



NATIONAL ASSOCIATION OF HEALTH UNDERWRITERS

Comparison of the Health Provisions of the National Association of Insurance Commissioners' (NAIC) Model Privacy of Consumer Financial and Health Information Regulation, the Health Provisions of the National Conference of Insurance Legislators' (NCOIL) Model Financial Information Privacy Protection Act, and Key Segments of the Final Federal Privacy Standards For Health Information

	NAIC Model	NCOIL Model	Final DHHS Rules
Type of Measure	State Regulation	State Legislation	Federal Regulation
Scope	Addresses the financial privacy requirements outlined in the federal Financial Services Modernization Act of 1999 (Gramm-Leach Bliley Act, GLBA). Also goes beyond the requirements of GLBA and creates separate treatment requirements for any disclosure of health information.	Addresses the financial privacy requirements outlined in the federal Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act, GLBA). Requires special authorization for the disclosure of health information to non-affiliated third parties for marketing purposes only .	Regulation establishes conditions under which covered entities may disclose protected health information. Provides framework for disclosures with business associates, government agencies, law enforcement and judicial proceedings.
Applicability	Applies to all individuals and entities required to obtain a license by GLBA, including business partner acting as an agent for a licensed carrier or financial entity, unless the business partner only discloses nonpublic personal information to the principal or its affiliates.	Applies to all financial entities and insurers required to be licensed by GLBA, and all licensed insurance producers, unless the producer is an employee of a licensed financial entity or insurance carrier.	Applies to health plans, certain health care providers and clearinghouses (covered entities) and contracted business associates who receive or create protected health information (PHI) from or on behalf of the covered entity.
Applicable Types of Health Information	All nonpublic personal health information of both customers and consumers.	Health information for disclosed for marketing purposes only .	Defined as individually identifiable health information that is or has been electronically transmitted or electronically maintained by a covered entity and includes such information in any other form. Excludes education records covered by the Family Educational Right and Privacy Act and those of inmates and detainees.

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			<ul style="list-style-type: none"> Marketing and funding raising disclosures require as a separate signed authorization.
Requirements for the Disclosure of Health Information	A licensee is prohibited from disclosing any nonpublic personal health information about either a consumer or a customer unless prior authorization from the individual is obtained.	Licenses would have to obtain special consumer authorization in order to release nonpublic personally identifiable health information to non-affiliated third parties for marketing purposes .	Requires covered entities to obtain consent for disclosure of protected health information for the purposes of treatment, payment and health care operations . This should be obtained at the point of enrollment. Requires a separate signed authorization for all other disclosures. Sets stringent minimum disclosure notice requirements for covered entities. The regulation calls for minimum necessary disclosures. Covered entities must develop administrative procedures to implement this requirement.
Content and Delivery Requirements for Health Information Authorizations	Valid authorization may be in either in writing or in electronic form, and most contain the following: <ul style="list-style-type: none"> The identity of the consumer or customer; A general description of the type(s) of nonpublic personal health information to be disclosed; General descriptions of the parties to whom the information will be disclosed, the purpose of such disclosures, and how the information will be used; The dated signature of the customer or consumer; and Notice of the length of time for which the authorization is valid, 	Valid authorization must comply with the following requirements: <ul style="list-style-type: none"> The purpose of the disclosure must stated in clear in simple terms and must appear in a distinct paragraph; It must specify the length of time for which the authorization is valid, which cannot exceed 24 months; and It must specify that the terms and conditions of insurance policies will not be in any way affected by a refusal to provide authorization. <p>Authorization may be provided to the consumer at the time of other</p>	<i>Core elements of an authorization (§ 164.506(c)):</i> Any valid authorization must include: <ul style="list-style-type: none"> A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion The name or other specific identification of the persons or class of persons authorized to make the requested use or disclosure The name of other specific identification of the person or class of persons to whom the covered entity may make the requested use or disclosure An expiration date or an

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	<p>which cannot exceed 24 months.</p> <p>The licensee must maintain copies of authorizations.</p> <p>Authorization needs only to be delivered to the consumer or customer prior to the intended disclosure of health information, and authorization can be provided in conjunction with other notices.</p>	<p>consumer notifications.</p>	<p>expiration event that relates to the individual or the purpose of the use or disclosure</p> <ul style="list-style-type: none"> • A statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization • A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer be protected by this rule • Signature of the individual and date • If the authorization is signed by a personal representative for the individual, a description of such representative's authority to act for the individual. <p>(All information must be in plain language)</p> <p><i>Authorizations requested by a covered entity for disclosures by others (§ 164.508(e)):</i> If an authorization is requested by a covered entity on behalf of a covered entity to disclose PHI for the purposes of treatment, payment, or health care operations, the covered entity requesting the authorization must comply with the following requirements:</p> <ul style="list-style-type: none"> • A description of each purpose of the requested disclosure

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			<p>treatment, payment or health care operations or intends to provide a notice, then the authorization must refer to those documents and state that the statements made pursuant to this section are binding</p> <p>An authorization for research involving treatment may be in the same document as a:</p> <ul style="list-style-type: none"> • Consent to participate in the research; • A consent to use or disclose PHI for treatment, payment or health care operations • A notice of privacy practices <p><i>Exceptions:</i></p> <p><i>Psychotherapy Notes (§ 164.508 (2)):</i> A separate authorization for psychotherapy notes is required even for treatment, payment of health care operations, unless used for treatment payment or health care operations by the originator of the notes (consistent with the original consent authorization obtained by the provider); for certain training programs; to defend against legal action by the patient; or as required to assure compliance with this privacy regulation or as permitted with regard to disclosures required by law (§ 164.512(a)), for health care oversight activities (§ 164.512(d)), disclosures to coroners (§ 164.512(g)(1)), to protect health or safety of a person or the public (§ 164.512(j)(1)(i)).</p>

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Expiration of Health Information Authorizations	Authorizations may not be valid for more than 24 months. A customer or consumer may revoke authorization at any time.	Authorizations may not be valid for more than 24 months. A customer or consumer may revoke authorization at any time.	Authorizations must contain an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure
Exceptions to the Health Information Disclosure Requirements	Specifies 32 exceptions to the authorization requirement, provided that a licensee makes the disclosure for the performance of specified insurance functions by or on the behalf of the licensee.	Specifies multiple exceptions to the authorization requirement, provided that a licensee makes the disclosure for the performance of specified insurance functions by or on the behalf of the licensee.	Under certain limited circumstances, a covered entity may use or disclose protected health information without patient authorization provided that the patient has advance notice and is given an opportunity to agree or to object to the proposed use or disclosure. The notice and patient response may be made orally. Other circumstances that allow a covered entity to use or disclose protected health information without patient authorization or an opportunity to agree or object: <ul style="list-style-type: none"> • <i>The covered entity has an indirect treatment relationship to the individual</i> • <i>The covered entity created or received information while treating as an inmate</i> • <i>Emergency situations</i> • <i>Required by law to treat the individual</i> • <i>Communication barriers</i>
Discrimination Provisions	Licensees are prohibited from unfairly discriminating against any customer or consumer because that individual has opted out of the disclosure of his/her nonpublic personal financial information. Furthermore, licensees are prohibited from unfairly discriminating against customers	Licensees are prohibited from discriminating against any customer or consumer on the basis of he/she opting out of sharing his/her nonpublic personal information. However, this does not prohibit licensees from engaging in their usual, appropriate, or acceptable methods for insurance underwriting.	Covered entities are prohibited from conditioning treatment or payment on the provision by the individual of an authorization, except when the authorization was requested in connection with a clinical trial. Authorizations for use or disclosure of psychotherapy notes, or research information unrelated to treatment,

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	and/or consumers who refuse to provide authorization for the disclosure of their nonpublic personal health information.	Also, adverse claim decisions that result from the individual's failure to provide access to nonpublic personal health or financial information may not be considered discrimination.	covered entities are prohibited from conditioning treatment, payment, or enrollment in a health plan on obtaining such an authorization. <i>Exception:</i> Health plans may condition eligibility for benefits and enrollment in the health plan on the individual's authorization for the use or disclosure of protected health information for purposes of eligibility or enrollment determinations relating to the individual or for its underwriting or risk-rating determinations. Payment of a claim for specified benefits on the individual's authorization for the disclosure of information maintained by another covered entity to the health plan, if the disclosure is necessary to determine payment of the claim. (This does NOT include psychotherapy notes.) Treatment rendered for the sole purpose of providing information to a third party may be conditioned on the receipt of an authorization to use or disclose protected health information related that treatment. (e.g. fitness-for-duty exam to the employer's employees or pre-enrollment physicals to applicants for life insurance coverage.)
Preemption Provisions	If a licensee is in complete compliance with all of the provisions of the final U.S. Department of Human Services' Health Insurance Portability and Accountability Act privacy rule, then the licensee will	This legislation is not intended to limit, modify or supercede any federal regulation promulgated by the federal Department of Health and Human Services concerning personally identifiable health	The regulations provide a federal floor and will not supercede state laws that provide greater protection of the confidentiality of health information, and certain categories of state laws (e.g. public health).

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	be deemed in compliance with the requirements of this section of the model rule. This regulation does not preempt existing state law concerning the privacy of medical records or health or insurance information privacy.	information.	The process that a State must undertake to receive an exception to federal preemption, and the duration and effect of an exception to federal preemption are outlined in the final rule. Any exception granted by the Secretary will last indefinitely and will apply to intra- and inter-state covered entities.
Effective/Compliance Dates	The effective date for licensee compliance with this measure shall be July 1, 2001. Initial notice requirements for existing customers of a licensee must be completed by July 1, 2001. Service agreements with nonaffiliated third parties are grandfathered from the opt-out requirements until July 1, 2002, provided that the service agreement was entered into on or before July 1, 2000.	The effective date for licensee compliance with this measure shall be July 1, 2001. Initial notice requirements for existing customers of a licensee must be completed by July 1, 2001. Service agreements with nonaffiliated third parties are grandfathered from the opt-out requirements until July 1, 2002, provided that the service agreement was entered into on or before July 1, 2000.	Effective date of the rule is February 26, 2001. Compliance with all provisions of the rule is no later than February 26, 2003 or February 26, 2004 in the case of small health plans with annual receipts of \$5 million or less.

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