

# OIC Rulemaking

A guide to rulemaking at the  
Office of the Insurance Commissioner  
Oct. 27, 2015

# Goals of the presentation

- Provide an overview of the process so stakeholders can be more effective in providing input
- Share tips for increasing the impact of stakeholder comments

# Rulemaking in general

- Rules implement, interpret, apply, or enforce a state or federal law or court decision.
- Governed by the Administrative Procedures Act (Chapters 34.05 RCW)
- Public participation is not just a requirement of the law, it's a high priority for the OIC

# Three types of rules

- **Standard rule:** CR-101, CR-102, CR-103
- **Emergency rule:** Used when a rule is needed before the standard rulemaking process can be completed. No public notice or hearing.
- **Expedited rule:** Used in specific, limited circumstances (e.g., typographical errors, incorporation of statute language, etc.). Public notice, but no hearing. Any objection results in the agency switching from expedited to standard rule process to adopt rule

# Pre-rulemaking

- Informal discussions
- For stakeholders, this is an opportunity to brainstorm solutions to issues, find out information such as existing laws
- Legislation quite often sets off rulemaking

# Petition for rulemaking

- A petition often starts the rulemaking process
- Anyone can petition the OIC to do rulemaking
- OIC is required to respond within 60 calendar days

## CR-101 Committee

- Composed of staff from each division throughout the agency
- Examines petitions to determine if there is a significant reason to move forward
- Also considers requests from OIC divisions for rulemaking
- Considers a variety of research on the topic being considered

# Rulemaking at the OIC

- Every rule has a team, led by Policy Division
- Includes representatives from relevant divisions, including Consumer Protection, Rates and Forms, Legal Affairs, Company Supervision
- The team's thought process:
  - What problem are we trying to solve? Are we solving it?
  - Is it reasonable?
  - Is this enforceable?
  - Is it within our authority?
  - Is our intent clearly stated?
- Agency's mission: Protect consumers while ensuring the stability of the insurance market

# CR-101: Pre-proposal

- Begins the rulemaking process; provides formal public notice to stakeholders and solicits comments
- No draft text available
- Includes reasons OIC is proposing rules
- Open comment period – your comments should focus on:
  - What should we avoid
  - What issues are relevant to this rule
  - What are other states doing

# Stakeholder drafts

- Decision to release a stakeholder draft and hold stakeholder meetings is driven by interest in the CR-101
- Drafts are available online: [www.insurance.wa.gov](http://www.insurance.wa.gov)
- Stakeholder meetings are held to answer questions, clarify intent, share perspectives and suggestions
- Comments can be broad at this point
  - Can be addressed at general applicability of the rule
  - Do you support or oppose the rule?

# Stakeholder comments are most helpful when they are:

- **Specific:** Include suggested language & specific concerns, including the specific section of the rule you are referencing
- **Supported with reasons you disagree:** Including why something can be interpreted multiple ways
- **Relevant to the scope of the rule** as set out in the CR-101. We are legally bound to the scope of the rule
- **Within the scope of our authority** under Title 48 RCW
- **Not repetitive.** Please don't repeat your comments
- **Written:** Comments in writing avoid misinterpretation, easier for public records.
- Address comments to the analyst in charge of rulemaking and send to [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov)

# Comments are difficult to address when...

- They are overly general:
  - “This rule exceeds your authority”
  - “This rule is discriminatory”
  - “This rule doesn’t fix X”
- Comments are repeated
  - If concerns are not addressed the first time, we encourage you to evaluate your initial comments for clarity. **Please do not resend the same letter.**

## CR-102: Notice of proposed rulemaking and hearing

- Must be filed with full text of proposed rules
- Comments can be provided at the hearing or in writing
- Language is nearly completely finalized, so consider comments appropriately
- Substantive changes to proposed language after the CR-102 is released require another CR-102
- Draft cost benefit analysis and small business economic impact statement available, if necessary

## CR-103P: Adoption and rulemaking order

- Includes effective date of rule
- Also released with CR 103:
  - Concise explanatory statement
  - Implementation plan (if necessary)
- Once adopted, new rules are rolled into existing insurance code for enforcement and oversight
- Opportunity for another discussion about implementation and ongoing monitoring
- Reminder: Consumer complaints are useful tool for oversight

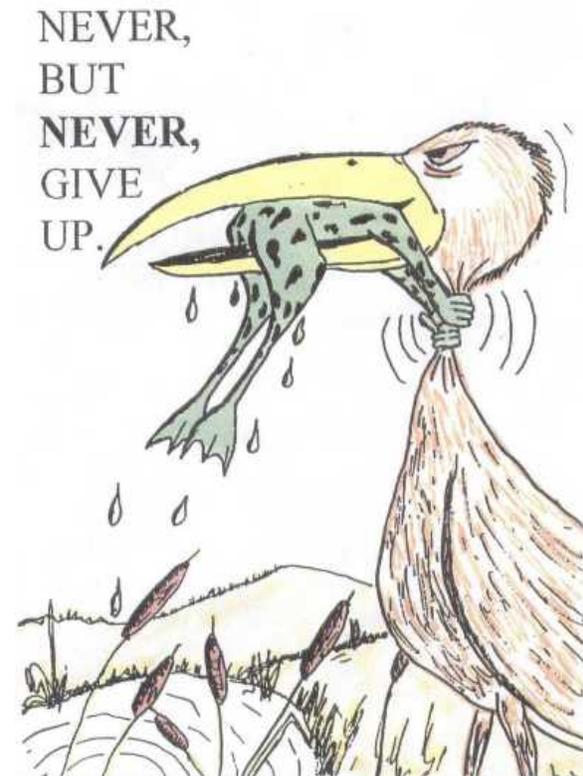
# Timeframes for rulemaking

Timeframes for rulemaking are determined primarily by:

- Stakeholder engagement
- APA requirements
- Deadlines

# Issues rarely die. They just go somewhere else.

- The end of rulemaking: opportunity for another discussion about implementation and ongoing monitoring
- Reminder: Consumer and provider complaints are useful tools for oversight



# Current Health insurance related rules in process

- Open & Special Enrollment rules (R2013-10): expanded CR101 to be filed 11/18
- Network Access (R2014-08): CR103 to be filed by 11/4
- Rx Prior Authorization (R2014-13): Hearing 11/2
- L&D rate & form filing rules (R2015-04): Hearing 11/24
- IRO decision data (R2015-12): Hearing 11/24
- Renumbering 284-43 & 284-170: CR105 filing 11/4
- EOB Privacy (R2013-11): CR102 after session

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