

NAIC INSURANCE INFORMATION AND PRIVACY PROTECTION MODEL ACT

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- (a) Collect, receive or maintain information in connection with insurance transactions which pertains to natural persons who are residents of this state, or
- (b) Engage in insurance transactions with applicants, individuals or policyholders

Section 2. Definitions

As used in this Act:

- A. "Adverse underwriting decision" means:
- (1) Any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:
 - (a) A declination of insurance coverage;
 - (b) A termination of insurance coverage;
 - (c) Failure of an agent to apply for insurance coverage with a specific insurance institution which the agent represents and which is requested by an applicant;
 - (d) In the case of a property or casualty insurance coverage:
 - (i) Placement by an insurance institution or agent of a risk with a residual market mechanism, an unauthorized insurer or an insurance institution which specializes in substandard risks; or
 - (ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished;

Drafting Note: The use of the term "substandard" in Section 2A(d)(i) is intended to apply to those insurance institutions whose rates and underwriting criteria are based on risks other than preferred or ps

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- C. "Agent" means [make reference here to every appropriate statutory category of producer, including brokers, authorized to do business in the state. This is necessary because in many states different types of producers, or producers for certain types of insurance institutions are referred to by specific statutory terms in the insurance code.]
- D. "Applicant" means a person who seeks to contract for insurance coverage oth.1 (n)2.4 (w)1.1 (hton r)1.2

- K. "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution or insurance support organization, other than:
- (1) An agent;
 - (2) The individual who is the subject of the information; or
 - (3) A natural person acting in a personal capacity rather than in a business or professional capacity.
- L. "Insurance institution" means any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance, including health maintenance organizations, medical service plans and hospital service plans as defined in [insert the applicable section of the State insurance code which defines health maintenance organizations or medical or hospital service plans.] "Insurance institution" shall not include agents or insurance support organizations.
- M. "Insurance support organization" means:
- (1) Any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including:
 - (a) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction, or
 - (b) The collection of personal information from insurance institutions, agents or other insurance support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.
 - (2) Notwithstanding (y)-7 a (s)-3., P3.5 2anagen-1.8 (a)-2.8 (n)p6.1 (f-0.6 ()4)-4 ((f12.8 2))JT (n))-2

- P. "Medical-care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to: health-maintenance organizations, home-health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies and skilled nursing facilities.
- Q. "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a chiropractor, clinical dietician, clinical psychologist, dentist, nurse, occupational therapist, optometrist, physician, physical therapist, podiatrist, psychologist, social worker, speech therapist, and veterinarian.

- (2) In the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy,
 - (a) The term of coverage of the policy if the claim is for a health insurance benefit;
 - (b) The duration of the claim if the claim is not for a health insurance benefit; and
- H. Advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

Drafting Note: The standard established by this section for disclosure authorization forms is intended to supersede any existing requirements a state may have adopted even if such requirements are more specific or applicable to particular authorizations such as medical information authorizations. This section is intended to be the exclusive statutory standard for all authorization forms utilized by insurance institutions, agents or insurance support organizations. This section does not preclude the inclusion of a disclosure authorization in an application form nor invalidate any disclosure authorizations in effect prior to the effective date of this Act. Nor does this section preclude an insurance institution, agent or insurance support organization from obtaining, in addition to its own authorization form which complies with this section, an additional authorization form required by the person from whom disclosure is sought.

Section 7. Investigative Consumer Reports

- A. No insurance institution, agent or insurance support organization may prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy rein

- (1) Inform the individual of the nature and substance of such recorded personal information in writing, by telephone or by other oral communication, whichever the insurance institution, agent or insurance support organization prefers;
- (2) Permit the individual to see and copy, in person, such recorded personal information pertaining to him or her or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in

- G. For purposes of this section, the term "insurance support organization" does not include "consumer reporting agency" except to the extent this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

Section 9. Correction, Amendment or Deletion of Recorded Personal Information

- A. Within thirty (30) business days from the date of receipt of a written request from an individual to correct, amend or delete any recorded personal information about the individual within its possession, an insurance institution, agent or insurance support organization shall either:
- (1) Correct, amend or delete the portion of the recorded personal information in dispute; or
 - (2) Notify the individual of:
 - (a) Its refusal to make such correction, amendment or deletion;
 - (b) The reasons for the refusal, and
 - (c) The individual's right to file a statement as provided in Subsection C.
- B. If the insurance institution, agent or insurance support organization corrects, amends or deletes recorded personal information in accordance with Subsection A(1) above, the insurance institution, agent or insurance support organization shall so notify the individual in writing and furnish the correction, amendment or fact of deletion to:
- (1) Any person specifically designated by the individual who may have, within the preceding two (2) years, received such recorded personal information;
 - (2) Any insurance support organization whose primary source of personal information is insurance institutions if the insurance support organization has systematically received such recorded personal information from the insurance institution within the preceding seven (7) years; provided, however, that the correction, amendment or fact of deletion need not be furnished if the insurance support organization no longer maintains recorded personal information about the individual; and
 - (3) Any insurance support organization that furnished the personal information that has been corrected, amended or deleted.
- C. Whenever an individual disagrees with an insurance institution's, agent's or insurance support organization's refusal to correct, amend or delete recorded personal information, the individual shall be permitted to file with the insurance institution, agent or insurance support organization:
- (1) A concise statement setting forth what the individual thinks is the correct, relevant or fair information; and
 - (2) A concise statement of the reasons why the individual disagrees with the insurance institution's, agent's or insurance support organization's refusal to correct, amend or delete recorded personal information.

- D. In the event an individual files either statement as described in Subsection C above, the insurance institution, agent or insurance support organizations shall:
- (1) File the state

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- (a) The insurance institution or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the Commissioner, that the applicant, policyholder or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure, and
- (b) Specific items of medical-record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or agent prefers, and

Drafting Note:

- B. On personal information received from an insurance support organization whose primary source of information is insurance institutions; provided, however, an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as a result of information received from such insurance support organization.

Section 13. Disclosure Limitations and Conditions

An insurance institution, agent or insurance support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

- A. With the written authorization of the individual, provided:
 - (1) If such authorization is submitted by another insurance institution, agent or insurance support organization, the authorization meets the requirements of Section 6 of this Act; or
 - (2) If such authorization is submitted by a person other than an insurance institution, agent or insurance support organization, the authorization is:
 - (a) Dated;
 - (b) Signed by the individual; and
 - (c) Obtained one (1) year or less prior to the date a disclosure is sought pursuant to this subsection; or
- B. To a person other than an insurance institution, agent or insurance support organization, provided such disclosure is reasonably necessary:
 - (1) To enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent or insurance support organization and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:
 - (a) Would otherwise be permitted by this section if made by an insurance institution, agent or insurance support organization; or
 - (b) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent or insurance support organization; or
 - (2) To enable such person to provide information to the disclosing insurance institution, agent or insurance support organization for the purpose of:
 - (a) Determining an individual's eligibility for an insurance benefit or payment; or
 - (b) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction; or

- C. To an insurance institution, agent, insurance support organization, or self-insurer, provided the information disclosed is limited to that which is reasonably necessary:
 - (1) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or
 - (2) For either the disclosing or receiving insurance institution, agent or insurance support organization to perform its function in connection with an insurance transaction involving the individual; or

- D. To a medical care institution or medical professional for the purpose of:
 - (1) Verifying insurance coverage or benefits;
 - (2) Informing an individual of a medical problem of which the individual may not be aware; or
 - (3) Conducting an operations or services audit to verify the individuals treated by the medical professional or at the medical care institution; provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes; or

- E. To an insurance regulatory authority; or

- F. To a law enforcement or other governmental authority:
 - (1) To protect the interests of the insurance institution, agent or insurance support organization in preventing or prosecuting the perpetration of fraud upon it; or
 - (2) If the insurance institution, agent or insurance support organization reasonably believes that illegal activities have been conducted by the individual; or

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- (1) Prior to the consummation of the sale, transfer, merger or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger or consolidation; and
- (2)

- (2) The information disclosed is limited to that which is reasonably necessary to permit such person to protect its interests in such policy.

Section 14. Power of Commissioner

- A. The Commissioner shall have power to examine and investigate into the affairs of every insurance institution or agent doing business in this state to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of this Act.
- B. The Commissioner shall have the power to examine and investigate into the affairs of every insurance support organization acting on behalf of an insurance institution or agent which either transacts business in this state or transacts business outside this state that has an effect on a person residing in this state in order to determine whether such insurance support organization has been or is engaged in any conduct in violation of this Act.

Section 15. Hearings, Witnesses, Appearances, Production of Books and Service of Process

- A. Whenever the Commissioner has reason to believe that an insurance institution, agent or insurance support organization has been or is engaged in conduct in this state which violates this Act, or if the Commissioner believes that an insurance support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates this Act, the Commissioner shall issue and serve upon such insurance institution, agent or insurance support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than [insert number] days after the date of service.
- B. At the time and place fixed for such hearing the insurance institution, agent or insurance support organization charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the Commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.
- C. At any hearing conducted pursuant to this section the Commissioner may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence. The Commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the Commissioner. If no stenographic record is made and if judicial review is sought, the Commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.

- (3) Suspension or revocation of an insurance institution's or agent's license.

Section 19. Judicial Review of Orders and Reports

- A. Any person subject to an order of the Commissioner under Section 17 or Section 18 or any person whose rights under this Act were allegedly violated may obtain a review of any order or report of the Commissioner by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of such order or report, a written petition requesting that the order or report of the Commissioner be set aside. A copy of such petition shall be simultaneously served upon the Commissioner, who shall forthwith certify and file in such court a transcript of the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and transcript the [insert title] Court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the Commissioner, in whole or in part. The findings of the Commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.
- B. To the extent an order or report of the Commissioner is affirmed, the Court shall issue its own order commanding obedience to the terms of the order or report of the Commissioner. If any party affected by an order or report of the Commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such C.

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