

**DENTONS**

# **AI's Growing Role in Insurance Spurs Regulatory Response**

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## Highlights

- As of the time of this writing, four states, including California and New York, have issued their own regulatory guidance and sixteen others have adopted the model regulatory framework issued by the National Association of Insurance Commissioners (“NAIC”) to address the growing implementation of AI in insurance practices.
- While the various regulatory approaches have some notable differences, they share a common objective of mitigating the purported risk of unfair treatment to policyholders and consumers. A comparison of these regimes is provided in the chart below.
- As the regulatory landscape concerning the use of AI by insurers evolves, there is an expected trend of class action lawsuits alleging unfair business practices or bad faith liability for insurers’ use of AI in areas such as underwriting and claims handling.

## Introduction

The swift development of AI has resulted in the increasing integration of AI technology in insurance claims management and insurance underwriting. In certain cases, AI has been used by insurers to streamline administrative work<sup>1</sup> to improve efficiency, especially for day-to-day claims handling. Insurers have also begun incorporating AI capabilities into other facets of the business, such as underwriting and the investigation of suspected fraud. As AI continues to impact how insurers are conducting business, various states are responding with regulatory frameworks to address purported risks. Specifically, regulators have expressed concern that the use of data sets and the algorithms developed to process them in marketing, underwriting, and claims handling may knowingly or unknowingly lead to systemic denials or discrimination and other disparate impacts to consumers. Accordingly, a patchwork of guidance has emerged, focused on governance, oversight, and disclosure regarding the use of consumer data and AI technology.

## Key contacts



**Natalie Limber**  
Counsel, Los Angeles  
D +1 213 892 2928  
natalie.limber@dentons.com



**Justine Margolis**  
Partner, New York  
D +1 212 768 5344  
justine.margolis@dentons.com



**Sabrina Chow**  
Associate, Orange County  
D +1 949 732 3729  
sabrina.chow@dentons.com

The following is a timeline of notable developments regarding the regulation of insurers using AI:

**September 30, 2020**

Texas Department of Insurance Bulletin B-0036-20

The Texas Department of Insurance (“TDI”) issues its Commissioner’s Bulletin # B-0036-20 titled “Insurers’ use of third-party data.” TDI Bulletin # B-0036-20 states that it “does not create a new legal duty, obligation, or standard of care” and merely encourages insurers to provide policyholders with a method to review and correct the data the insurer is using.



**June 30, 2022**

California Department of Insurance Bulletin 2022-5

The California Department of Insurance (“CDI”) issues its Bulletin 2022-5 on “Allegations of Racial Bias and Unfair Discrimination in Marketing, Rating, Underwriting, and Claims Practices by the Insurance Industry.” CDI Bulletin 2022-5 imposes a few obligations upon insurers, namely to review all laws that may be applicable to the integration of AI, to train their staff on the proper application of said laws, and to inform consumers of the specific bases for any adverse underwriting decisions that were based on the use of AI.



**September 21, 2023**

Colorado Division of Insurance Bulletin 3 CCR 702-10

The Colorado Division of Insurance adopts 3 CCR 702-10, which only applies to life insurers using external data. Colorado’s regulation imposes duties regarding the use of AI in any insurance practice. Such duties include the establishment of a comprehensive, risk-based governance and risk management framework for the use of external data, and annual reporting.



**December 4, 2023**

NAIC Model Bulletin “Use of Artificial Intelligence Systems by Insurers

The NAIC issues its Model Bulletin titled “Use of Artificial Intelligence Systems by Insurers.” The Model Bulletin sets forth detailed guidelines and requirements for the development of governance policies and procedures concerning the use of AI, including monitoring documentation and data testing.



**July 11, 2024**

New York Department of Financial Services Insurance Circular Letter No. 7

The New York Department of Financial Services (“NYDFS”) Insurance issues Circular Letter No. 7, which applies to insurers across all lines of business. The NYDFS circular applies to the use of both internal and external data, encourages insurers to perform quantitative and qualitative data assessments, and requires insurers to maintain documentation regarding their use of AI and data.

The chart below compares the main requirements and recommendations imposed by each of these regulatory frameworks:

	<a href="#"><u>NAIC Model Bulletin (16 states and D.C. have adopted)</u><sup>2</sup></a>	<a href="#"><u>New York Insurance Circular Letter No. 7</u></a>	<a href="#"><u>Colorado 3 CCR 702-10</u></a>	<a href="#"><u>California Bulletin 2022-5</u></a>	<a href="#"><u>Texas Commissioner's Bulletin # B-0036-20</u></a>
<b>Covered Lines</b>	<b>All Insurers</b>	<b>All Insurers</b>	<b>Life Insurers</b>	<b>All Insurers</b>	<b>All Insurers</b>
Covered Conduct	Any system using AI that makes or supports insurance-related decisions	ECDIS <sup>3</sup> and AI for underwriting and pricing	ECDIS and AI for any Insurance Practice	"Big Data" <sup>4</sup> and AI for marketing, rating, underwriting, processing claims, or investigating suspected fraud	Use of data, including third-party data, in rating, underwriting, and claims handling
Employee Training Required	✓ <sup>5</sup>	✓ <sup>6</sup>	✓ <sup>7</sup>	✓ <sup>8</sup>	✗
Covered Data Sources	Internal and External Data <sup>9</sup>	Internal and External Data <sup>10</sup>	External Data Only <sup>11</sup>	Internal and External Data	Internal and External Data <sup>12</sup>
Prescribed Periodic Reporting Requirement	✗	✗	✓ <sup>13</sup> Annual	✗	✗
Required to Maintain Documentation and Provide upon Request	✓ <sup>14</sup>	✓ <sup>15</sup>	✓ <sup>16</sup>	✗	✗
Subject to Audit	✓ <sup>17</sup>	✓ <sup>18</sup>	✗	✓ <sup>19</sup>	✗
Consumer Complaint Process Required	✗	✓ <sup>20</sup>	✓ <sup>21</sup>	✗	Encouraged <sup>22</sup>
Maintain Policies and Procedures for ECDIS and AIS Developed or deployed by a third-party vendor	✓ <sup>23</sup>	✓ <sup>24</sup>	✓ <sup>25</sup>	✗	✗
Contractual Terms for Third Party Vendors	✓ <sup>26</sup>	✓ <sup>27</sup>	✗	✗	✗
Testing and Assessing Data for Potential Bias	✓ <sup>28</sup>	✓ <sup>29</sup>	✓ <sup>30</sup>	✗	✗
Assessing and Evaluating the Accuracy of Data Used	✓ <sup>31</sup>	✓ <sup>32</sup>	✗	✗	✓ <sup>33</sup>
Governance Policies and Procedures Required	✓ <sup>34</sup>	✓ <sup>35</sup>	✓ <sup>36</sup>	✓ <sup>37</sup>	✗
Policyholder Transparency	✓ <sup>38</sup>	✓ <sup>39</sup>	✗	✓ <sup>40</sup>	✗



## Key Regulatory Differences and Takeaways

- With the exception of Colorado 3 CCR 702-10, which applies only to life insurers that use external data, all of the regulations apply to the use of internal and external data across all lines of insurance.
- Both the NAIC Model Bulletin and NYDFS' Circular Letter No. 7 impose additional requirements upon insurers to maintain policies and procedures concerning external data and AI systems deployed by insurers' third-party vendors.
- Each of the states, except for Colorado and California, require insurers to adopt measures to assess the reliability or accuracy of data used and/ or to assess whether an underwriting or pricing guideline derived from said data may unfairly discriminate against a protected class.
- Some of the regulations require some form of transparency or accountability to policyholders. For example, the NYDFS Circular Letter No. 7 obligates insurers to disclose to their insureds or potential insureds the use of AI systems in underwriting or pricing, whether external data about the insured is being used, and that insureds have the right to request information about the data that resulted in any underwriting or pricing decision. Similarly, the CDI's Bulletin 2022-5 confirms that the insurers' obligation to inform consumers of the specific reasons for any adverse underwriting decisions includes when said decisions are made based on AI systems or data.
- Some of the regulations require insurers to disclose information and documentation relating to their use of AI systems or external data. For instance, state regulatory agencies that have adopted the NAIC Model Bulletin require insurers to provide, upon request, documentation relating to the development and monitoring of any AI systems and insurers in New York must be prepared to provide "a description of how each AIS operates" if requested.

## Litigation Activity

The legal landscape of AI in insurance practices is still relatively new and is constantly changing. Along with the rapid increase in regulation, class action attorneys have been quick to challenge insurers' use of AI. The first wave of these class action lawsuits have been filed against several major health insurers claiming that they have implemented algorithms or software that result in unfair systemic denial of claims. *See, e.g., Suzanne Kisting-Leung, et al. v. Cigna Corporation, et al., Case No. 2:23-at-00698, pending in the Eastern District of California; Jeremy Jong v. Blue Shield of California, Case No. 24CV069627, pending in Alameda County Superior Court in California.* Similar class action lawsuits are anticipated as insurers expand their use of AI technology and regulatory activity increases.



## Suggested Action Items

Insurers that have already integrated or plan to implement any form of AI technology or use of consumer data in their insurance practices should:

- Examine the requirements and suggestions of any applicable regulatory framework against already-existing policies and procedures concerning the use of consumer data and AI platforms to identify potential gaps in compliance.
- Review existing laws prohibiting discrimination in the context of insurance ratemaking, claims handling, processing of insurance applications, and other insurance practices to ensure ongoing compliance.
- Where disclosures to policyholders and potential insureds are required, draft clear, concise, and compliant disclosures concerning the use of AI technology and/or consumer data in insurance decisions.
- Maintain documentation relating to all aspects of the implementation of AI technology, including any assessments, testing, maintenance, monitoring, and oversight of said programs.
- Adopt a mechanism for assessing the quality of data relied upon and performance of algorithms to identify any risk of systemic adverse decisions and outcomes.
- Consider retaining outside counsel to perform a comprehensive compliance review or to support compliant implementation at the outset, helping to mitigate future litigation risk and strengthening attorney-client privilege arguments.



## Footnotes

- 1 A “major US insurer” integrated WNS SKENSE, an AI-led data contextualization platform, to automate the claims settlement process by applying natural language to blend unstructured data shared by consumers, providers, repair vendors, claim surveyors, and adjusters to identify and categorize data. <https://www.wns.com/perspectives/case-studies/casestudydetail/1011/transforming-claims-processing-with-intelligent-automation>. In 2018, AXA introduced AI Bots to assist with the handling of customer property and commercial property and liability claims, but their involvement has largely been limited to reviewing customer correspondence and pairing them with claims records. <https://www.axa.co.uk/newsroom/media-releases/2019/harry-bert-and-lenny-axa-deploys-new-ai-bots-to-handle-admin-work/>.
- 2 As of July 24, 2024, the NAIC model has been adopted by Alaska, Arkansas, Connecticut, Illinois, Kentucky, Maryland, Michigan, Nebraska, Nevada, New Hampshire, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and Washington, as well as the District of Columbia.
- 3 “ECDIS” stands for External Consumer Data and Information Sources. New York Insurance Circular Letter No. 7.
- 4 California Bulletin 2022-5 defines “Big Data” as “extremely large data sets analyzed to reveal patterns and trends.”
- 5 “[I]n developing its governance framework, the Insurer should consider addressing . . . [t]he Insurer’s internal AI System governance accountability structure, such as . . . [d]evelopment and implementation of ongoing training and supervision of personnel.” NAIC Model Bulletin at Section 3, Sub-Section 2.3(e).
- 6 “Policies and procedures should include training for relevant personnel on the responsible and lawful use of ECDIS and AIS, appropriately tailored to staff responsibilities. Additionally, the training program should include prompt training for new relevant staff and a regular cadence for training thereafter, as well as accountability for completing training in a timely manner.” New York Insurance Circular Letter No. 7, Section III.B.28.
- 7 “Documented policies, processes, and procedures, including assigned roles and responsibilities, 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. Such policies and processes must 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.” Colorado 3 CCR 702-10, Section 5.A.5.
- 8 “All persons engaged in the business of insurance in California are directed to review all applicable laws and train their staffs on the proper application of all laws applicable to insurance.” California Bulletin 2022-5 at 3.
- 9 The NAIC model also requires that each AIS Program “address the Insurer’s process for acquiring, using, or relying on . . . third-party data to develop AI Systems.” NAIC Model Bulletin at Section 3, Sub-Section 4.0.
- 10 “When using ECDIS or AIS as part of their insurance business, insurers are responsible for complying with these anti-discrimination laws irrespective of whether they themselves are collecting data and directly underwriting consumers, or relying on ECDIS or AIS of external vendors that are intended to be partial or full substitutes for direct underwriting or pricing.” New York Insurance Circular Letter No. 7, Section II.B.14.
- 11 “Insurers that do not use ECDIS or algorithms and/or predictive models that use ECDIS are exempt from the requirements described in Section 5 . . . .” Colorado 3 CCR 702-10, Section 6.C.
- 12 “The Texas Department of Insurance reminds all regulated entities, their agents, and their representatives that they are responsible for the accuracy of the data used in rating, underwriting, and claims handling – even if the data is provided by a third party.” Texas Commissioner’s Bulletin # B-0036-20.

- 13 “Insurers that are using ECDIS, as well as algorithms and/or predictive models that use ECDIS, as of the effective date of this regulation must submit to the Division on December 1, 2024 and annually thereafter a narrative report summarizing compliance with the requirements in Section 5 and the title and qualifications of each individual responsible for ensuring compliance along with the specific requirement(s) from Section 5 for which that individual is responsible. The names of each individual may also be provided but are unnecessary to comply with this requirement. This report must be signed by an officer attesting to compliance with this regulation. In the event an insurer is unable to attest to compliance with this regulation, the insurer must submit to the Division a corrective action plan. This report shall be no more than ten (10) pages including an executive summary and address Sections 5.A.1. through 5.A.13.” Colorado 3 CCR 702-10, Section 6.B.
- 14 “[A] regulator may also ask questions regarding any specific model, AI System, or its application, including requests for” information and documentation relating to AI system governance, risk management, and use protocols and third-party AI systems and data. NAIC Model Bulletin at Section 4.
- 15 “Insurers should maintain comprehensive documentation for their use of all AIS, including all ECDIS relied upon for such AIS, whether developed internally or supplied by third parties consistent with 11 NYCRR 243, and be prepared to make such documentation available to the Department upon request.” New York Insurance Circular Letter No. 7, Section II.B.29.
- 16 “All components of the governance structure and risk management framework required by Section 5 must be available upon request by the Division pursuant to § 10-3-1104.9(4), C.R.S. on December 1, 2024, and annually thereafter.” Colorado 3 CCR 702-10, Section 5.C.
- 17 “The Department’s regulatory oversight of Insurers includes oversight of an Insurer’s conduct in the state, including its use of AI Systems to make or support decisions that impact consumers. Regardless of the existence or scope of a written AIS Program, in the context of an investigation or market conduct action, an Insurer can expect to be asked about its development, deployment, and use of AI Systems, or any specific Predictive Model, AI System or application and its outcomes (including Adverse Consumer Outcomes) from the use of those AI Systems, as well as any other information or documentation deemed relevant by the Department.” NAIC Model Bulletin at Section 4.
- 18 “The Department may audit and examine an insurer’s use of ECDIS and AIS, including within the scope of regular or targeted examinations pursuant to New York Insurance Law (“Insurance Law”) § 309, or a request for special report pursuant to Insurance Law § 308.” New York Insurance Circular Letter No. 7, Section I.9.
- 19 “The Department reserves the right to audit and examine all insurer business practices including an insurer’s marketing, rating, claim, and underwriting criteria, programs, algorithms, and models. The examinations may include examinations within the scope of market conduct examinations or SIU examinations. The Department also reserves the right to take disciplinary action, as necessary, to ensure compliance with all laws.” California Bulletin 2022-5 at 3.
- 20 “Insurers must be prepared to respond to consumer complaints and inquiries about the use of AIS and ECDIS by implementing procedures to receive and address such complaints. Insurers must maintain any records of complaints regarding AIS or ECDIS in accordance with 11 NYCRR 243 and be prepared to make such records available to the Department upon request.” New York Insurance Circular Letter No. 7 at III.B.30.
- 21 “The governance and risk management framework must include . . . [d]ocumented processes and protocols in place for addressing consumer complaints and inquiries about the use of ECDIS, as well as algorithms, and predictive models that use ECDIS. Such policies and protocols must provide consumers with information necessary to take meaningful action in the event of an adverse decision made based on the use of ECDIS, and the algorithms and predictive models that use ECDIS.” Colorado 3 CCR 702-10, Section 5.A.6.



- 22 “Insurers are encouraged to provide policyholders with a way to review and correct data being used by the insurer.” Texas Commissioner’s Bulletin # B-0036-20.
- 23 “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 . . . [d]ue 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.” NAIC Model Bulletin at Section 3, Sub-Section 4.1.
- 24 “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.” New York Insurance Circular Letter No. 7 at III.D.36.
- 25 “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.” Colorado 3 CCR 702-10, Section 5.B.
- 26 “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 . . . [w]here appropriate and available, the inclusion of terms in contracts with third parties . . .” NAIC Model Bulletin at Section 3, Sub-Section 4.2.
- 27 “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.” New York Insurance Circular Letter at III.D.37.
- 28 “The AIS Program should document the Insurer’s risk identification, mitigation, and management framework and internal controls for AI Systems generally and at each stage of the AI System life cycle. Risk management and internal controls should address . . . [d]ata practices and accountability procedures, including data currency, lineage, quality, integrity, bias analysis and minimization, and suitability.” NAIC Model Bulletin at Section 3, Sub-Section 3.2.
- 29 “As with any other variables employed in underwriting and pricing, insurers should be able to demonstrate that the ECDIS are supported by generally accepted actuarial standards of practice and are based on actual or reasonably anticipated experience, including, but not limited to, statistical studies, predictive modeling, and risk assessments. The underlying analyses should demonstrate a clear, empirical, statistically significant, rational, and not unfairly discriminatory relationship between the variables used and the relevant risk of the insured.” New York Insurance Circular Letter No. 7 at II.A.11. “An insurer should appropriately document the processes and reasoning behind its testing

- methodologies and analysis for unfair or unlawful discrimination commensurate with the insurer's use of ECDIS and AIS and the complexity and materiality of such ECDIS and AIS. An insurer should be prepared to make such documentation available to the Department upon request." New York Insurance Circular Letter No. 7 at II.C.16. "In performing the analyses described in paragraphs 12 and 15, insurers are encouraged to use multiple statistical metrics in evaluating data and model outputs to ensure a comprehensive understanding and assessment. There is no expectation that insurers collect additional data from, or about, individuals to perform exemplary analysis." New York Insurance Circular Letter No. 7 at II.C.18. "In addition to quantitative analysis, an insurer's comprehensive assessment should include a qualitative assessment of unfair or unlawful discrimination. This includes being able to explain, at all times, how the insurer's AIS operates and to articulate a logical relationship between ECDIS and other model variables with an insured or potential insured individual's risk." New York Insurance Circular Letter No. 7 at II.C.19.
- 30 "The governance and risk management framework must include . . . [d]ocumented description of testing conducted to detect unfair discrimination in insurance practices resulting from the use of ECDIS, as well as algorithms and predictive models that use ECDIS, including the methodology, assumptions, results, and steps taken to address unfairly discriminatory outcomes." Colorado 3 CCR 702-10, Section 5.A.10.
- 31 "Information and documentation relating to or evidencing the Insurer's implementation and compliance with its AIS Program, including documents relating to the Insurer's monitoring and audit activities respecting compliance, such as . . . [d]ocumentation related to validation, testing, and auditing, including evaluation of Model Drift to assess the reliability of outputs that influence the decisions made based on Predictive Models. Note that the nature of validation, testing, and auditing should be reflective of the underlying components of the AI System, whether based on Predictive Models or Generative AI." NAIC Model Bulletin at Section 4, Sub-Section 1.3(d).
- 32 "11 NYCRR § 89.16 requires an insurer to have an internal audit function to provide general and specific audits, reviews, and tests necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations. Insurers should ensure the internal audit function is appropriately engaged with the insurer's use of ECDIS and AIS consistent with the financial, operational, and compliance risk. Such auditing should assess the overall effectiveness of the AIS and ECDIS risk management framework, which may include . . . assessing supporting operational systems and evaluating the accuracy, reliability, and integrity of ECDIS and other data used by AIS . . ." New York Insurance Circular Letter No. 7 at III.C.34.v.
- 33 "[A]ll regulated entities, their agents, and their representatives . . . are responsible for the accuracy of the data used in rating, underwriting, and claims handling – even if the data is provided by a third party." Texas Commissioner's Bulletin # B-0036-20.
- 34 "The AIS Program should include a governance framework for the oversight of AI Systems used by the Insurer. Governance should prioritize transparency, fairness, and accountability in the design and implementation of the AI Systems, recognizing that proprietary and trade secret information must be protected. An Insurer may consider adopting new internal governance structures or rely on the Insurer's existing governance structures . . ." NAIC Model Bulletin at Section 3, Sub-Section 2.0.
- 35 "11 NYCRR § 90.2 requires an insurer to have a corporate governance framework that is appropriate for the nature, scale, and complexity of the insurer.<sup>5</sup> 11 NYCRR § 90.1(c) defines "corporate governance framework" as "the structures, processes, information, and relationships used for the oversight, direction, control, and management of an insurer or system and for ensuring compliance with legal and regulatory requirements." An insurer should have a corporate governance framework that provides appropriate oversight of the insurer's use of ECDIS and AIS to ensure compliance with the Insurance Law and regulations promulgated thereunder." New York Insurance Circular Letter No. 7 at III.20.



- 36 “Life insurers that use ECDIS, as well as algorithms and predictive models that use ECDIS in any insurance practice, must establish a risk-based governance and risk management framework that facilitates and supports policies, procedures, systems, and controls designed to determine whether the use of such ECDIS, algorithms, and predictive models potentially result in unfair discrimination with respect to race and remediate unfair discrimination, if detected.” Colorado 3 CCR 702-10, Section 5.A.
- 37 “[B]efore utilizing any data collection method, fraud algorithm, rating/underwriting or marketing tool, insurers and licensees must conduct their own due diligence to ensure full compliance with all applicable laws.” California Bulletin 2022-5 at 3.
- 38 “The AIS Program should include processes and procedures providing notice to impacted consumers that AI Systems are in use and provide access to appropriate levels of information based on the phase of the insurance life cycle in which the AI Systems are being used.” NAIC Model Bulletin at Section 3, Sub-Section 1.9.
- 39 “Where an insurer is using ECDIS or AIS, the notice to the insured or potential insured, or medical professional designee, should disclose: (i) whether the insurer uses AIS in its underwriting or pricing process; (ii) whether the insurer uses data about the person obtained from external vendors; and (iii) that such person has the right to request information about the specific data that resulted in the underwriting or pricing decision, including contact information for making such request. In the event of a declination, limitation, rate differential, or other adverse underwriting decision the reason or reasons provided to the insured or potential insured, or a medical professional designee, should include details about all information upon which the insurer based any declination, limitation, rate differential, or other adverse underwriting decision, including the source of the specific information upon which the insurer based its adverse underwriting or pricing decision.” New York Insurance Circular Letter No. 7 at IV.E.39. “If an underwriting process utilizing ECDIS or AIS determines that an applicant will not be approved for insurance under this process and can only obtain insurance by submitting to a non ECDIS or AIS-based underwriting process, the applicant has the right to know why. Within 15-days of such a determination an insurer should provide notice to the applicant in writing in the manner(s) through which the applicant has elected to receive communications from the insurer, and the notice should identify the reason or reasons that the applicant cannot be underwritten for insurance using ECDIS or AIS. During the notice period the insurer should continue the non ECDIS or AIS-based underwriting process. An insurer’s failure to provide this notice may be considered an unfair trade practice under Insurance Law Article 24.” New York Insurance Circular Letter No. 7 at IV.F.44. “If an applicant will not be approved for insurance under an underwriting process utilizing ECDIS or AIS based on specific ECDIS data, the insurer should provide the applicant with a process to review for accuracy those data that resulted in the applicant not qualifying for the ECDIS or AIS-based underwriting process. This review process needs to be provided at the time the applicant is notified that the application cannot be processed under the underwriting process utilizing ECDIS or AIS described in paragraph 44 above. An insurer’s failure to provide a review process may be considered an unfair trade practice under Insurance Law Article 24.” New York Insurance Circular Letter No. 7 at IV.F.45.
- 40 “[W]hen insurers use complex algorithms in a declination, limitation, premium increase, or other adverse action, the specific reason or reasons must be provided.” California Bulletin 2022-5 at 2-3. “Additionally, insurers and licensees must provide transparency to Californians by informing consumers of the specific reasons for any adverse underwriting decisions.” California Bulletin 2022-5 at 3.

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