



**MEDICAL PROFESSIONAL
LIABILITY ASSOCIATION**

April 5, 2023

Chair Katie Johnson (VA); Co-Vice Chairs Cynthia Amann (MO) and Chris Aufenthie (ND)
Privacy Protections (H) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Subject: Comments on Proposed Privacy Model 674

Dear Ms. Johnson, Ms. Amann, and Mr. Aufenthie:

On behalf of the Medical Professional Liability (MPL) Association and its more than 50 medical professional liability insurer members, we would like to thank you for the opportunity to share our feedback on the working group's proposed consumer data privacy model (MDL #670).

The Medical Professional Liability Association is the leading trade association representing insurance organizations with a substantial commitment to the MPL line. MPL Association members insure more than one million healthcare professionals in the U.S.— physicians, nurses, dentists, oral surgeons, nurse practitioners, and other healthcare providers. MPL Association members also insure nearly 2,000 hospitals and 7,500 medical facilities throughout the United States.

The MPL Association supports the adoption of consumer data privacy policies that reflect the need to protect consumers from the unauthorized collection, processing, retention, and/or sharing of their personal information while recognizing the legitimate need for companies to use consumer data for appropriate insurance purposes. Such purposes include the provision of a full range of insurance services to meet its contractual obligations, the analysis of data to enhance future business practices, and compliance with all legal requirements. We recognize that balancing these competing interests is no simple task, and so we appreciate the working group's willingness to solicit feedback on Model #670.

With this in mind, we respectfully submit the following feedback with the understanding that additional modifications may be necessary depending on what changes are made to the proposed model following this initial comment period.

Art. 1, Sec. 2. Oversight of Third-Party Service Provider Arrangements –

The proposed model appropriately requires licensees to contractually require third-party service providers to comply with the model and the licensee’s own privacy practices. However, it would be inappropriate to require licensees to renegotiate all of their third-party service contracts immediately upon the enactment of a new privacy law based on this model. Instead, we would recommend including a grandfather clause that exempts existing third-party service contracts that are in effect at the time that privacy legislation is enacted. Alternatively, you may want to consider giving licensees a minimum of a two-year grace period to update all their third-party service contracts.

Art. 1, Sec. 3. Definitions, Subsec. I. Consumer –

The definition for “consumer” is overly broad, potentially subjecting insurers to regulatory scrutiny over matters not involving the insurer-policyholder relationship. As such, the definition should be limited to applicants, insureds, and beneficiaries.

Art. II., Sec. 4. Data Minimization and Sharing Limitations –

We applaud this working group for including language that allows licensees to collect, process, retain, and/or share a consumer’s personal information in connection with an insurance transaction as necessary, including for the servicing of any insurance application, policy, contract, or certificate, as well as for compliance with a wide variety of legal requirements. These paragraphs adequately address our members’ need to collect, process, retain, and/or share consumers’ personal information to accurately underwrite medical liability insurance policies and defend their insureds when claims arise.

Sec. 5. Retention and Deletion of Consumers’ Information –

We are pleased that Section 5 allows for the retention of consumers’ personal information for the servicing of any insurance application, policy, contract, or certificate, as well as for compliance with a wide variety of legal requirements, following the dissemination of an initial consumer privacy protections notice. This section adequately addresses our members’ need to collect, process, retain, and/or share consumers’ personal information to accurately underwrite medical liability insurance policies and defend their insureds when claims arise. Furthermore, we concur with the decision to not confer upon consumers the right for their personal information to be forgotten.

Sec. 11. Access to Personal Information –

We believe the timeframe permitted for responding to a consumers’ request for access to their personal information is unnecessarily limited, and may pose a burden on smaller insurers that lack the resources to turn around such a request so quickly. Instead, we propose a 30-day time period for the disclosures required under Subsection B(2).

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The MPL Association strongly agrees with the limitation of a consumer's right to access personal information that is related to a claim or civil/criminal proceeding, as indicated in Subsection G.

Sec. 12. Correction or Amendment of Personal Information –

Given the “long-tail” nature of MPL insurance, our member companies must collect and retain accurate information about parties (i.e., personal health information) to an MPL claim for claims processing, risk management, and quality improvement/patient safety purposes. Hence, we are pleased to see that the consumer right to delete or correct information in this section is accompanied by exceptions that allow a covered entity to deny such requests with an explanation of its need to retain accurate information to fulfill legitimate business transactions and comply with legal obligations. We also agree with the carveout of personal information necessary for a claim or civil/criminal proceeding.

Art. V, Sec. 14. Adverse Underwriting Decisions –

Section 14 gives insurers just ten (10) business days to share with a consumer the reasons for an adverse underwriting decision. Insurers need adequate time to investigate and compose formal correspondence that detail the reasons for adverse underwriting decisions. We would recommend giving insurers a minimum of ninety (90) days to respond to these requests.

Sec. 19. Compliance with HIPAA and HITECH –

The MPL Association is concerned about proposals that require MPL insurers to comply with overlapping privacy requirements that may complicate efforts to safeguard consumers' personal health information. While we are pleased to see this model provide a limited exemption to entities that already protect consumer information in accordance with the requirements for protected health information under the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, we believe a complete exemption is appropriate to avoid dueling data protection requirements.

Sec. 26. Penalties and Sec. 28. Individual Remedies –

The MPL Association strongly objects to the inclusion of language in Section 28 that gives states the ability to give consumers the right to bring forth a private cause of action for alleged violations of the privacy protections included in the model act. Additionally, this section unfairly holds the licensee responsible for the failure by a third-party service provider to protect personal information. Insurers must not be held responsible for the actions of those over whom it cannot exercise sufficient levels of control to ensure compliance with this model act. Instead, enforcement of data privacy legislation should be limited to civil penalties and/or injunctive relief for covered entities that fail to comply. While the penalties outlined in Section 26 are a good start, we would recommend amending it to include a tiered system of civil penalties based on a covered entity's past behavior and its adoption of corrective action.

In closing, the MPL Association appreciates this opportunity to provide constructive input to support sound, fair, and effective public policy as the working group refines this proposed model. Please do not hesitate to contact our Government Relations Department at 301.947.9000 or via email at governmentrelations@mplassociation.org should you need any further information.

Sincerely,

A handwritten signature in blue ink that reads "B. K. Atchinson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Brian K. Atchinson
President & CEO