

Draft: 5/22/23

Privacy Protections (H) Working Group
Virtual Meeting
May 16, 2023

The Privacy Protections (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met May 16, 2023. The following Working Group members participated: Katie Johnson, Chair (VA); Cynthia Amann, Co-Vice Chair (MO); Chris Aufenthie, Co-Vice Chair (ND); Chelsy Maller (AK); Gio Espinosa and Catherine O'Neil (AZ); Damon Diederich (CA); George Bradner and Hicham Bourjaili (CT); Ron Kreiter (KY); Van Dorsey (MD); Jeff Hayden, Renee Campbell, Danielle Torres, and Julie Merriman (MI); T.J. Patton (MN); Molly Plummer (MT); Santana Edison (ND); Connie Van Slyke (NE); Teresa Green (OK); Scott D. Martin (OR); Gary Jones and Richard Hendrickson (PA); Matt Gendron and Raymond Santilli (RI); Frank Marnell (SD); Shari Maier and Michael Walker (WA); and Timothy Cornelius, Rachel Cissne Carabell, and Barbara Belling (WI). Also participating were Janice Davis, Scott Woods, and Rebecca Smid (FL); Paula Shamburger (GA); Joseph Fraioli and Sonya Sellmeyer (IA); Hermoliva Abejar (ID); Tanji J. Northup (UT); Garth Shipman (VA); and Mary Block and Karla Nuisl (VT).

1. Discussed Sharing Consumer Information with a Person Outside the Jurisdiction of the U.S., Section 4. A (5)

Johnson said the Working Group would discuss the sharing of consumer information with a person outside the jurisdiction of the U.S., including the consent provision (Section 4. A (5)) and the guardrails around sending consumer information outside the jurisdiction of the U.S.

Chris Petersen (Arbor Strategies) said he has legal and political concerns about this provision. He said that he believes federal labor laws pre-empt this type of provision at the state level and that this is a security breach issue rather than a privacy issue. Petersen said companies are becoming global and recommends that this provision be stricken from the model. Sarah Wood (Insured Retirement Institute—IRI) reiterated the comments in the IRI's letter. She said this provision would disrupt annuity supply chains by being overly burdensome in requiring operational changes, so implementation would not be feasible. Johnson asked Wood if she was referring to costs being prohibitive. Jordan Heiber (U.S. Chamber of Commerce) said its members are concerned with this provision as drafted because it would limit or prevent companies from outsourcing functions, prevent access to information, and lead to increased costs that would be passed on to consumers. He said mandatory consent requirements would confuse companies and consumers as to what information is needed. Heiber said it conflicts with U.S. legal, contractual, and recent state legislation in California and other states. He said these requirements are unnecessarily restrictive and conflict with the G7 requirements in the Organisation for Economic Co-operation and Development (OECD), which is moving forward with its plan for the free flow of data and trust globally.

Kristin Abbott (American Council of Life Insurers—ACLI) said this provision appears to give consumers consent. However, in her April 3 comment letter, she said it is better for companies to address consumer consent questions through vendor oversight and contractual obligations. She said this provision would severely limit global insurers and reinsurers, as well as cause them to lose 24/7 customer service. Abbott also said that the *Insurance Data Security Model Law* (#668) already covers this, so she suggests the provision be removed from the new model, the *Insurance Consumer Privacy Protection Model Law* (#674). Sabrina Miesowitz (Lloyd's of London—Lloyd's) said the comment letter Lloyd's submitted included a definition of "licensee" that includes unauthorized insurers like Lloyd's, which are non-U.S. based. She said this is different from other models in that most models say this means "surplus lines licensees." Shelby Shoensee (American Property Casualty Insurance Association—APCIA) said this provision would ban global servicing, as it goes against the G7 financial dialogue. She said the protection of data is a function of both security and systems and is concerned it would block a company's functionality, even within the company itself. Shoensee said it would cause companies to become less efficient over time and would limit a company's ability to respond to subpoenas from outside the U.S.; therefore, the provision should be stricken from

the model. Bob Ridgeway (America’s Health Insurance Plans—AHIP) and Tom Smith (American Reinsurance Association—ARA) both said they agreed with the others who had spoken. Ridgeway said companies help consumers save money and that the risk is on the carrier if anything happens.

Joseph Whitlock (Global Data Alliance—GDA) said he represents a coalition of 70 companies that rely on data transfer around the world. He said there are three cybersecurity, fraud, and privacy concerns: 1) domestic; 2) international obligations; and 3) international policy. Whitlock said this provision is more restrictive than federal laws and that it raises Article 1 constitutional concerns, as well as international case law concerns. He said there are cross-data requirements, as the provision is more restrictive than in other countries or jurisdictions that have very strict laws with contract-based consent, like China, Vietnam, and Africa. Petersen said privacy is about how and when data can be used and what companies need to do to protect it. If a third party misuses data, it is a legal breach and, therefore, a security issue. He said there are two victims—the company and the consumer—and that the provision as written says, “as permitted in the U.S.” (not outside the U.S.). Ridgeway said that the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) does not cover lots of information and that HIPAA data is controlled by contracts that are standard business association forms. He said companies could consent to jurisdiction, perhaps.

Diederich said he appreciated the comments and is sensitive to the concerns presented by companies and trade associations but that he was more concerned with consumer understanding and consent. With strong vetting, security, and contracts, he would like free-flowing data with trust. Diederich asked what the minimum boundary conditions, standards, and requirements would be to get companies to build out this type of system. Johnson said the Working Group has asked companies and trades for these types of industry standards many times. Diederich said state insurance regulators keep hearing that the carrier is the victim when data breaches occur and that the real problem is how to ensure there are safeguards on the front end. He said this is very helpful to build in protections for consumers in place of consent to prevent injury down the line. Silvia Yee (Disability Rights Education & Defense Fund—DREDF) said she would love to see a legal opinion that HIPAA has the authority over U.S. companies that operate overseas. She asked how companies can be held accountable because HIPAA is fairly limited as to what type of data is included.

2. Discussed Other Matters

Johnson reminded attendees about the in-person interim Working Group meeting to be held in Kansas City, MO, on June 5–6. She said the purpose of this meeting is to collaborate with state insurance regulators, consumer representatives, and industry members on revised wording for the most complex topics in the new draft of Model #674. Johnson thanked state insurance regulators, consumer representatives, and industry members who had submitted requests to be added to the registration invitation for this meeting, as the venue limits seating. Ridgeway asked when the agenda for the interim meeting will be available. Johnson said the agenda should be distributed and posted by May 22. Cate Paolino (National Association of Mutual Insurance Companies—NAMIC) asked when the revised draft of Model #674 would be available. Johnson said a revised draft would be posted after the interim meeting and after the Working Group meets in regulator-to-regulator session. Schoensee asked about the logistics for the interim meeting. Johnson said the room would be set up like it was for the Working Group at the Spring National Meeting and that the attendees may break into table rounds to discuss issues separately should the need arise during the meeting. She said the Working Group will have suggested language to start the conversations and that Lois E. Alexander (NAIC) will distribute and post the dial-in information a week prior to the meeting for those who will participate in listen-only mode.

Having no further business, the Privacy Protections (H) Working Group adjourned.