

NAIC Privacy Working Group Goes All-in on New Draft Privacy Model

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The National Association of Insurance Commissioners' Privacy Working Group has been feverishly shuffling and re-dealing its new privacy model, but its luck may be running out. After two full days of draws and calls on June 5 and 6, the working group dealt a revised draft of the privacy model on July 11. While the draft is an improvement over the initial version, it faced strong criticism, potentially indicating that the working group's odds of passing a new privacy model may be drawing thin.

Improvements From the Prior Draft The July 11 draft took some definite "wins" from the play on June 5 and 6. For example:

- No longer prohibiting cross-border sharing of consumers' personal information.
- Removing the optional private right of action.
- Including a total HIPAA safe harbor.
- Permitting joint marketing agreements.
- Narrowing the circumstances requiring opt-in permissions for marketing and instances where an annual notice of privacy protection practices would be required.
- Extending the timeframe for insurers to transition personal information from legacy systems.

Remaining Issues Despite this progress, many issues remain and the new model may still be a longshot. South Dakota and Nebraska have already stated that the current draft would be a bust in their states and stood no chance of passage. Criticism and concerns continued to be raised at the NAIC Summer National Meeting, prompting the working group to up the ante by promising to re-deal a new draft and request an extension. Will the next draft get sufficient buy-in to become a new model, or will the working group be forced to fold? We'll have to wait for the next draw.

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