

Many insurance agencies are being asked to sign “revised” privacy agreements with their insurers. These revisions are now also adding data and breach security provisions, as carriers attempt to manage the expanding area of “cyber liability.”

As always, before you sign, all agencies should review these agreements carefully. There are several things in particular for agencies to keep an eye on as they review these agreements and those are as follows:

1. Is the agreement clear as to what information it is asking the agencies to keep private?
2. Does the agreement affect the agency’s ownership of expirations? The answer to this questions should be no.
3. Does the agreement affect the agency’s ability to shop insurance with other carriers? The answer to this questions should be no.
4. If the agreement is issued independent of, and not as an addendum to your existing, current agency agreement with the carrier, does any of the language and/or provisions in this new one seem to counter, conflict or confuse the provisions already in your agency agreement that also address these areas? The answer to this question should be that it does not.

The agency may have other items that they want to review the privacy agreement for.

Privacy provisions already included in current agency agreements ask agencies to comply with Federal or State laws and provide specific reference to the Federal or State laws that they are asking the agency to comply with are generally okay. Some of these newer agreements are both expressing more details in their obligations of agencies in these traditional areas, as well as, adding further specifics for the increasing number of additional laws, regulations and rules that address more specifically data security and data breach protocols, as well as cyber liability exposures.

Insurance agencies, both as a matter of mutual obligation under agency-carrier agreements, and as a direct, independent obligation of the agency and as licensed insurance producers; have to comply with State and Federal laws in this area anyway. However, agencies have to comply with these laws to the extent that they apply to insurance agencies and/or the nature of the insurance and business transactions which they perform.

A carrier agreement that would attempt to obligate an insurance agency to comply with aspects of law that, otherwise are not applicable to insurance agencies (but rather carrier obligations or other general commercial vendors) would not be okay.

A Privacy &/or Data Security agreement which asks an insurance agency to state whether or not it has a privacy policy for its employees is okay since under current law agencies are expected to have such policies and practices in place and applied to all agency employees. But a carrier agreement that attempts to expand/extend their reach in obligating an agency to other parties beyond that would be problematic.

The most important thing to understand is how any such privacy/data security agreement interacts with your existing and already executed agency/carrier contract, and the overall nature of the agency's operations. By definition and practice, independent insurance agencies do business with many carriers – all of which must comply under these laws. Agencies must be able to maintain a common set of compliance policies and procedures that they implement in their agency to both meet its independent legal obligations, and at the same time meet all their mutual obligations in this area to all carriers with which they do business. Having an insurer driving and/or directing agency practice and/or obligation that is not aligned and/or conflicts with this would be a concern.

If insurance agents want more information on federal privacy laws that apply to insurance agencies that information can be viewed at:

1. http://www.maine.gov/pfr/insurance/consumer/faq_rights.htm
2. www.pianet.com (log in required with user ID & password)
3. www.iiaba.net (log-in required with user ID & password)

