

Privacy Notices

Concise Explanatory Statement November 23, 2016

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Introduction

The Revised Code of Washington (RCW) 34.05.325(6) requires the Office of Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption.

The CES:

1. Identifies the Commissioner’s reasons for adopting the rule;
2. Describes the differences between the proposed rule and the final rule (other than editing changes) and the reasons for the difference;
3. Summarizes and responds to all comments that the OIC received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the OIC’s reasons for not incorporating the change requested by the comment;
4. Must be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Reasons for adopting the rule

The Gramm-Leach-Bliley Act requires that financial institutions (which includes insurers and carriers) provide an annual notice of the privacy policy of the financial institution to its clients. The FAST Act which was recently enacted by Congress amended this requirement to permit financial institutions to not provide the annual notice under certain conditions. Under this rule-making the Commissioner amends existing rules to comport with this change in federal law.

Background

The Commissioner has previously adopted NAIC model rules related to privacy notices, which align with the requirements set forth in Title V of the Gramm-Leach-Bliley Act. Given the changes to Gramm-Leach-Bliley under the FAST Act (Public Law 114-84), and the Commissioner's desire to maintain alignment between state and federal law, this change is necessary.

Rule development process

On July 18, 2016, the OIC filed a Pre-proposal Statement of Inquiry (CR-101) proposing negate the need for annual privacy notices if certain conditions are met. The comment period on the CR-101 was open until September 1, 2016.

On October 17, 2016, the OIC filed a CR-102. The agency held a hearing on November 22, 2016. The OIC filed a CR-103P to adopt the rule on November 23, 2016 and the rule went into effect 31 days later.

Resources consulted

-Changes to NAIC model law 672 under consideration by the NAIC Privacy Disclosures (D) Working Group

Differences between proposed and final rule

No differences.

Responsiveness summary of comments

The OIC received numerous comments and suggestions regarding this rulemaking. The following information contains a description of the comments, the OIC's assessment of the comments, and information about whether the OIC included or rejected the comments.

The OIC received comments from:

- Cambia
- Premera
- American Council of Life Insurers, American Insurance Association, Independent Insurance Agents and Brokers of America, National Association of Mutual Insurance Companies, & Property Casualty Insurers Association of America

Comments regarding the CR-101

Comment: All comments received were supportive of the proposed change. Commenters appreciated the opportunity to streamline the provision of annual privacy notices. A health insurer noted that the Gramm-Leach-Bliley privacy notices were superfluous because of the more comprehensive requirements under HIPAA.

Response: The Commissioner appreciates these comments and intends to streamline privacy disclosures when possible.

Implementation plan

Implementation and enforcement of the rule

The OIC intends to implement and enforce the rule through the Rates and Forms Division and Market Conduct Oversight Unit, which is part of the Company Supervision Division. Using existing resources, OIC staff will continue to work with carriers, providers, and interested parties in complying with the requirements of these rules.

How the agency will inform and educate affected persons about the rule

After the agency files the permanent rule and adopts it with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting to its standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the Office of Insurance Commissioner's website.
- OIC staff will address questions as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection Division
Rule content	Policy and Legislative Affairs
Authority for rules	Policy and Legislative Affairs
Enforcement of rule	Legal Division
Market Compliance	Company Supervision

How the agency intends to promote and assist voluntary compliance for this rule

The steps listed under implementation will inform and educate affected persons on the changes and help promote voluntary compliance.

How the agency intends to evaluate whether the rule achieves the purpose for which it was adopted

The OIC will work closely with carriers, providers, and other interested parties to evaluate the effectiveness of the rule as well as monitor consumer complaints and to monitor plans for non-compliance.

Appendix A – Hearing Summary

Summarizing Memorandum

To: Mike Kreidler, Insurance Commissioner
From: Jim Freeburg, presiding official for rule hearing
Matter: Rule 2016-20
Topic: Privacy Notices Rule

This memorandum summarizes the hearing on the above-named rulemaking, which was held on Nov. 22, 2016 at 3:30 p.m. in Tumwater. I presided over this hearing in your place.

The hearing began at 3:30 p.m.

No one signed up to testify.

The hearing was adjourned.

SIGNED this 22th day of November, 2016

Jim Freeburg, Presiding Official