

2024 CEFLI  
AI - REGULATORY UPDATES & BEST  
PRACTICES FOR THIRD-PARTY  
CONTRACTING  
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- ✓ A link to the recording
- ✓ A copy of the slides
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## Regarding Questions

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Please use the Q&A Function (**not** the Chat function)

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The Compliance and Ethics Forum for Life Insurers (CEFLI) is committed to adhering strictly to the letter and spirit of the antitrust laws. Meetings conducted under CEFLI's auspices are designed solely to provide a forum for the expression of various points of view on topics described in the programs or agendas for such meetings.

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# NAIC PRINCIPLES ON AI (ADOPTED 2020)

## FAIR AND ETHICAL

- AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful or unintended consequences and corrects and remediates for such consequences when they occur.

## ACCOUNTABLE

- Any AI system should be compliant with legal requirements governing its use of data and algorithms during all phases of the insurance life cycle.

## COMPLIANT

- Any AI system that is deployed must be consistent with applicable laws and safeguards against outcomes that are either unfairly discriminatory or otherwise violate legal standards, including privacy and data security laws and regulations.

## TRANSPARENT

- For the purpose of improving the public's confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to relevant stakeholders.

## SECURE, SAFE & ROBUST

- AI actors should ensure a reasonable level of traceability in relation to datasets, processes and decisions made during the AI system life cycle.

# 2024 NAIC AI INITIATIVES

## NAIC Big Data & AI Working Group

- Proactively communicate findings and present recommendations to Innovation, Cybersecurity, and Technology (H) Committee.
- Monitor state, federal, and international activities on AI, including working with (H) Committee, (i) to respond to such activities, where appropriate and (ii) address potential impacts on existing state insurance laws or regulations.

## Third-Party Data and Models (H) Task Force

- Develop and propose a framework for the regulatory oversight of third-party data and predictive models.
- Monitor and report on state, federal, and international activities related to governmental oversight and regulation of third-party data and model vendors.
- Provide recommendations to (H) Committee regarding responses to such activities.
- **Fall National Meeting:** Finalize the general idea for a framework for regulatory oversight of third-party data and models so drafting can begin in 2025.

# RECENT REGULATORY ACTIVITY

# THREE CATEGORIES OF REGULATORY INSURANCE DEPARTMENT GUIDANCE

## NAIC AI Model Bulletin – Adopted State Bulletins & Guidance

- Bulletins merely provide guidance, however, please note applicability of existing insurance laws and regulations.
- Insurers must be prepared to provide documentation of Artificial Intelligence System (“AIS”) Programs in exams.

## Colorado AI Statute and Related Regulations

- Life Insurers that are using External Consumer Data and Information Sources (“ECDIS”), as well as algorithms and/or predictive models that use ECDIS, as of November 14, 2023, must submit to the Division a narrative report summarizing the progress made towards complying with the requirements for documented policies, including identifying the areas still under development, any difficulties encountered, and expected completion date.

This report was **due June 1, 2024**.

- Deadline - All components of the governance structure and risk management framework required for documented policies must be available upon request by the Division **on December 1, 2024, and annually thereafter**.

## New York DFS Circular Letter 2024-07 Issued July 11, 2024

- Circular Letters merely provide guidance, however, please note applicability of existing insurance laws and regulations.
- Deadline – Insurers must be prepared to provide documentation of AIS Programs in exams.

# APPLICABILITY

## NAIC AI Model Bulletin

- All Insurers and Regulated Entities Licensed to Do Business in the State.
- Applies to **all phases** of the insurance life cycle (e.g., product development & design, marketing, use, underwriting, rating and pricing, case management, claim administration & payment, & fraud detection).

## Colorado Framework Regulation

- All life insurers authorized to do business in Colorado.
- Only applies to individual life insurance.
- Applies to **all phases** of the insurance life cycle.
- While Colorado SB 21-169 (law enacted July 6, 2021) applies to all lines of insurance, Colorado has only promulgated *regulations* that are applicable to life insurers.

## New York Circular Letter

- All Insurers Authorized to Write Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations, etc. . .
- Only applies to the use of ECDIS and AIS in **underwriting and pricing.**

# NAIC AI MODEL BULLETIN (DECEMBER 2023)

- Insurers' use of AI must comply with applicable federal and state laws, including unfair and deceptive trade practices laws.
- Sets forth **expectations** and puts insurers on notice that DOIs will request information and documentation regarding an insurer's use of AI in market conduct exams and investigations.
- Does not prescribe specific requirements for documentation or AI practices but makes it clear that the DOI will regulate insurers' use of AI Systems under existing laws.
- Encompasses four areas of best practices and guidelines:
  - AIS Program Guidelines
  - Governance
  - Risk Management & Internal Controls
  - Third-Party AIS
- Defines key terms.
- Details written documentation & related retention requirements.
- Incorporates market conduct exam authority.
- Addresses third-party developed AI monitoring, audit and contract obligations.

# NAIC AI MODEL BULLETIN – STATE ADOPTION

- Alaska: Bulletin B 24-01 – Adopted February 1, 2024
- Arkansas: Bulletin 13-2024 – Adopted July 31, 2024
- Connecticut: Bulletin No. MC-25 – Adopted February 26, 2024
- DC: Bulletin 24-IB-002-05/21 – Adopted May 21, 2024
- Illinois: Company Bulletin 2024-08 – Adopted March 13, 2024
- Iowa: Bulletin 24-XX – Proposed October 10, 2024 (comments due October 31, 2024)
- Kentucky: Bulletin No. 2024-02 – Adopted April 16, 2024
- Maryland: Bulletin No. 24-11 – Adopted April 22, 2024
- Michigan: Bulletin 2024-20-INS – Adopted August 7, 2024
- Nebraska IGD-H1 – Adopted June 11, 2024
- Nevada: Bulletin 24-001 – Adopted February 23, 2024
- New Hampshire: Bulletin Docket #INS 24-011-AB – Adopted February 20, 2024
- Pennsylvania: Insurance Notice 2024-04, 54 Pa.B. 1910 – Issued April 6, 2024
- Rhode Island: Insurance Bulletin No. 2024-03 – Issued March 15, 2024
- Vermont: Insurance Bulletin No. 229 – Adopted March 12, 2024
- Virginia: Administrative Letter 2024-01 – Adopted July 22, 2024
- Washington: Technical Assistance Advisory 2024-02 – Adopted April 22, 2024
- West Virginia: Insurance Bulletin No. 24-06 – Adopted August 9, 2024

# COLORADO AI REGULATIONS - FRAMEWORK

**AI Framework Regulation (Eff. November 14, 2023)** entitled "*Governance and Risk Management Framework Requirements for Life Insurance Carrier's Use of External Consumer Data and Information Sources, Algorithms, and Predictive Models*"

- Applies **only to individually issued life** insurance policies and does not apply to group life insurance policies or annuity contracts.
- No specific format for attesting that insurer does not use ECDIS and information resources, or algorithms or predictive models that use ECDIS, but such **attestation** must be **signed by an officer** of the insurer **and "unambiguously state the insurer does not use ECDIS, or any algorithms or predictive model that uses ECDIS, with any insurance practice."**

# COLORADO AI REGULATIONS - TESTING

- **Proposed Draft AI Testing Regulation** entitled "*Concerning Quantitative Testing of External Consumer Data and Information Sources, Algorithms, and Predictive Models Used for Life Insurance Underwriting for Unfairly Discriminatory Outcomes*" exposed for comment on June 17, 2024.
  - Addresses **testing** requirements for *life insurers* that use ECDIS to ensure that their use is not unfairly discriminatory based upon *race and ethnicity*.
- **Proposed ACLI AI Testing Regulation** and DORA has been receiving comments on the ACLI's proposal.

## PROPOSED COLORADO BULLETIN NO. B-10.004

- Because the Division has not yet adopted a regulation establishing the required quantitative testing referenced in Regulation 10-1-1, the quantitative testing reporting requirement is not applicable for the current reporting period and the annual report due December 1, 2024 is not required to include a description of the quantitative testing referenced in Section 5.A.10.
- The waiver of this requirement is for the annual report due December 1, 2024 only; subsequent annual reports will be expected to include a description of the quantitative testing conducted.
  - All other requirements outlined in Regulation 10-1-1 remain in effect.

# NY DFS CIRCULAR LETTER NO. 7 – ISSUED JULY 11, 2024

- Does not follow the NAIC Model AI Bulletin.
- Applies to “all insurers authorized to write insurance in New York State, licensed fraternal benefit societies, and the New York State Fund.”
- Focuses on uses of “ECDIS, artificial intelligence systems and other predictive models” in the ***underwriting and pricing processes*** of insurance policies and annuities.
- Different definitions of ECDIS & AI Systems than Colorado or NAIC AI Model Bulletin.
- Senior Management and the Board have responsibility for overall outcomes of the ECDIS and AIS, but not the day-to-day implementation.
- Insurers must oversee third-party vendors and are responsible for outcomes of that use.
- Insurers must incorporate certain terms into third-party vendor contracts.
- Confidentiality: NY DFS intends to follow FOIA – all records are public unless they fall within an exception.
  - Insurers can assert that information is trade secret and if disclosed would cause substantial injury to Insurer’s competitive position and request that NY DFS except such information from disclosure.

# AI FRAMEWORK & GOVERNANCE

# LIFE INSURERS AI FRAMEWORK & CORPORATE GOVERNANCE

- Establish cross-functional AI governance team consisting of business unit decision makers
- Create comprehensive operating policies (e.g., AI Governance Corporate Policy, AI Use Policy, Compliance and Testing Policies & Third-Party Vendor Policies)
- Create an inventory of all AIS (ECDIS, algorithms, and models that use ECDIS)
  - Document and keep track of all AIS
- Document and implement policies, procedures, guidance and training materials
- Train senior management and employees
- Test, validate, retest to detect unfair discrimination or unlawful outputs
- Remediate as necessary
- Monitor and review AIS, algorithms and predictive models
- Protect non-public information
- Establish data and record retention policies
- Consult with third-party vendors about AIS use
- Implement third-party vendor contracting

# EXAMPLE ARTIFICIAL INTELLIGENCE GOVERNANCE CORPORATE POLICY

- 1. Policy Statement**
- 2. Scope**
- 3. Operating Guidelines**
  - 3.1 Governance
  - 3.2 Privacy and Security
  - 3.3 Compliance and Testing
- 4. Definitions (NAIC AI Bulletin)**
- 5. Roles and Responsibilities**
  - 5.1 Board of Directors –[Company Parent]
  - 5.2 AI Cross-functional team
  - 5.3 Employees
- 6. Risk Identification and Risk Management Framework**
- 7. Inventory**
- 8. Training**
- 9. Testing**
- 10. Third-Parties**
- 11. Related Documentation**
- 12. Audit**

## AI USE POLICY - EXAMPLE

***Use of Generative AI.*** Generative AI software and other generative tools are not “free.” A user’s search results can become the subject for ad targeting and data-gathering purposes, and information provided in the course of engaging with them become part of the software’s training and is, therefore, no longer confidential. Therefore, users shall not use generative AI software or tools, including generative AI chatbots such as ChatGPT, whether through Company Resources or personal devices, other than such software or services approved in advance by the Office of General Counsel. To the extent used in any non-legal or non-substantive fashion, users are prohibited from inputting any Company confidential information into any generative AI software and should verify the accuracy of any “outputs” through other sources. A list of approved AI software and tools may be found on the AI Advisory Committee webpage.

# RISK MANAGEMENT FRAMEWORK - EXAMPLE

## *Gather information of AIS use and impact*

- Low v. High Impact

## *Categorize the risk*

- Low risk – low impact to non-insurer function operations and no sensitive data
- Medium risk – high impact to business operations and involves sensitive data
- High risk – impacts insurer’s operations, involves sensitive data, and potential for unlawful or discriminatory outputs

## *Monitor and review AIS*

- Low risk – minimal governance & regulator monitoring
- Medium risk – frequent reviews, bias testing and related audits
- High risk – robust oversight, continuous monitoring & testing, periodic audits

## *Remediation Action Plans*

- High impact AIS – immediate corrective action
- Medium and low impact AIS – scheduled corrective actions and regular updates to mitigate risks over time

# INVENTORY

- Identify the AIS, algorithms and predictive models
- How is it used within the insurer
- Who is using it/who has access to it
- Who provides it – the insurer or a third-party vendor
- What are the insurer's processes and procedures for designing, developing, verifying, deploying, using, and monitoring predictive models
  - Include a description of methods used to detect and address errors, performance issues, outliers, or unfair discrimination resulting from the use of predictive models

# THIRD-PARTY VENDOR REGULATION

# HOW AI REGULATION WILL IMPACT THIRD-PARTY VENDORS

Third-Party Vendors Will Be Required To:

- Provide transparency to Insurers & their regulators
  - Explain in understandable terms where the data is being sourced from and how data is being used in the product
  - Provide related documentation
  - Respond to regulatory inquiries and cooperate
  - Unlikely to be able to rely on proprietary information and confidentiality provisions
- Engage in testing & related documentation
- Comply with applicable insurance laws – Insurer obligations likely flow through to vendors through contract provisions
- Execute written contractual provisions governing the use of AI products and Vendor responsibilities

# NAIC AI MODEL BULLETIN - AIS PROGRAM GUIDELINES APPLICABLE TO THIRD-PARTY VENDORS

- 4.0 Third-Party AI Systems and Data. Each AIS Program should address the Insurer’s process for acquiring, using, or relying on (i) third-party data to develop AI Systems; and (ii) AI Systems developed by a third-party, which may include, as appropriate, the establishment of standards, policies, procedures, and protocols relating to the following considerations:
- 4.1 Due diligence and the methods employed by the Insurer to assess the third-party and its data or AI Systems acquired from the third-party to ensure that decisions made or supported from such AI Systems that could lead to Adverse Consumer Outcomes will meet the legal standards imposed on the Insurer itself.
- 4.2 Where appropriate and available, the inclusion of terms in contracts with third parties that: a) Provide audit rights and/or entitle the Insurer to receive audit reports by qualified auditing entities. b) Require the third-party to cooperate with the Insurer with regard to regulatory inquiries and investigations related to the Insurer’s use of the third-party’s product or services.
- 4.3 The performance of contractual rights regarding audits and/or other activities to confirm the third-party’s compliance with contractual and, where applicable, regulatory requirements.

# NAIC AI MODEL BULLETIN – THIRD-PARTY AI SYSTEMS AND DATA

In addition, if the investigation or examination concerns data, Predictive Models, or AI Systems collected or developed in whole or in part by third-parties, the Insurer should also expect the Department to request the following additional types of **information and documentation**.

- 2.1 Due diligence conducted on third-parties and their data, models, or AI Systems.
- 2.2 Contracts with third-party AI System, model, or data vendors, including terms relating to representations, warranties, data security and privacy, data sourcing, intellectual property rights, confidentiality and disclosures, and/or cooperation with regulators.
- 2.3 Audits and/or confirmation processes performed regarding third-party compliance with contractual and, where applicable, regulatory obligations.
- 2.4 Documentation pertaining to validation, testing, and auditing, including evaluation of Model Drift.

# COLORADO 3 CCR 702-10 REGULATION 10-1-1

## Section 5 Governance and Risk Management Framework.

B. If an insurer uses third-party vendors and other external resources with respect to ECDIS, as well as algorithms and predictive models that use ECDIS, the insurer remains responsible for ensuring all requirements in Section 5.A. are met, including the production of any documents or information that the Division deems necessary to ensure compliance with regulatory requirements. The insurer must establish and document a process for the selection and oversight of all external resources and third-party vendors as part of the governance structure and risk management framework.

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.

# NY DFS CIRCULAR LETTER NO. 7

## D. Third-Party Vendors

- 35. Insurers retain responsibility for understanding any tools, EDCIS, or AIS used in underwriting and pricing for insurance that were developed or deployed by third-party vendors and ensuring such tools, EDCIS, or AIS comply with all applicable laws, rules, and regulations.
- 36. To ensure appropriate oversight of third-party vendors, insurers should develop written standards, policies, procedures, and protocols for the acquisition, use of, or reliance on ECDIS and AIS developed or deployed by a third-party vendor. Additionally, insurers should put in place procedures for reporting any incorrect information to third-party vendors for further investigation and update, as necessary. Further, insurers should develop procedures to remediate and eliminate incorrect information from their AIS that the insurer has identified or has been reported to a third-party vendor.
- 37. Where appropriate and available, insurers should include terms in their contracts with third-party vendors that: (i) provide audit rights or entitle the insurer to receive audit reports by qualified auditing entities; and (ii) require the third-party vendor to cooperate with the insurer regarding regulatory inquiries and investigations related to the insurer's use of the third-party vendor's product or services.

# THIRD-PARTY VENDOR CONTRACTING

# THIRD-PARTY VENDOR POLICIES & PROCEDURES

- Update inventory as necessary to include all third-party vendor AI use
- Create policies and procedures and protocols for:
  - Acquisition, use of, or reliance on ECDIS and AIS developed or deployed by a third-party vendor;
  - Reporting any incorrect information to third-party vendors for further investigation and update, as necessary;
  - Remediate and eliminate incorrect information from their AIS that the insurer has identified or has been reported to a third-party vendor; &
  - Implementation of third-party contracting.
- Maintain documentation of all policies and procedures and third-party vendor contracts.
- Be prepared to provide documentation to regulators, including contracts and evidence of validation, testing, and auditing.

# THIRD-PARTY CONTRACTING

- Locate and identify existing third-party vendor contracts that supply AI applications, ECDIS, algorithms, or predictive models that use ECDIS, etc. . .
- Prioritize review of third-party vendor contracts where vendor is performing an insurer function (*e.g.*, underwriting, pricing, claim administration)
- Review third-party vendor contracts to determine:
  - Use of AI
  - Compliance with AI guidance, & existing laws and regulations
  - Contractual provisions governing amendment or supplement requirements
- Develop third-party vendor AI supplement or contractual terms & conditions
  - Vendor contracts involving insurer functions & more risk - more robust supplement
  - Vendor contracts involving less risk – existing audit & cooperation T&Cs may suffice
- Implement third-party vendor contractual supplement or T&Cs

# THIRD-PARTY AI CONTRACTING SUPPLEMENT AND T&CS

## Supplement to Original Vendor Contract

- Negotiated separately
- Additional or different terms & conditions governing AI use
- Separate termination provisions
- Arbitration provision
- Separate indemnification & limitation of liability

## AI Specific Provisions

- Definitions
- Company Responsibilities
  - AI Use Approval Rights
  - Audit Rights
- Vendor Responsibilities
  - Permitted Use
  - Request to Use AI & Approval
  - Consent to Use Data
  - Written Policies & Procedures
  - Testing
  - Ownership
  - Prohibitions
  - Data Disclosure & Confidentiality

# AI REGULATORY TRENDS IMPACTING LIFE INSURANCE INDUSTRY

- New AI Governance Laws, Regulations & Guidance
- Increased Regulator AI Expertise, Training and Resources (*e.g.*, Staff)
- Colorado will issue an AI testing regulation
- Market Conduct Exams Expand to Include AI, Predictive Modeling & Algorithm Governance
- Increased Class Action Litigation Involving Technological Innovations Allegedly Causing Unlawfully Biased Harm
- Increased Regulatory Scrutiny of Practices and Filings Involving Technological Innovations

# Questions?

**Thank you Paige!!**

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