

February 25, 2020

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 modified proposed California Consumer Privacy Act (CCPA) regulations and writes to recommend one adjustment to the regulations to provide greater consistency and clarity to the Act's 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 the 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. Our proposed language is designed to avoid those consequences. This letter supplements and incorporates our preliminary rulemaking submission from December 6, 2019 and comments to the preliminarily proposed regulations from March 8, 2019 (attached for ease of reference).

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.

ACP companies respond every day to individuals and businesses who receive employee benefits or suffer a loss such as 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, it is important that there be greater clarity on what is and is not covered by the CCPA. Based on the current language of the Act and proposed regulations, information collected as part of administering and managing employee benefits, workplace injury, property and casualty damage, and liability claims and benefits largely are exempted from the CCPA's provisions. See, e.g., Cal. Civ. Code §§1798.105(d),ⁱ 1798.140(t)(2)(A),ⁱⁱ 1798.140(t)(2)(C),ⁱⁱⁱ 1798.145(a),^{iv} 1798.145(b),^v 1798.145(c)(1)(A),^{vi} 1798.145(h)(1)(A),^{vii} 1798.145(h)(1)(C),^{viii} and 1798.145(n)(1);^{ix} see also Modified Proposed CCPA Reg. § 999.313(c)(3).^x To provide greater clarity and consistency with other laws, the proposed regulations should be revised to make it clear that the following information is exempted:

This title shall not apply to any information collected, received, or shared for the purpose of administering or managing employee benefits or workplace injury, property and casualty damage, or liability claims or benefits.

This clarification, of course, makes good sense given that California has already specifically and comprehensively addressed transparency and privacy in the claims adjusting industry under the California Insurance Code, Labor Code, and health laws; the CCPA's preamble acknowledgement of existing law's providing protection in various other contexts; and the already existing exemptions in the CCPA itself, as noted above.

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,


w/e/p SRM

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ⁱ "A business or a service provider shall not be required to comply with a consumer's request to delete the consumer's personal



information if it is necessary for the business or service provider to maintain the consumer's personal information in order to: (1) Complete the transaction for which the personal information was collected, ... provide a good or service requested by the consumer, or reasonably anticipated within the context of a business' ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer. (2) Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity. (3) Debug to identify and repair errors that impair existing intended functionality. (4) Exercise free speech, ensure the right of another consumer to exercise that consumer's right of free speech, or exercise another right provided for by law... (7) To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business. (8) Comply with a legal obligation. (9) Otherwise use the consumer's personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information."

ii "For purposes of this title, a business does not sell personal information when ...: A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a third party, provided the third party does not also sell the personal information, unless that disclosure would be consistent with the provisions of this title."

iii "For purposes of this title, a business does not sell personal information when ...: The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business purpose if both of the following conditions are met: (i) The business has provided notice of that information being used or shared in its terms and conditions consistent with Section 1798.135. (ii) The service provider does not further collect, sell, or use the personal information of the consumer except as necessary to perform the business purpose."

iv "The obligations imposed on businesses by this title shall not restrict a business' ability to: (1) Comply with federal, state, or local laws. (2) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities. (3) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law. (4) Exercise or defend legal claims. (5) Collect, use, retain, sell, or disclose consumer information that is deidentified or in the aggregate consumer information. (6) Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly outside of California."

v "The obligations imposed on businesses by Sections 1798.110 to 1798.135, inclusive, shall not apply where compliance by the business with the title would violate an evidentiary privilege under California law and shall not prevent a business from providing the personal information of a consumer to a person covered by an evidentiary privilege under California law as part of a privileged communication."

vi "This title shall not apply to ... Medical information governed by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1) or protected health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5)."

vii "This title shall not apply to ... Personal information that is collected by a business about a natural person in the course of the natural person acting as ... an employee of ... that business to the extent that the natural person's personal information is collected and used by the business solely within the context of the natural person's role or former role as a ... an employee ... of that business."

viii "This title shall not apply to ... Personal information that is necessary for the business to retain to administer benefits for another natural person relating to the natural person acting as ... an employee of ... that business to the extent that the personal information is collected and used solely within the context of administering those benefits."

ix "The obligations imposed on businesses by Sections 1798.100, 1798.105, 1798.110, 1798.115, 1798.130, and 1798.135 shall not apply to personal information reflecting a written or verbal communication or a transaction between the business and the consumer, where the consumer is a natural person who is acting as an employee ... of a company ... and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from such company...."

x "In responding to a request to know, a business is not required to search for personal information if all the following conditions are met: a. The business does not maintain the personal information in a searchable or reasonably accessible format; b. The business maintains the personal information solely for legal or compliance purposes; c. The business does not sell the personal information and does not use it for any commercial purpose; and d. The business describes to the consumer the categories of records that may contain personal information that it did not search because it meets the conditions stated above."