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Katie Johnson, Chair
Privacy Protections (H) Working Group
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Attn: Lois Alexander, NAIC Market Regulation Manager
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Dear Chair Johnson:

Thank you for the opportunity to provide comments on Version 1.2 of the Insurance Consumer Privacy Protection Model Law (Model #674). We appreciate the time, energy, and consideration undertaken by the Privacy Protections Working Group and the positive intentions expressed within the Cover Page. Your summary of changes appears to recognize the consumer benefits that flow from enabling GLBA’s approach to information collection, use, and affiliate sharing while also acknowledging the need to supplement and modernize to meet today’s data-driven world. While some of the Working Group’s changes to the draft are consistent with this shared goal, others are not. The most workable approach to developing a modernized privacy framework is to identify and enhance gaps in the widely-adopted GLBA regulatory model. Focusing on the areas of current law that need to be improved is less disruptive to the very successful current insurance privacy regulatory scheme for consumers, regulators and industry. Taking a novel approach, as the current draft represents, would be extremely disruptive to all stakeholders and mark the insurance industry as an outlier. In order to not disadvantage insurers, the privacy model must also be harmonized with the state consumer privacy laws now adopted in 11 states.

As currently drafted, Model #674 remains unworkable, overly burdensome, and confusing for industry, regulators, and consumers alike. At a high level, the comments below are meant to highlight several provisions ACLI members continue to find troubling with Model #674. Key provisions of concern include joint marketing; marketing; retention and deletion of consumer information; definitions; access and correction; notice- timing, content, and delivery; nondiscrimination and nonretaliation; consent versus authorizations; reinsurance concerns; and group insurance concerns. We hope these comments provide some guidance on which provisions need to be discussed in more detail, as we foresee potentially negative consequences.

Concerns

ACLI members appreciate several changes made by the Working Group to draft Model #674. For instance, the removal of the prohibition on cross-border sharing of personal information was the correct decision. And the amendments to the private cause of action provisions are very welcome. The new Model Law will have a great

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The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.
impact on consumers as well as insurance company operations, so we want to get it right. The open calls and the
in-person drafting meeting in June demonstrated that robust stakeholder engagement leads to improved outcomes.
We want to keep that momentum going, however, ACLI members are concerned with the amount of time and
process remaining.

We continue to strive to be an active and valued contributor to the Model #674 drafting process. Recognizing the
need to provide input on the Working Group’s timeline, we are highlighting the provisions of Version 1.2 that are
most concerning to our members. In order for us to give the most constructive feedback in the limited time that is
available to us, it would be extremely helpful to have an explanation from the drafters as to why several of our
previously submitted comments and concerns were not addressed in this latest draft, so that we can better
understand the current language and perhaps offer more constructive solutions rather than repeating old requests.
Many of our previous suggestions would resolve some of the issues we raise once again below.

While we appreciate that the Working Group is open to receiving comments at any time and understand the desire
to move the process forward, the pressure to adhere to arbitrary deadlines and respond to the ever-changing draft
language impacts our ability to constructively engage. We understand that consistent stakeholder engagement can
feel laborious, in part because it requires Working Groups and Committees to give stakeholders sufficient time to
distribute information, collect feedback, and compile it to share with regulators. Throughout the drafting process,
ACLI has made a good faith effort to engage with the Working Group and provide thorough feedback, including
redline edits, detailed explanations, and suggested alternative language. As you all know, this level of engagement
requires a tremendous amount of time and energy from our members. We remain committed to a high level of
engagement, but we must give this project the time it warrants to meet the ultimate objective- uniform state
adoption.

**Joint Marketing**

While the Working Group’s cover letter clearly states an intent to permit joint marketing agreements, Section 5(A)(14)
requires further discussion to clarify that intent. In addition, other provisions in Version 1.2 include new and additional
restrictions on joint marketing between financial institutions, a legal construct authorized by the Gramm-Leach-Bliley
Act (GLBA). As just one example of where the draft restricts joint marketing, the model would require insurers to
send privacy notices at first collection of a consumer’s information from a joint marketing partner financial institution.
That may be required even if the insurer does not market or share the consumer’s information. Not only does the
change have no beneficial effect for consumers, but it in fact would detrimentally affect the ability of insurers to
provide a broader portfolio of financial services. The additional restrictions on joint marketing in the current draft are
not in line with GLBA requirements and would establish restrictions that conflict with other existing regulations
applicable to financial institutions.

**Marketing**

Given the very broad definition of sensitive personal information, it is concerning that a consumer’s sensitive personal
information cannot be shared or otherwise provided to any person for use in connection with any additional activity
involving marketing a non-insurance or non-financial product or service. At a time when industry and regulators are
focused on closing the coverage gap and building financial resilience, this may impact certain companies’ efforts to
reach more consumers, especially middle-market and underserved consumers.

**Retention and Deletion of Consumer Information**

Although improvements were made, Section 7 still includes several obligations that ACLI members find troubling.
For instance, the inclusion of an annual review of “all consumers’ personal information” in a licensee’s possession
is logistically infeasible. ACLI members are also concerned by the new unnecessary administrative obligations that would compel licensees to migrate data off legacy systems within ten years of the Model Act. This provision does not serve to benefit consumers and is unnecessarily costly and burdensome. While precise estimates are difficult, companies have shared that in some instances it could take decades to migrate multiple/complex systems and tens of millions of dollars to retire legacy systems. As previously mentioned, ACLI strongly recommends that the Working Group consider a “reasonable period of time,” rather than 90 days, as well as the adoption of a feasibility standard.

Insurers spend millions of dollars annually to maintain cybersecurity and comprehensive information security programs to appropriately safeguard the personal information entrusted to them. Many of the Working Group’s data privacy and security concerns are already addressed under the NAIC Insurance Data Security Law (Model #668), the GLBA Safeguards Rule as adopted by states, and other regulatory frameworks to which insurers are subject. Given the longevity of a relationship with its customers (in some cases close to 100 years), many legacy systems that hold customer data are not designed to be able to do individualized consumer deletion, as with backup or WORM retention systems. Current laws have provided for a risk-based approach, understanding these systems have in place appropriate security controls and requests for these deletions for customer data are few. State insurance commissioners, after understanding current technical environments of insurers, should be provided discretion as to appropriate retention control standards.

Definitions

Several key definitions remain concerning, with many of those concerns being interrelated with the other concepts raised in this letter. Below we highlight a few definitions that need to be discussed in more detail, as we foresee potentially negative consequences. This list is not all encompassing, and additional issues impacting definitions will need to be discussed.

The undefined term “additional activities” which has been inserted into Version 1.2 and placed throughout the latest draft Model #674 is problematic. This is an undefined term and would require consent and further limitations to collect, process, retain, or share consumer personal information.

The definition of “sensitive personal information” is still overly broad. As written, a consumer’s sensitive personal information cannot be shared or otherwise provided to any person for use in connection with any additional activity involving marketing a non-insurance or non-financial product or service. A consumer should have the right to consent to this sharing.

The definition of “insurance transaction” still needs further discussion, especially given the overall inclusion of transactions and services noted, as well as sections (7) and (8), which appear to be a drafting error.

The definition of “nonaffiliated third-party” does not expressly exclude service providers and/or insurance support organizations. This is important in particular because Section 5(B) prohibits sharing health information and privileged information about a consumer with a nonaffiliated third-party unless a consumer opts-in. Life insurers need to share that information with service providers in order to make underwriting decisions (e.g., sharing with a service provider to send paramedical providers for underwriting medical examinations), service claims or provide other services to in-force policy holders (e.g., sharing with a service provider to do an assessment of health status under a long-term care or disability insurance policy).

The term “publicly available” information appears to be added throughout the draft. This is especially concerning given the inconsistency with other laws and regulations and the inability for insurers to carry out the requirements noted in the draft rule.
The definition of “consumer” is extremely broad and should align with the definition in Model #672.

Similarly, the definition of “personal information” is broad given the extensive language detailing “any individually identifiable information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked to a consumer . . . .”. The definition of personal information should be clarified to provide more specificity.

Access and Correction

Version 1.2 still includes inconsistent response times for access and correction. As previously noted, many of the included response times are significantly shorter than Model #670, HIPAA, and what is required by state laws such as the CCPA/CPRA. Operationally, it would be very challenging for insurers to comply with these reduced time frames, which would provide little benefit for consumers. Additionally, Version 1.2 continues to contemplate that insurers will annually provide a list of all third-party service providers who receive personal information. As ACLI previously suggested, this should be revised to require, upon request, disclosure of the categories of persons who receive personal information, consistent with state laws such as the CCPA/CPRA.

There also remains a lack of clarity in how the timing and verification obligations are to be achieved with the expansion of these rights to third party service providers and publicly available information. The obligation should be on the consumer to correct publicly available information at the source and inform the licensee once the correction has been made.

Notice: Timing, Content, and Delivery

The Working Group has missed this opportunity to modernize and embrace steps taken by other regulators to meet the modern delivery demands and the sustainability expectations of consumers, where paperless digital delivery should be the default method unless the consumer requests the notice be mailed in hard copy format. Version 1.2 requires multiple disclosures and notices that will be lengthy in nature and require additional delivery requirements and confirmations, ultimately causing an increased burden to the customer given the confirmation receipt processes. Some of these changes would increase complexity, cost, and the number of notices individuals receive, all at a time when the trend is to decrease the frequency of notices or provide them by alternative means. Customers want clear, simple, digital experiences. The overly prescriptive requirements are complex and will cause confusion to the consumer. In addition, it continues to be a security concern that a consumer can request a list of all third-party service providers the insurer shares personal information with. As raised during the in-person meeting in Kansas City, this will provide a roadmap to malicious actors.

Nondiscrimination and Nonretaliation

Section 15 A (1) and (2) includes a rebuttable presumption that a licensee has discriminated or retaliated against a consumer if the consumer is required to consent to an “additional activity” to obtain a particular product, coverage, rate or service or transaction. The inclusion of the undefined term “additional activity” creates a vague and unclear standard on which to base a rebuttable presumption. Further discussion is needed on what “additional activity” refers to in order to fully evaluate whether a rebuttable presumption is appropriate.

Consent Versus Authorizations
As currently written, the draft conflates opt-ins and opt-outs with authorizations. Existing law allows customers to opt-in to certain types of information sharing. This is a onetime opt-in unless revoked. An opt-in is a straightforward process that could involve a check box or a simple affirmation. An authorization, on the other hand, requires certain language, such as an expiration date, the type of data, the identity of recipients, and the specific purpose of the authorization. This concept might make sense and be well understood in the context of Model 672’s language regarding disclosure of nonpublic personal health information. By conflating opt-ins with authorizations for all lines of business, this draft unnecessarily complicates the opt-in process. It would likely cause licensees to forgo opt-ins altogether because it would require the creation of a burdensome administrative process for expirations, among other reasons.

In addition, the draft also requires an authorization for an opt-out process for information sharing or participation. An opt-out provides a consumer the opportunity to remove the information sharing or participation in the event or activity that is occurring. It is not a consent process and should not require an authorization. If authorization were required, it would therefore be an opt-in or consent process. The requirement for authorization or consent for opt-out processes should be removed.

Reinsurance Concerns

Version 1.2 appears to include non-licensed, non-affiliated reinsurers in the definition of third-party service providers. If that interpretation is correct, the requirements for third-party service providers would apply to situations where licensed cedants ceded to non-affiliated, non-licensed reinsurers, and thus it would still apply to reinsurance. Additionally, while the draft appears to exempt reinsurers from the consumer notification requirements, this exemption is incomplete. Section 8A(1) needs to be replicated under 8B, 8C, 8D, 8E. Or, a simpler solution may be to delete 8A(1) and create 8F, and transfer the reinsurer exemption there.

Group Insurer Concerns

Draft Model #674 continues to impact long-standing practices around administration of group insurance business. Current law allows licensees to provide initial, annual, and revised notices to the plan sponsor, group or blanket insurance policyholder. Without these provisions, insurers will be in violation of the law when, for example, an employer automatically purchases insurance for an employee and provides that employee’s personal data to the insurer.

Conclusion

Consumers and companies need consistent privacy rules providing equal protection across the country. A patchwork quilt of differing state-by-state or sector-specific privacy regulations is confusing, frustrating, and not helpful to consumers. While modernization of existing privacy laws should be undertaken as advances in technology support collection and analysis of an ever-increasing amount of personal data, regulatory proposals that would unnecessarily increase complexity must be avoided. Additionally, while some aspects of insurance and financial services is unique and reflects the need for a unique regulation, it is important to have some harmonization with other privacy regulatory schemes so insurance does not end up with conflicting and contradictory aspects of handling personal information.

It is critical that we give the Model #674 drafting process the time it warrants to ensure the final version is carefully crafted to strike a balance between protecting consumer privacy and enabling insurers to meet the needs of their customers effectively.
Thank you for your consideration of our comments. We welcome any questions.

Sincerely,

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