

CLIENT ALERT

# NAIC Releases Draft Model Bulletin on the Use of AI by Insurers

July 20, 2023

## AUTHORS

Kara Baysinger | Stephanie Duchene | Matthew J. Gaul | David Heales  
Daniel K. Alvarez | Laura E. Jehl | Shlomo Potesky

---

On Monday, July 17, 2023, the National Association of Insurance Commissioners' ("NAIC") Innovation, Cybersecurity, and Technology (H) Committee ("H Committee") exposed its [\*Draft Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers\*](#) (the "Bulletin"). The draft comes as part of H Committee's 2023 Adopted Charge to consider and coordinate the development of regulatory guidance and examination standards related to the use of big data and artificial intelligence ("AI") in the business of insurance.

As we have [previously reported](#), on May 26, 2023 the Colorado Division of Insurance released a revised draft *Proposed Algorithm and Predictive Model Governance Regulation* focused on life insurers. Both of these documents take a similar approach by looking to establish a governance and risk-management framework for the use of AI systems.

## **Background**

In August 2020, the NAIC adopted the [Principles on Artificial Intelligence](#) (the "Principles"), which were intended to be a high-level guide for AI actors in the business of insurance rather than prescriptive legal guidelines. In short, the Principles encouraged users of AI systems to act fairly and ethically; maintain accountability; comply with applicable laws; provide transparency to stakeholders; and maintain a secure, safe and robust system.

The Bulletin looks to further the goals set forth in the Principles, particularly the goal of combating the risk of inaccuracy and unfair bias in the use of AI in insurance practices. It does so by suggesting how state departments of insurance should

---

## NAIC Releases Draft Model Bulletin on the Use of AI by Insurers

govern the development, acquisition and use of AI technologies, as well as the types of information and documentation that departments may request during an investigation or examination of an insurer in relation to AI systems. Once the Bulletin is final, state regulators will determine on a state-by-state basis whether to issue it. Even in states that do issue the Bulletin, it will serve only as non-binding guidance to insurers, setting forth the state regulators' "expectations" as to how insurers should govern their use of AI systems.

### Overview

The Bulletin recognizes that it can be difficult to accurately test AI systems<sup>1</sup> to determine whether decisions based on those systems are fully compliant with legal standards. It primarily relies on insurers developing a written program to govern the use of AI systems, which is designed to ensure that decisions based on AI systems that impact consumers are accurate and do not violate legal standards (an "AIS Program"). According to the Bulletin, the comprehensiveness of an AIS Program should be reflective of, and commensurate with, an insurer's assessment of the risk posed by its use of an AI system, and should consider (1) the nature of the decisions being made or informed by an AI system; (2) the degree of potential harm to consumers from errors or unfair bias resulting from the use of an AI system; (3) the extent to which humans are "in-the-loop"; and (4) the extent and scope of the insurer's use of or reliance on data, models, and AI systems from third parties.

General Guidelines. The AIS Program should be designed to mitigate the risk that an insurer's use of AI systems that impact consumers will result in decisions that are arbitrary, unfairly discriminatory or that otherwise violate unfair trade practice laws. It should be adopted by the insurer's board, with the responsibility for development, implementation and monitoring delegated to senior management. Specifically, the AIS Program should address:

- governance, risk-management controls and internal audit functions;
- use of AI systems across the insurance product life cycle, including product development, marketing, lead generation, applications, underwriting, rating, case management, claims administration and fraud detection; and
- use of all AI systems that make decisions impacting consumers by or on behalf of an insurer, whether developed by the insurer or third party.

Governance. The AIS Program should include a governance framework for the oversight of AI systems used by the insurer, which outlines:

- standards for adopting and developing the AI system;

---

<sup>1</sup> The Draft Model Bulletin uses "AI Systems" as a defined term to mean "an umbrella term describing artificial intelligence and big data related resources utilized by [i]nsurers." We use AI systems in this broad sense, without strictly defining it as such.

---

## NAIC Releases Draft Model Bulletin on the Use of AI by Insurers

- the policies, processes and procedures to be followed at each stage of an AI system's life cycle; and
- policies to document compliance with the AIS Program.

The AIS Program must also outline the following defined roles and responsibilities for key personnel charged with implementing the AIS Program:

- a committee comprised of representatives from various units within the Insurer, such as business, product specialists, actuarial, data science and analytics, compliance, and legal;
- a description of the roles and responsibilities of each unit as they relate to an AI system and the AIS Program;
- the qualifications of the persons serving in the roles identified;
- guidelines for coordination and communication;
- scope of authority, chains of command and decisional hierarchies;
- the independence of decision-makers;
- escalation procedures and requirements; and
- development and implementation of ongoing training and supervision of personnel.

Lastly, the framework should address monitoring, auditing and reporting protocols, including a description of methods used to detect and address unfair discrimination resulting from the use of predictive models.

*Risk Management and Internal Controls.* The AIS Program must also document a risk-identification and management framework that includes:

- oversight and approval processes for developing, adopting or acquiring AI systems;
- accountability procedures for the data;
- oversight of algorithms and predictive models;
- processes for validating and auditing data, algorithms and predictive models; and
- internal controls protecting nonpublic information.

---

## NAIC Releases Draft Model Bulletin on the Use of AI by Insurers

For predictive models, the AIS Program must also include a narrative description of the model's intended goals and objectives and how it ensures that reliance on the model is valid.

*Third-Party AI Systems*. The AIS Program should include an insurer's standards for acquiring, using or relying on AI systems developed by a third party. There must be protocols for due diligence to assess the third-party system to ensure that it meets legal standards imposed on the insurer and audits to confirm third-party compliance.

The insurer must also include the following terms in contracts with third parties:

- require third-party data and model vendors and AI system developers to maintain an AIS Program commensurate with the standards expected of the insurer;
- entitle the insurer to audit the third-party vendor for compliance;
- entitle the insurer to receive audit reports by qualified auditing entities confirming the third party's compliance; and
- require the third party to cooperate with regulators, regulatory inquiries and investigations related to the insurer's use of the third party's product or services as part of an investigation or examination of the insurer.

*Regulatory Oversight and Examination Considerations*. The Bulletin provides a list of information and documentation relating to an insurer's AIS Program that an insurer may be asked to provide in the context of an investigation or market conduct action. In summary, the list includes:

- information and documentation relating to the adoption of a written AIS Program;
- the scope of the insurer's AIS Program;
- a description of how the AIS Program is proportionate with the insurer's use of AI systems;
- the policies, procedures, guidance, training materials, and other information relating to implementation, ongoing maintenance, monitoring and oversight of the insurer's AIS Program;
- information and documentation relating to the insurer's compliance with its AIS Program;
- processes and procedures for the development, adoption, or acquisition of AI systems, including pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of AI systems developed or deployed, including by a third party such as an authorized agent or representative;

---

## NAIC Releases Draft Model Bulletin on the Use of AI by Insurers

- copies of contracts with third-party providers and confirmation of audit processes performed with respect to the third party's compliance with contractual and regulatory obligations; and
- information and documentation relating to the protection of nonpublic information, including unauthorized access to algorithms or models.

The Bulletin also clarifies that insurers may demonstrate compliance with applicable law through means that differ from those described therein, and that the purpose of this section of the Bulletin is only to ensure that insurers are aware of their obligations to and the expectations of state departments of insurance.

### **Conclusion**

H Committee is accepting written comments through Tuesday, September 5, 2023 and will also hear comments from attendees at the upcoming NAIC Summer National Meeting on Sunday, August 13, 2023. The Willkie insurance team will continue to monitor this process. Please contact any of the authors above if you have any questions.

---

## NAIC Releases Draft Model Bulletin on the Use of AI by Insurers

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

---

**Kara Baysinger**

415 858 7425

kbaysinger@willkie.com

**Stephanie Duchene**

310 855 3066

sduchene@willkie.com

**Matthew J. Gaul**

212 728 8261

mgaul@willkie.com

**David Heales**

212 728 8294

dheales@willkie.com

**Daniel K. Alvarez**

202 303 1125

dalvarez@willkie.com

**Laura E. Jehl**

202 303 1056

ljehl@willkie.com

**Shlomo Potesky**

212 728 3232

spotesty@willkie.com

Copyright © 2023 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in Brussels, Chicago, Frankfurt, Houston, London, Los Angeles, Milan, New York, Palo Alto, Paris, Rome, San Francisco and Washington. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).