NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
FIRST AMENDMENT TO INSURANCE REGULATION 168
(11 NYCRR 244)

CONFIDENTIALITY PROTOCOLS FOR VICTIMS OF DOMESTIC VIOLENCE AND ENDANGERED INDIVIDUALS

I, Kaitlin Asrow, Acting Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301 and 2612 of the Insurance Law, do hereby promulgate the following First Amendment to Part 244 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, to take effect 60 days after publication of the Notice of Adoption in the State Register, to read as follows:

(New Matter is Underlined; Matter in Brackets is Deleted)

Section 244.1 is amended as follows:

[(a)] This Part shall apply to a policy issued pursuant to the Insurance Law.

[(b) With respect to an insurer authorized to write kinds of insurance in addition to accident and health insurance or salary protection insurance, any section of this Part that establishes rules with regard to a requestor or covered individual shall apply only with respect to a policy of accident and health insurance or a policy of salary protection insurance.]

Subdivisions (c), (d), (m), (n), and (o) of section 244.2 are amended as follows:

(c) *Claim related information* shall have the meaning set forth in Insurance Law section [2612(h)(1)(A)] 2612(f), (g), and (h)(1)(A).

(d) *Covered individual* means an individual covered under a policy issued by [a health] an insurer who could be endangered by the disclosure of all or part of claim related information by the [health] insurer.

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(m) *Requestor* means a covered individual, or the individual's legal representative, or with regard to a covered individual who is a child, the child's parent or guardian, who makes a reasonable request to the [health] insurer.

(n) [*Salary protection insurance* shall have the meaning set forth in Insurance Law section 1113(a)(31).

(o)] *Victim of domestic violence* or *victim* shall have the meaning set forth in Social Services Law section 459-a(1).

Subdivisions (a) through (e) of section 244.3 are amended as follows:

(a) An insurer shall develop and implement a confidentiality protocol whereby, except with the express consent of the individual who delivers to the insurer a valid order of protection, the insurer shall keep confidential and shall not disclose the address, [and] telephone number, [of] or other method of contact for the victim of domestic violence, or any child residing with the victim, [and] the name, address, and telephone number of a person providing covered services to the victim, any personally identifying information of the victim, or the nature of the covered services provided to the victim, to a policyholder or another insured covered under the policy against whom the victim has a valid order of protection, if the victim, the victim's legal representative, or if the victim is a child, the child's parent or guardian, delivers to the insurer at its home office a valid order of protection pursuant to Insurance Law section 2612(f) and (g).

(b) In addition to the requirements of subdivision (a) of this section, [a health] an insurer shall develop and implement a confidentiality protocol whereby the [health] insurer shall accommodate a reasonable request made by a requestor for a covered individual to receive communications of claim related information from the [health] insurer by alternative means or at alternative locations. Except with the express consent of the requestor, [a health] an insurer shall not disclose to the policyholder or another insured covered under the policy:

(1) the address, telephone number, other method of contact, or any other personally identifying information of the covered individual or any child residing with the covered individual;

(2) the nature of the [health care] covered services provided to the covered individual;

(3) the name, address, and telephone number of the provider of the covered [health care] services; or

(4) any other information from which there is a reasonable basis to believe the foregoing information could be obtained.

(c) The insurer's confidentiality protocol shall include written procedures to be followed by its employees, agents, representatives, or other persons with whom the insurer contracts and who may have access to the information sought to be kept confidential. The written procedures shall include:

(1) [with respect to a health insurer,] the procedure by which a requestor may make a reasonable request, provided that the procedure shall not require a justification as part of the reasonable request;

(2) the procedure by which a victim of domestic violence or a covered individual may provide an alternative address, telephone number, or other method of contact;

(3) the procedure for limiting access to personally identifying information, such as the name, address, telephone number, other method of contact, and social security number of a victim

or covered individual and any other information from which there is a reasonable basis to believe the foregoing information could be obtained;

(4) the procedure for limiting or removing personal identifiers before information is used or disclosed, where possible;

(5) a system of internal control procedures, which the insurer shall review at least annually, to ensure the confidentiality of:

(i) addresses, telephone numbers, or other methods of contact;

(ii) the fact that a requestor made a reasonable request or that an order of protection was delivered to the insurer, and any information contained therein; and

(iii) any other information from which there is a reasonable basis to believe the information specified in subparagraphs (i) and (ii) of this paragraph could be obtained; and

(6) [with respect to a health insurer,] the procedure by which a requestor may revoke a reasonable request, provided, however, that the [health] insurer may require the requestor to submit a sworn statement revoking the request.

(d)(1) An insurer shall notify its employees, agents, representatives, and other persons with whom the insurer contracts who have access to the information sought to be kept confidential, that the insurer's protocol is to be followed for the specified victim of domestic violence or covered individual, within three business days of:

(i) receipt of a valid order of protection and an alternative address, telephone number, or other method of contact; or

(ii) receipt of a reasonable request[, with regard to a health insurer].

(2) Upon receipt of a valid order of protection or a reasonable request, an insurer shall inform the individual who delivered the order of protection or the requestor that the insurer has up to three business days to implement paragraph (l) of this subdivision.

(e) [A health] An insurer may require a requestor to make a reasonable request in writing pursuant to Insurance Law section [2612(h)(3)] 2612(f), (g), or (h)(3). However, [a health] an insurer may not require a requestor to provide a justification for the reasonable request.