

FOR THE RECORD

DECLARE YOUR PRIVACY INTENTIONS

Financial Institutions

In 1999, Congress made sweeping changes to the financial industry, allowing insurance companies to take on banking and other financial functions, and allowing financial and security institutions to assume insurance functions. As a result, medical data can now be held by both insurance and financial companies. Concerns about the merger of these functions include the possibility that a bank could use health information supplied by an affiliated health insurance company to deny a loan.

Title V of the Financial Modernization Act, (*15 U.S.C. 6801 et seq.*) widely referred to as the Gramm-Leach-Bliley Act (GLBA) was signed into law November 12, 1999 with compliance required on July 1, 2001. Several federal agencies were required to draft regulations on implementing the new federal law, including use, access to, and disclosure of both financial and health data. In addition, state regulators, particularly departments of insurance, found it necessary to determine how to best comply with the new federal law. The GLBA specifically allows data standards required by the 1996 Health Insurance Portability and Accountability Act (see Healthcare Services Declaration form) to supersede data provisions of the GLB Act.

PRIVACY LOOPHOLE

Most citizens do not realize that the new right to 'opt-out' of disclosure of their medical and financial data is limited to non-affiliated groups and companies. The law allows unconsented use by and disclosure to 'affiliates' of financial and insurance companies. In addition, for a broad array of "insurance functions" no patient or consumer consent is required prior to disclosure. Therefore, even if an individual chooses to follow the 'opt-out' process announced by their bank or insurer to prevent of disclosure of information, 'non-public' medical, personal and financial data can still be disclosed and exchanged.

The National Association of Insurance Commissioners' (NAIC) has published an example of legislation that legislatures and regulators can enact into law and implement in each state. Rather than restricting access to data, the NAIC permit insurers and financial institutions to use, disclose and access individually-identifiable health data without consent for 32 broad categories of insurance and business activities (see list on declaration form). According to an April 2001 NAIC press release, 24 states have already adopted the NAIC model as state law. To clarify the entities involved, one attorney writes:

"The term 'financial institution' as used in the Privacy Rules [Title V and various federal regulations] is very broad. A financial institution is any institution that is significantly engaged in financial activities. 'Financial activities' include traditional activities such as: a) lending, exchanging, transferring, investing for others, or safeguarding money or securities; b) underwriting or acting as an agent or broker of insurance or annuities; c) providing financial, investment, or economic advisory services; and d) underwriting or dealing in securities. In addition, financial activities may include certain activities specified by the Federal Reserve Board, such as: a) brokering or servicing loans; b) leasing real or personal property; c) appraising real or personal property; d) check guaranty, collection agency, credit bureau, and real estate settlement services; e) providing financial or investment advisory activities including tax planning, tax preparation, and instruction on individual financial management; f) management consulting and counseling activities; g) printing and selling checks and related documents; h) selling money orders, savings bonds, or traveler's checks; and i) providing financial data processing and transmission services, facilities (including hardware, software, documentation, or operating personnel), databases, advice or access to these by technological means." ("Financial Privacy and the GLBA," Michael P. Carlson, *Your Business and the Law TRENDS*, Spring 2001, Faegre & Benson, LLP)

Individuals should consider providing the following entities with CCHC's *Financial Institutions* Declaration form:

Bank	Mortgage Company	Life Insurer	Investment Corporation
Loan Institution	Securities Agency	Cheque Service	Financial Planning Corporation
Credit Card Company	Retail Business (Retail credit cards)	Credit Bureau	Tax Accountant/Preparer

 Separate declaration forms addressing additional health, financial, medical and personal data disclosures by doctors, health insurers, health care professionals, hospitals, health care facilities, and data clearinghouses, as permitted by the 1996 Health Insurance Portability and Accountability Act (HIPAA), the 2001 federal medical privacy regulation, and the federal home health care data collection system, called OASIS, can be found at the CCHC website: www.cchconline.org.

**FOR THE RECORD:
DECLARATION OF MEDICAL PRIVACY INTENT
TO FINANCIAL INSTITUTIONS**

To :

Fill in name of institution/person (Bank/Investment firm/Financial Planner/Life Insurer/Credit Card Company/Other)

I find the Congressionally-permitted and federally-approved use and disclosure of health information by various financial institutions to be detrimental to medical privacy and the confidentiality of medical records and individually-identifiable health data. Title V of the Financial Modernization Act, (15 U.S.C. 6801 et seq.) popularly referred to as the Gramm-Leach-Bliley Act (GLBA) which was signed into law November 12, 1999, became effective July 1, 2001 and has allowed regulators to issue a long list of exceptions to the requirement of patient and consumer consent.

For the record, I therefore and hereby declare my express wish and intent to prevent medical records and health information from access or disclosure by the above named person/corporation/agency without my express written, informed and voluntary consent. Please keep this form on file. To be specific, without written, specific, informed and voluntary consent, I ask that the medical, psychological, financial, genetic, or other personal data of _____

Name of self, child, or guardian responsibility

not be disclosed, used, placed in a database, or otherwise accessed for the **following functions/entities as checked below:**

- | | | |
|--|---|--|
| <input type="checkbox"/> Auditing | <input type="checkbox"/> Actuarial, scientific, medical or public policy research | <input type="checkbox"/> Peer review activities |
| <input type="checkbox"/> Case management | <input type="checkbox"/> Claims adjustment and management | <input type="checkbox"/> Risk management |
| <input type="checkbox"/> Claims administration | <input type="checkbox"/> Database security | <input type="checkbox"/> Loss control |
| <input type="checkbox"/> Disease management | <input type="checkbox"/> External accreditation standards | <input type="checkbox"/> Utilization review |
| <input type="checkbox"/> Reporting | <input type="checkbox"/> Grievance procedures | <input type="checkbox"/> Investigation or underwriting |
| <input type="checkbox"/> Quality assurance/improvement | <input type="checkbox"/> Provider credentialing verification | <input type="checkbox"/> Performance evaluation |
| <input type="checkbox"/> Reinsurance and excess loss insurance | <input type="checkbox"/> Policyholder service functions | <input type="checkbox"/> Third parties and affiliates |
| <input type="checkbox"/> Ratemaking and guaranty fund functions | <input type="checkbox"/> Policy placement or issuance | |
| <input type="checkbox"/> Administration of consumer disputes and inquiries | | |
| <input type="checkbox"/> Detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity | | |
| <input type="checkbox"/> Internal administration of compliance, managerial, and information systems | | |
| <input type="checkbox"/> 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 | | |
| <input type="checkbox"/> Replacement of a group benefit plan or workers compensation policy or program | | |
| <input type="checkbox"/> Activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit | | |
| <input type="checkbox"/> 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 | | |
| <input type="checkbox"/> Any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process | | |
| <input type="checkbox"/> "Additional insurance functions" that may be added with approval of the commissioner of insurance "to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers." | | |

This restriction on data disclosure, use and access shall be valid until otherwise removed by written authorization of the subject (or parent or guardian of subject if subject is a minor or under guardianship) of the information.

Signature	Relationship to Above Person	Date
Printed Full Name		
Address	City	State
		Zip code

Form created and distributed for CCHC's:
"For the Record" Medical Privacy Project
Citizens' Council on Health Care
1954 University Ave. W., Suite 8
St. Paul, MN 55104, 651-646-8935
info@cchconline.org
Website: www.cchconline.org

CCHC DISCLAIMER: CCHC is a non-profit 501(c)3 organization. CCHC provides this form only as information to assist individuals in restricting access to or use of their individually-identifiable medical or financial information. CCHC specifically does not warrant the effectiveness of said form in restricting access to or use of personal information by government agencies or private organizations. CCHC is not liable for any injury, either in whole or in part, caused, directly or indirectly, by use of this form. With the advice to the user that under the law this form may not be binding, it does however express your desire for medical, financial and personal privacy. It also expresses your protest if your medical records and other personal information are accessed, used or disclosed without your written, informed and voluntary consent.