the R or R. Industry input is duly noted and any necessary editing is added. At this stage, the document is again either continued, modified or closed

Public Comment: North Carolina

- A public hearing is held 15 days after publication of the proposed text
- Department of Insurance accepts comments of the proposed rule for 60 days following the public hearing

Public Comment: Oregon

- After notice given hold a hearing if scheduled or requested
- Maintain record of data and views submitted in writing or presented at hearing

Public Comment: Pennsylvania

- As previously mentioned, if the AG and GPO approve the proposed rulemaking, it is submitted to the Pennsylvania Bulletin for a 30-day public comment period
- The Department then reviews all the comments and, if necessary, makes changes to the rulemaking

Public Comment: Washington (State)

- Prior to Issuing a CR-102
 - Mechanics
 - Before filing CR-102
 - Signoff of affected Deputy
 - Signoff of Leg Liaison
 - Signoff of Chief Deputy
 - Hearing
 - Who is presiding?

Public Comment: Washington (State)

- Prior to Issuing a CR-102
 - Mechanics
 - Industry will have been contacted regarding the hearing
 - They will have been mailed and possibly e-mailed the CR-101 and CR-102
 - Are any other notifications desired?
 - Prior to Issuing a CR-103 Allow time to thoroughly review all comments.
 - Are text changes desired or necessary? If yes, are they substantive? (That may necessitate another CR-102 and hearing)

Approval: Florida

- Letter of intent to adopt filed with JAPC
- Rule filed for adoption (all steps prior to this one: 28-90 days)
- Rule becomes effective, unless otherwise noted in rule (20 days)

Approval: Florida

* Extensions:

- A. If a rule challenge petition is filed, the clock stops on that date, and resumes the date of the DOAH order closing the case. If the determination is appealed, the clock continues; the rule is filed for adoption regardless of the appeal
- B. 45 days after publication of a notice of change, if after 45th day of 90 days
- C. 21 days after receipt of all materials authorized to be submitted, if after 69th day of 90 days
- D. 21 days after receipt of transcript, if after 69th day of 90 days
- E. The agency may request that JAPC toll the 90 days for response to JAPC comments
- F. 45 days after adjournment of final public hearing (including FSC hearing), if after 45th day of 90 days or 45th day after publication of Notice of Change

Approval: California

- Rulemaking file delivered to OAL
- OAL has 30 working days to review
- OAL reviews & approves
- OAL files with Secretary of State
- Regulation becomes effective
- Regulation printed in California Code of Regulations (CCR)

Approval: California

If OAL disapproves:

- Disapproval is published in Notice Register & California Code of Regulations
- DOI can revise & resubmit (subject to 15 days notice for minor or 45 days for major changes), OR
- Appeal to the Governor

Approval: Texas

- Adoption notice filed with the Texas Register
- Rule effective 20 days after filed with the Texas Register
- Rule reviewed by agency every 4 years

Approval: Connecticut

- Redraft Regulation if necessary; prepare Statement explaining Final Draft
- Notify Interested Parties of availability of Final Draft
- Regulation signed by Agency Head
- Submit Regulation to Attorney General and Office of Policy and Management
- Signature of A.G.

Approval: Connecticut

- Submit to Office of the Legislative Regulation Review Committee "Original" and 18 copies
- Send Copies to Office of Fiscal Analysis and the Committee of Cognizance
- Attend Legislative Regulation Review Committee meeting, when proposed Regulation is on the Agenda
- File approved, signed, "Original" and one copy with the Secretary of the State
- Check for publication in the Connecticut Law Journal

Approval: Louisiana

- Given satisfaction of the results of the hearing, the R or R is presented to the State Legislature Insurance Committee. At this stage, the document is again either continued, modified or closed
- Given satisfaction of the above, the R or R is promulgated into law

Approval: North Carolina

- Department of Insurance adopts the rule, and files the rule with the Rules Review Commission
- After approval of the Rules Review Commission, the rule becomes effective on the first day of the month following the month the rule is approved by the Commission

Approval: Oregon

- Adopt, amend, or repeal rule after considering fully all written and oral submissions
- File copy of adopted or amended rule with Administrative Rules Unit, Archives Division, Secretary of State, along with original and copy of Certificate and Order for Filing Permanent Administrative Rules and computer disk with rule in ASCII and original format
- File copy of adopted or amended rule with Legislative Council within 10 days of filing with Secretary of State

Approval: Pennsylvania

- After the 30-day public comment period, the Department reviews all the comments and, if necessary, makes changes to the rulemaking
- The rulemaking is submitted to OGC and GPO again for review of the final form rulemaking
- If OGC and GPO approves the final form rulemaking, it goes again to the Standing Committees and the Independent Regulatory Review Commission for their approval

Approval: Pennsylvania

- Once it is approved, the final form rulemaking goes to the AG one more time and if approved, the AG submits it to the Pennsylvania Bulletin for publication as final
- The final form rulemaking will become a regulation and effective upon publication in the Pennsylvania Bulletin or, if noted otherwise, with an effective date other than the publication date

Approval: Washington (State)

- Prior to Issuing a CR-103
 - Allow time to thoroughly review all comments
 - Are text changes desired or necessary?
 - If yes, are they substantive? (That may necessitate another CR-102 and hearing)

Approval: Washington (State)

- Complete the CES.
 - Are there text changes needed?
 - Cost/benefit analysis
 - Review the CES
 - Are there any new cost benefit issues?
 - Is there any new cost or benefit information?
Has further cost information been developed during the rule-making process? Have costs been mitigated?
 - How have the benefits been documented?

Approval: Washington (State)

- Implementation plan.
 - Rules Process
 - Prior to Issuing a CR-103
- Mechanics
 - Before filing CR-103
 - Signoff of affected Deputy
 - Signoff of Legislative Liaison
 - Signoff of Chief Deputy

Q & A