DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF INSURANCE

3 CCR 702-10

UNFAIR DISCRIMINATION

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.