

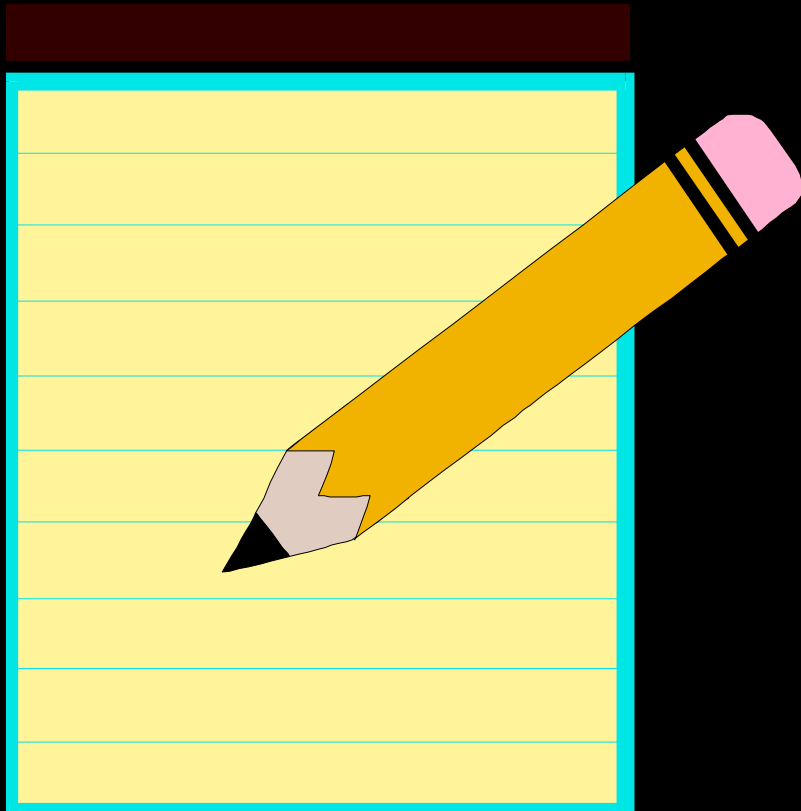
GLBA and Health Information Privacy
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Gramm-Leach-Bliley Act

- Financial Services Modernization Act (P.L. 106-102)
- signed by the President Nov. 12, 1999
- repeals Glass-Steagall
- Title V - Privacy provisions
- calls on state insurance regulators to issue regulations protecting privacy of insurance consumers' personal information

GLBA



- Federal regulations issued May 13, 2000
- enforcement delayed until July 1, 2001

NAIC Model Regulation

- NAIC process
- Privacy Working Group formed
- public hearings held
- multiple drafts distributed to all interested parties
- comments received and considered
- adopted by NAIC on Sept. 26, 2000

NAIC Model General Requirements

- Notify consumers about privacy policies
- Give consumers the opportunity to prohibit the sharing of protected financial information with nonaffiliated third parties
- Obtain affirmative consent from consumers before sharing protected health information with any parties

NAIC Model, Health Information - Why?

- GLBA standard is opt-out
- Federal regulations referenced health information
- Insurers collect a lot more health information than banks
- Congressional activity
- Not beyond the scope of GLBA

Negotiated issues



- Streamlined
- Doing everyday business
- Conflict with HHS regulation

Contentious issues

- Keep health out altogether - beyond GLBA
- If not, marketing exception only
- No need to act at all - HHS regulation forthcoming
- Scope



Health provisions

- Scope
- Who: Applies to ALL insurance licensees, not just health or life carriers.
- What Information: All health information.
- What Format: Applies to all disclosures of protected information.

What health information is protected?

- Nonpublic personal health information is protected.
- Nonpublic personal health information is health information that:
 - identifies an individual who is the subject of the information; or
 - with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

Health information defined

- Health Information is information or data, except age or gender, whether oral or recorded in any form or medium, created or derived from a health care provider or the consumer that relates to:
 - the past, present or future physical, mental or behavioral health or condition of an individual;
 - the provision of health care to an individual; or
 - payment for the provision of health care to an individual.

General Rule

- A licensee may not disclose nonpublic personal health information unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed (“opt in”) or pursuant to one of the specified exceptions.

Exceptions to the General Rule

- claims administration;
- claims adjustment and management;
- detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity;
- underwriting;
- policy placement or issuance;
- loss control;
- ratemaking and guaranty fund functions;
- reinsurance and excess loss insurance;
- risk management;

Exceptions to the General Rule

- disease management;
- quality assurance;
- quality improvement;
- performance evaluation;
- provider credentialing verification;
- utilization review;
- peer review activities
- actuarial, scientific, medical or public policy research;
- grievance procedures;
- internal administration of compliance, managerial and information systems;

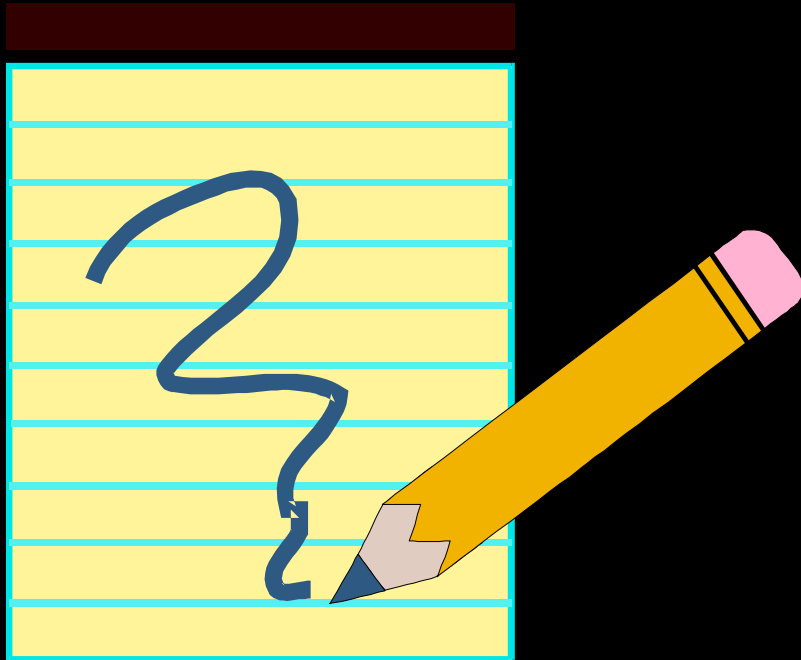
Exceptions to the General Rule

- policyholder service functions;
- auditing;
- reporting;
- database security;
- administration of consumer disputes and inquiries;
- external accreditation standards;
- the replacement of a group benefit plan or workers compensation policy or program;
- activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit;

Exceptions to the General Rule

- any activity that permits disclosure without authorization pursuant to the HHS health information privacy regulation;
 - 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 services that a consumer requests or authorizes; and
 - any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process.
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- 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.

Disclosure to Third Parties/Affiliates/ Others



- The opt-in requirement applies to both affiliates and non-affiliated third parties with certain exceptions.

Notice to Consumers Regarding Confidentiality Practices

- Unlike for financial information, no notice regarding health information privacy protections is required.
- However, a valid authorization to disclose nonpublic personal health information must contain the following information:

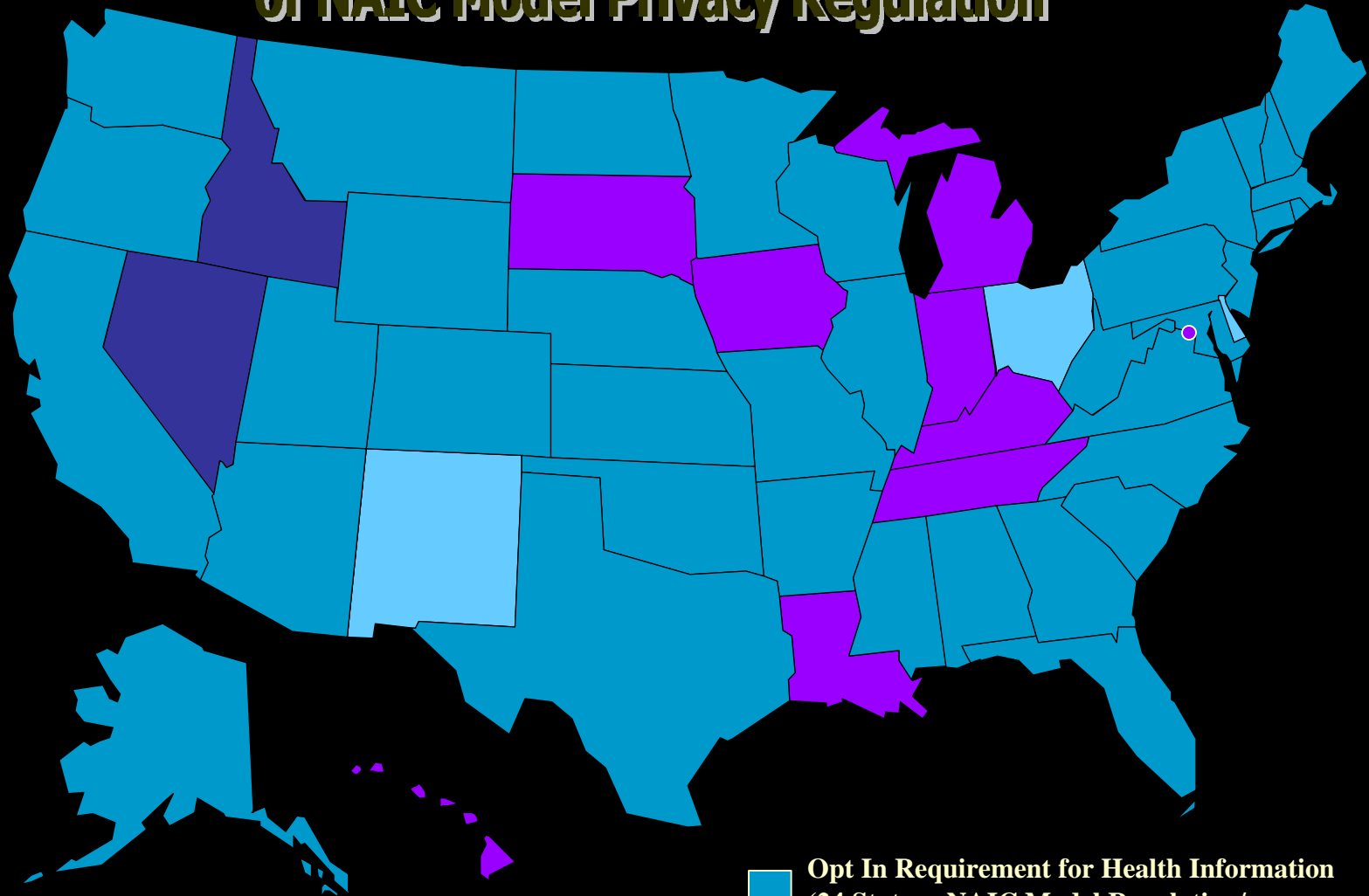
Requirements for valid authorization

- The identity of the consumer or customer who is the subject of the information;
- A general description of the types of information to be disclosed;
- The signature of the consumer or customer who is the subject of the information, or the individual who is legally empowered to grant authority, and the date signed; and
- Notice of the length of time for which the authorization is valid; that the consumer or customer may revoke the authorization at any time; and the procedure for making a revocation.

Revocation of authorization

- An individual may revoke an authorization at any time subject to the rights of any person who acted in reliance on the authorization prior to notice of revocation.

State Implementation of Health Information Provisions of NAIC Model Privacy Regulation



Undecided (3 States)

No Response to Date (2 States)

Opt In Requirement for Health Information
(24 States - NAIC Model Regulation/
13 States - NAIC 1982 Model Act)

States Not Using Model Regulation or Model
Act (9 States, including DC)

