Ms. Cynthia Amann  
Chair, NAIC Privacy Protections (D) Working Group  
Missouri Department of Insurance  
301 W High St Rm 530  
Jefferson City, MO 65101

Dear Ms. Amann:

I am writing on behalf of a Coalition of health insurers, who represent some of the country’s largest major medical insurers and health maintenance organizations, to comment on the NAIC Privacy Protections (D) Working Group’s (“Working Group”) proposed FIRST WORKING GROUP EXPOSURE DRAFT OF PRIVACY POLICY STATEMENT dated August 30, 2021 (“Exposure Draft”). We offer the following comments regarding the right to correct and amend information. We thank you for the opportunity to provide our input.

Health plans are already subject to requirements to correct and amend information under the HIPAA privacy rule, as well as in those states that adopted Model 670. However, it is important to note that neither the HIPAA privacy rule nor Model 670 includes an absolute right

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1 CVS Health/Aetna, Anthem, Cigna and UnitedHealthcare, who together provide health insurance and health maintenance organization coverage to more than 200 million members nationwide, are the members of this Coalition.
to correct or amend information. Both of these privacy laws recognize that individuals should not have an unfettered “right” to alter their medical or claims records to remove or edit health information, in, or out, of those records. Instead, existing privacy laws grant individuals the right to request that information be corrected or amended. However, health insurers are also allowed to deny that the request. The HIPPA privacy rule sets forth four conditions under which health insurers may deny the request. Model 670 sets forth requirements that must be met if an insurer denies the request to amend information. The discussion of this right in the Exposure Draft should clarify that it is not absolute. It should also set forth how individuals would be permitted to ask that medical or claims records be altered, as well as the requirements that licensees should meet when they intend to deny the request. As we have noted in earlier comment letters, health plans that are HIPAA compliant are already providing the appropriate “right” regarding correction or amendment, and should be exempt from any additional regulation which may ultimately hinder the provision of health care and health care financing.

We also suggest that the Exposure Draft’s definition of the right to correct or amend information be amended. The Exposure Draft includes the following definition:

“DEFINITION: This right ensures that underwriting process and claims adjudication will result in a fair and reasonable decision based on accurate information”.

This proposed definition seems less like a definition, and more like a policy rationale. We urge the Working Group to adopt the following:

“DEFINITION: The right for individuals to request the correction of, or amendment to, information created by the licensee that the individual believes is inaccurate.”

As we set forth in earlier letters, we also suggest that the following general observation should govern the development of the Exposure Draft. These general observations are:

1. Changes to the privacy rules must be done cautiously and carefully to avoid consumer and insurer confusion;
2. Any new model should include a HIPAA safe harbor to reflect the reality that a robust regulatory framework already exists for HIPAA protected data; and
3. The rules that apply to technology companies are not appropriate for health insurers in light of the obligations that health insurers have to their members.

Thank you for the opportunity to comment. If you have any questions, please feel free to reach out to me at either (202) 247-0316 or epetersen@arborstrategies.com. We look forward to

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2 45 CFR § 164.526(a)(2)
3 Model 670 at §9.(A)(2).
4 Exposure Draft at page 32.
working with the Working Group as it discusses topics for possible inclusion in a revised NAIC privacy model.

Sincerely,

[Signature]

Chris Petersen

cc: Lois Alexander