

# Creating and Maintaining Good Relationships between Regulators and Insurers

A Practical Guidance® Practice Note by  
Layna C. Rush, CIPP/US, CIPP/C, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC



Layna C. Rush  
CIPP/US, CIPP/C, Baker, Donelson,  
Bearman, Caldwell & Berkowitz, PC

This practice note discusses what insurers and their attorneys should know about developing and managing a good relationship with insurance regulators. It outlines the actions that insurers should take and important considerations upon which an insurer must focus during the course of its regulatory relationships.

For additional guidance about the regulation of insurance, see [Solvency Regulation Framework for United States Insurers](#) and [Insurance Regulatory Compliance Resource Kit](#).

See also New Appleman on Insurance Law Library Edition § 8.02 (Insurance Regulatory Framework).

## Overview of Insurance Regulation

Every state has a regulatory agency that is charged with enforcing the state's insurance laws and overseeing the activities of entities that operate in the insurance industry in that state. Each insurance regulatory agency is led by a commissioner or similar officer who is elected by the voters of the state (in 11 states), appointed by the governor (in 37 states) or appointed by a multimember commission (in two states). Because the commissioners are elected or appointed by elected officials, frequent turnaround in the agency's leadership is possible, but staff members whose tenure is typically longer primarily handle an agency's day-to-day operations.

For more guidance about state insurance departments and their regulatory and rulemaking powers, see New Appleman on Insurance Law Library Edition § 8.02 (Insurance Regulatory Framework).

While there are some federal laws that impact the business of insurance, insurance regulation is primarily left to the states. As such, each state's regulatory scheme, insurance laws, and insurance agency composition is unique. For instance, some states require third-party administrators (which are entities that process claims on behalf of insurance companies or other healthcare payers) to be registered with the state's insurance regulator; others do not. Some states require third-party administrators to obtain a bond; others do not.

For background details about insurance regulation, and the historical legislation and jurisprudence that leaves insurance regulation primarily to the states, see New Appleman on Insurance Law Library Edition § 8.01 (History of Insurance Regulation).

There are commonalities in many states' insurance laws because many states use Model Acts promulgated by the National Association of Insurance Commissioners (or NAIC) as the basis for their state's insurance laws. The NAIC is an association governed by the chief insurance regulators from all of the states, the District of Columbia and five U.S. territories. One of the NAIC's activities is promulgating model insurance laws that states may choose to adopt or use as templates for their own insurance laws.

For more background about the NAIC, including its history, mission, governance, structure and organization, and role in insurance regulation, see New Appleman on Insurance Law Library Edition § 8.05 (The National Association of Insurance Commissioners (NAIC)).

Despite the similarities that may exist in states' laws because of the use of these model laws, one should not assume that the various states will interpret their laws the same or that a particular issue will be handled in the same manner by different state regulatory agencies. As outlined in more detail below, it is important to not only become familiar with the laws in the state at issue but also to become familiar with how those laws are interpreted and enforced by that state's insurance regulatory agency.

Because the staff members handle the day-to-day operations of the agency and because they know and understand their states insurance laws, it is important to have a good working relationship with these staff members when dealing with state insurance regulatory agencies.

The following are some effective strategies for creating and maintaining those beneficial relationships.

## Understand the Laws, Regulations, and Other Authoritative Sources Impacting the Issues

Every state has an insurance code or title that governs regulated entities (such as insurers, third-party administrators, adjusters, and producer agents and agencies) and insurance or insurance-related products (such as the insurance policies offered by regulated entities). The state's insurance code or title also proscribes certain conduct for the purpose of protecting the state's citizens from fraud, discrimination, and other unfair treatment. The state insurance regulators expound on these statutes through agency rulemaking in the form of regulations. Additionally, most states also issue other written guidance in the form of bulletins, directives, declaratory orders, and advisory letters or opinions. An insurance regulator may also issue guidance or instructions on a more informal basis by posting the guidance or instructions on its website. Neither regulations nor other guidance can be inconsistent with insurance statutes, but regulators can expound greatly on the requirements of statute through these other written instructions.

For additional information about regulatory provisions that protect consumers from fraud and unfair treatment, see [Insurance Bad Faith Claims](#), [Insurance Bad Faith Coverage Litigation](#), [Denial, Disclaimer, and Declination of Coverage](#), [Bad Faith Claims and Litigation Avoidance Checklist](#), [Bad Faith: First- and Third-Party Standards State Law Survey](#), [Bad Faith Elements State Law Survey](#), and [Insurance](#)

[Claims Resolution and Unfair Claims Settlement Practices State Law Survey](#). See also New Appleman Insurance Bad Faith Litigation § 1.02 (What Does "Insurance Bad Faith Litigation" Mean?) and New Appleman Insurance Bad Faith Litigation § 12.03 (Interviewing the Client).

Another useful source of information are published market conduct exams and orders related to specific actions taken against regulated entities. Understanding how a regulator viewed conduct by another entity in the past can be insightful in understanding how the regulator may respond in a similar situation.

For more guidance about market conduct examinations, see [Market Conduct Examinations](#), [Market Conduct Pre-Examination Checklist](#), [Market Conduct: Controlling and Minimizing Agent and Broker Risk](#), and [Market Conduct: Controlling and Minimizing Agent and Broker Risk](#).

When representing a client that has an issue before the state insurance regulator or that implicates a state's insurance laws, practitioners should always consult not only the applicable statutes but also become familiar with any additional guidance in regulations, bulletins, and other written sources. The state insurance regulator's website should be consulted for any written guidance on the issue. Oftentimes, the website will provide checklists for required submissions, template documents, and other valuable resources. For example, some insurance regulators provide a list on the website of books and records that must be made available at the start of a financial examination of a regulated entity. Many states have checklists of provisions that must be in policy forms in order for them to be approved. By reviewing the available guidance and resources, practitioners can avoid unnecessarily contacting regulatory agency staff members with questions or requests that the practitioner can find on its own. And, in those scenarios where a practitioner still has questions after reviewing all available resources, the practitioner will be able to explain to the regulator that all available information has been consulted and will be able to fine tune the inquiry in light of the guidance. Regulators will appreciate a more precise question from a practitioner who has done its homework on the state's legal requirements and available resources.

## Seek Assistance from the Appropriate Staff Members

State insurance regulatory agencies are arranged into departments or divisions that handle one or more aspects of the insurance regulation delegated to the insurance

commissioner by law. Common departments within a state insurance regulatory agency include:

- A licensing division which handles licensing issues for producers (such as insurance agencies or brokers)
- The company or financial solvency department that licenses and regulates insurance companies and other risk bearing entities
- Product specific departments such as the property and casualty department or the life and health department that reviews policy filings for products offered by insurers in the state –and–
- A fraud and compliance or consumer complaint department that investigates allegations of fraud or misconduct by regulated entities

For additional information about licensing, see the [Adjuster Licensing](#), [Insurer Licensing](#), and [Producer Licensing](#) topics on the Practical Guidance [Insurance State Law Comparison Tool](#).

Understanding what issues are handled by which department within the insurance regulatory agency is helpful for ensuring that inquiries are directed to the appropriate staff members.

If the issue or submission you are handling is your first interaction with a particular department, division, or even staff member, it is a good idea to reach out and introduce yourself. If you do not have much prior experience with the issue or filing, let the staff member know your level of experience to set expectations. In most instances, staff members are willing to provide information to help guide you through the process. In some instances it may even be a good idea to request an initial meeting to meet the regulators with whom you will be working in-person and establish how you will work together on the particular submission (such as a licensing application, response to a complaint or investigation, or submissions in response to an examination). An in-person or virtual meeting is a great opportunity to ask questions of the regulator and establish a good working relationship.

Additionally, if a staff member has been the primary point of contact on an issue, it is important to continue communications with that individual unless that individual transfers the matter or indicates that contacting someone else within the regulatory agency is appropriate. For instance, if a client has received a complaint from an investigator in the fraud department that requires a response by the client, absent extraordinary circumstances, all communication regarding the complaint should be made with the investigator who sent the correspondence.

Contacting the investigator's supervisor, someone in another department, or someone in the commissioner's office will likely vex the investigator and have an adverse impact on your working relationship with that investigator. Also, unless there is a compelling reason that the investigator should not be the primary contact, the supervisor or staff member from another department will likely direct inquiries back to the investigator. The prudent course is to deal with the staff member who is charged with handling the issue and not involve others unless there is a compelling reason such as that staff member being unresponsive or unprofessional.

## Meet Required Deadlines

State insurance statutes and regulations often dictate timeframes for filing documents with the state insurance regulatory agency. For instance, most states' laws require that a policy form be filed within a specific time frame before the policy form can be issued to state residents. Some state laws prescribe the time frame within which an insurer must respond to a market conduct examination or the time frame in which a regulated entity must respond to a consumer complaint or an agency investigation. Even if not prescribed by law, state insurance regulators generally dictate a time within which a regulated entity must respond to an examination, investigation, or complaint in communication with the regulated person or entity. Practitioners should research any statutory timeframes relevant to their issue and whether that deadline can legally be extended if needed. Practitioners should make filings and respond to any examination, investigation, or complaint within the prescribed timeframes. Notwithstanding the legal implications, untimely filings or responses to the state insurance regulators will adversely affect your relationship with the regulators.

## Request Extensions in a Timely Fashion

If the deadline imposed by statute or regulation or by the regulator cannot be met, it is best to contact the regulator in a timely fashion to discuss an extension. However, before contacting the regulator, practitioners should consult applicable laws and guidance to determine if the law provides for an extension. In some instances, the laws may specifically state when and for how long an extension may be granted. In other instances, there may be a defined time frame for response in the law and the regulators take the position that it cannot be extended. For example, some states require that all documentation be submitted to the

regulators at least a prescribed number of days prior to the hearing on a merger or acquisition of an insurance company and state insurance regulators take the position that the time period cannot be shortened by agreement. Practitioners should review these types of legal deadlines before requesting an extension.

If an extension is permitted by the law or by regulatory guidance, then it is advisable to make the request as soon as it is determined that the initial deadline cannot be met. Regulators will appreciate the timely request. Furthermore, a prompt request is more likely to ensure that the request is given consideration and granted. If a request is made on the same day that a response is due, the likelihood of the request being received, considered, and granted is diminished. Additionally, repeated requests for an extension, particularly last minute, will have a negative effect on the partitioner's relationship with the insurance regulator.

There are instances where, because of last minute emergencies or unforeseen circumstances, a deadline cannot be met. In those instances, practitioners should contact the regulator and explain the extenuating circumstances that give rise to the last minute request for an extension. Also, while email is the typical communication method with most regulators, in a situation where a last minute extension is requested, it may be best to call the regulator and discuss the situation. A follow-up email or filing can be made after the telephone discussion to memorialize the conversation and any agreement reached on the request for an extension.

## Extend Professional Courtesies to State Regulators

Being available and helpful to regulators creates goodwill and makes for better interaction. If a regulator requests information that you can share without violating privilege or client instructions, then share the information or inform the regulator that you will get the information they requested and then promptly obtain the information and respond to the request.

Additional professional courtesies that some regulators appreciate are discussions of the best methods of communication when addressing a filing, complaint, or investigation and acknowledgment of receipt of communications. A quick email to indicate that the communication was received and when a response will be provided or what action will be taken in response to the communication is typically advisable. But, some staff

members prefer a phone call and others may opt for, or, in some instances, require, a more formal response. It is best to discuss methods of communications at the onset of a matter, as the regulator will appreciate receiving them in the method that they are most comfortable with or in the method that is required by the state insurance regulatory agency. And, of course, all communications should be courteous and professional. Being rude or disrespectful to a staff member will not only hamper your relationship with that staff member but will also likely create a bad reputation within the whole state insurance regulatory agency.

If a hearing before a regulator is scheduled, it is a benefit to both parties to exchange witness and exhibit lists prior to the hearing. In many instances, the parties can agree prior to the hearing as to whether there will be any challenges to witnesses or exhibits and how introduction of witnesses and exhibits will be handled, such as whether exhibits will be introduced individually or will be entered into the record in globo. In non-adversarial proceedings some regulators will share materials such as template questions that will be asked or transcripts of prior hearings on the same topic, to assist the practitioner in preparing for the hearing. Regulators are more likely to provide materials from previous hearings and assist the practitioner in preparing for the hearing if the practitioner is willing to discuss witness and exhibit lists with the state regulator prior to a hearing. In some instances it may even be advisable to discuss specific questions that will be asked of the various witnesses with the regulator so that all parties can work together to have a concise hearing and a record that adequately reflects all legal requirements for the hearing.

Just as practitioners should extend professional courtesies to other attorneys, professional courtesies should be extended to state insurance regulators in an adversarial setting. If a regulator asks for an extension in responding to a regulatory filing or a filing in a lawsuit, the extension should be granted unless there is a justifiable reason for not granting the extension. If the extension cannot be granted for some reason, then explain to the regulator why the request cannot be agreed to. If a situation arises where a dispute with a state insurance regulatory agency cannot be resolved and it becomes necessary to seek judicial relief, it is a good idea to call the regulators and inform them that a suit will be filed. Additionally, provide the regulators with a courtesy copy of the complaint when it is filed and agree to any reasonable extension of response times that the regulators request. These professional courtesies will make for a better working relationship with the regulators in the current proceedings and also in future dealings with the regulatory agency.

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## Answer All Questions Honestly

While there is a duty to effectively and vigorously represent clients, it is also important to be honest when dealing with state insurance regulators. If information cannot be shared because of privilege or client instructions, communicate that fact to the regulator, but do not misconstrue information either overtly or by omission. In many instances, if a client is facing a potential regulatory action, the state regulator has already conducted a thorough investigation of the underlying facts and knows the truth. Notwithstanding the legal implications for not being forthright, nothing will hinder a good working relationship with state insurance regulators as quickly as a reputation for dishonestly in dealings or filings.

## Ensure That Submissions Are Concise and Correct

It is important to ensure that all filings with the state insurance regulatory agency are correct and concise. As an initial step in preparing materials to file with the agency, check all applicable laws, regulations, and other authoritative sources for any substantive or procedural requirements for the filing or submission. In some instances, exemplar documents are available on the regulatory agency's website.

In addition to ensuring that submissions comply with applicable authoritative sources, it is advisable to proofread submissions carefully for typographical and grammatical errors. If it is apparent from a submission that a practitioner had not reviewed the legal requirements for a filing or has not taken the time to proofread a document, regulators are likely to become frustrated with the submitter. For example, when filing complex, multi-document submissions such as a Form A, if a staff member has to ask for resubmission of documents because they are incorrect or full of typographical errors, the regulator may simply deny the relief requested and require the submitter to completely refile the request. Also, one should avoid unnecessary legalese or meritless arguments in submissions. Regulators will appreciate your being considerate of their time by not submitting documents that are unduly lengthy.

## Show Appreciation for Assistance and Professional Conduct

Everyone appreciates a "thank you." If a staff member at the state regulatory insurance agency has been helpful, acknowledge the assistance or professional conduct. In some states small tokens of appreciation such as delivering donuts for breakfast are permissible. Before sending any token of appreciation with a value however, the state's ethics laws should be consulted. Do not send a gift to a staff member if it would violate the state's ethics laws. Additionally, some state agencies have agency specific prohibitions or limits on accepting gifts. Check the state agency's rules before sending any gifts to avoid what could be an awkward situation where the staff member has to refuse the gift.

Even if state ethics laws or agency guidelines prohibit the giving of anything of value to a state insurance regulator, notes of appreciation (even if just an email) to the staff member who was helpful or a note of commendation to that individual's supervisor are permissible. Showing appreciation after interacting with a regulator is very likely to result in the same helpful assistance in future interactions.

## Final Thoughts

Dealing with state insurance regulators can be daunting, but most regulators are simply trying to fulfill the mandate of the agency which is to regulate the business of insurance for the protection of the residents of the state. Most are approachable and willing to be helpful. Following these few simple tips for interactions with the regulatory agency and its staff members will help both create and maintain a good working relationship with the regulators.

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#### Layna C. Rush, Shareholder, CIPP/US, CIPP/C, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Ms. Rush leads the Firm's Data Incident Response Team, which is a NetDiligence Authorized Breach Coach® firm. She assists clients in the investigation of and response to privacy and security incidents. She is a U.S. and Canadian Certified Information Privacy Professional and member of the Firm's Data Protection, Privacy and Cybersecurity Team. Ms. Rush also assists clients with managed care and insurance regulatory issues.

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