

**CHAPTER 146b. PRIVACY OF CONSUMER  
HEALTH INFORMATION**

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**Authority**

The provisions of this Chapter 146b issued under sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); section 648 of The Insurance Department Act of 1921 (40 P. S. § 288); and the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.14), unless otherwise noted.

**Source**

The provisions of this Chapter 146b adopted October 25, 2002, effective October 26, 2002, 32 Pa.B. 5268, unless otherwise noted.

**Cross References**

This chapter cited in 31 Pa. Code § 146c.10 (relating to determined violation).

**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 an authorization from consumers prior to disclosing nonpublic personal health information, unless otherwise permitted in this chapter.
- (b) *Compliance.* A licensee domiciled in this Commonwealth that is in compliance with this chapter and Chapter 146a (relating to privacy of consumer financial information) 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 the 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 clearly indicates otherwise:

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

*Annual receipts*—Premium, commissions, fees or operating revenue received in a 12-month period.

*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 are as follows:

(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 United States Department of Health and Human Services in 45 CFR Parts 160—164.

*Financial institution*—

(i) An institution the business of which is engaging in activities that are financial in nature or incidental to the financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C.A. § 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.A. §§ 1—25).

(B) The Federal Agricultural Mortgage Corporation or an entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C.A. §§ 2001—2279cc).

(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 non-affiliated third party.

*Health care*—

(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*—

(i) A physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with the laws of the Commonwealth.

(ii) 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—991.2361), 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. § 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 § 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 sections 441.1—453 of the Public Welfare Code (62 P. S. §§ 441.1—453).

(C) The Medicare+Choice program as provided for in the Balanced Budget Act of 1997, sections 1851—1859, Medicare Part C under Title XVIII of the Social Security Act (42 U.S.C.A. §§ 1395w-21—1395w-29).

(D) The Adult Basic Care program as provided for in the Tobacco Settlement Act. See section 1303 of the Tobacco Settlement Act (35 P. S. § 5701.1303).

(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 under 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 section 1602 of The Insurance Company Law of 1921 (40 P. S. § 991.1602) in this Commonwealth, but only in regard to the sur-

plus lines placements placed under Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1625).

*Nonpublic personal financial information*—As defined in § 146a.2 (relating to definitions).

*Nonpublic personal health information*—

- (i) The term means either of the following:
  - (A) Health information that identifies an individual who is the subject of the information.
  - (B) Health information that 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 under the act.

#### Cross References

This section cited in 31 Pa. Code § 146c.2 (relating to definitions).

### 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 may 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 prohibits, restricts or requires an authorization for the disclosure of nonpublic personal health information by a licensee to the extent that the 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, investigation, negotiation, settlement 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 and wellness programs.
  - (12) Quality assurance.
  - (13) Quality improvement.
  - (14) Performance evaluation.
  - (15) Provider training, accreditation or certification by a recognized accrediting or certifying body, license and credential 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 (examples include reporting to medical index or consumer reporting bureaus and legally required reporting of disease, injury, vital statistics, child or adult abuse, neglect or domestic violence).
  - (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 under 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 under governmental regulatory or reporting authority, or to comply with legal process.
  - (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) *Disclosure of nonpublic personal health information.* Disclosure of nonpublic personal health information is necessary when the disclosure is required or when disclosure is usual, appropriate or acceptable for the purpose of performing an insurance function identified in subsection (b).

(d) *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 nonpublic personal health information is disclosed only for the purposes of carrying out one or more of the insurance functions identified in subsection (b). The Department may hold a licensee responsible for disclosures made by a third party that violate the requirements of this chapter.

(e) *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.

#### Cross References

This section cited in 31 Pa. Code § 146b.12 (relating to authorizations).

### § 146b.12. Authorizations.

(a) *Valid authorization contents.* A valid authorization to disclose nonpublic personal health information under § 146b.11(a) (relating to authorization required for disclosure of the nonpublic personal health information) 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 may not 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 under 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 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 under Chapter 146a (relating to privacy of consumer financial information), 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 under § 146b.11(a) (relating to authorization required for disclosure of nonpublic personal health information).

**Subchapter C. ADDITIONAL PROVISIONS**

Sec.

146b.21. Relationship with other laws.

146b.22. Nondiscrimination.

146b.23. Violation.

146b.24. Compliance dates.

**§ 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 the Federal regulation, the licensee will not be subject to this chapter.

(b) *Relationship with other state law or regulation.* Nothing in this chapter preempts or supersedes 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).* This chapter will not be construed to modify, limit or supersede the operation of section 648 of the act (40 P. S. § 288) regarding 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 under 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. Compliance dates.**

(a) Licensees with \$5 million or more in annual receipts shall comply with the applicable requirements of this chapter by the corresponding compliance date applicable to the Federal regulation.

(b) Licensees with less than \$5 million in annual receipts shall comply with the applicable requirements of this chapter by the corresponding compliance date applicable to the Federal regulation.

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