EVERSHEDS SUTHERLAND

THE Committee OF Annuity Insurers
www.annuity-insurers.org

June 18, 2025

Chair Elizabeth Kelleher Dwyer (RI)
Co-Vice Chair Jodi Frantz (PA)
Co-Vice Chair Nathan Houdek (WI)
Co-Vice Chair Timothy Cornelius (WI)
2024 NAIC Privacy Protections (H) Working Group
NAIC Central Office
1100 Walnut Street
Suite 1500
Kansas City, Missouri 64106

Sent via email to: privacywg@naic.org

RE: Chair's Draft Revising Model Law 672 – Article V

Dear Chair Dwyer and Co-Vice Chairs Gillespie and Hastings:

The Committee of Annuity Insurers (CAI or Committee)[1] appreciates the opportunity to submit the following comments to the 2024 NAIC Privacy Protections (H) Working Group (Working Group) on the Chair's Draft revising Model 672 (the Chair's Draft). We applaud the Working Group's renewed work on this important initiative and its commitment to continuing to work collaboratively with consumer and industry stakeholders to craft effective and pragmatic enhancements to consumer privacy protections that are tailored to the insurance sector.

OVERVIEW

The CAI recognizes and appreciates the Working Group's ongoing efforts to enhance privacy protections for consumers through a revised version of Model 672, an established and time-tested framework.

As requested, our comments below focus on issues raised by revised Article V of the Chair's Draft. However, the Committee's ability to meaningfully comment on the proposed language, and proposed revisions to Model 672 generally, is significantly limited by the piecemeal approach of releasing proposed language. Here, evaluating the impact of proposed revisions to Article V is necessarily dependent on exceptions provided in Article VI and the meaning of the undefined key terms "sale" and "targeted marketing". Overly broad definitions of these terms or future revisions to Article VI would substantively alter the meaning and impact of the current proposed revisions to Article V. ***Accordingly, it is imperative that at some point the Working Group expose a comprehensive proposed draft of revised Model 672 that would allow stakeholders to more meaningfully assess and comment on the proposed revisions***. It is important that current Article VI exemptions, which were thoughtfully crafted and are time-tested, remain in place.

[1] The Committee of Annuity Insurers is a coalition of life insurance companies that issue annuities. It was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of public policy with respect to securities, state regulatory and tax issues affecting annuities. The CAI's current 32 member companies represent approximately 80% of the annuity business in the United States. More information is available at https://www.annuity-insurers.org/.

The Committee appreciates that the proposed revisions to Article V recognize that an opt-out approach is appropriate in many circumstances to provide meaningful privacy protections to consumers without unduly impeding the ability of insurance licensees to conduct normal operations and compete in the broader financial services marketplace. However, the opt-in (consent) approach for limiting the sale of NPI or disclosure of SPI would pose significant challenges and would put the insurance industry at a competitive disadvantage with other financial services providers. That said, we recognize and appreciate the Working Group's efforts to find a workable compromise between the contrary approaches being advocated for by different stakeholders.

COMMENTS

Insurers Must Not Be At a Competitive Disadvantage

As noted, the Committee continues to be very concerned about an opt-in (consent) approach, including a limited opt-in approach, because that approach would put annuity insurers at a competitive disadvantage compared to competing non-insurance retirement products. Annuity products compete with traditional investment accounts, like bank savings accounts and mutual funds, among others. Annuity products provide unique benefits to consumers -- like guaranteed income and limited downside risk -- that cannot be replicated by traditional retirement savings products. Those competing products are regulated under GLBA through the SEC's recently updated Regulation S-P, which continues to take an opt-out approach consistent with current Model 672. Those products are not subject to privacy rules under state insurance laws. If revised Model 672 subjects annuity insurers to materially more limiting and burdensome standards than the standards applicable to traditional retirement savings products, it will hamstring insurers from effectively competing in the broader financial services marketplace; financial advisors would be less likely to recommend annuity products and consumers who would benefit from an annuity would be less likely to have access to them.

Maintaining an opt-out approach is the best way to ensure annuity insurers can remain competitive in marketing their products to consumers who could benefit from them. That said, it is possible that some limited opt-in requirements could be workable, provided appropriate exemptions are in place. Accordingly, whether the current suggested approach set forth in Article V is workable will depend heavily on whether and how other sections of the Chair's Draft is revised, including Article VI.

Section 22 – Limit on Sale of NPI

1. **The definition of a "sale" of NPI must be defined.**

As the Committee previously noted in response to proposed revisions to Article III, the Chair's Draft does not currently define what constitutes the "sale" or "selling" of NPI. Accordingly, we do not know what the intended scope of application of the limits of Section 22 would be under the Chair's Draft. Therefore, the Committee cannot identify what issues and additional considerations may be raised by the proposed language since any such issues are necessarily dependent on the definition of a "sale" of NPI. Other existing modern privacy frameworks have diverged on the scope of what constitutes the "sale" of personal information, and so there is not a single common understanding of the term's meaning. Some frameworks, such as the CCPA, define the term extremely broadly such that almost any disclosure of NPI to a third party could constitute a "sale" of information. Others, like the comprehensive privacy laws adopted in Virginia and other states, define the term more narrowly as disclosing personal data for monetary consideration. Necessarily, the more broadly the term "sale" is defined, the more potential significant interpretative issues will arise. Accordingly, the term "sale" should be defined in the Chair's Draft to reflect the more common, and widely adopted, definition of a "sale" as the disclosure of NPI for monetary consideration.

Please note that depending on how the Working Group proposes to define a "sale" of NPI, there may be considerable additional issues and concerns that arise with respect to Section 22 that will necessitate further comment.

CAI Recommendation. A "sale" of NPI should be defined in Section 4 as follows:

"Sale" or "selling" of nonpublic personal information means the exchange of nonpublic personal information for monetary consideration by the licensee to a non-affiliated third party. "Sale" or "selling" nonpublic personal information does not include:

(1) The disclosure of nonpublic personal information to a service provider that processes the nonpublic personal information on behalf of the licensee;

(2) The disclosure of nonpublic personal information to a third party for purposes of providing a product or service requested by the consumer or as otherwise permitted under Article VI of this Act;

(3) The disclosure or transfer of nonpublic personal information to an affiliate of the licensee;

(4) The disclosure of information that the consumer (i) intentionally made available to the general public via a channel of mass media and (ii) did not restrict to a specific audience; or

(5) The disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the licensee's assets.

Section 21 – Limits on Disclosure of NPI in Targeted Marketing

The Chair's Draft also does not currently define the term "targeted Marketing". Similar to our comment on Section 22 above, the ultimate scope and impact of proposed Section 21 inherently depends on how "targeted marketing" is defined as well as what exemptions may be provided, including exemptions under Article VI. Therefore, we cannot identify what issues and additional considerations may be raised by the proposed language without a definition of "targeted marketing."

CAI Recommendation. We support adoption of the definition of "targeted marketing" previously proposed as part of the industry draft submitted by a joint trades group:

(1) "Targeted advertising" means displaying online advertisements to a consumer where the advertisement is selected based upon data that is linked or reasonably linkable to an identified or identifiable natural person obtained from that consumer's activities across nonaffiliated websites or online applications over time to predict such consumer's preferences or interests.

(2) "Targeted advertising" does not include:

- *(a) Online advertisements based on activities within a Licensee's own websites or online applications;*
- *(b) Online advertisements based on the context of a consumer's current search query, visit to a website, or online application;*
- *(c) Online advertisements directed to a consumer in response to the consumer's request for information or feedback; or*
- *(d) Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.*

Additionally, proposed Section 21 would require that licensees act on an opt-out request within **15** days of receipt. This directly conflicts with a parallel requirement exposed as part of Revised Article IV, Section 14, which would require licensees to comply with a consumer's opt-out direction no later than **10** days after receipt.

CAI Recommendation. One of these duplicative provisions should be deleted, and the remaining provision should allow **30** days for compliance, which more appropriately reflects the operational realities of implementing opt-out requests across systems and use cases.

Section 23 – Limit on Use and Disclosure of Sensitive Personal Information ("SPI")

As discussed above, the CAI continues to be concerned about taking an opt-in approach and how that may impact annuity insurers' ability to compete in the financial services market. Additionally, Section 23 should be revised to clarify that it only limits disclosure of SPI to nonaffiliated third parties. As currently drafted, the limit applies to "disclosure" generally, as opposed to disclosures to a nonaffiliated third party. It is therefore unclear whether Section 23 would also potentially limit disclosure

of SPI to affiliates. Other limitations on disclosure, including Section 21 on targeted marketing and the existing opt-out right under Section 18, clearly specify that disclosure of NPI to third parties is what is restricted. This established and tested approach recognizes that affiliated companies often maintain integrated systems and operate as part of a single broader group with which consumers intentionally interact. Requiring consent to disclose SPI to affiliates would pose a significant burden on insurers without a corresponding benefit to consumers.

CAI Recommendation. Section 23 should be revised as follows:

A. *A Licensee may disclose a consumer's sensitive personal information to a nonaffiliated third party only as expressly permitted or required by Article VI or other provisions of this Act, unless the consumer has affirmatively opted in, as stated in subsection B(3) below, to disclosure of their sensitive personal information after receiving clear and conspicuous notice as provided by this Section.*

B. *Before a licensee may disclose a consumer's sensitive personal information to a nonaffiliated third party for purposes other than those specified in subsection A of this Section, a licensee shall provide notice to the consumer, including: . . . .*

Section 18 – Definition of "Opt-In".

As drafted, Subsection 18.A.(3) would define "opt-in" as "a knowing and intelligent agreement by the consumer to allow disclosure of information . . . ." It is unclear what would constitute a "knowing and intelligent" agreement by a consumer, or what is intended to be accomplished through this definition. Presumably, it is not intended that licensees be put in the position of deciding whether a consumer's knowing consent was the "intelligent" thing to do.

CAI Recommendation. To the extent an opt-in approach is retained at all, Subsection 18.A.(3) should be revised as follows:

(3) Opt in means an ~~knowing and intelligent~~ agreement by the consumer to allow disclosure of information described in Sections 22 and 23.

Section 19 – Limits on Redisclosure and Reuse of NPI

As drafted, it is unclear what the revisions to Section 19 are intended to accomplish. Under existing Model 672, the equivalent section functions to define how a licensee who receives NPI under any exemption in Model 672 is permitted to further use or disclose that NPI. It generally allows them to use the NPI for exempted purposes (i.e. Article VI exempted purposes under the Chair's Draft) or to disclose NPI in ways that the original disclosing financial institution would have been permitted to disclose the NPI directly.

Revised Section 19 does not carry out this same function. Rather, it would appear to only apply to NPI received pursuant to the exemptions defined in Sections 20 and 21 of revised Article V, but not the exemptions provided in Article VI. Additionally, it would appear to apply only to NPI received from nonaffiliated third party service providers, but not necessarily other financial institutions who are not service providers (e.g. NPI disclosed from a ceding insurer to a reinsurer). Accordingly, these revisions would dismantle the overall framework and structure of existing Model 672 without providing a replacement framework. It is not clear this was an intentional outcome of the proposed revisions to Article V.

CAI Recommendation. Section 19 should be revised to maintain the current structure and function of this section under existing Model 672, while accounting for newly added exemptions in Section 20 and 21 of the Chair's Draft, by specifying that the limits apply to "*NPI received from a nonaffiliated financial institution or third part services provider under an exception in Sections 20 or 21 or in Article VI of this Act . . . .*"

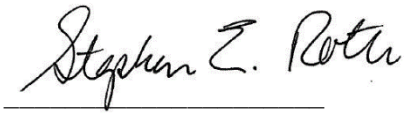
We want to express our appreciation for the opportunity to comment on these provisions of the Chair's Draft revising Model 672. We hope that you find these comments helpful at this stage. Please do not hesitate to contact us if you have any questions.

Sincerely,

For The Committee of Annuity Insurers

Eversheds Sutherland (US) LLP

By:



Stephen E. Roth
Mary Jane Wilson-Bilik
Alexander F. L. Sand
Eversheds Sutherland (US) LLP

EVERSHEDS SUTHERLAND

From: Sand, Alexander <AlexanderF.L.Sand@eversheds-sutherland.us>
Sent: Monday, June 16, 2025 4:37 PM
To: CAI-Cyber & Privacy Working Group <CAI-Cyber&PrivacyWorkingGroup@eversheds-sutherland.us>
Cc: Mary Jane Wilson-Bilik (mjwilson-bilik@eversheds-sutherland.com) <mjwilson-bilik@eversheds-sutherland.com>; Roth, Stephen <SteveRoth@eversheds-sutherland.us>
Subject: RE: NAIC PPWG Exposure of Revised Article V of Model 672 Chair's Draft - Proposed CAI Comments

CAI Cyber & Privacy Working Group Members:

Following up on the below, attached is our draft comment letter on the NAIC PPWG's proposed revisions to Article V of the #672 Chair's Draft. Also attached for reference is the current proposed revisions to Article V.

Please provide any feedback by Noon ET on Wednesday June 18, so a final letter may be submitted by the EOD June 18 comment deadline.

If you have any questions, comments, or further thoughts, you can reach out to myself (512-721-2721), Mary Jane Wilson-Bilik (202-383-0660), or Steve Roth (202-383-0158) (both copied above).

Best,

Al Sand

From: Roth, Stephen <SteveRoth@eversheds-sutherland.us>
Sent: Thursday, June 12, 2025 5:11 PM
To: CAI-Cyber & Privacy Working Group <CAI-Cyber&PrivacyWorkingGroup@eversheds-sutherland.us>
Cc: Sand, Alexander <AlexanderF.L.Sand@eversheds-sutherland.us>; Mary Jane Wilson-Bilik (mjwilson-bilik@eversheds-sutherland.com) <mjwilson-bilik@eversheds-sutherland.com>
Subject: NAIC PPWG Exposure of Revised Article V of Model 672 Chair's Draft - Proposed CAI Comments

CAI Cyber & Working Group Members:

Thank you to those who were able provide feedback on the NAIC PPWG's proposed revisions to Article V of the #672 Chair's Draft following our call last Friday. Based on that feedback, as well as coordinating conversations with the ACLI and other industry groups, we are working to draft a Committee of Annuity Insurers comment letter for submission by the June 18th deadline.

We plan to circulate a draft by Monday, June 16, and will ask for any feedback by Noon ET on Wednesday June 18, so a final letter may be submitted by the EOD June 18 comment deadline.

We are currently planning to focus the Committee's comments on the following issues:

- The Committee's ability to meaningfully comment on the proposed language, and proposed revisions to Model 672 generally, is significantly limited by the piecemeal approach of releasing proposed language. Here, evaluating the impact of proposed revisions to Article V is necessarily dependent on exceptions provided in Article VI and the meaning of the undefined key terms "sale" and "targeted marketing". Overly broad definitions of these terms or future revisions to Article VI would substantively alter the meaning and impact of the current proposed revisions to

EVERSHEDS SUTHERLAND

Article V. Accordingly, it is imperative that at some point the PPWG expose a comprehensive proposed draft of Model 672 that would allow stakeholders to more meaningfully assess and comment on the proposed revisions. It is important that current Article VI exemptions, which were thoughtfully crafted and time-tested, remain.

- The Committee appreciates that the proposed revisions to Article V recognize that an opt-out approach is appropriate in many circumstances to provide meaningful privacy protections to consumers without unduly impeding the ability of insurance licensees to conduct normal operations and compete in the broader financial services marketplace. However, the opt-in (consent) approach for limiting the sale of NPI or disclosure of SPI would pose meaningful challenges and would put the insurance industry at a competitive disadvantage with other financial services providers. That said, we recognize and appreciate the Working Group's efforts to find a workable compromise between the contrary approaches being advocated for by different groups of stakeholders.

- As noted, the Committee continues to be concerned about an opt-in approach, including a limited opt-in approach, because it will put annuity insurers at a competitive disadvantage compared to competing non-insurance retirement products. Those competing products are regulated under GLBA through the SEC's recently updated Regulation S-P, which continues to take an opt-out approach consistent with current Model 672. If annuity insurers are hamstrung from competing, the result is that consumers who would benefit from having access to annuity products are less likely to have such access.

- Suggest definition of a "sale" (CAI previously submitted the following definition when revised Article III was exposed):
    - *"Sale" or "selling" of nonpublic personal information means the exchange of nonpublic personal information for monetary consideration by the licensee to a non-affiliated third party. "Sale" or "selling" nonpublic personal information does not include:*

(1) The disclosure of nonpublic personal information to a service provider that processes the nonpublic personal information on behalf of the licensee;
(2) The disclosure of nonpublic personal information to a third party for purposes of providing a product or service requested by the consumer or as otherwise permitted under Article VI of this Act;
(3) The disclosure or transfer of nonpublic personal information to an affiliate of the licensee;
(4) The disclosure of information that the consumer (i) intentionally made available to the general public via a channel of mass media and (ii) did not restrict to a specific audience; or
(5) The disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the licensee's assets.

- Suggest definition of "targeted marketing". While the CAI has not previously provided a suggested definition, the industry draft submitted by a joint trade group included the following:
    - *(1) "Targeted advertising" means displaying online advertisements to a consumer where the advertisement is selected based upon data that is linked or reasonably linkable to an identified or identifiable natural person obtained from that consumer's activities across nonaffiliated websites or online applications over time to predict such consumer's preferences or interests.*
    - *(2) "Targeted advertising" does not include:*
        - *(a) Online advertisements based on activities within a Licensee's own websites or online applications;*
        - *(b) Online advertisements based on the context of a consumer's current search query, visit to a website, or online application;*
        - *(c) Online advertisements directed to a consumer in response to the consumer's request for information or feedback; or*
        - *(d) Processing personal data solely for measuring or reporting advertising performance, reach, or frequency.*

EVERSHEDS SUTHERLAND

- Clarify that limits on disclosure of SPI apply to disclosures to nonaffiliated third parties. This is not clear as drafted, and could be read to limit disclosure to affiliates.
- Fix conflicting timelines to comply with opt-out requests (15-days vs. 10 days).
- Clarify the definition of opt-in as a knowing and "intelligent" agreement. Unclear what "intelligent" would mean. Revise as "knowing and intentional" or just "knowing.

Please let us know if you have any questions, comments or further thoughts based on the above. ***You can reach out to Al Sand (512-721-2721), Mary Jane Wilson-Bilik (202-383-0660) (both copied above) or me.***

Regards,

Steve
Stephen E. Roth | Partner

steveroth@eversheds-sutherland.com
T: +1.202.383.0158
Biography

Eversheds Sutherland
Helping our clients, our people and our communities to thrive
From: Roth, Stephen
Sent: Tuesday, June 3, 2025 4:36 PM
To: CAI-Cyber & Privacy Working Group <CAI-Cyber&PrivacyWorkingGroup@eversheds-sutherland.us>
Cc: Sand, Alexander <AlexanderF.L.Sand@eversheds-sutherland.us>; Wilson-Bilik, Mary Jane <MJWilson-Bilik@eversheds-sutherland.us>
Subject: NAIC PPWG Release of Revised Articles IV & V of Chair's Draft - CAI Call Friday June 6 @ 2 pm ET

Dear CAI Cyber & Privacy Working Group Members,

We are writing to summarize the May 19th release by the NAIC Privacy Protections (H) Working Group (PPWG) of revised Articles IV and V of the Chair's Draft of revised Model Law 672 (both attached), and to schedule a call of the CAI's Working Group to discuss those issues and concerns that a Committee of Annuity Insurers comment letter should address.

Article V focuses on limits on the disclosure of Nonpublic Personal Information (NPI). **Comments on revised Article V as exposed are due June 18, 2025**.

Revised Article V of the Chair's Draft now includes language that was previously exposed by the PPWG as part of its revisions to Article III, and was tagged at that time as language that would ultimately be moved to Article V. Moving this language to Article V from Article III is consistent with the Committee's previous comments on Article III. Specifically, this includes previously released (but not exposed for comment) language establishing:

- Consumer opt-out rights from the disclosure of NPI for targeted advertising;
- An affirmative opt-in requirement for the sale of NPI; and
- An affirmative opt-in requirement prior to the disclosure of Sensitive Personal Information (SPI).

The terms "targeted advertising" and "sale" remain undefined. The definitions of these terms will be essential to determining the scope and potential impact of these opt-out and opt-in requirements. For any disclosure of NPI to a third party that does not fall under one of these

EVERSHEDS SUTHERLAND

categories (i.e. targeted advertising, sale, or disclosure of SPI), the existing opt-out requirements of Model 672 would apply.

The PPWG also released a revised version of Article IV (privacy notice requirements) based on comments received during the previous comment period. Revised Article IV deviates substantially from the version previously exposed for comment. Because that version was generally consistent with existing notice requirements under Model 672, the Committee did not submit a comment letter. **However, revised Article IV is not being exposed for additional comment at this time**.

A more detailed summary of the changes to both Articles IV and V is provided in the attached memo that we have prepared for your information and review.

As part of our ongoing work on these issues, we anticipate submitting a comment letter on behalf of the Committee on issues of concern to Committee members that are raised by Article V. ***We are scheduling a CAI Working Group call this Friday, June 6 at 2pm ET to discuss feedback from Committee members and potential comments that the Committee should submit on revised Article V.*** The details for that call are as follows:

DATE AND TIME: **Friday, June 6 @ 2-3pm ET**

Join By Telephone	
Dial In:	+1 646 558 8656
Meeting ID:	5787221869
Pass Code:	339516
Join Web-Based Meeting	**Zoom Link**
One-Tap Mobile:	+16465588656,,5787221869#,,,,*339516#
Meeting URL:	https://eversheds-sutherland-us.zoom.us/j/5787221869?pwd=K1FoZTRweG0ybFVoUnZCVHd1WUczdz09

We will also send a calendar invite to Working Group members for the call. In the meantime, if you have thoughts or questions about the PPWG's most recent release of revised Articles IV and V, and/or can't join this Friday's call and would like to share your thoughts about the issues and concerns that the Committee's comment letter should address, please reach out to Al Sand (512-721-2721), Mary Jane Wilson-Bilik (202-383-0660) or me.

Regards,

Steve
Stephen E. Roth | Partner | T: +1.202.383.0158

Eversheds Sutherland
Helping our clients, our people and our communities to thrive

From: Roth, Stephen
Sent: Tuesday, March 11, 2025 12:29 PM
To: CAI-Cyber & Privacy Working Group <CAI-Cyber&PrivacyWorkingGroup@eversheds-sutherland.us>
Cc: Sand, Alexander <AlexanderF.L.Sand@eversheds-sutherland.us>; Wilson-Bilik, Mary Jane

EVERSHEDS SUTHERLAND

<MJWilson-Bilik@eversheds-sutherland.us>
Subject: Update on PPWG's Work to Update NAIC Model Law #672

Hello everyone,

We are writing to provide an update on the progress of the NAIC's Privacy Protections Working Group (PPWG) to update Model Law # 672.

Revisions to Article III of the Chair's Draft

On February 25, the PPWG released new revisions to Article III of the previously proposed Chair's Draft, following a comment period during which we had submitted a comment letter on behalf of the Committee (attached). Article III contains many of the same substantive changes included in the Chair's Draft, including new consumer rights to access, correction, and deletion , limits on the sale of nonpublic personal information (NPI), and limits on the use and disclosure of sensitive personal information (SPI).

Revised Article III (also attached) makes a number of substantial revisions to the previous version, including some changes reflecting our recommendations, but retains a number of concepts about which we expressed concerns. Several provisions from the Chair's Draft have also been relocated, renamed, or replaced. Additionally, there are entire new sections which are called out as applicable. A summary of the key revisions is set forth below for your information.

Section 6 – Access, Correction, and Deletion of Nonpublic Personal Information

- Section 6 has been revised in several places to clarify that requests must be "authenticated," replacing previously inconsistent and unclear requirements to "verify" or "authorize" consumer requests. This change is consistent with our submitted comments.

Section 6(a) – Access Right

- Revised section 6(a) no longer includes language requiring the response to be made in a consumer defined format. This change is consistent with our comments.
- Section 6(a) revisions also include edits clarifying existing exemptions for responding to duplicative requests and new language stating that the licensee is not obligated to provide information beyond the scope of the request if the consumer has specified particular items.
- Section 6(a) has retained the requirement for licensees to provide consumers with the list of all third-party service providers to which the licensee disclosed the consumer's nonpublic personal information. This is in contrast to our submitted comments, which highlighted the challenge and burden of maintaining and providing this information while providing little value to consumers.

Section 6(b) – Correction Right

Revised Section 6(b) includes the following changes:

- A response to the consumer is now required within 45 days of a request to correct information, revised up from 30 days. Note that there is currently already an obligation to respond to correction requests within 30 days under Model 670.
- Licensees now have the option to delete information, in addition to correcting or denying the correction, upon receiving a request to correct.
- Addition of the ability for consumers to appeal if the licensee denies their request to change information, and a licensee is required to provide information about the appeals review process and notify the consumer of the decision.

- New language regarding the denial of a request to correct information when the licensee is not the creator of the information. The licensee may deny the correction unless the originator is no longer available to amend the information, and the consumer can independently demonstrate that the provided information is correct.

Section 6(c) – Deletion Right

- Revised Section 6(c) now allows licensees to delay deletion of data stored on archive or backup systems by 45 days, increased from 30 days. This revision is inconsistent with our comment, which requested that data not be required to be deleted until that system is next accessed in the ordinary course.
- In contrast to our comment and suggested revisions for a more comprehensive list of exemptions, revised Section 6(c) maintains the same short list of exemptions from the right to deletion as defined in the Chair's Draft.

Section 6(d) – Request and Response Requirements

Revised Section 6(d) provides more detailed guidance on the expectations for authenticating and responding to consumer rights requests. These changes include:

- New language requiring that licensees use commercially reasonable methods to authenticate the identity of requesters and allowing requests to be submitted by third-party agents/representatives, parents, or guardians.
- Allowing licensees not to respond to a request if the personal information at issue "is not locatable or retrievable by the licensee." This revised language removes the previous "impossible" standard consistent with our comment letter, but does not adopt the "disproportionate effort" standard we suggested. A new drafting note also directs examiners to review a licensee's justification for where it determines personal information is not locatable or retrievable.
- A new requirement to notify consumers if the licensee is unable to fulfill the request.
- A requirement that in the event a consumer disagrees with a licensee's refusal to correct NPI, the consumer may file a statement with the licensee stating why they disagree with the licensee's decision as well as what the consumer thinks is accurate information.
- The previously included cap on the number of requests to correct or delete information in a 12-month period has been removed.

Section 7 – Sale of NPI and Use of SPI

The Article III revisions also have significantly restructured what was formerly Section 7 and 8 of the Chair's Draft covering the sale of NPI and limits on the use and disclosure of SPI. Much of the substance of these requirements has been significantly revised and will be moved to Article V (Limits on Disclosure of NPI). Revisions include:

- Clearly requiring opt-in consent for the sale of NPI or the disclosure of SPI beyond uses specifically permitted under existing Article VI (Exception to Limits on Disclosures of NPI). What constitutes a "sale" of NPI has not yet been defined.
- Section 7 within Article III now focuses on the requirements for obtaining consent where required, including that the required consent must be authenticated and obtained separately from any other consent.
- New language has also been added requiring licensees to provide a notice to consumers describing what NPI will be sold or SPI will be disclosed and for what purposes prior to obtaining consent.
- Language suggesting that consumers might also be able to limit a licensee's internal uses of SPI has been removed.

These changes do provide requested clarification on the proposed approach to limiting the sale of NPI and disclosure of SPI, although they adopt an opt-in consent approach instead of an opt-out approach.

New Limitations on Disclosing NPI for Targeted Marketing

The revisions also include an entirely new proposed section establishing an opt-out right for the disclosure of NPI for targeted marketing purposes. Under this new requirement licensees may not disclose NPI to a non-affiliated third party for purposes of targeted marketing unless the consumer has the right to opt out of the targeted advertising or as is otherwise authorized under Model 672. This new provision includes:

- Licensee must provide clear and conspicuous instructions on how to opt out
- Licensees must act on opt-out requests within 15 days of receipt
- Licensees do not need to honor an opt-out request that does not match the licensee's records
- Licensees are under no obligation to obtain additional data to execute an opt-out request
- Licensees may not solicit consumers to change their opt-out for twelve months
- A licensee may comply with the opt-out requirement by providing a cookie banner on their website or another method if such approach can effectively identify a person and remove them from targeted advertising.

February 28 Meeting of the PPWG

The PPWG held a meeting on February 28, 2025 to hear comments on proposed revisions to Article IV (Privacy and Opt Out Notices for NPI) of the Chair's Draft. The Committee did not submit a written comment on these proposed changes as they were generally minimal and non-substantive.

During the call, consumer advocates and regulators from CA and VA used the opportunity to press their preference for an opt-in approach to any limitations imposed under a final revised Model 672, noting that most consumers will simply go with the default position and that therefore an opt-in approach is required to protect consumer interests. However, CA did recognize that insurance support organizations should be allowed to sell data that helps support the industry. Industry representatives generally supported an opt-out approach, and emphasized the importance of maintaining a level playing field between the insurance industry and other industries. Maine expressed equivocation on whether opt-in or opt-out was the more desirable approach, and noted that they continue to struggle to determine which approach they will favor. There was general agreement that disclosure should be permitted to third parties without consent where needed to comply with legal or operational obligations.

Various industry representatives also took the opportunity to urge the PPWG to modernize the default requirements for privacy notice delivery to allow for electronic notice by default and paper delivery upon request. CA indicated that they thought initial notice should be in paper by default, allowing for opt-in to electronic delivery consistent with the Uniform Electronic Transactions Act.

Regarding next steps, Chair Dwyer stated they were still determining what the PPWG's approach would be moving forward. She did confirm that a more fulsome revision of Model 672 will be released for comment at some point, but is unsure whether there will be additional smaller comment periods prior to that happening.

The Committee's Continued Engagement

EVERSHEDS SUTHERLAND

We plan to continue to engage with the PPWG to press our concerns regarding the issues raised in our comment letters, including submitting additional comments, as further revisions to Model 672 are opened for comment. We will be convening this Working Group to solicit your thoughts, reactions and input with respect to our continued advocacy. In the meantime we will continue to monitor and update you regarding the PPWG's ongoing efforts. Please don't hesitate to reach out if you have any questions.

Regards,

Steve