

Original: 2364



C. BRYAN COX
SENIOR LEGISLATIVE DIRECTOR, STATE RELATIONS
bryancox@acll.com

RECEIVED
2003 NOV 10 AM 9:28
DEPARTMENT OF REVENUE
REVIEW COMMISSION

October 31, 2003

Peter J. Salvatore
Regulatory Coordinator
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Proposed Regulation: 31 PA. Code CH. 146c Standards for Safeguarding Customer Information

Dear Mr. Salvatore:

This letter is written on behalf of the American Council of Life Insurers (ACLI), a national trade association whose 385 life insurance company members account for 76% of the life insurance and 75% of the annuity considerations written in the United States. ACLI member companies account for approximately 71% of the life insurance premiums and 80% of the annuity considerations in the state of Pennsylvania. We appreciate the opportunity to comment on Pennsylvania's proposed regulation 31 PA. Code CH. 146c, regarding Standards for Safeguarding Customer Information.

ACLI commends the efforts of Commissioner Koken and the Pennsylvania Insurance Department staff in taking the initiative to adopt this regulation, which is based on the NAIC Model Regulation for Safeguarding Customer Information. The ACLI appreciates the Department's adherence to the NAIC Model Regulation, which will permit companies to follow uniform guidelines and provide customers with clear protections.

ACLI fully supports and appreciates your efforts in the promulgation of this very important regulation.

Sincerely,

C. Bryan Cox



C. BRYAN COX
SENIOR LEGISLATIVE DIRECTOR, STATE RELATIONS
bryancox@acfi.com

RECEIVED

2003 NOV 10 AM 9:28

INSURANCE REGULATORY
REVIEW COMMISSION

October 31, 2003

Peter J. Salvatore
Regulatory Coordinator
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Proposed Regulation: 31 PA. Code CH. 146c Standards for Safeguarding Customer Information

Dear Mr. Salvatore:

This letter is written on behalf of the American Council of Life Insurers (ACLI), a national trade association whose 385 life insurance company members account for 76% of the life insurance and 75% of the annuity considerations written in the United States. ACLI member companies account for approximately 71% of the life insurance premiums and 80% of the annuity considerations in the state of Pennsylvania. We appreciate the opportunity to comment on Pennsylvania's proposed regulation 31 PA. Code CH. 146c, regarding Standards for Safeguarding Customer Information.

ACLI commends the efforts of Commissioner Koken and the Pennsylvania Insurance Department staff in taking the initiative to adopt this regulation, which is based on the NAIC Model Regulation for Safeguarding Customer Information. The ACLI appreciates the Department's adherence to the NAIC Model Regulation, which will permit companies to follow uniform guidelines and provide customers with clear protections.

ACLI fully supports and appreciates your efforts in the promulgation of this very important regulation.

Sincerely,

A handwritten signature in cursive script that reads 'Bryan Cox'.

C. Bryan Cox



Alliance
of American Insurers

3025 Highland Parkway, Suite 800
Downers Grove, IL 60515
Tel 630.724.2100 Fax 630.724.2190



November 3, 2003

Peter J. Salvatore
Regulatory Coordinator
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120.

By E-mail: psalvatore@state.pa.us

RE: Notice of Proposed Rulemaking Concerning 31 Pa. Code §§ 146c.1 to 146c.11 Standards for Safeguarding Customer Information

RECEIVED
2003 NOV -5 AM 10:00
INSURANCE COMMISSION

Dear Mr. Salvatore:

This letter is submitted on behalf of the Alliance of American Insurers, an association of 340 property and casualty insurers. Alliance members include large insurers as well as small and regional insurers, representing a cross section of the insurance industry in the United States. Many Alliance members do business in Pennsylvania and would be subject to the proposed regulation.

The Alliance appreciates the Department addressing the important issue of customer information security. The Alliance also agrees strongly with basing the rule and regulation on the NAIC's Standards for Safeguarding Customer Information Model Regulation.

However, the Alliance has concerns about some aspects of the proposed rules.

Scope

Section 146c.2 of the proposed rule covers both "customer" and "consumer" information rather than "customer" information under the Gramm-Leach-Bliley (GLB) Act and the National Association of Insurance Commissioners' (NAIC's) Standards for Safeguarding Customer Information Model Regulation. The distinction is that "customer information" is the information of policyholders and first party claimants while "consumer information" is information of declined applicants and third party claimants, persons who are hostile to insurers. The Department declined to restrict the proposed rules to customer information, arguing that it has authority to go beyond the GLB Act.

However, the Department failed to explain why its rules have to be out of step with the safeguarding customer information rules and statutes in every other state that has rules or legislation in effect on safeguarding customer information. Twenty other states have finalized laws on safeguarding customer information and all states apply their laws only to "customer

information.” The Department should articulate why Pennsylvania needs rules more restrictive than the twenty other states that have finalized laws on the issue.

For Pennsylvania to be out of step with other states causes problems for insurers. It means insurers must have special rules for Pennsylvania.¹ This means that insurers doing business in more than one state may choose not to do business in Pennsylvania, resulting in fewer market choices in shopping for insurance coverage.

Further, the fiscal impact provision of the Department’s explanation of the rules is inaccurate in stating that the rule will not have any fiscal impact “...because insurers have to comply with GLBA....” As the Department concedes, its rule goes beyond GLB. Insurers must bear the expense of special procedures to comply with Pennsylvania’s rule because Pennsylvania’s rule varies from the NAIC model regulation used in the laws of every other state that has a law in effect on safeguarding customer information.

Lastly, the NAIC has placed great emphasis in more uniformity among state laws. The Department should consider its responsibility to make it easier to do business in Pennsylvania through uniformity with other states by making its rules on safeguarding customer information like the laws in other states.

Violations

The Alliance was concerned that creating new unfair trade practices encourages private litigation and suggested that the reference to unfair trade practices be deleted. The Department pointed out that violations of the Unfair Insurance practices Act do not give rise to private causes of action and declined to amend the proposed rule. In light of the Department’s rationale in declining to change the rules, the Alliance agrees its suggested change is not necessary.

The proposed rule adds new provisions in § 146c.10(b) stating that insurers violate the proposed rule if the insurer knew or reasonably should have known of a service provider’s violations of the proposed rule on safeguarding customer information or the financial and health privacy rules promulgated by the Department and the insurer fails to take reasonable steps to end the violation. If those steps are unsuccessful, the insurer must terminate the contract, or if contract termination is not feasible, the insurer must report the matter to the Department.

The Alliance notes this change was made in response to comments from other insurers asking for standards for insurer liability for violations committed by service providers and did not appear in the proposed rule circulated in late 2002. The Department states that it drew this language from regulations implementing the Health Insurance Portability and Accountability Act (HIPAA). *See* 42 U.S.C. §§ 1320d *et seq.*; 45 C.F.R. § 164.504(e)(1).

Use of this standard in the proposed rule is not appropriate. The federal regulation controls service provider contracts more intensively than the proposed rule, requiring a standard contract provision. The NAIC model regulation that the Department used for its rule simply does not regulate service provider contracts with this intensity. The Department should delete § 146c.10(b).

¹ If safeguarding is required solely for “customer information,” some insurers may choose to apply their safeguarding measures to other kinds of information. However, insurers should make this decision themselves and not be forced into it by the Department.

That the Department should delete § 146c.10(b) is indicated by the Department's explanation that this provision in effect amends provisions of its other privacy rules relating to health and financial information. If the Department desires to amend those rules, it should do so through appropriate notice and comment proceedings relating to those rules, not by writing new provisions in a separate rule.

Time for Compliance

The Alliance suggested at least six months to comply as to service contracts, and a longer period of time for compliance as to service contracts if the rule and regulation is to apply to "consumer" as opposed to "customer" information. The Department agreed to make the rules effective six months from their effective date, but declined to limit the rules to customer information. The Alliance again emphasizes that the proposed rules vary considerably from the NAIC model regulation and other states' laws by applying the rules to customer information and urges the Department to use the approach in the GLB Act and the NAIC model regulation.

The Alliance appreciates the opportunity to comment on the proposed regulation. Please contact me if you have any questions concerning these comments.

Sincerely,

A handwritten signature in black ink that reads "PATRICK WATTS". The signature is written in a cursive, slightly stylized font. Below the signature is a solid horizontal line.

Patrick Watts
Assistant Vice President
Regulation, Tax, Law & Claims
Tel. 630.724.2166

Original: 2304

The Insurance Federation of Pennsylvania, Inc.

1600 Market Street
Suite 1520
Philadelphia, PA 19103
Tel: (215) 665-0500 Fax: (215) 665-0540
E-mail: mailbox@ifpenn.org

RECEIVED

2003 NOV -6 AM 9:12

REVIEW COMMISSION

John R. Doubman
Secretary & Counsel

November 3, 2003

Peter J. Salvatore,
Regulatory Coordinator
Special Projects Office
1326 Strawberry Square
Harrisburg, PA 17120

Re: Standards for Safeguarding Customer Information
31 Pa. Code Chapter 146c
Fiscal Note 11-215

Dear Mr. Salvatore:

The Insurance Federation generally supports the adoption of the captioned regulation published in proposed form at 33 Pennsylvania Bulletin 4917 (October 4, 2003). The Insurance Department has improved the regulation by making several changes to address the objections of insurers, including those put forward by the Federation in comments submitted to the Department in response to an exposure draft of this regulation.

While the majority of Federation members believe that the regulation is now viable, the Federation recommends that two aspects of the regulation be reviewed with an eye toward making it more uniform with regulations of other states and the federal Health Insurance Portability and Accountability Act (HIPAA) regulations. It is the Federation's hope that the Department will embrace these suggested changes as creating a more uniform and clearer regulation.

November 3, 2003

Page three

reason to extend these protections beyond the norm under the existing circumstances.

2. Third Party Service Provider Supervision - Sections 146c.10

In its comments on the exposure draft, the Federation carried over its concern from the Department's previously promulgated health privacy regulation that insurer responsibility for third party service provider actions is not clear. It proposed that the Department resolve this by clarifying that a licensee would only be responsible for third party privacy breaches if it knowingly played a role in the disclosure or failed to report a disclosure of which it became aware.

The Department addressed these concerns in some respects by adding a second subsection to Section 146c.10 articulating the "knew or reasonably should have known" standard and clarifying that it applies to a pattern of activity of a service provider consistent with other insurer violations in the Unfair Insurance Practices Act. The Department also modified some language making the wording of the insurer privacy obligations in Section 146c.4 more reasonable.

The Federation remains of the view that a brighter line standard for whether an insurer has violated the regulation is desirable. Consequently, the Federation reiterates its recommendation that the regulation would be improved by including language in Section 146c.8 similar to HIPAA stating that a licensee has the obligation to report and correct, to the best of its ability, and within a reasonable time, a service provider's disclosure of confidential information. Further, the Federation proposes that the section provide that by making this effort, the licensee shall not be in violation of the chapter so long as it did not knowingly participate in the inappropriate disclosure.

In the Federation's view this will give licensees appropriate guidance and allow the Department to apply a

November 3, 2003

Page four

uniform standard for licensees, including those not subject to HIPAA's provisions.

Thank you for considering our suggestions. If you have any comments or questions, please give me a call.

Very truly yours,

John R. Doubman

c: Robert E. Nyce, Executive Director
Independent Regulatory Review Commission

Gibson Armstrong
Chairman, Senate Banking and Insurance Committee

Nicholas A. Micozzie
Chairman, House Insurance Committee

Original: 2364

The Insurance Federation of Pennsylvania, Inc.

1600 Market Street
Suite 1520
Philadelphia, PA 19103
Tel: (215) 665-0500 Fax: (215) 665-0540
E-mail: mailbox@ifpenn.org

John R. Doubman
Secretary & Counsel

November 3, 2003

Peter J. Salvatore,
Regulatory Coordinator
Special Projects Office
1326 Strawberry Square
Harrisburg, PA 17120

Re: Standards for Safeguarding Customer Information
31 Pa. Code Chapter 146c
Fiscal Note 11-215

RECEIVED
2003 NOV - 7 AM 10:33
INSURANCE
REVIEW COMMISSION

RECEIVED

43

Dear Mr. Salvatore:

The Insurance Federation generally supports the adoption of the captioned regulation published in proposed form at 33 Pennsylvania Bulletin 4917 (October 4, 2003). The Insurance Department has improved the regulation by making several changes to address the objections of insurers, including those put forward by the Federation in comments submitted to the Department in response to an exposure draft of this regulation.

While the majority of Federation members believe that the regulation is now viable, the Federation recommends that two aspects of the regulation be reviewed with an eye toward making it more uniform with regulations of other states and the federal Health Insurance Portability and Accountability Act (HIPAA) regulations. It is the Federation's hope that the Department will embrace these suggested changes as creating a more uniform and clearer regulation.

November 3, 2003

Page two

1. Scope of Protection - Section 146c2

The persons whose information is protected by this regulation are identified by the scope of the definition of "customer" in Section 146c.2. The Department includes within this term both "customers" and "consumers" as they are defined in the Department's financial and health information protection regulations, Chapters 146a and 146b of Title 31. Including "consumers," however, protects people who have no ongoing relationship with the insurer such as rejected applicants and third party claimants.

While in terms of actual insurer operating procedures, there probably is little impact from the inclusion of "consumers," the Federation suggests that the issue of dropping "consumers" from the definition of "customers" in the regulation be revisited for several reasons.

First, the Federation is informed that the vast majority, perhaps all, of the other states which have adopted regulations based on the NAIC model have not imposed obligations on insurers with respect to these classes of persons. If, indeed, this is not a major point, the presumption would seem to be that Pennsylvania should stay consistent with other jurisdictions.

Second, while insurers will probably afford the same privacy protections to these classes anyway, this anomaly singles out a class for protection likely to include many people with an antagonistic view toward the insurer. Accordingly, while as the Department maintains in the preamble to the proposed regulation, it probably has the authority to require their protection, the question is why.

For these reasons, the Department at least should be asked to present a solid public policy rationale for broadening the protected class, especially since its effort to do so causes a variation from the majority practice. We know of no publicized incidents of insurer privacy information breaches, so there does not seem to be any overwhelming

November 3, 2003

Page three

reason to extend these protections beyond the norm under the existing circumstances.

2. Third Party Service Provider Supervision - Sections 146c.10

In its comments on the exposure draft, the Federation carried over its concern from the Department's previously promulgated health privacy regulation that insurer responsibility for third party service provider actions is not clear. It proposed that the Department resolve this by clarifying that a licensee would only be responsible for third party privacy breaches if it knowingly played a role in the disclosure or failed to report a disclosure of which it became aware.

The Department addressed these concerns in some respects by adding a second subsection to Section 146c.10 articulating the "knew or reasonably should have known" standard and clarifying that it applies to a pattern of activity of a service provider consistent with other insurer violations in the Unfair Insurance Practices Act. The Department also modified some language making the wording of the insurer privacy obligations in Section 146c.4 more reasonable.

The Federation remains of the view that a brighter line standard for whether an insurer has violated the regulation is desirable. Consequently, the Federation reiterates its recommendation that the regulation would be improved by including language in Section 146c.8 similar to HIPAA stating that a licensee has the obligation to report and correct, to the best of its ability, and within a reasonable time, a service provider's disclosure of confidential information. Further, the Federation proposes that the section provide that by making this effort, the licensee shall not be in violation of the chapter so long as it did not knowingly participate in the inappropriate disclosure.

In the Federation's view this will give licensees appropriate guidance and allow the Department to apply a

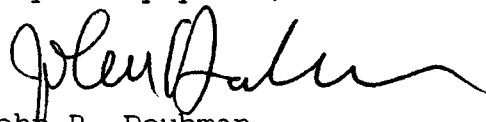
November 3, 2003

Page four

uniform standard for licensees, including those not subject to HIPAA's provisions.

Thank you for considering our suggestions. If you have any comments or questions, please give me a call.

Very truly yours,



John R. Doubman

c: Robert E. Nyce, Executive Director
Independent Regulatory Review Commission

Gibson Armstrong
Chairman, Senate Banking and Insurance Committee

Nicholas A. Micozzie
Chairman, House Insurance Committee

Original 2364



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

**SPECIAL PROJECTS OFFICE
1326 Strawberry Square
Harrisburg, PA 17120**

**Phone: (717) 787-4429
Fax: (717) 772-1969
E-mail: psalvatore@state.pa.us**

November 4, 2003

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Comments Received on Regulation #11-215

Dear Mr. Nyce:

Pursuant to Section 5(c) of the Regulatory Review Act, the Department is required to submit all comments on proposed regulations received during the public comment period to the Independent Regulatory Review Commission and the Legislative Standing Committees within 5 days.

The attached list represents comments that the Department has received.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

RECEIVED
2003 NOV -6 AM 9:11
REGULATORY REVIEW COMMISSION

48

Original: 2304

Comments on the regulation listed below have been received from the following:

Reg #	Regulation Title
11-215	Standards for Safeguarding Customer Information

Mr. J. Stephen Zielezienski

Date Received 11/03/2003 Date Sent To Cmtes/IRRC 11/04/2003

Associate General Counsel

American Insurance Association

1130 Connecticut Ave. NW

Washington, DC 20036

Letter Co-Author

Phone (202) 828-7175 X00000

EMail szielezienski@aiadc.org

Page 1

11/04/2003

RECEIVED
2003 NOV -6 AM 9:12
REVIEW COMMISSION

49

Original. 2364

Comments on the regulation listed below have been received from the following:

<i>Reg #</i>	<i>Regulation Title</i>
11-215	Standards for Safeguarding Customer Information

Mr. John Doubman

Date Received **11/03/2003** Date Sent To Cmtes/IRRC **11/04/2003**

Secretary and Counsel

Insurance Federation of Pennsylvania, Inc.

1600 Market St.

Philadelphia, PA 19103

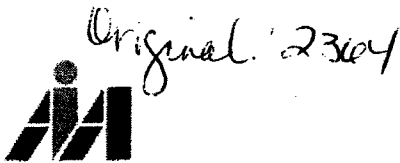
Letter Co-Author

Phone (215) 665-0508 X00000

EMail jdoubman@ifpenn.org

RECEIVED
2003 NOV -6 AM 9:11
REVIEW/COMMISSION





American Insurance Association

RECEIVED

2003 NOV -6 AM 9:12

REVIEW COMMISSION

1130 Connecticut Ave. NW

Suite 1000

Washington, DC 20036

202-828-7100

Fax 202-293-1219

www.aiaac.org

BY E-MAIL

Peter J. Salvatore
Regulatory Coordinator
Insurance Department
Commonwealth of Pennsylvania
1326 Strawberry Square
Harrisburg, PA 17120

**Re: Supplemental Comments - Proposed Pennsylvania Privacy Regulation,
Title 31 Chapter 146c, "Standards for Safeguarding Customer
Information"**

Dear Mr. Salvatore:

The American Insurance Association ("AIA") has again reviewed the Pennsylvania Department of Insurance ("Department") draft rule setting forth standards for safeguarding customer information, proposed to be added as new Chapter 146c of Title 31, "Standards for Safeguarding Customer Information." ("proposed data security rule" or "proposed rule"). The proposed rule seeks to implement § 501(b) of the Gramm-Leach-Bliley Act of 1999 ("GLBA"). Section 505(b)(2) of GLBA requires state insurance authorities to establish appropriate standards for financial institutions subject to their respective jurisdictions relating to administrative, technical, and physical safeguards for "customer" records and information. AIA is a trade association of major property and casualty insurance companies, representing over 424 insurers that provide all lines of property and casualty insurance throughout the United States and wrote more than \$103 billion in premiums in 2001. In 2001, AIA member companies also wrote over \$3.8 billion in premiums in Pennsylvania. We are pleased to provide supplemental comments on the Department's revised proposed rule.

Because the proposed rule is in its second iteration, AIA's supplemental submission focuses on one continuing fundamental concern with the proposed data security rule. While the structure of the proposed rule apparently mirrors the NAIC Standards for Safeguarding Customer Information Model Regulation ("Model Data Security Regulation") adopted in 2002 and applies to "customer" information, the

JAY S. FISHMAN
Chairman

JOHN J. AMORE
Chairman Elect

DOUGLAS G. ELLIOT
Vice Chairman

Vice Chairman

ROBERT E. VAGLEY
President

definition of “customer” used in the proposed rule (§146.c.2) goes well beyond the parameters of the NAIC Model Data Security Regulation and effectively applies the data security standards to all types of nonpublic personal information, including information on applicants and claimants with whom insurers have no continuing business relationship.

The Department’s proposed expansion of the data security standard to include all consumer information threatens AIA’s primary goals of uniformity and operational consistency in privacy regulation across jurisdictional lines, and places Pennsylvania out-of-step with other insurance regulatory jurisdictions. For AIA member companies, many of which operate regionally and nationally, uniformity and consistency are necessary for three overriding reasons: (1) compliance implementation; (2) reduction in cost burden; and (3) leveling the competitive playing field. The costs of ensuring compliance increase with differing regulation. Those costs will inevitably increase where a company guesses incorrectly about a legislative or regulatory outcome and must re-tool its privacy compliance program. In addition, an uneven insurance regulatory playing field in the area of privacy may tip the competitive balance in favor of federally regulated financial institutions (which are regulated by one standard instead of by 51 standards). If adopted as proposed, the Department’s proposed data security rule would require Pennsylvania insurers (and other Pennsylvania licensees) to incur significant costs to expand their data security measures to include consumer information within the scope of their programs. Pennsylvania’s expanded data security rule would be particularly burdensome now, as insurers have implemented data safeguards based on GLBA and the NAIC Data Security Model Regulation, and the growing number of insurance regulatory jurisdictions that have adopted consistent standards. These burdens will not be imposed on those financial institutions with which insurers compete, and will therefore put Pennsylvania-licensed insurers at a distinct disadvantage. Based on these significant impediments to the goals of uniformity and consistency, AIA must respectfully oppose the proposed data security rule as currently written.

Further, the regulatory definition of “customer” places the proposed rule in conflict with the NAIC Model Data Security Regulation. When the NAIC prepared its data security model, it did so using the Model Privacy Regulation definitions as a guide, including the “customer” definition in that Model. Thus, while the proposed rule mirrors much of the language in the NAIC Model Data Security Regulation, the parallel construction is undercut by the proposed rule’s departure from the standard NAIC regulatory definitions. As such, the “purpose” section of the proposed rule, noting that the rule “is based upon the NAIC Standards for Safeguarding Customer Information Model Regulation,” is incorrect. The proposed rule goes significantly beyond that Model by manipulating the “customer” definition to include “consumers.”

Equally important, the Department’s “fiscal impact” statement is incorrect, as it assumes there will be no fiscal impact to insurers because of their obligation to comply with both GLBA and the existing insurance privacy regulations in Pennsylvania. This assumption, however, does not account for the systems changes that companies doing

business in Pennsylvania will be forced to make because the proposed rule applies to a larger scope of information than that currently required in other U.S. regulatory jurisdictions. We urge the Department to reconsider this approach and to instead following the NAIC Model Data Security Regulation carefully.

Again, AIA thanks the Department for this opportunity to file supplemental comment on the proposed rule and appreciates your consideration of the points discussed in this letter. With these recommended changes, AIA believes the proposed rule would substantially aid the security of customer information and would promote compliance by all insurance licensees in a manner that can be uniformly implemented in all U.S. insurance regulatory jurisdictions, including Pennsylvania. If you have any questions about the concerns raised, please contact me at 202 – 828 – 7175.

Sincerely,

/s/

J. Stephen Zielezienski
Associate General Counsel

cc: Taylor Cosby
Catherine I. Paolino