

National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI)

RECOMMENDS that insurance companies and all persons or entities facilitating the business of insurance that play an active role in the AI system lifecycle, including third parties such as rating, data providers and advisory organizations (hereafter referred to as “AI actors”) promote, consider, monitor, and uphold the following principles according to their respective roles; and

Commented [CA1]: CT and CEJ - addition

Commented [CA2]: APCIA - define

Comment CT and CEJ - data providers play a pivotal role in the AI lifecycle and should be included.

Comment APCIA - AI actors” is a broad term and there is no language in the principles that limits accountability to the employer entity. This seems like a potentially new employee liability that does not exist for many other employees. -

THIS DOCUMENT is intended to establish consistent high-level guiding principles for AI actors. These principles are guidance and do not carry the weight of law or impose any legal liability. However, this guidance can serve to inform and establish general expectations for AI actors and systems emphasizing the importance of accountability, compliance, transparency, and safe, secure, fair and robust outputs.

Commented [CA3]: CT and CEJ - addition

Comment CT and CEJ - first category of the AI principles is “Fair and Ethical.” Consequently, the term fair should be included in the types of outputs expected from insurers’

Further, **THIS DOCUMENT**

Should be used to assist regulators and NAIC committees addressing insurance-specific AI applications. The level of regulatory oversight may vary based on the risk and impact to the consumer. These principles should be interpreted and applied in a manner that accommodates the nature and pace of change in the use of AI by the insurance industry and promotes innovation, while protecting the consumer from harm.

Commented [CA4]: APCIA - remove/change “. . . while protecting consumers.”

Comment from APCIA - to change “while protecting the consumer from harm” to “while protecting consumers” This offers a more holistic statement of the regulator’s consumer protection role.

Task force decision to include “data providers” and “fair”? (cleanup/clarifying) Task force decision to clarify or add anything for “AI actors.” Task force decision to keep wording as is or to change to “while protecting consumers”?

FOUR MAIN DECISION POINTS:

- Include “Data Providers”
- Include “Fair”
- Further define “AI actors”
- Remove “from harm”

Chairperson Godfreed:

- I would suggest we add “Data Providers” and “Fair.”
- I don’t think we need to further define AI actors, as that is meant to be kept broad, understanding further definition may be necessary moving forward.
- I don’t have any comments on changing “from harm”

Fair and Ethical

- a. AI actors should respect the rule of law throughout the AI lifecycle. This includes, but is not limited to, insurance laws and regulations, such as those relating to trade practices, unfair discrimination, access to insurance, underwriting, privacy, consumer protection and eligibility practices, ratemaking standards, advertising decisions, claims practices and solvency.

Commented [CA5]: AHIP - replace with unlawful (also see section b)

Comment AHIP - As these Principles are to be used as guidance, it seems such a term as “unfair” offers little guidance, since in many situations, there seems to be disagreement about what is fair and unfair. Therefore, we would suggest “unfair” be replaced with a term which is more easily determined –unlawful.

Task force decision to change unfair to unlawful. Also see part b.

ONE MAIN DECISION POINT:

- Changing “unfair” to “unlawful” – Could impact the rest of the document as well

Chairperson Godfreed:

- I would be opposed to changing “unfair” to “unlawful”

- b. AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers, and to avoid proxy discrimination against protected classes. AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful unintended consequences, and corrects and compensates for such consequences when they occur.

Commented [CA6]: AHIP - add unlawful

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Deleted: .

Commented [CA7]: CT and CEJ - See Accountable and Compliant a.

Deleted:

ACLI comment - We also welcome a conversation with regulators, consumer groups and other industry stakeholders regarding proxy discrimination: what it means, and how systems, processes and oversight can be put in place to prevent AI from resulting in underwriting decisions that would otherwise be prohibited.

APCIA comment - continues to have reservations with the use of the undefined term “proxy discrimination,” we recognize this is only the beginning of an important dialogue and are committed to proactive and productive engagement and collaboration as this issue evolve.

NAMIC comment - Principles utilize the complex, undefined, and granular term “proxy discrimination. Ultimately, we would recommend not including in the AI Principles this type of undefined language, even in an aspirational document. At the very least, we would strongly encourage the task force to pair any use of “proxy discrimination” with a strong statement in support of risk-based pricing.

Comment CEJ - supports current language - “proxy discrimination against protected classes” is crystal clear. Industry arguments that current statutes do not envision proxy discrimination are factually incorrect and irrelevant. The inclusion of a requirement for proactive efforts to identify and address proxy discrimination are necessary to prompt insurers and other developers of algorithms to action.

Comment ND - North Dakota wants to emphasize that in some cases variables may be used that avoid proxy discrimination. If these variables have legitimate and acceptable business practice, it would be allowable to use. The proxy discrimination language was not intended to compromise cost-based pricing or claims settlement in insurance or any other legitimate and acceptable business practice. For example, let's say a rating variable has to do with the age and value of the house. It can be shown that these variables are used to discriminate against minority communities because these communities' housing is characterized by low value and old age, as a result of historical discrimination in housing and lending. IE the data is already flawed. While one could argue there is correlation between the age of the home and risk-based pricing. There's also a strong correlation with discrimination. This challenges an insurer to find a better alternative to the age and value of homes. Such as the condition of the roof and/or the condition and age of the wiring. Well this doesn't eliminate disparate impact; it does provide insurers with better tools that makes insurance more available and enhanced cost-based pricing. So, it would make more sense to use the variables; the roof and/or the condition and age of the wiring rather than a broad variable such as the age of the house. North Dakota offers new language that should emphasize the point, avoiding proxy discrimination does not mean abandoning cost-based processes. Rather, it means examining these processes to identify unintentional and unnecessary discriminatory effects on protected classes.

“Consistent with the cost-based foundation of insurance, AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid proxy discrimination against protected classes.”

Task force decision - Anything else to be added to the term proxy discrimination for definition or remove it completely or keep as is? Options include, the option from North Dakota's suggested language regarding the proxy discrimination.

MAIN DECISION POINT:

- Do we make any further adjustments to the proxy discrimination language?

Chairperson Godfread:

- I would be supportive of either concept:
 - AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers. AI Actors must proactively avoid proxy discrimination against protected classes however this does not preclude the use of variables for legitimate and acceptable business purposes;

OR

- "Consistent with the cost-based foundation of insurance, AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid proxy discrimination against protected classes."

OR

- AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers. AI actors may engage in fundamental cost-bases insurance methods, but must proactively avoid proxy discrimination against protected classes
- I think the other language being suggested is addressed in both the accountable and compliant sections.

Comment CT and CEJ - We suggest replacing the "or" between harmful and unintended in the last sentence with a comma. While some unintended consequences may be harmful to consumers, it is not a given that all unintended consequences are harmful. The additional language recognizes that some outcomes may be harmful to consumers and, if so, the harm should be addressed – both by fixing the algorithm and reversing the harm to the consumer.

Task force decision - The task force must decide on either one of two options. 1- adding the suggested language from Connecticut and a CEJ and removing the last two sentence is an accountable and compliant. Or 2. keeping the language as it is an keeping the last two sentences in accountable and compliant.

Chairperson Godfread: I suggest we discuss these points during the Accountable and Compliant sections

Comment AHIP - As these Principles are to be used as guidance, it seems such a term as “unfair” offers little guidance, since in many situations, there seems to be disagreement about what is fair and unfair. Therefore, we would suggest “unfair” be replaced with a term which is more easily determined –unlawful.

Chairperson Godfread: This is pending the previous discussion of “unfair” or “unlawful”

Accountable

- a. AI actors should be accountable for ensuring that AI systems operate in compliance with these principles consistent with the actors’ roles, within the appropriate context and evolving technologies. Any AI system should be compliant with legal requirements governing its use of data and algorithms during its phase of the insurance lifecycle. Data supporting the final outcome of an AI application should be retained and be able to be produced in accordance with applicable insurance laws and regulations in each jurisdiction. AI actors should be responsible for the creation, implementation and impacts of any AI system, even if the impacts are unintended. AI actors should implement mechanisms and safeguards consistent with the degree and nature of the risks posed by AI to ensure all applicable laws and regulations are followed, including ongoing (human or otherwise) monitoring and when appropriate, human intervention. However, absent negligence in the creation, implementation or monitoring of an AI system the remedy of an impact that violates existing regulation should be correction of said impact.

Comment CT and CEJ - The repercussions of violations should not be limited in a guidance publication and such statement may have a negative impact on a regulator’s future enforcement actions.

APCIA comment - The traditional remedy for ordinary negligence is and should be a corrective action, for which the ordinary negligence standard described in the principles does not clearly provide.

Task force decision - See CEJ and CT comments under Fair and Ethical - Addition to the options under fair and ethical, a 3rd option maybe to add in suggested language from APCIA which would say “however absence of willful an wanton negligence...”

MAIN DECISION POINT:

- Do we make any changes to this language? Understanding that changes here may need to be addressed in earlier portions of the document.

Chairperson Godfread: I suggest we keep this language in the document as it acknowledges and recognizes the necessity for understanding that we, as regulators, have an important role to play in balancing the

Commented [CA8]: APCIA - add willful and wanton

Commented [CA9]: CT and CEJ - remove and move “parts” to into Fair part B

benefits of new technology while maintaining the consumer protections we all strive for. This portion is critical, in my opinion, for regulators to recognize that balance.

Compliant

- a. AI actors must have the knowledge and resources in place to comply with all applicable insurance laws and regulations. AI actors must recognize that insurance is primarily regulated by the individual states and territories of the United States as well as by the federal government, and that AI systems must comply with the insurance laws and regulations within each individual jurisdiction. Compliance is required whether the violation is intentional or unintentional. Compliance with legal requirements is an ongoing process. Thus, any AI system that is deployed must be consistent with applicable laws and safeguards against outcomes that are either unfairly discriminatory or otherwise violate legal standards, including privacy and data security laws and regulations. Any decision by an AI actor that utilizes an AI system in its creation shall not be held in violation of existing regulation, if that same decision would have been rendered without the use of an AI system.

Commented [CA10]: CT and CEJ - remove

Comment CT and CEJ - The principles set forth in this draft are designed to present guidance for AI actors and this last sentence seems incompatible with that purpose.

Task force decision - See CEJ and CT comments under Fair and Ethical

MAIN DECISION POINT:

- Do we make any changes to this language? Understanding that changes here may need to be addressed in earlier portions of the document.

Chairperson Godfred: I suggest we keep this language in the document as it acknowledges and recognizes the necessity for understanding that we, as regulators, have an important role to play in balancing the benefits of new technology while maintaining the consumer protections we all strive for. This portion is critical, in my opinion, for regulators to recognize that balance.

Transparent

- a. For the purpose of improving the public's confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to all relevant stakeholders. AI actors must have the ability to protect confidentiality of proprietary algorithms, provided adherence to individual state law and regulations in all states where AI is deployed can be demonstrated. These proactive disclosures include revealing the kind of data being used, the purpose of the data in the AI system and consequences for all stakeholders.

Deleted: including consumers

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Comment CT - removing the one separately identified stakeholder (consumers). By naming one you run the risk of unintentionally having others argue that they were not intended to be included. The other recommendation provides a stronger statement that AI actors should have the ability to protect algorithms provided they can demonstrate that they have adhered to the relevant state laws and regulations.

- b. Consistent with applicable laws and regulations, stakeholders (which includes regulators and consumers) should have a way to inquire about, review and seek recourse for AI-driven insurance decisions. This information should be, easy-to-understand and describe the factors that lead to the prediction, recommendation or decision. This information may be presented differently and should be appropriate for applicable stakeholders.

Comment CEJ - Transparent section repeats many of the same ideas in both parts a and b. and object to the original wording which would pre-empt state public information laws - Change section to "For the purpose of improving the public's confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to relevant stakeholders, particularly to the people whose outcome is affected by the algorithm. Disclosures about the content and use of AI should be proactive and include the kind of data being used, the purpose of the data in the AI system and the expected outcomes for affected people. People who are affected by the AI-driven decisions and people who are responsible for ensuring these AI practices are fair and legally compliant should have a way to inquire about, review and seek recourse for AI-driven insurance decisions. This information should be easy-to-understand and describe the factors that lead to the prediction, recommendation or decision. This information may be presented differently and should be appropriate for applicable stakeholders."

Task force decision - the task force has three options one to keep the language as it is now. 2 - implement the changes from Connecticut. 3- adopt language suggested by CEJ

MAIN DECISION POINT:

- Leave Language as is?
- Adopt changes proposed by Connecticut
- Adopt Changes proposed by CEJ (Changes made by CEJ would remove (a) and (b) and make the transparent section one paragraph).

Chairperson Godfreed:

- I have no comments on these proposed changes

Secure, Safe and Robust

- a. AI systems should be robust, secure, and safe throughout the entire life cycle so that, in conditions of normal or reasonably foreseeable use, or adverse conditions, they can function in compliance with applicable laws and regulations. To this end, AI actors should ensure a reasonable level of traceability in relation to datasets, processes, and decisions made during the AI system lifecycle. AI actors should enable analysis of the AI system's outcomes, responses, and other insurance related inquiries, as appropriate in keeping with applicable industry best practices and legal requirements.
- a. AI actors should, based on their roles, the situational context, and their ability to act, apply a systematic risk management approach to each phase of the AI system lifecycle on a continuous basis to address risks related to AI systems, including privacy, digital security and unfair discrimination as defined by applicable laws and regulations.

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