West's Colorado Revised Statutes Annotated
Title 10. Insurance
Regulation of Insurance Companies
Article 3. Regulation of Insurance Companies (Refs & Annos)
Part 11. Unfair Competition--Deceptive Practices (Refs & Annos)

C.R.S.A. § 10-3-1104.9

§ 10-3-1104.9. Insurers' use of external consumer data and information sources, algorithms, and predictive models--unfair discrimination prohibited--rules--stakeholder process required--investigations--definitions--repeal

Effective: September 7, 2021
Currentness

(1) In addition to the methods and practices prohibited pursuant to section 10-3-1104 (1)(f), an insurer shall not, with regard to any insurance practice:

(a) Unfairly discriminate based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression; or

(b) Pursuant to rules adopted by the commissioner, use any external consumer data and information sources, as well as any algorithms or predictive models that use external consumer data and information sources, in a way that unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression.

(2)(a) The commissioner shall adopt rules for the implementation of this section.

(b) The commissioner shall engage in a stakeholder process prior to the adoption of rules for any type of insurance that includes carriers, producers, consumer representatives, and other interested parties. The commissioner shall hold stakeholder meetings for stakeholders of different types of insurance to ensure sufficient opportunity to consider factors and processes relevant to each type of insurance. The commissioner shall provide notice of stakeholder meetings on the division website, and stakeholder meetings shall be open to the public.

(3)(a) After the stakeholder process described in subsection (2) of this section, the commissioner shall adopt rules for specific types of insurance, by insurance practice, which rules establish means by which an insurer may demonstrate, to the extent practicable, that it has tested whether its use of external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression. The rules shall not become effective until January 1, 2023, at the earliest, for any type of insurance, and the commissioner shall consider solvency impacts, if any, to insurers in adopting the rules.

(b) Rules adopted pursuant to this section must require each insurer to:

(I) Provide information to the commissioner concerning the external consumer data and information sources used by the insurer in the development and implementation of algorithms and predictive models for a particular type of insurance and insurance practice;

(II) Provide an explanation of the manner in which the insurer uses external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, for the particular type of insurance and insurance practice;

(III) Establish and maintain a risk management framework or similar processes or procedures that are reasonably designed to determine, to the extent practicable, whether the insurer's use of external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression;

(IV) Provide an assessment of the results of the risk management framework or similar processes or procedures and actions taken to minimize the risk of unfair discrimination, including ongoing monitoring; and

(V) Provide an attestation by one or more officers that the insurer has implemented the risk management framework or similar processes or procedures appropriately on a continuous basis.

(c) The rules adopted by the commissioner pursuant to this section must include provisions establishing:

(I) A reasonable period of time for insurers to remedy any unfairly discriminatory impact in an algorithm or predictive model; and

(II) The ability of insurers to use external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, that have been previously assessed by the division and found not to be unfairly discriminatory.

(d) Documents, materials, and other information in the possession or control of the division that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to this section or any rules adopted pursuant to this section are recognized as proprietary and containing trade secrets. All such documents, materials, and other information are confidential and privileged; are not subject to disclosure under the "Colorado Open Records Act", part 2 of article 72 of title 24 [1] , or other open records, freedom of information, sunshine, or similar law of this state; are not subject to subpoena; and are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer from which the documents, materials, or other information was obtained. The commissioner may make data publicly available in an aggregated or de-identified format in a manner deemed appropriate by the commissioner.

(4) Pursuant to section 10-3-1106, the commissioner may examine and investigate an insurer's use of an external consumer data and information source, algorithm, or predictive model in any insurance practice. Insurers shall cooperate with the commissioner and the division in any examination or investigation under this section.

(5)(a) In the report submitted by the department of regulatory agencies to the legislative committees of reference during the first two weeks of each regular legislative session, pursuant to part 2 of article 7 of title 2, the division shall include:

(I) Information concerning any rules adopted pursuant to this section;

(II) Information concerning any changes in insurance rates that have resulted from the prohibitions described in subsection (1) of this section;

(III) A summary of the stakeholder engagement process described in subsection (2)(b) of this section; and

(IV) A description of data sources, if any, discussed during the stakeholder engagement process, which data sources insurers may use to comply with this section.

(b) This subsection (5) is repealed, effective July 1, 2025.

(6) Notwithstanding any provision of this section to the contrary, this section does not apply to:

(a) Title insurance, as defined in section 10-11-102(8);

(b) Bonds executed by qualified surety companies pursuant to part 3 of article 4 of this title 10; or

(c) Insurers issuing commercial insurance policies; except that this section does apply to insurers that issue business owners' policies or commercial general liability policies, which business owners' policies or commercial general liability policies have annual premiums of ten thousand dollars or less.

(7) Nothing in this section:

(a) Requires an insurer to collect from an applicant or policyholder the race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression of an individual; or

(b) May be construed to:

(I) Prohibit the use of, or require life, annuity, long-term care, or disability insurers to test, medical, family history, occupational, disability, or behavioral information related to a specific individual, which information, based on actuarially sound principles, has a direct relationship to mortality, morbidity, or longevity risk unless such information is otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources;

(II) Prohibit the use of, or require life, annuity, long-term care, or disability insurers to test, traditional underwriting factors being used for the exclusive purpose of determining insurable interest or eligibility for coverage unless such factors are otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources;

(III) Amend, modify, or supersede section 10-3-1104(1)(f)(III) or (1)(f)(IV); or

(IV) Prohibit the use of or require the testing of longstanding and well-established common industry practices in settling claims or traditional underwriting practices unless such practices or factors are otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources.

(8) As used in this section, unless the context otherwise requires:

(a) "Algorithm" means a computational or machine learning process that informs human decision making in insurance practices.

(b)(I) "External consumer data and information source" means a data or an information source that is used by an insurer to supplement traditional underwriting or other insurance practices or to establish lifestyle indicators that are used in insurance practices. "External consumer data and information source" includes credit scores, social media habits, locations, purchasing habits, home ownership, educational attainment, occupation, licensures, civil judgments, and court records.

(II) The commissioner may promulgate rules to further define "external consumer data and information source" for particular lines of insurance and insurance practices.

(c) "Insurance practice" means marketing, underwriting, pricing, utilization management, reimbursement methodologies, and claims management in the transaction of insurance.

(d) "Predictive model" means a process of using mathematical and computational methods that examine current and historical data sets for underlying patterns and calculate the probability of an outcome.

(e) "Unfairly discriminate" and "unfair discrimination" include the use of one or more external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, that have a correlation to race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression, and that use results in a disproportionately negative outcome for such classification or classifications, which negative outcome exceeds the reasonable correlation to the underlying insurance practice, including losses and costs for underwriting.

Credits

Added by Laws 2021, Ch. 436 (S.B. 21-169), § 2, eff. Sept. 7, 2021.

Footnotes

1 C.R.S. § 24-72-200.1 et seq.

C. R. S. A. § 10-3-1104.9, CO ST § 10-3-1104.9
Current through the Second Regular and Extraordinary Sessions, 74th General Assembly (2024). Some statute sections may be more current. See credits for details.

End of Document

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

UNFAIR DISCRIMINATION

3 CCR 702-10

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

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

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-3-1104.9, C.R.S.

Section 2 Scope and Purpose

This regulation establishes the governance and risk management requirements for life insurers that use external consumer data and information sources (ECDIS), as well as algorithms and predictive models that use ECDIS.

Section 3 Applicability

This regulation shall apply to all life insurers authorized to do business in the state of Colorado.

Section 4 Definitions

A. "Algorithm" shall have the same meaning as set forth in § 10-3-1104.9(8)(a), C.R.S.

B. "Division" means, for the purposes of this regulation, the Colorado Division of Insurance.

C. "External Consumer Data and Information Source" or "ECDIS" means, for the purposes of this regulation, a data or an information source that is used by a life 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, occupation that does not have a direct relationship to mortality, morbidity or longevity risk, 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.

D. "Insurance Practice" shall have the same meaning as set forth in § 10-3-1104.9(8)(c), C.R.S.

E. "Internet of Things" means, for the purposes of this regulation, networks of physical objects embedded with sensors, software, and other technologies for the purposes of collecting, transmitting, and exchanging data over the Internet. This definition does not apply to devices that require direct human intervention for data collection and exchange.

F. "Life Insurer" or "insurer" means, for the purpose of this regulation, an entity authorized and licensed by the commissioner of insurance to sell life insurance products in the state of Colorado.

G. "Predictive Model" shall have the same meaning as set forth in § 10-3-1104.9, C.R.S.

H. "Unfairly Discriminate" and "Unfair Discrimination" shall have the same meaning as set forth in § 10-3-1104.9(8)(e), C.R.S.

Section 5 Governance and Risk Management Framework

A. 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. The governance and risk management framework must include the following components:

1. Documented governing principles outlining the values and objectives of the insurer that provide the guidance necessary for ensuring that:

   a. ECDIS, and algorithms and predictive models that use ECDIS are designed, developed, used, and monitored in a manner that achieves effective oversight and management; and

   b. The use of ECDIS, and the algorithms and predictive models that use ECDIS are reasonably designed to prevent unfair discrimination.

2. The governance structure and risk management framework must be overseen by the board of directors or a committee of the board.

3. Senior management responsibility and accountability for setting and monitoring the overall strategy and providing direction governing the use of ECDIS, and algorithms and predictive models that use ECDIS. This includes establishing clear lines of communication and delegated decision-making authority, and regular reporting to senior management on the performance and potential risks of using ECDIS, and the algorithms and predictive models that use ECDIS.

4. Documented cross-functional ECDIS, algorithm, and predictive model governance group composed of representatives from key functional areas including legal, compliance, risk management, product development, underwriting, actuarial, data science, marketing, and customer service, as applicable.

5. 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.

6. Documented 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.

7. Documented rubric for assessing and prioritizing risks associated with the deployment of ECDIS, as well as algorithms and predictive models that use ECDIS, in insurance in practices with reasonable consideration given to insurance practices' consumer impact(s).

8. Documented up-to-date inventory, including version control, of all utilized ECDIS, as well as algorithms and predictive models that use ECDIS, including a detailed description of each ECDIS, algorithm, and predictive model, their clearly stated purpose(s), and the outputs generated through their use.

9. Documented explanation of any material change(s) in the inventory of all ECDIS, as well as all algorithms and predictive models that use ECDIS, and the rationale for the change(s).

10. Documented 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.

11. Documented description of ongoing monitoring regarding the performance of algorithms and predictive models that use ECDIS including accounting for model drift.

12. Documented description of the process used for selecting external resources including third-party vendors that supply ECDIS, algorithms, and/or predictive models that use ECDIS including the intended use of the ECDIS, algorithm(s), and/or predictive model(s).

13. Documented comprehensive annual reviews of the governance structure and risk management framework and updates to the required documentation to ensure its continued accuracy and relevance.

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

C. 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.

Section 6 Reporting Requirements

A. 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 a narrative report summarizing the progress made towards complying with the requirements specified in Section 5 including identifying the areas still under development, any difficulties encountered, and expected completion date. This report is due June 1, 2024.

B. 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.

C. Insurers that do not use ECDIS or algorithms and/or predictive models that use ECDIS are exempt from the requirements described in Section 5 and must submit to the Division within one month of the effective date of this regulation and on December 1 annually thereafter an attestation signed by an officer indicating that the insurer does not use ECDIS or algorithms and/or predictive models that use ECDIS.

D. Insurers that do not use ECDIS or algorithms and/or predictive models that use ECDIS as of the effective date of this regulation but subsequently plan to use ECDIS or algorithms and/or predictive models that use ECDIS must submit to the Division the report specified in Section 6.B. prior to the use of ECDIS or algorithms and/or predictive models that use ECDIS.

Section 7 Confidentiality

Any documents or materials disclosed to the Division as a result of this regulation shall be subject to § 10-3-1104.9(3)(d), C.R.S.

Section 8 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 9 Enforcement

Noncompliance with this regulation may result in the imposition of any sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocations of license, subject to the requirements of due process.

Section 10 Effective Date

This regulation shall become effective on November 14, 2023.

Section 11 History

New regulation effective November 14, 2023.

Editor's Notes

History
New rule eff. 11/14/2023.