

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

11 NYCRR 244
(INSURANCE REGULATION 168)

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 upon filing with the Secretary of State, 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 requests to keep records and information confidential 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) In addition to the requirements of subdivision (a) of this section, 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 to be followed by its employees, agents, representatives, or other persons with whom the insurer contracts and who may have access to the information sought to be kept confidential. The written procedures shall include:

(1) with respect to a health insurer, 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) the procedure 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) the procedure 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 information specified in subparagraphs (i) and (ii) could be obtained; and

(6) with respect 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, and other persons with whom the insurer contracts who have access to the information sought to be kept confidential, 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 individual who delivered the order of protection or the 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 may not require a requestor to provide a justification for the reasonable request.

(f)(1) Prior to releasing any information prohibited to be disclosed pursuant to subdivisions (a) and (b) of this section pursuant to a warrant, subpoena, or court order involving the policyholder or another insured covered under the policy, an insurer shall notify the individual who delivered the order of protection or the 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 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) 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 September 23, 2013, 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 upon filing with the Secretary of State.

Pursuant to Section 202(6) of the State Administrative Procedure Act, 11 NYCRR 244 (Insurance Regulation 168) is being promulgated as an emergency measure. This regulation previously was promulgated on an emergency basis on December 31, 2012, March 29, 2013, and June 26, 2013. A statement of the specific reasons for the finding of the need for emergency action is attached.

A handwritten signature in blue ink, appearing to read "Benjamin M. Lawsky".

Benjamin M. Lawsky
Superintendent of Financial Services

Date: September 23, 2013

**Statement of the Reasons for Emergency Measure
11 NYCRR 244 (Insurance Regulation 168)**

This regulation governs confidentiality protocols for domestic violence victims and endangered individuals. Insurance Law § 2612 states that if any person covered by an insurance policy issued to another person who is the policyholder or if any person covered under a group policy delivers to the insurer that issued the policy, a valid order of protection against the policyholder or other person, then the insurer is prohibited for the duration of the order from disclosing to the policyholder or other person the address and telephone number of the insured, or of any person or entity providing covered services to the insured.

In addition, on October 25, 2012, Governor Andrew M. Cuomo signed into law Chapter 491 of the Laws of 2012, effective January 1, 2013, Part E of which amends Insurance Law § 2612 to require a health insurer to accommodate a reasonable request made by a person covered by an insurance policy or contract issued by the health insurer to receive communications of claim related information from the health insurer by alternative means or at alternative locations if the person clearly states that disclosure of all or part of the information could endanger the person. Except with the express consent of the person making the request, the amendment prohibits a health insurer from disclosing to the policyholder: (1) the address, telephone number, or any other personally identifying information of the person who made the request or child for whose benefit a request was made; (2) the nature of the health care services provided; or (3) the name or address of the provider of the covered services.

Insurance Law § 2612 requires the Superintendent, 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 the confidential information protected by § 2612. Section 2612 provides important protections to persons who may be subject to domestic violence.

For the reasons stated above, emergency action is necessary for the general welfare.



Benjamin M. Lawsky
Superintendent of Financial Services

Date: September 23, 2013