How transparent should insurers be with regulators ?

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I am often presented with the following question: "Joe, we are dealing with a potential problem, should we tell state regulators about the situation?"

Or someone says, "We are completing a state data call, and we know our numbers are correct, but when the insurance department compares this to other information, we know it won't look good and they are going to wonder what's going on. What should we do?"

Simply stated for both situations -- a company needs to tell regulators what has happened.

Data Calls & Market Analysis

Insurance department data calls are increasing on a variety of topics and issues by state, and at the same time, market regulation is changing in each state. States are reviewing data in more detail to analyze what insurance companies are doing in the marketplace, and to determine whether they should be subject to a market conduct examination.

This process is called market analysis. Some states are also using a Market Conduct Annual Statement to gather data. Although the number of states varies between Property and Casualty and Life and Health, the main categories of data collected for specified lines of business include:

Property & Casualty
- Claims
- Underwriting
- Lawsuits

Life & Annuity
- Claims
- Underwriting
- Complaints

The submission materials in these Market Conduct Annual Statements include space for companies to provide additional information or comments related to the submitted data, and companies should not be hesitant to include explanations. Many companies do not provide explanatory information and then go into panic mode when they receive an inquiry from a state related to their data. All too often, they assume regulators will look at explanations as a "red flag" tipping them off to a problem and that it will lead to a full-blown market conduct examination. This simply is not the case.

When an insurance department is provided with a reasonable explanation of why the company's data may seem inconsistent, in many cases that means it will not need to conduct further investigations or schedule a market conduct exam. This saves time, resources and money for both the company and for the state.

Of course, not all explanations are simple, but it's always a good idea for an insurer to explain as much as possible up front.

Here are two scenarios, taken from actual cases:

- Company A did not provide an explanation of the material they submitted. The state could not help but notice a large amount of business dropped off the books, so they decided to conduct a market conduct exam to be sure the company terminated everyone correctly and to verify a withdrawal plan was not necessary.
- Company B provided an explanation with its data indicating why they nonrenewed a large portion of their business -- notice I used the term "nonrenewed," as the company did. Precisely indicating that policyholders were nonrenewed let the insurance department know that policies were not cancelled mid-term. In addition, the company told the state they were processing the nonrenewal notices 75 days in advance (the state required at least 45 days notice) and that they provided each insured a specific reason for the termination. Company B did not subsequently undergo a market conduct exam.

For the most part, the exam of Company A went well. However, the company probably could have avoided the exam by alerting the state in advance about the dropped business. The problems uncovered in the exam had nothing to do with the large number of policies that were terminated, but the exam did reveal that the drop in business resulted from a large agency moving its business to another company leading to the terminations.

Company B's comprehensive response to this situation is what insurance departments are seeking through market analysis. Companies need to do their part in helping to streamline the process.

When a mistake happens

A much tougher situation occurs when a company discovers they have indeed done something wrong. Companies often do the right thing at this point -- they uncover the root cause of the problem, fix it, identify and correct policies or claim files, and create checks and balances to ensure similar situations do not occur in the future.

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But sometimes companies wonder, "Should we tell the Department of Insurance?" The answer is yes. Even if you don't tell them about it, they will probably find out at some point. I have been involved in many discussions with companies and states over the years, and can tell you -- the Department of Insurance appreciates knowing when you know. They will take more kindly to the company being upfront and forthright with them, and depending on the situation, they may not even issue a fine or stipulation and consent order on the matter. However, if they find out about a problem through other means, such as an examination or complaints, fines are more likely to occur.

Being straightforward with your regulator will help mitigate negative press, bad feelings and costly fines, and providing a full explanation will help even more. The more information you can give your regulator, the better. Tell them what happened, how it occurred, when it occurred, when it was fixed or when it will be fixed, the number of policyholders or claimants involved and the total dollar impact.

Also, remember that time is of the essence: Let the state know about any problems as soon as possible. Sometimes problems come to light and it takes several months to fix the last policy or claim. Do not wait until the end of the process to inform the state. Provide the information early along with your plan of action.

Collaborating with your regulator in properly treating your policyholders and claimants is important and effective. The returns from the customers and the regulators will help you and your company in the long run, both in direct benefits to your top and bottom lines and in how you are perceived in the industry. Company stakeholders don't just want company profits to be as high as possible, they also require you to do the right thing, and reporting a regulatory deficiency is one of those necessities. Speaking with your regulators as needed and having an effective compliance program will help your company immeasurably.

Joseph Bieniek has 30 years of experience in the insurance industry. He joined the National Association of Insurance Commissioners as Statistical Information Manager this fall.

Welcome, new IRES members

Edward J. Bannister, DC
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