

CLIENT ALERT

Colorado Adopts Life Insurer AI Governance and Risk Management Regulation

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The Colorado Insurance Commissioner has formally adopted the first legally binding regulation requiring insurers to adopt a governance and risk management framework for the use of artificial intelligence, machine learning and other technologies that utilize “external consumer data.” [Regulation 10-1-1 Governance and Risk Management Framework Requirements for Life Insurers’ Use of External Consumer Data and Information Sources, Algorithms, and Predictive Models](#) (the “Regulation”) will become effective on November 14, 2023. All components of the governance structure and risk management framework required by the Regulation must be available upon request by the Colorado Division of Insurance (the “Division”) on December 1, 2024, giving life insurers using these technologies just over a year to develop compliant risk management and governance structures. A narrative progress report on the life insurer’s implementation of the Regulation is due by June 1, 2024. It is also expected that the Regulation will serve as the basis for similar requirements for insurers writing health insurance and property and casualty insurance.

As we have [previously reported](#), in June 2021 Colorado enacted [Colo. Rev. Stat. § 10-3-1104.9](#), which prohibits insurers from using external consumer data and information sources (“ECDIS”), as well as algorithms or predictive models that use ECDIS, in a way that unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity or gender expression. As required by the statute, the Division engaged in months of stakeholder meetings and released a Draft Proposed Algorithm and Predictive Model Governance Regulation in February 2023 and a further revised draft in May 2023. On August 31, 2023 the Division held a virtual rulemaking hearing to consider adopting the Regulation, and thereafter adopted the Regulation.

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A brief overview of the Regulation's key requirements is provided below.

Governance and Risk Management Framework. The Regulation establishes the governance and risk management requirements for life insurers authorized to do business in Colorado that use ECDIS, as well as algorithms and predictive models that use ECDIS. For the purposes of the Regulation, ECDIS is defined as:

[A] data or an information source that is used by a life insurer to supplement or supplant traditional underwriting factors or other insurance practices or to establish lifestyle indicators that are used in insurance practices. This term includes credit scores, social media habits, locations, purchasing habits, home ownership, educational attainment, licensures, civil judgments, court records, occupation that does not have a direct relationship to mortality, morbidity or longevity risk, consumer-generated Internet of Things data, biometric data, and any insurance risk scores derived by the insurer or third-party from the above listed or similar data and/or information sources.

The governance and risk management framework must facilitate and support policies, procedures, systems, and controls designed to determine whether the use of ECDIS, algorithms or predictive models could potentially result in unfair discrimination with respect to race and remediate unfair discrimination, if detected.

Board Oversight and Senior Management Accountability. The board of directors or an appropriate board committee must oversee the risk management framework. Senior management is responsible for setting, monitoring and directing governance on the use of ECDIS.

Documentation Requirements. The Governance and Risk Management Framework must include:

- (a) Documented policies, processes, and procedures for the design, development, testing, deployment, use, and ongoing monitoring of ECDIS and algorithms and predictive models that use ECDIS, and processes to ensure that they are documented, tested, and validated.
- (b) Documented processes and protocols in place for providing a meaningful response to consumer complaints and inquiries about the use of ECDIS or algorithms and predictive models that use ECDIS.
- (c) A documented rubric for assessing and prioritizing risks associated with the deployment of ECDIS or algorithms and predictive models that use ECDIS.
- (d) A documented up-to-date inventory, including version control, of all utilized ECDIS, as well as algorithms and predictive models that use ECDIS, including the purpose and outputs generated through their use.

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- (e) A documented description of testing conducted to detect unfair discrimination in insurance practices resulting from the use of ECDIS or algorithms or predictive models that use ECDIS and steps taken to address unfairly discriminatory outcomes.
- (f) A documented description of the process used for selecting third-party vendors that supply ECDIS or algorithms or predictive models that use ECDIS, including the intended use of the ECDIS, algorithms and predictive models.
- (g) Documented comprehensive annual reviews of the governance structure and risk management framework and updates to the required documentation to ensure its continued accuracy and relevance.

Third-Party Vendors. If an insurer uses third-party vendors and other external resources with respect to ECDIS or algorithms and predictive models that use ECDIS, the insurer remains responsible for ensuring that all requirements under the Regulation are met, including the production of any documents or information that the Division requests. Insurers may satisfy requests for documentation and information by third-party vendors providing the requested documents or information directly to the Division on behalf of the insurer.

Reporting Requirements. Insurers using ECDIS or algorithms and predictive models that use ECDIS as of November 14, 2023 must submit a narrative report to the Division:

- (a) Summarizing the progress made towards complying with the requirements specified in the Regulation. This report is due June 1, 2024.
- (b) Summarizing compliance with the requirements specified in the Regulation. This report is due December 1, 2024 and annually thereafter. The report should be not more than ten pages and include an executive summary.

Insurers not using ECDIS or algorithms or predictive models that use ECDIS are exempt from the requirements specified in the Regulation, but must submit an attestation stating that they do not use ECDIS or algorithms or predictive models that use ECDIS by December 14, 2023 and annually thereafter.

Insurers that do not use ECDIS or algorithms or predictive models that use ECDIS as of November 14, 2023 but subsequently plan to use ECDIS or algorithms or predictive models that use ECDIS must submit a report to the Division summarizing compliance with the requirements specified in the Regulation prior to the use of ECDIS or algorithms or predictive models that use ECDIS.

The Division has indicated that it intends to release a draft testing regulation for life insurers to compliment the Regulation. The Division also intends to promulgate governance and testing regulations for other lines of insurance, and is currently engaging in a stakeholder process focusing on auto insurance.

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The Willkie insurance team continues to monitor Colorado's efforts to implement this first-of-its-kind legislation on the use of artificial intelligence and big data in the business of insurance and stands ready to advise on the development of risk management and governance structures compliant with the Regulation. Please contact any of the attorneys listed on this client alert if you would like to discuss further.

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

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