

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

---

**AGENCY:** Department of Business Regulation

**DIVISION:** Insurance

**RULE IDENTIFIER:** Insurance Regulation 100

**ERLID:** 895

**REGULATION TITLE:** Privacy of Consumer Health Information

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

Public notice date: February 22, 2018

Hearing date: March 29, 2018

End of comment period date: April 5, 2018

**SUMMARY OF PROPOSED RULE:** The rule governs the treatment of nonpublic personal health information by all insurance licensees. The amendments are designed to incorporate the provisions of the Regulation into 230-RICR-20-60-7 to be consistent with the NAIC Model Regulation.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed regulations by April 5, 2018 to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** 1511 Pontiac Avenue, Cranston, RI 02920

**Email Address:** [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov)

**WHERE COMMENTS MAY BE INSPECTED:**

**Mailing Address:** 1511 Pontiac Avenue, Cranston, RI 02920

**PUBLIC HEARING INFORMATION:**

**Hearing date:** March 29, 2018

**Hearing Time:** 10:30 AM

**Hearing Location:** 1511 Pontiac Avenue, Cranston, RI 02920

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-462-9551 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Dwyer, Esq., Deputy Director, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, RI 02920 401.462-9617 [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov)

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:**

The proposed amendments have a positive impact on small businesses as they are designed to combine all privacy notices into one regulation and repeal the separate regulation for health information. For full regulatory analysis or supporting documentation see agency contact person above.

**Authority for This Rulemaking:** R.I. Gen. Laws § 27-58-4.

**Regulatory Findings:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**The Proposed Amendment:**

Department of Business Regulation proposes to repeal Insurance Regulation 100 as follows:

**State of Rhode Island and Providence Plantations**  
**DEPARTMENT OF BUSINESS REGULATION**  
*Division of Insurance*  
**1511 Pontiac Avenue**  
**Cranston, RI 02920**

**REGULATION 100**  
**PRIVACY OF CONSUMER HEALTH INFORMATION**

**Table of Contents**

~~Section 1 — Authority~~  
~~Section 2 — Purpose and Scope~~  
~~Section 3 — Definitions~~  
~~Section 4 — When Authorization Required for Disclosure of Nonpublic Personal Health Information~~  
~~Section 5 — Authorizations~~  
~~Section 6 — Authorization Request Delivery~~  
~~Section 7 — Relationship to Federal Rules~~  
~~Section 8 — Relationship to State Laws~~  
~~Section 9 — Protection of Fair Credit Reporting Act~~  
~~Section 10 — Nondiscrimination~~  
~~Section 11 — Violation~~  
~~Section 12 — Severability~~  
~~Section 13 — Effective Date~~

~~**Section 1** — **Authority**~~

~~This regulation is promulgated pursuant to the authority granted by R.I. Gen. Laws §§ 27-58-4 and 42-14-17.~~

~~**Section 2** — **Purpose and Scope**~~

~~A. Purpose. This Regulation governs the treatment of individual's nonpublic personal health information by all insurance licensees of the Rhode Island Department of Business Regulation. This Regulation:~~

- ~~(1) describes the conditions under which a licensee may disclose nonpublic personal health information about individuals to affiliates and nonaffiliated third parties; and~~
- ~~(2) provides methods for individuals to prevent a licensee from disclosing that information.~~

~~B. Scope. This Regulation applies to all nonpublic personal health information.~~

~~Nothing in this Regulation shall be construed to modify, limit or supercede the operation of the Rhode Island Workers' Compensation Act (R.I. Gen. Laws § 28-29-1 *et seq.*) and the health care provider's obligation to provide information directly related to a claim for workers' compensation benefits or any proceeding before the Workers' Compensation Court, or any proceeding relating to workers' compensation including, but not limited to, actions seeking benefits under the Longshore and Harbor Workers Compensation Act (33 U.S.C. § 901 *et seq.*) or the Police Officers and Firefighters Relief Statute (R.I. Gen. Laws § 45-19-1 *et seq.*)~~

~~C. Compliance. An insurance licensee that is in compliance with this regulation may be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in a state which has not yet enacted laws or regulations that meet the requirements of Gramm-Leach-Bliley.~~

~~**Section 3** — **Definitions**~~

~~As used in this Regulation, unless the context requires otherwise:~~

- ~~A. "Affiliate" means a company that controls, is controlled by or is under common control with another company.~~
- ~~B. (1) "Clear and conspicuous" means reasonably understandable and designed to call attention to the nature and significance of the information being presented.~~
- ~~(2) Examples:~~

- ~~(a) Reasonably understandable. A licensee shall be deemed to have complied with the “reasonably understandable” criteria if it:~~
- ~~(i) presents the information in clear, concise sentences, paragraphs and sections;~~
  - ~~(ii) uses short explanatory sentences or bullet lists whenever possible;~~
  - ~~(iii) uses definite, concrete, everyday words and active voice whenever possible;~~
  - ~~(iv) avoids multiple negatives;~~
  - ~~(v) avoids legal and highly technical business terminology whenever possible; and~~
  - ~~(vi) avoids explanations that are imprecise and readily subject to different interpretations.~~
- ~~(b) Designed to call attention. A licensee shall be deemed to comply with the “designed to call attention to” criteria if it:~~
- ~~(i) uses a plain language heading to call attention to the information;~~
  - ~~(ii) uses a typeface and type size that are easy to read;~~
  - ~~(iii) provides wide margins and ample line spacing;~~
  - ~~(iv) uses boldface or italics for key words; and~~
  - ~~(v) uses distinctive type size, style, and graphic devices, such as shading or sidebars where information is combined or included in a form containing other types of information, so as to set it apart.~~
- ~~(c) Authorization on web sites. An authorization placed on a web site must comply with portions (a) and (b) of this Section. Additionally, the authorization should be designed to call attention to the nature and significance of the information in that the licensee should use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the authorization, and the licensee either:~~
- ~~(i) places the authorization on a screen that consumers frequently access, such as a page on which transactions are conducted; or~~

~~(ii) — places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the authorization and is labeled appropriately to convey the importance, nature and relevance of the authorization.~~

~~C. — “Collect” means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying method particularly assigned to the individual, irrespective of the source of the underlying information.~~

~~D. — “Company” means a corporation (whether for profit or not), limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.~~

~~E. — “Control” means:~~

~~(1) — ownership, control or power to vote twenty five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;~~

~~(2) — control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or~~

~~(3) — the power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.~~

~~F. — “Director” means the Director of the Rhode Island Department of Business Regulation.~~

~~G. — “Health care” means:~~

~~(1) — Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:~~

~~(a) — relates to the physical, mental or behavioral condition of an individual; or~~

~~(b) — affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or~~

~~(2) — Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.~~

~~H. — “Health information” means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the patient that relates to:~~

- ~~(1) the past, present or future physical, mental or behavioral health or condition of an individual;~~
- ~~(2) the provision of health care to an individual; or~~
- ~~(3) payment for the provision of health care to an individual.~~
- ~~I. (1) “Licensee” means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to Chapter 27 of the Rhode Island General Laws.~~
- ~~(2) “Licensee” shall also include an authorized insurer that accepts business placed through a licensed surplus lines brokers in this state pursuant to R.I. Gen. Laws §§ 27-3-38 through 27-3-42.~~
- ~~J. (1) “Nonaffiliated third party” means any person except:~~
  - ~~(a) a licensee’s affiliate; or~~
  - ~~(b) a person employed jointly by a licensee and any company that is not the licensee’s affiliate (but nonaffiliated third party includes the other company that jointly employs the person).~~
- ~~(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. § 1843(k)(4)(H) and (I)).~~
- ~~K. “Nonpublic personal health information” means health information:~~
  - ~~(1) that identifies an individual who is the subject of the information; or~~
  - ~~(2) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.~~
- ~~L. (1) “Publicly available information” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:~~
  - ~~(a) federal, state or local government records;~~
  - ~~(b) widely distributed media; or~~

- ~~(c) — disclosures to the general public that are required to be made by federal, state or local law.~~
- ~~(2) — Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:
  - ~~(a) — that the information is of the type that is available to the general public; and~~
  - ~~(b) — whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.~~~~
- ~~(3) — Examples:
  - ~~(a) — Government records. Publicly available information in government records includes information in government real estate records and security interest filings.~~
  - ~~(b) — Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.~~~~

~~**Section 4 — When Authorization Required for Disclosure of Nonpublic Personal Health Information**~~

- ~~A. — A licensee shall not disclose nonpublic personal health information to an affiliate or non-affiliated third party about an individual unless an authorization is obtained from the individual whose nonpublic personal health information is sought to be disclosed.~~
- ~~B. — Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: 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; case management; 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; 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; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; 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 service 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. Additional insurance functions may be added with the approval of the Director to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.~~

~~*Section 5 — Authorizations*~~

~~A. — A valid authorization to disclose nonpublic personal health information shall be in written or electronic form shall be clear and conspicuous and shall contain all of the following:~~

- ~~(1) — the identity of the individual who is the subject of the nonpublic personal health information;~~
- ~~(2) a statement of the need for and proposed uses of the nonpublic personal health information to be disclosed;~~
- ~~(3) a statement that all information is to be released or clearly indicating the extent of the information to be released;~~
- ~~(4) — general descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;~~
- ~~(5) — the signature of the individual who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and~~
- ~~(6) — notice of the length of time for which the authorization is valid and that the individual may revoke the authorization at any time and the procedure for making a revocation.~~

~~B. — An authorization shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.~~

~~C. — An individual who is the subject of nonpublic personal health information may revoke an authorization at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.~~

- ~~D. A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.~~
- ~~E. An authorization entered into prior to the effective date of this Regulation is valid as long as it meets the requirements of this Regulation.~~
- ~~F. This Regulation applies to all consumer health information in the possession of a licensee regardless of whether that information was obtained by the licensee before or after the effective date of this Regulation.~~

~~***Section 6 — Authorization Request Delivery***~~

~~A request for authorization and an authorization form may be delivered as part of an opt-out notice pursuant to Regulation 99, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information.~~

~~***Section 7 — Relationship to Federal Rules***~~

~~Irrespective of whether a licensee is subject to the Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services (the “federal rule”), if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of this Regulation.~~

~~***Section 8 — Relationship to State Laws***~~

~~Nothing in this article shall preempt or supersede existing state law related to medical records, health or insurance information privacy. Any disclosure of health information must comply with R.I. Gen. Laws § 5-37.3-1 *et seq.*~~

~~***Section 9 — Protection of Fair Credit Reporting Act***~~

~~Nothing in this Regulation shall be construed to modify, limit or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. §§ 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this Regulation regarding whether information is transaction or experience information under 15 U.S.C. § 1681a.~~

~~***Section 10 — Nondiscrimination***~~

~~A licensee shall not unfairly discriminate against an individual because that individual has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this regulation.~~

~~***Section 11 — Violation***~~

~~The Department of Business Regulation is authorized to investigate any alleged violations of this Regulation and to impose fines and other sanctions as lawfully determined to be appropriate in accordance with the applicable insurance laws. These sanctions are in addition to any other sanctions which could be imposed under state or federal law for violation of statute arising from the same conduct as constitutes violation of this Regulation.~~

~~*Section 12 — Severability*~~

~~If any section or portion of a section of this Regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the Regulation or the applicability of the provision to other persons or circumstances shall not be affected.~~

~~*Section 13 — Effective Date*~~

~~This regulation is effective July 1, 2001 pursuant to Emergency Insurance Regulation number 96 effective November 6, 2000.~~

~~EFFECTIVE DATE: July 1, 2001~~

~~REFILED: December 19, 2001~~