

CLIENT ALERT

Colorado Division of Insurance Adopts Amended AI Governance Regulation

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I. Introduction

The Colorado Division of Insurance (the “Division”) has adopted an amended 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* (the “Regulation”),¹ expanding its applicability from just life insurers to also include private passenger automobile and health benefit plan insurers² who use external consumer data and information sources (“ECDIS”) as well as algorithms and predictive models that use ECDIS. The requirements under the original version of the Regulation,

¹ 3 Colo. Code Regs. § 702-10.

² “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.” Section 4.K.

“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, offered, or sold in Colorado.” Colo. Rev. Stat. § 10-16-102(32).

which we summarized [here](#), largely remain in effect. The amended Regulation contains a few new substantive requirements for developing a governance and risk management framework for artificial intelligence and big data systems, which are summarized below. The Regulation will become effective on October 15, 2025.

The Regulation requires insurers to establish a risk-based governance and risk management framework which includes policies, procedures, systems, and controls that determine whether the use of ECDIS, algorithms, and predictive models results in unfair discrimination with respect to race. Should such unfair discrimination be detected through quantitative testing (standards for such quantitative testing remain under consideration by the Division),³ it must be remediated.

II. Reporting Requirements

While all reporting requirements under the Regulation already apply to life insurers, the new reporting requirements for private passenger automobile and health benefit plan insurers are the following:

- On July 1, 2026 and annually thereafter, all components of the governance structure and risk management framework must be available upon request by the Division.
- On December 1, 2025, a narrative report summarizing the progress made towards complying with the requirements, including identifying the areas still under development, any difficulties encountered, and expected completion date is due.
- On July 1, 2026 and annually thereafter, insurers using ECDIS, as well as algorithms and predictive models that use ECDIS as of October 15, 2025 must submit a report summarizing compliance with the Regulation and the title and qualifications of each individual responsible for ensuring compliance with the Regulation, while noting the specific requirements under the Regulation for which that individual is responsible.

All reports should be submitted in SERFF.⁴

III. Notable Changes to the Governance and Risk Management Framework

While the Regulation walks back some of the requirements that had been included in its original draft (which we reported on [here](#)), the Regulation does contain some new requirements for the governance and risk management framework, including:

³ The Division released a [Draft Proposed Algorithm and Predictive Model Quantitative Testing Regulation](#) for informal comments on September 28, 2023. On June 17, 2024, the American Council of Life Insurers presented its version of a [proposed draft quantitative testing regulation](#).

⁴ "Annual Report" should be used as the filing type. Each insurer in a group should submit its own filing. The filing description should indicate that the report is being submitted pursuant to Colorado Insurance Regulation 10-1-1.

- Health benefit plan insurers must have a human-in-the-loop for coverage decisions, including prior authorizations.⁵
- Documented policies and procedures for the design, development, testing, deployment, use, and ongoing monitoring of ECDIS, as well as algorithms and predictive models that use ECDIS must now ensure that the ECDIS is credible, relevant, and appropriate for its intended purpose or the intended purpose of the algorithm or predictive model.⁶

IV. Conclusion

Private passenger automobile and health benefit plan insurers who write business in Colorado should begin to review their current artificial intelligence and data governance and compliance programs, and create a road map to reach full compliance with the 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 is 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.

⁵ "Health benefit plan insurers shall ensure that a provider acting on behalf of the insurer is ultimately responsible for the decisions made when ECDIS, or algorithms or predictive models that use ECDIS, are used to inform decisions to 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." Section 5.A.5.

⁶ "Documented policies, processes, and procedures, including assigned roles and responsibilities, for the design, development, testing, deployment, use, and ongoing monitoring of ECDIS, as well as algorithms and predictive models that use ECDIS, and processes to ensure that they are documented, tested, and validated. Such policies and processes must ensure the ECDIS is credible, relevant, and appropriate for its intended purpose or the intended purpose of the algorithm or predictive model and include an ongoing internal supervision and training program for relevant personnel on the responsible and compliant use of ECDIS, and the algorithms and predictive models that use ECDIS." Section 5.A.6.

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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