

DRAFT DISCUSSION DOCUMENT

Draft: 11/7/19

Privacy Protections (D) Working Group Workplan

2019 Charge:

Review state insurance privacy protections regarding the collection, use and disclosure of information gathered in connection with insurance transactions, and make recommended changes, as needed, to certain NAIC models, such as the NAIC Insurance Information and Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and Health Information Regulation (#672), by the 2020 Summer National Meeting.

This working group will not review data security, which deals with how the information (that a business has already collected and has in its possession) is protected from unauthorized access.

December 2019 – January 2020

General education and discussion of standards in NAIC privacy models, the General Data Protection Model Regulation, the California Consumer Privacy Act, and recent state privacy legislation.

- I. Review *NAIC Insurance Information and Privacy Protection Model Act (Model #670)*
 - A. Adopted in 1980.
 - B. Seventeen states have adopted.
 - C. Sets standards for the collection, use and disclosure of information gathered in connection with insurance transactions.
 1. Requires insurers to provide notice that alerts the individual of the insurer's information practices.
 2. Gives consumers the right to request that an insurer:
 - a. give access to recorded personal information,
 - b. disclose the identity of the third parties to whom the insurance disclosed the information,
 - c. provide the source of the collected information,
 - d. correct and amend the collected information,
 - e. amend the personal information, and
 - f. delete the collected personal information.
- II. Review *NAIC Privacy of Consumer Financial and Health Information Regulation (Model #672)*
 - A. Adopted in 1998
 - B. Most states have adopted.
 - C. Requires that insurers provide notice to consumers about its privacy policies and practices.
 - D. Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties.
 - E. Provides methods for individuals to prevent a licensee from disclosing that information – “opt out” for financial info and “opt in” for health information.
 - F. Enforced via the state's Unfair Trade Practices Act.
- III. Review the General Data Protection Regulation (GDPR)
https://ec.europa.eu/info/law/law-topic/data-protection/reform/rights-citizens/my-rights/what-are-my-rights_en
 - A. Consumers have the following rights under GDPR:
 1. information about the processing of personal data;
 2. obtain access to the personal data;
 3. ask for incorrect, inaccurate or incomplete personal data to be corrected;
 4. request that personal data be erased when it's no longer needed or if processing it is unlawful;
 5. object to the processing of personal data for marketing purposes or on grounds relating to a consumer's particular situation;
 6. request the restriction of the processing of personal data in specific cases;
 7. receive personal data in a machine-readable format and send it to another controller ('data portability');

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8. request that decisions based on automated processing concerning consumer or significantly affecting consumer and based on consumer's personal data are made by natural persons, not only by computers. Consumers also have the right in this case to express their point of view and to contest the decision.
- IV. Review California Consumer Privacy Act (CCPA)
https://content.naic.org/sites/default/files/call_materials/NAIC%20Privacy%20Research.pdf
- A. Right to Requested Disclosures - Consumers have the right to request that a business:
 1. disclose the categories and specific pieces of personal information collected;
 2. delete any personal information;
 3. disclose categories of sources the information was collected from;
 4. disclose the business purpose for collecting the information; and
 5. disclose the categories of third parties with whom the information is shared, and the specific pieces of personal information that was shared
 - A. Notice Requirement – A business must disclose the following information in an online privacy policy:
 1. a description of consumers' right to request disclosures about personal information collected;
 2. a description of consumers' right to request information about any sale or disclosure of their personal information;
 3. a statement of consumers protection against discrimination;
 4. a list of the categories of personal information collected about consumers in the past 12 months;
 5. a list of the categories of personal information the business has sold in the past 12 months; and
 6. a list of categories of personal information it as disclosed about consumers for a business purpose in the preceding 12 months.
- V. Review State Data Privacy Legislation
https://content.naic.org/sites/default/files/call_materials/NAIC%20Privacy%20Research.pdf
- A. State privacy legislation has included the following:
 1. notice requirement;
 2. requirement to disclose information collected;
 3. requirement to disclose shared information;
 4. requirement to disclose sources of information;
 5. requirement to disclosure business purpose;
 6. requirement to disclosure third party involvement;
 7. a consumer right to delete information;
 8. a consumer right of a portable data format;
 9. a consumer right to correct information;
 10. a consumer right to restrict use; and
 11. a consumer opt-out or opt-in standard.

February 2020 – March 2020

Identify what industry requirements and consumer rights are appropriate for the collection, use and disclosure of information gathered in connection with insurance transactions and whether these are appropriately addressed in NAIC models.

March 2020 – July 2020

Draft and adopt amendments, if any, to NAIC model #670 and #672 to address appropriate insurance privacy protections regarding the collection, use and disclosure of information gathered in connection with insurance transactions.

August 2020 (NAIC Summer National Meeting)

Present adopted NAIC model amendments, if any, to the Market Regulation and Consumer Affairs (D) Committee.