

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

INSURANCE REGULATION 168
(11 NYCRR 244)

Confidentiality Protocols for Victims of Domestic Violence
and Endangered Individuals

I, Benjamin M. Lawskey, 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, as an emergency measure, a new Part 244 of Title 11 of the Official Compilation of Codes, Rules and Regulations (Insurance Regulation 168), to take effect on January 1, 2013, to read as follows:

(ALL MATERIAL IS NEW)

Section 244.0 Preamble.

Individuals experiencing actual or threatened violence frequently establish new addresses and telephone numbers to protect their health and safety. Insurance Law section 2612 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health, Office of Children and Family Services, and Office for the Prevention of Domestic Violence, to promulgate rules to guide and enable insurers to guard against the disclosure of information protected by Insurance Law section 2612. This Part establishes requirements with which insurers shall comply to enable them to effectively respond to legitimate requests for confidential records and information in conformance with Insurance Law section 2612.

Section 244.1 Applicability.

(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.

Section 244.2 Definitions.

As used in this Part:

(a) *Accident and health insurance* shall have the meaning set forth in Insurance Law section 1113(a)(3) and with regard to a fraternal benefit society, also shall have the meaning set forth in Insurance Law section 4501(i)-(k), (m), (o), and (p).

(b) *Address* means a street address, mailing address, or e-mail address.

(c) *Claim related information* shall have the meaning set forth in Insurance Law section 2612(h)(1)(A).

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

(e) *Fraternal benefit society* shall have the meaning set forth in Insurance Law section 4501(a).

(f) *Health insurer* shall have the meaning set forth in Insurance Law section 2612(h)(1)(B).

(g) *Insured* means an individual who is covered under an individual or a group policy.

(h) *Insurer* shall have the meaning set forth in Insurance Law section 2612(c)(2) and shall include a fraternal benefit society.

(i) *Person* means an individual or legal entity, including a partnership, limited liability company, association, trust, or corporation.

(j) *Policy* means a policy, contract, or certificate of insurance, an annuity contract, a child health insurance plan issued pursuant to Title 1-A of Public Health Law Article 25, medical assistance or health care services provided pursuant to Title 11 or 11-D of Social Services Law Article 5, or any certificate issued under any of the foregoing.

(k) *Policyholder* means a person to whom a policy has been issued.

(l) *Reasonable request* means a request that contains a statement that disclosure of all or part of the claim related information to which the request pertains could endanger an individual, and the specification of an alternative address, telephone number, or other method of contact.

(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).

Section 244.3 Confidentiality protocol.

(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 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, 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) A health 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 insurer shall not disclose to the policyholder or another insured covered under the policy:

(1) the address, telephone number, 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 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 that its employees, agents, representatives, or any other persons with whom the insurer contracts or who has gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, shall follow. The written procedures shall include:

(1) 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) procedures for limiting access to personally identifying information, such as the name, address, telephone number, 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) procedures 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 foregoing information could be obtained; and

(6) with regard 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, or any other persons with whom the insurer contracts or who has gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, 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 victim of domestic violence or requestor that the insurer has up to three business days to implement paragraph (1) of this subdivision.

(e) A health insurer may require a requestor to make a reasonable request in writing pursuant to Insurance Law section 2612(h)(3). However, a health insurer shall not require a requestor to provide a justification for the reasonable request.

(f)(1) Prior to releasing any information pursuant to a warrant, subpoena, or court order, an insurer shall notify the victim of domestic violence or requestor, as soon as reasonably practicable, that it intends to release information and specify what type of information it intends to release, unless prohibited by the warrant, subpoena, or court order.

(2) Upon release of information pursuant to a warrant, subpoena, or court order, an insurer shall advise the person to whom the insurer is releasing the information that the information is confidential and that the person should continue to maintain the confidentiality of the information to the extent possible.

(g) An insurer shall comply with Parts 420 and 421 of this Title (Insurance Regulations 169 and 173) and where applicable, the federal Health Insurance Portability and Accountability Act of 1996, as amended, with respect to any information submitted pursuant to Insurance Law section 2612 or this Part.

(h) An insurer or any person subject to the Insurance Law shall not engage in any practice that would prevent or hamper the orderly working of this Part in accomplishing its intended purpose of protecting victims of domestic violence and covered individuals.

(i) An agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article 43, a health maintenance organization certified pursuant to Public Health Law Article 44, or a provider issued a special certificate of authority pursuant to Public Health Law section 4403-a, who is regulated pursuant to the Insurance Law, need not develop its own confidentiality protocol pursuant to this section if the agent, representative, or designee follows the protocol of the insurer, corporation, health maintenance organization, or provider.

Section 244.4 Notice.

(a) Within six months of this Part's effective date, an insurer shall post conspicuously on its website, and with regard to a health insurer, also annually provide all its participating health service providers with:

- (1) a description of Insurance Law section 2612;
- (2) the information required by section 244.3(c)(1), (2), and (6); and
- (3) the phone number for the New York State Domestic and Sexual Violence Hotline.

(b) An insurer shall post conspicuously on its website the information set forth in paragraphs (1) and (3) of subdivision (a) of this section in a format suitable for printing and posting. A health insurer shall recommend to its participating health service providers that the providers print and post the information in their offices.

(c) This section shall not apply to an agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article 43, a health maintenance organization certified pursuant to Public Health Law Article 44, or a provider issued a special certificate of authority pursuant to Public Health Law section 4403-a, who is regulated pursuant to the Insurance Law, if the agent, representative, or designee follows the protocol of the insurer, corporation, health maintenance organization, or provider.



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is a new Part 244 of Title 11 of the Official Compilation of Codes, Rules and Regulations (Insurance Regulation 168), entitled "Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals," signed by me on December 31, 2012, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301 and 2612 of the Insurance Law, to take effect on January 1, 2013.

Pursuant to Section 202(6) of the State Administrative Procedure Act, 11 NYCRR 244 (Insurance Regulation 168) is being promulgated as an emergency measure. A statement of the specific reasons for the finding of the need for emergency action is attached.

Benjamin M. Lawsky
Superintendent of Financial Services

Date: December 31, 2012

One Court Square
Long Island City, NY 11120
Phone 718-248-8000
Fax 800-584-9303
www.nationalbenefitlife.com



CONFIDENTIAL COMMUNICATION REQUEST FORM

This form is for use by a person who is covered by insurance and wishes to make a reasonable request to receive communications of insurance claim-related information from National Benefit Life Insurance Company by alternative means or at alternative locations if disclosing claim-related information could endanger the person.

Send completed form to:
National Benefit Life Insurance Co.
One Court Square, Long Island City, NY11120
Fax 800-584-9303 or email customerservice@nationalbenefitlife.com

SECTION A – Covered individual requesting confidential communication

Name _____ Policy / Claim# _____
Birth Date (mm/dd/yyyy) _____ Relationship to
Primary Insured or Subscriber _____
Current Address _____

SECTION B – To the covered individual – please read the following and complete the information requested.

You have the right to make a reasonable request that you receive communications of claim-related information from us by alternative means or at alternative locations if disclosing the claim-related information could endanger you. "Claim-related information" means all claim or billing information relating specifically to you, including your name, address, any services received, and the name and address of the provider of any services (such as your doctor). Your request will remain in effect until you revoke the request.

I, the covered individual, request that National Benefit Life Insurance Company send communications of claim-related information to me by the following alternative means or at the following alternative locations because disclosing the claim-related information could endanger me.

In care of _____
IF YOU ARE USING SOMEONE ELSE'S ADDRESS, THEN ENTER HIS OR HER NAME HERE.

Alternative Address _____
Alternative Phone Number _____ Alternative Email Address _____

Signature _____ Date _____

SECTION C – Parents, Guardians, or Legal Representatives

If the covered individual is a child younger than 18 years old and the person making this request is the child's parent or guardian, then please provide this information.

Parent or Guardian's Name _____ Relationship to Covered Individual _____

If a legal representative, such as an attorney, is making this request on behalf of the covered individual, then please provide this information.

Legal Representative's Name _____ Relationship to Covered Individual _____

Organization or Firm Name _____

Business Address _____

Business Phone Number _____ Business E-mail Address _____

NYS Domestic Violence Hotline and Sexual Violence Hotline number is 800-942-6906 (Spanish 800-942-6908).