

Bulletin No. 2017-12

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RE: IMPACT OF CYBERSECURITY REGULATION (23 NYCRR 500) ON INSURANCE PRODUCERS

The reach of New York State Department of Financial Services (DFS) Cybersecurity Regulation (23 NYCRR 500) is very extensive and will have a significant impact on all insurance producers (both resident and nonresident), even those that qualify for the limited exemption.

The regulation, which took effect as of March 1, 2017 and mandates compliance by September 1, 2017, requires every “covered entity,” including New York licensed insurance producers, to assess their specific cybersecurity risk profile and design a program that addresses those risks as well as conduct periodic reviews and updates of their cybersecurity program in order to ensure the security of their information systems and protection of their clients’ nonpublic information.

Various law firms, producer associations and others have published very detailed guidance on how to comply with the requirements of this Regulation. ELANY’s comments below are focused on a few unique situations that may affect insurance producers regarding this regulation.

Each New York licensed Insurance producer is a “Covered Entity.” While insurance producers may not meet the technical definition of a “Third Party Service Provider,” it is probable that New York licensed insurers, with whom insurance producers electronically exchange “Nonpublic Information,” will treat them as “Third Party Service Providers.”

- If treated as “Third Party Service Providers,” all insurance producers doing business with a number of “covered entity” insurance companies will be required to implement separate and various cybersecurity requirements adopted by each insurer subject to the regulation. Insurance producers might find it difficult to simultaneously coordinate and meet the requirements of the “covered entity” insurance company’s mandates with the insurance producers own cybersecurity plan within the timeframes required by the regulation.
- To the extent insurance producers are treated as “third party service providers,” they will have to provide “representations and warranties” of compliance with each of the “covered entity” insurance company’s cybersecurity policies and procedures and inform the covered entity if their data has been compromised.
- Even insurance producers that are not licensed in New York and not producing New York insurance business but who electronically exchange Nonpublic Information with a “covered entity” New York licensed insurer may be treated as “Third Party Service Providers” in order for these insurers to successfully execute a leak proof cybersecurity program required by the regulation.
- Covered entities who qualify for the limited exemption must file a “Notice of Exemption” (Appendix B of Regulation) with the DFS within 30 days of determination of exempt status.
- As a “Covered Entity” all insurance producers must also implement minimum cybersecurity standards for their critical “third party service provider” vendors and create a process to periodically assess and evaluate the adequacy of their cybersecurity practices. This includes evaluations of all “overseas” outsourcing IT firms and the like that have access to your information systems and clients’ nonpublic information.

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