

Comment to NAIC Privacy Protection Work Group Regarding Contents of Consumer Privacy Notices

Submitted by
Harry Ting, PhD. NAIC Consumer Representative
June 9, 2023

I am submitting this note to provide the precise wording of the licensee privacy notices that I cited in my oral comments at the PPWG's meeting in Kansas City on June 6th and to expand on how the categories used by USAA could be helpful for revising Model Law 674.

Categories of Information

In the discussion about the content of consumer privacy notices, there was discussion about whether to require the notices to specify the "types" vs. the "categories" of information collected, used or shared. Industry speakers liked "categories", which makes sense to me. However, unless there is some specification of what categories to include, that requirement could be meaningless. In my oral comments, I cited USAA's Privacy Promise disclosure as a possible model. I should have stated that I was referring to its California privacy notice. It describes the categories of PI it collects as follows [highlighting added by me]:

1. Categories of Personal Information We Collect

We may collect (and may have collected during the 12-month period prior to the Last Updated date of this Disclosure) the following categories of Personal Information about you:

- Identifiers, such as name, address and Social Security Number;
- Personal information, as defined in the California safeguards law (Cal. Civ. Code § 1798.80), such as contact information and financial information;
- Characteristics of protected classifications under California or federal law, such as sex and marital status;
- Commercial information, such as **transaction and account information**;
- Biometric information, such as fingerprints and voiceprints;
- **Internet or network activity information, such as browsing history and interactions with our website**;
- **Geolocation data, such as device location**;
- Audio, electronic, visual, or similar information, such as call and video recordings;
- Professional or employment-related information, such as work history and prior employer;
- Education information, such as school and date of graduation; and
- **Inferences drawn from any of the Personal Information listed above to create a profile about, for example, and individual's preferences and characteristics.**

We only collect and process Personal Information that is considered to be Sensitive Personal Information under the CCPA for the purposes set forth in Section 3. **We do not collect or process Sensitive Personal Information with the purpose of inferring characteristics about Covered Individuals.**

In Model Act 674, disclosure of categories should note what sources of information OTHER than the consumer were used, with an explanation of sources. For example, if geolocation data are used, licensees should state the types of devices that might be involved (e.g., mobile phone, computers, cars). Highlighting information from sources other than the consumer will direct the consumer's attention to sources that might be questioned. In addition, a version of the last sentence in the USAA disclosure language above is one that should be mandated: require licensees to state whether they used sensitive personal information to infer characteristics of individuals.

Knowing what information is collected from other sources can be especially helpful to consumers who have been declined coverage or who experience unusual changes in premiums or coverage. Sources of information, such as browsing activity or geolocation devices in cars that were driven by other family members, can lead to invalid inferences about people. Consumers need to know when those sorts of information are used to help them decide whether to challenge licensee actions.

Confidentiality for Victims of Domestic Violence or Abuse

In my oral comments in Kansas City, I also stated Model Act 674 should provide for protection of victims of domestic violence or abuse. I cited a section in Pacific Life's Privacy Promise to illustrate how this can be incorporated in a disclosure. For your information, the wording of that section is shown in the box below.

Confidentiality Practices for Victims of Domestic Violence or Abuse

Pacific Life understands that certain personal information may require special handling. This may be especially true in instances where an individual is, or has been, a victim of domestic violence or abuse. This information may include the individual's address, telephone number, name and place of employment, and other contact or location information.

If you are a Pacific Life applicant, policyowner, insured or beneficiary, who is a victim of domestic violence or other abuse, and would like Pacific Life to take steps to further safeguard your information from others or need to remove a previously submitted request, our customer service representatives are available to assist you.

[This language is followed with phone numbers and hours of operation to call for life insurance, annuity contract, and pension and institutional clients.]

COMMENTS TO PRIVACY PROTECTION WORK GROUP
ON REVISED NAIC MODEL ACT 674, SECTIONS 17-20
Submitted by Harry Ting, PhD, NAIC Consumer Representative
July 8, 2023

I am submitting these comments regarding the revisions to Sections 19 and 20 of Model Act 674, Version 1.1, dated June 23, 2023.

Section 19.B

In this latest draft, Section 19.B is included as an optional regulation. This makes no sense at all. A Commissioner must have the ability to investigate insurance support organizations that are acting on behalf of licensees, in order for the requirements of Model 674 to have any teeth. Otherwise, licensees wishing to circumvent the Model's requirements could simply ask an insurance support organization to do so for them. For example, licensees in states that do not include Section 19.B language could choose to sell personal information of consumers through an insurance support organization, knowing that Commissioners in those states could not investigate whether personal information collected by licensees was being sold.

Section 19.C

Model Act 674 should recognize that it is impossible for state insurance departments to monitor compliance of licensees and insurance support organizations with Model Act 674. To be effective, there must be meaningful penalties for non-compliance. Recognizing that different states will adopt different penalties, I suggest the addition of a Drafting Note in Section 19.C that recommends significant penalties for recurring or intentional violation of Model Act requirements to incentivize compliance.

Section 20

In cases where licensees or their service providers become aware of unauthorized access or use of confidential personal information, there should be a requirement that affected consumers be notified of that fact, so they can be on the lookout for fraudulent use of that information. I'm not sure if that is mandated by regulations established by insurance departments or other government entities. In cases where it is not, such a requirement should be included in Model Act 674, possibly in this section.

Thank you to the Privacy Protection Work Group for its diligent work on this Model Act. I look forward to seeing future versions and commenting on them.

Kitt / Cude Comments to Exposure PPWG Draft Model #674: Sections 17-20

Due Date: July 10, 2023

ARTICLE VI

Section 17. Investigative Consume Reports

- A. We support for this provision requiring that licensees inform the consumer when an investigative report is prepared in relation to their insurance transaction. This reflects significant transparency for consumers and allows consumers to request an interview and receive a written copy of the investigative report. We are, however, concerned about those consumers who lack Internet access to receive an electronic notice.
- B. This provision's focus is on third-party providers who do an investigative report. We support the requirement that consumers' information can be used only for fulfillment of the contract.
- C. We would like a conversation about why claims reports aren't automatically required to interview the consumer in the request or preparation of a claims report.

ARTICLE VII

Section 19. Power of Commissioner

- A. We support the power to examine / investigate a licensee for a violation of the Act. (Consider a better word for *affairs* such as dealings or actions).
- B. We assume the term "insurance support organization" is defined in the definitions of the Act? Is the involvement of consumers' personal information the major difference from a third-party service provider?

Section 20. Confidentiality

- A. Support
- B. This doesn't benefit consumers who could be involved in a private civil action ... correct?
- C.(3)(c) We support the prohibition of third-party retention of personal information once the contract has been satisfied.

Who are NAIC's affiliates/subsidiaries as stated in this Act?

Insurance Consumer Privacy Protection Model Law #674

ACLI Language Suggestions¹

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Section 2. Oversight of Third-Party Service Provider Arrangements

Based on VA Consumer Data Protection Act, §59.1-579(B).

A contract between a licensee and a third-party service provider shall govern the processing of personal information performed on behalf of the licensee. The contract shall be binding and clearly set forth instructions for processing personal information, the nature and purpose of processing, the type of personal information subject to processing, the duration of processing, and the rights and obligations of both parties. The contract shall also include requirements that the third-party service provider shall:

1. Ensure that each person processing personal information is subject to a duty of confidentiality with respect to the data;
2. At the licensee's direction, delete or return all personal information to the licensee as requested at the end of the provision of services, unless retention of the personal information is required by law;
3. Upon the reasonable request of the licensee make available to the licensee all information in its possession necessary to demonstrate the third-party service provider 's compliance with the obligations in this Act;
4. Engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the obligations of the third-party service provider with respect to the personal information.

Nothing in this section shall be construed to relieve a licensee or a third-party service provider from the liabilities imposed on it by virtue of its role in the processing relationship as defined by this Act.

¹ ACLI has worked in good faith to flag potential issues and offer constructive suggestions. Our comments are subject to change based on how the intent behind certain provisions is made clearer and the draft continues to take shape. ACLI members also have several concerns with the definitions in Section 3, with many of those concerns being interrelated with the concerns included within these pages. We request that the Working Group revisit the Definitions section after additional drafting is complete.

Section 3. Definitions

“Additional Permitted Transactions”

ACLI supports removing the term “Additional Permitted Transactions” from this Model and the prior consent condition. ACLI does not support inclusion of HIPAA as a framework for the insurance industry.

“Insurance Transaction”

“Insurance transaction” means any transaction or service by or on behalf of a licensee [and its affiliates](#) involving:

- (1) The determination of a consumer’s eligibility for or the amount of insurance coverage, rate, benefit, payment, or claim settlement;
- (2) The servicing of an insurance application, policy, contract, or certificate, or any other insurance product;
- (3) Provision of “value-added services or benefits” in connection with an insurance transaction;
- (4) ~~Any mathematical based decision that involves a consumer’s personal information;~~
- (5) Any actuarial or research studies for rating or risk management purposes conducted by or for the benefit of the licensee using consumers’ personal information;
- (6) [Business Purposes; or](#)
- (7) [Any functions that support the above.](#)

“Third-party Service Provider”

Based on 23 NYCRR 500.01 and NAIC Insurance Data Security Model Law.

“Third-party service provider” [means a Person, not otherwise defined as a Licensee, that contracts with a Licensee that \(i\) is not an Affiliate of the Licensee, \(ii\) provides services to the Licensee, and \(iii\) maintains, processes or otherwise is permitted access to Personal Information through its provisions of services to the Licensee.](#)

“Consumer”

“Consumer” means an individual and the individual’s legal representative, including a current or former (i) applicant, (ii) policyholder, (iii) insured, (iv) beneficiary, (v) participant, (vi) annuitant, (vii) claimant, or (viii) certificate holder who is a resident of this state and whose personal information is used, ~~may be used,~~ or has been used in connection with an insurance transaction. An individual that is a mortgagor of a mortgage covered under a mortgage insurance policy is a consumer. A consumer shall be considered a resident of this state if the consumer’s last known mailing address, as shown in the records of the licensee, is in this state unless the last known address of record is deemed invalid. [A consumer does not include a natural person acting in a commercial or employment context.](#)

“Business Purpose”

“Business purpose” means the use of personal information for the business’s operational purposes or for the service provider or contractor’s operational purposes provided that the use of personal information shall be reasonably necessary and proportionate to achieve the purpose for which the personal information was collected or processed or for another purpose that is compatible with the context in which the personal information was collected. Business purposes are:

- (1) Auditing, including but not limited to auditing related to counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards.
- (2) Helping to ensure security and integrity to the extent the use of the consumer’s personal information is reasonably necessary and proportionate for these purposes.
- (3) Debugging to identify and repair errors that impair existing intended functionality.
- (4) Short-term, transient use, including, but not limited to, non-personalized advertising shown as part of a consumer’s current interaction with the business, provided that the consumer’s personal information is not disclosed to another third party and is not used to build a profile about the consumer or otherwise alter the consumer’s experience outside the current interaction with the business.
- (5) Performing services on behalf of the business, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing analytic services, providing storage, or providing similar services on behalf of the business.
- (6) Providing advertising, marketing and joint marketing services, except for cross-contextual behavioral advertising.
- (7) Undertaking internal research for technological development and demonstration.
- (8) Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business.
- (9) Completing the transaction for which the personal information was collected, provide a good or service requested by the consumer, or reasonably anticipated by the consumer within the context of a business’ ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.
- (10) Enabling solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer’s relationship with the business and compatible with the context in which the consumer provided the information.
- (11) Making a mathematical-based decision that involves a consumer’s personal information.

or if that is not possible, the criteria used to determine the period of time it will be retained.

Section 4. Data Minimization and Sharing Limitations

- A. No licensee shall collect, process, retain, or share a consumer’s personal information unless:
- 1) The collection, processing, retention, or sharing is in connection with an insurance transaction as defined in this Act;

- 2) The licensee provides the applicable notices required by this Act;
 - 3) The collection, processing, retention, or sharing of the consumer's personal information is consistent with and complies with the most recent notice provided to the consumer by the licensee;
 - 4) The collection, processing, retention, or sharing of the consumer's personal information is reasonably necessary and proportionate to achieve the purposes related to ~~the requested insurance transaction or additional permitted transactions~~ the purposes identified in the notice provided to the consumer and not further processed, retained, or shared in a manner that is incompatible with those purposes; and
 - ~~5) The licensee or third-party service provider has obtained prior consent from any consumer whose personal information will be:
 - a) Used in connection with an additional permitted transaction, as defined in this Act; or
 - b) Shared with a person outside the jurisdiction of the United States, or its territories, as provided in this Act.~~
- B. Consistent with the requirements of this Act, and notwithstanding Clause A above, a licensee may collect, process, retain, or share a consumer's personal information in connection with an insurance transaction as necessary:
- 1) For ~~the~~ recommending, offering, or servicing of any insurance application, policy, contract, or certificate under which the consumer is an actual or prospective insured, claimant, or beneficiary;
 - 2) For planning, recommending, offering, servicing, or payment-related activities related to any additional permitted transaction;
 - 3) For compliance with a legal obligation to which the licensee is subject;
 - 4) For compliance with a request or directive from a law enforcement or regulatory authority;
 - 5) For compliance with a warrant, subpoena, discovery request, judicial order, or other administrative, criminal, or civil legal process, or any other legal requirement that is binding upon the licensee collecting, processing, retaining, or sharing the personal information;
 - 6) For a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurer or producer as having a legal or beneficial interest in a policy of insurance, to protect that interest provided that:
 - a) No health information is shared unless the sharing would otherwise be permitted by this section, and
 - b) The information shared is limited to that which is reasonably necessary to permit such person to protect its interests in such policy;
 - 7) To enable a licensee to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction;
 - 8) To enable a health care provider to:
 - a) Verify the consumer's insurance coverage or benefits;
 - b) Inform a consumer of health information of which the consumer may not be aware; or
 - c) Conduct an operations or services audit to verify the individuals treated by the health care provider; provided only such information is shared as is reasonably necessary to accomplish the audit;
 - 9) To permit a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the licensee to review the information necessary for such transaction, provided:

- a) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is shared as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and
- ~~b) The recipient agrees not to share consumers' personal information until (i) consumer privacy protection notices have been provided to the consumers and (ii) the recipient has complied with the provisions of this Act;~~
- ~~10) For an affiliate whose only use of the information is to perform an audit of a licensee provided the affiliate agrees not to process personal information for any other purpose or to share the personal information;~~
- 11) To permit a group policyholder to [conduct plan administration activities](#), report claims experience, or conduct an audit of the operations or services of a licensee, provided the information shared is reasonably necessary for the group policyholder to make the report or conduct the audit and is not otherwise shared; or
- 12) To permit (i) a professional peer review organization to review the service or conduct of a healthcare provider provided the personal information is not otherwise processed or shared or (ii) to permit arbitration entities to conduct an arbitration related to a consumer's claim;
- 13) To provide information to a consumer, [or their personal representative/designee](#), regarding the status of an insurance transaction;
- 14) To permit a governmental authority to determine the consumer's eligibility for health care benefits for which the governmental authority may be liable.
- 15) [To perform marketing for the licensee's or affiliates own products or services, or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institution, as long as the service provider is not authorized to directly initiate charges to the account;](#)
- 16) [In connection with reinsurance or stop loss or excess loss insurance;](#)
- 17) [To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors; or](#)
- 18) [For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.](#)
- 19) [For any actuarial or research studies for rating or risk management purposes conducted by or for the benefit of licensees.](#)
- ~~C. No licensee shall, unless legally required, collect, process, retain, or share a consumer's personal information with an entity outside of the United States and its territories, unless the licensee has provided the required notice and obtained the consumer's prior express consent to do so, as required by Article III of this Act.~~
- D. No licensee shall permit any of its officers, employees, or agents to collect, process, retain, or share any consumer's personal information, except ~~as relevant and necessary~~ as part of that person's assigned duties.
- ~~E. No licensee may collect, process, retain, or share a consumer's personal information in connection with any additional permitted transactions without consumers' prior express consent. Once consent has been given, any person may conduct marketing, actuarial studies, and research activities as follows:~~
 - ~~1) For actuarial studies and research activities:
 - ~~a) No consumer may be identified in any research study or report;~~~~

- ~~b) All materials allowing the consumer to be identified are returned to the licensee that initiated the actuarial or research study; and~~
- ~~e) A consumer's personal information is deleted as soon as the information is no longer needed for the specific actuarial or research study.~~
- ~~2) For all additional permitted transactions:~~
 - ~~a) The person conducting the marketing, actuarial study report, or research activity agrees not to further share any consumer's personal information; and~~
 - ~~b) A consumer's sensitive personal information may not be shared or otherwise provided to any person for use in connection with any additional permitted transaction.~~
- F. A licensee may collect, process, retain, or share consumers' de-identified personal information.
- G. No licensee shall:
 - 1) Collect, process, retain, or share personal information in a manner inconsistent with the ~~direction of a consumer~~ [notice provided to the consumer](#) pursuant to this act; or
 - 2) Collect, process, retain, or share personal information in a manner requiring the prior express consent or authorization of the consumer without obtaining such prior consent.
- H. Notwithstanding any other provision of law, no licensee may sell ~~or share~~ consumers' personal information for any type of consideration.
- I. This section shall not prohibit the collection, processing, retention, or sharing of consumers' personal information to the extent preempted by subdivisions (b)(1)(H) or (b)(2) of Section 625 of the Fair Credit Reporting Act.

Joint Marketing Language

- A. Any restrictions or limitations established under this Act that would otherwise require a licensee to obtain prior consent to collect, process, retain or share a consumer's personal information or otherwise limit the ability of a licensee to collect, process, retain, or share a consumer's personal information, shall not limit a licensee's ability to engage in joint marketing.
- B. For purposes of this Section, "joint marketing" means marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to a written contract between the licensee and one or more financial institutions, which complies with the requirements of Section 2 of this Act and pursuant to which the licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

[Insurance Consumer Privacy Protection Model Law #674](#), see Section 4(A)
[Privacy of Consumer Financial and Health Information Regulation #672](#), see Section 15

Section 6. Initial and Annual Notice of Consumer Information Practices

- A. A licensee that collects, processes, retains, or shares a consumer's personal information in connection with insurance transactions, by whatever means used, shall provide to consumers clear and conspicuous notices that accurately reflect its information policies and practices.

- B. Subject to the exception for privacy notices to group policyholders in [insert section], an initial consumer information practices notice shall be provided to a consumer at or before the licensee, directly or through a third-party service provider, first does any of the following:
1. Collects, processes, retains, or shares the consumer's personal information in connection with an application for insurance coverage;
 - ~~2.—Collects, processes, retains, or shares the consumer's personal information in connection with a claim under an insurance policy;~~
 3. Collects the consumer's personal information from a source other than the consumer or public records;
 4. Collects, processes, retains, or shares the consumer's personal information in connection with value-added services;
 5. Collects, processes, or shares the consumer's personal information in connection with an additional permitted transaction; or
 6. Collects, processes, or shares the consumer's personal information, including but not limited to reviewing the consumer's policy or coverage for renewal or reinstatement, if the consumer relationship predates the applicability of this section and the consumer has not already received a notice substantially similar notice.
- C. ~~A further information practice notice shall be provided not less than annually to each consumer with whom the licensee has an ongoing business relationship. The licensee shall conspicuously identify any material changes in its information practices.~~ A licensee that has not materially changed its policies and practices from those disclosed in the most recent notice made available to consumers shall not be required to provide an annual notice under this section until such time as there is a material change in its policies and practices.
- D. The licensee shall honor all representations made to consumers in its most current initial and annual notices, unless otherwise compelled by law, in which case the licensee shall promptly send a notice to all affected consumers explaining the changes in the licensee's information practices. If the licensee's information practices materially change, the licensee remains bound by the terms of the most recent notice it has given a consumer, until a revised notice has been given.
- E. When a licensee is required to provide a consumer a consent form required by this Act, the licensee shall deliver it according to Section 8.

Section 7. Content of Consumer Information Practices Notices

- A. The content of any notice required by Section 6 shall state in writing all of the following:
- (1) Whether personal information has been or may be collected from any sources other than the consumer or consumers proposed for coverage, and whether such information is collected by the licensee or by a third-party service provider;
 - (2) The ~~specific types~~ categories of personal information of ~~the consumer that~~ the licensee or any of its third-party service providers has or may collect, process, retain, or share;
 - (3) The ~~specific~~ purposes for which the licensee collects, processes, retains, or shares personal information as permitted by this Act;
 - (4) The categories of sources that have been used or may be used by the licensee to collect, process, retain, or share the consumer's personal information;

- (5) That consumers' personal information may be shared for any of the purposes listed permitted in this Act, or a description of the licensee's information practices if those practices are more limited than permitted by this Act;
- (6) That the consumer may, upon request, annually obtain a list of any persons categories of third-party service providers with which the licensee ~~or any of the licensee's third-party service providers~~ has shared the consumer's personal information within the current calendar year and, at a minimum, the three previous calendar years.
- ~~(7) A description of the following requirements as established under Section 4 of this Act:~~
- ~~a) The requirement that the licensee or third-party service provider obtain the consumer's express written consent prior to sharing the consumer's personal information with any person in connection with the collection, processing, retention, or sharing of the consumer's personal information with a person in a jurisdiction outside of the United States and its territories, and the consumer's right to prohibit sharing of the consumer's personal information with such a person;~~
 - ~~b) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for actuarial purposes unless such information has been de-identified;~~
 - ~~c) The requirement that the licensee obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for research purposes unless such information has been de-identified; and~~
 - ~~d) The requirement for the licensee to obtain the consumer's express written consent for the collection, processing, retention, or sharing of a consumer's personal information for marketing a product or service to the consumer;~~
- (8) A description of the rights of the consumer to access, correct or amend personal information about the consumer and to correct or amend factually incorrect personal information as established under Article IV of this Act, and the instructions for exercising such rights;
- (9) A statement of the rights of non-retaliation established under Section 13 of this Act;
- (10) A summary of the reasons the licensee ~~or any third-party service provider~~ retains personal information and the approximate period of retention or if that is not possible, the criteria used to determine the period of time it will be retained; and
- (11) A statement that no licensee ~~or third-party service provider~~ may sell ~~or share for valuable consideration~~ a consumer's personal information.
- ~~(12) In addition to the notice provided to consumers, a licensee shall prominently post and make available the notice required by this section on its website, if a website is maintained by the licensee. The licensee shall design its website notice as follows:~~
- ~~a) The notice is clear and conspicuous;~~
 - ~~b) The licensee uses text or visual cues to encourage scrolling down the page, if necessary, to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice; and~~
 - ~~c) The licensee either:~~
 - ~~i. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or~~
 - ~~ii. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is~~

labeled appropriately to convey the importance, nature, and relevance of the notice.

~~B. If the licensee uses a consumer's personal information to engage in additional permitted transactions, in addition to the provisions in Subsection A of this section, the following information shall be included in the notice:~~

- ~~(1) A statement that the consumer may, but is not required to, consent to the collection, processing, sharing, and retention of the consumer's personal information for any additional permitted transactions in which the licensee engages;~~
- ~~(2) A description of the reasonable means by which the consumer may express written consent;~~
- ~~(3) That the consumer may consent to any one or more of the additional permitted transactions or refuse to consent to any one or more of the additional permitted transactions;~~
- ~~(4) That once consent has been given for an additional permitted transaction, the consumer may revoke consent at any time;~~
- ~~(5) That once consent for using a consumer's personal information for an additional permitted transaction is withdrawn, the licensee will no longer engage in such additional permitted transaction using the consumer's personal information; and~~
- ~~(6) That once consent to an additional permitted transaction has been revoked, any of the consumer's personal information in the possession of the licensee used solely for that additional permitted transaction will be destroyed and deleted as set forth in Section 5 of this Act.~~

~~G. If the licensee shares consumers' personal information with a person who will collect, process, retain, or share consumers' personal information in a jurisdiction outside of the United States and its territories, the following information shall additionally be included in any notice required by Section 6 of this Act:~~

- ~~(1) A statement that the consumer may, but is not required to, consent to the collection, processing, retention, or sharing, of the consumer's personal information a jurisdiction outside of the United States and its territories;~~
- ~~(2) A description of the reasonable means by which the consumer may express written consent;~~
- ~~(3) That once consent has been given for the collection, processing, retention, or sharing of consumers' personal information in a jurisdiction outside the United States and its territories, a consumer may revoke consent at any time; and~~
- ~~(4) That once consent for the collection, processing, retention, or sharing of consumers' personal information by a person in a jurisdiction outside the United States and its territories has been revoked, any of the consumer's personal information in the possession of such person shall be deleted as set forth in Section 5 of this Act.~~

D. The obligations imposed by this section upon a licensee may be satisfied by another licensee or third-party service provider authorized to act on its behalf.

Reference for Section A (10)

[CPPA - FINAL REGULATIONS TEXT \(ca.gov\)](#)

§ 7012. Notice at Collection of Personal Information. (e)(4) *The length of time the business intends to retain each category of personal information identified in subsection (e)(1), or if that is not possible, the criteria used to determine the period of time it will be retained.*

(e)(1) A list of the categories of personal information about consumers, including categories of sensitive personal information, to be collected. Each category of personal information shall be written in a manner that provides consumers a meaningful understanding of the information being collected.

Section 8. Delivery of Notices Required by This Act

- A. A licensee shall ~~provide~~ make available any notices required by this Act electronically so that each consumer can reasonably be expected to receive actual notice or, by paper if the consumer requests in writing or, if the consumer agrees, electronically pursuant to [state's UETA law].
- ~~B. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:~~
- ~~1. Hand-delivers a printed copy of the notice to the consumer;~~
 - ~~2. Mails a printed copy of the notice to the address of record of the consumer separately, or in a policy, billing, or other written communication;~~
 - ~~3. For a consumer who has agreed to conduct transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service or emails the notice to the consumer and requests a delivery receipt;~~
- C. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:
1. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or
 2. Make Available Sends the notice electronically to a consumer who has requested notice by paper not agreed to conduct business electronically with the licensee in connection with an insurance transaction or an additional permitted transaction.
 - ~~3. Sends the notice electronically to a consumer who has agreed to conduct business electronically with the licensee in connection with an insurance transaction or an additional permitted transaction, but the licensee does not obtain a delivery receipt.~~
- ~~D. A licensee may reasonably expect that a consumer will receive actual notice of the licensee's annual privacy notice if:~~
- ~~1. The consumer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or~~
 - ~~2. The licensee mails or emails the notice to the consumer's address of record.~~
 - ~~3. A licensee may not provide any notice required by this Act solely by orally explaining the notice, either in person or over the telephone.~~
 - ~~4. The licensee provides all notices required by this Act so that the consumer can retain them or obtain them later in writing or, if the consumer agrees, electronically.~~
- E. A licensee may provide a joint notice from the licensee and one or more of its affiliates if the notice accurately reflects the licensee's and the affiliate's privacy practices with respect to the consumer.
- F. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial and annual notice requirements of Sections 6 and 7 of this Act, respectively, by providing one notice to those consumers jointly. ~~The notice must reflect the consent of each consumer.~~
- ~~G. If any consumer has requested that the licensee refrain from sending an annual notice of consumer privacy protections and the licensee's current privacy protections notice remains available to the consumer~~

~~upon request, the licensee shall honor the consumer's request but must continue to send any jointly insured consumer the annual notice.~~

Exemption Language

Group Policyholders- ACLI members are comfortable with the language from the NAIC Privacy of Consumer Financial and Health Information Regulation (#672).

Section 10. Privacy Notices to Group Policyholders

Unless a licensee is providing privacy notices directly to covered individuals described in Section 4F(2)(e)(i), (ii) or (iii), a licensee shall provide initial, annual and revised notices to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, or workers' compensation policyholder, in the manner described in Sections 5 through 9 of this regulation, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts or plans. [Compliance with this section satisfies the licensee's initial and annual notice of consumer information practices in Section \[insert section number\].](#)

Reinsurance- ACLI members request an exemption similar to the one given in the NAIC Insurance Data Security Model Law (#668).

Section 6 (E)(1)(b). The ceding insurers that have a direct contractual relationship with affected Consumers shall fulfill the consumer notification requirements imposed under [insert the state's breach notification law] and any other notification requirements relating to a Cybersecurity Event imposed under Section 6.



APCIA Suggestions from Interim Meeting on Draft Model 674

Please find below several of the suggested changes APCIA shared during the Interim Meeting in Kansas City. The specific suggestions below represent our good-faith effort to convey our recommendations on several of the topics discussed on the ground in Kansas City. We hope these constructive comments are helpful, and note that we will have continued comprehensive feedback to share in future calls and on the next draft of the Model. We will continue to have further thoughts and suggestions (and possibly changes to these suggestions) based on changes included in the next draft of the Model and further changes to the “Definitions” section. APCIA appreciates the opportunity to share our members thoughts.

Definitions

“Insurance Transaction”

"Insurance transaction" means any transaction or service by or on behalf of a licensee involving:

- (1) [The evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service;](#)
- (2) The determination of a consumer’s eligibility for or the amount of insurance coverage, rate, benefit, payment, or claim settlement;
- (3) The servicing of an insurance application, policy, contract, or certificate, or any other insurance product;
- (4) Provision of “value-added services or benefits” in connection with an insurance transaction;
- (5) ~~Any mathematical-based decision that involves a consumer’s personal information;~~
- (6) Any actuarial or research studies for rating or risk management purposes conducted by or for the benefit of the licensee using consumers’ personal information;
- (7) [Any activities included in Article II, Section 4\(B\) of this Model](#)
- (8) [Business Purposes; or](#)
- (9) [Any functions that support the above.](#)

Additional Suggestions

Oversight of Third-Party Service Provider Arrangements

- APCIA advocates taking a principles-based risk management approach to oversight of third-party service providers.
- The approach to oversight of third-party service providers should align with the approach taken in Model #668.
- Any additional requirements of this section should be enacted on a moving-forward basis with a delayed effective date.

APCIA Suggestions from Interim Meeting on Draft Model 674

- Licensees should not be required to renegotiate existing contracts to add language specified by the Draft. Instead, the Draft should establish risk-based standards for third party contracts that ensure personal information is protected without requiring them to include specific prescribed language.

HIPPA Approach

- APCIA does not support applying HIPPA as a framework for the insurance industry, or as a source of definitions for industry-wide application.

Marketing

- Insurers should be permitted to market without prior consent and with a consumer option to opt-out, consistent with existing standards. We also have considerable concerns with the potential implications for joint marketing.
- APCIA does not support inclusion of HIPAA as a framework for the insurance industry, or as a source of definitions for industry-wide application.

Joint Marketing Language

- We believe the Model should make clear that joint marketing is permitted. Please find some suggested language below for consideration.

A. Any restrictions or limitations established under this Act that would otherwise require a licensee to obtain prior consent to collect, process, retain or share a consumer's personal information or otherwise limit the ability of a licensee to collect, process, retain, or share a consumer's personal information, shall not limit a licensee's ability to engage in joint marketing.

B. For purposes of this Section, "joint marketing" means marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to a written contract between the licensee and one or more financial institutions, which complies with the requirements of Section 2 of this Act and pursuant to which the licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

Frequency and Method of Delivery of Notices

- APCIA members believe the Draft should include a safe harbor for those using the Federal Model Privacy Form (defined under the Gramm-Leach-Bliley Act).

APCIA Suggestions from Interim Meeting on Draft Model 674

- The Draft should align with the NAIC’s 2016 Gramm Leach Bliley Act Annual Privacy Notices Bulletin and should only require subsequent annual notices if there is a material change.
- The most effective method of delivery and ensuring that the consumer has ready access to the current notice is for it to be posted on the licensee’s website. This should replace the other prescriptive requirements included in the Model for method of delivery.
- The current options for electronic delivery described in the Draft are challenging because of the requirement to obtain an acknowledgement from each consumer if they view the notice electronically or to get an email delivery receipt. In terms of the latter, consumers can block delivery receipts, which complicates this process.



John Euwema
VP-Legislative/Regulatory Counsel
1300 Pennsylvania Ave, NW 190-327
Washington, DC 20004
630.824.7300

June 9, 2023

Katie Johnson, Chair
Privacy Protections (H) Working Group
National Association of Insurance Commissioner
110 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Attn: Lois Alexander, NAIC Market Regulation Manager

By email: lalexander@naic.org

RE: CCIA Comments on Draft Insurance Consumer Privacy Protection Model Act #674

Dear Chair Johnson,

The Consumer Credit Industry Association appreciates the opportunity to comment on the current draft of the Insurance Privacy Protection Model Act #674.

We share many of the concerns raised by industry on Model Act #674 provisions and requirements, but our focus here is ensuring that Model Act #674 does not affect and is not applicable to a licensee's non-insurance business. CCIA members as licensees engage in such insurance transactions as credit insurance, life insurance, GAP insurance, lender placed insurance, and non-file insurance. Additionally, they provide such non-insurance products as GAP waiver, debt cancellation agreements, service contracts, and motor club products. Other licensees also provide similar non-insurance products and services which could be inadvertently impacted by Model Act #674 requirements.

Model Act #674 clearly intends to limit data privacy requirements to "insurance transactions" as delineated in numerous provisions, yet we respectfully suggest for the avoidance of doubt further language to specifically exclude individuals' information related to a licensee's non-insurance products and services.

To that end, we suggest a new subsection J. be added to Section 4:

J. This Act shall not be applicable to or govern a licensee's collection, processing, retention, use, or sharing of any individuals' information involving or in connection with non-insurance products or services.

Again, thank you for accepting our comments, and we look forward to working with you to provide an effective Model Act that recognizes the complexity and variation of licensees' insurance and non-insurance products and services.

Sincerely,

A handwritten signature in cursive script, appearing to read "John E. Emma".



1012 14th St., NW, Suite 1105
Washington, D.C. 20005
202.393.7330

July 10, 2023

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Matthew J. Smith, Esq.
Executive Director

A national coalition of consumers, government agencies and insurers dedicated to combating all forms of insurance fraud through public information and advocacy.

Lois Alexander
National Association of Insurance Commissioners
lalexander@naic.org

RE: Request for Comments on Draft Model #674

Dear Ms. Alexander,

I am writing on behalf of the Coalition Against Insurance Fraud in response to the National Association of Insurance Commissioners (NAIC) request for comments on the NAIC Privacy Protections (H) Working Group's (PPWG) draft Model #674.

The Coalition strongly supports NAIC's effort to maintain a balance between the need for information by those conducting the business of insurance and the consumers' need for fairness. We also believe that it is equally important to ensure that the investigation of insurance fraud by all involved parties is not restricted.

As the full version of the amended draft Model #674 is not yet available, the Coalition bases the following on Model #670 and the certain sections of the draft Model #674 that was made available.

1. We are requesting that the PPWG revisit and possibly modify the definition of "investigative consumer report" as it may be too broad and need additional clarification as to the scope of what is intended.
2. In addition, we would ask the PPWG to include similar fraud exclusions and disclosure limitations found in Model #670 or special consideration for instances where the reasonable suspicion of insurance fraud exists, based on the presence of indicators that warrant further investigation.
3. Additionally, we would expect that nothing in the forthcoming model would conflict with existing anti-fraud immunity statutes.

We look forward to reviewing the full version of the amended draft Model #674 that will be made available soon. The Coalition Against Insurance Fraud also welcomes the opportunity to partner with the PPWG in providing future comment.

If there is any further assistance that we may provide, please contact me at any time. Thank you for your consideration.

Sincerely,

Brent Walker
Director of Government Relations
(301) 821-6145
brent@insurancefraud.org



July 10, 2023

NAIC Privacy Protections (H) 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

Dear Chair Johnson, Vice Chairs Amann and Aufenthie, and Members of the Privacy Protections Working Group:

The National Association of Benefit and Insurance Professionals (NABIP), which was previously known as the National Association of Health Underwriters (NAHU), appreciates the efforts of the Working Group and the release of new draft sections 17-20 of the proposed revision to the Consumer Privacy Protections Model Law.

NABIP members are particularly grateful for the significant changes made to the previous Section 19 (now Section 18) to expand the safe harbor for licensees who comply with the federal HIPAA/HITECH privacy and data security requirements to all sections of the Draft Act. By changing the draft model language in this manner, you have eliminated potential conflicts with existing Federal law and significantly reduced the amount of dual compliance needed by licensees, like NABIP members, who also must follow the federal health privacy and data security requirements.

Additionally, we support the clarifications made to the model law in Section 20 to protect the confidentiality of documents, materials, data, or other information provided or obtained by a state insurance department or a commissioner as part of compliance with the draft privacy model law. It is critical that licensees, including health insurance agents and brokers, as well as other entities subject to this measure, who may be required to provide significant and sensitive information to state regulators because of this act, have the assurance that this data will be kept privileged and confidential by law.

If you need additional information or have questions about our comments, please do not hesitate to contact me at (202) 595-0639 or jtrautwein@nabip.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Stokes Trautwein". The signature is written in a cursive style with a large, looping initial "J".

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Benefits and Insurance Professionals



July 10, 2023

Katie Johnson, Chair
Privacy Protections (D) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

By Email to Lois Alexander at LAlexander@NAIC.org

Re: Draft Model Law #674 – Sections 17-20 of June 26, 2023

Dear Ms. Johnson:

On behalf of the members of AHIP, we appreciate the opportunity to provide comments on the recent release of the newly modified Sections 17-20 dated June 26, 2023. We appreciate the continuing spirit of collaboration. In view of the relatively short exposure period including a holiday, we may ask to refine some of these comments in the near future.

Section 17. Investigative Consumer Reports, and Section 19. Power of the Commissioner. We have no comments on these sections.

Section 18. Compliance with HIPAA and HITECH. We appreciate the updates made to this section to provide a safe harbor to companies subject to and compliant with HIPAA and HITECH, including those entities which are allowed by HIPAA as “hybrid” entities. We also understand the language which is intended to provide assurances to regulators that these companies are in compliance. We continue to review this language to determine whether any of the language can be improved to further clarify its intent, but for now, we see it as a great improvement from the language of the January 31 draft and, as stated before, we appreciate it.

Section 20. Confidentiality. We are also encouraged to see the original Confidentiality language of January 31, 2023 has been expanded to more closely resemble the language found in the “Gold Standard” confidentiality language used in the *Risk Management and Own Risk and Solvency Assessment Model Act* (ORSA), #505 (Section 8), and the *Insurance Holding Company System Regulatory Act* (Holding Company Act), #440 (Section 8). There are, however, some portions which have been omitted, several of which are important.

The first omission is in Section 20.C(1), where the following words from the end of ORSA Section 8.C(1) should appear at the end: "...and has verified in writing the legal authority to maintain confidentiality;..." This language is to ensure an entity, primarily a third-party vendor, has the legal ability to support the representations made that it will maintain the confidentiality and privileged status of the documents, data, materials, or information in question. Anyone can say they will keep materials confidential, but not everyone has statutory authority to decline or contest a subpoena or other litigation demand.

The next substantial omission in this draft's Section 20 is the language in ORSA Section 8.C(v) and (vi), which isn't present at all in this draft. Subsection (v) is another litigation-related protection so that a third-party, including the NAIC, is required to allow the insurer in question to participate, or "intervene", in any litigation which seeks the confidential information. This allows the insurer to bring additional resources and come to the defense of the third-party to assist their protection efforts. Section (vi) requires the insurer to agree to any involvement of a third-party consultant to protect against any conflicts of interest of the third-party consultant of which the regulator may not be aware.

Although this draft has a Section 20.F, it does not match the language of ORSA's Section 8.F, which provides a broad assurance that any information which the commissioner has shared with the NAIC or a third-party consultant pursuant to the Privacy Model retains its status as privileged and confidential, maintains its protection from FOI, sunshine, or open records laws, isn't subject to subpoena or discovery, and isn't admissible in any private civil action.

Some of these provisions may seem to be overly detailed, but this language was carefully created, extensively debated, and carefully reviewed by industry and regulators during the development of both the Model Holding Company Act and the ORSA Model. They were seen then and now as necessary to protect highly confidential company information. The privacy of consumers' information contemplated by this proposed Model #674 is just as deserving of protection.

Thank you for the opportunity to provide these comments, and we look forward to further discussing these matters with you.

Sincerely,

Bob Ridgeway

Bridgeway@ahip.org

501-333-2621



July 10, 2023

Via email:

Lois Alexander (lalexander@naic.org)

NAIC Market Regulation Manager

Katie C. Johnson (VA), Chair

Cynthia Amann (MO), Co-Vice Chair

Chris Aufenthie (ND), Co-Vice Chair

Privacy Protections (H) Working Group

National Association of Insurance Commissioners

1100 Walnut Street, Suite 1500

Kansas City, MO 64106

Re: National Association of Insurance Commissioners Consumer Privacy Protection Model Law (#674): Exposure Draft of Article VI, Sections 17 and 18 and Article VII, Sections 19 and 20

Dear Chair Johnson, Vice Chairs Amann and Aufenthie, and Members of the Privacy Protections Working Group:

On behalf of the National Association of Professional Insurance Agents (PIA)¹, thank you for the opportunity to provide comments on the National Association of Insurance Commissioners (NAIC) Privacy Protections Working Group's (PPWG) updated draft of Article VI, Sections 17 and 18, and Article VII, Sections 19 and 20 of the Consumer Privacy Protection Model Law (#674) (herein referred to as "MDL #674"). We appreciate the PPWG's continued attention to the challenges posed by the application of current and nascent technologies and business practices to NAIC's current consumer protection regulatory regime.

1. PIA shares the PPWG's goal of protecting insurance consumer data, and our feedback reflects that shared goal.

PIA appreciates the work that the PPWG has invested in both exposure drafts and the time the PPWG has continued to devote to this important subject over the past eighteen months or so. We also valued the time spent on consideration of the draft at the PPWG meeting held during the NAIC National Meeting in Louisville earlier this year and at the June interim meeting in Kansas

¹ PIA is a national trade association founded in 1931 whose members are insurance agents and agency owners in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals serving insurance consumers in communities across America.

City. We were particularly grateful for the time PIA staff spent privately with the PPWG during a videoconference this past spring. During that meeting, we described the evolving ways independent agents are using data to strengthen the independent agency model and facilitate the growth of their small and mid-sized businesses all around the country.

In each forum, we have appreciated the regulators' collaborative mindset and the thoughtful questions they have posed. We look forward to continuing our partnership with PPWG members and interested regulators to ensure that the final version of MDL #674 both protects consumer data and cultivates the longevity and strength of the independent agency system in the United States. Both goals will benefit consumers.

Like the members of the PPWG, we share the goals of ensuring that consumer data is protected; that consumers get the opportunity to know how their data is being used; that they have the choice not to share data gratuitously in ways that make them uncomfortable; and that they are aware of that choice and are given the chance to exercise it. Empowering consumers to limit the circumstances in which their data may be shared is valuable, and data belonging to insurance consumers may be particularly susceptible to exploitation because of the extent to which transmission of consumers' personal information is required for consumers purchasing insurance products.

PIA's concerns about the newly exposed sections of Articles VI and VII are set forth below. We have omitted Article VI, Section 17 ("Investigative Consumer Reports") and Article VII, Section 20 ("Confidentiality") because we do not currently have concerns regarding those sections.

2. Article VI, Section 18: Compliance with HIPAA and HITECH.

a. Section 18(B): Potential source of ambiguity.

Section 18 governs the duties of licensees that are already subject to the consumer protection standards set forth in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, commonly referred to as "HIPAA") and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, commonly referred to as "HITECH"). Section 18 deems such licensees to be complying with MDL #674. Licensees relying on this section are required to submit to the appropriate state insurance regulatory authority "a written statement from an officer of the licensee certifying that the licensee collects, processes, retains, and shares all personal information *in the same manner as protected health information*" (emphasis added).

The identical phrase "in the same manner as protected health information" appears in Sections 18(A) and 18(B). In Section 18(A), though, the sentence containing that phrase begins, "A licensee that is subject to *and compliant with ...*" (emphasis added). The phrase "and compliant with" eliminates a possible source of ambiguity in Section 18(A) that its absence from Section 18(B) leaves in place.

In Section 18(B), the second use of the phrase "in the same manner as protected health information," does not include the descriptor "compliant with." The PPWG likely intends for

both sections to require licensees to treat consumer information subject to MDL #674 with the level of rigor associated with HIPAA/HITECH compliance. However, the phrase “in the same manner as,” without the description of the licensee as “compliant with” injects potential ambiguity into Section 18(B) that does not exist in Section 18(A). Section 18(B) appears to leave open the possibility that a malevolent licensee could under-protect consumer information susceptible to MDL #674, particularly if such a licensee already under-protects its “protected health information.”

To eliminate this potential loophole in Section 18(B), we recommend replacing “in the same manner as protected health information” with “as if it were protected health information,” so that the applicable standard for the protection of consumer information is unequivocal and equally rigorous, whether the data is subject to the substantive provisions of MDL #674 or the HIPAA/HITECH deemer clause.

Striking through ~~eliminated words~~ and underlining additional text, revised Section 18(B) would thus read:

- B. Any such licensee shall submit to the [Commissioner] a written statement from an officer of the licensee certifying that the licensee collects, processes, retains, and shares all personal information ~~in the same manner~~ as if it were protected health information.

b. Section 18(B): Defining “officer.”

Additionally, because an “officer” of each licensee availing itself of the deemer clause will have a duty to submit a written statement certifying that the licensee is compliant with HIPAA/HITECH, we recommend adding a definition of the word “officer” to Article I, Section 3, “Definitions,” or, in the alternative, referring here to an existing definition of the word “officer,” if one appears elsewhere within the NAIC consumer protection regulatory regime.

3. Article VII, Section 19: Power of the Commissioner.

a. Section 19(A): Unfair application of law.

Section 19(A) provides state insurance commissioners with the power to examine and investigate licensees for potential violations of MDL #674. Our concern about Section 19(A) focuses on the relationship between its first sentence and its final sentence, which says that a commissioner’s investigation or examination must “be conducted pursuant to [insert applicable statutes governing the investigation or examination of *insurers*]” (emphasis added). However, the first sentence of Section 19(A) explicitly allows such investigations or examinations to be performed as to all licensees, not only insurers.

These word choices appear to give commissioners the power to investigate or examine any licensee, whether insurer or non-insurer, and only subject commissioner activity to applicable statutes when such investigations and examinations involve insurers. When commissioners are investigating or examining non-insurers, on the other hand, the current language appears to allow commissioners to proceed uninhibited by applicable statutes. To remedy this apparent unfair application of law, we recommend that Section 19(A) be revised as follows:

- A. The Commissioner shall have power to examine and investigate the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this Act. This power is in addition to the powers which the Commissioner has under [insert applicable statutes governing the investigation or examination of insurers]. Any such investigation or examination shall be conducted pursuant to [insert applicable statutes governing the investigation or examination of ~~insurers~~ licensees].

b. Section 19(B): “Any” v. “every.”

Section 19(B) states that commissioners “have the power to examine and investigate the affairs of *every* insurance support organization acting on behalf of a licensee ...” (emphasis added). This wording is taken verbatim from MDL #670, as the exposure draft suggests. However, the word “every” could imply that a commissioner’s examination and investigation of the affairs of *any* insurance support organization acting on behalf of a particular licensee would require the commissioner to also examine and investigate *every other* insurance support organization acting on behalf of that licensee. To eliminate the availability of this interpretation, which seems to be at odds with the drafters’ intent, we recommend revising Section 19(B) as follows:

- B. The Commissioner shall have the power to examine and investigate the affairs of ~~every~~ any insurance support organization acting on behalf of a licensee that either transacts business in this state or transacts business outside this state that affects a person residing in this state to determine whether such insurance support organization has been or is engaged in any conduct in violation of this Act.

4. Conclusion.

We are grateful to the PPWG for its adherence to an aggressive timeline and for its flexibility in exposing the revisions to Article VI, Sections 17 and 18 and Article VII, Sections 19 and 20 of MDL #674 while the PPWG’s work on the remaining sections continues. We look forward to discussing the revisions with the members and interested regulators of the PPWG during its upcoming calls and during the in-person PPWG meeting in Seattle next month. As always, we appreciate the PPWG’s recognition of the concerns that are specific to the independent agent community and are thankful for the opportunity to provide the independent agent perspective.

Please contact me at lpachman@pianational.org or (202) 431-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,



Lauren G. Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents