

February 20, 2001

The Honorable Terry Parke  
Representative, State of Illinois  
President, National Conference of Insurance Legislators  
139 Lancaster Street  
Albany, NY 12210-1903

Dear Representative Parke:

The National Association of Health Underwriters (NAHU) appreciates the opportunity to provide the National Conference of Insurance Legislators' (NCOIL) Privacy Task Force with information on the cost impact of implementing the provisions of the NCOIL Financial Information Privacy Protection Model Act, the National Association of Insurance Commissioners' (NAIC) Privacy of Consumer Financial and Health Information Regulation, and Title V of the federal Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act; GLBA).

NAHU represents more than 16,000 health insurance producers nationally, and each day our members service the health insurance needs of millions of Americans. Our members do not just sell health insurance products to their clients. NAHU members also serve as their client's advocate and advisor in dealing with insurance companies, doctors and hospitals, and government agencies involving claims, services and regulations. NAHU is concerned that the increased costs associated with privacy compliance, particularly in the states that choose to adopt the NAIC's Privacy of Consumer Financial and Health Information Regulation, will force our members to reduce the level of service they currently are able to offer consumers.

In the states that adopt the NAIC's privacy regulation, health insurance producers will be subject to all of the model's privacy requirements if they disclose nonpublic personal financial and/or health information to non-affiliated third parties, even if they are working on the behalf of a compliant insurance carrier. Agents routinely provide their clients with services, like helping to resolve a claim problem with a provider or assisting with an independent medical review, that require the disclosure of nonpublic personal financial and health information to providers and other third parties. According to the NAIC model, if agents would like to continue providing their clients with these routine services, they would have to provide every consumer and customer with the same notifications and authorizations required of health insurance carriers, as well as endure all of the same administrative burdens and expenses.

Health insurance agents are primarily independent small businessmen and women, and the vast majority of agents would be unable to afford the increased administrative costs associated with providing their clients with all of the necessary notifications and authorizations and maintaining all of the related privacy records. Also, health insurance agents carry errors and omissions insurance, and there is reason to believe that the cost of E&O premiums for agents that choose to offer the services that would require compliance with the NAIC privacy regulation (e.g., claims processing assistance) would rise substantially. Precedent for higher E&O premium rates already exists for agents that choose to handle self-funded cases due to the associated liability issues. And unlike insurance carriers, who can increase premiums to

help offset the cost of privacy compliance, agents receive set commissions for their services. Since agent commissions rates are nationally on a decline, there is little hope that agents could raise their fees in order to accommodate increased compliance costs. In states that adopt the NAIC model, producers will have to choose between either following the very complex, costly and confusing privacy requirements and also helping clients with relatively routine services, or ceasing to provide their clients with such services. Unfortunately, NAHU believes that most agents who do business in the states that adopt the NAIC model will be unable to absorb the high cost of privacy compliance, and that they will be forced to curtail the services they provide. The loser in this scenario will, of course, be the health insurance consumer.

Even if agents did elect to absorb the overwhelming costs associated with privacy compliance in order to maintain their existing level of customer service, the assistance agents could provide would still be limited by the NAIC model, again at great loss to the consumer. Agents are frequently called upon by their clients to provide assistance during crisis situations. But for agents bound by the NAIC's authorization requirements, in particular the requirements concerning the disclosure of health information, it would be almost impossible to obtain disclosure authorization quickly enough in a medical emergency to actually be of help to the consumer. By placing limits on customer service abilities, the NAIC model reduces the value of the health insurance agent. This puts the consumer at risk, and it also threatens the agent's position and livelihood within the insurance industry.

In the states that either enact the NCOIL model privacy legislation, or implement independently developed privacy measures that follow the intent of GLBA and exempt agents from the privacy requirements if they are working on the behalf of a compliant carrier, we anticipate that the burden on health insurance agents will be much less onerous. However, it is still highly possible that agents will be subject to higher E&O insurance rates, due to the potential liability issues associated with privacy compliance.

NAHU hopes that this information provides you with a better perspective on how implementing the privacy protection provisions required by GLBA will financially impact our members, and we thank you for the chance to present to you our views on this important issue. If you have any questions, or if you need further information, please do not hesitate to contact me at either (703) 276-3817 or [jwaltman@nahu.org](mailto:jwaltman@nahu.org).

Sincerely,

Jessica Fulginiti Waltman  
Manager of Health Policy