

Comments of the Independent Regulatory Review Commission



Insurance Department Regulation #11-257 (IRRC #3207)

Privacy of Consumer Financial Information

September 19, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the July 21, 2018 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Insurance Department (Department) to respond to all comments received from us or any other source.

1. Section 146a.3. Examples and safe harbor. – Reasonableness; Implementation procedures.

This new section is proposed in accordance with recent changes to National Association of Insurance Commissioners (NAIC) Model Regulation #672. Subsection (c) provides that licensees may not rely on the use of privacy notices containing the sample clauses in 16 CFR Part 313 Appendix A as a safe harbor for compliance with the privacy notice content requirements of Chapter 146a after July 1, 2019. A commentator from the health insurance industry believes this sunset provision will leave health insurers little choice but to use a Model Form that is designed specifically for financial institutions. They contend this would cause confusion for its customers. We ask the Department to explain the rationale for the sunset provision of Subsection (c) in the Preamble to the final-form regulation. If the Department believes the sunset provision is needed, we ask that it consider alternative methods for compliance for the health insurance industry.

2. Section 164a.13. Information to be included in privacy notices. – Implementation procedures.

Subsection (f) identifies where sample clauses illustrating some of the notice content can be found. It is being amended to include language referencing the Federal model privacy form. A commentator has suggested that a reference to NAIC Model Regulation #672 Appendix B also be included in this subsection because the instructions are more specific to the insurance industry. We ask the Department to consider the recommendation of the commentator because it could assist with compliance by the regulated community.