



**MEDICAL PROFESSIONAL
LIABILITY ASSOCIATION**

September 23, 2021

Chair Cynthia Amann (MO) and Vice Chair Ron Kreiter (KY)
Privacy Protections (D) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Subject: Consumer Right to Opt-in/Opt-out of Data Sharing (Privacy Framework)

Dear Chair Amann and Vice Chair Kreiter:

On behalf of the Medical Professional Liability (MPL) Association and its more than 50 medical professional liability insurer members, we would like to provide our perspective on the working group's inclusion of proposals to allow consumers to opt-in or opt-out of data sharing in its privacy policy statement.

The Medical Professional Liability Association ("MPL Association") is the leading trade association representing insurance organizations with a substantial commitment to the MPL line. MPL Association members insure more than one million healthcare professionals in the U.S.— physicians, nurses, dentists, oral surgeons, nurse practitioners, and other healthcare providers. MPL Association members also insure nearly 2,000 hospitals and 7,500 medical facilities throughout the United States.

The MPL Association supports the adoption of a privacy policy statement that reflects the need to protect consumers from the unauthorized sharing of their personal information while recognizing the legitimate need in some instances for companies to use consumer data for appropriate insurance purposes. Such purposes include the provision of a full range of insurance services to meet its contractual obligations, the analysis of data to enhance future business practices and compliance with all legal requirements. In this regard, it is vital to consider the unique circumstances which MPL insurers face on all these fronts.

With this in mind, we strongly recommend that any opt-out or opt-in proposals clearly exempt data that is necessary to the servicing of an insurance policy. Such proposals should be applicable to data provided by all claimants, not solely policyholders, and should apply to the sharing of data with third parties necessary to mount a robust legal defense of the policyholder's interests. In addition, opt-in or opt-out exceptions must apply to any data used for risk-management or underwriting purposes, whether such data is used in the servicing of an insurance contract or maintained for long-term analysis relevant to the conduct of future insurance services. Finally, data necessary to comply with the full range of state and federal legal requirements, including reporting mandates, must also be excluded from any opt-in or

opt-out proposal to prevent unnecessary conflict of laws applicable to the insurance industry. We recognize the broad acceptance of these principles among the industry and the regulator community, but feel it is important to stress them while contemplating a privacy policy statement that is still in the early stages of development.

Additionally, the MPL Association believes that the inclusion of opt-in/opt-out language in the privacy policy statement should be accompanied with a safe harbor for insurers that comply with existing federal or state laws or regulations containing similar consumer privacy rights. For example, MPL insurers already comply with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Health Information Technology for Economic and Clinical Health Act (HITECH Act) which restrict the sharing of personal health information (PHI), including electronic health information, for anything other than explicitly stated purposes. Similarly, the Gramm-Leach-Bliley Act (GLBA) requires MPL and other insurers to give consumers the ability to opt-out of the disclosure of their nonpublic personal information. The addition of overlapping opt-in/opt-out requirements may cause unnecessary confusion for both consumers and insurers, making it more difficult to address consumer concerns about data usage. Therefore, we would ask the working group to include a safe harbor provision for insurers that already comply with any data privacy requirements that are included under current federal or state laws or regulations.

In closing, the MPL Association appreciates this opportunity to provide constructive input to support sound, fair, and effective public policy as the working group develops a more detailed privacy policy statement outlining the direction it wishes to take going forward. Please do not hesitate to contact me at 301.947.9000 or via email at batchinson@mplassociation.org should you need any further information.

Sincerely,

A handwritten signature in blue ink that reads "B. K. Atchinson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Brian K. Atchinson
President & CEO