

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE

RULE NO. 76
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RULE NO. 76

**CHARACTERISTICS OF THE ELECTRONIC STORAGE SYSTEM FOR THE
PRESERVATION OF BOOKS, RECORDS AND ANY DOCUMENT RELATED TO THE
INSURANCE BUSINESS AND STANDARDS FOR THE DISPOSAL OF ORIGINAL
DOCUMENTS**

SECTION 1. GENERAL PROVISIONS

SUBSECTION 1. LEGAL BASIS

The Office of the Commissioner of Insurance of Puerto Rico adopts Rule No. 76 of the Regulations of the Puerto Rico Insurance Code under the provisions of Section 2.040 and Section 2.161 of Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code and Public Law No. 170 enacted on August 12, 1988, 3 §§ 2101 *et seq.* known as Uniform Administrative Procedures Act.

SUBSECTION 2.- PURPOSE AND SCOPE

The purpose of this Rule is to establish the characteristics of the electronic storage system to be used by the components of the insurance industry that choose to use the system to totally or partially preserve books, records, and other documents related to the insurance business as required by the Puerto Rico Insurance Code and its Regulations. In addition, this Rule establishes the standards for data protection and the disposal of original documents that are stored electronically, as well as the penalties for failure to comply with the provisions of Section 2.161 of the Puerto Rico Insurance Code and of this Rule.

This Rule will be applicable to all insurers, health services organizations, agents, general agents, brokers, adjusters, rating bodies, and consultant or service organizations that hold a license or authorization to transact insurance business, duly issued by the Office of the Commissioner of Insurance of Puerto Rico (the "OCI") and that decide to use an electronic storage system, as set forth in this Rule.

SECTION 2 – DEFINITIONS

The following words and phrases shall have meanings set forth below:

1. "Certified information systems auditor" means an information systems auditor who is certified by the Information Systems Audit Control Association (ISACA), whose responsibilities include determining whether a computer

system protects the assets of an organization, maintains the integrity of the data stored in the system, and allows for achieving organizational goals, while making an efficient use of the information system resources.

2. "Code"- means the Puerto Rico Insurance Code, Public Law No. 77, enacted on June 19, 1957, as amended, 26 L.P.R.A., et seq.
3. "Commissioner"- means the Commissioner of Insurance of Puerto Rico.
4. "Original document" – means the paper or digital document used to create the document in an electronic format.
5. "Electronic" – means any aspect related to technology with an electronic, digital, magnetic, wireless, optical, electromagnetic or similar capacity.
6. "Information" – means data, text, images, sounds, code contained in a document or anything similar to such.
7. "Legible" – means that the image reproduced by means of an electronic storage system is a true and exact copy of the original document, and may be read easily by any person.
8. "Electronic media" – means any form of message transmission using a format that will allow for a visual examination of the content, whether by using the monitor of a personal computer or in any other manner.
9. "Person" – means a natural or legal person.
10. "Electronic storage system" – means the method for preparing, recording, transferring, listing, storing, preserving, recovering or reproducing documents in one of the following ways:
 - a. Reproduction of images of books, records and documents in an electronic storage system; transfer of computerized documents to an electronic storage system, using techniques such as optical discs that will allow for visualizing or reproducing documents without using the original software;
 - b. Any other method that the Commissioner may from time to time authorize by Ruling Letter.

11. "Listing system" – means any method used to maintain, organize or coordinate multiple electronic storage systems, which will allow for the identification and recovery of the electronically stored data.

SECTION 3. – ELECTRONIC STORAGE SYSTEM

Any person to whom this Rule may be applicable may use an electronic storage system, provided that the system complies with all of the provisions of this Rule.

The electronic storage system must ensure the complete and accurate filing and transfer of the original document, as well as the reproduction of the electronically stored data.

SECTION 4.- GENERAL REQUIREMENTS FOR ELECTRONIC STORAGE SYSTEM

Any electronic storage system that is used to comply with the provisions of this Rule should have as a minimum the following general characteristics:

1. The capacity to transfer and store in a true and exact manner the content of the original document.
2. Easy access to the stored information within a reasonable period of time.
3. Guarantees the integrity of the electronically stored data.
4. Allows for the transfer or exchange of the stored documents to any other computer application.
5. Capacity to reproduce the document legibly and true to the original.
6. Identifies anomalous situations caused by changes in voltage or other events that could affect the integrity of the electronically stored document.
7. The licensing contract does not limit or restrict access by the Commissioner.

SECTION 5.- MINIMUM CONTROLS TO BE ESTABLISHED IN AN ELECTRONIC STORAGE SYSTEM

Any person who elects to use an electronic storage system to totally or partially preserve its books, records, and other documents related to the insurance business should establish minimum controls or security measures to guarantee the reliability, integrity and veracity of the electronically stored information by:

1. Limiting access to the electronic storage system and comment privileges on the original image to guarantee data integrity.
2. Distributing responsibilities among staff assigned to use and maintain the electronic storage system to avoid possible conflicts of interest that could compromise data integrity.

3. Recording any use of the electronic storage system, including the identity of the person accessing the system, the activities performed while using the system, the date, time, and place of origin, and the results of such use.
4. Tracking any unauthorized change in the electronic storage system to determine accountability.
5. Maintaining a prevention and disaster management plan, including emergency data backup procedures for the electronic storage system.
6. Performing regular audits of the electronic storage system and addressing any finding immediately.

SECTION 6. REQUIRED DOCUMENTATION

Any insurer, health services organization, agent, general agent, broker, adjuster, rating body, and consultant or service organization shall establish and maintain at least the following documentation for the electronic storage system:

1. A list of the uses and purposes of the electronic storage system, as well as policies and specific procedures for the operation and maintenance of the system.
2. Quality controls, security measures, tests, and retention of information.
3. Hardware specifications and operation instructions and software used.
4. A listing system.

The required documentation shall have the following characteristics:

1. Be correct, current, and administered by staff possessing the necessary training and knowledge on the subject.
2. Be available and easily accessible.
3. Be in a clear format that is easily understood by current and future external and internal users.
4. Be immediately available if needed for use for any legal purpose or legal proceedings.
5. Be retained for the time provided for in this Rule.

Any anomalous situation should be recorded to support the electronic storage system logs and reports prepared by the information systems division.

SECTION 7. – CERTIFICATION OF THE ELECTRONIC STORAGE SYSTEM

Any insurer, health services organization, agent, general agent, broker, adjuster, rating body and consultant or service organization using an electronic storage system shall have the obligation to obtain the opinion of a certified information system auditor to the effect that the electronic storage system complies with the requirements set forth in the Code and this Rule.

In addition, the finance director or the person in charge of information systems shall certify that the information on which the auditor based the opinion is correct and complete.

The certifications required in this Section shall be filed with the OCI within 90 days following the date on which the electronic storage system began to operate.

Given the changing and evolving nature of information systems and the technology used for electronic information storage, the certifications required in this Section shall be filed with the OCI once every three (3) years, to prevent that the system being used, while functional, may be insufficient for current circumstances.

SECTION 8.- DESTRUCTION OF DOCUMENTS

Any document or information in electronic format that is stored in an electronic storage system is considered to have been destroyed if the person to whom this Rule is applicable ceases to maintain and update the system and/or hardware needed to comply with the provisions of this Rule.

After storing documents in an electronic storage system, any person to whom this Rule is applicable may destroy the original documents, if the person can document compliance with all of the provisions and requirements of this Rule and the Code. Likewise, the person will be responsible for preserving the originals of those documents which, given the nature of the person's business, must be preserved.

Nothing provided in this Section should be interpreted as exempting any person to whom this Rule is applicable from complying with any other federal or state law or regulation regarding the retention of original documents, and therefore may not be used as a pretext for any failure to comply with said federal or state law or regulations.

SECTION 9. – RETENTION PERIOD

All documents that are stored electronically shall be retained for the longer of a period of five (5) years, or up to one year from the time that any legal action brought in relation to a policy has concluded.

SECTION 10. – POWERS OF THE COMMISSIONER

The Commissioner shall have the power and authority, as provided in Section 2.030 of the Code, to examine and investigate any person to whom this Rule is applicable to verify compliance with the provisions of this Rule and of the Code.

SECTION 11. – PENALTIES

Any violation of the provisions of this Rule will be subject to the penalties provided in Chapter 27 of the Code.

SECTION 12. – INTERACTION WITH FEDERAL LEGISLATION

Any document or information that is retained or preserved in electronic format that is related to the condition of health of a client or subscriber, in addition to complying with all of the provisions of this Rule, shall comply with all of the provisions related to the confidentiality of such information and the security rules set forth in the federal law known as the "Health Insurance Portability and Accountability Act of 1996", ("HIPAA"), and any other applicable federal or state law currently in effect or that may be enacted in the future.

SECTION 13. - SEVERABILITY

If any word, sentence, paragraph, subsection, section or part of this Rule were found to be null or invalid by a court of competent jurisdiction, the order entered by such a court will not affect or invalidate the remaining provisions of this Rule and the effect of such order will be limited to such word, sentence, paragraph, subsection, section or part that has been found to be null.

SECTION 14. - EFFECTIVE DATE

The provisions of this Rule shall enter into effect thirty (30) days after filing at the Department of State of Puerto Rico under the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known the "Uniform Procedures Act".

SIGNED

FERMÍN CONTRERAS-GÓMEZ
COMMISSIONER OF INSURANCE

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