

Insurance Compliance Research: The Underestimated Challenge

What every insurer needs to know about the benefits, risks, and costs of research in the public domain.

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Having a comprehensive and up-to-date set of these documents is a “must” in the insurance industry. Decisions about how to locate and maintain this information have a great deal of impact on the ability of insurance researchers to do high-quality work.

The established state-based system of regulation creates a unique and sizable challenge for the US insurance industry—that is, the challenge of maintaining compliance with the regulations of all states in which an insurer does business. Despite the significance of this challenge many insurers still share the dangerous perception that using public information resources alone is enough to maintain compliance.

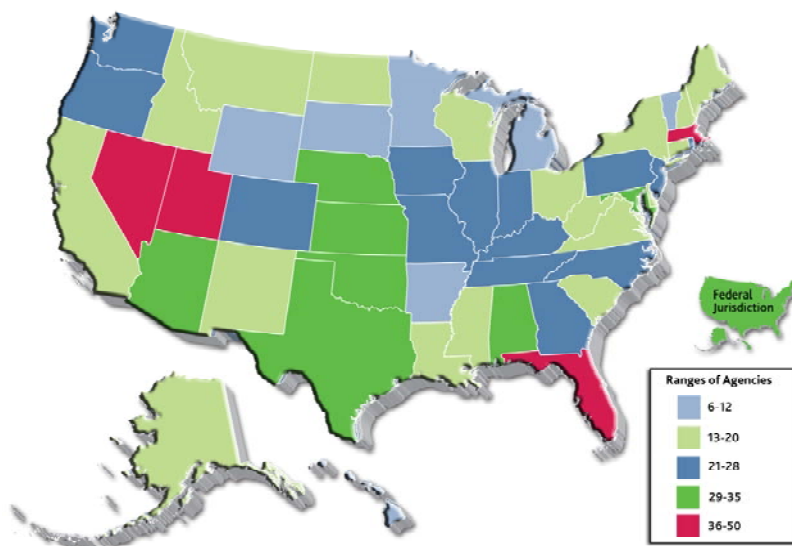
A Closer Look at Regulations and Advisory Materials

Multiple and diverse state and federal agencies regulate the insurance industry. These agencies include commissions and departments governing:

- Workers’ Compensation
- Professional Regulation
- Departments of Health
- Labor
- Transportation
- Environmental Protection
- Motor Vehicles
- Commerce

On average, there are twenty such agencies or sub-agencies *per state* that directly affect insurers through their bulletins, promulgated rules, and agency-sponsored legislation—all of which compliance personnel must be aware and knowledgeable.

Compliance staff must also monitor key agencies at the federal level, such as Health and Human Services and its Center for Medicare and Medicaid Services, and the Federal Trade Commission.



Jurisdictions vary in agency structure. The chart to the left shows how much the number of agencies involved can vary from one jurisdiction to another. Approximately 1,100 state and federal agencies, departments, divisions, sub-agencies, and boards currently issue regulations and guidance documents directly affecting the insurance industry.

Chart 1. Agencies by Jurisdiction

Sources of Regulations & Advisory Materials: Agency Challenge in a Single State

To understand the incredible complexity that compliance staffs face, consider the following analysis of state agencies within Maryland, where there are 53 state agencies *other than* the Maryland Insurance Administration, of which 16 issue insurance compliance-relevant regulations through 31 distinct divisions and sub-agencies.

State Agency	Example of Regulations That Pertain To The Insurance Industry
Automobile Insurance Fund Comptroller of the Treasury/Miscellaneous Revenue Comptroller of the Treasury/Sales and Use Tax Dept. of Aging/Continuing Care Division Dept. of Agriculture Dept. of Health and Mental Hygiene Dept. of Health & Mental Hygiene/Board of Morticians & Funeral Dir Dept. of Health & Mental Hygiene/Health Care Commission Dept. of Health & Mental Hygiene/Health Srvc Cost Review Com Dept. of Health and Mental Hygiene/Hospitals	Filing a Notice of Claim Abandoned Property Liability for Interest Taxes on Professional, Personal, or Insurance Services Insurance Requirements for Continuing Care at Home Minimum Insurance Limits for Pesticide Businesses Health Maintenance Organization Definitions Preneed Insurance Contract Requirements Determination of Certificate of Need for Health Care Facilities Health Service Rate Application and Approval Procedures Medical Professional Liability Closed Claims
Dept. of Health and Mental Hygiene/Medical Care Programs Dept. of Housing and Community Development	Information From and Liability of Health Insurers Multi-Family Housing Program
Dept. of Housing and Community Dev/Homeownership Programs	Reinsurance, Coinsurance and Shared Insurance Preferred Interest Rate Loan Program
Dept. of Human Resources/Child Support Enforcement Admin Dept. of Human Resources/Community Services Administration Dept. of Labor, Licensing & Regulation/Com of Financial Regulation Dept. of Labor, Licensing & Regulation/Division of Labor & Industry	Property Insurance Requirement Methods of Child Support Enforcement Adult Foster Care Requirements Insurance Premium Finance Requirements Notification Requirements of Boiler Insp. Employed by Insurers
Dept. of Environment Dept. of State Police	Surface Coal Mining Liability Insurance Requirements Process for Obtaining Motor Vehicle Accident Reports
Dept. of Transportation	Minimum Limits for Towing, Road Service & Vehicle Storage
Dept. of Trans/Motor Vehicle Administration	Minimum Automobile Insurance Limits
Dept. of Trans/Motor Vehicle Administration - Admin Procedures	Fee Schedule for Vehicle Titles and Salvage Certificates
Dept. of Trans/Motor Vehicle-Driver Licensing and Identification	Availability of Driver Licensing Records
Dept. of the Envr/Disposal of Controlled Hazardous Substances	Hazardous Waste Treatment Facility Owners Financial Req
Dept. of the Envr/Office of the Bureau of Mines	Deep Mining Liability Insurance Requirements
Dept. of the Envr/Oil Pollution and Tank Management	Underground Storage Tank Facilities Liability Ins Program
Office of the Attorney General/Consumer Protection Division	Arbitration Program
Office of the Attorney General/Division of Securities	Investment Advisor Requirements & Exemptions for Licensed Producers
Office of the State Treasurer	Coverage & Limits for Commercial Insurance Used in State Insurance Programs
Public Service Commission	Taxicab Financial Responsibility Requirements
Workers' Compensation Commission	Cancellation of Workers' Compensation Policies Average Weekly Wage

Navigating the Legislative Landscape

It is no easier to stay current with all sources of laws that affect insurers. More than 2,000 titles of state and Federal law contain insurance-relevant content.

Sources of Statutes: A Typical Jurisdiction

To illustrate the situation at the state legislative level, consider the following analysis of state code titles within Florida, where 36 distinct areas of law *other than the Insurance Code* have content relevant to insurance compliance.

State Agency	Relevant Insurer Content
Title IV - Executive Branch	Office of Insurance Regulation structure and responsibilities
Title V -- Judicial Branch	Sheriff may obtain insurance to cover liability for damages
Title VI -- Civil Practice and Procedure	Offer of settlement
Title VII -- Evidence	Insurer's denial of value of property damaged by fire
Title VIII -- Limitations	Tolling of statute of limitations
Title X -- Public Officers, Employees, and Records	State group health insurance program
Title XI -- County Organization and Intergovernmental Relations	Health Facilities Authorities; Bonds as legal investments
Title XII -- Municipalities	Revocation of insurer's certificate of authority
Title XIII - Planning and Development	Authority for the issuance of bonds
Title XIV - Taxation and Finance	Economic development ad valorem tax exemptions
Title XV - Homestead Exemptions	Disposition of life insurance proceeds
Title XL - Real and Personal Property	Title insurer; mortgage release certificate
Title XLI - Statute of Frauds, Fraudulent Transfers, and General Assignments	Construction contracts; limitation on indemnification
Title XLII - Estates and Trusts	Disposition of insurance policy death benefits
Title XLIV - Civil Rights	Living will procedures
Title XLV -- Torts	Liability of health care facilities
Title XLVI -- Crimes	Fraudulent insurance application
Title XLVII - Criminal Procedure and Corrections	Judgment against surety
Title XLVIII -- K - 20 Education Code	Tort liability; medical payments insurance
Title XVI - Teachers' Retirement System; Higher Educational Facilities Bonds	Bonds as legal investments
Title XVII - Military Affairs and Related Matters	Continuation of insurance coverage
Title XVIII - Public Lands and Property	Florida building and facilities act

State Agency	Relevant Insurer Content
Title XXII - Ports and Harbors	Bonds as legal investments
Title XXIII - Motor Vehicles	Proof of financial responsibility
Title XXIX - Public Health	Nursing homes; Restrictions on punitive damages
Title XXV -- Aviation	Bonds as legal investments
Title XXVIII - Natural Resources, Conservation, Reclamation, and Use	State-assisted third-party liability insurance
Title XXX - Social Welfare	A qualified state long-term care insurance partnership program in Florida
Title XXXI -- Labor	Notice of injury or death; reporting requirements
Title XXXII - Regulation of Professions and Occupations	Report of malpractice claims
Title XXXIII - Regulation of Trade, Commerce, Investments, and Solicitations	Preneed sales; Insurance transactions prohibited
Title XXXIV - Alcoholic Beverages and Tobacco	Punitive damages permitted
Title XXXIX - Commercial Relations	Electronic signature act of 1996
Title XXXVI - Business Organizations	Directors' liability; improper personal benefits
Title XXXVIII - Banks and Banking	Notice of insurance coverage on security interest

Public Information Sources: Benefits and Barriers

Insurance compliance staffs have at their disposal a wide range of public information sources regarding insurance-relevant regulations and laws. Usually technology-driven, these sources can provide a great volume of information at low or no cost—making them highly attractive to compliance managers trying to work within strict budgets.

As we will outline below, these sources can provide additional benefits. However, significant barriers can overshadow those benefits.

Public Information Sources for Regulatory Activity

Compliance staffs have three main, publicly available means of monitoring regulatory activity:

1. Web Pages. State agencies are taking advantage of the Internet as a medium to communicate about their activities. However, one must keep in mind that compliance staff must monitor a vast array of agencies—which can involve sourcing, tracking, and compiling agency developments on as many as 1,100 web pages *per day*. Compounding that daunting barrier of *volume* is the barrier of *quality*. Compliance staff must know which agencies have acceptable, reliable, and directly useable content that will not expose their firm to compliance risk.
2. Email Alerts. In a few cases, compliance staff can supplement their proactive monitoring efforts with email alerts from agencies that provide them. Such alerts can notify recipients of new or amended bulletins and rules, and summaries of insurance-sponsored legislation. However, this service is extremely limited in its availability.

3. State Registers. State register publications have historically been the primary means of learning of and monitoring state regulatory activity. They remain viable options today, yet there are some important barriers involved in using them, including:
 - a. Registers require significant manual review.
 - b. Publication schedules vary widely. While 16 state registers are published weekly, most of the remaining states publish either biweekly or monthly. *Three states do not publish traditional registers at all.*
 - c. Likewise, the scope of registers is inconsistent. Some of these registers are "Notice Only," requiring the individual to contact the agency directly for the actual regulation text. For example, California's "Notice Only" register may indicate that an insurance regulation is available at the Department of Insurance website. However, one frequently has to go through many alternate methods, searches, and sometimes direct contacts at the Department to actually obtain the regulation. Quite often, when following the specific instructions, a search yields no results.
 - d. Not all registers are in electronic format. One of the weekly registers is "paper only," presenting the possibility of mail delays.
 - e. The coverage offered by registers is not comprehensive. Very few registers publish bulletins and other guidance documents.

An effective program of monitoring regulatory activity using public sources needs to combine all three of these approaches. Yet such a program requires extensive person hours, typically beyond the capacity of most insurers' compliance departments. Additionally, researchers must understand the nuances and challenges of various jurisdictions and information sources.

Public Information Sources for Legislative Activity

State and federal legislative Web sites are acknowledged as the primary public sources for information about insurance-relevant lawmaking activity. Using them to monitor that activity, though, presents its own set of challenges and barriers:

- Volume. From January through mid-July 2009 over 10,000 bills related to insurance have been introduced into state and federal legislatures. This number reflects only bills and not the even more significant number of actual citations they affect. Keeping track of the bills introduced each session can be overwhelming, yet they must be monitored daily.
- Lack of Automated Update Services. While some states offer an email alert update service that notifies subscribers of bills that match specific criteria, most state legislative Web sites remain essentially passive sources of information. Bill-driven search functionality is generally adequate, but the staff researcher will usually have to re-enter search criteria with each visit to the page.
- Complexity of the Content and Type of Activity. Compliance staff must monitor and track bills not only at topic level, but also at the chapter and citation level, in order to truly ensure understanding of and compliance with the changes or new requirements. At any point in time in each year's regular and special legislative sessions, these are subject to change, repeal, or additions.
- Variations in the Timing of Legislative Activity. The state legislatures publish introduced bills, as well as the final enacted text, according to different and inconsistent timeframes. Enacted-interim text is sometimes available in advance of chaptered versions. However, access to the final versions on the states' Web sites is sometimes delayed, leaving compliance staff few choices other than contacting the states directly. For example, in New Jersey it can take up to

15 business days to receive the final/Pamphlet Law version from the state. There are also often differences in the statutory text between the online and printed versions: the Pamphlet Law version includes codifications and other code revisor changes (that is, it reads as it does in the code of laws without changes shown).

Why Using Web Sites is not a Realistic Option

Publicly available resources seem natural “first steps” for researchers—not least because they provide information at low or no cost. While the Internet is a bottomless well of information, it is far too diverse, complex, and slow to access for insurance professionals’ use.

Furthermore, there is no consistent editorial quality control on the “Wild, Wild Web,” so researchers who rely on Web sites for their regulatory information can open their companies to compliance risk. Even state sites can be dubious: rules indicated as “New” on [some state websites](#) can be up to six years old.

Why You Can’t Afford To Go It Alone

It is simply not realistic to think that a small staff of compliance analysts, who are at least partially allocated to other priorities, can locate timely and complete information about insurance regulatory requirements using public Web sites. The following calculator demonstrates the issue.

Research Resource Calculator			
Assumptions:			
<ul style="list-style-type: none"> ■ Personal auto and excess/umbrella lines of business ■ Product development specifications research project ■ Research analyst hourly rate of \$45.00 			
Section 1 - Laws		Section 2 - Regulations & Advisory Materials	
Research one title of law	2 hrs	Research one regulatory agency’s documents	.5 hrs
Average number of titles	15	Average number of agencies	9
Total Hours for Laws Research	30 hrs	Total Hours for Regulations Research	4.5 hrs
Total Cost Per State	\$1,350	Total Cost Per State Agency	\$202
Total cost per state for complete research, including agency coverage			\$1,552
Total cost for research covering 5 jurisdictions			\$7,760
Total cost for research covering 25 jurisdictions			\$38,800
Total cost for research covering 53 jurisdictions			\$82,256

In Conclusion

Many insurance professionals share the misconception that, using public resources alone, they can perform research on regulatory requirements sufficiently enough to maintain compliant practices. This is a risky proposition. Relying solely on state department of insurance web sites for regulatory research will not deliver the content needed to maintain compliance. Multiple and diverse state and federal agencies regulate the insurance industry. There are approximately 1,100 such agencies currently issuing regulations and guidance documents directly affecting insurance organizations. Given the magnitude of the material to be researched and the fact that little consistency exists among states and agencies for the publishing of such content, producing the required research can be an overwhelming experience. Even single jurisdiction research can be incredibly complex with multiple agencies and sub-agencies publishing compliance-relevant regulations. Identifying the often complex structure of these agencies and the materials they publish can quickly consume scarce resources. However, failing to perform the exhaustive research necessary to identify and evaluate all requirements from all governing entities, can lead to unacceptable levels of exposure to noncompliance risks and increased costs.

Insurance professionals can and should leverage access to resources that combine content from all relevant sources, including state web sites, into a single solution that reduces overall research time and costs.

