



June 3, 2022

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: Proposed Revisions to MDL # 670, Sections 1 – 3

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 modifications to Sections 1-3 of the *Insurance Information and Privacy Protection Model Act* (Model # 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 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. In this regard, it is vital to consider the unique circumstances which MPL insurers face on all these fronts.

With this in mind, we would strongly recommend the following modifications with the understanding that additional modifications may be necessary depending on how the working group decides to proceed with changes to other sections of the model.

Definition of “Adverse Insurance Transaction” (Page 1 and 2) –

The proposed definition of an “adverse insurance transaction” applies broadly to any insurer-initiated increase in premium, insurer-initiated decrease in coverage, or any adverse underwriting decisions. Such transactions may include adverse actions that are anticipated by the consumer, such as when a consumer takes on additional risk requiring an increased

premium or when temporary premium credits expire. In these scenarios, MPL insurers will notify the affected policyholders about the adverse action and the reasons behind it well in advance. Hence, it is unnecessary to require an insurer to send a policyholder an additional notification explaining the reasons behind an adverse action. Additionally, in order to avoid over-notification of routine “adverse insurance transactions,” it would be appropriate to modify the terminology to “significantly adverse insurance transaction” and add minimum thresholds that would constitute such a transaction (e.g., 50% premium hike or decrease in coverage). Such an approach would be consistent with how another NAIC working group has recently sought to improve policyholder communications relating to significant premium increases.

Definition of What Is Not An “Adverse Underwriting Decision” (Page 3) –

Section 2, Subsection 2 on Page 3 outlines several actions that do not constitute an adverse underwriting decision for the purposes of this model. The working group should consider including *policy cancellations as permitted by law* (e.g., failure to pay premiums) as a fourth type of action that is not considered to be an adverse underwriting decision. Clarifying this definition would recognize the distinction between *policy cancellations* and *policy rescissions*.

Definition of “Collection (Page 4) –

The working group should consider replacing “data” with “personal information” in the definition of “collection” given that Section 2 defines the term “personal information.” Furthermore, the use of “by any means” in the definition makes the applicable sources of personal information exceptionally broad. Instead, we recommend that the working group consider listing specific sources of personal information which fall under “collection,” as well as sources that are exempt from the definition (i.e., public sources, aggregators).

Definition of “Insurance Transaction (Pages 7-8) –

The definition of “insurance transaction” should be modified further to clarify it applies to the servicing of an insurance application, policy, contract, or certificate which affects the consumers’ interest, and not activity related solely to internal operations of the insurer.

In closing, the MPL Association appreciates this opportunity to provide constructive input to support sound, fair, and effective public policy as the working group continues to propose revisions to Model # 670. 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,



Brian K. Atchinson
President & CEO