

Draft: 8/8/23

Privacy Protections (H) Working Group  
Conference Call  
July 25, 2023

The Privacy Protections (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met July 25, 2023. The following Working Group members participated: Katie Johnson, Chair (VA); Cynthia Amann, Vice Chair (MO); Damon Diederich and Jennifer Bender (CA); George Bradner and Anthony Francini (CT); Erica Weyhenmeyer (IL); LeAnn Crow (KS); Van Dorsey (MD); Robert Wake and Sandra Darby (ME); Jeff Hayden (MI); T.J. Patton (MN); Santana Edison (ND); Martin Swanson (NE); Richard Hendrickson and Gary Jones (PA); Patrick Smock (RI); Frank Marnell (SD); Mike Walker (WA); and Rachel Cissne Carabell and Timothy Cornelius (WI). Also participating were: Doug Ommen (IA); and Garth Shipman (VA).

1. Discussed Comments Received on the Draft of Model #674.

Johnson said that the revised work plan dated July 10, 2023, is posted on the Working Group's web page and indicates that the exposure draft of the new *Insurance Consumer Privacy Protection Model Law* (#674) was distributed July 11 for a comment period ending July 28. She said it also lists Sept. 12 as the date that bi-weekly Working Group open meetings will resume to discuss comments received. Johnson said the Working Group will hear comments on the new Model #674, starting with those from NAIC consumer representatives. Karrol Kitt (The University of Texas at Austin) said she is good with the revisions to Sections 17–20. Harry Ting (Health Consumer Advocate) said he would submit written comments by the end of the week that would include replacing the 10-year time for companies to comply with consent, use, and deletion of consumer data requirements with a more reasonable time frame that would include exceptions to be granted by the Commissioner. He said opt-in and opt-out needed expiration dates that are consistent in each section, as consumers tend to forget to whom they gave consent two years ago. Dr. Ting said he agreed with discussions during the interim meeting that included changing notice requirements to the 11 categories defined in the California Consumer Privacy Act (CCPA). He said that he opposed the adverse underwriting decisions section of the model that would require consumers to send a letter to request the reason for such denial because doing so would cause unnecessary delays and effort by consumers. He also said the option for a private right of action needs to include some individual remedy for significant breaches like that in the CCPA. Diederich asked if expiration dates should be included for consent only or other areas of the model.

Jeff Klein (McIntyre & Lemon, PLLC and the American Bankers Association—ABA) said changes to opt-in and opt-out have been narrowed to not include financial institutions; sensitive personal information (SPI) now includes emails; and the sharing of information now includes publicly available information. He said the ABA benefited from the private calls with the drafting group and that they would suggest adding the *Privacy of Consumer Financial and Health Information Regulation* (#672) sections verbatim to avoid state and federal conflicts. He agreed with Wes Bissett's (Independent Insurance Agents and Brokers Association—IIABA) comment letter that the new Model #674 should consider the 13 state privacy laws that have already been enacted.

Helen Dalziel (International Underwriting Association—IUA) said the IUA represents alien insurers with NAIC surplus lines written and asked that adverse underwriting decisions exclude lawful surplus lines because the definition of a licensee means that there is a relationship with companies, not with consumers but that brokers licensed to sell these should send notices to individual consumers. She said Article 3 (8) A (2) needs to include surplus and excess lines.

Jennifer McAdam (American Council of Life Insurers—ALCI) said the ACLI supports changes to private right of action and that the ACLI still has concerns with the new Joint Marketing Agreements section and the annual review of consumer data. She said the time to comply with the requirement to move away from legacy systems should be extended to 20 years and that the delivery of notice requirements needed to be modernized. McAdam expressed concern about the time left in the work plan and the amount of work still needed. She said ACLI members have been meeting weekly to discuss changes in the new model, and sometimes they meet more often. McAdam said more explanation is needed from drafters as to why the changes suggested by the ACLI were not made. She said ACLI members agree that progress has been made but that the language is unworkable for their members as revised.

Diederich said the Working Group wanted to make sure the legacy system issue does not limit real-time response and deletion. He asked the ACLI what time frame would work from its standpoint, as 10 years seemed generous to him. McAdam said that thousands of policyholders have been their customers for decades, so ACLI members need more than 10 years to change the systems in which the data for those policyholders' is recorded. Johnson said the Working Group recognized that there are difficulties but that some companies said 10 years was plenty of time. Even so, she said the Working Group gave commissioners discretion for individual company exclusions or extensions and that specific suggestions as to the desirable time frame are needed.

Swanson asked how much it would cost companies to make this change and how much of that companies would pass along to consumers. McAdam said she did not know how much it would cost or how much would be passed on. Peter Kochenburger (Southern University Law School—SULS) said legacy systems are not upgraded as frequently and are more vulnerable to hacking, so there is a greater need to end legacy systems to avoid giving hackers access. McAdam said she did not know about the technical part of it but that she is not so much concerned about it as companies are still subject to the *Insurance Data Security Model Law* (#668). Kitt said legacy systems cannot make modifications, so companies will have to change them so that the cost would be there to replace the legacy system with a new system or to keep the old one updated. Johnson said that at the NAIC International Forum, she heard that the cost of maintaining legacy systems is tremendous but that they still have lost costs compared to new systems.

Sabrina Miesowitz (Lloyd's Underwriting) said surplus lines are different as they go through brokers, not direct to consumers, and that Lloyd's Underwriting agrees with the IUA's comments on adverse underwriting decisions. Shelby Schoensee (American Property Casualty Insurance Association—APCIA) said the APCIA received significant additional changes to the notice content and delivery; joint marketing agreements; definitions; and the cover letter's intent versus the changes made. removal of the sharing of data with overseas affiliates and the private right of action sections of the initial draft of the model. She said the APCIA will submit additional comments in writing but that they need more time to do so.

Bissett suggested the deletion of personal information, notices, etc., and that the Working Group step back to reassess if a new model could be adopted at state legislatures. He said the Working Group should add to a successfully operating framework already in place. Bissett asked what problem the model is trying to solve. He said the National Conference of Insurance Legislators (NCOIL) does not like nor support state passage of the new model. Bissett said the Working Group should limit its changes just to existing marketing models. He also said that the IIBA will oppose the new model. Diederich said the old models were written pre-digital and that the Working Group is trying to address new digital processes because under the federal Gramm-Leach-Bliley Act (GLBA), there was no right of access, limited joint marketing agreements, and limited control of what happens to a consumer's personal information. Bissett said the U.S. House Committee drafted a new module to the GLBA with changes to consumer notices that indicated consumer data uses should be addressed. He also said that no new types of data have been used since then. Diederich asked Bissett if he had any guardrails to suggest so all parties could find a middle ground. Bissett said not having to disclose uses of client data and removal of the mandatory deletion within

90 days after the consumer is no longer a client takes away the agent's rights. Bissett suggested the Working Group see the New York State Department of Financial Services' (DFS') cybersecurity regulations. Johnson said she disagrees with Bissett because the model has several reasons under which agents can keep consumer data. Bissett said the words on the page say consumer data can be kept while there is an ongoing business relationship, which he reads to mean that agents have 90 days after the policy closes. Johnson asked Bissett to give the Working Group language that is clearer for use in the new model. Bissett said he would not provide any. Marnell said the Working Group is performing an important task but that his state would not support this draft of the model. He said he does not support it as a model and that the Working Group has not listened closely enough to industry. Marnell said the model needs lots of redrafting, as noted in the redline he submitted. Swanson said he agreed with Marnell and supports the changes noted in Marnell's redline submission. Swanson said he thinks this is true in a lot of other states.

Cate Paolino (National Association of Mutual Insurance Companies—NAMIC) said she appreciated the Working Group's attention to industry's comments. She said the Working Group has taken a novel approach with radical changes but that she likes the old system because Model #672 was a success of uniformity that just needs a few modifications to list third parties, allow deletions, and clarify permitted use of public information. Paolino said a pause is needed as she wants to understand why the Working Group has not made industry changes. Johnson said the Working Group still has changes needed and that the goal is to have a new redline draft (version 1.3) before the Summer National Meeting. She said the drafting group is still having private meetings because it still needs continual input to get to a workable model. Johnson said she disagrees that the new model is radically different and reiterated that the existing models needed changes, as noted by NAIC leadership and privacy working groups over the past four years. She said the goal is to develop a model that protects the privacy of consumers' data when it is used for insurance transactions. Johnson asked regulators, industry, and consumer representatives to submit ongoing specific wording changes to the model in redline because the Working Group reads all comments and takes parts of the language changes from everyone. She asked that interested parties read all the comments submitted and take note of the fact that they do not all agree on the wording, as each type of insurance and licensee has its own areas of concern due to differences in how their business is conducted. Johnson said the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) safe harbor is being revised as recommended by America's Health Insurance Plans (AHIP).

## 2. Discussed Other Matters

Johnson thanked everyone for their comments, discussion, and collaboration during the meeting. She said she looked forward to receiving additional comments on the draft and to continuing collaboration at the Summer National Meeting. She said the due date for changes on model 1.2 is July 28 and that comments received no later than Aug. 7 would be considered at that meeting. Johnson said the Privacy Protections (H) Working Group is scheduled to meet Aug. 13 from 11:30 a.m. to 1:00 p.m. PT (Pacific Time). She said there would also be a regulator-to-regulator meeting Aug. 12 from 4:00 p.m. to 5:00 p.m. PT. Both meetings will have virtual participation with the ability to speak (with requests submitted via the chat feature).

Having no further business, the Privacy Protections (H) Working Group adjourned.

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