Statement of

the American Council of Life Insurers

Before the

House Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

On

The Role of FCRA in Employee Background Checks and the Collection of Medical Information

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Chairman Bachus, and Members of the Subcommittee. I am Roberta Meyer, Senior Counsel at the American Council of Life Insurers ("ACLI"). I am pleased to appear before the Subcommittee today on behalf of the ACLI to discuss the topic of the Fair Credit Reporting Act ("FCRA") and the collection of medical information by life insurers. The ACLI is the principal trade association of life insurance companies. Its 383 member companies account for 73 percent of the assets of legal reserve life insurance companies, 70 percent of life insurance premiums and 77 percent of annuity considerations in the United States. ACLI members are also major participants in the pension, long-term care insurance, disability income insurance and reinsurance markets.

Life insurers have a long history of dealing with highly sensitive information, including consumers' medical information, in a professional and appropriate manner. Life insurers must collect and use medical information in order to serve their existing and prospective customers. At the same time, life insurers support strict protections for medical records confidentiality, including support for prohibiting the sharing of medical information in connection with an extension of credit .

Why Life Insurers Collect Medical Information

In today's world, it is more important than ever for consumers to have ready access to as much insurance as possible to protect their future financial security as well as the financial security of their families. In order to continue to make insurance products and services widely available at the lowest possible cost, life insurers need access to information that establishes a consumer's eligibility and the appropriate premium for insurance products for which the consumer has applied. An applicant's medical

condition is an important factor in making that determination. Accordingly, insurers collect personal medical information from consumers in connection with providing life, disability income and long term care insurance.

Medical information is used to group applicants into pools that accurately reflect the financial risk presented by the applicants. This system of classifying proposed insureds by level of risk is called risk classification. It enables insurers to group together people with similar characteristics and to calculate a premium based on that group's level of risk. Those with similar risks pay the same premiums. The process of risk classification provides the fundamental framework for the current private insurance system in the United States. It is essential to insurers' ability to determine premiums which are fair relative to the risk posed by the applicant. It is the process of risk classification based in large part on medical information, which has made life, disability income and long term care insurance widely available and affordable in our country. Preserving our risk classification process is critical to preserving our ability to continue to pay future claims to consumers.

Life insurers may collect medical information directly from the consumer. With the consumer's consent, medical information may also be collected from the consumer's medical provider. Medical information used for underwriting purposes is collected from third parties only with the consumer's consent. Insurers may also request medical information in connection with processing a policyholder's claim. For additional information regarding the operational aspects of the underwriting process, I refer you to

my previous testimony before the Subcommittee in June 1999 and before the full Committee in June, 2000.[1]

The ACLI's Medical Information Confidentiality Policy

ACLI members are keenly aware of the importance of maintaining the confidentiality of medical information of policyholders. They are committed to the principle that they must handle medical information appropriately and ensure that its confidentiality is preserved. To underscore that commitment, our members strongly support ACLI's policy, entitled Confidentiality of Medical Information: Principles of Support, which is intended to be used in connection with legislative and regulatory privacy proposals. I have attached a copy of our Principles of Support to my testimony.

The ACLI's Principles of Support provide for strict limits on the ability of insurers to obtain and disclose medical information about their policyholders. The Principles also support a prohibition against an insurance company sharing a consumer's medical information with a financial institution, such as a bank, for the purpose of determining the person's eligibility for a loan or other credit. This policy applies even if the financial institution is affiliated with the insurer. Our members are strongly committed to this principle.

Medical Information and the FCRA

Under the FCRA, medical information may be a "consumer report" because it bears on the consumer's personal characteristics and is used as a factor in establishing a consumer's eligibility for insurance. However, medical information is accorded special

[1] Testimony of the American Council of Life Insurance Before the House Committee on Banking and Financial Services, Subcommittee on Financial Institutions and Consumer Credit On Emerging Privacy Issues, June 21, 1999; Testimony of the American Council of Life Insurers Before the House Committee on Banking and Financial Services On The Medical Financial Privacy Protection Act, June 14, 2000.

status under the FCRA. Medical information can be disclosed by a consumer reporting agency to an insurer only in connection with an insurance transaction and only with the consumer's consent.

The FCRA is important to insurers because it establishes a framework under which insurers may obtain and share consumer information which facilitates the widespread availability and affordability of life insurance products and services uniformly through out the country. For example, the Act establishes that insurers may obtain a consumer report in connection with underwriting insurance. The Act enables insurers to obtain and share information that is critical to the determination of the consumer's eligibility for insurance and the appropriate premium. At the same time, the FCRA provides safeguards to ensure that the confidentiality of highly sensitive medical information will be preserved. Insurers believe that the FCRA is critical to their business. The act acknowledges that it is important for insurers to obtain medical information in connection with underwriting insurance and processing claims. At the same time, the FCRA recognizes the highly sensitive nature of medical information and establishes safeguards for consumers.

The Gramm-Leach-Bliley Act and State Law

Insurers also strongly support the privacy protections of Title V of the Gramm-Leach-Bliley Act (the "GLB Act"). Under the GLB Act, medical information is regarded as nonpublic personal information and is subject to the protections established by that act. Medical information may not be shared with an unaffiliated third party unless the consumer has been given a notice that the information may be shared and is provided with the opportunity to opt-out of such sharing. Medical information is permitted to be

shared without an opt-out only for operational reasons or in connection with a joint marketing agreement between two or more financial institutions. However, as noted below, state privacy laws and regulations generally require an opt-in for the sharing of medical information.

The GLB Act provides that state insurance authorities are to adopt rules to implement and enforce the GLB Act under state insurance law. When the National Association of Insurance Commissioners ("NAIC") and the states were in the process of developing and promulgating their rules, the ACLI expressed the view that medical information should be accorded additional protections in view of its highly sensitive nature. Accordingly, the ACLI firmly supported the heightened protections contained in the NAIC Privacy of Consumer Financial and Health Information Model Regulation. Under the Model Regulation, an insurer may not disclose health information about a consumer unless an authorization is obtained from the consumer. In effect, the NAIC's Model Regulation requires an opt-in before medical information may be shared by insurers. It should be noted, of course, that like the GLB Act, the Model Regulation permits the disclosure of medical information in connection with operational requirements in order to complete the insurance transaction, as well as for other operational needs.

The NAIC's Insurance Information and Privacy Protection Model Act

Before Congress enacted the GLB Act, the NAIC developed its Insurance Information and Privacy Protection Model Act (the "NAIC Model Act"). The NAIC Model Act requires the written authorization of the consumer before an insurer may share consumer medical information with another person. Information, of course, can be

shared in order to enable the insurer to perform business functions needed to process an application and to complete the insurance transaction. Under the NAIC Model Act, an insurer must obtain a consumer's authorization (i.e., opt-in) before it may disclose medical information to a nonaffiliated party for marketing. The Model Act provides an added degree of protection to consumers and underscores the importance insurers attach to preserving the confidentiality of consumer medical information. Also, in addition to these NAIC model laws, many states have other laws and regulations that require insurers to obtain consumers' consent before disclosing medical information relating to particular medical conditions.

HIPAA

Health insurers and long term care insurers are subject to regulations adopted by the Secretary of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The ability of other insurers, including life and disability income insurers, to obtain medical information is also subject to the HIPAA rules. The HIPAA rules establish a broad regulatory framework governing the use and disclosure of consumer health information by health care providers, such as doctors, hospitals, pharmacies and health plans, which include long term care insurers. Unless they are engaged in treatment, payment or health care operations, health care providers may not disclose medical information about a consumer to others, including life and disability insurers, as well as long term care insurers, unless they first obtain the authorization (i.e., opt-in) of the consumer. Similarly, unless they are engaged in treatment, payment, or health care operations, health insurers and long term care insurers may only disclose medical information about a consumer with the consumer's

authorization (i.e., opt-in). The HIPAA rules, therefore, provide another significant level of protection to assure that consumer medical information is handled properly.

Conclusion

The ACLI and its members are committed to protecting the privacy of consumer medical information. We believe that our exemplary record in preserving the confidentiality of such information demonstrates our commitment to protecting the privacy of our policyholders. We reiterate our strong support for strict protections for medical records confidentiality, including support for prohibiting the sharing of medical information in connection with an extension of credit . We appreciate the opportunity to testify today, and I would be pleased to address any questions the Subcommittee may have.

Confidentiality of Medical Information

Principles of Support

Life, disability income, and long-term care insurers have a long history of dealing with highly sensitive personal information, including medical information, in a professional and appropriate manner. The life insurance industry is proud of its record of protecting the confidentiality of this information. The industry believes that individuals have a legitimate interest in the proper collection and use of individually identifiable medical information about them and that insurers must continue to handle such medical information in a confidential manner. The industry supports the following principles:

1. Medical information to be collected from third parties for underwriting life, disability income and long-term care insurance coverages should be collected only with the authorization of the individual.

2. In general, any redisclosure of medical information to third parties should only be made with the authorization of the individual.

3. Any redisclosure of medical information made without the individual's authorization should only be made in limited circumstances, such as when required by law.

4. Medical information will not be shared for marketing purposes.

5. Under no circumstances will an insurance company share an individual's medical information with a financial company, such as a bank, in determining eligibility for a loan or other credit - even if the insurance company and the financial company are commonly owned.

6. Upon request, individuals should be entitled to learn of any redisclosures of medical information pertaining to them which may have been made to third parties.

7. All permissible redisclosures should contain only such medical information as was authorized by the individual to be disclosed or which was otherwise permitted or required by law to be disclosed. Similarly, the recipient of the medical information should generally be prohibited from making further redisclosures without the authorization of the individual.

8. Upon request, individuals should be entitled to have access and correction rights regarding medical information collected about them from third parties in connection with any application they make for life, disability income or long-term care insurance coverage.

9. Individuals should be entitled to receive, upon request, a notice which describes the insurer's medical information confidentiality practices.

10. Insurance companies providing life, disability income and long-term care coverages should document their medical information confidentiality policies and adopt internal operating procedures to restrict access to medical information to only those who are aware of these internal policies and who have a legitimate business reason to have access to such information.

11. If an insurer improperly discloses medical information about an individual, it could be subject to a civil action for actual damages in a court of law.

12. State legislation seeking to implement these principles should be uniform. Any federal legislation to implement the foregoing principles should preempt all other state requirements.