



National Association of Insurance Commissioners

## Privacy Protections (D) Working Group

CONFERENCE CALL

Monday, October 25, 2021

1:00-2:30 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](mailto:LAlexander@naic.org)

OUR MEETING WILL BEGIN SHORTLY



# NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 10/24/21

*Virtual Meeting*

## **PRIVACY PROTECTIONS (D) WORKING GROUP**

Monday, October 25, 2021

2:00 – 3:30 p.m. ET / 1:00 – 2:30 p.m. CT / 12:00 – 1:30 p.m. MT / 11:00 a.m. – 12:30 p.m. PT

### **ROLL CALL**

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

NAIC Support Staff: Lois E. Alexander

### **AGENDA**

1. Receive a Legislative Update from NAIC Staff—*Cynthia Amann (MO)*
2. Receive Comments on Segment Four of the Privacy Policy Statement Exposure Draft—*Cynthia Amann (MO)*
3. Discuss Any Other Matters Brought Before the Working Group—*Cynthia Amann (MO)*
4. Adjournment—*Cynthia Amann (MO)*

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In	Opt-in
Out*	Opt-out in certain instances
B	Opt-in or Opt-out
CP	Office of Consumer Protection
CA	Director of the Division of Consumer Affairs in the Department of Law and Public Safety
SD	Secretary of the Department of Consumer Affairs
X+	Attorney General, County District Attorney, or City Corporation General
S	Private rights of action for security violation only
P	Partial exemption only. Still subject to private action.

Disclose Collected Info	Disclose Sources of info	Disclose Business Purpose	Disclose Third Party Involvement	Right to Delete Information	Portable Format	Right to Correct Information	Right to Restrict Use	Opt-Out/Opt-In	Private Right of Action	Enforced by AG	Anti-Discrimination	HIPAA Exemption	GLBA Exemption	Other Exemption	Establishes a Committee
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State Citation / Status

**PASSED BILLS**

California	CAL. CIV. CODE §§ 1798.100-199 (2020)	X	X	X	X	X	X	Out*	S	X	X	X	P	P		
California	AB713/In committee/Amendment <sup>1</sup>													X		
California	AB 2751/In Committee/Amendment <sup>2</sup>															
California	§999.306/Amendment <sup>3</sup>															
Colorado	SB21-190/Passed	X		X	X	X	X	Out		X		X	X	X		
Hawaii	HCR 225: 4/3/2019 Adopted														X	
Louisiana	HR 249 / Adopted														X	
Maine	ME. REV. STAT. tit. 35-A, § 94 (2019) <sup>4</sup>							In								
Nevada	NEV. REV. STAT. ANN. § 603A.300 (2019)	X						Out	X			X	X	X		
Nevada	SB260/Approved by governor <sup>5</sup>									X						
North Dakota	HB 1485 / Adopted														X	
Texas	HB 4390 / Adopted														X	
Virginia	SB 1392/Adopted	X		X	X	X	X	Out		X	X	X	X	X	X	
<b>ACTIVE BILLS</b>																
Massachusetts	SD 1726	X		X	X	X	X	In	X			X				
New Jersey	A5448 / In Committee	X			X		X	Out		CA	X	X	X	X	X	
New Jersey	A3283 / In Committee	X		X	X	X	X	In		X*		X	X	X		
New Jersey	A3255 / In Committee	X			X	X	X	In	X		X	X	X	X		
New York	A400/S1349 / In Committee	X			X				X	X						
<b>ACTIVE BILLS (cont.)</b>																

<sup>1</sup>Amendment to existing CCPA that exempts information collected for biomedical research.

<sup>2</sup> Amendment to existing CCPA that revises definition of “deidentified”; cannot be used to infer other information about/linked to a consumer; business must take “reasonable measures”.

<sup>3</sup> Amendments to existing CCPA that changes opt-out (offline collections & notices, opt-out icon, make opt-out requests easy to submit); authorized agents may need to submit proof that consumer gave them permission to submit request.

<sup>4</sup> Only applies to internet service providers.

<sup>5</sup> Proposed amendment to Nevada Internet privacy law. Defines data broker and establishment enforcement by AG.

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Out*	Opt-out in certain instances
B	Opt-in or Opt-out
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SD	Secretary of the Department of Consumer Affairs
X+	Attorney General, County District Attorney, or City Corporation General
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P	Partial exemption only. Still subject to private action.

State	Citation / Status	Disclose Collected Info	Disclose Sources of info	Disclose Business Purpose	Disclose Third Party Involvement	Right to Delete Information	Portable Format	Right to Correct Information	Right to Restrict Use	Opt-Out/Opt-In	Private Right of Action	Enforced by AG	Anti-Discrimination	HIPAA Exemption	GLBA Exemption	Other Exemption	Establishes a Committee
New York	A3818/ S1570 In Committee <sup>6</sup>	X	X	X	X	X						X	X				
New York	SB567/In committee	X	X	X	X					Out	X	X	X	X		X	
New York	A405/In committee <sup>7</sup>									Out		X					
New York	A674/In committee <sup>8</sup>				X					In	X		X				
New York	S4021/In committee									In	X						
New York	A6042/Referred to committee	X		X	X					In	X	X	X	X			
New York	S6701/Referred to committee	X	X	X	X	X	X	X		In	X	X	X		X	X	
North Carolina	S569/Referred to committee	X		X	X	X	X	X		Out	X	X	X	X	X	X	
Ohio	HB 376/Introduced	X	X	X	X	X	X			In		X	X	X	X		
Oklahoma	HB 2968/Introduced	X				X	X	X		Out		X	X	X	X		
Pennsylvania	HB 1126/Referred to committee	X	X	X	X	X	X			Out	X		X				

<sup>6</sup> Only applies to government entities and contractors.

<sup>7</sup> Only applies to advertising networks.

<sup>8</sup> Only applies to internet service providers.

<b>Colorado SB21-190</b>	
<b>Status</b>	Passed 7/7/21
<b>Looks Like</b>	VDCPA, WPA
<b>Scope</b>	Controllers that conduct business in Colorado or produce products or services that are intentionally targeted to residents of Colorado and that (1) control or process the personal data of 100,000 or more consumers during a calendar year and/or (2) derive revenue or receive a discount on the price of goods or services from the "sale" of personal data and process or control the personal data of 25,000 or more consumers.
<b>Rights</b>	Delete, correct, portable format
<b>Opt In/Out</b>	Opt out of the processing of ALL personal data concerning the consumer. Consent to processing of sensitive data.
<b>Enforcement</b>	AG
<b>Exemptions</b>	Data & entity GLBA, HIPAA, other

<b>Illinois Consumer Privacy Act Bill HB 3910</b>	
<b>Status</b>	Assigned to Civil Committee
<b>Looks Like</b>	Disclosure-focused
<b>Scope</b>	Annual gross revenues in excess of \$25 million; or buys, receives, sells or shares personal info of 50,000 or more consumers, households, or devices; or derives 50% or more of its annual revenues from selling consumers' personal info
<b>Rights</b>	Right to request disclosure, deletion with some exceptions
<b>Opt In/Out</b>	Opt-out of sale to third parties. Opt-in for those under 16.
<b>Enforcement</b>	Civil action; AG
<b>Exemptions</b>	HIPAA, GLBA, Driver's Privacy Protection Act
<b>Other</b>	Provide a clear and conspicuous link on the business's Internet homepage, titled "Do Not Sell My Personal Information"

<b>Massachusetts Information Privacy Act Bill SD 1726</b>	
<b>Status</b>	
<b>Looks Like</b>	
<b>Scope</b>	
<b>Rights</b>	Know, access, correction, data portability, and deletion. Individuals 13 and older deemed competent to exercise all rights.
<b>Opt In/Out</b>	Opt-in. A covered entity must obtain consent.
<b>Enforcement</b>	Private right of action. Mass. Information privacy commission
<b>Exemptions</b>	HIPAA
<b>Other</b>	Prohibition of surreptitious surveillance

<b>New Jersey Bill AB 5448</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	
<b>Scope</b>	commercial Internet websites and online services
<b>Rights</b>	Right to make changes
<b>Opt In/Out</b>	Opt-out
<b>Enforcement</b>	AG
<b>Exemptions</b>	HIPAA, GLBA, other
<b>Other</b>	
<b>New Jersey Disclosure and Accountability Transparency Act</b>	

<b>New Jersey Bill A3283</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	
<b>Scope</b>	
<b>Rights</b>	Deletion, correction, or restriction of information. Object to disclosure to a third party.
<b>Opt In/Out</b>	Opt-in
<b>Enforcement</b>	Office of Data Protection and AG
<b>Exemptions</b>	HIPAA, GLBA, DPPA, FCRA
<b>Other</b>	Established the Office of Data Protection and Responsible Use. Processing sensitive personal info prohibited. In event of data breach, controller has 72 hrs to notify office.

<b>New Jersey Bill A3255</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	
<b>Scope</b>	Annual gross revenues in excess of \$25 million; or buys, receives, sells or shares personal info of 50,000 or more consumers, households, or devices; or derives 50% or more of its annual revenues from selling consumers' personal info
<b>Rights</b>	Deletion, portable format
<b>Opt In/Out</b>	Opt-in
<b>Enforcement</b>	AG
<b>Exemptions</b>	HIPAA, GLBA, DPPA, FCRA
<b>Other</b>	

New York “The Right to Know Act of 2021” Bill A400/S1349 (older versions of bill in previous years)	
Status	In committee
Looks Like	
Scope	
Rights	
Opt In/Out	
Enforcement	Private right of action or brought by AG, DA, city attorney
Exemptions	
Other	Restricts the disclosure of personal information by businesses

New York Bill A3818/ S1570	
Status	In committee
Looks Like	
Scope	Only applies to government entities and contractors.
Rights	Disclosure, deletion
Opt In/Out	
Enforcement	AG for guidance
Exemptions	FCRA
Other	

New York Privacy Act Bill A680A	
Status	In committee
Looks Like	
Scope	
Rights	Delete, correct, restriction
Opt In/Out	Opt-in or out to data processing. Opt-in to third party transfers
Enforcement	Private right of action, AG
Exemptions	HIPAA, GLBA
Other	



<b>New York Bill SB567</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	
<b>Scope</b>	Annual gross revenues in excess of \$50 million; or sells or shares personal info of 100,000 or more consumers, households, or devices; or derives 50% or more of its annual revenues from selling consumers' personal info
<b>Rights</b>	Disclosure
<b>Opt In/Out</b>	Opt-out. Under 16, opt-in
<b>Enforcement</b>	Private right of action; AG
<b>Exemptions</b>	HIPAA, FCRA
<b>Other</b>	"Do Not Sell Personal Information" link on webpage

<b>New York Online Consumer Protection Act Bill A405</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	
<b>Scope</b>	Advertising network: company that is collecting online consume activity for the purpose of ad delivery
<b>Rights</b>	
<b>Opt In/Out</b>	Opt-out
<b>Enforcement</b>	AG
<b>Exemptions</b>	
<b>Other</b>	

<b>New York S6701</b>	
<b>Status</b>	Referred to Consumer Protection Committee 6/10/21
<b>Looks Like</b>	Enacts the NY privacy act to require companies to disclose their methods of de-identifying personal information, to place special safeguards around data sharing and to allow consumers to obtain the names of all entities with whom their information is shared.
<b>Scope</b>	This article applies to legal persons that conduct business in New York or produce products or services that are targeted to residents of New York, and that satisfy one or more of the following thresholds: <ul style="list-style-type: none"> <li>(a) have annual gross revenue of twenty-five million dollars or more;</li> <li>(b) controls or processes personal data of one hundred thousand consumers or more;</li> <li>(c) controls or processes personal data of five hundred thousand natural persons or more nationwide, and controls or processes personal data of ten thousand consumers; or</li> <li>(d) derives over fifty percent of gross revenue from the sale of personal data, and controls or processes personal data of twenty-five thousand consumers or more.</li> </ul>
<b>Rights</b>	Notice, Access and obtain in electronic format, correct, delete
<b>Opt In/Out</b>	Opt-in
<b>Enforcement</b>	AG, Private right of action
<b>Exemptions</b>	FCRA, GLBA, Driver’s Privacy Protection Act, Family Educational Rights, Farm Credit, HIPAA entity
<b>Other</b>	

<b>New York “Digital Fairness Act” A6042</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	
<b>Scope</b>	The term “covered entity” shall mean a legal entity that conducts business in NY state and as a part of such business, processes and maintains the data of 500 or more individuals.
<b>Rights</b>	Notice, access, delete
<b>Opt In/Out</b>	Opt-in
<b>Enforcement</b>	Private right of action, AG
<b>Exemptions</b>	HIPAA
<b>Other</b>	

<b>New York “It’s Your Data Act” S4021</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	This bill seeks to establish a duty of care requirement for data extractors & miners, and mandates these entities adhere strictly to this legal obligation when it comes to the sovereignty and privacy of an individual's private information.
<b>Scope</b>	Any person, firm or corporation that collects, stores, or uses for the purpose of advertising, trade, data mining, or generating commercial or economic value, the name, portrait, picture, video, voice, likeness, and all other personal data, biometric data, and location data of any living person
<b>Rights</b>	
<b>Opt In/Out</b>	
<b>Enforcement</b>	Makes it a misdemeanor to use without consent or to fail to exercise reasonable care consistent with its obligations
<b>Exemptions</b>	
<b>Other</b>	

<b>New York A674</b>	
<b>Status</b>	In committee
<b>Looks Like</b>	Prohibits the disclosure of personally identifiable information by an internet service provider without the express written approval of the consumer.
<b>Scope</b>	Internet Service Provider
<b>Rights</b>	
<b>Opt In/Out</b>	Opt-in
<b>Enforcement</b>	Private right of action
<b>Exemptions</b>	
<b>Other</b>	

<b>North Carolina S569</b>	
<b>Status</b>	Referred to committee 4/7/21
<b>Looks Like</b>	
<b>Scope</b>	This Article applies to persons that conduct business in the State or produce products or services that are targeted to residents of this State and that either (i) during a calendar year, control or process personal data of at least 100,000 consumers or (ii) control or process personal data of at least 25,000 consumers and derive over fifty percent (50%) of gross revenue from the sale of personal data.
<b>Rights</b>	Confirm consumer's data is being processed; correct inaccuracies; delete; obtain in readily usable format
<b>Opt In/Out</b>	Opt-out of processing for targeted advertising, the sale of personal data, profiling in furtherance of decisions that produce legal or similarly significant effects
<b>Enforcement</b>	AG, private right of action
<b>Exemptions</b>	GLBA, HIPAA, nonprofits, higher ed, etc
<b>Other</b>	

<b>Ohio Personal Privacy Act HB 376</b>	
<b>Status</b>	Introduced 7/12/21
<b>Looks Like</b>	
<b>Scope</b>	Businesses that conduct business in this state, or produce products or services targeted to consumers in this state, that satisfy one or more of the following criteria: (1) The business's annual gross revenues generated in this state exceed twenty-five million dollars; (2) During a calendar year, the business controls or processes personal data of one hundred thousand or more consumers; (3) During a calendar year, the business derives over fifty per cent of its gross revenue from the sale of personal data and processes or controls personal data of twenty-five thousand or more consumers
<b>Rights</b>	Notice, access, delete, request not to sell data to 3 <sup>rd</sup> parties,
<b>Opt In/Out</b>	Opt-in
<b>Enforcement</b>	AG
<b>Exemptions</b>	GLBA entity, HIPAA, Family Educational Rights & Privacy Act, etc
<b>Other</b>	

<b>HB 2968 Oklahoma Computer Data Privacy Act of 2022</b>	
<b>Status</b>	Introduced 9/9/21
<b>Looks Like</b>	
<b>Scope</b>	applies to “businesses,” defined as “[a] sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that collects consumers’ personal information, or on the behalf of which such information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers’ personal information, that does business in the State of Oklahoma, and that satisfies one or more of the following thresholds: (A) has annual gross revenues in excess of ten million dollars (\$10,000,000) in the preceding calendar year; (B) alone or in combination, annually buys, receives, shares, or discloses for commercial purposes, alone or in combination, the personal information of 25,000 or more consumers, households, or devices; or (C) derives 50 percent or more of its annual revenues from sharing consumers’ personal information.
<b>Rights</b>	right to deletion, right to know/access, right to data portability, right to correct inaccurate information, and right not to be discriminated against for exercising their rights
<b>Opt In/Out</b>	Opt-out
<b>Enforcement</b>	AG
<b>Exemptions</b>	HIPAA, GLBA
<b>Other</b>	

<b>Pennsylvania HB 1126</b>	
<b>Status</b>	Referred to Consumer Affairs 4/7/21
<b>Looks Like</b>	

<b>Scope</b>	For profit business with annual gross revenues in excess of \$10 million, or annually buys, receives, sells or shares for commercial purposes the personal info of 50,000 or more consumers or derives 50% or more of annual revenue from selling consumers' personal info
<b>Rights</b>	Know what's being collected; know to whom info is disclosed or sold; access; request deletion
<b>Opt In/Out</b>	Opt-out of sales
<b>Enforcement</b>	Private right of action; AG may promulgate rules and give advice
<b>Exemptions</b>	
<b>Other</b>	

<b>Virginia Consumer Data Protection Act Bill SB 1392 (identical to HB 2307)</b>	
<b>Status</b>	Adopted; Effective date: 1/1/2023
<b>Looks Like</b>	GDPR, CCPA, CPRA. More business friendly than CA
<b>Scope</b>	Applies to all persons that conduct business in the Commonwealth and either (i) control or process personal data of at least 100,000 consumers or (ii) derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.
<b>Rights</b>	rights to access, correct, delete, obtain a copy of personal data
<b>Opt In/Out</b>	opt out of the processing of personal data for the purposes of targeted advertising
<b>Enforcement</b>	AG has exclusive authority to enforce
<b>Exemptions</b>	GLBA, HIPAA, nonprofits, higher education, government
<b>Other</b>	Directs Joint Commission to establish group to review act and issues related to its implementation. Consent for collection of sensitive personal info.



October 18<sup>th</sup>, 2021

NAIC Privacy Protections (D) Working Group  
NAIC Central Office  
1100 Walnut Street  
Suite 1500  
Kansas City, MO 64106

*Attn: Lois Alexander, NAIC Market Regulation Manager*  
Via email: [lalexander@naic.org](mailto:lalexander@naic.org)

Dear Chair Amann, Vice Chair Kreiter and Members of the Privacy Protections Working Group:

Thank you very much for the continued opportunity to provide comments on your ongoing review of past and current consumer privacy frameworks. We very much appreciate the extensive work that the NAIC Privacy Protections Working Group is doing to develop their Privacy Policy Statement. ACLI appreciates this opportunity to participate in the process, as our members are deeply engaged.

As mentioned in our July remarks, we are proud of the fact that the insurance industry has long been a consumer privacy leader in adhering to clear obligations in the appropriate collection, use, and sharing of personal information. Keeping our policyholders' personal information private and protected is at the core of what we do. Life insurers believe that it is important for consumers to have certain rights with respect to personal information that companies maintain about them. At the same time, companies need the ability to maintain and process such personal information to provide consumers with the affordable products and services they request, as well as to ensure the accuracy and integrity of information they use and to comply with applicable laws and regulations.

We respectfully submit the following thoughts to the Working Group on the "Right to Delete Information" provisions of the Privacy Policy Statement.

#### Right to Request Deletion

ACLI recognizes consumer's legitimate interest in requesting deletion of personal information. Insurers are committed to maintaining the integrity of the personal information used to provide products and services to consumers. As we have noted before, existing Model 670 currently provide consumers with robust rights to request correction, amendment, or deletion of personal information, while still recognizing that insurance companies may deny those requests when retention is legally or practically required. We believe that the California Consumer Privacy Act (CCPA), Virginia Consumer Data Protection Act (VDPA), and Colorado Privacy Act (CPA) have appropriately addressed this issue. We believe that exceptions to the right to deletion should be

clear to consumers and that the exceptions included in the CCPA, VDPA, and CPA are instructive, and may be reasonably used to guide efforts on this issue.

We specifically note that businesses are often required to comply with laws or regulations that necessitate maintaining data regarding consumers' contracts that may endure many decades and that may become subject to litigation for years in the future. We support the approach of existing frameworks, which acknowledge those realities and provide appropriate exceptions. For example, the CCPA states that a business is not required to comply with a request to delete personal information if it is necessary for the business to complete the transaction for which the personal information was collected, provide a good or service requested by the consumer or reasonably anticipated within the context of a business' ongoing relationship with the consumer, perform a contract between the business and the consumer, detect fraudulent or illegal activity, and comply with a legal obligation, among other things. Additionally, the CCPA includes the concept that nothing in the law "shall restrict a business's ability to exercise or defend legal claims." This list of reasons, while not comprehensive, illustrates several of the reasons an insurer may need to deny a request to delete information, and why that right must be tempered by legal and practical realities.

Additionally, we note that while it may be possible to request downstream service providers with whom we have an existing written agreement or affiliates with whom we share information to delete data related to the individual consumer, it may not always be possible to do so. Any regulation should take these limitations into account.

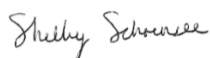
Insurers and other financial services companies are subject to a complex array of federal and state laws and regulations that compel them to maintain records, documentation, and audit trails to prevent and report fraud, money laundering and other financial crimes. As noted by the Working Group, insurers are also compelled to retain to maintain books, records, documents and other business records so that their claims, rating, underwriting, marketing, complaint, and producer licensing, records, rates and forms filings and other records are readily available for examination. Most of the products offered by life insurers have long durations over many decades such as life insurance and long-term care insurance. The need for insurers to retain customer personal information in order to comply with such rules, administer their business, and pay claims is critical.

ACLI supports reasonable laws and regulations giving consumers the ability to request deletion and believes that the necessary exceptions should be clear and consistent for consumers. We recommend that existing Models and several enacted state privacy laws should be relied upon in developing a comprehensive list of exceptions, in order to provide that clarity and consistency to insurers and consumers alike.

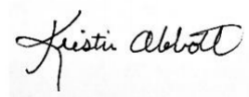
### Conclusion

Thank you for your continued consideration of our comments. We look forward to continuing to collaborate with the Working Group as we move through this review process.

Sincerely,



Shelby Schoensee  
Associate Counsel



Kristin Abbott  
Counsel



October 18, 2021

NAIC Privacy Protections (D) Working Group  
NAIC Central Office  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106

Via email: [lalexander@naic.org](mailto:lalexander@naic.org)

Dear Chair Amann, Vice Chair Kreiter, and Members of the Privacy Protections (D) WG:

Thank you for the opportunity to comment on Segment Four of the PPWG Policy Statement regarding the Right to Delete Information. I serve as a NAIC 2021 Consumer Representative in the NAIC Designated Consumer Participation Program.

A basic consumer right is to have any information collected on an individual to be correct and true. False information can often harm consumers in their personal affairs. Of course, this requires that consumers have access to information collected about them and it be available to the consumers to review for any false information that has been collected. If false information is found, the consumer must be able to inform the appropriate authority for modification/correction to insure that "truth wins out". This necessitates deletion of false information and leads to my support for consumers to be able to delete misinformation.

I strongly support the concept that a consumer "**be forgotten**" once that consumer has no "active" relationship/contract with the insurer. What this means is that the insurer no longer can "share/sell" the consumer's information to affiliates or third parties, nor can the insured market products to the consumer without their permission. This action doesn't keep insurers from "holding" that consumer's information in a separate account for legal purposes.

Respectively,

*Karrol Kitt*

Karrol Kitt, Ph.D.,  
2021 NAIC Consumer Representative

# Arbor Strategies, LLC

**Chris Petersen**  
804-916-1728  
[cpetersen@arborstrategies.com](mailto:cpetersen@arborstrategies.com)

October 20, 2021

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<sup>1</sup> 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 delete information.

As I noted on the Working Group's last conference call, the right to request that inaccurate information be deleted should more appropriately be included within the right to request that information be corrected or amended. This is consistent with the NAIC's earlier approach to this issue. The NAIC's Insurance Information and Privacy Protection Model Act ("Model 670") includes the right to request that information be deleted within the section that relates to 'Correction, Amendment or Deletion of Recorded Personal Information'.<sup>2</sup> The HIPAA privacy rule does not include an expressed right to delete information, but that right is implicitly included within the privacy rule's right to request amendment of information.

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<sup>1</sup> 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.

<sup>2</sup> See Model 670 at Section 9.

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As stated in our last letter, neither the HIPAA privacy rule nor Model 670 includes an absolute right to correct or amend information. Neither should there be an absolute right to delete information. Both of these privacy laws recognize that individuals should not have an unfettered “right” to delete their medical or claims records. Instead, existing privacy laws grant individuals the right, under certain circumstances, to request that information be deleted. 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 deleted, 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, amendment or deletion of information, 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 delete information be amended to reflect that this right has been merged into the right to correct and amend information. The Exposure Draft includes the following definition of the right to delete information:

“DEFINITION: This right ensures that underwriting process and claims adjudication will result in a fair and reasonable decision based on accurate information”.<sup>3</sup>

This proposed definition is not a true definition, but instead, is a policy rationale. We urge the Working Group to adopt the following definition as part of its decision to merge the right to delete information with the right to amend and correct information:

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

As noted in our previous comments and letters, we question whether a new privacy model is necessary. Between the HIPAA privacy rule and state laws based on NAIC models, the members of our coalition already comply with significant privacy requirements. However, if the Privacy Working elects to move forward, it is important that NAIC Model 672 form the basis for your starting point and that the HIPAA privacy rule provide the Working Group with additional guidance if needed. These rules and model were designed with the unique nature of the health insurance, and more broadly, the entire insurance industry in mind.

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<sup>3</sup> Exposure Draft at page 32.

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The consumer representatives have suggested that requirements from the Fair Credit Reporting Act or other laws that do not relate to the insurance industry be lifted and imposed upon the insurance industry. This would be inappropriate and possibly disastrous for health insurance and health care. The approaches proposed by the consumer representatives do not readily translate to the insurance industry and the unintended consequence could be significant.

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 [cpetersen@arborstrategies.com](mailto:cpetersen@arborstrategies.com). We look forward to working with the Working Group as it discusses topics for possible inclusion in a revised NAIC privacy model.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Chris Petersen". The signature is fluid and cursive, with the first name "Chris" and last name "Petersen" clearly distinguishable.

Chris Petersen  
Arbor Strategies, LLC

cc: Lois Alexander

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