Colorado Division of Insurance

SB21-169 and Life Insurance

NAIC SCORI Life Workstream
October 11, 2023

Agenda

- Overview of SB21-169

- Life Insurance Stakeholder Process and Insurer Survey

- Governance Regulation

- Draft Quantitative Testing Regulation

Goal of SB21-169

Protect Colorado consumers from insurance practices that result in unfair discrimination on the *basis of race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression*

Scope of SB21-169

- Applies broadly to insurers that use external consumer data and information sources ("ECDIS") as well as algorithms and predictive models that use ECDIS including life, auto, homeowners, and health insurance

- Insurance practices subject to SB21-169: Marketing, Underwriting, Pricing, Utilization Management, Reimbursement Methodologies, and Claims Management

- Requires carriers to test whether any ECDIS, and/or algorithms and predictive models utilizing ECDIS result in unfairly discriminatory outcomes and to establish a risk management framework

External Consumer Data and Information Source

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

- The Commissioner may promulgate rules to further define "external consumer data and information source" for particular lines of insurance and insurance practices.

What SB21-169 Does Not Do

- Does not require an insurer to collect race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression of an individual

- Does not prohibit the use of, or require life, annuity, long-term care, or disability insurers to test, medical, family history, occupational, disability, or behavioral information related to a specific individual, if the information has a <u>direct relationship to mortality, morbidity, or longevity risk</u> unless such information is otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources

Stakeholder Engagement

- Prior to the adoption of rules for any type of insurance and insurance practice, the Division must engage in a stakeholder process with carriers, producers, consumer representatives, and other interested parties

- Hold public stakeholder meetings for each type of insurance and insurance practice to ensure sufficient opportunity to consider factors and processes relevant to each type of insurance and insurance practice

Stakeholder Process

- Initiated the stakeholder process in February 2022

- Focused on life insurance underwriting and held seven meetings

- Presentations by American Council of Life Insurers, American Academy of Actuaries, and the Consumer Federation of America

- Many individiual discussions with interested parties including insurers, consumer advocates, and third-party vendors

Life Insurance Survey

- Conducted a survey of life insurers regarding current risk management and governance practices related to the use ECDIS, algorithms, and predictive models

- A wide range of insurer preparedness with insurers in various stages of developing their governance and risk management processes

- Some considering the type of quantitative testing contemplated by SB21-169

Life Insurance Survey

- Multi-disciplinary, cross-functional team

- Clearly defined roles and responsibilities for evaluating data and models and developing risk mitigation measures

- Comprehensive and detailed documentation of policies and procedures as well as thorough record keeping

Life Insurance Survey

- Division bifurcated our approach to address the required risk management framework and testing components contemplated by SB21-169 through two regulations

Colorado Insurance Regulation 10-1-1 Governnace and Risk Managment

- Effective November 14, 2023

- Further defines "ECDIS" to include occupation data that does not have a direct relationship to mortality, morbidity, or longevity risk, IoT data, biometric data, and insurance risk scores

Colorado Insurance Regulation 10-1-1 Governnace and Risk Managment

- Documented governing principles providing guidance for goverance and risk management

- Board oversight and senior management accountability

- Cross-functional goverance group with clearly defined roles and responsibilities

- Inventory including version control of all algorithms and predictive models, their purpose, and outputs

Colorado Insurance Regulation 10-1-1 Governnace and Risk Managment

- Documented ongoing monitoring of predicitve model performance including accounting for model drift

- Documented roles and responsibilities for the design, development, testing, deployment, use, and monitoring

- Documented process for selecting third-party predicitve models and third-party vendors that supply ECDIS, algorithms, and/or predictive models

Colorado Insurance Regulation 10-1-1 Governnace and Risk Managment

- Insurers that use third-party vendors remain responsible for ensuring requirements are met including the production of any documents or information the Division deems necessary to ensure compliance

Colorado Insurance Regulation 10-1-1 Governnace and Risk Managment

- Insurers that use ECDIS, and algorithms and/or predicitve models that use ECDIS, must submit a report by December 1, 2024 demonstrating compliance or corrective action plan

- Insurers that do not use ECDIS, or algorithms and/or predicitve models that use ECDIS, must submit an attestation by December 14, 2023

Confidentiality

- Documents, materials, and other information obtained or disclosed to Commissioner or any other person are recognized as proprietary and containing trade secrets and are confidential and privileged

- Commissioner may use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties

- Commissioner may make data publicly available in an aggregated or de-identified format

Draft Quantitative Testing Regulation

- Exposed for informal comment on September 28

- Testing underwriting outcomes

- Underwriting defined as process of evaluting risk factors determining insurability and the premium if coverage is offered

- Required for insurers that use ECDIS as well as algorithms and predicitve models that use ECDIS

Draft Quantitative Testing Regulation

- Limited to testing for unfairly discriminatory outcomes based on race and ethnicity

- Insurers must estimate race or ethnicity of proposed insureds using application data and Bayesian Improved First Name Surname Geocoding (BIFSG)

- Racial and ethnic categories: Hispanic, Black, Asian Pacific Islander, and White

Draft Quantitative Testing Regulation Application Approval Decisions

- Traditional underwriting factors are defined to include medical and family history, disability, occupational information, Rx drug history, financial information on the application, MIB, and certain motor vehicle and criminal history records

Draft Quantitative Testing Regulation Application Approval Decisions

- Use a prescribed logistic regression methodology

- Insurers required to calculate whether Hispanic, Black, and API proposed insureds are disapproved at a statistically significant different rate relative to White applicants

- Policy type, face amount, age, gender, and tobacco use may be used as control variables while including Hispanic, Black, and API as separate dummy variables in the regression

Draft Quantitative Testing Regulation Application Approval Decisions

- If there is a statistically significant difference in approval rates, the insurer must conduct a second test of each variable in the underwriting model to determine what variable(s) are contributing to the observed difference

- If an ECDIS variable contributes to the observed difference, the variable and model that uses the variable are deemed to be unfairly discriminatory

Draft Quantitative Testing Regulation Premium Rates

- Use a prescribed linear regression methodology

- Insurers are required to calculate if there is a statistically signficant difference in the premium rate per $1,000 of face amount for policies issued to Hispanic, Black, and API insureds relative to White insureds

- Same control variables while including Hispanic, Black, and API as separate dummy variables in the regression

Draft Quantitative Testing Regulation Premium Rates

- If there is a statistically significant difference in premium rate, the insurer must conduct a second test of each variable in the underwriting model to determine what variable(s) are contributing to the observed difference

- If an ECDIS variable contributes to the observed difference, the variable and model that uses the variable are deemed to be unfairly discriminatory

Draft Quantitative Testing Regulation Remediation and Reporting

- Insurers must remediate any unfairly discriminatory ECDIS, algorithms, or predictive models and conduct additional testing to demonstrate the effectiveness of the remediation

- Insurers are required to report the results of the testing beginning in 2024 and annually thereafter

Next Steps

- Stakeholder meeting on October 19

- Comments due on October 26

- Expect to have at least one more stakeholder meeting

Contact information

- Jason Lapham, Big Data and AI Policy Director

  jason.lapham@state.co.us

  303-869-3412

How to engage

- Website: https://doi.colorado.gov/for-consumers/sb21-169-protecting-consumers-from-unfair-discrimination-in-insurance-practices

- Email: DORA_Ins_RulesandRecords@state.co.us

- Meetings