



Bias in Insurance – A Regulatory and Legislative Update

2023 FINREP Forum

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Bias in Insurance – A Regulatory and Legislative Update

- ▶ Defining Bias
- ▶ Colorado
- ▶ NAIC
- ▶ National Institute of Standards and Technology (NIST)
- ▶ Prevent Auto Insurance Discrimination Act (PAID Act)

Defining Bias

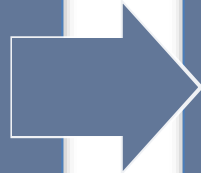
The Challenge of **Defining** Bias

- Many terms are thrown around loosely as part of this debate
 - Discrimination, proxy discrimination, unfair discrimination, disparate treatment, disparate impact
- Other potentially related issues become conflated
 - Affordability, transparency, intentional bias
- Result
 - With no clear definition of the problem we are trying to solve, the probability increases that the proposed solution will not accomplish anything

Defining Bias – Discriminatory Effects

Prohibited from using protected characteristics in rating

- Even though protected characteristics may be predictive of loss, insurers are prohibited from using them in rating



What if I find something that is perfectly correlated to the protected characteristic?

- I am not using the protected characteristic, so technically I am not violating the law
- But I am ending up in the same place as if I used the protected characteristic, so I am violating the spirit of the law



What if I am using something that is partially correlated to the protected characteristic?

- How much is too much?

Colorado

Colorado Senate Bill 21-169

- Signed into law on July 6, 2021
- **Goal**: Protect Colorado consumers from insurance practices that result in unfair discrimination on the basis of race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity or gender expression
- **Lines of business**: Health, homeowners, auto, life, BOP/CGL with annual premiums of less than \$10,000
- **Insurance practices**: Marketing, underwriting, pricing, utilization management, reimbursement methodologies, claims management
- **Stakeholder process**: Life underwriting was first, auto rating started earlier this year

Colorado Progress to Date

- Life Underwriting
 - Began in February 2022
 - Six stakeholder meetings
 - Draft model governance guidelines have been released, revised once
 - Still awaiting draft testing guidelines
- Auto Underwriting
 - Three stakeholder meetings in 2023 (April, June and August)

Proposed Colorado Regulation 3 CCR 702-4

- Governance and Risk Management Framework Requirements for Life Insurance Carriers' Use of External Consumer Data and Information Sources [ECDIS], Algorithms, and Predictive Models
- Establishes the requirements for a Life Insurance company's internal risk management framework necessary to ensure that the life insurers' use of external consumer data and information sources, algorithms, and predictive models does not result in unfairly discriminatory insurance practices.
- Still awaiting proposed testing guidelines

Colorado Governance and Risk Management Framework

1. Governing principles
2. Board oversight
3. Senior management responsibility
4. Cross functional governance group
5. Policies for ECDIS testing and validation
6. Consumer complaint and inquiry process
7. Risk inventory
8. ECDIS inventory
9. Documentation of material changes
10. Unfair discrimination testing documentation
11. Ongoing monitoring of models that use ECDIS
12. Documentation of process used to select external resources
13. Regular reviews of framework

NAIC

NAIC Model Bulletin

- ***Use of Algorithms, Predictive Models and Artificial Intelligence Systems by Insurers***
- Released for comment on July 17, 2023
- Written comments were accepted through September 5, 2023
- Expect the next step will be a revised draft bulletin

NAIC Model Bulletin – Legislative Authority

- **Unfair Trade Practices Model Act (#880)**: regulates trade practices in insurance by: 1) defining practices that constitute unfair methods of competition or unfair or deceptive acts and practices; and 2) prohibiting the trade practices so defined or determined
- **Unfair Claims Settlement Practices Model Act (#900)**: sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued
- **Corporate Governance Annual Disclosure Model Act (#305)**: requires insurers to report on governance practices and to provide a summary of the insurer's corporate governance structure, policies, and practices

NAIC Model Bulletin – Legislative Authority

- **Property and Casualty Model Rating Law (#1780)**: requires that property/casualty (P/C) insurance rates not be excessive, inadequate, or unfairly discriminatory.
- **Market Conduct Surveillance Model Law (#693)**: establishes the framework pursuant to which the Department conducts market conduct actions.

NAIC Model Bulletin – Expectations

- All insurers authorized to do business in this state are **encouraged** to develop, implement, and maintain a **written program** for the use of **AI Systems** that is designed to assure that decisions impacting consumers made or supported by AI Systems are accurate and do not violate unfair trade practice laws or other applicable legal standards (AIS Program)
- Assessment should consider:
 - the nature of the decisions being made, informed, or supported using the AI System
 - the nature and the degree of potential harm to consumers from errors or unfair bias resulting from the use of the AI System
 - the extent to which humans are “in-the-loop”
 - the extent and scope of the Insurer’s use or reliance on data, models, and AI Systems from third parties

NAIC Model Bulletin – Additional Considerations

- Specifically includes testing for unfair discrimination and bias in the guidelines
 - Bias is defined, unfair discrimination is not
- Sets requirements for governance and controls of modeling cycle
- Requires insurer to assess third party data providers to ensure they meet the standards being required of insurers
- Documentation required as part of market conduct examination, potentially in other cases as well

NIST

National Institute for Standards and Technology

- Released AI Risk Management Framework on January 26, 2023
- Launched the Trustworthy and Responsible AI Resource Center on March 20, 2023, which provides practical tools for the implementation of the framework
- Framework is voluntary at this point
- Why is this important – Federal Insurance Office Charter
 - monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the U.S. financial system
 - monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable non-health insurance products

PAID Act

Prohibit Auto Insurance Discrimination (PAID) Act

- Introduced in the United States House of Representatives by Representatives Rashida Tlaib (MI-12), Bonnie Watson Coleman (NJ-12), and Mark Takano (CA-39) on June 6, 2023
 - Last introduced in United States Senate and House of Representatives in 2020
- Would ban the use of:
- Education
 - Occupation
 - Employment status
 - Home ownership status
 - Credit score, consumer report
 - Gender
 - ZIP code or adjacent zip codes
 - Census tract
 - Marital status
 - Previous insurer
 - Prior purchase of insurance

What Does All This Mean for Insurers?

- The insurance industry should be at the table and involved in the relevant discussions
- Insurers should endeavor to be influential in the ultimate solutions, and I believe we are at a point where if the industry simply defends the status quo, we will be left out completely
- Internally, companies should be exploring options for responding to potential model governance and testing requirements

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