

September 27, 2022

**To:** IDMA Members  
**From:** Aimee Siliato, FIDM  
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**Subject:** *The Regulatory Review* eBulletin – 2022 Edition No. 3

*Welcome to IDMA's Regulatory Review, presented in support of IDMA's commitment to the robust education of the insurance data manager. Information presented here is compiled from discussions of the National Association of Insurance Commissioners (NAIC) and related regulatory actions, activities and discussions.*

## **THE REGULATORY REVIEW**

**2022 Edition No. 3**

### **Artificial Intelligence (AI)/Machine Learning (ML) Surveys**

- Analysis of NAIC Private Passenger Automobile survey results proceeding at the regulator-only level, public report to be released by year-end
- Homeowners survey being finalized, will be released to participating insurers shortly. Insurance companies writing homeowners insurance in 2020 with premium of more than \$50 million will be asked to complete the survey.
- Draft life insurance survey will be released for comment and be issued after the homeowners survey is complete
- Approaches to regulatory evaluation of third-party data and model vendors under discussion include:
  - Regulators requiring insurance companies to obtain verification from their third-party vendor that an actuary or other professional has reviewed a model prior to using the model certifying its compliance with AI standards
  - Create a library of third-party vendors, classified by line of insurance and operational area

### **Climate and Resiliency**

- Meetings being held between regulators and insurers to discuss how to complete the newly revised NAIC Climate Risk Disclosure form which is modeled on the international Climate-Related Financial Disclosures (TCFD)

### **Cybersecurity**

- At the state level, twenty-one states have adopted the NAIC Insurance Data Security Model Law
- At the federal level, the Cyber Incident Reporting for Critical Infrastructure Act of 2022 signed into law, requiring that critical infrastructure operators report cybersecurity incidents to the US Department of Homeland Security and the Cybersecurity and Infrastructure Security Agency

### Collaboration Forum

- Forum established to facilitate collaboration, coordination of topics, issues of regulator responsibility
- First forum held July 18-19 on the topic of algorithmic bias, detecting and addressing unfair bias
- Goals and learning objectives
  1. Identify all NAIC groups working on AI/ML algorithms and models
  2. Identify work being done
  3. Provide foundational education
  4. Develop a common vocabulary
  5. Identify foundational regulatory issues e.g., core elements of any acceptable accountability framework
- Presentation by Faegre, Drinker, Biddle & Reath LLP
  - Risk management efforts must cover every stage of the AI life cycle
    - Pre-design, data collection, stakeholder discussions
    - Design and development, data analysis, data cleaning
    - Test and evaluation, validation and verification
    - Deployment, user feedback
- Presentation by Milliman
  - Key questions
    1. Whether the model is being used as a proxy for a protected class
    2. Whether the predictive effect is consistent across protected classes
    3. Whether the model disproportionately affects risks that are the same in every other way except for their protected class and the evaluated variable
    4. Whether the inclusion of the variable significantly improves the model's ability to predict across protected classes

### COVID-19 Litigation

- Recent decision from the NJ Appellate Division held that six businesses were not entitled to insurance coverage for losses sustained when they were forced to close or limit their operations as a result of an Executive Order
- No direct physical loss or damage to properties
- To trigger coverage the action of the civil authority needed to be taken as a result of damage to nearby property and either in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage or to enable the civil authority to have unimpeded access to the damaged property
- Washington State Supreme Court ruling August 25, deprivation of intended use following COVID-19 government closure orders do not amount to “direct physical loss of property”
- Rulings follow national general trend

### E-Commerce

- What may be regulatory impediments to e-commerce being reviewed in areas including
    - e-signature
    - e-notices
    - claims
    - policy forms
- as identified by the responses to the 2021 e-commerce survey conducted by the NAIC

**Privacy Protections**

- Five US states have passed comprehensive data privacy laws-California, Colorado, Connecticut, Virginia, Utah
- The House Energy and Commerce Committee passed the American Data Privacy and Protection Act (ADPPA), sweeping act especially with regard to private right of action and possibility to pre-empt state laws
- Under current ADPPA draft an entity is deemed compliant with ADPPA if they comply with GLBA or HIPAA
- Draft NAIC white paper on Consumer Data Ownership and Use is expected to be released for public comment in December 2022, focus on personal data relative to insurance transactions, provide guidance on data ownership
- Work to begin on a new NAIC data privacy model law to replace 2 existing models, draft expected to be available for comment in Fall 2022

**Race and Insurance**

- Regulators working on draft diversity and inclusion recommendations for the insurance industry to follow
- The NAIC is developing diversity, equity and inclusion coursework

**Workers' Compensation**

- Remarks from IAIABC
  - Estimated 25% of workforce works remotely on a full or part-time basis
  - Thirty one percent of gig workers hold gig work as their main job
  - Are workers compensation presumptions, injuries presumed to have happened at work, creating inequities in the workers compensation system?
  - Potential shifting of responsibilities of benefits, payment responsibility, claim frequency
- Several state insurance departments allow remote work which has helped in hiring and retaining employees and with recruiting new employees from local colleges and universities

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