



September 18, 2024

Commissioner Amy L. Beard
Indiana Department of Insurance
Chair, NAIC Privacy Protections (H) Working Group
311 W Washington Street
Indianapolis, IN 46204

Sent Via Electronic Mail

Dear Commissioner Beard,

I am writing on behalf of the National Association of Benefits and Insurance Professionals (NABIP), formerly known as NAHU, an association representing over 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefits specialists. Our members are dedicated to providing consumers with comprehensive, fair, and accessible health insurance options. NABIP has adopted a Consumer Healthcare Bill of Rights, which ensures that every individual receives transparent information, privacy protection, and fair treatment when it comes to health insurance and financial security. Specifically, this letter addresses Article IV of NABIP's "Bill of Rights," which focuses on consumer privacy and data security, as we comment on the Chair's Draft Amendments to the NAIC Model #672, "Privacy of Consumer Financial and Health Information Regulation."

NABIP appreciates the Committee's decision to revise the existing model rather than creating an entirely new privacy protections model law, ensuring continuity and clarity for consumers and industry stakeholders.

Our association would also like to express our gratitude for your decision to carry forward a choice made by the Privacy Protections Working Group during its deliberation over last year's draft of the model. Specifically, in Article Seven, Section 21 of the Chair's Draft, the act will not apply to licensees who are already subject to the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) privacy and data security requirements, provided they maintain nonpublic personal information in the same manner as protected health information (PHI). Individuals and entities licensed by state departments of insurance, who are subject to HIPAA and HITECH, have spent the last two decades building systems, policies, and procedures to safeguard PHI and nonpublic personal information. Moreover, consumers are familiar with and trust these protections. Therefore, ensuring that those who comply with HIPAA/HITECH requirements are not subjected to redundant regulations benefits both licensees and consumers alike, aligning with our Bill of Rights, which emphasizes privacy protections for individuals.

NABIP does, however, offer one suggestion regarding the placement of the HIPAA/HITECH compliance exemption. Currently, the language is included in Article Seven, “Rules for Health Information,” since the original model (crafted before the finalization of the HIPAA privacy rules) only exempted those who were subject to and compliant with federal rules from the health information protections in what was then labeled Article Five. Given that the new language applies to the entire act, and not just one article, we suggest moving this section to Article Eight, “Additional Provisions,” for clarity.

While the vast majority of NABIP members will be exempt from the provisions of this model, as currently drafted, due to the HIPAA/HITECH privacy compliance exemption, some individuals and entities represented by our association may be subject to the provisions of Model #672 due to their business activities related to lines of insurance other than health. The current revisions to the model retain the definitions of health information and nonpublic personal health information that were included when it was originally drafted in 2001. At that time, the HIPAA privacy rules had not yet been finalized, and the HITECH data security rules were years away. Today, the definition of PHI, as established by HIPAA and HITECH, is well known to both consumers and industry professionals. For simplicity and clarity, we suggest that the Working Group replace the current health information definitions (and any other overlapping definitions) with those already established by HIPAA and HITECH privacy and data security rules.

Another recommendation NABIP offers, to make things easier for both state insurance department staff and those subject to the revised model, is to reinstate model notice language in the updated model. The original document included sample notice language for covered entities to use with consumers. This draft simply specifies that each state insurance commissioner will prepare a sample notice and post it online for licensees to use in notifying affected individuals. Including sample notice text in the model would allow for consistent notifications to be used nationwide and ensure the immediate availability of a compliant notice for licensees. This recommendation aligns with Article II of our Consumer Healthcare Bill of Rights, which stresses clear and consistent communication to consumers about their rights and protections.

Finally, regarding the entirely new Article Two, Section Five, “Third Party Contractual Obligations,” while we appreciate the notation that contract requirements be “consistent with the size and complexity of the third party,” this section goes on to specify many privacy protection elements that should be included in third-party contracts. Many contracts that licensees, particularly small business owners, are required to sign with third-party service providers are contracts of adhesion. Licensees, like the majority of insurance producers, often have little ability to modify these contractual arrangements. Rather than requiring licensees to ensure that service providers meet privacy standards by contract, NABIP believes it would be more appropriate for state regulators to address the activities of third-party service providers



directly, particularly when these providers accept sensitive information from insurance entities. This approach ensures fair treatment for smaller entities, as outlined in Article VI of our Consumer Healthcare Bill of Rights.

NABIP appreciates the NAIC's willingness to consider stakeholder comments in revising this critical model. If you have any questions or if NABIP can provide additional assistance as you continue developing this model, please do not hesitate to contact me.

Sincerely,

Jessica Brooks-Woods
CEO, National Association of Benefits and Insurance Professionals (NABIP)

cc: Lois E. Alexander
Jennifer Neuerburg