

- (a) 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 the financial transaction or providing the product or service.

- (b) Required, or is a usual, appropriate or acceptable method to accomplish any of the following:
 - 1. To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service.

 - 2. To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part.

 - 3. To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker.

 - 4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party.

 - 5. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits including utilization review activities, participating in research projects, workers compensation premium audits, workers' compensation first reports of injury, workers' compensation

loss runs or as otherwise required or specifically permitted by federal or state law.

6. In connection with any of the following:

- a. The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means.
- b. The transfer of receivables, accounts or interests therein.
- c. The audit of debit, credit or other payment information.

Ins 25.60 Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information. (1) EXCEPTIONS TO OPT OUT REQUIREMENTS. The requirements for initial notice to consumers in s. Ins 24.10 (1) (b), the opt out in ss. Ins 25.17 and 25.30, and service providers and joint marketing in s. Ins 25.50 do not apply when a licensee discloses nonpublic personal financial information under any of the following circumstances:

- (a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction.
- (b)
 1. To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction.
 2. To protect against or prevent actual or potential fraud or unauthorized transactions.
 3. For required institutional risk control or for resolving consumer disputes or inquiries.

4. To persons holding a legal or beneficial interest relating to the consumer.
 5. To persons acting in a fiduciary or representative capacity on behalf of the consumer.
- (c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors.
- (d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety.
- (e)
1. To a consumer-reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).
 2. Disclosure from a consumer report reported by a consumer-reporting agency.
- (f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit.

- (g) 1. To comply with federal, state or local laws, rules and other applicable legal requirements.
 - 2. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities.
 - 3. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law.
- (h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

(2) **EXAMPLE OF REVOCATION OF CONSENT.** A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal financial information as permitted under s. Ins 25.17 (6).

(3) **RECEIVERSHIP.** This chapter does not apply to a receiver for an insurer subject to a delinquency proceeding under ch. 645, Stats.

SUBCHAPTER V-RULES FOR HEALTH INFORMATION

Ins 25.70 When authorization required for disclosure of nonpublic personal health information. (1) 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 or unless disclosure of the health information is permitted under ss. 51.30, or 146.81 to 146.84, Stats., or otherwise authorized by law.

(2) 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; rate-making 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; workers' compensation premium audits; workers' compensation first reports of injury; workers' compensation loss runs; 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. A licensee may apply for approval of, and the commissioner may approve additional specific insurance functions that are subject to this subsection if the commissioner finds inclusion is fair and reasonable to the interests of consumers.

Ins 25.73 Authorizations. (1) A valid authorization to disclose nonpublic personal health information pursuant to this subchapter shall be in written or electronic form and shall contain all of the following:

- (a) The identity of the consumer or customer who is the subject of the nonpublic personal health information.
 - (b) A general description of the types of nonpublic personal health information to be disclosed.
 - (c) 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.
 - (d) 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.
 - (e) 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.
- (2) An authorization for the purposes of this subchapter shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than the period permitted if the authorization were subject to s. 610.70 (2)(b), Stats., or twenty-four months, whichever is longer
- (3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this subchapter at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.
- (4) 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.

Ins 25.75 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 s. Ins 25.25, 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 s. Ins 25.70 (1).

Ins 25.77 Relationship to federal rules. 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, if a licensee complies with all requirements of that rule, regardless of whether it currently applies to the licensee, the licensee shall not be subject to the provisions of this subchapter.

Ins 25.80 Insurers and agents compliance with s. 610.70, Stats. (1) An insurer that is subject to s. 610.70, Stats., or an intermediary acting solely as an agent of an insurer subject to s. 610.70, Stats., with respect to health information is not required to comply with this subchapter. An insurer is responsible for the acts or omissions of its agents that constitute violations of s. 610.70, Stats.

- (2) For the purposes of s. 610.70 (1) (d), Stats., “insurance that is primarily for personal, family or household purposes” includes group or individual health insurance policies and personal automobile, homeowners, disability and life policies. It does not include workers’ compensation or commercial property and casualty policies.
- (3) Nothing in this chapter or s. 610.70, Stats., restricts disclosure of nonpublic personal health information permitted under s. 102.13, Stats.

SUBCHAPTER VI-ADDITIONAL PROVISIONS

Ins 25.90 Nondiscrimination. (1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this chapter.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this chapter.

(3) Failure to provide an insurance product or service based on usual and customary insurance underwriting practices and standards is not unfair discrimination under this section, even if such failure is the result of a consumer or customer's refusal to authorize the disclosure of his or her nonpublic personal information.

Ins 25.95 Effective date. (1) Enforcement under section 505 of the Gramm-Leach-Bliley Act (PL 102-106) is effective only on and after the effective date of this rule.

(2) (a) *Phased in notice requirement for consumers who are the licensee's customers on the compliance date.* Beginning on the first day of the fourth month commencing after the after publication of this rule and by not later than June 30, 2002 a licensee shall provide an initial notice, as required by s. Ins 25.10, to consumers who are the licensee's customers on the first day of the fourth month commencing after the after publication of this rule.

(b) *Example.* A licensee provides an initial notice to consumers who are its customers on the first day of the fourth month commencing after the after publication of this rule, if, by that date, the licensee has established a system for providing an initial notice to all new customers and if by June 30, 2002 the licensee has mailed the initial notice to all the licensee's existing customers.

(3) ONE YEAR GRANDFATHERING OF SERVICE AGREEMENTS. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of s. Ins 25.50 (1) (a) 2, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal financial information,

as long as the licensee entered into the agreement on or before July 1, 2000.

APPENDIX A – SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1–Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of s. Ins 25.15 (1) (a) to describe the categories of nonpublic personal financial information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of s. Ins. 25.15 (1) (b) to describe the categories of nonpublic personal financial information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal financial information other than as permitted by the exceptions in s. Ins 25.50, 25.55 and 25.60.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal financial information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of s. Ins 25.15 (1) (b), (c) and (d) to describe the categories of nonpublic personal financial information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic financial personal information to any party, other than as permitted by the exceptions in s. Ins 25.55 and 25.60.

Sample Clause A-3:

We do not disclose any nonpublic personal financial information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of s. Ins 25.15 (1) (c) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic financial personal information. This clause may be used if the licensee discloses nonpublic financial personal information other than as permitted by the exceptions in s. Ins 25.50, 25.55 and 25.60, as well as when permitted by the exceptions in s. Ins 25.55 and 25.60.

Sample Clause A-4:

We may disclose nonpublic financial personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic financial personal information about you to nonaffiliated third parties as permitted by law.

A-5–Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of s. Ins 25.15 (1) (e) related to the exception for service providers and joint marketers in s. Ins 25.50. If a licensee discloses nonpublic personal financial information under this exception, the licensee shall describe the categories of nonpublic financial personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6–Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of s. Ins 25.15 (1) (f) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal financial information other than as permitted by the exceptions in ss. Ins 25.50, 25.55 and 25.60.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal financial information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)].

A-7-Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of s. Ins 25.15 (1) (g) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information.

Sample Clause A-7:

We restrict access to nonpublic personal financial information about you to [provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal financial information.

SECTION 2. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2001.

Connie L. O'Connell
Commissioner of Insurance