

REVIEW OF OCCUPATIONAL REGULATION AND THE “SUNRISE” PROCESS

The Sunrise Process

The Legislature uses a Sunrise process for the purpose of assessing requests for new or increased occupational regulation, pursuant to Government Code Section 9148 and policy Committee Rules. The process includes a questionnaire and a set of evaluative scales to be completed by the group supporting regulation. The questionnaire is an objective tool for collecting and analyzing information needed to arrive at accurate, informed, and publicly supportable decisions regarding the merits of regulatory proposals.

This process accomplishes the following: (1) places the burden of showing the necessity for new regulations on the requesting groups; (2) allows the systematic collection of opinions both pro and con; and, (3) documents the criteria used to decide upon new regulatory proposals. This helps to ensure that regulatory mechanisms are imposed only when proven to be the most effective way of protecting the public health, safety and welfare.

Background

Legislators and committees of the Senate and Assembly receive requests for new or expanded occupational regulation each Legislative Session. The regulatory proposals are intended to assure the competence of specified practitioners in different occupations. These requests in the past resulted in a proliferation of licensure and certification programs – a proliferation that met with mixed reviews. Proponents argue that licensing benefits the public by assuring competence and an avenue for consumer redress. Critics disturbed by increased governmental intervention in the marketplace have cited shortages of practitioners and increased costs of service as indicators that regulation benefits a profession more than it benefits the public.

State legislators and administrative officials are expected to weigh arguments regarding the necessity of such regulation, determine the appropriate level of regulation (e.g., registration, certification or licensure), and select a set of standards (education, experience, examinations) that will assure competency. Requests for regulatory decisions often result in sharp differences of opinion as supporters and critics of the proposed regulation present their arguments. The need for accurate information is clear and universal; however, no system existed to ensure that all needed information is collected and that the arguments presented are objectively weighed.

To create such a system, the Legislature and the state Department of Consumer Affairs undertook to develop ways of assessing needs for examinations, educational standards, and experience requirements that would assure provider competence in non-health-related occupations. The results of this project resulted in an evaluative process designed to provide a uniform basis for the presentation and review of proposed occupational regulation. This Sunrise process includes a questionnaire and evaluative scales that allow systematic collection and analysis of the data required for decisions about new regulation.

Developing the Sunrise Process

Several important concepts were considered in development of this process. The first is that the public is best served by minimal governmental intervention. Therefore, the group seeking regulation should be responsible for showing that government oversight is needed to protect the public health, safety or welfare.

Second, the decision to regulate an occupation involves weighing the right of individuals to do work of their choosing against the government's responsibility to protect the public when protection is clearly needed. Therefore, regulation should encompass fairness to consumers and practitioners alike.

Third, the instruments derived from this project should in no way deter small or poorly funded groups from making legitimate requests for regulation. Though it is true, for example, that requests for regulation come most often from professional associations, concerned citizens also propose new statutes. Usually such individuals will be less than able to provide extensive statistics and documentation in support of their proposal. It is imperative in such cases to ensure that form does not triumph over substance, i.e., that well-grounded concerns are not held hostage to formal completion of a data-collection process.

The development of the Sunrise process began with an exploration of current regulatory practice in other jurisdictions. Several sources were found that indicate a nationwide, ongoing effort to develop criteria that determine whether a need for regulation exists and, if it does, the level of regulation needed.

Especially helpful were the Bateman Commission report to the New Jersey Legislature, Minnesota's Allied Health Credentialing Act, the Council of State Governments' publication "**Occupational Licensing: Questions a Legislator Should Ask**," and documents from Washington's Department of Licensing. Each of these sources provided ideas and information that have been integrated into the project products.

Sunrise Criteria and the Evaluative Questionnaire

Central to the Sunrise process was the creation of nine Sunrise criteria developed to provide a framework for evaluating the need for regulation. These criteria are:

1. Unregulated practice of the occupation in question will harm or endanger the public health, safety or welfare.
2. Existing protections available to the consumer are insufficient.
3. No alternatives to regulation will adequately protect the public.
4. Regulation will alleviate existing problems.
5. Practitioners operate independently, making decisions of consequence.
6. The functions and tasks of the occupation are clearly defined.
7. The occupation is clearly distinguishable from other occupations that are already regulated.

8. The occupation requires knowledge, skills and abilities that are both teachable and testable.
9. The economic impact of regulation is justified.

The Sunrise criteria were designed to present a concise statement of conditions indicative of a need for regulation. They were used to develop a “Regulatory Request Questionnaire” that solicits responses to a comprehensive, clearly defined set of questions. These questions allow presentation of arguments regarding the merits of the proposed regulation. The Questionnaire is intended as an aid to legislative and administrative staff, who should supply it to proponents of new regulations. (It can also be provided to those opposing such regulations.) In this way, the burden of proving the need for new regulations rests with the requesting groups.

The Questionnaire has three sections:

Section A helps identify the group seeking regulation and helps determine whether the applicant group adequately represents the occupation.

Section B will identify (1) consumers who typically seek practitioner services, and (2) non-applicant groups with an interest in the proposed regulation.

Section C has two parts: Part 1 allows presentation of data that support the application for regulation. Questions in this section, organized under the nine Sunrise criteria, require the applicant group to identify the current problems associated with unregulated practice of the occupation, show how the proposed regulation would solve those problems, and estimate the costs of implementing it. Part 2 requires the applicant group to complete a self-rating on each of the Sunrise criteria. These rating scales allow quantitative evaluation of the information and arguments concerning each important aspect of the proposed regulation. Examples of low and high ratings help clarify and standardize the criteria.

Procedure for Submitting Questionnaire

The “Regulatory Request Questionnaire” should be completed prior to introduction of a bill, and accompanied by a cover letter that provides information helpful to committee staff and other interested parties. At minimum, the letter should include: (1) a brief overview of the proposal; (2) the name of the person to contact for additional information; and (3) a comment on whether the proponents intend to pursue introduction of legislation in the current year or two-year session, and, if so, the intended author of the legislation.

Once the applicant group has completed the Questionnaire, legislative staff and other interested parties (e.g., staff of the appropriate state agency or agencies) will review and evaluate the information provided. While the Questionnaire will generate information useful in several contexts, its main purpose is to provide proponents and Legislative staff with comprehensive information in a common format and thereby facilitate informed decision making.

The process should help administrators and legislators answer three basic questions:

1. Does the proposed regulation benefit the public health, safety or welfare?
2. Will the proposed regulation be the most effective way to correct existing problems?
3. Is the level of the proposed regulation appropriate?

Determination of the Level of Regulation Needed

If review of the proponents' case indicates that regulation is appropriate, a determination must be made regarding the appropriate level of regulation. As noted above, the public is best served by minimal government intervention. The definitions and guidelines below are intended to facilitate selection of the least restrictive level of regulation that will adequately protect the public interest.

Level I: Strengthen existing laws and controls. The choice may include providing stricter civil actions or criminal prosecutions. It is most appropriate where the public can effectively implement control.

Level II: Impose inspections and enforcement requirements. This choice may allow inspection and enforcement by a state agency. These should be considered where a service is provided that involves a hazard to the public health, safety, or welfare. Enforcement may include recourse to court injunctions, and should apply to the business or organization providing the service, rather than the individual employees.

Level III: Impose registration requirements. Under registration, the state maintains an official roster of the practitioners of an occupation, recording also the location and other particulars of the practice, including a description of the services provided. This level of regulation is appropriate where any threat to the public is small.

Level IV: Provide opportunity for certification. Certification is voluntary; it grants recognition to persons who have met certain prerequisites. Certification protects a title: non-certified persons may perform the same tasks but may not use "certified" in their titles. Usually an occupational association is the certifying agency, but the state can be one as well. Either can provide consumers a list of certified practitioners who have agreed to provide services of a specified quality for a stated fee. This level of regulation is appropriate when potential for harm exists and when consumers have substantial need to rely on the services of practitioners.

Level V: Impose licensure requirements. Under licensure, the state allows persons who meet predetermined standards to work at an occupation that would be unlawful for an unlicensed person to practice. Licensure protects the scope of practice and the title. It also provides for a disciplinary process administered by a state control agency. This level of regulation is appropriate only in those cases where a clear potential for harm exists and no lesser level of regulation can be shown to adequately protect the public.