



December 6, 2019

BY EMAIL

California Department of Justice
ATTN: Privacy Regulations Coordinator
300 S. Spring Street
Los Angeles, CA 90013
PrivacyRegulations@doj.ca.gov

RE: Proposed California Consumer Privacy Act Regulations

Ladies and Gentlemen:

The Association of Claims Professionals (ACP) is pleased to respond to requests for comment on the proposed California Consumer Privacy Act (CCPA) regulations and writes to suggest ways of improving the text of the proposed regulations to provide consistency and clarity to CCPA application and to avoid consumer confusion over potential conflict with other California laws. While ACP members are strong proponents of individual privacy rights, we remain concerned that the unintended application of the CCPA and proposed regulations, as currently drafted, will sow confusion and discord among California consumers and result in conflicting regulatory standards for our members and the larger California business community writ large. We therefore submit this letter outlining suggested refinements to the proposed regulations. This supplements and incorporates our preliminary rulemaking submission from March 8, 2019 (attached for ease of reference).

ACP's Interest in the Regulations

ACP (formerly known as the American Association of Independent Claims Professionals or AAICP) was formed in 2002 as the only national association representing the interests of the nation's independent claims professionals. ACP members employ thousands of claims specialists and other professionals across the country and handle millions of property and casualty, workers' compensation, disability, and other liability claims annually. Membership is comprised of independent claims adjusters and third-party administrator organizations, many of whom handle claims administration responsibilities for California insureds and their carriers. ACP member companies employ thousands of adjusters in the State of California and manage billions of dollars of claims for California insurers and policyholders.

Resolve Potential Consumer Confusion over Conflict of Law.

As shared in our March 8, 2019 submission, there are a number of existing California laws that appear to create competing obligations for our industry and others, including the California Insurance Code, Labor Code, and health laws. With that said, Section 1798.196 of the CCPA



provides that “[t]his title is intended to supplement federal and state law, if permissible, but shall not apply if such application is preempted by, or in conflict with, federal law or the United States or California Constitution.” The Act further provides that “[t]he obligations imposed on businesses by this title shall not restrict a business’ ability to ... comply with federal, state, or local laws... or exercise or defend legal claims.” Section 1798.145(a)(1), (4). The Act then specifically calls out a limited number of statutory scenarios in which the CCPA would not apply, including under the Confidentiality of Medical Information Act, Health Insurance Portability and Accountability Act, Fair Credit Reporting Act, and Gramm-Leach-Bliley Act, as well as clinical trials.

The imprecise language in the proposed regulations could be misconstrued to undercut this foundational principle. Respectfully, revisions are warranted. By way of example, the proposed regulations reference the conflict of law issue in guidance on responding to verified consumer requests to know, providing:

If a business denies a consumer’s verified request to know specific pieces of personal information, in whole or in part, **because of a conflict with federal or state law, or an exception to the CCPA**, the business shall inform the requestor and explain the basis for the denial....

Section 999.313(c)(5) (emphasis added). However, similar language is missing from that section’s guidance on responding to verified consumer request to delete.

In cases where a business denies a consumer’s request to delete the business shall do all of the following:

- a. Inform the consumer that it will not comply with the consumer’s request and describe the basis for the denial, including any statutory and regulatory exception therefor;
- b. Delete the consumer’s personal information that is not subject to the exception; and
- c. Not use the consumer’s personal information retained for any other purpose than provided for by that exception.

Section 999.313(d)(6).

To avoid confusion, we respectfully request that this Section reinforce that such requests can be denied “because of a conflict with federal or state law, or an exception to the CCPA.” Section 999.313(d)(6)(a) should be amended to read:

In cases where a business denies a consumer’s request to delete the business shall do all of the following

- a. Inform the consumer that it will not comply with the consumer’s request and describe the basis for the denial, including ~~any~~



statutory and regulatory exception therefor if there is a conflict with federal or state law, or an exception to the CCPA.

Greater Clarity on the Interplay of “Businesses” and “Service Providers”

The proposed regulations could also be misread to impede members’ ability to duly carry out their lawful responsibilities. ACP companies respond every day to individuals and businesses who suffer a loss such as a workplace injury, property or casualty damage, or liability. Insurance carriers and self-insured companies retain our member companies for expert advice and knowledge throughout the management of claims entrusted to their care. ACP companies provide a full range of claims services from claims adjusting to comprehensive claims management. ACP focuses on the importance of claims specialists as front line responders when an individual or business suffers a loss such as a workplace injury, property or casualty damage, or liability. For claimants, ACP companies help individuals and companies begin to recover from such a loss. For carriers and self-insured customers, ACP companies are a strategic business partner and trusted advisor providing professional claims services integral to risk management. At each step of this process, important information is shared to facilitate effective and efficient claims management.

Given these important roles and responsibilities, and to ensure the most expedient claims management and administration, while avoiding consumer confusion and consternation, there are adjustments that should be made to the proposed regulations’ guidance on Service Providers. In particular, Section 999.314 should be revised to bring more clarity to who qualifies as a service provider and what their duties are under the Act.

- Subsection (a) states a person or entity that provides services to a person or organization that is a service provider to also be a service provider under the law. More concrete detail is needed to define those relationships. For example, does a service provider pass on deletion requests to its own service providers, or does the business, as the CCPA text seem to indicate, have the responsibility to direct each and every service provider in the provision chain?
- Subsection (c) states that a service provider “shall not use personal information received from a person or entity it services or from a consumer’s direct interaction with the service provider for the purpose of providing services to another person or entity.” There is, however, a carve out for service providers’ combining personal information received from one or more entities “to the extent necessary to detect data security incidents, or protect against fraudulent or illegal activity.” To reduce confusion about the ability to share information between claimants and carriers, and remove unnecessary barriers to appropriate information sharing, the subsection should be revised to also allow the following sharing: “A service provider may, however, combine personal information received from one or more entities to which it is a service provider, on behalf of such businesses, to the extent necessary to detect data security incidents, ~~or~~ protect against fraudulent or illegal activity, complete the transaction for which the personal information was collected, provide a good or service requested by the consumer, or otherwise perform



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a contract between the business and the consumer, as well as where the combination is reasonably anticipated within the context of the service provider's business purpose."

- Subsection (d) requires service providers that receive a request to know or delete from a consumer to "explain the basis for the denial" if the service provider does not comply with the request and to inform the consumer that the consumer should submit the request directly to the business. This provision would seem to impermissibly expand the Act's reach to require service providers to comply with obligations otherwise resting with "business." In addition, compliance with such a new standard would be unduly burdensome and create confusion about where the line should be drawn between service providers and businesses on request management. It should therefore be removed.

ACP appreciates the opportunity to provide comments on the proposed regulations. If you have any questions concerning our comments, or if we can be of further assistance, please contact Susan Murdock at susan@murdockinc.com. We thank you for consideration of these comments and welcome any further questions you may have.

Sincerely,

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