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## National Council of Insurance Legislators (NCOIL)

### Insurance E-Commerce Model Act

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*\*Sponsored by Rep. Edmond Jordan (LA)*

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#### Section 1. Title

This Act shall be known as the “[State] Insurance E-Commerce Model Act.”

## **Section 2. Purpose**

The purpose of this Act is to provide consumers more choice, convenience and flexibility in managing their insurance.

## **Section 3. Definitions**

As used in this Chapter, the following definitions apply:

(1) "Delivered by electronic means" means either of the following:

(a) Delivery to an electronic mail address at which a party has consented to receive notices or documents.

(b) Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party. The separate notice of the posting shall contain the internet address at which the documents are posted. For purposes of this subsection, delivery shall be effective upon the latter of the posting or the actual delivery of the separate notice of the posting.

(2) "Party" means any recipient of any notice or document required as part of an insurance transaction, including but not limited to an applicant, an insured, a policyholder, a covered person, or an annuity contract holder.

## **Section 4. Electronic delivery of insurance documents and notices**

A. As used in this section, the term:

(1) 'Health benefit plan' means a policy, contract, certificate, or agreement entered into, offered by, or issued by an insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services, including a vision or dental benefit plan and a self-insured plan not subject to ERISA.

(2) 'Plan sponsor' means a person, other than a regulated entity, who establishes, adopts, or maintains a health benefit plan that covers residents of this state, including a plan established, adopted, or maintained by an employer or jointly by an employer and one or more employee organizations, an association, a committee, a joint board of trustees, or any similar group of representatives who establish, adopt, or maintain a plan.

B. Subject to the requirements of this Section, any notice to a party or any other document required by law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if the electronic means meet the requirements of the [Uniform Electronic Transactions Act/state technology law].

C. Delivery of a notice or document in accordance with this Section shall be considered equivalent to and have the same effect as any delivery method required by law, including delivery by first class mail, first class mail with postage prepaid, certified mail, certificate of mail, or certificate of mailing.

D. A notice or document may be delivered by electronic means by an insurer to a party pursuant to this Section if all of the following apply:

(1) The party has affirmatively consented electronically, or confirmed consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means to which the party has given consent, and the party has not withdrawn the consent.

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of all of the following:

(a) The hardware and software requirements for access to and retention of a notice or document delivered by electronic means.

(b) The types of notices and documents to which the party's consent would apply.

(c) The right of the party to withdraw consent to have a notice or document delivered by electronic means, at any time, and any conditions or consequences imposed in the event consent is withdrawn.

(d) The procedures a party must follow to withdraw consent, which can be no more burdensome than providing consent, to have a notice or document delivered by electronic means and to update the party's electronic mail address.

(e) The right of a party to have any notice or document delivered, upon request, in paper form.

E. (1) The plan sponsor of a health benefit plan may, on behalf of covered persons enrolled in the plan, provide the consent to the mailing of all communications related to the plan by electronic means otherwise required by paragraph (1) and (2) of subsection (D).

(2) Before consenting on behalf of a covered person, a plan sponsor must:

(a) confirm that the covered person routinely uses electronic communications during the normal course of employment and is able to access and retain electronic communications that may be delivered by the insurer; and

(b) Inform the party that such consent will be provided, and that notices and documents related to the plan may be delivered to the party's work electronic mail

address unless the party affirmatively opts out of delivery by electronic means or provides an alternative electronic mail address.

(3) Before providing delivery of a notice or document by electronic means pursuant to this subsection, the insurer for the health benefit plan must:

(a) Provide the party with a clear and conspicuous statement informing the person of all of the following:

(i) The types of notices and documents that may be delivered to the covered person by electronic means.

(ii) The right of the party to withdraw consent to have a notice or document delivered by electronic means at any time without charge.

(iii) The procedures the party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the person's electronic mail address.

(iv) The right of the party to have any notice or document delivered, upon request, in paper form free of charge.

(b) Provide the party an opportunity to opt out of delivery by electronic means;

(c) Document that the applicable provisions of the conditions under [insert citation from state UETA or similar law] are satisfied; and

(d) Satisfy the other requirements of this Chapter.

(4) When a notice or document is provided electronically to a party pursuant to this subsection, an insurer shall apprise the party of the significance of the notice or document when it is not otherwise reasonably evident and of the right to request and obtain a paper version of such notice or document.

F. An insurer shall take all measures reasonably calculated to ensure that delivery by electronic means pursuant to this Section results in receipt of the notice or document by the party.

### **Section 5. Change in hardware or software requirements**

After the consent of a party is given, in the event a change in the hardware or software requirements needed to access or retain a notice or document to be delivered by electronic means creates a material risk that the party will not be able to access or retain the notice or document to which the consent applies, the insurer shall not deliver a notice or document to the party by electronic means unless the insurer complies with Section 4 of this Act and provides the party with a statement that describes all of the following:

(1) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means.

(2) The right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

## **Section 6. Applicability**

A. The provisions of this Section shall not be construed to affect requirements related to content or timing of any notice or document required by any other provision of law.

B. If a provision of this Title or other applicable law requiring a notice or document to be provided to a party expressly requires confirmation of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for active confirmation of receipt by the recipient.

C. This Chapter shall not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this Chapter to a party who, before that date, has consented to receive the notice or document in an electronic form otherwise allowed by law.

## **Section 7. Contracts and policies not affected**

The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party shall not be denied solely because of the failure of the insurer to obtain electronic consent or confirmation of consent of the party in accordance with the provisions of this Chapter if the notice or document is delivered in paper form.

## **Section 8. Withdrawal of consent**

A. A withdrawal of consent by a party shall not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.

B. A withdrawal of consent by a party shall be effective within a reasonable period of time after receipt of the withdrawal by the insurer.

C. Failure by an insurer to comply with any provision of Section 4 or 5 of this Act may be treated, at the election of the party, as a withdrawal of consent for purposes of this Chapter.

## **Section 9. Prior consent to receive notices or documents in an electronic form**

If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this Chapter, and an insurer intends to deliver additional notices or documents to the party in an electronic form pursuant to this Chapter, then prior to delivering the additional notices or documents electronically, the insurer shall comply

with the provisions of Section 4 of this Act and shall provide the party with a statement that describes both of the following:

- (1) The notices or documents that shall be delivered by electronic means that were not previously delivered electronically.
- (2) The party's right to withdraw consent to have notices or documents delivered by electronic means, without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

### **Section 10. Alternative method of delivery required**

An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if either of the following occurs:

- (1) The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party.
- (2) The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

The insured's consent to electronic delivery shall not preclude the insurer from delivering a notice or document by any other delivery method permitted by law.

### **Section 11. Limitation of liability**

An insurance producer shall not be subject to civil liability for any harm or injury that occurs because of a party's election to receive any notice or document by electronic means or by an insurer's failure to deliver or a party's failure to receive a notice or document by electronic means.

### **Section 12. Posting Policy on Internet**

A. An insurance policy and an endorsement that does not contain personally identifiable information may be mailed, delivered, or, if the insurer obtains separate, specific consent, posted on the insurer's website. If the insurer elects to post an insurance policy and an endorsement on the insurer's website in lieu of mailing or delivering the policy and endorsement to the insured, the insurer shall comply with the following conditions:

- (1). The policy and an endorsement must be accessible to the insured and producer of record and remain that way while the policy is in force;
- (2). After the expiration of the policy, the insurer shall either
  - (a). Make the expired policy and endorsement available upon request, for a period of five years; or

- (b). If the insurer continues to make the expired policy or endorsement available on its website, keep the insured's user ID active for a period of five years;
- (3). The policy and endorsement must be posted in a manner that enables the insured and producer of record to print and save the policy and endorsement using a program or application that is widely available on the internet and free to use;
- (4). The insurer shall provide the following information in, or simultaneous with, each declaration page provided at the time of issuance of the initial policy and any renewals of the policy:
  - (a). A description of the exact policy and endorsement form purchased by the insured;
  - (b) A description of the insured's right to receive, upon request and without charge, an electronic and/or a paper copy of the policy and endorsement; and
  - (c) The internet address at which the policy and endorsement are posted;
- (5) The insurer, upon an insured's request and once without charge following receipt of the initial copy, shall mail a paper copy of the policy and endorsement to the insured; and
- (6). The insurer shall provide notice, either electronically or in writing at the insured's option, of any change to the forms or endorsement; the insured's right to obtain, upon request and once without charge following receipt of the initial copy, a paper copy of the forms or endorsement; and the internet address at which the forms or endorsement are posted.

B. This section does not affect the timing or content of any disclosure or document required to be provided or made available to any insured under applicable law

### **Section 13. Receipt of Claim Payments by Electronic Transfer**

All claims brought by insureds, workers' compensation claimants, or third parties against an insurer shall be paid by check or draft of the insurer or, if offered by the insurer and the claimant consents, electronic transfer of funds to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or her/his attorney, or upon direction of the claimant to one specified. However, when the employer has advanced the claims payment to the claimant, the check or draft shall be paid jointly to the claimant and the employer; or, if consented by all parties, the electronic payment shall be paid to the trust account. The check or draft shall be paid jointly until the amount of the advanced claims payment has been recovered by the employer. The electronic payment shall be held in trust until the amount of the advanced claims payment has been recovered by the employer.

### **Section 14. Rules**

The Insurance Commissioner may adopt rules to implement the provisions of this Act.

**Section 15. Effective Date**

Section 14 of this Act shall take effect immediately. The remaining sections of the Act shall take effect 180 days following enactment.