

## SECTION FIFTEEN

# REGULATORY AGENCIES

Regulatory agencies are the governmental entities that administer the laws passed by the legislature. These bureaucracies interpret and enforce legislative mandates. They can reverse significant legislative victories by your chapter if they choose an adverse interpretation or administration of a new or existing law. Conversely, working with these same agencies can sometimes mitigate a legislative defeat. It is, therefore, essential to work with the appropriate regulatory agencies as soon as impactful new laws are passed.

The regulations ultimately drafted will benefit from your input. Regulators may attempt to use terminology that is inaccurate, problematic, or not commonly accepted by your profession. They may define terms or address issues in a manner that is not meaningful in the real world. If the regulatory agency's administrators disagree with the intent of the law, they may search for a way to mitigate or circumvent the legislation. In addition, where no law exists, states may give their regulatory agencies significant power and latitude in enforcement. It is essential that you and your chapter be familiar with the regulatory

agencies involved in interpreting and enforcing laws that affect your patients and to deal with them effectively.

### Early Steps

The first step in this process is to determine which agencies will receive the laws that your chapter has actively supported or opposed in the legislative process. Become familiar with the process for disseminating the laws to various agencies for interpretation and enforcement.

Ask that your chapter be placed on the distribution list for the publication, (usually called the Register), which announces rules and proposed regulations of state agencies. Monitor the agencies' activities. Assistance in regulatory tracking is available upon request from the State Legislative Office. There are multiple web-based subscription services that track state legislation and regulations should you not have a lobbyist that participates in such a program.

It is important to know the mechanisms for the development of regulations in your state. Become familiar with the publication dates, comment period, schedule, and other aspects of proposed

regulations. Determine whether a public hearing will be held or whether the agency can enact regulations “quietly.” Finally, know the appeals process if the adopted regulations are unacceptable. Once a regulation is adopted, often it is difficult to change unless a new law is written.

## **The Process**

There are two significant opportunities for influencing proposed regulatory language: during the drafting or development of the proposed regulation and when proposed regulations are submitted for comment or public hearings.

Regulators are usually very committed to the success and reputation of their agency. A few regulators, may briefly pass through the agency on a career track, but most others are long-term employees. In either circumstance, they generally are committed to formulating good, workable regulations. Consequently, they are often receptive to the opinions of those who have expertise or who will be most affected by the regulations.

## **Coalitions**

A coalition effort can be extremely effective in dealing with regulatory agencies. If a coalition was formed to address an issue in the legislature, it may be advisable to keep the coalition together, informed and focused on the issue, until the regulations are finalized. Many of the guidelines for effective coalitions are the same in the legislative and regulatory arenas. There are, however, some important considerations when a coalition is dealing with regulators.

Coalition members should determine common ground and agree on a unified front before dealing with a regulatory agency. There may be issues that affect coalition members differently, but members should agree to exclude them from the coalition’s discussions with regulators. Coalition members should separately address with regulators their unique issues at

another time and thereby avoid jeopardizing the coalition’s common goals.

*Teamwork is critical.* A team must be developed that can deal effectively with the staff of the regulatory agency. There may be times when the entire team should meet with regulators. This approach provides many “ears” to hear what is being said and is particularly important if an agency has a reputation for changing its views or positions during negotiations. This tactic also allows for multiple viewpoints and perspectives from your side. The varied input may help you to develop a solution that otherwise would not have been considered. This team approach is especially important in the early stages of discussions.

There may be other meetings that are appropriate for only certain members of the coalition to attend. Certain meetings may be scheduled on short notice, or issues may arise that require a quick response. It may be best to strategically limit the attendance so that a decision can be deferred for further review. “Sounds OK to me, just let me bounce it off the others and I’ll get back to you,” is a great line to appear cooperative without making a commitment. Remember, it is likely that you will almost always be facing similar tactics from the regulators. It is rare for the individuals who will be making the final regulatory decisions to attend most of these meetings.

Know when to divide issues. The time may come when members of the coalition need to separate and negotiate their own issues. Dividing the issues is a coalition decision and should be done after careful thought and discussion between coalition members. Do not allow the regulatory agency to divide and conquer.

It is essential that the most current information flow among members of the negotiating team, the entire coalition, and the leadership of the represented organizations. Avoid the error of having discussions between the representatives of an agency and other coalition members who may not be current on the status of negotiations. At the very least, your

credibility will be hampered. At the worst, commitments might be made or undone that could jeopardize previously negotiated concessions or successes.

Communication between members of the coalition is crucial, particularly if you have separated your issues and are having individual meetings. Make definite plans to talk after anyone has a meeting with the agency, especially if the discussions have resulted in any agreements. Do not allow your agreements to be undermined by another member of the coalition who is unaware of your arrangement when interacting later with the agency contact.

## Negotiations

Try to define your purpose at the outset of the negotiations. Be sure to frame your purpose in a manner that goes beyond the self-serving. The people with whom you will be dealing are government employees and as such may be unsympathetic to issues that are focused primarily on maintaining or enhancing your lifestyle. Remember that they are also likely to be lobbied by consumer groups and others with a stake in the proposed regulations. Accentuate the aspects of your position that benefit patients or are otherwise in the public good. It is acceptable to express concern about payment for health care services, but it is best to frame any financial discussions in the context of ensuring patient access to timely and quality emergency care.

Maintain focus on the “issue” throughout your discussions. Many distractions and diversions will occur. Constantly remind the agency of the overriding commitment to benefit the patients and public that we are all trying to serve. Whenever possible, identify the decision makers within the agency and deal directly with them. If this tactic is not possible, deal with senior staff who are most knowledgeable in your area.

Try to understand and give credence to the agency’s issues. The agency may have legitimate concerns that initially appear contrary to your purpose or direction.

Together you may be able to work out a mutually acceptable solution. Sometimes you have to help the agencies in their work. Regulatory agencies are frequently short staffed, and such assistance as providing accurate information and preparing drafts may expedite decisions and improve your chances of success.

Know where you stand with respect to public opinion on your issues and which powerful organizations and individuals share your viewpoint. The commonly used negotiating style of good guy/bad guy usually does not work. Neither do threats, except where you may threaten to invoke a negative public opinion, outcry, or other similar response. Remember that regulatory agencies and their “bosses” (elected officials) depend on positive public opinion. In addition, make sure that your suggestions make good policy sense and are permissible within the agency’s legal authority.

Regulatory agency workers function under different requirements than those of other legislative bodies. Contributions in the form of money or other tangible products are generally prohibited. Regulatory agencies are receptive, however, to accurate, complete, and timely information.

## Follow up

Consider offering to continue working with the agency on a periodic or regular basis after rule enactment has occurred. This involvement will assist the agency in evaluating the effects of final regulations and allow them to be proactive when changes need to be made. This interaction can enhance credibility for your future contacts with the same agency.

## Tips

- Try to understand the perspective and goals of regulatory agency staffers. Work with them, but remember that their major concerns may be different from yours.
- Do not get frustrated by agency staff turnover. If your discussions are

- lengthy, you may work with many different agency personnel.
- Do not be too avant-garde or futuristic. Regulatory agencies and their staff are generally not risk takers unless public support is apparent.
  - Share successes, processes, and failures with other chapters and ACEP. Circulate copies of public comment.