

Legislation vs. Regulation: Which does what?

Laws in the health care, workers' compensation, and insurance industries are changing constantly, so it's important to not only understand what is changing, but how, and by whom. This article will define and describe two main areas of law and the authorities that control the outcomes of each. Simply defined:

Legislation crafts policy ideas into bills through the legislative process.

Regulation clarifies or implements legislation by adding details to facilitate changes.

Legislation Process (Statutory law)

The legislation process is prompted when elected members of the state legislature (representatives, assembly members, senators, etc.) draft policy ideas into a bill.

The bill is assigned to a relevant committee(s) for discussion and testimony from interested parties. The committees review amendments to the bill and vote on whether to pass the bill out of committee.

If the bill passes out of committee(s), it moves to a vote of the whole first chamber. If it passes there, the bill moves to the second chamber for the same process. (Most states and the federal government have two legislative chambers.)

If a bill passes both chambers, it is sent to the governor's desk for signature, veto or sometimes enactment without action by the governor after a prescribed time. An enacted bill/legislation then becomes an enforceable statute.

The overall legislation process is not easy and can take months to complete. Most bills do not get the support or votes needed and die during the process.

The bills that do make it through the process often still lack detail, which can result in confusion in how to interpret and implement the new law. These details are worked out in the regulatory process.

Regulation Process (Administrative law)

When a bill has passed through the legislative process, the enacted law is often left to an authorized state agency to implement. This includes additional rulemaking to adopt

Legislation Process



regulations/rules designed to clarify legislation, add details, and facilitate changes to comply with the statute.

The authorized agencies regulating workers' compensation and auto insurance are usually:

- The Department of Insurance
- The Department of Labor
- The Workers' Compensation Board

These state agencies are typically part of the executive branch, and agency heads are appointed by the governor. Rulemaking in some states can also include the Secretary of State and/or the Attorney General.

The Department of Insurance (DOI) is responsible for regulating the business of insurance within its respective state. This includes licensing insurers and other entities such as third-party administrators and pharmacy benefit managers. The DOI has the authority to write and enforce rules and investigate claims payment practices. They are also often the default agency overseeing auto no-fault regulation.

The role of the workers' compensation regulator varies by state, but they are primarily responsible for carrying out the workers' compensation statute. They provide administrative and judicial services to resolve claim disputes regarding workers' compensation benefits. In many states, the agencies also focus on the regulations around how medical (including pharmacy) treatment is authorized, billed and paid. This includes the adoption of:

- Medical and pharmacy fee schedules
- Drug formularies
- Treatment guidelines
- Billing forms
- Dispute processes

Most proposed regulations from the state agency include a comment period for interested stakeholders and parties to provide testimony, arguments for or against, and suggestions for amendments to the regulation. The state agency considers the comments and weighs whether to adopt the regulation as originally proposed, adopt with changes, or hold off on adopting the regulation. This process typically takes two to three months but can be longer

Regulation Process

Passed legislation goes to state agency for additional rulemaking



Regulation comment period opens for stakeholders



State agency determines if and how to adopt the new regulation



Final regulation becomes administrative law

depending on the resources available to the state agency and how controversial the rulemaking may be.

If adopted, the final and approved regulation becomes administrative law. While many state agency regulations become effective after adoption, there are still some states that require yet another level of review and approval by the legislature or committee before the regulation can officially be approved as final administrative law.

Essential Processes for Reasonable Laws

In conclusion, legislation establishes the law for the individuals and organizations in the industry. Regulation sets additional rules to operationalize the law. Understanding and participating in the process for both is essential to advocating for reasonable laws that benefit the industry, our clients, and the injured persons we all serve.

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