
SECOND DRAFT COMMENTS

NAIC MODEL BULLETIN: USE OF ALGORITHMS, PREDICTIVE MODELS, AND ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS

1. American Council of Life Insurers (ACLI)
2. American InsurTech Council (AITC)
3. American Property Casualty Insurance Association (APCIA)
4. America's Health Insurance Plans (AHIP)
5. Blue Cross Blue Shield Association (BCBSA)
6. InsurTech Coalition
7. LexisNexis Risk Solutions Inc.
8. Michigan Association of Health Plans (MAHP)
9. National Alliance of Life Companies (NALC)
10. National Association of Mutual Insurance Companies (NAMIC)
11. New Hampshire Department of Insurance
12. Oregon Division of Financial Regulation
13. Oscar Health, Inc.

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November 6, 2023

Commissioner Kathleen Birrane, Chair
Commissioner Mike Conway, Co-Vice Chair
Commissioner Doug Ommen, Co-Vice Chair
Innovation, Cybersecurity and Technology (H) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Comments on NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers

Dear Chair Birrane and Co-Vice Chairs Conway and Ommen:

The American Council of Life Insurers (“ACLI”) appreciates the opportunity to provide comments on the updated NAIC Model Bulletin on the Use of Artificial Intelligence Systems (“Bulletin”) on behalf of our members.

ACLI appreciates the modifications that have been made in this updated draft to address concerns raised in comments provided following the exposure of the first draft. We have additional comments and suggested changes which are described below and/or delineated in a redline version of the updated draft that is attached at the end of this letter.

Definitions

We note that some modifications have been made to existing definitions in addition to new terms being included in this section that were not in the previous draft. We offer the following suggested changes to the current Definitions section, which better align some of the definitions to the NIST framework.

1. “Adverse Consumer Outcome” refers to a decision by an insurer that is subject to applicable laws and regulations ~~insurance regulatory standards~~ enforced by the Department that adversely impact the consumer in a manner that violates those ~~standards~~ applicable laws and regulations.”

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.

2. “AI Systems” – is an engineered or machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, content (such as text, images, videos or sounds) or other output which may influence or make decisions ~~influencing decisions made~~ in real or virtual environments. AI Systems are designed to operate with varying levels of autonomy. AI Systems exclude algorithms automating a deterministic process or models using traditional actuarial techniques.”
3. “Bias” – the capitalized form of this term is not used within the body of the bulletin. The term “bias analysis” isn’t clear. We suggest removing this definition and such reference and simply refer to unfair discrimination, where appropriate, which is already defined in Section 4.G. of the Unfair Trade Practices Model Act (MO 880).
4. “Big Data” – this term is not used within the body of the bulletin. This definition should be removed.
5. “Generative Artificial Intelligence (Generative AI)” – This term is only used once throughout the document in a section where we are asking for its removal as the section broadly applies to all AI. This definition should be removed from the document.
6. “Machine Learning” – refers to a field within artificial intelligence that focuses on the ability of computers to learn from provided data without being explicitly programmed for a particular risk.
7. “Model Risk” – this term is not used anywhere within the document other than within the definition itself. This term should be removed from the document.
8. “Predictive Model” – refers to a model developed through the mining of historic data using ~~algorithms and/or machine learning~~ AI to identify patterns, which model is used to and predict outcomes that can be used to make or support the making of decisions.
9. “Third Party” – for purposes of this bulletin means an organization other than the insurer or a subsidiary or affiliate of the insurer that provides services, data, or other resources related to AI.

Section 3. Regulatory Guidance and Expectations

In the AIS Program Guidelines, General Guidelines, a new Section 1.9 has been added which suggests the AIS Program should include processes and procedures providing notice to impacted consumers that AI Systems are in use and to also provide access to appropriate levels of information based on the phase of the insurance life cycle in which the AI Systems are being used. While we have no objection to informing potential insureds that AI Systems may be in use, we do not believe it is appropriate, nor are there any existing requirements, for the insurer to provide

access to information to the potential insured. If this section is to remain, we suggest striking the language after the word “use.”

In Section 3.2 we have stricken the term “data currency” from the list of items included in the data practices and accountability procedures. The term “data currency” is often used interchangeably with “quality” but is actually a subset of data quality. Including both of these terms is redundant and we believe the broader term “quality” is the more appropriate choice here.

In addition, we have removed the reference to bias analysis here and included a reference to the analysis and mitigation of potential unfair discrimination to Section 3.3.(c). 3.2 focuses on evaluating the data used, i.e. lineage, quality, integrity suitability. Determining if the use of the data may create the potential for unfair discrimination would be best evaluated during predictive model development and assessment. The management and oversight of predictive models is the appropriate place for such an evaluation.

Section 4: Regulatory Oversight and Examination Considerations

We believe it is important to include confidentiality protections that would be provided to all information generated by requests made in accordance with this bulletin by referencing the confidentiality provisions under the state law governing market conduct examinations, based upon either the Model Law on Examinations (#390) or Market Conduct Surveillance Model Law (#693). Absent a reference to a specific statutory reference, we ask that language be included at the end of the opening paragraph of this section that reads: “All information generated, including that provided to regulators, shall be treated as confidential and proprietary and is not subject to disclosure or subpoena.”

For the same reasons as mentioned above with respect to Section 3.3.2, we have stricken the term “data currency” in 1.1.e.i.(2), 1.3.b and 1.3.c.ii.(2) in Section 4.

As in Section 3, we have removed the reference to bias analysis in 1.1.i (2) where it is focused on data governance and controls and not the use of data within predictive models. We have included language pertaining to the analysis and mitigation of potential unfair discrimination in 1.1.e.ii which focuses on processes and procedures related to the management and oversight of predictive models. Similarly, we have removed reference to bias analysis in 1.3.(b). We have included language addressing the analysis and minimization of potential unfair discrimination in 1.3.(c) ii (2) which is focused on the predictive model.

Third-Party AI Systems and Data

As we mentioned in our initial comment letter, the use of third-party vendors is and will continue to be very important in the expanded use of technology within the insurance industry, regardless of the size of the carrier. In some instances, third-party vendors may not be willing to provide insurers with detailed information requested by the regulator that they deem proprietary. We ask that language be included in this section to make clear that compliance with requests for information may be accomplished through direct submission of the information to the regulator by the third-party vendor on the insurer’s behalf. The suggested language which is included in the red-line

version attached reads: “Insurers may satisfy requests for documentation and information by third-party vendors providing the requested documents or information directly to the Department on behalf of the insurer.”

Conclusion

ACLI appreciates the work done to bring forth this Model AI Bulletin and the continued dialogue with all stakeholders to create uniformity in guidance to carriers for the use of AI across the country. We look forward to working with the NAIC to bring this Model to conclusion later this year.

Sincerely,

Handwritten signature of Kaumulehu in black ink.Handwritten signature of B. Barfield in black ink.

**NAIC MODEL BULLETIN:
USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS**

TO: All Insurers Licensed to Do Business In (*Insert Name of Jurisdiction*) (“Insurers”)

FROM: [Department/Commissioner]

DATE: [Insert]

RE: The Use of Artificial Intelligence Systems in Insurance

This bulletin is issued by the [] (Department) to remind all Insurers that hold certificates of authority to do business in the state that decisions or actions impacting consumers that are made or supported by advanced analytical and computational technologies, including Artificial Intelligence (AI) Systems (as defined below), must comply with all applicable insurance laws and regulations. This includes those laws that address unfair trade practices and unfair discrimination. This bulletin sets forth the Department’s expectations as to how Insurers will govern the development/acquisition and use of certain AI technologies, including the AI Systems described herein. This bulletin also advises Insurers of the type of information and documentation that the Department may request during an investigation or examination of any Insurer regarding its use of such technologies and AI Systems.

SECTION 1: INTRODUCTION, BACKGROUND, AND LEGISLATIVE AUTHORITY

Background

AI is transforming the insurance industry. AI techniques are deployed across all stages of the insurance life cycle, including product development, marketing, sales and distribution, underwriting and pricing, policy servicing, claim management, and fraud detection.

AI may facilitate the development of innovative products, improve consumer interface and service, simplify and automate processes, and promote efficiency and accuracy. However, AI, including AI Systems, can present unique risks to consumers, including the potential for inaccuracy, unfair discrimination, data vulnerability, and lack of transparency and explainability. Insurers should take actions to minimize these risks.

The Department encourages the development and use of innovation and AI Systems that contribute to safe and stable insurance markets. However, the Department expects that decisions made and actions taken by Insurers using AI Systems will comply with all applicable federal and state laws.

The Department recognizes the *Principles of Artificial Intelligence* that the NAIC adopted in 2020 as an appropriate source of guidance for Insurers as they develop and use AI systems. Those principles emphasize the importance of the fairness and ethical use of AI; accountability; compliance with state laws and regulations; transparency; and a safe, secure, fair, and robust system. These fundamental principles

should guide Insurers in their development and use of AI Systems and underlie the expectations set forth in this bulletin.

Legislative Authority

The regulatory expectations and oversight considerations set forth in Section 3 and Section 4 of this bulletin rely on the following laws and regulations:

- **Unfair Trade Practices Model Act (#880)**: The *Unfair Trade Practices Act* [insert citation to state statute or regulation corresponding to Model #880] (UTPA), 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)**: The *Unfair Claims Settlement Practices Act*, [insert citation to state statute or regulation corresponding to Model #900] (UCSPA), sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of [insert state].

Actions taken by Insurers in the state must not violate the UTPA or the UCSPA, regardless of the methods the Insurer used to determine or support its actions. As discussed below, Insurers are expected to adopt practices, including governance frameworks and risk management protocols, that are designed to ensure that the use of AI Systems does not result in: 1) unfair trade practices, as defined in []; or 2) unfair claims settlement practices, as defined in [].

- **Corporate Governance Annual Disclosure Model Act (#305)**: The *Corporate Governance Annual Disclosure Act* [insert citation to state statute or regulation corresponding to Model #305] (CGAD), requires Insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for CGAD information are set forth in the *Corporate Governance Annual Disclosure Model Regulation* (#306) [insert citation to state statute or regulation corresponding to Model #306] (CGAD-R).

The requirements of CGAD and CGAD-R apply to elements of the Insurer's corporate governance framework that address the Insurer's use of AI Systems to support actions and decisions that impact consumers.

- **Property and Casualty Model Rating Law (#1780)**: The *Property and Casualty Model Rating Law*, [insert citation to state statute or regulation corresponding to the Model #1780], requires that property/casualty (P/C) insurance rates not be excessive, inadequate, or unfairly discriminatory.

The requirements of [] apply regardless of the methodology that the Insurer used to develop rates, rating rules, and rating plans subject to those provisions. That means that an Insurer is responsible for assuring that rates, rating rules, and rating plans that are developed using AI techniques and predictive models that rely on data and machine learning do not result in excessive, inadequate, or unfairly discriminatory insurance rates— with respect to all forms of casualty insurance—including fidelity, surety, and guaranty bond—and to all forms of property insurance—including fire, marine, and inland marine insurance, and any combination of any of the foregoing.

- **Market Conduct Surveillance Model Law (#693)**: The *Market Conduct Surveillance Model Law* [*insert citation to state statute or regulation corresponding to Model #693*] establishes the framework pursuant to which the Department conducts market conduct actions. These are comprised of the full range of activities that the Department may initiate to assess and address the market practices of Insurers, beginning with market analysis and extending to targeted examinations. Market conduct actions are separate from, but may result from, individual complaints made by consumers asserting illegal practices by Insurers.

An Insurer's conduct in the state, including its use of AI Systems to make or support actions and decisions that impact consumers, is subject to investigation, including market conduct actions. Section 4 of this bulletin provides guidance on the kinds of information and documents that the Department may request in the context of an AI-focused investigation, including a market conduct action.

SECTION 2: DEFINITIONS

For the purposes of this bulletin the following terms are defined¹:

"Adverse Consumer Outcome" refers to a decision by an Insurer that is subject to ~~insurance regulatory standards—applicable laws and regulations~~ enforced by the Department that adversely impacts the consumer in a manner that violates those standards.

"Algorithm" means a clearly specified mathematical process for computation; a set of rules that, if followed, will give a prescribed result.

"AI Systems" is an ~~n engineered or~~ machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, content (such as text, images, videos, or sounds), or other output ~~which may influence or make decisions—~~~~influencing decisions made~~ in real or virtual environments. AI Systems are designed to operate with varying levels of autonomy. ~~AI Systems exclude algorithms automating a deterministic process or models using traditional actuarial techniques.~~

"Artificial Intelligence (AI)" refers to a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement. This definition considers machine learning to be a subset of artificial intelligence.

~~"Bias" is the differential treatment that results in favored or unfavored treatment of a person, group or attribute.~~

~~"Big Data" consists of extensive datasets — primarily in the characteristics of volume (i.e., the size of the dataset), variety (i.e., data from multiple repositories (including third-party data), domains, or types), velocity (i.e., rate of flow), and/or variability (i.e., the change in velocity or structure) that require a scalable architecture for efficient storage, manipulation, and analysis.~~

¹ Drafting note: Individual states may have adopted definitions for terms that are included in the model bulletin that may be different from the definitions set forth herein.

“Degree of Potential Harm to Consumers” refers to the severity of adverse economic impact that a consumer might experience as a result of an Adverse Consumer Outcome.

~~“Generative Artificial Intelligence (Generative AI)” refers to a class of AI Systems that generate content in the form of data, text, images, sounds, or video, that is similar to, but not a direct copy of, pre-existing data or content.~~

“Machine Learning (ML)” ~~R~~ refers to a field within artificial intelligence that focuses on the ability of computers to learn from provided data without being explicitly programmed for a particular task.

“Model Drift” refers to the decay of a model’s performance over time arising from underlying changes such as the definitions, distributions, and/or statistical properties between the data used to train the model and the data on which it is deployed.

~~“Model Risk” is the potential for loss arising from decisions based on flawed or misused models. Four basic sources of model risk are: (1) data limitations in terms of either or both availability and quality; (2) estimation uncertainty or methodological flaws in model design (volatility of estimators, simplifications, approximations, inappropriate assumptions, improper design, etc.); (3) calculation or coding error; and (4) inappropriate use of a model (use outside its intended purpose, lack of resources with knowledge to use properly, failure to update and recalibrate, etc.).~~

“Predictive Model” refers to a model developed through the mining of historic data using algorithms and/or machine learning AI to identify patterns, which model is used to and predict outcomes that can be used to make or support the making of decisions.

“Third-Party” for purposes of this bulletin means an organization other than the Insurer or a subsidiary or affiliate of the Insurer that provides services, data, or other resources related to AI.

SECTION 3: REGULATORY GUIDANCE AND EXPECTATIONS

Decisions subject to regulatory oversight that are made by Insurers using AI Systems must comply with the legal and regulatory standards that apply to those decisions, including unfair trade practice laws. These standards require, at a minimum, that decisions made by Insurers are not inaccurate, arbitrary, capricious, or unfairly discriminatory. Compliance with these standards is required regardless of the tools and methods Insurers use to make such decisions. However, because, in the absence of proper controls, AI has the potential to increase the risk of inaccurate, arbitrary, capricious, or unfairly discriminatory outcomes for consumers, it is important that Insurers adopt and implement controls specifically related to their use of AI that are designed to mitigate the risk of Adverse Consumer Outcomes.

Consistent therewith, all Insurers authorized to do business in this state are expected to develop, implement, and maintain a written program (an “AIS Program”) for the responsible use of AI Systems that make, or support decisions related to regulated insurance practices. The AIS Program should be designed to mitigate the risk of Adverse Consumer Outcomes, and includeing, at a minimum, the statutory provisions set forth in Section 1 of this bulletin.

The Department recognizes that robust governance, risk management controls, and internal audit functions play a core role in mitigating the risk that decisions driven by AI Systems will violate unfair trade practice laws and other applicable existing legal standards. The Department also encourages the development and use of verification and testing methods to identify errors and bias in predictive models and AI Systems, as well as the potential for unfair discrimination in the decisions and outcomes resulting from the use of predictive models and AI Systems.

The controls and processes that an Insurer adopts and implements as part of its AIS Program should be reflective of, and commensurate with, the Insurer's own assessment of the degree and nature of risk posed to consumers by the AI Systems that it uses, considering: (i) the nature of the decisions being made, ~~informed,~~ or supported using the AI System; (ii) the type and Degree of Potential Harm to Consumers resulting from the use of AI Systems; (iii) the extent to which humans are involved in the final decision-making process; (iv) the transparency and explainability of outcomes to the impacted consumer; and (v) the extent and scope of the insurer's use or reliance on data, predictive models, and AI Systems from third parties. Similarly, controls and processes should be commensurate with both the risk of Adverse Consumer Outcomes and the Degree of Potential Harm to Consumers.

As discussed in Section 4, the decisions made as a result of an Insurer's use of AI Systems are subject to the Department's examination to determine that the reliance on AI Systems are compliant with all applicable existing legal standards governing the conduct of the Insurer.

AIS Program Guidelines

1.0 General Guidelines

1.1 The AIS Program should be designed to mitigate the risk that the Insurer's use of an AI System will result in Adverse Consumer Outcomes.

1.2 The AIS Program should address governance, risk management and internal controls, and internal audit functions.

1.3 The AIS Program should vest responsibility for the development, implementation, monitoring, and oversight of the AIS Program and for setting the Insurer's strategy for AI Systems with senior management accountable to the board or an appropriate committee of the board.

1.4 The AIS Program should be tailored to and proportionate with the Insurer's use and reliance on AI and AI Systems. Controls and procedures should be focused on the mitigation of Adverse Consumer Outcomes and the scope of the controls and procedures applicable to a given AI System use case should reflect and align with the Degree of Potential Harm to Consumers with respect to that use case.

1.5 The AIS Program may be independent of or part of the Insurer's existing Enterprise Risk Management (ERM) program. The AIS Program may adopt, incorporate, or rely upon, in whole or in part, a framework or standards developed by an official third-party standard organization, such as the National Institute of Standards and Technology (NIST) Artificial Intelligence Risk Management Framework, Version 1.0.

1.6 The AIS Program should address the use of AI Systems across the insurance life cycle, including areas such as product development and design, marketing, use, underwriting, rating and pricing, case management, claim administration and payment, and fraud detection.

1.7 The AIS Program should address all phases of an AI System's life cycle, including design, development, validation, implementation (both systems and business), use, on-going monitoring, updating and retirement.

1.8 The AIS Program should address the AI Systems used with respect to regulated insurance practices whether developed by the Insurer or a third-party vendor.

1.9 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.

2.0 Governance

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; however, in developing its governance framework, the Insurer should consider addressing the following items:

2.1 The policies, processes, and procedures, including risk management and internal controls, to be followed at each stage of an AI System life cycle, from proposed development to retirement.

2.2 The requirements adopted by the Insurer to document compliance with the AIS Program policies, processes, procedures, and standards. Documentation requirements should be developed with Section 4 in mind.

2.3 The Insurer's internal AI System governance accountability structure, such as:

- a) The formation of centralized, federated, or otherwise constituted committees comprised of representatives from appropriate disciplines and units within the Insurer, such as business units, product specialists, actuarial, data science and analytics, underwriting, claims, compliance, and legal.
- b) Scope of responsibility and authority, chains of command, and decisional hierarchies.
- c) The independence of decision-makers and lines of defense at successive stages of the AI System life cycle.
- d) Monitoring, auditing, escalation, and reporting protocols and requirements.
- e) Development and implementation of ongoing training and supervision of personnel.

2.4 Specifically with respect to predictive models: the Insurer's processes and procedures for designing, developing, verifying, deploying, using, updating, and monitoring predictive models, including a description of methods used to detect and address errors, performance issues, outliers, or unfair discrimination in the insurance practices resulting from the use of the predictive model.

3.0 Risk Management and Internal Controls

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 the following items:

3.1 The oversight and approval process for the development, adoption, or acquisition of AI Systems, as well as the identification of constraints and controls on automation and design to align and balance function with risk.

3.2 Data practices and accountability procedures related to AI Systems, including ~~data currency~~, lineage, quality, integrity, ~~bias analysis and minimization~~, and suitability.

3.3 Management and oversight of predictive models (including algorithms used therein), including:

- a) Inventories and descriptions of the predictive models.
- b) Detailed documentation of the development and use of the predictive models.
- c) Assessments such as interpretability, repeatability, robustness, regular tuning, reproducibility, traceability, model drift, analysis and mitigation of potential unfair discrimination and the auditability of these measurements where appropriate.

3.4 Validating, testing, and retesting as necessary to assess the generalization of AI System outputs upon implementation, including where appropriate the suitability of the data used to develop, train, validate and audit the model. Validation can take the form of comparing model performance on ~~unseen data~~ holdout data available at the time of model development to the performance observed on data post-implementation, measuring performance against expert review, or other methods.

3.5 The protection of non-public information, particularly consumer information, including unauthorized access to the predictive models themselves.

3.6 Data and record retention.

3.7 Specifically with respect to predictive models: a narrative description of the model's intended goals and objectives and how the model is developed and validated to ensure that the AI Systems that rely on such models ~~correctly and efficiently predict or~~ are positioned to implement those goals and objectives.

4.0 Third-Party AI Systems and Data

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 the following considerations:

4.1 Due diligence and the methods employed by the Insurer to assess the selection of any 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.

4.2 Where appropriate and available, the inclusion of terms in contracts with third parties that:

- a) Provide audit rights and/or entitle the Insurer to receive audit reports by qualified auditing entities.
- b) Require the third-party to cooperate with the Insurer with regard to regulatory inquiries and investigations related to the Insurer's use of the third-party's product or services.

4.3 The performance of audits and/or other activities to confirm the third-party's compliance with contractual and, where applicable, regulatory requirements.

SECTION 4: REGULATORY OVERSIGHT AND EXAMINATION CONSIDERATIONS

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. All information generated, including that provided to regulators, shall be treated as confidential and proprietary and is not subject to disclosure or subpoena

Insurers should expect those inquiries to include (but not be limited to) the Insurer's governance framework, risk management, and internal controls (including the considerations identified in Section 3). In addition to conducting a review of any of the items listed in this Bulletin, a regulator may also ask questions regarding any specific model, AI System, or its application, including requests for the following types of information and/or documentation:

1. Information and Documentation Relating to AI System Governance, Risk Management and Internal Controls, and Use Protocols

1.1. Information and documentation related to or evidencing the Insurer's AIS Program, including:

- a) The written AIS Program.
- b) Information and documentation relating to or evidencing the adoption of the AIS Program.
- c) The scope of the Insurer's AIS Program, including any AI Systems and technologies not included in or addressed by the AIS Program.
- d) How the AIS Program is tailored to and proportionate with the Insurer's use and reliance on AI Systems, the risk of Adverse Consumer Outcomes, and the Degree of Potential Harm to Consumers.
- e) The policies, procedures, guidance, training materials, and other information relating to the adoption, implementation, maintenance, monitoring, and oversight of the Insurer's AIS Program, including:
 - i. Processes and procedures for the development, adoption, or acquisition of AI Systems, such as:
 - (1) Identification of constraints and controls on automation and design.
 - (2) Data governance and controls related to AI systems, any practices related to data lineage, quality, integrity, ~~bias analysis and minimization~~, and suitability within AI systems, and Data Currency.

- ii. Processes and procedures related to the management and oversight of predictive models, including measurements, standards, or thresholds adopted or used by the Insurer in the development, validation, and oversight of models and AI Systems, including analysis and minimization of potential unfair discrimination.
- iii. Protection of non-public information, particularly consumer information, including unauthorized access to predictive models themselves.

1.2. Information and documentation relating to the Insurer's pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of data or AI Systems developed by a third-party.

1.3. 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:

- a) Documentation relating to or evidencing the formation and ongoing operation of the Insurer's coordinating bodies for the development, use, and oversight of AI Systems.
- b) Documentation related to data practices and accountability procedures, including data lineage, quality, integrity, ~~bias analysis and minimization~~, and suitability, ~~and data currency~~.
- c) Management and oversight of predictive models and AI Systems, including:
 - i. The Insurer's inventories and descriptions of predictive models, and AI Systems used by the Insurer to make or support decisions that can result in Adverse Consumer Outcomes.
 - ii. As to any specific predictive model or AI System that is the subject of investigation or examination:
 - (1) Documentation of compliance with all applicable AI Program policies, protocols, and procedures in the development, use, and oversight of predictive models and AI Systems deployed by the Insurer.
 - (2) Information about data used in the development and oversight of the specific model or AI System, including the data source, provenance, data lineage, quality, integrity, analysis and mitigation of potential unfair discrimination ~~bias analysis and minimization~~, and suitability, ~~and Data Currency~~.
 - (3) Information related to the techniques, measurements, thresholds, and similar controls used by the Insurer.
- d) Documentation related to validation, testing, and auditing, including evaluation of 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~~.

2. Third-Party AI Systems and Data

In addition, if the investigation or examination concerns data, predictive models, or AI Systems collected or developed in whole or in part by third-parties, the Insurer should also expect the Department to request the following additional types of information and documentation. Insurers may satisfy requests for documentation and information by third-party vendors providing the requested documents or information directly to the Department on behalf of the insurer.

- 2.1 Due diligence conducted on third-parties and their data, models, or AI Systems.
- 2.2 Contracts with third-party AI System, model, or data vendors, including terms relating to representations, warranties, data security and privacy, data sourcing, intellectual property rights, confidentiality and disclosures, and/or cooperation with regulators.
- 2.3 Audits and/or confirmation processes performed regarding third-party compliance with contractual and, where applicable, regulatory obligations.
- 2.4 Documentation pertaining to validation, testing, and auditing, including evaluation of model drift.

The Department recognizes that Insurers may demonstrate their compliance with the laws that regulate their conduct in the state in their use of AI Systems through alternative means, including through practices that differ from those described in this bulletin. The goal of the bulletin is not to prescribe specific practices or to prescribe specific documentation requirements. Rather, the goal is to ensure that Insurers in the state are aware of the Department's expectations as to how AI Systems will be governed and managed and of the kinds of information and documents about an Insurer's AI Systems that the department expects an Insurer to produce when requested.

As in all cases, investigations and market conduct actions may be performed using procedures that vary in nature, extent, and timing in accordance with regulatory judgment. Work performed may include inquiry, examination of company documentation, or any of the continuum of market actions described in the NAIC's *Market Regulation Handbook*. These activities may involve the use of contracted specialists with relevant subject matter expertise. Nothing in this bulletin limits the authority of the Department to conduct any regulatory investigation, examination, or enforcement action relative to any act or omission of any Insurer that the Department is authorized to perform.



November 6, 2023

Commissioner Kathleen Birrane
Chair, Innovation, Cybersecurity, and Technology (H) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64105

Re: Revised NAIC Model Bulletin: Use of Algorithms, Predictive Models, and Artificial Intelligence Systems By Insurers

Commissioner Birrane:

The American InsurTech Council (AITC) is an independent advocacy organization dedicated to advancing the public interest through the development of ethical, technology-driven innovation in insurance. We appreciate the opportunity to comment on these most recent revisions to the NAIC Model Bulletin: Use of Algorithms, Predictive Models, and Artificial Intelligence Systems By Insurers (Revised Model Bulletin).

We appreciate the leadership and hard work that you and other members of the Innovation, Cybersecurity, and Technology (H) Committee have committed to this extremely important project. We also appreciate consideration of AITC's comments and recommendations in our previous comment letter, in particular clarification of definitions of several key terms such as "AI," and the expansion of the definition of "AI systems." Those changes reflect our view that regulatory focus should be on "AI" and how it is being utilized in specific use cases. Inclusion of a definition of "Generative AI," is also an important addition.

Likewise, we are also concerned that actuarial methodologies that have been in use for many decades - but would not be considered "AI" as that term is commonly understood - could inadvertently be included in the Model Bulletin. A preferred approach is to avoid future debates over terms while focusing on substantive issues involving AI and how it is being applied in a specific business use case.

We would take this opportunity to once again urge the Committee to consider a few issues not yet addressed in the Revised Model Bulletin.

1. **Include a Confidential Self-Audit of AI Processes.** Insurance carriers that are interested in incorporating AI into one or more business process have a powerful self interest in developing a robust a governance and risk framework tailored to their own unique risks. Inclusion of a confidential self-audit of AI processes and decisions would provide a framework for robust self-examination (including third-party providers) and, where necessary, remedial action.
2. **Third Party AI Vendor Oversight.** We appreciate the Committee’s effort to clarify expectations regarding use of AI systems provided by third party vendors. The “Where appropriate and available” standard contained in Section 4.2 is a helpful addition that should give insurance carriers and third party vendors an opportunity to develop approaches that ensure the transparency that regulators expect while also ensuring legitimate IP concerns. We would also remind the Committee that smaller and medium sized companies have a significantly reduced ability negotiate these terms into contracts with larger companies and those considerations should be taken into account by regulators.
3. **Consider Utilizing a Pilot Project Approach.** We reiterate here our previous recommendation that the NAIC conduct one or more pilot projects to develop a deeper understanding of how AI is utilized in practice, including companies’ risk management practices. This approach was utilized successfully with cybersecurity and would help the NAIC and other companies find best practices and yield new regulatory approaches to regulating this activity.

Thank you again for the opportunity to address our comments.

Respectfully Submitted,



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Co-Founder, American InsurTech Council
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November 6, 2023

Commissioner Kathleen Birrane
Chair
Innovation, Cybersecurity, and Technology (H) Committee
National Association of Insurance Commissioners

Re: Revised Model AI Bulletin Comments

Dear Commissioner Birrane:

The American Property Casualty Insurance Association (APCIA) welcomes the opportunity to comment on the Innovation, Cybersecurity, and Technology (H) Committee’s revised model bulletin on the use of artificial intelligence systems in insurance. APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA continues to support the NAIC’s goal of developing a model bulletin outlining how existing regulatory requirements apply to insurers’ use of artificial intelligence (AI). We strongly support the overall framework and approach of the bulletin to use legislated regulatory standards as the anchor and to address any AI issues exclusively within the context of, and by applying, those standards. We also appreciate that the revised model bulletin addresses several of APCIA’s earlier comments, and we continue to urge that the bulletin not inadvertently be worded so as to be misconstrued as creating new regulatory standards.

However, APCIA has significant concerns about the removal of the language in the original version of the model bulletin acknowledging that current limitations on the availability of reliable demographic data on consumers make it challenging for insurers and regulators to directly test these systems to determine whether the decisions made meet all applicable legal standards. Although these limitations persist, the revised bulletin deletes this language and replaces it with language encouraging testing.

We also continue to have concerns about the prescriptiveness and breadth of the model bulletin. Although the bulletin states that its goal is not to prescribe specific requirements, the guidelines and expectations listed in Section 3 and Section 4 are now more prescriptive in several areas compared to the original version of the bulletin. The proposal would also still require undue effort for insurers to aggregate information they have not been previously asked to produce, assemble new oversight mechanisms for every model including models that have long been used and are already adequately regulated, and produce documentation that would unproductively consume resources of both regulators and insurers.

Notwithstanding the amendments to the bulletin's title, the scope of the bulletin does not appear limited to AI based on the definitions and context of the bulletin. It is important that the bulletin is clear on its intent and truly narrows its applicability to AI as intended. The scope of the bulletin should be further tailored to focus on AI models that have not previously been regulated and that have the greatest impact on consumers if not executed and administered properly and fairly. Consistent with this risk-focused approach, we continue to believe the bulletin should explicitly exclude commercial lines of business.

Given the breadth of the proposal, the bulletin should afford a transition period of at least between six months and one year before insurers must comply with the expectations set forth in the bulletin. We also recommend adding a safe harbor providing that insurers will not be deemed in violation of the bulletin where companies make good-faith efforts to comply. A safe harbor is necessary because the bulletin lacks any indication of what actions would demonstrate compliance on the part of an insurer. A safe harbor, along with further clarity in the bulletin regarding what insurers must do to demonstrate compliance, will help safeguard against unintentional violations of the bulletin's expectations.

We believe the changes recommended in this letter will best serve consumers by ensuring regulatory oversight of new AI applications that most directly impact them. It is also critical that regulators foster and support innovation that enables insurers to use AI to better tailor insurance products to the particular needs of all consumers, meet customer service expectations, assess risk, and assist policyholders and the larger society to identify, reduce, and manage risk of loss.

Definitions

Adverse Consumer Outcome

The proposal defines "Adverse Consumer Outcome" as "a decision by an Insurer that is subject to insurance regulatory standards enforced by the Department that adversely impacts the consumer in a manner that violates those standards." When read together with the definition of "Degree of Potential Harm to Consumers," this term seems to be focused on the cost of the insurance policy, or more specifically, the increased premium cost. We are concerned this ignores the existing statutory framework of ratemaking providing that rates cannot be excessive, *inadequate*, or unfairly discriminatory. A justifiably higher premium for a customer based on actuarial principles must not be considered an Adverse Consumer Outcome under the bulletin. APCA recommends deleting this term from the bulletin or clarifying that it only applies where a consumer experiences an actual loss or harm resulting from an insurer violating existing regulatory standards. We believe this change would ensure the focus of the proposed bulletin is consistent with legislated regulatory standards and the actual impacts to consumers, rather than speculative or potential impacts.

Artificial Intelligence

The updated bulletin changes the definition of "Artificial Intelligence" to "a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement." We are concerned this definition remains overly broad because it can still be interpreted to include every automated process utilized by an insurance company

regardless of whether any statistical or machine learning is involved in its development. For example, this definition can be interpreted to include unsophisticated calculators and spreadsheets. APCIA recommends limiting the definition of “Artificial Intelligence” to applications where statistical or machine learning is involved in its development. This change would create a distinction between newer AI applications and models that insurers have long used and are already adequately regulated. Additionally, the Committee should consider aligning this definition with the definition of AI in the October 30, 2023, Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. Specific examples of systems that are included in, and excluded from, the definition of AI would also help clarify the definition.

Bias

The revised bulletin is clear that it does not intend to establish regulatory standards in addition to the designated model legislation. Yet, the bulletin is inconsistent with that stated objective in that it includes the term “bias” and maintains the previous definition of “bias” as “the differential treatment that results in favored or unfavored treatment of a person, group or attribute.” It is critical for the proposed bulletin to clearly state that the concept of “bias” is being defined and used in the sense of technical not political bias. The term should not be defined or used as though it is replacing the legislated standards of conduct, most importantly “unfair discrimination.” APCIA is concerned the broad definition of “bias” in this proposal could be misinterpreted to supplant anti-discrimination law and create a new legal standard for how insurers conduct their core business.

Big Data

“Big Data” remains a defined term, but it is no longer used in the body of the document. Since this term is no longer included in the proposed bulletin, Big Data should be deleted from the definitions.

Degree of Potential Harm to Consumers

“Degree of Potential Harm to Consumers” is defined as “the severity of adverse economic impact that a consumer might experience as a result of an Adverse Consumer Outcome.” APCIA is concerned that this definition does not have a fairness component. For example, a justifiably higher premium for a customer based on actuarial principles could be construed under this definition as a potential harm to that customer. To address this concern, we recommend clarifying that this term only applies where a consumer experiences an actual loss or harm resulting from an insurer violating existing regulatory standards.

Predictive Model

“Predictive Model” is defined as “the mining of historic data using algorithms and/or machine learning to identify patterns and predict outcomes that can be used to make or support the making of decisions.” This definition is overly broad for the purpose of the bulletin because the definition can be interpreted to include almost any automated process utilized by an insurance company. Additionally, predictive models have long been used by insurers and are already adequately regulated. Since the scope of the proposed bulletin is intended to address the use of AI by insurers, the definition of “Predictive Model” should be limited to only predictive models utilizing AI.

Other Definitional Issues

The terms “transparency” and “explainability” are used throughout the proposed bulletin, but these terms are not defined. For added clarity, APCIA recommends adding the following definitions: “‘Transparency’ refers to appropriate information about the system that is made available to relevant stakeholders.” “‘Explainability’ is the extent to which AI decision-making processes and outcomes are reasonably understood.”

Additionally, the proposed bulletin makes frequent references to insurers’ AI systems that support decisions that “impact consumers.” However, the bulletin does not define what it means to impact consumers. The proposal should clarify that AI systems that “impact consumers” are those AI models that affect the availability, purchase, or processing of insurance transactions for individuals. This term can also be defined by reference to the language in Section 1 referring to “unique risks to consumers, including the potential for inaccuracy, unfair discrimination, data vulnerability, and lack of transparency and explainability.”

We also note that the definitions proposed in this revised bulletin differ from most of the definitions for the same terms provided in the previous draft as well as the Big Data and Artificial Intelligence (H) Working Group’s proposed model and data regulatory questions. The Committee should coordinate with the Big Data Working Group to ensure the definitions in the finalized AI model bulletin align with those in the finalized model and data regulatory questions.

Further, we respectfully urge changing the phrase “data currency” to “data recency” throughout the document. We believe this amendment will avoid confusion and continue to accurately represent the drafters’ intent to capture the temporal nature of the data. Also, we note the term “data currency” is capitalized in paragraphs 1.1(e)(i)(2) and 1.3(c)(ii)(2) of Section 4, but the term is currently not a defined term in the definitions section. If the term is capitalized because it is intended to be defined, “data recency” should be added to the definitions section.

Finally, we appreciate that most defined terms are capitalized throughout the bulletin. These capitalizations are helpful to readers who may not otherwise realize that a particular term is defined for purposes of the bulletin. For that reason, we recommend capitalizing all defined terms throughout the revised bulletin.

Regulatory Guidance and Expectations

APCIA has strong concerns about the changes to the introductory guidance in Section 3 regarding testing. The original version of the proposed model bulletin, released in July, correctly recognized that current limitations on the availability of reliable demographic data on consumers make it challenging for insurers and regulators to directly test these systems to determine whether the decisions made meet all applicable legal standards. Although these limitations on demographic data persist, the revised bulletin deletes the language describing the limitations and replaces it with language encouraging testing for bias and unfair discrimination. The revised bulletin, released three months after the original version, does not explain the drastic change. APCIA believes the original testing language most accurately reflects reality and therefore should be added back to the bulletin. Likewise, the language encouraging insurers to test for bias and unfair discrimination should be deleted.

We are also concerned about the use of the terms “arbitrary” and “capricious” in the proposal. The terms “arbitrary” and “capricious” are generally only used in the context of administrative law in most states as the standard for challenging actions by government, not private, entities. Since most states do not use these terms in their rating, unfair trade practices, or similar insurance statutes, “arbitrary” and “capricious” should be omitted from the proposed model bulletin. Even with this recommended change, if a state uses these terms in its insurance laws, that state would still be free to add “arbitrary” and “capricious” when implementing the bulletin.

AIS Program General Guidelines

APCIA appreciates the deletion of the language formerly in paragraph 1.3 that said an insurer’s AIS Program should be adopted by the board of directors or an appropriate committee of the board. We agree with deleting this paragraph because it is not necessary or appropriate to mandate board adoption of insurers’ AIS Programs; senior management should be responsible for designing and implementing an AIS Program. The language in the current version of paragraph 1.3 vests responsibility for the development, implementation, monitoring, and oversight of an AIS Program with senior management accountable to the board or an appropriate committee of the board. Paragraph 1.3 can be further improved by replacing the reference to the board with language stating the board or a risk management committee reporting to the board should be informed of management’s compliance with the governance requirements set forth in the AIS Program. This change would make clear that responsibility for an AIS Program rests with senior management.

Paragraph 1.6 provides that an AIS Program should address the use of AI systems across the insurance life cycle. Although products themselves are appropriately subject to regulation, the language in paragraph 1.6 would go further by regulating development efforts. Regulating development efforts would be broad and impractical, so this paragraph should be amended to focus on outcomes over the exact methods used to achieve them.

APCIA is also concerned with the new paragraph 1.9, which provides that an insurer’s AIS Program should include processes and procedures for providing notice to impacted consumers that AI is in use and provide access to appropriate levels of information based on the phase of the insurance life cycle in which the AI is used. We have significant concerns with the language requiring access to insurers’ AI systems. Most of the AI being used is highly proprietary in nature and should not be shared with the public. Therefore, this paragraph should be amended to make clear that insurers will not be required to provide the public access to their proprietary AI systems. Moreover, APCIA is concerned that the notice requirements in paragraph 1.9 are overbroad and vague. It is unclear whether every decision resulting from an AI system must be disclosed to consumers. The notice requirements should apply only to customer-facing AI applications, and the bulletin should provide further details or examples regarding how insurers can comply with the disclosures in paragraph 1.9.

Governance

APCIA appreciates the addition to the introductory paragraph of the Governance section recognizing that proprietary and trade secret information must be protected. We urge the Committee to maintain this language within the final version of the bulletin.

We also appreciate that some of the prior requirements around internal operations, roles and responsibilities, and qualifications of people serving in key roles were removed from the revised version of the bulletin. However, a number of similarly prescriptive requirements were maintained in paragraph 2.3 of the revised proposal. This section should allow companies more flexibility to develop and implement their own proportionate and risk-focused governance framework.

Further, we are concerned with the requirement in paragraph 2.4 for companies to provide a “description of methods used to detect and address errors, performance issues, outliers, or unfair discrimination.” This paragraph should prescribe only that insurers mitigate unfair discrimination because the methods used by insurers to detect errors and address performance issues unrelated to unfair discrimination are immaterial.

Risk Management and Internal Controls

Paragraph 3.2 requires AIS Programs to address data practices and accountability procedures including data currency, lineage, quality, integrity, bias analysis and minimization, and suitability. Paragraph 3.3 requires AIS Programs to address the management and oversight of predictive models (including algorithms used therein), including inventories and descriptions of predictive models and detailed documentation of their development and use.

These documentation requirements are unnecessarily broad and burdensome. Preparing the documentation described in this section for each and every model or algorithm used by an insurer – regardless of whether AI is involved – would be a substantial project for any company. It is also unclear why a department would want much of this information, what regulators would do with the information, and whether regulators have the resources and expertise to properly digest any information they may receive. To address these concerns, we believe the documentation requirements in this section should be limited to algorithms and predictive models that use AI in insurance processes that affect the availability, purchase, or processing of insurance transactions for individuals.

Third-Party AI Systems and Data

We are concerned with the language in paragraph 4.1 providing that insurers should have AIS Programs that can “ensure” unrelated third-party vendors will meet the legal standards imposed on the insurer itself. It is exceedingly unlikely that third-party vendors would be willing grant insurers the access to the vendors’ proprietary AI models and internal governance procedures that would be necessary for an insurance company to be able to “ensure” the vendor is meeting the legal standards imposed on the insurer itself. Given this reality, the bulletin should provide a safe harbor to insurers that have their vendors attest that the vendor will comply with a generally accepted AI risk management program, such as the NIST AI Risk Management Framework.

Further, APCA appreciates the addition of the phrase “where appropriate and available” in paragraph 4.2. However, we are concerned with the expectations in this paragraph and paragraph 4.3 that contracts provide insurers the right to audit a vendor and that insurers conduct such audits to confirm third parties’ compliance with regulatory requirements. Given third-party vendors’ concerns over protecting their proprietary information, vendors would likely be

resistant to these provisions, and insurers may be unable to negotiate the inclusion of such provisions depending on the circumstances. Since vendors are likely to be resistant to audits – and even if permitted, vendors may put limitations on the scope – insurers should have the flexibility to determine the scope of the audit and when an audit of a third-party vendor is necessary, and that determination should be risk based.

Regulatory Oversight and Examination Considerations

The regulatory oversight and examination considerations section would require insurers to maintain and produce voluminous amounts of documentation related to their use of AI. These documentation requirements are overly prescriptive and far beyond what is typically sought by regulators. We are also concerned with the new language in the introductory text stating that “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.” The scope of these documentation requirements should be tailored to focus on impacts on the availability, purchase, or processing of insurance transactions for individuals and regulatory concerns around the potential for inaccuracy, unfair discrimination, data vulnerability, and lack of transparency and explainability.

In addition, much of the documentation that insurers would be expected to provide under this section could be highly proprietary. Regulators should ensure that insurers’ proprietary information disclosed pursuant to this bulletin remains confidential under state law. Therefore, the bulletin should explicitly state that it will require insurers to turn over information that is proprietary and contains trade secrets subject to confidentiality protections under state law. These amendments should also state that regulators will ensure that companies will only be asked to turn over confidential information if the confidentiality of the answers and related documentation will remain subject to the highest level of confidentiality protections afforded under state law.

Finally, paragraph 1.2 sets the expectation for insurers to provide documentation regarding the pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of AI systems developed by a third party. Given the concerns with the availability of audits of unrelated third parties identified above, we recommend deleting the term “audit” from this paragraph and replacing the term with “due diligence.”

Conclusion

In conclusion, we ask for your consideration of these comments to help produce a bulletin that is appropriately limited in scope, reflects the realistic status and constraints with testing, helps address regulatory concerns about third-party vendors without closing off access to their expertise and innovation, adheres in all ways to legislated standards, and results in the most cost-effective bulletin for regulators, insurers, and the consumers we serve. This is critical if we are to appropriately regulate insurers’ use of AI but also to enable insurers to better tailor products for all consumers, meet consumer service expectations, assess risk, and assist policyholders and the larger society to identify, reduce, and manage the risk of loss.

Thank you for considering the points addressed in this letter, and please do not hesitate to contact us if you have any questions. We look forward to working with you and other regulators to finalize a bulletin that efficiently and effectively achieves the goals set forth in the draft.

Sincerely,

Matthew Vece
Director, Financial & Tax Counsel

Dave Snyder
Vice President, International & Counsel



November 6, 2023

Kathleen Birrane, Chair
Innovation, Cybersecurity, and Technology (H) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

By Email to Miguel Romero at MARomero@NAIC.org

Re: AHIP Comments – Second Draft, Model Bulletin on the Use of Artificial Intelligence Systems by Insurers

Dear Commissioner Birrane:

On behalf of the members of AHIP, we appreciate the opportunity to provide comments on the October 13, 2023, Second Draft of the Model Bulletin on the Use of Artificial Intelligence Systems by Insurers (“Bulletin”). AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone by leveraging, among other things, technological solutions such as AI.

At the outset, we appreciate the hard work and diligence reflected by this Bulletin. This version has several generally positive changes:

- It is more concise.
- It is more aligned with the NIST AI Risk Management Framework.
- It provides more flexibility in regard to third-party contracting.
- It reduces references to prescriptive protocols.

However, we have some remaining concerns which we believe can be easily remedied.

In **Section 2: Definitions**, the footnote in the first line seems to condone the possibility that individual states may have adopted a variety of different definitions for the same terms. Although that may be the case, it is important that the Bulletin promote consistency where possible, and perhaps note that the Bulletin itself has used established resources in an effort to avoid confusion for states, developers, enforcement entities, and end users who may refer to the

Bulletin. AHIP members noted with approval, for example, that the definition of “AI systems” reflected alignment with the NIST Artificial Intelligence Risk Management Framework.

Also in the **Definitions**, we would suggest deletion of the “Bias” definition, or in the alternative, replacing it with another term more meaningful in the insurance world, such as “unfair discrimination.” It could also be deleted and replaced with a reference to Adverse Consumer Outcome or Consumer Harm.

In **Section 3: Regulatory Guidance and Expectations**, in **AIS Program Guidelines, 1.0 General Guidelines**, Subsection 1.5 allows for reliance on an authoritative third-party standard organization, such as the NIST Artificial Intelligence Risk Management Framework, Version 1.0. Although a relatively small point, we would suggest that the sentence be supplemented with the words, “...and succeeding updates” or similar language. This will make it clear that not only are licensees and others encouraged to refer to established accepted authorities, but also updated versions that may be subsequently established or approved.

Also in **Section 3**, in **AIS Program Guidelines, 1.0 General Guidelines**, Subsection 1.9 should be deleted. The addition to this Second Draft of references to Adverse Consumer Outcome and Consumer Harm, as well as existing requirements regarding data privacy, consumer consent, and consumer rights should provide sufficient consumer protection without Subsection 1.9.

In **Section 3**, in **2.0 Governance**, there is a list of a variety of items which insurers should consider addressing, including those concerning the insurer’s internal AI System governance accountability structure. Subsection 2.3(c) includes the “independence of decision-makers”. This clause should be deleted as it is potentially confusing as to the concerns it purports to address and overly subject to conflicting interpretations. Its deletion would leave this subsection (c) with a more understandable “lines of defense at successive various stages of the AI System life cycle”, a more familiar phrase used in AI steps.

Additionally in **Section 3**, Subsection **4.0 Third-Party AI Systems and Data**, the changes made to 4.2(b) are an improvement. We would suggest the language in **Section 4: Regulatory Oversight and Examination Considerations**, Subsection 2, **Third-Party AI System and Data 2.2** be modified to align with the updated language in 4.2(b).

Thank you for the opportunity to provide these comments, and we look forward to further discussing these matters with you.

Sincerely,

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November 6, 2023

Commissioner Kathleen A. Birrane, Chair
Commissioner Michael Conway, Co-Vice Chair
Commissioner Doug Ommen, Co-Vice Chair
Innovation, Cybersecurity, and Technology (H) Committee
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, DC, 20001

Submitted electronically via Miguel Romero (maromero@naic.org)

Re: Second Exposure Draft of NAIC Model Bulletin: Use of Artificial Intelligence Systems (AIS) by Insurers

Dear Commissioners Birrane, Conway, and Ommen:

The Blue Cross Blue Shield Association (BCBSA) is pleased to have the opportunity to share our comments on the National Association of Insurance Commissioners (NAIC)'s revised second exposure draft, "NAIC Model Bulletin: Artificial Intelligence Systems by Insurers" (the "AIS Model Bulletin").

BCBSA is a national federation of 33 independent, community-based and locally operated BCBS companies (Plans) that collectively cover, serve, and support 1 in 3 Americans in every ZIP code across all 50 states and Puerto Rico. Our Plans contract with 96% of hospitals and 95% of doctors across the country and serve those who are covered through Medicare, Medicaid, an employer, or purchase coverage on their own.

BCBSA believes that everyone should have access to high-quality health care. BCBSA and Blue Plans' commitment to the health of our communities includes continuing to improve the way we gain insight from diverse health factors and how we use technologies. BCBS Plans are actively leveraging technology, where appropriate, to provide innovative solutions and services to their members.

To facilitate the appropriate use of innovative technology in health care, it is important to continue to evolve regulatory expectations and standards for artificial intelligence systems (AI Systems or AIS) governance, risk management controls, internal audit functions and third-party AI Systems, while mitigating risks such as adverse bias and inaccuracies. Any regulatory structure should be flexible and enable industry to appropriately measure and balance the varying levels of risks presented by different AIS and the data those Systems rely upon. It must also simultaneously support the opportunities to innovate that AI Systems provide.

We commend and appreciate the Committee's collaborative and thoughtful consideration of all the feedback from interested parties included in this revised exposure draft of the Model Bulletin. With this in mind, we offer the following comments.

Adoption of a risk-based approach is foundational to a responsible AI. We applaud the Committee's acknowledgement of the importance of a risk-based approach and we support the changes reflected in the second exposure draft to take a more flexible and risk-based approach to balance the varying levels of risks presented by different use cases and different AI Systems.

As we previously stated in our comments to the first exposure draft, the foundation of responsible and trustworthy AI is in the appropriate identification, measurement and mitigation of risks through governance, protocols and internal controls tailored to a particular AIS and use case. There is no one-size-fits-all approach to measuring, managing and mitigating potential risks of AI. A workable framework is one that has the necessary level of flexibility that allows companies to appropriately balance innovation with a way to measure risk and tailor risk mitigation to different AI Systems and use cases, including risks associated with unfair bias and unintended outcomes.

Consistency across AI definitions and terminologies is critical. We appreciate the Committee's further clarification around the definitions of the various AIS terminologies and its effort to align with those developed at the federal level by the National Institute of Standards and Technology (NIST) in their AI Risk Management Framework (NIST AI RMF).

As we previously commented, to the extent regulators take a regulation-based approach in deploying AI accountability measures, we urge NAIC to encourage state insurance departments to collaborate with their federal regulatory agency partners to work towards a regulatory structure that includes consistent definitions and terms. In fact, to the extent state and federal agencies adopt regulation-based approaches, they should do so only after developing a deep understanding of the technology, existing risk identification and mitigation approaches, impacts (costs and benefits) to consumers, health care providers, and the insurance industry as well as existing regulatory obligations.

Policymakers' engagement with stakeholders is essential to developing industry standards around AIS testing and validation protocols. We appreciate the Committee's acknowledgement and approach that avoids prescriptive measures around AIS testing and validation protocols and methodologies. Prescribing testing and validation protocols at this time

would create added confusion given that no industry standards exist to appropriately test or accurately measure AIS protocols and outputs. We urge policy makers and the NAIC to engage with interested parties and subject matter experts to facilitate a discussion on the development of industry standards around testing and validation protocols.

We appreciate your consideration of our comments and believe that our recommendations discussed above will help with the development and use of trustworthy AI through sensible public policies. If you have additional questions or comments, please contact Randi Chapman, Managing Director, State Affairs at randi.chapman@bcbsa.com.

Sincerely,

A handwritten signature in cursive script that reads "Clay S. McClure".

Clay S. McClure



November 6, 2023

Commissioner Kathleen Birrane, Chair
Commissioner Mike Conway, Co-Vice Chair
Commissioner Doug Ommen, Co-Vice Chair
Innovation, Cybersecurity and Technology (H) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Dear Commissioner Birrane:

The Insurtech Coalition (“Coalition”) appreciates the opportunity to supply the Innovation, Cybersecurity and Technology Committee with comments on the second Draft AI Bulletin titled “Use Of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers..” As the Committee is likely aware, the Coalition is composed of diverse and technology-forward companies committed to the responsible use of technology in insurance and stands ready to assist regulators taking on the difficult task of building frameworks to regulate new and emerging technologies.

The Coalition appreciates the significant effort that this Committee and the NAIC are making to develop regulatory frameworks suitable for models or systems using artificial intelligence (AI), machine learning and predictive analytics and particularly the efforts the Committee has previously made to improve the definitions. The Coalition appreciates the wide spectrum of comments the Committee has received and will likely continue to receive and hopes our feedback will be of use to the Committee. Artificial Intelligence will allow consumers easier access to and better understanding of insurance and allow smaller carriers to increase efficiency, lower costs, and better compete with larger carriers in the market space. The potential for increased competition and better, faster service will inure to the benefit of all consumers.

The Coalition’s concerns are highlighted by some of the new language in the draft bulletin. Specifically in Section 3, the Committee asserts that “AI has the potential to increase the risk of inaccurate, arbitrary, capricious, or unfairly discriminatory outcomes for consumers.” We respectfully challenge this statement. It is unclear exactly the ways in which AI has the potential to do any harm to consumers, much less create **arbitrary** or **capricious** outcomes. To the contrary, AI has the potential to create outcomes which are far more directly related to individual risk than we have seen in the history of insurance.

We respectfully submit that the Committee **nearly** hit the nail on the head when it wrote that “the **decisions** made as a result of an Insurer’s use of AI Systems are subject to the Department’s examination to determine whether the reliance on AI Systems are compliant with all applicable existing legal standards governing the conduct of the Insurer.”¹ Our collective interest is in ensuring that **decisions** meet legal standards, not that all steps in the process of making a decision be subjected to unnecessary standards and examinations.

We sincerely hope that the Committee’s final product will demonstrate its understanding that AI is a tool, a powerful tool, but a tool to implement already regulated practices.

Definitions

Adverse Consumer Outcome. We are extremely concerned by this definition for a number of reasons. The definition makes no reference to the already well-established definitions of “Adverse Action” or “Adverse Underwriting Decision,” and appears to introduce a new concept of regulatory authority - “regulatory standards enforced by the Department” - unique to the use of Artificial Intelligence. We are puzzled by the use of the phrase “regulatory standards” rather than simply referring to existing laws or regulations. Moreover, standards that are “enforced by the Department” creates a high degree of uncertainty as to precisely to which standards you refer.

We are quite concerned how **any** insurer or producer could create a governance structure which is disconnected from the established definitions. In particular, the proposed formulation seems to reject almost 50 years of precedent under the Fair Credit Reporting Act, 15 U.S.C.A. Secs 1681a(k)(1)(B)(i) & 1681m(a). Moreover, this definition creates additional confusion insofar as it would seem to apply to **any** decision of an insurer or producer and is not limited to specific categories of conduct already identified in existing law. Without grounding in established law or categories of activities, Without some connection to established law, what does it mean to say that an action is “adverse” and violative of a “regulatory standard”? Is an action “adverse” when it is the result of the AI System applying its filed underwriting guidelines? And, how would insurers and producers determine whether other decisions are adverse - would providing a particular customer with **more** advertising be an “adverse impact”?

Finally, and perhaps most importantly, this definition and others, and their use would appear to move the entire industry far away from its mooring in risk-based pricing. We sincerely hope that that is not the intent of the proposed Model.

AI Systems and Big Data. AI Systems is largely defined the same as Artificial Intelligence. The committee suggests that AI systems be collapsed into the definition of AI. Big Data is separately

¹ We suggest that the sentence read: “the decisions made as a result of an Insurer’s use of AI Systems are subject to the Department’s examination to determine whether the decisions ~~reliance on AI Systems~~ are compliant with all applicable existing legal standards governing the conduct of the Insurer.

defined in the bulletin and not specifically used. We recommend removing this definition especially since it is not a term specific to necessarily related to AI.

Bias. The proposal defines “bias” as “the differential treatment that results in favored or unfavored treatment of a person, group or attribute.” Laws and regulations governing insurance correctly do not reference “bias” in this way. The insertion of this term into the bulletin is not only contrary to the bulletin’s stated objective, but also counter to established insurance standards. Insurers must match risk to rate just as we must match assets to liabilities. It is critical that each reference to “bias” is removed. The bulletin rightfully references various laws that do govern insurers’ use of Artificial Intelligence, including state Unfair Claims Settlement Practices Model Act provisions and requirements that insurance rates are not “unfairly discriminatory.” The Coalition strongly recommends using the definition of unfairly discriminatory already included in the Unfair Claims Practices Model Act.

Degree of Potential Harm to Consumers - This definition strikes us as creating an insurmountable challenge to understand or implement. We find ourselves unable to offer constructive criticism because we have far too many questions at this point. For instance: How could one judge “severity”? What is the baseline? Is an “adverse economic impact” judged on a per consumer basis? Is an adverse economic impact severe if it has a high dollar value associated with it or is it a percentage of the total risk insured? Is the severity of economic impact related or unrelated to the degree of associated risk? Because this definition is tied to “adverse consumer outcome,” are Departments viewing severity through the lens of enacted laws and regulations or on the basis of undefined “regulatory standards”? Simply put, we suggest that this definition further creates a situation in which insurance regulation is unmoored from the existing law and regulations simply because of the introduction of systems which utilize AI or ML.

Predictive Models - The current Bulletin defines predictive models as the “mining of historic data using algorithms and/or machine learning to identify patterns and predict outcomes that can be used to make or support the making of decisions.” As the Committee is well aware, predictive models in insurance are not new and frequently do not require the use of any machine learning. The Coalition believes by implying predictive modeling is unique to AI only serves to further confuse the bulletin’s intent.

Sections 3 and 4

We continue to believe that concerns about AI Systems should be addressed by a risk management framework rather than a governance framework. Oversight of AI Systems does not need to deviate from the risk management controls that insurance carriers currently place around underwriting, claims, special investigation units, or core financial controls. We agree that there ought to be reasonable and logical methods by which insurers go about designing and developing models, but we disagree with the way in which the draft Bulletin specifies those

methods and focuses on the documentation. We think that we are all better served by focusing on the key concern of protecting consumers, not whether the development process meets a list of specific criteria and every step is specifically documented. We think a better approach would be to focus on the inputs and outputs versus confining the development process.

Confidentiality

Based on the draft Bulletin, we anticipate that in the future there will be demands for specific confidential and proprietary data. Our companies will provide necessary data but are concerned about the protection of that data. We believe that current statutes provide reasonable legal protection for data under the examination authority of the Departments of insurance, but we are concerned about the inadvertent disclosure or activity by threat actors. We suggest that the Bulletin express that the regulators should facilitate information disclosures in as secure a process as possible and specify that disclosure methods that do **not** result in an actual transfer of data be the preferred method of disclosure.

The advancements in technology are an evolution and progression of insurance that will benefit consumers with fairer and better products. The InsurTech Coalition appreciates your attention to these proposed changes and welcomes further conversations. If you have questions regarding our comments, please feel free to contact Jennifer Crutchfield at jcrutchfield@clearcover.com.

Signed,

InsurTech Coalition

November 6, 2023

Miguel Romero
Property and Casualty Regulatory Services
NAIC Central Office
1100 Walnut Street, Suite 1500
Kansas City, MO. 64106

Attn: Mr. Miguel Romero, Director, P&C Regulatory Services

Sent via email: maromero@naic.org

Re: Comments on NAIC MODEL BULLETIN: USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS

Dear Mr. Romero:

We are writing on behalf of LexisNexis Risk Solutions Inc. (“LexisNexis”), a leader in providing essential information to help customers across industries and government assess, predict, and manage risk. LexisNexis appreciates the opportunity to provide feedback on the draft NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers (“Model Bulletin”).

LexisNexis is greatly appreciative of the continued comprehensive and inclusive stakeholder process the NAIC has undergone as it seeks to identify the best approach for the Model Bulletin. The NAIC Innovation Cybersecurity and Technology (H) Committee (“NAIC”) continues to show its willingness to identify an AI framework that is both operationally feasible for carriers and provides necessary protections for consumers. The comments below are intended to assist the NAIC in refining the most recent proposed draft provisions of the Model Bulletin.

Confidentiality

While the Model Bulletin addresses proprietary information under Section 2.0 Governance when it states “*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*” the Bulletin does not include a section regarding confidentiality that would clearly apply to all documents that may be provided under the Bulletin as a whole, which is a necessary protection for insurers or third parties who may provide confidential or proprietary information. LexisNexis recommends inclusion of the following language found in NAIC Model Law 693, Market Conduct Surveillance Model Law, which is referred to in this Bulletin as one of the Model Laws to be utilized as legislative authority to permit insurers and third parties to be transparent while also protecting information that may be deemed confidential and proprietary.

“All documents, including but not limited to working papers, third party models or products, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of any market conduct actions, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by

law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.”

Definitions

Under the proposed redlines, the term Big Data no longer appears in the proposed Bulletin, and it does not aid in the understanding of the Bulletin, nor the content described therein. Therefore, the definition should be struck in its entirety.

The definitions for Adverse Consumer Outcome and Degree of Potential Harm to Consumers are new additions to the Bulletin that appear to be intended to operate as the benchmarks for insurers to determine the scope of controls and procedures necessary for their individual AIS Program. However, the proposed definitions do not provide clear guidelines for insurers to utilize. Adverse Consumer Outcome is defined as *“a decision by an Insurer that is subject to insurance regulatory standards enforced by the Department that adversely impacts the consumer in a manner that violates those standards,”* but does not identify the standards that would make this definition actionable. Degree of Potential Harm to Consumers refers to *“the severity of adverse economic impact that a consumer might experience as a result of an Adverse Consumer Outcome,”* but does not provide clarity on how insurers should determine an actionable level of severity.

LexisNexis recommends striking the definitions of Big Data, Adverse Consumer Outcome, and Degree of Potential Harm to Consumers and instead aligning the Bulletin with the definition of Unfair Discrimination as defined in the NAIC’s “Unfair Trade Practices Act.” This change would allow the Bulletin to be more actionable for insurers and align with current industry standards.

Two definitions requiring clarity from the Bulletin include Artificial Intelligence (“AI”) and Model Drift. Traditional statistical models have historically not been evaluated as AI and this Bulletin’s definition appears to cover this category. The industry would need clarification regarding this categorization. Regarding Model Drift, the Bulletin’s definition discusses model decay, but attributes can drift without meaningfully impacting a model in a negative way. Defining Model Drift separately from Model Decay would provide clarity on this distinction.

Prescriptive Requirements

The Bulletin states that its intent is to not “prescribe specific practices or to prescribe specific documentation requirements”, however Section 4.2 under Third Party AI Systems and Data provides suggested requirements that are overly prescriptive regarding the contracts between insurers and third parties, which should be determined by the parties based on the nature of their engagement. Despite being suggested requirements, inclusion of these terms indicates support for states to require all of the documentation listed, thereby in effect requiring insurers to renegotiate all contracts to include these terms versus having to justify not including the terms listed. LexisNexis recommends striking these sections from the Bulletin to be in line with the Bulletin’s stated intent.

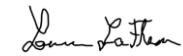
Scope of an Explanatory Bulletin

Subsection 2.2 under Section 4 Third Party AI Systems allows for the request of third-party contracts. However, the NAIC Corporate Governance Model Act and Regulation, which is cited as authority for this Bulletin, requires insurers provide a report that “shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical areas impacting the insurer’s business activities...” but does not include requirements related to management of third party vendors or contract requirements for this Bulletin to provide clarity on. Further, third party contracts are currently not permitted to be provided under market conduct exams due to their confidential and proprietary nature and no state law requires the provision of such documentation. The inclusion of this requirement would be outside the scope of an explanatory Bulletin and therefore LexisNexis recommends this requirement be stricken.

Thank you for your consideration of these comments. To the extent they have not already, we fully anticipate that other industry participants will provide more detailed feedback and observations.

LexisNexis looks forward to future opportunities to comment on revised drafts of the Model Bulletin. Should you have any questions, please do not hesitate to contact us at Lauren.LaFleur@lexisnexisrisk.com or Jon.Burton@relx.com.

Sincerely,



Lauren LaFleur
Corporate Counsel
LexisNexis Risk Solutions Inc.



Jon Burton
Managing Director, State Government Relations
RELX, Inc.



mahp
Michigan Association
of Health Plans

PRESIDENT

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McLaren Health Plan

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EXECUTIVE DIRECTOR

Dominick Pallone
Michigan Association of Health Plans

November 6, 2023

Kathleen Birrane, Chair
Innovation, Cybersecurity, and Technology (H) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Dear Chair Birrane:

On behalf of our eleven health plan members, the Michigan Association of Health Plans (MAHP) would like to thank you for soliciting comments on the National Association of Insurance Commissioners' (NAIC) second draft model Bulletin on the use of Artificial Intelligence (AI).

Members of MAHP have been closely monitoring and actively discussing this model Bulletin on AI for several months. We have brought in national experts who work closely with NAIC to explain the challenges and opportunities this Bulletin may have on our health plans operating in Michigan. We have also compared notes and asked questions of state regulators who are very active within NAIC's leadership.

As such, we would like to compliment the progress made in the second draft model. The second draft has many changes, including tighter definitions, reasonable expectations from insurers, and better guidance regarding transparency and disclosures to assist our membership. We applaud the deliberative approach and openness to stakeholders in this continuing process to set forth a model Bulletin.

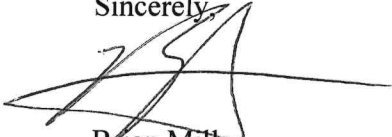
After reviewing the second draft, we want to share some additional commentary for your consideration.

- **Section 1.9:** Since the draft second Bulletin mentions the adverse consumer-based outcomes of AI multiple times, we believe section 1.9 is purely redundant and could be stricken.
- **Section 2:** If it's deemed necessary to include the footnote to Section 2 noting that other states may have alternative definitions, perhaps it could be stressed during the introduction paragraph to the definition section that states are encouraged to use the

following definitions in Section 2. We would also suggest changing the definition of a subjective term like “bias” to a term more commonly used in the industry, such as “unfair discrimination.”

Thank you for the opportunity to provide these comments, and we look forward to further discussing these matters with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Mills', with a long horizontal stroke extending to the left.

Brian Mills
Deputy Director for Commercial Markets & Communications
Michigan Association of Health Plans

cc: Miguel Romero, Director, P&C Regulatory Services
Anita Fox, Director, Michigan Department of Insurance and Financial Services



NATIONAL ALLIANCE OF LIFE COMPANIES *An Association of Life and Health Insurance Companies*

November 6, 2023

Commissioner Kathleen Birrane
Chair, Innovation, Cybersecurity, and Technology (H) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64105

Re: Revised NAIC Model Bulletin: Use of Algorithms, Predictive Models, and Artificial Intelligence Systems
By Insurers

Dear Commissioner Birrane:

I am the Executive Director of the National Alliance of Life Companies (the NALC), a trade group of more than fifty life insurance companies and associates that represents the interests of small and mid-sized insurers and their policyholders. We provided written comments and testified at the NAIC Summer 2023 National Meeting in Seattle, and appreciate the opportunity to follow up on the Revised NAIC Model Bulletin regarding the use of Artificial Intelligence Systems by Insurers.

We appreciate the leadership and hard work that you and other members of the Innovation, Cybersecurity, and Technology (H) Committee have committed to this extremely important project. We also appreciate consideration of the NALC's comments and recommendations in our previous comment letter, in particular clarification of definitions of several key terms such as "AI," and the expansion of the definition of "AI systems." Those changes reflect our view that regulatory focus should be on "AI" and how it is being utilized in specific use cases. Inclusion of a definition of "Generative AI," is also an important addition.

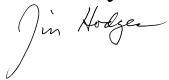
We would take this opportunity to once again urge the Committee to consider a few issues not yet addressed in the Revised Model Bulletin.

1. Include a Confidential Self-Audit of AI Processes. Insurance carriers that are interested in incorporating AI into one or more business processes have a powerful self interest in developing a robust governance and risk framework tailored to their own unique risks. Inclusion of a confidential self-audit of AI processes and decisions would provide a framework for robust self-examination (including third-party providers) and, where necessary, remedial action.

2. Third-Party AI Vendor Oversight. We appreciate the Committee’s effort to clarify expectations regarding use of AI systems provided by third-party vendors. The “Where appropriate and available” standard contained in Section 4.2 is a helpful addition that should give insurance carriers and third-party vendors an opportunity to develop approaches that ensure the transparency that regulators expect while also ensuring legitimate IP concerns. We would also remind the Committee that smaller insurers have a significantly reduced ability to negotiate these terms into contracts than larger insurers, and these considerations should be taken into account by regulators.
3. Cooperation With Other Policymakers. In our previous comment letter, we urged coordination with other state and federal regulators who are wrestling with these same issues. Just last week we noted a statement from the NAIC indicating its intention to work closely with federal officials with regard to the recently announced Presidential Executive Order concerning AI. We strongly endorse the NAIC’s efforts in this regard, and urge that regulatory standards concerning insurance carrier use of AI be preserved to the states consistent with existing federal law.
4. Pilot Program. Finally, we would reiterate our previous recommendation for pilot initiatives around new regulatory approaches to test effectiveness and fairness.

Thank you again for the opportunity to address our comments.

Sincerely,



Jim Hodges
Executive Director
NALC

November 6, 2023

The Hon. Kathleen A. Birrane (MD), Chair
NAIC Innovation, Cybersecurity, and Technology (H) Committee
c/o Miguel Romero, NAIC Director, P&C Regulatory Services
Via email maromero@naic.org

Re: NAMIC Comments on the Second Exposure Draft Model Bulletin on Use of Artificial Intelligence Systems by Insurers

Dear Chair Birrane, Vice-Chairs, and Members of the Committee:

On behalf of the National Association of Mutual Insurance Companies (NAMIC)¹, we would like to thank the NAIC Innovation, Cybersecurity, and Technology (H) Committee for requesting and accepting comments on the *Second Draft of the Model Bulletin on the Use of Artificial Intelligence Systems by Insurers*.

NAMIC continues to appreciate and acknowledge your efforts to draft a framework that can accomplish the Committee's intended goals while finding common ground with industry and all stakeholders where possible. The second draft of the Bulletin reflects the Committee's time, attention, and consideration of comments from the first iteration of the draft Bulletin. We believe some of the updates have made the draft better, but opportunities remain to further improve your effort to strike the delicate balance between consumer protection and fostering innovation to benefit all stakeholders. Pursuant to that goal, NAMIC provides below general inquiries, as well as substantive and technical comments on the recent exposure draft.

SUBSTANTIVE COMMENTS

Scope of Applicability

An important clarification and distinction for insurers and their operations is whether the Bulletin is intended to apply in the commercial insurance context or only in the personal lines context. In the second iteration of the Draft, "consumer" remains undefined, and begs the question whether commercial insureds are "consumers" or whether only personal lines insureds

¹ The National Association of Mutual Insurance Companies consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.



are “consumers.” NAMIC supports consumer protection, and respectfully recommends the Committee consider and clarify the ambiguity in scope, which may unintentionally include commercial lines.

Additionally, “Predictive Models” remains a defined and used term in the Draft’s second iteration. As stated in NAMIC’s comments to the Draft’s first iteration, we continue to believe there are already existing guardrails in the area of predictive models, and the inclusion of predictive models in the Bulletin will unnecessarily broaden the scope. NAMIC asks the Committee whether the inclusion of Predictive Models was unintended over-inclusiveness in this Draft.

The Concepts of Bias and Outcomes Testing are Not Grounded in Governing Laws Referenced in the Bulletin

NAMIC continues to believe that proposals in the Bulletin or other directives from state insurance departments should factor in and mirror existing state law and its accompanying regulations, not advance novel concepts or interpretations that expand such laws. The recent iteration of the Draft properly emphasizes insurers’ responsibility to avoid unfair discrimination, but it still intermingles use of the term “bias” in a manner which we believe cannot be implemented by insurers consistent with the controlling legal framework pertaining to fair and unfair discrimination in risk classification. The Draft also no longer recognizes the limitations of reliable demographic data for purposes of outcomes testing, and instead expressly encourages outcomes testing for bias on AI Systems and Predictive Models. **We thus respectfully submit the basis for our concerns below and ask that the term “bias” (and all references to “bias” throughout the Draft), as well as all references to outcomes testing, be removed from the Draft.**

At the outset, the recent iteration of the Draft still states that the Bulletin is intended to “remind all insurers . . . that decisions impacting consumers . . . must comply with all applicable insurance laws and regulations.” The Draft also still states that “The regulatory expectations and oversight considerations set forth in Section 3 and Section 4 of this bulletin rely on the following laws and regulations,” including the Property and Casualty Model Rating law, which “requires that property/casualty (P/C) insurance rates not be excessive, inadequate, or unfairly discriminatory.” These provisions in the Draft remain well-crafted, and NAMIC supports the necessary tethering of Bulletin provisions to existing insurance statutes.

In this second iteration of the Draft, however, the non-statutory term “bias” remains, and the acknowledgment of very real limitations on availability of reliable demographic data for purposes of testing AI Systems has been deliberately removed. Instead, the updated Draft’s Section 3 affirmatively encourages developing testing methods to identify “bias” in AI Systems and predictive models, as well as to identify the *potential* for unfair discrimination in the *outcomes* resulting from use of predictive models and AI Systems. Additionally, Section 4 of the Draft now states that “an Insurer can expect to be asked about . . . its outcomes (including Adverse Consumer Outcomes) from the use of AI Systems.” These new aspects of the Draft are problematic in that neither “bias” nor the concept of outcomes testing is consistent with the state insurance codes underlying the Bulletin’s authority.

“Bias” as Defined Creates a Standard Inconsistent with the Governing Laws Referenced in the Bulletin



As NAMIC noted in previous comments, the standard for evaluating the fairness of differential treatment of insurance consumers is statutory, well-established, and found, as stated in the Draft, in Section 4, Rate Standards, of the NAIC Property and Casualty Model Rating Law (#1780). The Model Rating Law instructs that “rates shall not be excessive, inadequate or unfairly discriminatory,” and elaborates on the basics of insurance risk discrimination:

“Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. No risk classification, however, may be based upon race, creed, national origin, or the religion of the insured.”

If an insurer’s use of AI Systems or Predictive Models produces a rating factor which is not predictive of risk or which is itself a protected class, then such conduct is not compliant with the already existing prohibition on unfair discrimination in the Bulletin’s governing laws. Insurers have been diligently applying these objective and understandable rules for many decades and are continuing to do so today.

Further, as NAMIC noted in its comments on the Draft’s first iteration, “discrimination” has a different and specific meaning in the business of insurance and its regulatory state than it does in many other legal contexts. See, e.g., *Thompson v. IDS Life Ins. Co.*, 274 Or. 649, 654 (1976) (“The Insurance Commissioner is instructed to eliminate unfair discrimination, whereas the Public Accommodations Act prohibits all discrimination. The reason for the different standards . . . is that insurance . . . always involves discrimination . . . based on statistical differences and actuarial tables. The legislature specifically intended . . . to only prohibit unfair discrimination in the sale of insurance policies.”). This discrimination, or differential treatment, between consumers is not problematic in insurance regulation, as explained by the NAIC to the U.S. Supreme Court: “[R]isk selection is the very essence of the business of insurance. . . . In insurance, discrimination is not necessarily a negative term so much as a descriptive one. For insurance fair discrimination is not only permitted, but necessary.”²

The inclusion of “bias” as a metric for judging insurer conduct introduces a new and separate standard that is inconsistent with governing law pertaining to fair and unfair discrimination in risk classification. **As such, NAMIC again respectfully requests that the term “bias,” and all references to “bias,” be removed from the Draft.**

Outcomes Testing is not Contemplated by the Governing Laws Referenced in the Bulletin

Unfair discrimination, as recognized and defined in the Unfair Trade Practices Act, and the Property and Casualty Model Rating Law, does not necessitate nor contemplate testing of outcomes. Instead, impartiality under the recognized unfair discrimination standard and framework is defined by inputs. As the Committee has voiced in public forums, the law has not

² NAIC Amicus Brief to the U.S. Supreme Court in *Nationwide v. Cisneros*, 1996 WL 33467770



changed; it is technology that has changed. As such, the existing unfair discrimination framework can and should be applied the same regardless of whether a human is performing a task, or the work is assisted by an AI System. Such an approach is also the only acceptable approach for a bulletin that must remain tethered to existing law. To that end, the points contained below are notwithstanding the main fact that a bulletin cannot create law or standards, but rather must only explain and elaborate on how statutory standards and obligations apply to the industry.

To the extent the Draft intends to encourage testing for “biased” outputs, in addition to testing outputs for “Adverse Consumer Outcomes,” additional issues result. First, such a standard would further diverge from the existing laws governing unfair discrimination as well as the industry’s recognized risk-based foundation, and have unintended consequences on policyholders and consumers as a result. A “bad” outcome in insurance occurs when rate diverges from risk, regardless of the policyholder’s membership in a protected class. To invoke or utilize a different standard will likely undermine the industry’s foundational principles of risk-based pricing. Such result could be catastrophic for policyholders if an insurer must effectively charge all groups similarly, as that would lead to increasing premiums for all policyholders to cover for the highest risk. As consumers are already feeling the economic impacts from changing climate, inflation, the state of the reinsurance market, and legal system abuse, NAMIC implores the Committee to take steps to ensure that it does not implement these requirements that are not tethered to the Bulletin’s governing laws, of which would also create unintended consequences for policyholders.

Separately, even if an outcomes-testing regime for “bias” was contemplated by existing legal frameworks, there are inherent limitations in reliable demographic data to utilize in such testing. The Committee affirmatively recognized this limitation in the Draft’s first iteration (“Current limitations on the availability of reliable demographic data on consumers make it challenging for Insurers and regulators to directly test these systems.”); however, the Committee removed this recognition in the second iteration of the Draft. NAMIC urges the Committee to put this acknowledgement back into the Draft.

Property-casualty Insurers do not collect nor use protected class data today (except in circumstances where there is actuarial significance, and the traditional underwriting factor has been recognized – like that of sex in auto insurance risk rating), nor are they interested in doing so. Collecting data directly from applicants or insureds creates numerous issues, including but not limited to, credibility of the data, whether the data collection is voluntary and what to do if it is not obtained, how data is stored and preserved, as well as privacy, security, and litigation risk concerns from collecting and storing sensitive data, to name a few. As such, any analysis of protected classes mandated by a regulator would require the industry to estimate protected class status of an applicant or insured, a prospect that creates its own separate set of concerns and potential liabilities.

The only tool suggested for use in insurance regulation thus far for estimating a protected class has been Colorado’s suggestion of using BIFSG to estimate race and ethnicity. It is important to note that BIFSG is an inherently flawed method, relying on Census data to estimate race based on first name, last name, and zip code of an individual. BIFSG also does not account for multi-racial households, or individuals that identify as more than one race and ethnicity. Further, to suggest that



there will be other methodologies available in the future to predict protected class status of protected classes other than race is presumptuous at best and raises its own concerns of bias. For instance, it is difficult to contemplate how an insurer would estimate someone's religion or sexual orientation with any degree of confidence. **NAMIC therefore respectfully requests that any reference to testing of outcomes be removed from the Draft.**

Principles-Based Approach and AIS Program Commensurate with Risk

The Committee has stated that the insurance laws themselves have not changed, merely the technology has changed, and the goal is to protect consumers without being overly prescriptive. While the Draft attempts to take a principles-based approach commensurate with risk, it also explains and expounds upon concepts resulting in overly prescriptive conduct that may or may not fit particular purposes. In the spirit of taking a principles-based and risk-based approach, NAMIC respectfully asks the Committee to again conduct an overall review of the Draft for areas that could be interpreted as being overly-prescriptive. NAMIC would respectfully direct the Committee's attention to Section 3's AIS Program Guidelines, namely 2.1-2.4, 3.1-3.7, and 4.1-4.3 as being very detailed and prescriptive, and worthy of consideration for removal or adding significant flexibility. Even if those sections remain as drafted, NAMIC requests the Committee consider significant time to implement and comply, and the inclusion of an explicit and well-reasoned regulatory safe harbor language for good faith efforts to comply.

Confidentiality Protections

NAMIC appreciates the Committee's inclusion of language in the Governance portion of Section 3 acknowledging that trade secrets and proprietary information must be protected. Yet, given the importance of the issue, NAMIC recommends that the Committee include an explicit Confidentiality Protections Section in the Bulletin. The edits made to the Governance portion of Section 3 in the Draft state that, though the Governance framework should promote transparency, it is recognized that "proprietary and trade secret information must be protected." So, the edit is only an acknowledgement of protecting such information in the context of transparency in a Governance framework. Given the overall topic and substance of the Bulletin, and the proprietary nature of many of these models and processes, NAMIC strongly encourages the Committee to incorporate a standalone Confidentiality Protections Section that applies more broadly, including explicit acknowledgement that supervisory processes relating to the Bulletin are subject to stringent confidentiality protections.

TECHNICAL EDITS

Section 2: Definitions

To clarify that the laws and standards being referred to in the definition of "Adverse Consumer Outcome" are those insurance laws and regulations currently existing, NAMIC suggests the following edit:



- “Adverse Consumer Outcome” refers to a decision by an Insurer that is subject to **existing insurance laws and regulations** ~~regulatory standards~~ enforced by the Department that adversely impacts the consumer in a manner that violates those ~~standards~~ **existing laws and regulations**.

Section 3: Regulatory Guidance and Expectations

Consistent with the technical edit to “Adverse Consumer Outcome,” NAMIC similarly suggests the edits below in Section 3, to clarify that the “legal and regulatory standards” being referred to are those insurance laws and regulations currently existing. In further effort to remain consistent with existing insurance laws and regulations, NAMIC also suggests removal of language referring to “arbitrary and capricious,” as it is NAMIC’s understanding that these terms do not appear in every state’s version of these laws.

- **Paragraph 1, Section 3:** Decisions subject to regulatory oversight that are made by Insurers using AI Systems must comply with **existing laws and regulations** ~~the legal and regulatory standards that apply to those decisions,~~ including unfair trade practice laws. These ~~standards~~ **laws and regulations** require, at a minimum, that decisions made by Insurers are not ~~inaccurate, arbitrary, capricious, or~~ unfairly discriminatory. Compliance with these ~~standards~~ **laws and regulations** is required regardless of the tools and methods Insurers use to make such decisions.
- **Paragraph 5, Section 3:** As discussed in Section 4, the decisions made as a result of an Insurer’s use of AI Systems are subject to the Department’s examination to determine that the reliance on AI Systems are compliant with all applicable existing ~~legal standards~~ **laws and regulations** governing the conduct of the Insurer.

In consideration of insurers’ need to protect proprietary and trade secret information, as well as substance already covered in the Governance portion of Section 3 (the Governance portion begins by stating transparency should be prioritized, recognizing that proprietary and trade secret information must be protected), NAMIC recommends deleting provision 1.9 of the General Guidelines in Section 3:

- ~~1.9 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.~~

Regarding standards for Third-Party AI Systems and Data in Section 3, NAMIC suggests the following technical edit:

- 4.1 Due 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 **reasonably ensure, based on available information,** 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.

Section 4: Regulatory Oversight and Examination Considerations

To remain consistent with the rest of the Draft Bulletin and reference the governing laws to which the Bulletin must conform, NAMIC recommends the following edit:



- Paragraph 1: “. . . as well as any other information or documentation deemed relevant by the Department and which it has the legal authority to review.

NAMIC further suggests the below edit under Section 4’s “Third-Party AI Systems and Data” portion, to ensure confidentiality and protection of trade secret materials:

- 2. Third-Party Systems and Data “. . . expect the Department to request the following additional types of information and documentation subject to the state’s protections of trade secret materials and the limitations on materials of business use in the ordinary course of business.”

Lastly, NAMIC suggests the following edit to the closing paragraph of the Bulletin in Section 4, to limit scope to violations of existing insurance laws and regulations:

- “Nothing in this bulletin limits the authority of the Department to conduct any regulatory investigation, examination, or enforcement action relative to any act or omission of any Insurer that may be in violation of existing insurance laws and regulations that the Department is authorized to perform.

IN SUMMARY

We close by again thanking the H Committee for allowing NAMIC to submit comments to engage on this extremely important discussion on AI systems, and we urge you to continue offering additional iterative opportunities for robust, transparent conversations prior to any formal adoption. NAMIC endeavors through these comments to point out some of the concerns relative to ensuring consistency with existing insurance laws and regulations, protecting against legitimate harm to consumers or policyholders, and producing desired and fair results, all while embracing the many positive aspects and efficiencies that AI can create for consumers. NAMIC looks forward to continuing our work with the Committee to arrive at solutions that protect and stabilize the insurance marketplace while fostering growth and innovation that benefit all stakeholders.

Sincerely,

Lindsey Klarkowski
Director of Data Science & AI/ML Policy
NAMIC

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REGULATOR DRAFTING GROUP ONLY
CIRCULATION DRAFT 1.0
JUNE 26, 2023

CONFIDENTIAL – FOR REGULATOR/NAIC STAFF EYES ONLY

NAIC MODEL BULLETIN:

USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS

TO: All Insurers Licensed to Do Business In ~~(Insert Name of Jurisdiction)~~New Hampshire (“Insurers”)

FROM: ~~{New Hampshire Insurance Department/ (“Department”), Commissioner}~~David J. Bettencourt

DATE: ~~{Insert}~~November 1, 2023

RE: The Use of Artificial Intelligence Systems in Insurance

~~This~~The Department issues this bulletin ~~is issued by the {} (Department)~~ to remind ~~all Insurers~~insurers that ~~hold certificates of authority to do business in the state that decisions or actions impacting consumers that are made or supported by advanced analytical and computational technologies, including~~ Artificial Intelligence (AI) Systems ~~(as defined below)~~, must comply with all applicable insurance laws and regulations. ~~This includes those laws that address unfair trade practices and unfair discrimination.~~ This bulletin sets forth the Department’s expectations as to how Insurers will govern the development/acquisition and use of certain AI technologies, including the AI Systems described herein. This bulletin also advises Insurers of the type of information and documentation that the Department may request during an investigation or examination of any Insurer regarding its use of such technologies and AI Systems.

SECTION 1: INTRODUCTION, BACKGROUND, AND LEGISLATIVE AUTHORITY

Background

~~AI is transforming the insurance industry. AI techniques are deployed across all stages of the insurance life cycle, including product development, marketing, sales and distribution, underwriting and pricing, policy servicing, claim management, and fraud detection.~~

~~AI may facilitate the development of innovative products, improve consumer interface and service, simplify and automate processes, and promote efficiency and accuracy. However, AI, including AI Systems, can present unique risks to consumers, including the potential for inaccuracy, unfair discrimination, data vulnerability, and lack of transparency and explainability. Insurers should take actions to minimize these risks.~~

The Department encourages the development and use of innovation and AI Systems that contribute to safe and stable insurance markets. However, the Department expects that decisions made and actions taken by Insurers using AI Systems will comply with all applicable federal and state laws.

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COMMITTEE EXPOSURE DRAFT [Fox/Citarella edits](#)

The Department recognizes the *Principles of Artificial Intelligence* that the NAIC adopted in 2020 as an appropriate source of guidance for Insurers as they develop and use AI systems. Those principles emphasize the importance of the fairness and ethical use of AI; accountability; compliance with state laws and regulations; transparency; and a safe, secure, fair, and robust system. These fundamental principles should guide Insurers in their development and use of AI Systems and underlie the expectations set forth in this bulletin.

Legislative Authority

The regulatory expectations and oversight considerations set forth in Section 3 and Section 4 of this bulletin rely on the following laws and regulations:

- ~~Unfair Trade Practices Model Act (#880);~~ [RSA 417](#): The *Unfair Trade Practices Act* ~~[insert citation to state statute or regulation corresponding to Model #880]~~ (UTPA), 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.
- [The Unfair Claims Settlement Practices Model Act \(#900\);](#) [section of the UTPA](#). The *Unfair Claims Settlement Practices Act*, ~~[insert citation to state statute or regulation corresponding to Model #900]~~ (UCSPA), ~~sets~~ [\(UCSP\) provision of the UTPA set](#) forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of ~~[insert state]~~ [New Hampshire](#).

Actions taken by Insurers in the state must not violate the UTPA ~~or the UCSPA~~, regardless of the methods the Insurer used to determine or support its actions. As discussed below, Insurers are expected to adopt practices, including governance frameworks and risk management protocols, that are designed to ensure that the use of AI Systems does not result in: ~~1) unfair trade practices, as defined in []; or 2) unfair claims settlement practices, as defined in []~~ [the UTPA](#).

- ~~Corporate Governance Annual Disclosure Model Act (#305);~~ [RSA 401-D](#): The *Corporate Governance Annual Disclosure Act* ~~[insert citation to state statute or regulation corresponding to Model #305]~~ (CGAD), requires Insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for CGAD information are set forth in the *Corporate Governance Annual Disclosure Model Regulation* ~~(#306) [insert citation to state statute or regulation corresponding to Model #306]~~ (CGAD-R) [Act](#).

The requirements of CGAD ~~and CGAD-R~~ apply to elements of the Insurer's corporate governance framework that address the Insurer's use of AI Systems to support actions and decisions that impact consumers.

- [Property and Casualty Model Rating Rate Standards Law \(#1780\);](#) [RSA 412:15](#): The *Property and Casualty Model Rating Rate Standards Law*, ~~[insert citation to state statute or regulation corresponding to the Model #1780]~~, requires that property ~~/casualty (P/C)~~ [and Casualty](#) insurance rates not be excessive, [\(non-competitive lines\)](#), inadequate, or unfairly discriminatory.

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The requirements of ~~the~~ [the rates standards law](#) apply regardless of the methodology that the Insurer used to develop rates, rating rules, and rating plans subject to those provisions. That means that an Insurer is responsible for assuring that rates, rating rules, and rating plans that are developed using AI techniques and predictive models that rely on data and machine learning do not result in excessive, inadequate, or unfairly discriminatory insurance rates. with respect to all forms of casualty insurance—including fidelity, surety, and guaranty bond—and to all forms of property insurance—including fire, marine, and inland marine insurance, and any combination of any of the foregoing.

- ~~• **Market Conduct Surveillance Model Law (#693):** The *Market Conduct Surveillance Model Law* [insert citation to state statute or regulation corresponding to Model #693] establishes the framework pursuant to which the Department conducts market conduct actions. These are comprised of the full range of activities that the Department may initiate to assess and address the market practices of Insurers, beginning with market analysis and extending to targeted examinations. Market conduct actions are separate from, but may result from, individual complaints made by consumers asserting illegal practices by Insurers.~~

An Insurer’s conduct in the state, including its use of AI Systems to make or support actions and decisions that impact consumers, is subject to investigation [and examination](#), including market conduct actions ~~under~~ [under RSA 400-A:16 \(Investigations\) and 400-A:37 \(Examinations\)](#). Section 4 of this bulletin provides guidance on the kinds of information and documents that the Department may request in the context of an AI-focused investigation, ~~including a market conduct action~~ [or examination](#).

SECTION 2: DEFINITIONS

For the purposes of this bulletin the following terms are defined¹:

“Adverse Consumer Outcome” refers to a decision by an Insurer that is subject to insurance regulatory standards enforced by the Department that adversely impacts the consumer in a manner that violates those standards.

“Algorithm” means a clearly specified mathematical process for computation; a set of rules that, if followed, will give a prescribed result.

“AI Systems” ~~is a~~ [are](#) machine-based systems that can, for a given set of objectives, generate outputs such as predictions, recommendations, content (such as text, images, videos, or sounds), or other output influencing decisions made in real or virtual environments. AI Systems are designed to operate with varying levels of autonomy.

“Artificial Intelligence (AI)” refers to a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement. This definition considers machine learning to be a subset of artificial intelligence.

¹ Drafting note: Individual states may have adopted definitions for terms that are included in the model bulletin that may be different from the definitions set forth herein.

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“**Bias**” is the differential treatment that results in favored or unfavored treatment of a person, group or attribute.

“**Big Data**” consists of extensive datasets – primarily in the characteristics of volume (i.e., the size of the dataset), variety (i.e., data from multiple repositories (including third-party data), domains, or types), velocity (i.e., rate of flow), and/or variability (i.e., the change in velocity or structure) that require a scalable architecture for efficient storage, manipulation, and analysis.

“**Degree of Potential Harm to Consumers**” refers to the severity of adverse economic impact that a consumer might experience as a result of an Adverse Consumer Outcome.

“**Generative Artificial Intelligence (Generative AI)**” refers to a class of AI Systems that generate content in the form of data, text, images, sounds, or video, that is similar to, but not a direct copy of, pre-existing data or content.

“**Machine Learning (ML)**” Refers to a field within artificial intelligence that focuses on the ability of computers to learn from provided data without being explicitly programmed.

“**Model Drift**” refers to the decay of a model’s performance over time arising from underlying changes such as the definitions, distributions, and/or statistical properties between the data used to train the model and the data on which it is deployed.

“**Model Risk**” is the potential for loss arising from decisions based on flawed or misused models. Four basic sources of model risk are: (1) data limitations in terms of either or both availability and quality; (2) estimation uncertainty or methodological flaws in model design (volatility of estimators, simplifications, approximations, inappropriate assumptions, improper design, etc.); (3) calculation or coding error; and (4) inappropriate use of a model (e.g., use outside its intended purpose, lack of resources with knowledge to use properly, failure to update and recalibrate, etc.).

“**Predictive Model**” refers to the mining of historic data using algorithms and/or machine learning to identify patterns and predict outcomes that can be used to make or support the making of decisions.

“**Third-Party**” for purposes of this bulletin means an organization other than the Insurer that provides services, data, or other resources related to AI.

SECTION 3: REGULATORY GUIDANCE AND EXPECTATIONS

Decisions subject to regulatory oversight that are made by Insurers using AI Systems must comply with the legal and regulatory standards that apply to those decisions, ~~including unfair trade practice laws.~~ These standards require, at a minimum, that decisions made by Insurers are not inaccurate, arbitrary,

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capricious, or unfairly discriminatory. Compliance with these standards is required regardless of the tools and methods Insurers use to make such decisions. ~~However, because, in~~ [In](#) the absence of proper controls, AI has the potential to increase the risk of inaccurate, arbitrary, capricious, or unfairly discriminatory outcomes for consumers. [As such](#), it is important that Insurers adopt and implement controls specifically related to their use of AI that are designed to mitigate the risk of Adverse Consumer Outcomes.

~~Consistent therewith, all~~ [All](#) Insurers authorized to do business in ~~this state~~ [New Hampshire](#) are expected to develop, implement, and maintain a written program (an “AIS Program”) for the responsible use of AI Systems that make, or support decisions related to regulated insurance practices. The AIS Program should be designed to mitigate the risk of Adverse Consumer Outcomes, including, at a minimum, the statutory provisions set forth in Section 1 of this bulletin.

The Department recognizes that robust governance, risk management controls, and internal audit functions play a core role in mitigating the risk that decisions driven by AI Systems will violate unfair trade practice laws and other applicable existing legal standards. The Department ~~also~~ [strongly](#) encourages the development and use of verification and testing methods to identify errors and bias in predictive models and AI Systems, ~~as well as to limit~~ the potential for unfair discrimination in the decisions and outcomes resulting from the use of predictive models and AI Systems.

The controls and processes that an Insurer adopts and implements as part of its AIS Program should be reflective of, and commensurate with, the ~~insurer’s own assessment of the~~ degree and nature of risk posed to consumers by the AI Systems that it uses, considering: (i) the nature of the decisions being made, informed, or supported using the AI System; (ii) the type and Degree of Potential Harm to Consumers resulting from the use of AI Systems; (iii) the extent to which humans are involved in the final decision-making process; (iv) the transparency and explainability of outcomes to the impacted consumer; and (v) the extent and scope of the insurer’s use or reliance on data, predictive models, and AI Systems from third parties. Similarly, controls and processes should be commensurate with both the risk of Adverse Consumer Outcomes and the Degree of Potential Harm to Consumers.

As discussed in Section 4, the decisions made as a result of an Insurer’s use of AI Systems are subject to the Department’s examination to determine that the reliance on AI Systems are compliant with all applicable existing legal standards governing the conduct of the Insurer.

AIS Program Guidelines

[To help insured compliance with the above-mentioned statutory requirements \(RSA 417, RSA 412:15, & RSA 400-A:16 &37\), insurers should consider the following guidelines.](#)

1.0 General Guidelines

1.1 The AIS Program should be designed to mitigate the risk that the Insurer’s use of an AI System will result in Adverse Consumer Outcomes.

1.2 The AIS Program should address governance, risk management controls, and internal audit functions.

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1.3 The AIS Program should vest responsibility for the development, implementation, monitoring, and oversight of the AIS Program and for setting the Insurer's strategy for AI Systems with senior management accountable to the board or an appropriate committee of the board.

1.4 The AIS Program should be tailored to and proportionate with the Insurer's use and reliance on AI and AI Systems. Controls and procedures should be focused on the mitigation of Adverse Consumer Outcomes and the scope of the controls and procedures applicable to a given AI System use case should reflect and align with the Degree of Potential Harm to Consumers with respect to that use case.

1.5 The AIS Program may be independent of or part of the Insurer's existing Enterprise Risk Management (ERM) program. The AIS Program may adopt, incorporate, or rely upon, in whole or in part, a framework or standards developed by an official third-party standard organization, such as the National Institute of Standards and Technology (NIST) Artificial Intelligence Risk Management Framework, Version 1.0.

1.6 The AIS Program should address the use of AI Systems across the insurance life cycle, including areas such as product development and design, marketing, use, underwriting, rating and pricing, case management, claim administration and payment, and fraud detection.

1.7 The AIS Program should address all phases of an AI System's life cycle, including design, development, validation, implementation (both systems and business), use, on-going monitoring, updating and retirement.

1.8 The AIS Program should address the AI Systems used with respect to regulated insurance practices whether developed by the Insurer or a third-party vendor.

1.9 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.

2.0 Governance

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; however, in developing its governance framework, the Insurer should consider addressing the following items:

2.1 The policies, processes, and procedures, including risk management and internal controls, to be followed at each stage of an AI System life cycle, from proposed development to retirement.

2.2 The requirements adopted by the Insurer to document compliance with the AIS Program policies, processes, procedures, and standards. Documentation requirements should be developed with Section 4 in mind.

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- 2.3 The Insurer's internal AI System governance accountability structure, such as:
- a) The formation of centralized, federated, or otherwise constituted committees comprised of representatives from appropriate disciplines and units within the Insurer, such as business units, product specialists, actuarial, data science and analytics, underwriting, claims, compliance, and legal.
 - b) Scope of responsibility and authority, chains of command, and decisional hierarchies.
 - c) The independence of decision-makers and lines of defense at successive stages of the AI System life cycle.
 - d) Monitoring, auditing, escalation, and reporting protocols and requirements.
 - e) Development and implementation of ongoing training and supervision of personnel.

2.4 Specifically with respect to predictive models: the Insurer's processes and procedures for designing, developing, verifying, deploying, using, updating, and monitoring predictive models, including a description of methods used to detect and address errors, performance issues, outliers, or unfair discrimination in the insurance practices resulting from the use of the predictive model.

3.0 Risk Management and Internal Controls

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 the following items:

3.1 The oversight and approval process for the development, adoption, or acquisition of AI Systems, ~~as well as the identification of~~ with constraints and controls on automation and design to align and balance function with risk. ~~mitigate risks that would be inconsistent with the above-mentioned statutes.~~

3.2 Data practices and accountability procedures, including data currency, lineage, quality, integrity, bias analysis and minimization, and suitability.

3.3 Management and oversight of predictive models (including algorithms used therein), including:

- a) Inventories and descriptions of the predictive models.
- b) Detailed documentation of the development and use of the predictive models.
- c) Assessments such as interpretability, repeatability, robustness, regular tuning, reproducibility, traceability, model drift, and the auditability of these measurements where appropriate.

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3.4 Validating, testing, and retesting as necessary to assess the generalization of AI System outputs upon implementation, including the suitability of the data used to develop, train, validate and audit the model. Validation can take the form of comparing model performance on unseen data available at the time of model development to the performance observed on data post-implementation, measuring performance against expert review, or other methods.

3.5 The protection of non-public information, particularly consumer information, including unauthorized access to the predictive models themselves.

3.6 Data and record retention.

3.7 Specifically with respect to predictive models: a narrative description of the model's intended goals and objectives and how the model is developed and validated to ensure that the AI Systems that rely on such models correctly and efficiently predict or implement those goals and objectives.

4.0 Third-Party AI Systems and Data

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 the following considerations:

4.1 Due 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.~~

4.2 Where appropriate and available, the inclusion of terms in contracts with third parties that:

- a) Provide audit rights and/or entitle the Insurer to receive audit reports by qualified auditing entities.
- b) Require the third-party to cooperate with the Insurer with regard to regulatory inquiries and investigations related to the Insurer's use of the third-party's product or services.

4.3 The performance of audits and/or other activities to confirm the third-party's compliance with contractual and, ~~where applicable,~~ regulatory requirements.

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SECTION 4: REGULATORY OVERSIGHT AND EXAMINATION CONSIDERATIONS

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~~ [Department](#) 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.

Insurers should expect those inquiries to include ~~(, but not be limited to),~~ the Insurer's governance framework, risk management, and internal controls (including the considerations identified in Section 3). In addition to conducting a review of any of the items listed in this Bulletin, a regulator may also ask questions regarding any specific model, AI System, or its application, including requests for the following types of information and/or documentation:

1. Information and Documentation Relating to AI System Governance, Risk Management, and Use Protocols

1.1. Information and documentation related to ~~or evidencing~~ the Insurer's AIS Program, including:

- a) The written AIS Program.
- b) Information and documentation relating to ~~or evidencing~~ the adoption of the AIS Program.
- c) The scope of the Insurer's AIS Program, including any AI Systems and technologies not included in or addressed by the AIS Program.
- d) How the AIS Program is tailored to and proportionate with the Insurer's use and reliance on AI Systems, the risk of Adverse Consumer Outcomes, and the Degree of Potential Harm to Consumers.
- e) The policies, procedures, guidance, training materials, and other information relating to the adoption, implementation, maintenance, monitoring, and oversight of the Insurer's AIS Program, including:
 - i. Processes and procedures for the development, adoption, or acquisition of AI Systems, such as:
 - (1) Identification of constraints and controls on automation and design.
 - (2) Data governance and controls, any practices related to data lineage, quality, integrity, bias analysis and minimization, suitability, and ~~Data Currency~~ [data currency](#).

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- ii. Processes and procedures related to the management and oversight of predictive models, including measurements, standards, or thresholds adopted or used by the Insurer in the development, validation, and oversight of models and AI Systems.
- iii. Protection of non-public information, particularly consumer information, including unauthorized access to predictive models themselves.

1.2. Information and documentation relating to the Insurer's pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of data or AI Systems developed by a third-party.

1.3. 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](#)ing activities respecting compliance, such as:

- a) Documentation relating to ~~or evidencing~~ the formation and ongoing operation of the Insurer's coordinating bodies for the development, use, and oversight of AI Systems.
- b) Documentation related to data practices and accountability procedures, including data lineage, quality, integrity, bias analysis and minimization, suitability, and data currency.
- c) Management and oversight of predictive models and AI Systems, including:
 - i. The Insurer's inventories and descriptions of predictive models, and AI Systems used by the Insurer to make or support decisions that can result in Adverse Consumer Outcomes.
 - ii. As to any specific predictive model or AI System ~~that is the subject of investigation or examination~~:
 - (1) Documentation of compliance with all applicable AI Program policies, protocols, and procedures in the development, use, and oversight of predictive models and AI Systems deployed by the Insurer.
 - (2) Information about data used in the development and oversight of the specific model or AI System, including the data source, provenance, data lineage, quality, integrity, bias analysis and minimization, suitability, and ~~Data Currency~~[data currency](#).
 - (3) Information related to the techniques, measurements, thresholds, and similar controls used by the Insurer.
- d) Documentation related to validation, testing, and auditing, including evaluation of drift to assess the reliability of outputs that influence the decisions made based on

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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.

2. Third-Party AI Systems and Data

In addition, if the investigation or examination concerns data, predictive models, or AI Systems collected or developed in whole or in part by third-parties, the Insurer should also expect the Department to request the following additional types of information and documentation.

- 2.1 Due diligence conducted on third-parties and their data, models, or AI Systems.
- 2.2 Contracts with third-party AI System, model, or data vendors, including terms relating to representations, warranties, data security and privacy, data sourcing, intellectual property rights, confidentiality and disclosures, and/or cooperation with regulators.
- 2.3 Audits and/or confirmation processes performed regarding third-party compliance with contractual and, where applicable, regulatory obligations.
- 2.4 Documentation pertaining to validation, testing, and auditing, including evaluation of model drift.

The Department recognizes that Insurers may demonstrate their compliance with ~~the~~[New Hampshire](#) laws that regulate their conduct ~~in the state~~ in their use of AI Systems through alternative means, including through practices that differ from those described in this bulletin. The goal of the bulletin is not to ~~prescribe~~[mandate](#) specific practices or ~~to prescribe specific~~ documentation requirements. Rather, the goal is to ensure that Insurers in the state are aware of the Department's expectations as to how AI Systems ~~will be~~[governed](#) and managed and of the kinds of information and documents about an Insurer's AI Systems that the department expects an Insurer to produce when requested.

As in all cases, investigations and market conduct actions may be performed using procedures that vary in nature, extent, and timing in accordance with regulatory judgment. Work performed may include inquiry, examination of company documentation, or any of the continuum of market actions described in the NAIC's *Market Regulation Handbook*. These activities may involve the use of contracted specialists with relevant subject matter expertise. Nothing in this bulletin limits the authority of the Department to conduct any regulatory investigation, examination, or enforcement action relative to any act or omission of any Insurer that the Department is authorized to perform.

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NAIC MODEL BULLETIN:

USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS

TO: All Insurers Licensed to Do Business In (*Insert Name of Jurisdiction*) ("Insurers")

FROM: [Department/Commissioner]

DATE: [Insert]

RE: The Use of Artificial Intelligence Systems in Insurance

This bulletin is issued by the [] (Department) to remind all Insurers that hold certificates of authority to do business in the state that decisions or actions impacting consumers that are made or supported by advanced analytical and computational technologies, including Artificial Intelligence (AI) Systems (as defined below), must comply with all applicable insurance laws and regulations. This includes those laws that address unfair trade practices and unfair discrimination. This bulletin sets forth the Department's expectations as to how Insurers will govern the development/acquisition and use of certain AI technologies, including the AI Systems described herein. This bulletin also advises Insurers of the type of information and documentation that the Department may request during an investigation or examination of any Insurer regarding its use of such technologies and AI Systems.

SECTION 1: INTRODUCTION, BACKGROUND, AND LEGISLATIVE AUTHORITY

Background

AI is transforming the insurance industry. AI techniques are deployed across all stages of the insurance life cycle, including product development, marketing, sales and distribution, underwriting and pricing, policy servicing, claim management, and fraud detection.

AI may facilitate the development of innovative products, improve consumer interface and service, simplify and automate processes, and promote efficiency and accuracy. However, AI, including AI Systems, can present unique risks to consumers, including the potential for inaccuracy, unfair discrimination, data vulnerability, and lack of transparency and explainability. Insurers should take actions to minimize these risks.

The Department encourages the development and use of innovation and AI Systems that contribute to safe and stable insurance markets. However, the Department expects that decisions made and actions taken by Insurers using AI Systems will comply with all applicable federal and state laws.

The Department recognizes the *Principles of Artificial Intelligence* that the NAIC adopted in 2020 as an appropriate source of guidance for Insurers as they develop and use AI systems. Those principles

Commented [FB1]: Suggest "inability to explain outcomes" or "capability to explain outcomes" vs "explainability"; "explainability" is not dictionary defined (Merriam-Webster).

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emphasize the importance of the fairness and ethical use of AI; accountability; compliance with state laws and regulations; transparency; and a safe, secure, fair, and robust system. These fundamental principles should guide Insurers in their development and use of AI Systems and underlie the expectations set forth in this bulletin.

Legislative Authority

The regulatory expectations and oversight considerations set forth in Section 3 and Section 4 of this bulletin rely on the following laws and regulations:

- **Unfair Trade Practices Model Act (#880)**: The *Unfair Trade Practices Act* [insert citation to state statute or regulation corresponding to Model #880] (UTPA), 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)**: The *Unfair Claims Settlement Practices Act*, [insert citation to state statute or regulation corresponding to Model #900] (UCSPA), sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of [insert state].

Actions taken by Insurers in the state must not violate the UTPA or the UCSPA, regardless of the methods the Insurer used to determine or support its actions. As discussed below, Insurers are expected to adopt practices, including governance frameworks and risk management protocols, that are designed to ensure that the use of AI Systems does not result in: 1) unfair trade practices, as defined in []; or 2) unfair claims settlement practices, as defined in [].

- **Corporate Governance Annual Disclosure Model Act (#305)**: The *Corporate Governance Annual Disclosure Act* [insert citation to state statute or regulation corresponding to Model #305] (CGAD), requires Insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for CGAD information are set forth in the *Corporate Governance Annual Disclosure Model Regulation* (#306) [insert citation to state statute or regulation corresponding to Model #306]) (CGAD-R).

The requirements of CGAD and CGAD-R apply to elements of the Insurer's corporate governance framework that address the Insurer's use of AI Systems to support actions and decisions that impact consumers.

- **Property and Casualty Model Rating Law (#1780)**: The *Property and Casualty Model Rating Law*, [insert citation to state statute or regulation corresponding to the Model #1780], requires that property/casualty (P/C) insurance rates not be excessive, inadequate, or unfairly discriminatory.

The requirements of [] apply regardless of the methodology that the Insurer used to develop rates, rating rules, and rating plans subject to those provisions. That means that an Insurer is responsible for assuring that rates, rating rules, and rating plans that are developed using AI techniques and predictive

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models that rely on data and machine learning do not result in excessive, inadequate, or unfairly discriminatory insurance rates with respect to all forms of casualty insurance—including fidelity, surety, and guaranty bond—and to all forms of property insurance—including fire, marine, and inland marine insurance, and any combination of any of the foregoing.

Commented [FB2]: Suggest comma vs period; sentence fragment.

- ***Market Conduct Surveillance Model Law (#693)***: The *Market Conduct Surveillance Model Law* [insert citation to state statute or regulation corresponding to Model #693] establishes the framework pursuant to which the Department conducts market conduct actions. These are comprised of the full range of activities that the Department may initiate to assess and address the market practices of Insurers, beginning with market analysis and extending to targeted examinations. Market conduct actions are separate from, but may result from, individual complaints made by consumers asserting illegal practices by Insurers.

An Insurer’s conduct in the state, including its use of AI Systems to make or support actions and decisions that impact consumers, is subject to investigation, including market conduct actions. Section 4 of this bulletin provides guidance on the kinds of information and documents that the Department may request in the context of an AI-focused investigation, including a market conduct action.

SECTION 2: DEFINITIONS

For the purposes of this bulletin the following terms are defined¹:

“**Adverse Consumer Outcome**” refers to a decision by an Insurer that is subject to insurance regulatory standards enforced by the Department that adversely impacts the consumer in a manner that violates those standards.

“**Algorithm**” means a clearly specified mathematical process for computation; a set of rules that, if followed, will give a prescribed result.

“**AI Systems**” is a machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, content (such as text, images, videos, or sounds), or other output influencing decisions made in real or virtual environments. AI Systems are designed to operate with varying levels of autonomy.

“**Artificial Intelligence (AI)**” refers to a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement. This definition considers machine learning to be a subset of artificial intelligence.

“**Bias**” is the differential treatment that results in ~~favor~~ favored-favorable or ~~unfavor~~ unfavored-unfavorable treatment of a person, group or attribute.

Commented [FB3]: Suggest "favorable or unfavorable"; unfavored does not have a dictionary definition (Merriam-Webster)

¹ [Drafting note: Individual states may have adopted definitions for terms that are included in the model bulletin that may be different from the definitions set forth herein.](#)

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“**Big Data**” consists of extensive datasets – primarily in the characteristics of volume (i.e., the size of the dataset), variety (i.e., data from multiple repositories (including third-party data), domains, or types), velocity (i.e., rate of [data](#) flow), and/or variability (i.e., the change in velocity or structure) that require a scalable architecture for efficient storage, manipulation, and analysis.

Commented [FB4]: Suggest "data flow" vs "flow".

“**Degree of Potential Harm to Consumers**” refers to the severity of adverse economic impact that a consumer might experience as a result of an Adverse Consumer Outcome.

“**Generative Artificial Intelligence (Generative AI)**” refers to a class of AI Systems that generate content in the form of data, text, images, sounds, or video, that is similar to, but not a direct copy of, pre-existing data or content.

“**Machine Learning (ML)**” Refers to a field within artificial intelligence that focuses on the ability of computers to learn from provided data without being explicitly programmed.

“**Model Drift**” refers to the decay of a model’s performance over time arising from underlying changes such as the definitions, distributions, and/or statistical properties between the data used to train the model and the data on which it is deployed.

“**Model Risk**” is the potential for loss arising from decisions based on flawed or misused models. Four basic sources of model risk are: (1) data limitations in terms of either or both availability and quality; (2) estimation uncertainty or methodological flaws in model design (volatility of estimators, simplifications, approximations, inappropriate assumptions, improper design, etc.); (3) calculation or coding error; and (4) inappropriate use of a model (use outside its intended purpose, lack of resources with knowledge to use properly, failure to update and recalibrate, etc.).

“**Predictive Model**” refers to the mining of historic data using algorithms and/or machine learning to identify patterns and predict outcomes that can be used to make or support the making of decisions.

“**Third-Party**” for purposes of this bulletin means an organization other than the Insurer that provides services, data, or other resources related to AI.

SECTION 3: REGULATORY GUIDANCE AND EXPECTATIONS

Decisions subject to regulatory oversight that are made by Insurers using AI Systems must comply with the legal and regulatory standards that apply to those decisions, including unfair trade practice laws. These standards require, at a minimum, that decisions made by Insurers are not inaccurate, arbitrary, capricious, or unfairly discriminatory. Compliance with these standards is required regardless of the tools and methods Insurers use to make such decisions. However, because, in the absence of proper controls, AI has the potential to increase the risk of inaccurate, arbitrary, capricious, or unfairly discriminatory outcomes for consumers, it is important that Insurers adopt and implement controls specifically related to their use of AI that are designed to mitigate the risk of Adverse Consumer Outcomes.

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Consistent therewith, all Insurers authorized to do business in this state are expected to develop, implement, and maintain a written program (an "AIS Program") for the responsible use of AI Systems that make, or support decisions related to regulated insurance practices. The AIS Program should be designed to mitigate the risk of Adverse Consumer Outcomes, including, at a minimum, the statutory provisions set forth in Section 1 of this bulletin.

Commented [FB5]: Appears to be first use of "AIS" without a proximal definition; suggest adding AIS acronym to "AI Systems" definition provided in Section 2: Definitions, to read "AI Systems (AIS)".

The Department recognizes that robust governance, risk management controls, and internal audit functions play a core role in mitigating the risk that decisions driven by AI Systems will violate unfair trade practice laws and other applicable existing legal standards. The Department also encourages the development and use of verification and testing methods to identify errors and bias in predictive models and AI Systems, as well as the potential for unfair discrimination in the decisions and outcomes resulting from the use of predictive models and AI Systems.

The controls and processes that an Insurer adopts and implements as part of its AIS Program should be reflective of, and commensurate with, the Insurer's own assessment of the degree and nature of risk posed to consumers by the AI Systems that it uses, considering: (i) the nature of the decisions being made, informed, or supported using the AI System; (ii) the type and Degree of Potential Harm to Consumers resulting from the use of AI Systems; (iii) the extent to which humans are involved in the final decision-making process; (iv) the transparency and explainability of outcomes to the impacted consumer; and (v) the extent and scope of the insurer's use or reliance on data, predictive models, and AI Systems from third parties. Similarly, controls and processes should be commensurate with both the risk of Adverse Consumer Outcomes and the Degree of Potential Harm to Consumers.

Commented [FB6]: Suggest "ability to explain" or "capability to explain" vs "explainability of"; "explainability" is not dictionary defined (Merriam-Webster).

As discussed in Section 4, the decisions made as a result of an Insurer's use of AI Systems are subject to the Department's examination to determine that the reliance on AI Systems are compliant with all applicable existing legal standards governing the conduct of the Insurer.

AIS Program Guidelines

Commented [FB7]: Previously commented, suggest including "AIS" in the Section 2 definition for "AI Systems".

1.0 General Guidelines

1.1 The AIS Program should be designed to mitigate the risk that the Insurer's use of an AI System will result in Adverse Consumer Outcomes.

1.2 The AIS Program should address governance, risk management controls, and internal audit functions.

1.3 The AIS Program should vest responsibility for the development, implementation, monitoring, and oversight of the AIS Program and for setting the Insurer's strategy for AI Systems with senior management accountable to the board or an appropriate committee of the board.

Commented [FB8]: "board" is commonly understood to mean "Board of Directors"; suggest initial reference used be "Board of Directors (board)".

1.4 The AIS Program should be tailored to and proportionate with the Insurer's use and reliance on AI and AI Systems. Controls and procedures should be focused on the mitigation of Adverse Consumer Outcomes and the scope of the controls and procedures applicable to a given AI System use

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case should reflect and align with the Degree of Potential Harm to Consumers with respect to that use case.

1.5 The AIS Program may be independent of or part of the Insurer's existing Enterprise Risk Management (ERM) program. The AIS Program may adopt, incorporate, or rely upon, in whole or in part, a framework or standards developed by an official third-party standard organization, such as the National Institute of Standards and Technology (NIST) Artificial Intelligence Risk Management Framework, Version 1.0.

1.6 The AIS Program should address the use of AI Systems across the insurance life cycle, including areas such as product development and design, marketing, use, underwriting, rating and pricing, case management, claim administration and payment, and fraud detection.

1.7 The AIS Program should address all phases of an AI System's life cycle, including design, development, validation, implementation (both systems and business), use, on-going monitoring, updating and retirement.

1.8 The AIS Program should address the AI Systems used with respect to regulated insurance practices whether developed by the Insurer or a third-party vendor.

1.9 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.

2.0 Governance

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; however, in developing its governance framework, the Insurer should consider addressing the following items:

2.1 The policies, processes, and procedures, including risk management and internal controls, to be followed at each stage of an AI System life cycle, from proposed development to retirement.

2.2 The requirements adopted by the Insurer to document compliance with the AIS Program policies, processes, procedures, and standards. Documentation requirements should be developed with Section 4 in mind.

2.3 The Insurer's internal AI System governance accountability structure, such as:

- a) The formation of centralized, federated, or otherwise constituted committees comprised of representatives from appropriate disciplines and units within the

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Insurer, such as business units, product specialists, actuarial, data science and analytics, underwriting, claims, compliance, and legal.

- b) Scope of responsibility and authority, chains of command, and decisional hierarchies.
- c) The independence of decision-makers and **consumer protection lines of defense** at successive stages of the AI System life cycle.
- d) Monitoring, auditing, escalation, and reporting protocols and requirements.
- e) Development and implementation of ongoing training and supervision of personnel.

Commented [FB9]: Possible language addition: add "consumer protection"; regulatory review of governance focuses on the degree and success of company governance systems/practices that reduce/prevent consumer harm.

2.4 Specifically with respect to predictive models: the Insurer's processes and procedures for designing, developing, verifying, deploying, using, updating, and monitoring predictive models, including a description of methods used to detect and address errors, performance issues, outliers, or unfair discrimination in the insurance practices resulting from the use of the predictive model.

3.0 Risk Management and Internal Controls

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 the following items:

3.1 The oversight and approval process for the development, adoption, or acquisition of AI Systems, as well as the identification of constraints and controls on automation and design to align and balance function with risk.

3.2 Data practices and accountability procedures, including data currency, lineage, quality, integrity, bias analysis and minimization, and suitability.

3.3 Management and oversight of predictive models (including algorithms used therein), including:

- a) Inventories and descriptions of the predictive models.
- b) Detailed documentation of the development and use of the predictive models.
- c) Assessments such as interpretability, repeatability, robustness, regular tuning, reproducibility, traceability, model drift, and the auditability of these measurements where appropriate.

3.4 Validating, testing, and retesting as necessary to assess the generalization of AI System outputs upon implementation, including the suitability of the data used to develop, train, validate and audit the model. Validation can take the form of comparing model performance on unseen data available

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at the time of model development to the performance observed on data post-implementation, measuring performance against expert review, or other methods.

3.5 The protection of non-public information, particularly consumer information, including unauthorized access to the predictive models themselves.

3.6 Data and record retention.

3.7 Specifically with respect to predictive models: a narrative description of the model's intended goals and objectives and how the model is developed and validated to ensure that the AI Systems that rely on such models correctly and efficiently predict or implement those goals and objectives.

4.0 Third-Party AI Systems and Data

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 the following considerations:

4.1 Due 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.

4.2 Where appropriate and available, the inclusion of terms in contracts with third parties that:

- a) Provide audit rights and/or entitle the Insurer to receive audit reports by qualified auditing entities.
- b) Require the third-party to cooperate with the Insurer with regard to regulatory inquiries and investigations related to the Insurer's use of the third-party's product or services.

4.3 The performance of audits and/or other activities to confirm the third-party's compliance with contractual and, where applicable, regulatory requirements.

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SECTION 4: REGULATORY OVERSIGHT AND EXAMINATION CONSIDERATIONS

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.

Insurers should expect those inquiries to include (but not be limited to) the Insurer's governance framework, risk management, and internal controls (including the considerations identified in Section 3). In addition to conducting a review of any of the items listed in this Bulletin, a regulator may also ask questions regarding any specific model, AI System, or its application, including requests for the following types of information and/or documentation:

1. Information and Documentation Relating to AI System Governance, Risk Management, and Use Protocols

1.1. Information and documentation related to or evidencing the Insurer's AIS Program, including:

- a) The written AIS Program.
- b) Information and documentation relating to or evidencing the adoption of the AIS Program.
- c) The scope of the Insurer's AIS Program, including any AI Systems and technologies not included in or addressed by the AIS Program.
- d) How the AIS Program is tailored to and proportionate with the Insurer's use and reliance on AI Systems, the risk of Adverse Consumer Outcomes, and the Degree of Potential Harm to Consumers.
- e) The policies, procedures, guidance, training materials, and other information relating to the adoption, implementation, maintenance, monitoring, and oversight of the Insurer's AIS Program, including:
 - i. Processes and procedures for the development, adoption, or acquisition of AI Systems, such as:
 - (1) Identification of constraints and controls on automation and design.
 - (2) Data governance and controls, any practices related to data lineage, quality, integrity, bias analysis and minimization, suitability, and **dData cCurrency**.

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- ii. Processes and procedures related to the management and oversight of predictive models, including measurements, standards, or thresholds adopted or used by the Insurer in the development, validation, and oversight of models and AI Systems.
- iii. Protection of non-public information, particularly consumer information, including unauthorized access to predictive models themselves.

1.2. Information and documentation relating to the Insurer’s pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of data or AI Systems developed by a third-party.

1.3. 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:

- a) Documentation relating to or evidencing the formation and ongoing operation of the Insurer’s coordinating bodies for the development, use, and oversight of AI Systems.
- b) Documentation related to data practices and accountability procedures, including data lineage, quality, integrity, bias analysis and minimization, suitability, and data currency.
- c) Management and oversight of predictive models and AI Systems, including:
 - i. The Insurer’s inventories and descriptions of predictive models, and AI Systems used by the Insurer to make or support decisions that can result in Adverse Consumer Outcomes.
 - ii. As to any specific predictive model or AI System that is the subject of investigation or examination:
 - (1) Documentation of compliance with all applicable AI Program policies, protocols, and procedures in the development, use, and oversight of predictive models and AI Systems deployed by the Insurer.
 - (2) Information about data used in the development and oversight of the specific model or AI System, including the data source, provenance, data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.
 - (3) Information related to the techniques, measurements, thresholds, and similar controls used by the Insurer.

Commented [FB10]: Question: is the intent only to identify internal insurer groups coordinating AI development, use and oversight, or would it be better to identify documentation that rises to the level of authoritative oversight/governance of these activities?

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- d) Documentation 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.

Commented [FB11]: Suggest adding "model" to align with the definition provided in Section 2.

2. Third-Party AI Systems and Data

In addition, if the investigation or examination concerns data, predictive models, or AI Systems collected or developed in whole or in part by third-parties, the Insurer should also expect the Department to request the following additional types of information and documentation.

- 2.1 Due diligence conducted on third-parties and their data, models, or AI Systems.
- 2.2 Contracts with third-party AI System, model, or data vendors, including terms relating to representations, warranties, data security and privacy, data sourcing, intellectual property rights, confidentiality and disclosures, and/or cooperation with regulators.
- 2.3 Audits and/or confirmation processes performed regarding third-party compliance with contractual and, where applicable, regulatory obligations.
- 2.4 Documentation pertaining to validation, testing, and auditing, including evaluation of model drift.

The Department recognizes that Insurers may demonstrate their compliance with the laws that regulate their conduct in the state in their use of AI Systems through alternative means, including through practices that differ from those described in this bulletin. The goal of the bulletin is not to prescribe specific practices or to prescribe specific documentation requirements. Rather, the goal is to ensure that Insurers in the state are aware of the Department's expectations as to how AI Systems will be governed and managed and of the kinds of information and documents about an Insurer's AI Systems that the department expects an Insurer to produce when requested.

As in all cases, investigations and market conduct actions may be performed using procedures that vary in nature, extent, and timing in accordance with regulatory judgment. Work performed may include inquiry, examination of company documentation, or any of the continuum of market actions described in the NAIC's *Market Regulation Handbook*. These activities may involve the use of contracted specialists with relevant subject matter expertise. Nothing in this bulletin limits the authority of the Department to conduct any regulatory investigation, examination, or enforcement action relative to any act or omission of any Insurer that the Department is authorized to perform.



75 Varick St, 5th Floor
New York, NY 10013

November 6, 2023

Commissioner Kathleen Birrane
Chair, Innovation, Cybersecurity, and Technology (H) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Ste. 1500
Kansas City, MO 64106-2197

Sent via email: MARomero@naic.gov

Dear Commissioner Birrane:

Oscar Health, Inc. (“Oscar”) appreciates the opportunity to comment on the October 11, 2023 Exposure Draft of the Innovation, Cybersecurity, and Technology (H) Committee’s Model Bulletin entitled “USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS.”

As a tech-driven insurer with a vision¹ for how Artificial Intelligence (“AI”) can make healthcare more affordable and accessible, Oscar appreciates the continued opportunity to engage with the NAIC and state regulators to ensure appropriate governance of AI so that it can be responsibly used to its full potential.

In general, Oscar is supportive of the clarifying changes made to the draft bulletin. As revised, the bulletin refines key definitions and appropriately requires payers to employ a *risk-based approach* to AI oversight, giving each payer the flexibility to scale its AI Systems Program to reflect the degree of risk of “Adverse Consumer Outcomes” and the “Degree of Potential Harm to Consumers” relative to the use case. It also creates needed flexibility concerning third-party contracting, while maintaining insurers’ responsibility for outcomes resulting from the use of third-party data or models. We appreciate the NAIC’s incorporation of these changes.

We encourage and support the NAIC's continued focus on the regulation of AI outcomes, as opposed to a focus on the end to end operation and oversight of AI tools used to produce such outcomes. We agree with the InsurTech coalition's observation that "our collective interest is in ensuring that decisions meet legal standards, not that all steps in the process of making a decision be subjected to unnecessary standards and examinations....AI is a tool, a powerful tool, but a tool to implement already regulated practices."

We continue to urge the NAIC to formally state in the Bulletin that any regulator evaluation of the performance of AI use cases will measure performance against the best human alternative currently in use. Human alternatives contain many of the same risks that this bulletin seeks to

¹ See: <https://www.hioscar.com/ai>

mitigate for AI, and Oscar believes AI, when deployed responsibly, will ultimately reduce such risks.

Finally, we encourage the NAIC to consider the importance of transparency in AI use case development, and the value of open source models to ensure a level playing field in AI development. Research on AI is moving unpredictably fast, and there are new applications developed every day, which when publicly shared, can further the success of industry as a whole. It is Oscar's belief that the best approach to understanding AI, its risks, and its potential is through experimentation, learning, and sharing.

We welcome the opportunity to further discuss these comments.

Sincerely,



Catherine Grason, Esq.
Senior Counsel and Head of Government Affairs
Oscar Health

About Oscar

Since its founding in 2012, Oscar, the first health insurance company built around a full stack technology platform, has been on a mission to make a healthier life accessible and affordable for all. By leveraging technology and member engagement to design innovative products, Oscar is able to improve healthcare outcomes and reduce the total cost of care for its members.