

<h1 style="text-align: center;">Regulatory Analysis Form</h1>		<p style="text-align: center;">This space for use by IRRC</p> <p style="text-align: center;">2002 MAR -4 AM 11:13 REVIEW COMMISSION</p>	
		<p>IRRC Number: 2257</p>	
<p>(1) Agency</p> <p>Insurance Department</p>			
<p>(2) I.D. Number (Governor's Office Use)</p> <p>11-209</p>			
<p>(3) Short Title</p> <p>Privacy of Consumer Health Information</p>			
<p>(4) PA Code Cite</p> <p>31 Pa. Code, Chapter 146b, §§146b.1-146b.24</p>		<p>(5) Agency Contacts & Telephone Numbers</p> <p>Primary Contact: Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429</p>	
<p>(6) Type of Rulemaking (check one)</p> <p><input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted</p>		<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and nontechnical language.</p> <p>The purpose of this proposed rulemaking is to adopt Chapter 146b in order to implement the privacy requirements for nonpublic health information in the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model). Also, certain licensees such as health insurers will be subject to the federal HIPAA privacy regulation, while other licensees such as life insurers and automobile insurance carriers will not be subject to those regulations. Therefore, this regulation is needed in order to provide consistent privacy protections too all insurance consumers of the Commonwealth.</p>			
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>The proposal is made under the general rulemaking authority of §§ 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), and under the guidance of § 648 of The Insurance Department Act of 1921 (40 P.S. §§ 288), as amended by Act 40 of 1997 (P.L. 349, No. 40). Likewise, this proposal is made pursuant to the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 et seq.) (as such authority is further explained in <u>PALU v. Insurance Department</u>, 371 A.2d 564 (Pa. Cmwlth. 1977)).</p>			

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

This regulation is associated with the Department's recently-promulgated financial privacy regulation located at 31 Pa.Code Chapter 146a, and those regulations were required pursuant to the Title V of the Gramm-Leach-Bliley Act (P.L. 102-106; 15 U.S.C. §§ 6801 *et seq.*). Also, the compliance date for this regulation mirrors that of the federal HIPAA privacy regulation at 45 C.F.R. Parts 160 through 164.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Insurance Department seeks to amend Chapter 146b, §§146b.1-146b.24 in order to implement the privacy requirements for nonpublic health information in the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model). Moreover, it is in the public interest to amend the Pennsylvania Code in order to ensure consumer health information privacy.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environment or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Consumers will benefit from the regulation to the extent that it will ensure protection of the privacy of nonpublic personal health information that is available to licensees.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the amendment of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all licensees doing the business of insurance in the Commonwealth, with the exception of bail bondsmen, motor vehicle physical damage appraisers and governmental health programs such as CHIP and Medicaid.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Comments regarding an initial draft of this regulation were solicited from the various trade associations representing the insurance industry. These comments were taken into consideration in the drafting of this proposed rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

This regulation will likely have some costs for licensees associated with obtaining authorization from consumers prior to releasing nonpublic personal health information. However, numerous exceptions to the authorization requirements have been included in the regulation so as not to unnecessarily interfere with licensees' daily transaction of the business of insurance.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

There are no costs or savings associated to state government associated with this rulemaking.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A. Because of the varied nature of the licensees that are covered by this regulation and because many licensees will be able to avoid the requirements of this regulation if they are compliant with the federal HIPAA privacy regulations, it is difficult, if not impossible, to accurately assess the costs associated with the promulgation of this regulation.

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

N/A.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Amending Chapter 146b, §§146b.1-146b.24 to the Pennsylvania Code is the most efficient method to achieve consistency with the NAIC Model regulation. Because the majority of other states are also promulgating the NAIC Model's health privacy provisions, a level of uniformity will be achieved by promulgating this proposed rulemaking. Therefore, no other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The amendment of the regulation is the most efficient method of updating the regulatory requirements.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Because a majority of other states are also promulgating the NAIC Model's privacy provisions, this rulemaking will not put Pennsylvania at a competitive disadvantage with other states. It merely provides for consistency with the NAIC model that other states are using.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. However, this regulation is related to the Department's Privacy of Consumer Financial Privacy Regulation located at 31 Pa.Code Chapter 146a.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

The amendment of the regulation imposes no additional paperwork requirements on the Department. Licensees, however, will need to comply with the authorization requirements of the regulation, which include a requirement that they maintain such authorizations and any revocations thereof for a period of six years.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission and upon final publication in the *Pennsylvania Bulletin*. Compliance with the regulation by licensees will be delayed until April 14, 2003 or April 2004, depending upon the size of the licensee that is subject to the regulation.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

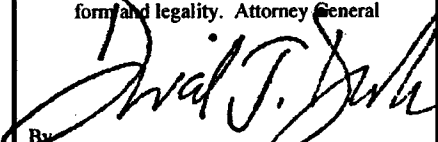
FEB 26 11:14

RECEIVED

2257

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General



By

(Deputy Attorney General)

FEB 26 2002

Date of Approval

→ Check if applicable.
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

Insurance Department

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-209

DATE OF ADOPTION:

BY:

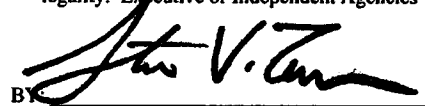


M. Diane Koken
Insurance Commissioner

TITLE:

(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

Copy below is hereby approved as to form and
legality. Executive or Independent Agencies



By

1/2/02

DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
(~~CHIEF COUNSEL, INDEPENDENT AGENCY~~)
(STRIKE INAPPLICABLE TITLE)

→ Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 146b

§§ 146b.1-146b.24

Privacy of Consumer Health Information

Preamble

The Insurance Department (Department) proposes to adopt §§ 146b.1-146a.24 to read as set forth in Annex A. The proposal is made under the general rulemaking authority of §§ 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), and under the guidance of § 648 of The Insurance Department Act of 1921 (40 P.S. §§ 288), as amended by Act 40 of 1997 (P.L. 349, No. 40). Likewise, this proposal is made pursuant to the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 *et seq.*) (as such authority is further explained in PALU v. Insurance Department, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner of the Commonwealth of Pennsylvania has determined that the improper disclosure and/or marketing of nonpublic personal health information by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.

Purpose

The purpose of this proposed rulemaking is to adopt Chapter 146b in order to implement the privacy requirements for nonpublic health information in the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model). The privacy requirements for nonpublic financial information in the NAIC Model were promulgated in final form on August 11, 2001 by publication in the *Pennsylvania Bulletin* at 31 Pa. Bull. 4426 (August 11, 2001) in order to comply with the requirements set forth in Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 102-106; 15 U.S.C. §§ 6801 *et seq.*).

Background

This proposed regulation is modeled from the health information privacy sections of the NAIC Model. For purposes of this rulemaking, the Department will make available a copy of the NAIC model to the Standing Committees of the Senate and the House, and to the IRRC. Otherwise, this material is copyrighted and is available from the NAIC upon request. For further information, see the NAIC website at <http://www.naic.org>. In general, the NAIC Model requires that insurance entities obtain the authorization of a consumer before disclosing nonpublic personal health information relating to that consumer. The Department has chosen to implement the NAIC Model in order to achieve a level of uniformity among the states because a majority of the states have committed to implementing the NAIC Model, including its health information privacy provisions.

For these reasons, the Department has attempted to implement the health information privacy provisions of the NAIC Model as closely as possible. However, because the Department is promulgating the health information privacy provisions in the NAIC Model separately from the financial privacy requirements and because the Department believed that additional consumer protections were necessary, this proposed rulemaking includes several variations from the NAIC Model in this rulemaking. For example, in section 146b.2, the Department has modified the definition of "consumer" to include persons that meet the definition of either a "consumer" or a "customer" in the NAIC Model. The NAIC Model distinguishes between these

two types of person because each is treated differently with respect to the privacy of their nonpublic personal financial information. However, because there is no distinction between a “consumer” and a “customer” in the NAIC Model’s health privacy provisions, and because the Department is promulgating the NAIC Model’s health privacy provisions separately from the financial privacy provisions, the distinction is no longer necessary.

The Department has also made two substantive additions to the NAIC Model’s health privacy provisions in order to provide additional protection to consumers’ nonpublic personal health information. For example, The Department has limited the disclosure of nonpublic personal health information for the purpose of carrying out one of the “insurance function exceptions” in section 146b.11(b) only “to the extent that such disclosure of nonpublic personal health information is necessary for the performance” of the insurance function. This language is not found in the NAIC Model. Finally, the Department also included in section 146b.11(c) a requirement that licensees enter into an agreement with a third party to whom the licensee discloses nonpublic personal health information for the purpose of performing one of the insurance function exceptions in order to preserve the confidentiality of the information.

In addition, this proposed regulation is being promulgated in order to address several segments of the insurance industry that are not subject to the Federal Health Insurance Portability and Accountability Act privacy regulation (federal HIPAA privacy regulation) as promulgated by the U.S. Department of Health and Human Services (HHS) at 45 C.F.R. Parts 160 through 164. Although certain licensees such as health insurers will be subject to the federal HIPAA privacy regulation, other licensees such as life insurers and automobile insurance carriers will not be subject to those regulations. Therefore, this regulation is needed in order to provide privacy protections too all insurance consumers of the Commonwealth. Also, this regulation is not intended to constitute duplicative regulation of health information privacy for those licensees that are subject to the federal HIPAA privacy regulation, as evidenced in the “self-preemption” provision in subsection 146b.21(a). This subsection provides an exemption from the purview of this regulation for any licensee that otherwise is compliant with the entire federal HIPAA privacy regulation.

Pre-Proposal Comments

On August 28, 2001, the Department held an outreach meeting with various trade groups and members of the Commonwealth’s insurance industry that could be affected by this rulemaking. The purpose of the meeting was to discuss an initial draft of the Department’s health information privacy regulation, which included the deviations from the NAIC model highlighted above. In conjunction with that meeting, the Department also permitted the meeting attendees to submit written comments relating to the Department’s initial draft of the health information privacy regulation. Written comments were submitted by the following entities and, where applicable, were considered during the design of this proposed rulemaking: the Insurance Federation of Pennsylvania, the Pennsylvania Association of Mutual Insurers, American Family Life Assurance Company of Columbus, Keystone Health Plan Central, Capital Blue Cross, Lucas & McClain, LLP, the Managed Care Association of Pennsylvania, the American Insurance Association, Independence Blue Cross, Highmark, Inc., the Pennsylvania Association of Health Underwriters, and the Alliance of American Insurers. Also, a joint comment was submitted by

the Independent Insurance Agents of Pennsylvania and the Pennsylvania Association of Insurance and Financial Advisors.

Copies of the written pre-proposal comments submitted by these groups are available upon request. The Department has taken these pre-proposal comments into consideration and, where applicable, the Department made several revisions to its initial draft of the regulation based upon those comments for the purpose of this proposed rulemaking.

Explanation of Regulatory Changes

Subchapter A. General provisions.

§ 146b.1 (relating to purpose) contains the purpose and compliance requirements needed to govern the treatment of nonpublic personal health information about individuals in this Commonwealth by all licensees of the Department.

§ 146b.2 (relating to definitions) contains the definitions of terms that are used in this chapter.

Subchapter B. Rules for Disclosure of Nonpublic Personal Health Information.

§ 146b.11 (relating to the authorization that is required for disclosure of nonpublic personal health information) contains the requirement that an authorization from the consumer is required before a licensee may disclose a consumer's nonpublic personal health information.

§ 146b.12 (relating to authorizations) contains the general requirements for the contents of the authorizations that are required in § 146a.11.

§ 146b.13 (relating to authorization request delivery) describes the appropriate methods for delivery of a request for authorization by a licensee to a consumer

Subchapter C. Additional Provisions

§ 146b.21 (relating to the regulation's relationship with other laws) describes the interaction of this rulemaking with other laws of this Commonwealth and the federal government.

§ 146b.22 (relating to nondiscrimination) provides that a licensee may not unfairly discriminate against a consumer because that consumer has not granted an authorization for the disclosure of nonpublic personal health information.

§ 146b.23 (relating to violations) provides that a contravention of this proposed rulemaking shall be deemed to be an unfair or deceptive act and practice in the conduct of the business of insurance and shall be deemed a violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.15).

§ 146b.24 (relating to effective and compliance dates) provides that this proposed rulemaking will become effective upon publication in the Pennsylvania Bulletin, and the compliance dates mirror those in the federal HIPAA privacy regulation.

Fiscal Impact

There will be a fiscal impact as a result of the proposed rulemaking. However, this rulemaking merely fills in any gaps in the insurance industry that are not covered by the federal HIPAA privacy regulation. Therefore, the adoption of this regulation should not have a significant cost impact over what is currently being required by the federal HIPAA privacy regulation.

Paperwork

Unless specifically executed under the § 146b.2 definition of licensee of the proposed rulemaking, the rulemaking will affect all licensees doing the business of insurance in this Commonwealth by imposing additional paperwork requirements pertaining to the delivery and treating of opt out notices.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon publication in the Pennsylvania Bulletin, and the compliance dates mirror those in the federal HIPAA privacy regulation.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 4, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under § 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days after the close of the Committee's review. The notification shall specify the regulatory review criteria that have not

been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN
Insurance Commissioner

Annex A

TITLE 31. INSURANCE. PART VIII. MISCELLANEOUS PROVISIONS. Chapter
146b. Privacy of Consumer Health Information.

Subch.

A. GENERAL PROVISIONS

B. RULES FOR DISCLOSURE OF NONPUBLIC PERSONAL HEALTH INFORMATION

C. ADDITIONAL PROVISIONS

Subchapter A. GENERAL PROVISIONS

Sec.

146b.1. Purpose.

146b.2. Definitions.

§ 146b.1. Purpose.

(a) *Purpose.* This chapter:

(1) Governs the treatment of all nonpublic personal health information about individuals by various licensees of the Department.

(2) Describes the conditions under which a licensee may disclose nonpublic personal health information about consumers to a third party.

(3) Requires licensees to obtain the affirmative consent of consumers prior to disclosing nonpublic personal health information.

(b) *Compliance.* A licensee domiciled in this Commonwealth that is in compliance with this chapter and chapter 146a of the Department's regulations in a state that has not enacted laws or regulations that meet the requirements of Title V of the act of November 12, 1999 (Pub. L. No. 106-102, 113 Stat. 1338) known as the Gramm-Leach-Bliley Act (Financial Services

Modernization Act of 1999) (15 U.S.C.A. §§ 6801--6827) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(c) *Examples.* The examples provided in this chapter are for illustrative purposes only and do not otherwise limit or restrict the scope of this chapter.

§ 146b.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context requires otherwise:

Act--The Insurance Department Act of 1921 (40 P. S. §§ 1--321).

Commissioner--The Insurance Commissioner of the Commonwealth.

Company--A corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

Consumer--

(i) An individual, or that individual's legal representative, who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal health information. Examples include:

(A) An individual who provides nonpublic personal health information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship.

(B) An applicant for insurance prior to the inception of insurance coverage.

(C) A beneficiary of a life insurance policy underwritten by the licensee.

(D) A claimant under an insurance policy issued by the licensee.

(E) An insured under an insurance policy or an annuitant under an annuity issued by the licensee.

(F) A mortgagor of a mortgage covered under a mortgage insurance policy.

(G) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary.

(H) An individual covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(I) A claimant in a workers' compensation plan.

(ii) *Examples of persons who are not consumers.*

(A) An individual is not a consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee.

(B) An individual is not a consumer solely because the individual has designated the licensee as trustee for a trust.

(C) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

Department--The Insurance Department of the Commonwealth.

Federal regulation— The Federal Health Insurance Portability and Accountability Act (HIPAA) privacy regulation as promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160 through 164.

Financial institution—

(i) The term means an institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(ii) The term does not include the following:

(A) A person or entity with respect to a financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

(B) The Federal Agricultural Mortgage Corporation or an entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*).

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

Health care—The term means:

(i) Preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that either:

(A) Relates to the physical, mental or behavioral condition of an individual.

(B) Affects the structure or function of the human body or a part of the human body, including the banking of blood, sperm, organs or other tissue.

(ii) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

Health care provider—A physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with the laws of this Commonwealth, or a health care facility.

Health information—Information or data except age, gender or nonpublic personal financial information, whether oral or recorded in a form or medium, created by or derived from a health care provider or the consumer that relates to one or more of the following:

(i) The past, present or future physical, mental or behavioral health or condition of an individual.

(ii) The provision of health care to an individual.

(iii) Payment for the provision of health care to an individual.

Insurance product or service--A product or service that is offered by a licensee under the insurance laws of the Commonwealth. Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

Licensee--

(i) A licensed insurer, as defined in section 201-A of the act (40 P. S. § 65.1-A), a producer and other persons or entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under the act or The Insurance Company Law of 1921 (40 P. S. §§ 361 et seq.), including health maintenance organizations holding a certificate of authority under section 201 of the Health Care Facilities Act (35 P. S. § 448.201).

(ii) The term does not include:

(A) Bail bondsmen as defined in 42 Pa.C.S.A. § 5741 (relating to definitions).

(B) Motor vehicle physical damage appraisers as defined in section 2 of the Motor Vehicle Physical Damage Appraiser Act (63 P. S. § 852) and 31 Pa.Code § 62.1 (relating to definitions).

(iii) Subject to subparagraph (iv), the term does not include governmental health insurance programs such as the following:

(A) The Children's Health Insurance Program as provided for in the Children's Health Care Act (40 P. S. §§ 991.2301-991.2361).

(B) The Medicaid program as provided for in 62 P. S. §§ 441.1 et seq.

(C) The Medicare+Choice program as provided for in the Balanced Budget Act of 1997, sections 1851 through 1859, Medicare Part C under Title XVIII of the Social Security Act.

(D) The Adult Basic Care program as provided for in Act 77 of 2001 (June 26, 2001).

(iv) The term includes a licensee that enrolls, insures or otherwise provides an insurance related service to participants that procure health insurance through a governmental health insurance program exempted pursuant to subparagraph (iii).

(v) Subject to subparagraph (ii), the term "licensee" shall also include a nonadmitted insurer that accepts business placed through a surplus lines licensee (as defined in 40 P.S. § 991.1602 (relating to definition of surplus lines licensee)) in this Commonwealth, but only in regard to the surplus lines placements placed under Article XVI of The Insurance Company Law (40 P. S. § 991.1601 et seq.).

Nonpublic personal financial information—As defined in § 146a.2 of the Privacy of Consumer Financial Information Regulation (31 Pa.Code § 146a.2).

Nonpublic personal health information—

- (i) The term means health information that either:
 - (A) Identifies an individual who is the subject of the information.
 - (B) There is a reasonable basis to believe could be used to identify an individual.
- (ii) The term does not include nonpublic personal financial information.

Producer—An insurance agent or broker licensed or required to be licensed by the Department pursuant to the act.

Subchapter B. RULES FOR DISCLOSURE OF NONPUBLIC PERSONAL HEALTH INFORMATION

Sec.

146b.11. Authorization Required for Disclosure of Nonpublic Personal Health Information.

146b.12. Authorizations.

146b.13. Authorization Request Delivery.

§ 146b.11. Authorization Required for Disclosure of Nonpublic Personal Health Information.

(a) *Authorization required.* A licensee shall not disclose nonpublic personal health information about a consumer unless an authorization is obtained from the consumer whose nonpublic personal health information is sought to be disclosed.

(b) *Insurance function exception.* Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee to the extent that such disclosure of nonpublic personal health information is necessary for the performance of one or more of the following insurance functions by or on behalf of the licensee:

- (1) Claims administration, including coordination of benefits and subrogation.
- (2) Claims adjustment and management.
- (3) Detection, prevention, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity.
- (4) Underwriting.
- (5) Policy placement or issuance.
- (6) Loss control.
- (7) Ratemaking and guaranty fund functions.
- (8) Reinsurance and excess loss insurance.
- (9) Risk management.
- (10) Case management.
- (11) Disease management.
- (12) Quality assurance.
- (13) Quality improvement.
- (14) Performance evaluation.
- (15) Provider credentialing verification.
- (16) Utilization review.
- (17) Peer review activities.
- (18) Actuarial, scientific, medical or public policy research.

- (19) Grievance and complaint procedures.
- (20) Internal administration of compliance, managerial, and information systems.
- (21) Policyholder service functions.
- (22) Auditing.
- (23) Reporting.
- (24) Database security.
- (25) Administration of consumer disputes and inquiries.
- (26) External accreditation standards.
- (27) The replacement of a group benefit plan or workers compensation policy or program.
- (28) Activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit.
- (29) An activity that permits disclosure without authorization pursuant to the Federal regulation.
- (30) Disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes.
- (31) An activity otherwise permitted by law, required pursuant to governmental regulatory or reporting authority, or to comply with a court ordered warrant, a subpoena or summons issued by a judicial officer, administrative judge, referee, hearing officer or a grand jury subpoena.
- (32) Compliance with Qualified Medical Child Support Orders.

(33) Preventive service reminders that do not require disclosure of nonpublic personal health information that a consumer has not previously disclosed directly to the recipient of the information.

(c) *Insurance functions performed by third parties on behalf of the licensee.* A licensee may disclose nonpublic personal health information to a third party not licensed by the Department provided that the licensee enters into an agreement with the third party that prohibits the third party from disclosing or using the nonpublic personal health information for a purpose other than to carry out one or more of the insurance functions identified in paragraph (b).

(d) *Additional insurance functions.* Additional insurance functions may be added with the approval of the Commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers. The addition of insurance functions may be done by publication of a notice identifying such additional insurance functions in the *Pennsylvania Bulletin*.

§ 146b.12. Authorizations.

(a) *Valid authorization contents.* A valid authorization to disclose nonpublic personal health information pursuant to § 146b.11(a) shall be in written or electronic form and shall contain all of the following:

(1) The identity of the consumer who is the subject of the nonpublic personal health information.

(2) A general description of the types of nonpublic personal health information to be disclosed.

(3) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used.

(4) The signature of the consumer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed.

(5) Notice of the length of time for which the authorization is valid and that the consumer may revoke the authorization at any time and the procedure for making a revocation.

(b) *Duration of authorization.* An authorization for the purposes of § 146b.11(a) shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

(c) *Revocation of authorization.* A consumer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this subchapter at any time, subject to the rights of an individual or licensee who acted in reliance on the authorization prior to notice of the revocation.

(d) *Record of authorization.* A licensee shall retain the authorization and a revocation of the authorization, or copies thereof, for a period of 6 years in the record of the individual who is the subject of nonpublic personal health information.

§ 146b.13. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer as part of a privacy notice delivered pursuant to chapter 146a (privacy of consumer financial information) of this title, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or included

in other notices unless the licensee intends to disclose nonpublic personal health information pursuant to § 146b.11(a).

Subchapter C. ADDITIONAL PROVISIONS

Sec.

146b.21. Relationship with Other Laws.

146b.22. Nondiscrimination.

146b.23. Violation.

§ 146b.21. Relationship with Other Laws.

(a) *Relationship with the Federal regulation.* Irrespective of whether a licensee is subject to the Federal regulation, if a licensee complies with all requirements of the Federal regulation, the licensee shall not be subject to the provisions of this chapter.

(b) *Relationship with other state law or regulation.* Nothing in this chapter shall preempt or supercede existing laws or regulations of the Commonwealth that relate to medical records, health or insurance information privacy.

(c) *Relationship with the Fair Credit Reporting Act.* This chapter will not be construed to modify, limit or supersede the operation of the Federal Fair Credit Reporting Act (15 U.S.C.A. §§ 1681--1681u), and no inference may be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of that act (15 U.S.C.A. § 1681a).

(d) *Relationship with section 648 of the act (40 P.S. § 288) (relating to customer privacy).* This chapter will not be construed to modify, limit or supercede the operation of section 648 of the act (40 P.S. § 288) (relating to customer privacy).

§ 146b.22. Nondiscrimination.

A licensee may not unfairly discriminate against a consumer because that consumer has not granted authorization for the disclosure of nonpublic personal health information pursuant to the provisions of this chapter.

§ 146b.23. Violation.

Violations of this chapter are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to applicable penalties or remedies contained in the Unfair Insurance Practices Act (40 P. S. §§ 1171.1--1171.15).

§ 146b.24. Effective and compliance dates.

(a) *Effective date.* This chapter is effective upon publication in the *Pennsylvania Bulletin*.

(b) *Compliance dates.*

(1) Licensees with more than five million dollars (\$5,000,000.00) in annual receipts must comply with all applicable requirements of this chapter no later than April 14, 2003.

(2) Licensees with less than five million dollars (\$5,000,000.00) in annual receipts must comply with all applicable requirements of this chapter no later than April 14, 2004.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 705-3873
E-mail: psalvato@ins.state.pa.us

March 4, 2002

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Insurance Department Proposed Regulation No. 11-209, Privacy of Consumer Health Information

Dear Mr. Nyce:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 146b, Privacy of Consumer Health Information.

The purpose of this rulemaking is to adopt Chapter 146b in order to implement the privacy requirements for nonpublic health information in the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model). The privacy requirements for nonpublic financial information in the NAIC Model were promulgated in final form on August 11, 2001 by publication in the Pennsylvania Bulletin at 31 Pa. Bull. 4426 (August 11, 2001) in order to comply with the requirements set forth in Title V of the Gramm-Leach-Bliley Act (GLBA) (P.L. 102-106; 15 U.S.C. §§ 6801 et seq.).

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in black ink that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-209
 SUBJECT: Privacy of Consumer Health Information
 AGENCY: DEPARTMENT OF INSURANCE

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/4/02	<i>M. Pappalardo</i>	HOUSE COMMITTEE ON INSURANCE
3/6/02	<i>[Signature]</i>	
3/4/02	<i>Denise Yellon</i>	SENATE COMMITTEE ON BANKING & INSURANCE
	<i>Ron Deibert</i>	
	<i>Steph J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
3/4/02	<i>C. Lee Brown</i>	LEGISLATIVE REFERENCE BUREAU