August 8, 2023

Via email:
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NAIC Market Regulation Manager

Katie C. Johnson (VA), Chair
Cynthia Amann (MO), Vice Chair

Privacy Protections (H) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Version 1.2 of National Association of Insurance Commissioners Consumer Privacy Protection Model Law (#674)

Dear Chair Johnson, Vice Chair Amann, and Members of the Privacy Protections Working Group:

On behalf of the National Association of Professional Insurance Agents (PIA)[1], thank you for the opportunity to provide comments on Version 1.2 of the National Association of Insurance Commissioners (NAIC) Privacy Protections Working Group's (PPWG) Consumer Privacy Protection Model Law (#674) (herein referred to as "Version 1.2"). We appreciate the PPWG's continued attention to the challenges posed by the application of current and nascent technologies and business practices to NAIC's current consumer protection regulatory regime.

1. Introduction

PIA appreciates the work that the PPWG has invested in its series of exposure drafts and the enormous amount of time and resources that the PPWG regulators and NAIC staff have continued to devote to this important subject over the past eighteen months or so. We valued the time spent on consideration of the initial draft at the PPWG meeting in Louisville earlier this year and at the June interim meeting in Kansas City. We were particularly grateful for the time PIA staff has spent privately with the PPWG this past spring. We have tried to convey the substantial concerns we have about the effect the initial draft could have on the evolving ways

[1] PIA is a national trade association founded in 1931 whose members are insurance agents and agency owners in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals serving insurance consumers in communities across America.

independent agents are using data to strengthen the independent agency model and facilitate the growth of their small and mid-sized businesses all around the country.

PIA shares the PPWG's goals of protecting consumer data, while allowing insurance businesses, including independent agencies, to continue to serve their clients by providing unsurpassed customer service. Like the members of the PPWG, PIA member agencies want to protect consumer data, give consumers the opportunity to understand how their data is being used, notify them that they can choose not to share data in ways that make them uncomfortable, ensure consumers know they have that choice, and give them a chance to exercise it. Empowering consumers to limit the circumstances in which their data may be exploited is valuable, especially as insurance consumer data may be particularly susceptible to exploitation because of the extent to which the purchase of insurance products requires the transmission of potentially sensitive personal information.

Version 1.2 represents an improvement over the initial draft released early this year. However, PIA remains troubled by Version 1.2. Our concerns about Version 1.2 of the model are set forth below; they include our previously submitted comments on the sections of Articles VI and VII that were exposed at the end of June, with adjustments to acknowledge numbering and other variances from the June exposure.

Our primary substantive focus here is on the issues of adverse underwriting decisions and third-party service providers, but, going forward, we may supplement these comments with additional remarks addressing other areas of concern.

2. **Current State of Version 1.2:**

    a. **Despite the improvements in Version 1.2, PIA cannot support Version 1.2** for several reasons.

        i. **It lacks sufficient support among the states.** Over the past month or so, it has become clear that Version 1.2 is not worthy of passage as a model by the NAIC or as a regulation within the states. Several states' insurance departments have already made clear that they do not support the draft and do not expect it to be promulgated successfully in their states. While this model's development process is not complete, the states' expressed rejection of Version 1.2 places its future, both within the NAIC and, later, among the states, in question.

        ii. **It is overly broad.** A model law on consumer privacy protections should not attempt to address issues like adverse underwriting decisions, and yet Version 1.2 devotes a full page, not including the definition of "adverse underwriting decision," to the handling of such decisions. It purports to provide state insurance departments with a degree of authority that not all of them have and instructs them to regulate third-party service providers

(TPSPs), for example, to a degree that some departments may be unauthorized to deploy.

b. The PPWG's timeline continues to be unnecessarily aggressive. PIA supports the PPWG's goal of modernizing the NAIC's existing consumer privacy protection regime. However, the PPWG's initial draft was met with substantial concerns among both industry and consumer groups. While Version 1.2 has alleviated a handful of those concerns, the vast majority of interested parties representing those who will be affected by the final model continue to object to its content, as have several regulators whose support will be key to the eventual model's successful adoption around the states. The PPWG should not tailor its work to exclusively meet the needs of its interested parties, but it would be equally unwise to move forward without thoroughly considering the needs of its interested parties.

3. Specific Objections to Version 1.2:

a. **Most state insurance commissioners lack the authority to regulate TPSPs, unless said TPSPs are also regulated entities of state insurance departments.**

i. Version 1.2 explicitly excludes licensees from the definition of TPSPs, which makes sense; all licensees, whether they are also TPSPs or not, would be subject to the final draft of Version 1.2. However, contrary to its opening sentence, Version 1.2 does not so much "establish standards" for TPSPs as it sets forth circumstances in which the standards it establishes for licensees may also be applicable to TPSPs.

ii. Based on this observation, we recommend, at a minimum, the following changes:

1. Remove the term "third-party service providers" from the first paragraph of Article I, Section 1.A.:

The purpose of this Act is to establish (i) standards for the collection, processing, retaining, or sharing of consumers' personal information by licensees ~~and their third-party service providers~~ to maintain a balance between the need for information by those in the business of insurance and consumers' need for fairness and protection in the ~~use~~ [sic] *collection, processing, retaining, or sharing of consumers' personal information; (ii) standards for licensees engaged in additional activities involving the collection, processing, retaining, or sharing consumers' personal information; and (iii) standards applicable to licensees for providing notice to consumers of the collection, processing, retention, or sharing of consumers' personal and publicly* [sic] *information.*

2. Even though most TPSPs will not be regulated by state insurance departments, based on the definition of "third-party service

provider" in Article I, Section 2(QQ), Article I, Section 1.A(5) suggests that Version 1.2 will allow consumers to choose whether to consent to the collection, processing, retention, or sharing of their personal information by TPSPs. For that reason, we recommend the PPWG remove the phrase "and their third-party service providers" as indicated below:

(5) Enable consumers to choose whether to consent to the collection, processing, retaining, or sharing of consumers' personal information by licensees ~~and their third-party service providers~~ for additional activities;

3. We also recommend that the PPWG remove the phrase "and any third-party service providers used by licensees" from Article I, Section 1.A(9):

(9) Provide accountability for the improper collection, processing, retaining, or sharing of consumers' personal information by licensees ~~and any third-party service providers used by licensees~~ in violation of this Act.

4. We also recommend that the PPWG remove the phrase "and third-party service providers" from Article I, Section 1.B.:

B. The obligations imposed by this Act shall apply to licensees ~~and third-party service providers~~ that on or after the effective date of this Act:

5. We also recommend that the PPWG remove the phrase "or third-party service provider" from Article I, Section 1.C(2):

C. The protections granted by this Act shall extend to consumers:

[…]

(2) Who have engaged in the past in insurance transactions with any licensee ~~or third-party service provider~~; or

6. We also recommend that the PPWG remove the phrase "and third-party service providers" from Article I, Section 1.C(3):

C. The protections granted by this Act shall extend to consumers:

[…]

(3) Whose personal information is used in additional activities by licensees ~~and third-party service providers~~.

7. Similarly, we recommend that the PPWG remove the phrase "or third-party service providers" from the definition of "insurance transactions," because including it there substantially broadens the scope of Version 1.2 beyond NAIC Model #672, the *NAIC Privacy of Consumer Financial and Health Information Regulation*, from which it derives and which Version 1.2 purports to replace. Our recommended revision to the definition of "insurance transactions," located in Article I, Section 2.V(2), appears below:

V. "Insurance transaction" means any transaction or service by or on behalf of a licensee and its affiliates related to:

[…]

(2) Licensees ~~or third-party service providers~~ performing services including maintaining or servicing accounts, providing customer service, processing requests or transactions, verifying customer information, processing payments, providing financing, providing analytic services, providing storage, providing similar services or any similar services;

8. Likewise, we recommend removing the phrase "or a third-party service provider" from the definition of "retain, retention, or retaining," because including it there suggests a degree of insurance department authority that is unavailable in some states. Our recommended revision to the definition of "retain, retention, or retaining," located in Article I, Section 2(LL), appears below:

LL. "Retain" "retention" or "retaining" means storing or archiving personal information that is in the continuous possession, use, or control of licensee ~~or a third-party service provider~~.

9. We also recommend removing the phrase "or third-party service provider" from the definition of "written consent" in both places in which it appears. Our recommended revision to the definition of "written consent," located in Article I, Section 2(TT), appears below:

TT. "Written consent" means any method of capturing a consumer's consent that is capable of being recorded or maintained for as long as the licensee ~~or third-party service provider~~ has a business relationship with a consumer; or the licensee ~~or third-party service provider~~ is required to maintain the information as provided in this Act.

10. Similarly, in the first sentence of Article II, Section 5.E., we recommend removing the reference to TPSPs ("or its third-party service providers), as reflected in the suggested revision below:

E. Notwithstanding any other provision of law, no licensee ~~or its third-party service providers~~ may sell consumers' personal information for any type of consideration.

11. Likewise, in Article II, Section 7.C., we recommend striking item (4) and its subparts, which inappropriately attempt to regulate TPSPs, regardless of whether they exist within or outside the regulatory authority of state insurance departments.

12. Similar issues arise in Article II, Section 7.C(5), which also sets forth an unrealistic expectation about the amount of control licensees are likely to have over their TPSPs' consumer data. We recommend the following revision to address this issue:

(5) If a consumer requests a copy of the consumer's personal information that has been deleted or de-identified as provided in this Act, the licensee shall inform the consumer that the licensee ~~and any of the licensee's third-party service providers in possession of the consumer's personal information~~ no longer retain<u>s</u> any of the consumer's personal information or such information has been de-identified;

13. This issue continues in Article II, Section 9.A(1), where the content that licensees are required to provide in their notices of consumer privacy protection practices is addressed. There, we recommend the following revision:

(1) Whether personal information has been or may be collected from any sources other than the consumer or consumers proposed for coverage~~, and whether such information is collected by the licensee or by third-party service providers~~;

14. Later in that same section, Section 9.A(2) states that Section 8 notices, which are required to be provided by licensees, are required to include the categories of consumer information collected, processed, retained, or shared by licensees or TPSPs, even though, ostensibly, TPSPs will not be bound by the final model resulting from this endeavor. Implicitly, then, much of Section 9 relies on extensive voluntary information sharing between licensees and TPSPs. We thus recommend the following revision:

(2) The categories of consumer's personal information that the licensee ~~or any of its third-party service providers~~ has or may collect, process, retain, or share;

15. Similarly, Section 9.A(5) permits the consumer to request and receive a list of people with whom licensees or their TPSPs have shared the consumer's personal information, even though TPSPs

may not provide such detailed information to licensees. We therefore recommend the following revision to this provision:

(5) That the consumer may, upon request, annually obtain a list of any persons with which the licensee ~~or any of the licensee's third-party service providers~~ has shared the consumer's personal information within the current calendar year and, at a minimum, the three previous calendar years.

16. Likewise, Section 9.A(8) offers the consumer the opportunity to access and/or correct information in the possession of a licensee or its TPSPs. However, again, licensees may not have access to this information from their TPSPs, making it difficult or impossible for licensees to comply with Version 1.2 as written. We therefore recommend the following revision to this provision:

(8) A statement of the rights of the consumer to access, correct or amend factually incorrect personal publicly available information about the consumer in the possession of the licensee ~~or its third-party service providers~~ under Article IV of this Act, and the instructions for exercising such rights;

17. Section 9.A(10) gives the consumer the right to receive a summary of reasons a licensee or a TPSP may retain their personal information, along with other details about said retention, pursuant to the notice requirement of Section 8. This is another instance in which the consumer may potentially be promised information that a licensee may not have and that a TPSP may not be made to furnish. We therefore recommend the following revision:

(10) A summary of the reasons the licensee ~~or any third-party service provider~~ retains personal information and the approximate period of retention or if that is not reasonably possible, the criteria used to determine the timeframe it will be retained; and

18. Section 9.A(11) entitles a consumer to a Section 8 notice that includes a statement enforcing a prohibition on the sale of consumer information by TPSPs. Again, such a prohibition is not consistent with the language of the Section 8 notice requirement, and it may not be consistent with the legal obligations of TPSPs. We therefore recommend the following revision:

(11) A statement that no licensee ~~or third-party service provider~~ may sell for valuable consideration a consumer's personal information.

19. Section 9.A(12) entitles consumers to specific notice alerting them to the fact that their personal, privileged, or publicly available information is being processed or shared with an entity located

outside the United States and its territories. Again, such specificity of notice is inconsistent with the language of the Section 8 notice requirement, and it may not be consistent with the legal obligations of TPSPs. We therefore recommend the following revision:

(12) If the licensee ~~or its third-party service providers~~ processes or shares personal, privileged, or publicly available information with an entity located outside the jurisdiction of the United States and its territories, the notice must state that such information is processed or shared in this manner. This requirement does not apply if the only processing or sharing is:

(a) In connection with a reinsurance transaction; or

(b) With an affiliate of the licensee.

20. Article IV, Section 12 purports to set forth the rights of consumers to access their personal and publicly available information. However, Section 12.B., like many of the provisions previously mentioned, attempts to impose questionably valid obligations on TPSPs. To avoid this and bolster the validity of the rest of Section 12, we recommend the following revisions, which will both alleviate the issue described here and align this section with the revised version of Section 9.A(5) above:

B. The licensee ~~or third-party service provider~~ shall

(1) Acknowledge the request within five (5) business days; and

(2) Within forty-five (45) business days from the date such request is received:

(a) Disclose to the consumer the identity of those persons to whom the licensee ~~or any third-party service provider~~ has shared the consumer's personal information within the current year and, at a minimum, the three calendar years prior to the date the consumer's request is received.

(b) Provide the consumer with a summary of the consumer's personal information and the process for the consumer to request a copy of such information in the possession of the licensee.

(c) Identify the source of any consumer's personal information provided to the consumer pursuant to this subsection.

21. Article IV, Section 12.E. is a particularly potent example of the overreach of Version 1.2 as to TPSPs. It explicitly extends the consumer protections set forth in Section 12 to TPSPs, regardless of whether a consumer's personal information is collected,

processed, retained, or shared in connection with an insurance transaction or "an additional activity." That a licensee could be unable to procure the relevant information from a TPSP engaged in "an additional activity" is unacknowledged. For this reason, we recommend the following edits:

E. The rights granted to consumers in this section shall extend to any individual to the extent personal information about the individual is collected processed, retained, or shared by a licensee ~~or its third-party service provider~~ in connection with an insurance transaction or an additional activity.

22. Similarly, Article IV, Section 13.B. would impose questionably valid obligations on TPSPs requiring them to, among other things, provide specific correspondence to consumers within certain limited time frames and to provide the state insurance commissioner with a demonstration of cause for refusing to correct or amend a consumer's information, even though, again, the state insurance commissioner may not have regulatory authority over many TPSPs. To avoid the imposition of additional questionable obligations on TPSPs, we recommend the following revisions:

B. The licensee ~~or third-party service provider~~ shall

(1) Acknowledge the request within five (5) business days; and

(2) Within fifteen (15) business days from the date such request is received:

(a) Correct or amend the personal or publicly available information in dispute; or

(b) If there is a specific legal basis for not correcting or amending the personal or publicly available information in question, the licensee ~~or its third-party service provider~~ may refuse to make such correction or amendment. However, the licensee ~~or third-party service provider~~ refusing to take such action shall provide the following information to the consumer:

(i) Written notice of the refusal to make such correction or amendment;

(ii) The basis for the refusal to correct or amend the information;

(iii) The contact information for filing a complaint with the consumer's state insurance regulator, and

(iv) The consumer's right to file a written statement as provided in Subsection C of this section.

(3) No licensee ~~or third-party service provider~~ may refuse to correct or amend a consumer's personal or publicly available information without good cause. Such cause shall be demonstrated to commissioner of the consumer's state insurance department, upon request.

23. Similarly, Article IV, Section 13.D. would allow a consumer to file a "concise statement" with a TPSP if it refused to correct or amend the consumer's personal or publicly available information. Again, the TPSP's acceptance of such a filing is an unknown factor over which a state insurance commissioner may have no authority. For that reason, we recommend the following revisions:

D. Whenever a consumer disagrees with the refusal of a licensee ~~or third-party service provider~~ to correct or amend personal or publicly available information, the consumer shall be permitted to file with the licensee ~~or third-party service provider~~ a concise statement setting forth:

(1) The relevant and factual information that demonstrates the errors in the information held by the licensee or third-party service provider; and

(2) The reasons why the consumer disagrees with the refusal of the licensee ~~or third-party service provider~~ to correct or amend the personal or publicly available information.

24. Likewise, Article IV, Section 13.E. would require a TPSP to, upon receipt of such a statement, provide it to "anyone reviewing the disputed … information" and identify the areas of dispute in future disclosures of said information. Again, the TPSP's legal obligation in response to such a statement is unknown, and its adherence to these attendant requirements could demand that a state insurance commissioner enforce regulatory provisions over which they may have no authority. For that reason, we recommend the following revisions:

E. In the event a consumer files such statement described in Subsection C, the licensee ~~or third-party service provider~~ shall:

(1) Include the statement with the disputed personal or publicly available information and provide a copy of the consumer's statement to anyone reviewing the disputed personal or publicly available information; and

(2) In any subsequent disclosure of the personal of publicly available information that is the subject of disagreement, the licensee ~~or third-party service provider~~ clearly identify the matter or matters in dispute and include the consumer's statement with the personal or publicly available information being disclosed.

25. **State regulators lack the authority to circumscribe the terms of binding contracts legally and willingly entered into by licensees and TPSPs.** We therefore recommend the following revisions to Article VI, Section 16.B.:

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 are encouraged to include in the written contract between the two a ~~shall~~ requirement that the third-party service provider ~~to~~:

(1) Comply with the requirements of Subsection 18 A;

(2) 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 other than to fulfill the purpose of the contract with the licensee.

26. Similarly, Article VI, Section 16.C. would require TPSPs to conduct personal interviews upon the request of a consumer; licensees are expected to have conveyed such requests to affected TPSPs. While a licensee may convey said request, the licensee lacks the authority to require the TPSP to conduct the requested interview, unless the parties' contract requires the TPSP to conduct such interviews. If the PPWG's expectation is that the parties will enter into a contract assigning such a duty to a TPSP, we encourage the PPWG to add that to Article II, Section 3, where its other recommendations pertaining to contract provisions between licensees and TPSPs are set forth. Otherwise, we recommend the following revisions:

C. If a licensee requests a third-party service provider to prepare an investigative consumer report, the licensee requesting such report shall notify in writing the third-party service provider whether a personal interview has been requested by the consumer. ~~The third-party service provider shall conduct the interview requested.~~

27. Article VII, Section 20.B. would also impose questionable obligations on TPSPs by requiring them to maintain records necessary for compliance with the final iteration of Version 1.2, even though TPSPs' obligation to adhere to a state insurance department regulation is far from assured. We thus recommend the following revisions:

B. A licensee ~~or third-party service provider~~ shall maintain all records necessary for compliance with the requirements of this Act, including, but not limited to:

(1) Records related to the consumer's right of access pursuant to Article IV;

(2) Copies of authorizations and consent~~l~~ executed by any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee; and

(3) Representative samples of any notice required to be provided to any consumer pursuant to this Act, for as long as the consumer is in a continuing business relationship with the licensee.

b. **Adverse underwriting decisions are not related to consumer privacy protections.**

i. The definition of "adverse underwriting decisions" (AUDs) and the way said decisions are conveyed to consumers are currently addressed in NAIC Model #670, the *NAIC Insurance Information and Privacy Protection Model Act*, which Version 1.2 purports to replace. The PPWG maintains that AUD provisions are included to "provide consistency with current state law," for states that adopted Model #670.

ii. However, AUDs are unrelated to consumer privacy protections and therefore have no place in a model purportedly addressing consumer privacy protection issues. Should the PPWG wish to update the definition and best practices around AUDs, it may wish to retain and update some sections of Model #670.

iii. Regardless, AUDs and related issues do not belong in this model, which should be laser-focused on consumer privacy protection issues. For that reason, we encourage the PPWG to:

1. Delete Article I, Section 1.A.(7), which states that Version 1.2 will "[p]ermit consumers to obtain the reasons for adverse underwriting transactions."

2. Delete the entire definition of "adverse underwriting decisions," located in Article I, Section 2.B.

3. Delete the substantive section, Article IV, Section 14, of Version 1.2, addressing adverse underwriting decisions.

c. **State regulators lack the authority to circumscribe the terms of binding contracts legally and willingly entered into by licensees and TPSPs.**

i. For that reason, we recommend the following edits to Article II, Section 3.F:

F. ~~A contract between a l~~Licensees are encouraged to enter into contracts with ~~and~~ third-party service providers ~~shall~~ that require ~~that no~~ third-party service providers ~~shall~~ not to further

share or process a consumer's personal information other than as specified in the contract with the licensee.

ii. For the same reason, we recommend the following edits to Article II, Section 3.G.

G. ~~Contracts between a l~~Licensee~~s~~ and ~~any~~ third-party service providers ~~shall require either entity~~ are encouraged to honor the consumer's directive, whether it is an opt-in or an opt-out, and to refrain from collecting, processing, retaining, or sharing the consumer's personal information in a manner inconsistent with the directive of the consumer.

d. **We also remain concerned about the relationship between TPSPs and AUDs.** While we also would like to see changes to the treatment of TPSPs in Article I, Section 14, we do not address those individually here because our recommendation is to delete Section 14 altogether, and that recommendation would remain even if Section 14 was otherwise satisfactorily revised.

e. Ambiguities exist within Article VI, Section 17.B.

i. Potential source of ambiguity in comparing Section 17.A. and 17.B. Section 17 governs the duties of licensees that are already subject to the consumer protection standards set forth in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, commonly referred to as "HIPAA") and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, commonly referred to as "HITECH"). Section 17 deems such licensees to comply with Version 1.2. Licensees relying on this section are required to submit to the appropriate state insurance regulatory authority "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*" (emphasis added).

1. The identical phrase "in the same manner as protected health information" appears in Sections 17.A. and 17.B. In Section 17.A., though, the sentence containing that phrase begins, "A licensee that is subject to *and compliant with* …" (emphasis added). The phrase "and compliant with" eliminates a possible source of ambiguity in Section 17.A. that lingers because of its absence from Section 17.B.

2. In Section 17.B., the second use of the phrase "in the same manner as protected health information," does not include the phrase "and compliant with." The PPWG likely intends for both sections to require licensees to treat consumer information subject to MDL #674 with the level of rigor associated with HIPAA/HITECH

compliance. However, the phrase "in the same manner as," without the description of the licensee as "compliant with" injects unnecessary ambiguity into Section 17.B. Section 17.B. appears to leave open the possibility that a malevolent licensee could under-protect consumer information susceptible to MDL #674, particularly if such a licensee already under-protects its "protected health information."

3. To eliminate this potential loophole in Section 17.B., we recommend replacing "in the same manner as protected health information" with "as if it were protected health information," so that the applicable standard for the protection of consumer information is unequivocal and equally rigorous, whether the data is subject to the substantive provisions of MDL #674 or the HIPAA/HITECH deemer clause. Revised Section 17.B. would thus read:

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 if it were protected health information.

ii. Section 17.B.: Defining "officer." Additionally, because an "officer" of each licensee availing itself of the deemer clause will have a duty to submit a written statement certifying that the licensee is compliant with HIPAA/HITECH, we recommend adding a definition of the word "officer" to Article I, Section 2, "Definitions," or, in the alternative, referring here to an existing definition of the word "officer," if one appears elsewhere within the NAIC consumer protection regulatory regime.

f. Article VII, Section 18: Power of the Commissioner allows for a potentially unfair application of law.

i. Section 18.A. provides state insurance commissioners with the power to examine and investigate licensees for potential violations of the final model. Our concern about Section 18.A. focuses on the relationship between its first sentence and its final sentence, which says that a commissioner's investigation or examination must "be conducted pursuant to [insert applicable statutes governing the investigation or examination of *insurers*]" (emphasis added). However, the first sentence of Section 18.A. explicitly allows such investigations or examinations to be performed as to all licensees, not only insurers.

ii. These word choices appear to give commissioners the power to investigate or examine any licensee, whether insurer or non-insurer, and only subject commissioner activity to applicable statutes when such investigations and

examinations involve insurers. When commissioners are investigating or examining non-insurers, on the other hand, the current language appears to allow commissioners to proceed uninhibited by applicable statutes. To remedy this apparent unfair application of law, we recommend that Section 18.A. be revised as follows:

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~~licensees].

g. **Section 19.A.: Self-reference.** Section 19.A. seems to refer to itself in a way that may confuse readers. Specifically, it provides limitations on the use of materials obtained via an investigation or examination "pursuant to Section 19 of this Act." In so doing, Section 19 refers to itself. Our belief is that the PPWG intended for this statement to refer to Section 18, and we recommend that Section 19.A. be revised to refer to Section 18 rather than to itself.

h. **Technical Recommendations:**

i. Article I, Section 1, Paragraph A:

1. The word "use" is struck through but remains in the draft; we recommend that it be deleted.

2. There appears to be a word missing after "publicly" near the very end of that long sentence; a suggested edit is included below.

The purpose of this Act is to establish (i) standards for the collection, processing, retaining, or sharing of consumers' personal information by licensees and their third-party service providers to maintain a balance between the need for information by those in the business of insurance and consumers' need for fairness and protection in the ~~use~~ collection, processing, retaining, or sharing of consumers' personal information; (ii) standards for licensees engaged in additional activities involving the collection, processing, retaining, or sharing consumers' personal information; and (iii) standards applicable to licensees for providing notice to consumers of the collection, processing, retention, or sharing of consumers' personal and publicly available information.

i. Conclusion.

We look forward to discussing Version 1.2 with regulators, industry colleagues, and consumer advocates during the in-person PPWG meeting in Seattle later this month. As always, we appreciate the PPWG's recognition of the specific concerns of the independent agent community

and are thankful for the opportunity to provide the independent agent perspective. Please contact me at lpachman@pianational.org or (202) 431-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,

Lauren G. Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents