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Connecticut Enacts the National Association of Insurance Commissioners' Model Insurance Data Security Act. Law May Impact Not Only Insurers but Also Other Entities Regulated by State Insurance Departments.

### **Model Insurance Data Security Act – Codification of Best Practices or New Requirements?**

*The Model Insurance Data Security Act (“Model Act”), which was drafted by the National Association of Insurance Commissioners (“NAIC”), requires entities licensed by state insurance departments to implement a series of proactive cybersecurity practices. The law adopts a risk-based approach similar to that imposed by federal industry-specific privacy statutes such as the Health Insurance Portability and Accountability Act (HIPAA), which governs healthcare providers, and the Gramm-Leach-Bliley Act (GLBA), which governs the financial services sector. The Model Act also shares some similarities with preexisting state statutes and regulations governing insurance companies’ data security practices, such as those in California and Virginia. According to the NAIC, the Model Act was developed in 2017 in response to several data breaches involving large insurers. The Model Act has been enacted in Connecticut, where it took effect on October 1, 2020, along with ten other states.*

### **Core Requirements of Model Act**

#### **a. Cyber Security Program**

*The Model Act requires covered entities to perform and, periodically update, risk assessments to develop, document, and implement a cybersecurity program commensurate with the size and complexity and the nature of the activities conducted by a covered entity. It is to include administrative, technical and physical safeguards that:*

- *Protect the security and confidentiality of the nonpublic information and the security of the information system;*
- *Protect against all reasonably foreseeable threats and hazards to the security or integrity of nonpublic information and information systems; and,*
- *Protect against unauthorized access to, or use of, nonpublic information and minimize the likelihood of harm to any consumer.*

#### **b. Retention Schedule**

*Covered entities are required to define, and periodically reevaluate, a schedule for retention of nonpublic information and a mechanism for the destruction of such information when such information no longer is needed.*

#### **c. Incident Response Plan and Vetting of Third Party Service Providers**

*The Model Act also requires covered entities to develop and implement written incident response plans and report cybersecurity incidents to the insurance commissioners in each enacting state in which they are licensed. Covered entities are also required to exercise due diligence in the selection of third-party service providers and require such providers to implement appropriate administrative, technical, and physical measures, to protect and secure nonpublic information.*

#### **d. Designated Employee or Third-Party to Oversee Manage Cybersecurity Risk**

*The Model Act requires covered entities to designate an employee or outside vendor to manage cybersecurity risk management. The designated employee or vendor must assess the likelihood of cybersecurity threats and the adequacy of safeguards, exercise due diligence in selecting such licensee's third-party service providers, and require each of such licensee's third-party service providers to implement appropriate administrative, technical and physical measures to protect and secure the information systems that are, and nonpublic information that is, accessible to, or held by, such*

licensee's third-party service providers.

#### ***Are Non-Insurers Licensed by State Insurance Departments Covered by the Model Act?***

*In most states, a variety of businesses other than traditional insurance companies are regulated by state insurance departments. Those include insurance brokers and agents, insurance premium finance companies, insurance adjusters, and providers of service contracts. The Model Act is not clear as to whether its coverage extends to such non-insurer licensees. Given that (i) the Model Act defines "licensees" subject to the statute as "entities licensed by the Department of Insurance" and (ii) the NAIC has taken the position that the Model Act applies also to "other entities licensed by the department of insurance" of a state that has enacted the Model Act and not merely to insurers, it is likely that courts and regulators would extend its reach to non-insurers licensed by state insurance departments. Therefore, all other entities licensed by enacting states' insurance departments should be prepared to comply with the statute's requirements.*

#### **Outlook**

*The Model Act is in many ways a codification of cybersecurity practices already employed in various degrees by regulated businesses. The additional compliance burden may be outweighed by the fact that adherence to its provisions may prove a valuable defense, if not a safe harbor, against cyber-incident litigation. Insurers and other entities regulated by state insurance departments would be well advised to adhere to the Model Act's requirements even if licensed in a state that has not yet enacted or adopted the Model Law.*

For any questions or concerns about specific situations, please feel free to contact **Joyce Boyle** at [jboyle@mdmc-law.com](mailto:jboyle@mdmc-law.com) or **Bradford Meisel** at [bmeisel@mdmc-law.com](mailto:bmeisel@mdmc-law.com).

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