



April 2, 2012

Submitted via email at privacyrfc2012@ntia.doc.gov

U.S. Department of Commerce
National Telecommunications and Information Administration
1401 Constitution Avenue, N.W.
Room 4725
Washington, D.C. 20230

Re: Request for Public Comments on Multistakeholder Process to Develop Consumer Data
Privacy Codes of Conduct

Dear Sir or Madam:

I am writing on behalf of America's Health Insurance Plans (AHIP) in response to the Department's request for public comments that was published in the *Federal Register* on Monday, March 5, 2012 (77 Fed. Reg. 13098).¹ The Notice solicited public comments related to substantive consumer data privacy issues and the development of legally enforceable codes of conduct, as well as procedures to foster the development of these codes.

AHIP is the national trade association representing health insurance plans. AHIP's members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. AHIP advocates for public policies that expand access to affordable health care coverage to all Americans through a competitive marketplace that fosters choice, quality and innovation.

Our members have been at the forefront of developing and implementing business practices that ensure the privacy and confidentiality of individuals' personal information across all mediums including paper, electronic, and oral forms. Our comments leverage our members' experiences with and expertise in the implementation of business strategies that protect consumers' privacy and we look forward to our involvement in future public dialog so that we can contribute our experiences about ways that health entities protect consumers' data.

AHIP supports the Administration in its plan to engage a broad range of stakeholders in both transparent and consensus-driven efforts to develop a set of voluntary codes of conduct that will implement privacy protections for consumers. We think it will be helpful for consumers and for companies to engage in this public dialog, but we believe the agency should focus its efforts on

¹ The deadline to submit comments in response to the request for information was [extended](#) until April 2, 2012. See 77 Fed. Reg. 17460.



business sectors where consumers' information is not protected by an existing federal or state law or regulation.

We believe that NTIA should build into the development process adequate time and resources to facilitate broad stakeholder agreement surrounding two foreseeable challenges:

- Developing codes of conduct that create a meaningful privacy benefit to consumers when compared to the expected implementation costs.
- Striking a balance in the development process so its result spurs adoption among unregulated private or commercial entities and also mitigates the risk that the framework generates duplicative requirements for those entities that *are* subject to existing privacy laws and regulations.

Additionally, we recommend that NTIA adopt as procedure a requirement that stakeholders:

- Publish a series of progress reports that allow the public additional opportunities for review and input.

Our comments below illustrate the importance of incorporating these three key components in any future work.

A Meaningful Privacy Benefit to Consumers

To encourage robust adoption, consumers, as well as affected stakeholders, will balance the expected privacy benefits with the cost to implement business strategies or strategies that implement the privacy proposals. As NTIA facilitates development of codes of conduct, it should work to ensure that an appropriate range of impacted stakeholders are engaged in the process to make the codes meaningful and likely to have wider adoption. To ensure a meaningful privacy benefit to consumers, linking the voluntary codes of conduct to solutions that are based on objective data about consumer needs (i.e., as supported by reliable, statistically-valid, objective market research or consumer surveys), and that are financially attainable, technically feasible, vendor-neutral, and applicable to a wide range of entities will likely make possible a greater number of entities are able to integrate consumer privacy benefits into their business practices. The codes of conduct should be informed by current business processes, how to move to best practices from current processes, and a description of technologies that exist and that may be available for free or at low cost to business entities to ease the transition.



A Targeted Focus and Solutions for Entities that Adequately Protect Consumers' Data

Regulatory initiatives that duplicate entities' compliance activities or result in dual and likely conflicting requirements are contrary to the spirit of the Administration's commitment to reduce the regulatory burden on private entities.²

AHIP believes that the NTIA process should produce codes of conduct that incentivize adoption amongst commercial entities that are not currently subject to regulation. Addressing this population first will alleviate the greatest risk to consumers.

This being said, AHIP is concerned there remains potential for the codes of conduct to interact with existing law, and also set precedent for federal legislation further codifying the Consumer Privacy Bill of Rights.³ The NTIA should, therefore, commit stakeholders to a process that requires the identification and brief discussion of existing laws and regulations that apply to certain commercial business sectors (e.g., healthcare, under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)⁴ and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH)⁵) with the express intention to mitigate the possibility that unintended consequences or duplicative requirements have a disproportionate impact on such entities as a result of implementation of the Consumer Privacy Bill of Rights.

Therefore AHIP recommends that the NTIA process not only encourage stakeholders to develop solutions tailored to appeal to unregulated private or commercial entities, but also commit to achieve this goal without unintentionally generating duplicative requirements for those entities that *are* subject to existing privacy laws and regulations.

Progress Reports

AHIP supports the Department's commitment to ensure openness, transparency, and consensus-building through its implementation plans. AHIP hopes that NTIA will provide future opportunities to engage in the public dialogue throughout the development process. We believe that our experience in applying innovative business solutions under the framework of HIPAA and HITECH can both inform and benefit stakeholders as they work to develop privacy codes of conduct that are both attainable and effective to a wide-ranging scope of business entities.

Allowing stakeholders multiple opportunities to provide public comments with at least a 30-day response timeframe in which submit those comments will maximize the likelihood that a robust

² Executive Order 13563, 76 Fed. Reg. 3821.

³ *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*. The Executive Office of the United States. January, 2012.

⁴ Pub. L. No. 104-191 and corresponding regulations.

⁵ Enacted as part of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

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number of stakeholders are able to share their unique perspectives, and may reduce or eliminate any potential obstacles to adoption of the voluntary codes of conduct before they are finalized. Therefore, we recommend that the Department publish a series of progress reports (corresponding to meaningful junctures during the development process) in conjunction with any relevant supporting materials (e.g., a draft copy of the consumer codes of conduct) in the *Federal Register*, each with a request for information lasting the duration of at least a 30-day public comment period.

AHIP appreciates the opportunity to provide comments in response to the Department's request for information on this important matter. Please do not hesitate to contact Daniel T. Durham (ddurham@ahip.org) at 202-778-8490, or Marilyn Zigmund Luke (mzluke@ahip.org) at 202-861-1473 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Daniel T. Durham". The signature is fluid and cursive, with the first and last names being the most prominent.

Daniel T. Durham
Executive Vice President
Policy and Regulatory Affairs
America's Health Insurance Plans

A handwritten signature in black ink that reads "Marilyn Zigmund Luke". The signature is cursive and somewhat stylized, with the first and last names being the most prominent.

Marilyn Zigmund Luke
Senior Counsel and Compliance Officer
America's Health Insurance Plans