

Colorado February 7 Stakeholder Meeting Shines Light on the Departments Draft Proposed Data Governance Rule

February 10, 2023

In satisfying its directive under Senate Bill (SB) 21-169, the Colorado Insurance Department (DOI) held a stakeholder meeting on February 7 to discuss the DOI's February 1 draft proposed rule styled "Governance and Risk Management Framework Requirements for Life Insurance Carriers' Use of External Consumer Data and Information Sources, Algorithms, and Predictive Models." We discuss the proposed rule here in our article "[Does Colorado's Draft Big Data Governance Rule Foretell of a Long Winter or an Early Spring?](#)"

At the February 7 stakeholder meeting, the DOI provided an overview of the draft rule and shed light on its proposed timeline for comments and next steps. The DOI also announced that stakeholders would have until February 28 to submit written comments. After stakeholders raised concerns with the short deadline, the DOI suggested that stakeholders provide what they could by February 28, and then the DOI would not shut out other comments but would consider extending the comment period. The DOI intends to consider the comments and develop a draft, perhaps as quickly as two weeks after it closes the comment period. Once the draft is completed, the formal rule-making process would start.

Under Colorado law, the rule-making process begins once the DOI files a Notice of Proposed Rulemaking with the Colorado Secretary of State for publications in the Colorado Register. Once that notice is published, comments on the proposed rule must be accepted. The DOI would then hold a hearing on the proposed rule. Importantly, once the hearing ends, no more comments may be submitted unless the DOI alters the proposed rule in a manner that requires it to accept additional comments.

At the February 7 stakeholder meeting the following was also discussed:

- **Two-pronged regulatory regime** – The DOI highlighted that there would be a two-pronged regulatory regime—the proposed rule is the “Governance Rule,” and a second proposed “Testing Rule” with respect to life insurance underwriting is on the horizon.
- **Scope** – While the prior stakeholder meetings and the DOI survey have only addressed life insurance underwriting, Commissioner Conway asserted that he viewed the Governance Rule as having general applicability. Commissioner Conway emphasized that there would not be huge differences in how insurers approach governance and risk management across lines of insurance or insurance practices.

These comments cast a spotlight for insurers in other lines of business, who may have assumed that their opportunity to comment would come later as a part of the stakeholder meetings for the respective line of business.

- **Prescriptive Approach for the Governance and Risk Management Framework and Documentation** – Industry stakeholders voiced concern over the prescriptive nature of reporting requirements and advocated for a principles-based approach. The DOI explained that due to the wide variety in the life insurers’ survey responses as to respondents’ frameworks and documentation, the DOI believed it was necessary to provide a beacon on what the DOI considers to be the minimum required items. Consumer advocates endorsed the prescriptive nature of the proposed rule’s requirements and noted that the requirements would facilitate the DOI’s review. These minimums, however, do not appear to take into account differences in insurers and may place undue burdens on all but the largest insurers.
- **Availability of the Reported Information** – Industry stakeholders requested that the rule incorporate the confidentiality and privilege provisions contained in 10-3-1104.9(3)(d) to protect the information reported to the DOI. That section also states that:

“Documents, materials, and other information in the possession or control of the division that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to this section or any rules adopted pursuant to [10-3-1104.9(3)(d)] . . . are not subject to subpoena; and are not subject to discovery or admissible in evidence in any private civil action.”

This additional language should also be incorporated into the proposed rule.

- **Protected Class** – Industry stakeholders sought confirmation that sex and disability may continue to be considered by life insurers.

As the DOI continues to move forward with the stakeholder and rulemaking process, we will continue to monitor developments on the draft rule and the draft Testing Rule, when it is exposed.

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