



National Association of Insurance Commissioners

Privacy Protections (D) Working Group

CONFERENCE CALL

Monday, May 10, 2021

1:00-2:00 PM CENTRAL

- ✓ All audio will be muted upon entry
- ✓ Enter with video on or off (your choice)
- ✓ Use the “Chat” feature for questions, comments or assistance from moderators
- ✓ If you have joined by phone, to mute and unmute your line, press*6
- ✓ For any additional assistance please contact me through email at LAlexander@naic.org

OUR MEETING WILL BEGIN SHORTLY



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 5/5/21

PRIVACY PROTECTIONS (D) WORKING GROUP

Monday, May 10, 2021

2:00 – 3:00 p.m. ET / 1:00 – 2:00 p.m. CT / 12:00 – 1:00 p.m. MT / 11:00 a.m. - 12:00 p.m. PT

ROLL CALL

Cynthia Amann, Chair	Missouri	Martin Swanson	Nebraska
Ron Kreiter, Vice Chair	Kentucky	Chris Aufenthie/Johnny Palsgraaf	North Dakota
Damon Diederich	California	Teresa Green	Oklahoma
Erica Weyhenmeyer	Illinois	Ravin Collins/Brian Fordham	Oregon
LeAnn Crow	Kansas	Gary Jones	Pennsylvania
T.J. Patton	Minnesota	Don Beatty/Katie Johnson	Virginia
Molly Plummer/Tyler Spady	Montana		

NAIC Support Staff: Lois Alexander

AGENDA

1. Consider Adoption of its Spring National Meeting Minutes Attachment A
—*Cynthia Amann (MO)*
2. Discuss Draft of Initial Privacy Policy Statement Attachment B
—*Cynthia Amann (MO)*
3. Discuss Any Other Matters Brought Before the Working Group
—*Cynthia Amann (MO)*
4. Adjournment—*Cynthia Amann (MO)*

Draft: 4/12/21

Privacy Protections (D) Working Group
Virtual Meeting (*in lieu of meeting at the 2021 Spring National Meeting*)
March 29, 2021

The Privacy Protections (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met March 29, 2021. The following Working Group members participated: Cynthia Amann, Chair, (MO); Ron Kreiter, Vice Chair (KY); Erica Weyhenmeyer (IL); LeAnn Crow (KS); T.J. Patton (MN); Chris Aufenthie and Johnny Palsgraaf (ND); Martin Swanson (NE); Raven Collins and Brian Fordham (OR); and Don Beatty and Katie Johnson (VA).

1. Adopted its 2020 Fall National Meeting Minutes

Mr. Kreiter made a motion, seconded by Mr. Aufenthie, to adopt the Working Group's Nov. 20 minutes (*see NAIC Proceedings – Fall 2020, Market Regulation and Consumer Affairs (D) Committee, Attachment Nine*). The motion passed unanimously.

2. Received Status Reports on Federal and State Privacy Legislation

Brooke Stringer (NAIC) said both Republicans and Democrats acknowledge the need for federal data privacy legislation, but the differences in their approach have thwarted efforts to enact comprehensive legislation thus far. She said the key points of contention include: 1) whether, and to what extent, federal legislation should preempt state laws; and 2) whether the legislation should include a private right of action. Ms. Stringer said as momentum builds among the states to enact data privacy laws, so does the pressure on Congress to act at the federal level. She said both sides of the aisle were engaged over the past session of Congress on developing privacy bills and were committed to comprehensive legislation, but the onset of the pandemic stalled out their momentum.

Ms. Stringer said the most likely starting points for federal legislation in 2021 are: 1) U.S. Senate Commerce Committee Chairwoman Maria Cantwell's (D-WA) Consumer Online Privacy Rights Act (COPRA), which contained strict standards, but would have established a preemptive floor and allowed for a private right of action; and 2) Sente Commerce Committee Ranking Member Roger Wicker's (R-MS) SAFE DATA Act, which also had high standards and would have preempted all state data privacy and security laws. However, Ms. Stringer said it also had a federal Gramm-Leach-Bliley Act (GLBA) carve out, which may have protected some of the state consumer data privacy laws. While these two bills differ, Ms. Stringer said both senators remain interested in a bipartisan Senate bill.

She said the House Energy and Commerce Committee developed a bipartisan staff draft bill during the last Congress that would have provided the Federal Trade Commission (FTC) with significant rule-making authority to implement standards, but the committee had not yet determined how to handle preemption. Ms. Stringer said U.S. Rep. Suzan Delbene (D-WA) recently reintroduced the Information Transparency and Personal Data Control Act (H.R.1816), which would create a unified national data privacy standard and preempt conflicting state laws. She said according to Rep. Delbene's press release, this act would allow consumers to opt-in before companies could use the consumer's most sensitive, private information in ways consumers might not expect. Ms. Stringer said the Act increases transparency by requiring companies to disclose: 1) the purpose of sharing personal information; 2) if personal information will be shared; and 3) with whom the personal information will be shared.

Ms. Stringer said NAIC staff continue to engage with Congress, oppose preemptive legislative proposals and inform Congress of the NAIC's Privacy Protections (D) Working Group's efforts to update NAIC models. She said the NAIC continues to underscore the importance of not disregarding the existing state regulatory framework or inhibiting ongoing efforts in the states to develop laws and regulations in the best interest of insurance consumers. Birny Birnbaum (Center for Economic Justice—CEJ) asked if the NAIC had entered a position with Congress on the privacy of consumer data for insurance purposes. Ms. Stringer said this has been communicated via the staff level only at this time, but not in a formal letter to this Congress.

Jennifer Neuerburg (NAIC) provided a recap of what happened with state privacy legislation in 2020: 1) at least 30 states introduced data privacy legislation—many of them comprehensive and similar to the California Consumer Privacy Act (CCPA)—but very few of them were enacted since COVID-19 disrupted everyone's legislative sessions; 2) California residents voted in November 2020 to approve the California Consumer Privacy Rights Act (CPRA), which modified the CCPA, further expanded consumer privacy rights, and created a statewide privacy agency that will be charged with enforcing privacy laws and will likely lead to increased enforcement actions for privacy violations in California; 3) California also extended its exemption from the CCPA to certain employment information and personal information involved in business-to-business communications and transactions; 4) Michigan modified requirements for insurers providing privacy policies to customers; and 5) Virginia enacted a law governing driver's license scanning.

Ms. Neuerburg said there has been a lot of activity in state privacy legislation in 2021. She said privacy bills have been introduced in 23 states, including: Colorado, Florida, New York, West Virginia, New Jersey, Oklahoma, and Washington. Ms. Neuerburg said these bills focus on business obligations stemming from consumer rights but vary in substance. She said many of these bills indicate to which businesses the bill applies. For example, Florida's bill applies to for-profit businesses in the state that: 1) have global annual gross revenues in excess of \$25 million; 2) annually buy, sell, or share for commercial purposes the personal information of 50,000 or more consumers; or 3) derive 50% or more of its global revenues from selling or sharing personal information.

Ms. Neuerburg said no template is emerging yet; however, she said some have the following issues in common: 1) they have a requirement that covered entities perform a risk assessment; 2) they provide for a private right of action; 3) they address data security, as well as data privacy; 4) they resemble the General Data Protection Regulation (GDPR) and would be more expansive than the CCPA. Arizona, Florida, and Washington are examples of states with such legislation; and 4) they exempt data collected in compliance with the GLBA, as well as entities subject to the GLBA. Colorado and Virginia, for example, have this exemption. She said these exemptions differ from the CCPA and CPRA, which only exclude the data collected in compliance with the GLBA, while still regulating the entity.

Ms. Neuerburg said the CCPA was amended just this month to make it easier for consumers to opt-out. She said most recently, Virginia passed its Consumer Data Protection Act, which creates consumer rights like the CCPA; imposes security and assessment requirements for businesses; and leaves enforcement entirely up to the attorney general, so there is no private right of action. Ms. Neuerburg said a lot more movement in state legislation is anticipated throughout 2021. Ms. Amann said a lot of legislation being considered this year lumps together data security and data privacy, but this Working Group will continue to focus its efforts on the privacy of insurance-related consumer data.

3. Reviewed the 2021 NAIC Member-Adopted Strategy for Consumer Data Privacy Protections

Ms. Amann said since the Working Group completed its work plan in 2020, the Working Group received additional guidance through the Market Regulation and Consumer Affairs (D) Committee in the form of the following NAIC Member-Adopted Strategy for Consumer Data Privacy Protections (Attachment D). She said the Working Group is currently working on item C because item A and item B have already been completed.

NAIC Member-Adopted Strategy for Consumer Data Privacy Protections

1. Charge the Market Regulation and Consumer Affairs (D) Committee with:
 - a. Summarizing consumer data privacy protections found in existing NAIC models—the *Health Information Privacy Model Act* (#55), the *NAIC Insurance Information and Privacy Protection Model Act* (#670), and the *Privacy of Consumer Financial and Health Information Regulation* (#672).
 - b. Identifying notice requirements of states, the European Union's (EU's) General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), and how insurers may be subject to these requirements.
 - c. Identifying corresponding consumer rights that attach to notice requirements, such as the right to opt-out of data sharing, the right to correct or delete information, the right of data portability and the right to restrict the use of data, and how insurers may be subject to these requirements.
 - d. Setting forth a policy statement on the minimum consumer data privacy protections that are appropriate for the business of insurance.
 - e. Delivering a report on items (a– d) above by the NAIC Fall National Meeting.
2. Engage with state attorneys general (AGs), Congress and federal regulatory agencies on state and federal data privacy laws to minimize preemption provisions and maximize state insurance regulatory authority.
3. Reappoint the Privacy Protections (D) Working Group to revise NAIC models, as necessary, to incorporate minimum consumer data privacy protections that are appropriate for the business of insurance. Complete by the NAIC Fall National Meeting.

4. Discussed Comments Received on the 2020 Fall National Meeting Verbal Gap Analysis

Robert Neill (American Council of Life Insurers—ACLI) said he and Shelby Schoensee (ACLI) would be sharing trade opinions on behalf of ACLI members since the retirement of Robbie Meyer (ACLI). He said the ACLI was concerned with the Working Group's strategy being too challenging and that the timeline was too short for the Working Group to accomplish its objectives by the Fall National Meeting. Mr. Neill suggested that the Working Group would be better served to wait to see where federal and state legislation ended up regarding preemption, which seemed to cover business areas broader than insurance. He also said that the business of insurance would be uniquely affected by general data privacy concerns due to conflicting and overlapping provisions. Ms. Amann said the Working Group would attempt to simplify its discussions

surrounding overlapping and conflicting legislation by focusing on actual practices rather than on theory. She said the Working Group would call on trades to assist in this important endeavor.

Chris Petersen (Arbor Strategies LLC), speaking on behalf of the Coalition of Health Insurers, said that health insurance is already subject to the GDPR and CCPA, even though these are not insurance specific. He said insurance products should be regulated by insurance commissioners and should include a safe harbor for compliant companies. Mr. Petersen said a two-stage approach is encouraged for gap analysis: 1) gaps in NAIC models should be identified; and 2) it should be determined whether gaps need to be filled. For example, he said that portability is not needed in insurance because an employer (not the employee) decides what data is needed for employees while they are employed, but this data is no longer needed after the employee leaves the company. Mr. Petersen said this type of data cannot be purged from employers' systems as the GDPR wants. Ms. Amann said the Working Group welcomes all kinds of input because insurance is unique from technology companies, vendors, data brokers, third parties, etc.

Cate Paulino (National Association of Mutual Insurance Companies—NAMIC) said clarification and workability should be goals of the Working Group. She said notices are covered by Model #672, and if it is revised, she asked that it also: 1) incorporates a safe harbor; 2) has more examples added to Appendix A; 3) continues to allow federal privacy notices to be used; and 4) allows web postings with other alternatives. Ms. Paulino said the frequency of notices should be revisited because it has changed in that the annual notices required starting in 2016 by the GLBA are no longer required if there have been no changes by the company since the prior notice. She said workability is the concern regarding the opt-out versus opt-in data-sharing question, so the insurance industry, other than health insurance, urges the Working Group to continue to use opt-out for continuity of existing practices. Ms. Paulino said there is no real difference in them, except opt-in is a lot more difficult for companies to administer, and the scope of opt-out works much better with business function exemptions such as fraud, liens, underwriting, etc. Ms. Amann said state insurance regulators are ready to learn more about areas of functionality from trades.

Angela Gleason (American Property Casualty Insurance Companies—APCIA) said privacy regulation is not new to insurance, but there is a difference between theory and practice. She said that she appreciates the Working Group not rushing into changes without first considering the risk, uncertainty and conflicts such changes may cause. Ms. Gleason said notices are working well now, have changed over time, and can adapt again given the proper time and consideration. She said the concern with portability is that currently states have the right to regulate insurance in their states and that states should continue to have that right in the future. Ms. Gleason said that partnership and collaboration is needed between industry and state insurance regulators. She said the timeline is challenging and asked if it might be more flexible. She also asked if other committees would be making decisions regarding consumer data privacy together or separately. Ms. Amann said the Working Group process would not be slowed down, but it would be thorough. She asked that additional comments on strategy be sent to her, Mr. Kreiter or Lois E. Alexander (NAIC). Ms. Amann said all comments together will help the Working Group maintain its focus on consumer protections, not coverage inhibitors. She said all NAIC groups working on issues related to consumer data protection would work in tandem and collaboration with one another throughout the year.

Mr. Birnbaum said consumer protections and data privacy have more in common than not and that differences are the exception rather than the rule. He asked why the Working Group did not hear from consumer representatives about data protection gaps. Mr. Birnbaum said the Working Group should reach out to them to get a broader set of perspectives. Ms. Amann said all state insurance regulators and interested parties are always welcome to submit comments to the Working Group at any time.

5. Announced the Consumer Privacy Protections Panel at the NAIC Virtual Insurance Summit

Ms. Amann said there will be a panel on consumer privacy protections at the NAIC virtual Insurance Summit June 21–24, with herself, Mr. Kreiter, Ms. Stringer, Ms. Neuerburg and two NAIC consumer representatives serving as panelists.

Ms. Amann said Ms. Alexander would be sending an email regarding the schedule of meetings every four to six weeks with a road map designed to avoid overlap with other groups working on interrelated issues.

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

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INITIAL DRAFT PRIVACY POLICY STATEMENT

April 28, 2021

This initial draft privacy policy statement is the framework for the minimum consumer data privacy protections that are appropriate for the business of insurance to be applied to NAIC model #672 as revisions, if possible, or as a start for a new model, if necessary.

Our focus will be on the types of consumer protections the working group is discussing at this time in accordance with item 1.c. of the NAIC Member Adopted Strategy for Consumer Data Privacy Protections that was received recently from the Market Regulation and Consumer Affairs (D) Committee.

A. Identify corresponding consumer rights that attach to notice requirements, such as:

1. the right to opt-out of data sharing,
2. the right to opt-in of data sharing,
3. the right to correct information,
4. the right to delete information,
5. the right of data portability, and
6. the right to restrict the use of data.

AND

B. How insurers may be subject to these requirements.

1. the right to opt-out of data sharing,
2. the right to opt-in of data sharing,
3. the right to correct information,
4. the right to delete information,
5. the right of data portability, and
6. the right to restrict the use of data.

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