

CLIENT ALERT

Colorado DOI Proposes Amended AI Governance and Risk Management Framework Regulation

December 11, 2024

AUTHORS

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

The Colorado Division of Insurance (the “Division” or “DOI”) has released a draft proposed amendment to Regulation 10-1-1, *Governance and Risk Management Framework Requirements for Life Insurers’, Private Passenger Automobile Insurers, and Health Benefit Plan Insurers’ Use of External Consumer Data and Information Sources, Algorithms, and Predictive Models* (“Regulation 10-1-1” and with regard to the proposed amendment, the “Proposed Amendment”).^{1 2} This revises Regulation 10-1-1 which was adopted on August 31, 2023 and established governance, risk management and associated documentation and reporting requirements for life insurers using external consumer data and information sources (“ECDIS”) as well as algorithms and predictive models that use ECDIS, as we previously reported.³ As drafted, the Proposed Amendment extends those requirements to private passenger automobile⁴ and health benefit plan insurers⁵ who use

¹ 3 Colo. Code Regs. § 702-4.

² The Proposed Amendment can be viewed [here](#).

³ Available at: https://www.willkie.com/media/files/publications/2023/09/colorado_adopts_life_insurer_ai_governance_and_risk_management_regulation.pdf.

⁴ “Private passenger automobile insurer” is defined as “an entity authorized and licensed by the commissioner of insurance to sell private passenger automobile insurance products in the state of Colorado.” Proposed Amendment § 4.L.

⁵ “Health benefit plan” is defined as “any hospital or medical expense policy or certificate, hospital or medical service corporation contract, or health maintenance organization subscriber contract or any other similar health contract subject to the jurisdiction of the commissioner available for use,

Colorado DOI Proposes Amended AI Governance and Risk Management Framework Regulation

ECDIS, as well as algorithms and predictive models that use ECDIS.⁶ Interested parties have until December 13, 2024 at 5:00pm MST to submit comments.

Under the Proposed Amendment, private passenger automobile and health benefit plan insurers must have all components of the governance structure and risk management framework required by Section 5 of the Proposed Amendment available upon request of the Division by December 1, 2025.⁷ An initial report summarizing progress towards compliance must be submitted to the Division by June 1, 2025.⁸

The Proposed Amendment contains three notable new requirements:

- Health benefit plan insurers must have a human-in-the-loop for coverage decisions, including prior authorizations.⁹
- Additional documentation is required regarding evaluations of ECDIS for bias and other data quality and relevance concerns.¹⁰
- For insurers using third-party ECDIS, documentation requirements include an evaluation of adherence to the intended use of the ECDIS.¹¹

Insurers captured under the Proposed Amendment should begin to consider their current artificial intelligence and data governance and compliance programs, and create a road map to reach full compliance with the Proposed Amendment.

offered, or sold in Colorado.” See Proposed Amendment § 4.D (referencing Colo. Rev. Stat. § 10-16-102(32)). Colo. Rev. Stat. § 10-16-102(32) also excludes certain types of plans from the “health benefit plan” definition.

⁶ The Proposed Amendment slightly modifies the definition of ECDIS for private passenger automobile and health benefit plan insurers, as compared to life insurers. The definition is: “a data or an information source that is used by the 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, 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.” Proposed Amendment § 4.D.2-3. The definition for life insurers is the same as above except that it also includes as an additional type of ECDIS “occupation that does not have a direct relationship to mortality, morbidity or longevity risk.”

⁷ Proposed Amendment § 5.C.

⁸ Proposed Amendment § 6.A.

⁹ “Health benefit plan insurers shall ensure that a provider acting on behalf of the insurer is ultimately responsible for the decisions made when ECDIS, algorithms, or predictive models that use ECDIS, are used to inform decisions to approve, modify, or deny requests by a covered person or a covered person’s provider for authorization prior to, or concurrent with, the provision of health care services to a covered person.” Proposed Amendment § 5.A.5.

¹⁰ “Documented evaluation of ECDIS for bias, disparities, representativeness, data quality, data validity, and appropriateness for the intended purpose and steps taken to address and correct data quality issues.” Proposed Amendment § 5.A.9.

¹¹ Proposed Amendment § 5.B.

Colorado DOI Proposes Amended AI Governance and Risk Management Framework Regulation

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. 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.

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

Copyright © 2024 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, Dallas, Frankfurt, Houston, London, Los Angeles, Milan, Munich, 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.