

CLIENT ALERT

# AI in Insurance Update: Colorado Division of Insurance Stakeholder Process Update

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## AUTHORS

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

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## I. Introduction

The insurance regulatory landscape as it relates to AI continues to be busy. As we have [recently reported](#), the New York Department of Financial Services released a draft circular letter on the [Use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing](#) on January 17, 2024. Alaska, Connecticut and New Hampshire have recently adopted the National Association of Insurance Commissioners' model bulletin on the [Use of Artificial Intelligence Systems by Insurers](#), each with only slight revisions. And, as we will discuss here, on Thursday, February 29, 2024, the Colorado Division of Insurance (the "Division") held a stakeholder meeting and provided important updates related to its process for implementing SB21-169 (Colo. Rev. Stat. § 10-3-1104.9).

## II. Colorado Updates

As we have [previously reported](#), the purpose of SB21-169 (Colo. Rev. Stat. § 10-3-1104.9) is to protect Colorado consumers from unfair insurance practices resulting from the use of AI and big data systems (i.e., external consumer data and information sources, algorithms and predictive models), and the Division has been holding a series of stakeholder meetings as part of its effort to adopt implementing regulations for SB21-169, by line of insurance. While the specific purpose of the recent meeting was to discuss implementing governance and risk management and testing regulations related to health insurance, and specifically comprehensive major medical coverage, the Division provided updates on its efforts to regulate life and private passenger auto insurance as well.

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The Division explained that it intends to use 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](#) (3 C.C.R. § 702-10), which was adopted in September 2023 (the "[Life Governance Regulation](#)"), as a base for a governance and risk management regulation that would be generally applicable to all health insurance-related practices. The Division asked interested parties to provide comments on what changes are necessary to make the Life Governance Regulation applicable to health insurance. Depending on the comments received, and taking into consideration comments that the Division received when it made a similar solicitation in November 2023 regarding private passenger auto insurance, the Division is strongly considering revising the Life Governance Regulation to also apply to private passenger auto and health insurance, instead of adopting individual governance regulations for each of these lines of business.

The Division also explained that it will not expand the current implementation process until it completes the current open workstreams, i.e., finalizing and adopting governance regulations that are generally applicable for each of life (already adopted), private passenger auto and health insurance, as well as adopting quantitative testing regulations that are specific to a single, specific insurance practice for each of those lines. Only once that process is complete will the Division consider additional AI/big data regulation workstreams.

The Division stated that it expects to expose a second draft of its draft regulation [Concerning Quantitative Testing Of External Consumer Data and Information Sources, Algorithms, and Predictive Models Used for Life Insurance Underwriting for Unfairly Discriminatory Outcomes](#) for a comment period in the "coming weeks."

The Division also asked interested parties to provide comments on which specific health insurance practice the Division should address with a quantitative testing regulation (the Division mentioned claims management and utilization management as ideas). The comment period related to health insurance ends on March 29 and the Division has scheduled a follow-up meeting for April 2.

### III. Conclusion

The Willkie insurance team continues to monitor these efforts to adopt legislation, regulation and guidance 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, governance and testing structures compliant with these initiatives. Please contact any of the attorneys listed on this client alert if you would like to discuss further.

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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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**Daniel K. Alvarez**

202 303 1125

dalvarez@willkie.com

**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

**Laura E. Jehl**

202 303 1056

ljehl@willkie.com

**Allison J. Tam**

212 728 8282

atam@willkie.com

**Shlomo Potesky**

212 728 3232

spotesky@willkie.com

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