Jim's Perspective…

Privacy of Client's Personal Information Held by Agent

The process of submitting an application for an individual's insurance needs usually involves collecting a significant amount of personal information about the client. In the old days, much of this information was stored in a paper format and placed in a paper file and stored in a filing cabinet. It was not practical or easy to take this paper and show it to others or send it to other business entities. It usually just stayed put in the filing cabinet. Today, most information is stored electronically. It is much easier to move or share this electronic data with others internally, or send it to other non-affiliated entities electronically. All of this has led to substantial regulation of how a business must handle or store personal financial or health information.

The development of consumer privacy law got its start back in 1998 with the merger of Citicorp and Travelers Group to form the conglomerate Citigroup. This merger was given temporary approval because technically it violated the Glass Steagall Act which was a Depression era law that required banks and insurance companies to remain separate entities. In 1999, Congress passed the Gramm-Leach-Bliley Act which allowed for the consolidation of various financial services institutions. In addition to allowing mergers, the Act included extensive consumer privacy requirements applicable to financial institutions, including insurance companies. This Act was a federal law, but insurance is regulated at the state level. Consequently, the National Association of Insurance Commissioners adopted a model law providing privacy protection for certain insurance consumers similar to what is required in Gramm-Leach. This model law was passed in all states. In Nebraska, this model law is found at Section 44-901 through 44-925, and is titled, Privacy of Insurance Consumer Information Act (hereinafter The Act). It was passed by the Nebraska Legislature in 2001.

The Act applies to nonpublic personal health information and nonpublic personal financial information about individuals. The privacy requirements of The Act apply to an individual or insurance entity involved in insurance and *licensed* with the Department of insurance. Consequently, the provisions of The Act apply to a "licensee." The term licensee, as used in The Act is specifically defined to include "producers."

In general, The Act requires a producer to provide customers with an annual privacy notice that includes, in part, the following information:

1. The categories of nonpublic personal financial information that the producer collects.
2. The categories of nonpublic personal financial information that the producer discloses.
3. The categories of affiliates and nonaffiliated third parties to whom the producer discloses nonpublic personal financial information.
4. Notice to the customer that he or she may opt out of any process by which the producer discloses nonpublic personal financial information to nonaffiliated third parties.

It is very important to understand that a licensee is not subject to the notice and opt out requirements if the licensee is an agent of another licensee acting as principal (insurance company), the principal otherwise complies with and provides the notices required by The Act, and the licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates as allowed by the Act. This exception to the privacy notice requirements probably removes most agents from this Act. I think all insurers issue annual privacy notices to policyholders.

Another important exception to The Act involves the collection of personal financial information for purposes of claims handling or underwriting matters such as preparing an application for insurance. Disclosure of personal financial information for purposes of an investigation related to a fraud is also exempted from The Act.

The Act also prohibits the disclosure of nonpublic personal health information unless the licensee has written authorization from the customer to do so.

The Act applies to a broader category of individuals called consumer. This involves individuals who seek to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes. Consumer would include for example claimants who submit claim information to the agency which has written an auto policy for a customer who was involved in an auto accident with the claimant. Note too that The Act does not extend to commercial insurance.

Since insurers already provide privacy notices, and since personal financial information used for claims and underwriting purposes is not subject to the provisions of The Act, this law is probably not applicable to agents in most cases. However, it might still be a good business practice to have a written policy that requires customer information to remain confidential and only be used in conjunction with the acquisition or administration of the agency's insurance products. In that regard, the Nebraska Department of Insurance adopted a regulation in 2003 that requires licensees (which includes agents) to implement an information security program.[1] Development of an information security program includes considering the follow factors:

1. Assess the level of risk related to internal and external threats that could result in unauthorized disclosure of customer information.
2. Manage and control the security program by training staff to implement the provisions of the program and conduct tests or otherwise monitor how the program controls are working.
3. If the agency uses outside service providers, it should take appropriate steps to assure that the service provider is in compliance with the agency information security program.

A violation of The Act or Chapter 77 constitutes an unfair trade practice under the Nebraska Unfair Insurance Trade Practice Act which can result in a fine of between one thousand dollars to thirty thousand dollars. Finally, as you know, the Department is always available to answer any questions you might have about The Act, Chapter 77 or CB-134.

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[1] This regulation can be found at Chapter 77. See also Department Bulletin CB-134.