

# Arbor Strategies, LLC

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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 the last name "Petersen" clearly distinguishable.

Chris Petersen  
Arbor Strategies, LLC

cc: Lois Alexander