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Capital BLUE

August 17, 2018

Ms. Bridget Burke
Regulatory Coordinator
Pennsylvania Insurance Department
1341 Strawberry Square
Harrisburg, PA 17120



Submitted via email to briburke@pa.gov

Re: Proposed Regulation #11-257: Privacy of Consumer Financial Information

Dear Ms. Burke:

Capital BlueCross ("Capital") appreciates the opportunity to provide comments on proposed Regulation #11-257: Privacy of Consumer Financial Information.

Capital applauds the Pennsylvania Insurance Department's ("PID") proposed actions to eliminate the redundancy of mandated consumer notification under the Gramm-Leach-Bliley Act (GLBA), while continuing to ensure consumers are sufficiently apprised of their privacy rights. As such, Capital supports the Department's proposal to eliminate the requirement of annual GLBA notices in the absence of any changes to a regulated entity's privacy policies and procedures. However, Capital has substantial concerns regarding the sunset of the existing sample clause safe harbor in favor of the use of the federal GLBA model form ("Model Form.") We believe there are unintended consequences of doing so and urge the PID to reconsider the current direction on the Model Form.

Streamlining of GLBA Annual Notice Requirement

The GLBA requires all financial institutions, including insurance companies, to provide notices of their privacy practices relating to Non-public Personal Information ("NPI") to consumers ("GLBA Notices.") The GLBA Notices must be provided upon the initial establishment of a customer relationship and then at least annually thereafter. Capital supports the PID's proposal to no longer require insurers issue such notices annually in the absence of any privacy policy and/or practice changes. We believe that this is an important step toward reducing consumer information fatigue, resulting from the bombardment of redundant privacy notices from multiple sources, thereby increasing consumer alertness to truly useful and actionable information. Subsequently, we strongly encourage the PID to adopt this streamlined approach as proposed.

Sunset of Sample Clause Safe Harbor

On the other hand, Capital has substantial concerns with the PID's proposal to sunset the sample clause safe harbor. One of the long-standing goals of the GLBA is to provide consumers with easily understandable and relevant information on the use and disclosure of their NPI. The PID's proposal to sunset the sample clause safe harbor and adopt the Model Form in its place contravenes this goal.

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The Model Form was developed by federal regulators in 2009 for financial institutions, such as banks and credit card companies. While health insurers, such as Capital, fall within the broadly-defined term of "financial institution" to which the GLBA applies, we are unlike these other entities in that we do not use consumer information for financial transactions that are unrelated to the administration of health insurance coverage.

While the PID's proposal does not require insurers to use the Model Form, by sunseting the sample clause safe harbor and establishing the Model Form in its place, health insurers will be left with no choice but to use the Model Form in order to take advantage of the compliance safe harbor.

The Model Form is designed specifically for financial institutions that deal in investments, loans and deposits, as evidenced by its multiple references to financial companies and the many mentions of credit reporting and related activities. The Model Form does not inform consumers and has little connection to how NPI is used by health insurers to provide coverage, process claims, and facilitate treatments. This disconnect makes the Model Form irrelevant in the insurance context. Additionally, consumers may be confused by receiving the Model Form from their health insurers when they customarily receive these from banks and credit card companies. This may create a misconception that health insurers are using consumer information for financial transactions unrelated to their insurance coverage. In the health insurance context, the Model Form does not provide any added benefits toward improving consumer awareness of data privacy. Rather, it creates unnecessary confusion to consumers at the expense of added financial and administrative burdens on health insurers.

Last but not least, health insurers are also subject to the Health Insurance Portability and Accountability Act (HIPAA), which establishes specific privacy and security standards for the use and disclosure of Protected Health Information ("PHI"). Since the HIPAA-mandated Notice of Privacy Practices ("HIPAA NPP") already outlines health insurers' use and disclosure of PHI within which NPI almost always falls; the Model Form provides no additional actionable information to consumers for their privacy protection. The sample clauses, on the other hand, may be used in a way that is concise and succinct to supplement the HIPAA NPP without contributing to consumers' informational overload. Consequently, we strongly recommend that the PID not sunset the sample clause safe harbor, but maintain it as an alternative to the Model Form.

We appreciate your consideration of our comments. Should you have any questions, please contact me at 717-541-6245 or at douglas.furness@capbluecross.com

Sincerely,



Douglas J. Furness
Senior Director, Government & Regulatory Affairs