

ARTICLE VII. RULES FOR HEALTH INFORMATION

Section 2218. When Authorization Required for Disclosure of Nonpublic Personal Health Information

- A. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer 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 commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Section 23219. Authorizations

- A. A valid authorization to disclose nonpublic personal health information pursuant to this Article VII shall be in written or electronic form and shall contain all of the following:
 - (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
 - (2) A general description of the types of nonpublic personal health information to be disclosed;
 - (3) 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;
 - (4) The signature of the consumer or customer 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

(5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

- B. An authorization for the purposes of this Article VII 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. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this Article VII 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.

Section 240. Authorization Request Delivery

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 151, 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 pursuant to Section 2218A.

Section 251. Relationship to Federal Rules

A Licensee that is subject to and governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, HITECH), and that maintains nonpublic personal information in the same manner as protected health information shall be deemed to comply with the requirements of this Act.

This act shall not apply to a nonprofit organization that processes or shares personal information solely for the purposes of assisting law enforcement organizations in investigating criminal or fraudulent acts relating to insurance. Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services [insert cite] (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 Article V.

~~**Drafting Note:** The drafters note that the effective date of this regulation is July 1, 2001. The HHS regulation is anticipated to be promulgated in late 2000, thereby becoming effective in late 2002. As of July 1, 2001, if the licensee is in compliance with all requirements of the HHS regulation except its effective date provision, the licensee is not subject to the provisions of this article. If the licensee comes into compliance with the HHS regulation after that date, the licensee is no longer subject to the provisions of this article as of the date the licensee comes into compliance with the HHS regulation.~~

Section 262. Relationship to State Laws

Nothing in this article shall preempt or supercede existing state law related to medical records, health or insurance information privacy.