



IPMPC

International Pharmaceutical &
Medical Device Privacy Consortium

February 25, 2020

Mr. Xavier Becerra
California Department of Justice
ATTN: Privacy Regulations Coordinator
300 S. Spring Street, First Floor
Los Angeles, CA 90013

By Email to: PrivacyRegulations@doj.ca.gov

Re: Revised CCPA Proposed Regulations

Dear Attorney General Becerra,

The International Pharmaceutical & Medical Device Privacy Consortium (“IPMPC”) welcomes the opportunity to provide comments on the revised proposed regulations under the California Consumer Privacy Act (CCPA).

The IPMPC is comprised of chief privacy officers and other data privacy and security professionals from a number of research-based, global pharmaceutical companies and medical device manufacturers.¹ The IPMPC is the leading voice in the global pharmaceutical and medical device industries to advance innovative privacy solutions to protect patients, enhance healthcare, and support business enablement.²

¹ IPMPC members may also operate related businesses, including in vitro diagnostics manufacturing and CLIA laboratories.

² More information about IPMPC is available at <https://www.ipmpc.org/>. This filing reflects the position of the IPMPC as an organization and should not be construed to reflect the positions of any individual member.

The IPMPC appreciates the revisions made by the Attorney General to the first draft of the CCPA regulations. The changes in the second draft provide needed clarity. However, the IPMPC believes that, in some areas, the new requirements may create consumer confusion—including by requiring businesses to implement ambiguous consumer-facing notices and icons. The IPMPC also believes that the revised regulations create new requirements that are not called for by the CCPA and have little benefit to consumers.

§ 999.301(c) The IPMPC appreciates the additional clarity about the requirements for an “authorized agent,” and requests that the Attorney General make it clear that, when someone other than the consumer submits a request on a consumer’s behalf, and that person does not meet the definition of “authorized agent,” a business is permitted to deny the request.

§ 999.302 The IPMPC believes the guidance provided by the Attorney General offers needed clarity about the standard to be applied when determining whether data held by a business is “personal information.” In many cases, IPMPC members collect data for medical or scientific research that includes information that member companies do not and could not link with a specific person. Clarification about the impact of the CCPA on these important research functions will allow IPMPC members to proceed with greater certainty about the regulatory requirements applicable to research designed to improve patient health, increase access to medicines, and identify important treatments.

Although the additional interpretative note clarifies the applicable standard, the IPMPC believes that a further statement about what information should be considered either deidentified or not personal information would be helpful. In particular, the IPMPC urges the Attorney General to make it clear that information which has been deidentified using a process described in federal regulations (like the HIPAA deidentification standards) will be considered deidentified for the purposes of the CCPA.

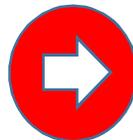
§ 999.305(a)(3) The IPMPC appreciates the Attorney General’s inclusion of additional examples, and requests that the Attorney General clarify § 999.305(a)(3)(d) to make it clear that, when a business collects information over the telephone or in person, in addition to the option of providing notice orally, a business also has the option of directing consumers to “where the notice can be found online,” as described in § 999.305(a)(3)(c).

The IPMPC also requests clarification of the term “download page” in § 999.305(a)(3)(b). Most applications are downloaded from an application store—is the regulation intended to require posting of the privacy notice within the application store where the application is available for download?

§ 999.306(e) The IPMPC requests that the Attorney General clarify the scope of this new section, and make it clear that the prohibition on selling data applies only to information collected after the CCPA’s effective date.

§ 999.306(f) The IPMPC requests that the Attorney General consider alternative designs for the opt-out button. The current proposed design of the button looks like switches that consumers are used to encountering in mobile devices or applications. However, the required functionality of the button is to serve as a link to the webpage or online location where the consumer can provide their information to accomplish the opt-out. Consumers may be misled or frustrated when this occurs, since—based on their previous experiences with switches—they will likely expect to be able to click the button and have it “turn off.” To discover that, instead, they are being routed (as required by the law and these regulations) to a new page where they can provide the information required to implement the opt-out may be a surprise. Consumers may come to believe that such pages are non-compliant, even though they in fact follow the letter of the law and regulations.

Instead, the IPMPC urges the Attorney General to adopt a button that clearly implies to consumers that clicking the button will take them to a new page, where the consumer can provide information and opt-out. The IPMPC also requests that the Attorney General allow businesses to modify the color scheme, design, and placement of the button—provided it remains materially recognizable as the “Opt-Out” button and stays conspicuous—so that the button and accompanying link can be made consistent with and incorporated into the other design elements of a business’s website. For the design of the button, the IPMPC suggests something like the below:



Finally, the IPMPC notes that not all websites contain buttons currently. Accordingly, the requirement in § 999.306(f)(2) that the button be “the same size as

other buttons on the business's website" should be made conditional, and apply only when other buttons are present.

- § 313(c) The IPMPC appreciates the Attorney General's clarification about the kind of information that must be searched in response to a consumer's request to know. However, the IPMPC urges the Attorney General to restore a modified version of the deleted text that clearly establishes that businesses are not required to put other consumers at risk of harm in responding to a different consumer's request to know. When information about a consumer is being maintained for the purpose of protecting the security of the business's systems or networks, an important part of what is being protected is the personal information of *other* consumers, employees, and their dependents.

The Attorney General's previous draft aimed to strike a balance between consumer rights and the need to protect personal information. The IPMPC supports reincorporation of a slightly modified version of the deleted text, as follows: "A business is not required to provide a consumer with specific pieces of personal information if the disclosure creates an unreasonable risk to the security of that personal information, the personal information of other consumers, employees, and their dependents, the consumer's account with the business, or the security of the business's systems or networks."

The IPMPC requests that the Attorney General include a clause acknowledging that the CCPA permits non-disclosure when another exemption to CCPA applies, like in the case of a privileged communication or where disclosure would violate an applicable law.

- § 313(d)(3) The IPMPC requests that the Attorney General clarify that deletion of information in an archived or backup system is only required when the information is restored *and* accessed or used for a sale, disclosure, or commercial purpose. Data is usually restored from archives or back-ups when an incident occurs that impacts the businesses' existing information systems. Restoring systems quickly is often vital to prevent negative consequences for the business, its customers, and employees. Requiring businesses to pause and reconcile systems with deletion records immediately upon restoration would create an unnecessary obstacle to the resumption of normal operations. Consumers would still be protected by the requirement that deletion occur before the data is used for a commercial purpose.

- § 999.314(c) The IPMPC requests that the Attorney General define the words “cleaning” and “augmenting” in § 999.314(c)(3), and reconsider these exclusions. Prohibiting service providers from using other information in their possession to correct erroneous, incomplete, or outdated records just means that erroneous, incomplete, and outdated records will remain in use by businesses until rectified by the consumer. The benefit to consumers from this exclusion seems negligible.
- § 999.314(e) The IPMPC requests that the Attorney General note that a service provider may act on behalf of a business to respond to a consumer request only when the service provider has been authorized by the business to respond on its behalf. Otherwise, consumers may be confused about who acted on their request and what information was covered.
- § 999.317(e) The IPMPC suggests that the Attorney General revise the restriction on sharing record-keeping information with third parties, and explicitly acknowledge that such information may be shared with service providers (including attorneys and auditors retained to assess compliance with the CCPA) and with third parties when an exception to the CCPA applies—like where required by law or in the course of defending a legal claim.
- § 999.317(g)(2) The IPMPC asks the Attorney General to indicate that this obligation commences on July 1, 2021. Otherwise, businesses will not have time to compile the necessary records, and will not have a full year’s worth of data to report.

Finally, the IPMPC reiterates its request from our initial set of comments: We ask that the Attorney General publish examples of the various notices and responses to consumer requests that would be required under the proposed regulations. Example materials will greatly assist businesses in crafting compliance materials that meet consumer expectations under the CCPA.

We thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink that reads "Peter Blenkinsop". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Peter A. Blenkinsop
IPMPC Secretariat