Locke Lord QuickStudy: New York DFS Issues Circular Letter No. 7 RE: Use of AIS and ECDIS in Insurance Underwriting and Pricing

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On Thursday, July 11, 2024, the New York Department of Financial Services ("NYDFS") issued Circular No. 7 Re: Use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing which is applicable to all insurers authorized to write insurance in New York, Article 43 Corporations, health maintenance organizations, licensed fraternal benefit societies, and the New York State Insurance Fund. The Letter does <u>not</u> follow the NAIC Bulletin on the Use of AI By Insurers. The NYDFS published the final Circular Letter No. 7 after considering comments and conducting additional due diligence in connection with the January 17, 2024 proposed Circular Letter.

Circular Letter No. 7 addresses the following:

Definitions

- Includes the original proposed definitions of "AIS" and "ECDIS".
  - **AIS** means any machine-based system designed to perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, that is used – in whole or in part – to supplement traditional health, life, property or casualty underwriting or pricing, as a proxy for traditional health, life, property or casualty underwriting or pricing, or to identify "lifestyle indicators" that may contribute to an underwriting or pricing assessment of an applicant for insurance coverage.
  - **ECDIS** includes data or information used – in whole or in part – to supplement traditional medical, property or casualty underwriting or pricing, as a proxy for traditional medical, property or casualty underwriting or pricing, or to identify "lifestyle indicators" that may contribute to an underwriting or pricing assessment of an applicant for insurance coverage. ECDIS does not include an MIB Group, Inc. member information exchange service, a motor vehicle report, prescription drug data, or a criminal history search.
- Cross-references the definitions regarding "unfair" and "unlawful discrimination" in state and federal law.
- Excludes a definition of "traditional underwriting" because it does not include ECDIS or AIS as defined in the Letter.

Proxy Assessments

- Clarifies what the proxy assessment may entail and the protected classes to which the provision applies.
- The provision does not prevent insurers from using data to infer or impute protected class status for the limited purpose of the quantitative assessments (Section 17).

Quantitative Assessments

- Clarifies that its provisions regarding quantitative proxy assessments and assessment of disproportionate adverse effects only apply to protected classes for which data are available or may be reasonably imputed using statistical methodologies.
- Clarifies that insurers are <u>not</u> expected to collect additional data from or about individuals for such analyses.

Governance and Risk Management

- Maintains the expectation that Insurers take an appropriate, risk-based approach to utilizing ECDIS and AIS.
- Insurers must determine the appropriate sufficiency thresholds and standards of proof based on the product and the particular use of ECDIS or AIS.

Board and Senior Management Oversight

- Maintains the expectation that both senior management and the board have a responsibility for the overall outcomes of the use of ECDIS and AIS, not the day-to-day implementation.

Third-Party Vendors

- Maintains the expectation that insurers conduct appropriate oversight over third-party vendors.
- Insurers should perform appropriate due diligence and oversight relative to the risks of the ECDIS or AIS used by third-party vendors.
- Insurers are ultimately responsible for the outcomes of that use.
- Provides an additional clause drawn from the NAIC's Model Bulletin on the Use of Artificial Intelligence Systems by Insurers demonstrating the expectation that insurers incorporate certain terms into contracts with third-party vendors, where appropriate.

Confidentiality

- Confidentiality of information is not guaranteed, but the NYDFS intends to protect confidential information, intellectual property, and trade secrets of insurers and third-parties.
- The NYDFS will comply with the Freedom of Information Law, Public Officers Law Article 6, which provides that all agency records are public unless they fall within an exception from disclosure.
- If an insurer asserts that such information is a trade secret that if disclosed would cause substantial injury to the insurer's competitive position pursuant to Public Officers Law § 87(2)(d), then the insurer may, at the time the information is submitted, request that the NYDFS except such information from disclosure pursuant to Public Officers Law § 89(5)(a)(1).

The link to the Circular Letter is found here.

Please contact your Locke Lord LLP attorney if you have any additional questions.

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