

**PPWG-EXPOSURE OF DRAFT MODEL #674 LANGUAGE FOR COMMENT
SECTIONS 19 AND 20
COMMENTS DUE July 10, 2023**

To: Interested Regulators and All Interested Parties

From: Privacy Protections (H) Working Group

Date: June 26, 2023

The PPWG Drafting Pod is exposing certain sections of the draft Model #674 for comment as the amended drafts of these sections are completed.

The sections exposed in this document are those that are not dependent on other sections of the draft model law to be understandable. We want to get a sense of everyone's thoughts as we make changes based on your comments, and to move this process along more quickly.

As always, until the PPWG votes on a version of the model, anyone may comment on any of the sections as we move through the process. The PPWG reserves the right to amend these sections based on future comments.

A full version of the amended draft Model #674 will be exposed for comment the week of July 10, 2023.

If you wish to comment, please do so by **July 10, 2023**. Please send those comments to Lois Alexander at lalexander@naic.org.

ARTICLE VI. ADDITIONAL PROVISIONS

Section 17. Investigative Consumer Reports

- A. No licensee may prepare or request an investigative consumer report about a consumer in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the licensee informs the consumer in writing prior to the report being prepared that the consumer:
 - (1) May request to be interviewed in connection with the preparation of the investigative consumer report and the insurer or producer shall conduct such interview; and
 - (2) Is entitled to receive a written copy of the investigative consumer report.
- B. If a licensee uses a third-party service provider to obtain an investigative consumer report, the written contract between the licensee and the third-party service provider shall require the third-party service provider:
 - (1) To adhere to the requirements of this Section; and
 - (2) To not otherwise use any personal information provided to the third-party service provider by the licensee or obtained by the third-party service provider in its investigation of the consumer in manner other than to fulfill the purpose of the contract with the licensee.

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- C. Any licensee that prepares or requests an investigative consumer report in connection with an insurance claim shall notify the consumer that the consumer may request to be interviewed in connection with the preparation of the investigative consumer report. However, neither the licensee nor the third-party service provider is required to provide a copy of an investigative report prepared in connection with an insurance claim unless compelled to do so by a state or federal court.

Section 18. Compliance with HIPAA and HITECH

- A. A licensee that is subject to and compliant with the privacy and notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, HITECH), and collects, processes, retains, and shares all personal information in the same manner as protected health information shall be deemed to comply with this Act.
- 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 protected health information.
- C. Any such licensee that fails to fully comply with Sections 18 A and B shall be subject to all provisions of this Act with respect to all personal information.

ARTICLE VII GENERAL PROVISIONS

Section 19. Power of Commissioner

- 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].
- B. The Commissioner shall have the power to examine and investigate the affairs of every 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.

Drafting Note: Section 19 B is optional. The drafters included this language for those states that had already adopted Model 670 and those states that wish to adopt this provision.

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C.

Whenever the Commissioner has reason to believe that a licensee has been or is engaged in conduct in this State which violates this Act, the Commissioner may take action that is necessary or appropriate to enforce the provisions of this Act.

Section 20. Confidentiality

- A. Any documents, materials, data, or information in the control or possession of the state insurance department that are furnished by a licensee, third-party service provider, or an employee or agent thereof, acting on behalf of the licensee pursuant to this Act, or that are obtained by the Commissioner in any investigation, or an examination pursuant to Section 19 of this Act shall be confidential by law and privileged, shall not be subject to [insert reference to state open records, freedom of information, sunshine or other appropriate law], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's duties.
- B. Neither the Commissioner nor any person who received documents, data, materials, or information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Section 20 A.
- C. In order to assist in the performance of the Commissioner's duties under this Act, the Commissioner:
- (1) May share documents, data, materials or information, including the confidential and privileged documents, data, materials, or information subject to Section 20 A, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, any third-party consultant or vendor, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information; and
 - (2) May receive documents, data, materials, or information, including otherwise confidential and privileged documents, data, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, data, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, data, materials, or information.
 - (3) Shall enter into a written agreement with any third-party consultant or vendor governing sharing and use of documents, data, materials, or information ~~subject~~ provided pursuant to this Act, consistent with this subsection that shall:

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- (a) Specify that the third- party consultant or vendor agrees in writing to maintain the confidentiality and privileged status of the documents, data, materials, or information subject to Section 20 A;
 - (b) Specify that the ownership of the documents, data, materials, or information shared pursuant to Section 20 A with the third-party consultant or vendor remains with the Commissioner, and the third-party consultant's or vendor's use of the information is subject to the direction of, the Commissioner;
 - (c) Prohibit the third-party consultant or vendor from retaining the documents, data, materials, or information shared pursuant to this Act after the purposes of the contract have been satisfied;
 - (d) Require prompt notice be given to the Commissioner if any confidential documents, data, materials, or information in possession of the third-party consultant or vendor pursuant to this Act is subject to a request or subpoena to the third-party consultant or vendor for disclosure or production.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, data, materials, or information shall occur due to disclosure to the Commissioner under this section or due to sharing as authorized in-Section 20 C.
- F. Nothing in this Act shall prohibit the Commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.