The Privacy Protections (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met Aug. 2, 2022. The following Working Group members participated: Katie Johnson, Chair (VA); Cynthia Amann, Co-Vice Chair, represented by Jo LeDuc (MO); Chris Aufenthie, Co-Vice Chair (ND); Chelsy Maller (AK); Damon Diederich (CA); George Bradner and Kristin Fabian (CT); Erica Weyhenmeyer (IL); LeAnn Crow (KS); Ron Kreiter (KY); Benjamin Yardley (ME); T.J. Patton (MN); Martin Swanson (NE); Teresa Green (OK); Gary Jones (PA); Frank Marnell (SD); Todd Dixon represented by Michael Walker (WA); and Timothy Cornelius and Lauren Van Buren (WI). Also participating were Scott Woods (FL); Jeff Hayden (MI); Chlora Lindley-Myers (MO); Laura Arp (NE); Hermoliva Abejar (NV); George McNab (OH); Mary Block (VT); Shari Maier (WA); and Barbara Belling and Richard Wicka (WI).

1. **Adopted its June 15 Minutes**

   Mr. Aufenthie made a motion, seconded by Mr. Kreiter, to adopt the Working Group’s June 15 minutes (Attachment A). The motion passed unanimously.

2. **Considered Adoption of a Request for NAIC Model Law Development Replacing Model #670 and Model #672 with One New Model**

   Ms. Johnson said the next item on the agenda is for the Working Group to consider adoption of the Request for NAIC Model Law Development replacing the *NAIC Insurance Information and Privacy Protection Model Act* (#670) and the *Privacy of Consumer Financial and Health Information Regulation* (#672) with one new model. She said the Request for NAIC Model Law Development was changed to reflect the creation of one new model to replace Model #670 and Model #672 rather than updating both existing models in response to comments from various industry and consumer representatives asking for one new model and due to the extensive nature of revising models that were written several decades ago. She said adoption of the Request for NAIC Model Law Development is part of the standard review process to move forward with the Working Group’s charges to review and change NAIC privacy models, such as Model #670 and Model #672, as needed. She said she would also like to address additional comments that were received from interested parties after the revised Request for NAIC Model Law Development was distributed. She said changing the Request for NAIC Model Law Development does not change the newer work plan that will be posted following the meeting, and the drafting group’s plan is still to have an exposure draft available for the 2023 Summer National Meeting. She said the work that was done on revisions to Model #670, which is nearly completed, will be incorporated into the one new model and be consistent with the work done previously on Model #672. She said in response to comments asking if the scope of the revisions would go beyond Model #670 and Model #672, it would because the whole point of the charges given to the Working Group was to move consumer privacy protections into the 21st century and address technical changes already made within the insurance industry. She said the suggestion to comments that companies do not collect data they do not need, the survey on consumer data ownership indicated that much of the data companies collect is not needed to provide consumers with insurance coverage, so the suggestion is declined.

   Chris Petersen (Arbor Strategies LLC), representing the Healthcare Coalition, said the Working Group is overly optimistic about the number of states that will adopt or pass legislation based on the number of states that passed Model #670 and Model #672. He said the Request for NAIC Model Law Development was sending the wrong message to the Innovations, Cybersecurity, and Technology (H) Committee and the Executive (EX) Committee and
Plenary, and it will be defeated like the [State] Pharmacy Benefit Manager Licensure and Regulation Model Act. He said all existing privacy regulation does not distinguish from mail or internet notices, so he warned the Working Group against trying to regulate the methods of data collection, but rather the Working Group should stick to regulating the use and disclosure of data. Robert W. Woody (American Property Casualty Insurance Association—APCIA) said he agrees with Mr. Petersen that the survey responses to the question about companies collecting data that they did not need to write about insurance coverage were wrong. He also suggested that the word “much” in the Request for NAIC Model Law Development should be changed to the word “some.” Mr. Swanson said he agrees with Mr. Petersen about being cautious about the need for a private right of action and including a safe harbor for Health Insurance Portability and Accountability Act of 1996 (HIPAA) to ensure passage. Birny Birnbaum (Center for Economic Justice—CEJ) said insurers collect data for much more than insurability; i.e., profitability. He recommended that the current Request for NAIC Model Law Development wording be kept even though there would be changes to be considered going forward through the process, and he welcomes the opportunity to provide input from a consumer perspective.

Ms. Johnson said the focus right now is just on getting permission to move forward and open the models. She said everyone would have several months to comment on the exposure draft of the new model. Cate Paolino (National Association of Mutual Insurance Companies—NAMIC) said the Request for NAIC Model Law Development is not perfectly clear about revisions versus drafting a new model from scratch. She said a single new model appears best, but it is not so easy to implement legislation, and she suggested that the Working Group focus on Model #672 notices that were passed in most states. She said based on the topics being raised by the parent committee, such as artificial intelligence (AI), a single model may be premature with the lack of transparency and Model #672 not being an omnibus model. She asked for clarification about how future topics being discussed in other working groups could be incorporated into the new model before such topics are fully discussed. Mr. Diederich said two models mean different protections for consumers in different states. He said insurers have requested uniformity, which would seem to suggest that one model is needed.

As noted during prior Working Group calls, Ms. Johnson said the work plan schedule may be revised when necessary to address the needs of the Working Group to meet its charges and timeline. She said the Working Group is continuing to work very closely with the other Innovation, Cybersecurity, and Technology (H) Committee working groups in this area by participating in monthly Working Group calls and coordinating with other working groups—the Big Data and Artificial Intelligence (H) Working Group, the Accelerated Underwriting (A) Working Group, the Cybersecurity (H) Working Group, and the E-Commerce (H) Working Group—as each has its own unique set of issues that nevertheless require coordination, especially definitions.

Mr. Aufenthie made a motion, seconded by Mr. Diederich, to adopt the Working Group’s Request for NAIC Model Law Development replacing Model #670 and Model #672 with one new model (Attachment B). The motion passed with Nebraska opposed.

3. **Discussed Other Matters**

Ms. Johnson reminded attendees about the upcoming Working Group meeting, which will be held on Aug. 9 during the Summer National Meeting in Portland, OR.

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