

Market Conduct Compliance – A Look at Recent Issues and Trends

Presenters:

Kathy Donovan

Matthew Gendron



Market Conduct Compliance - A Look at Recent Issues and Trends

- NAIC activity
- A look at recent “Regional” issues and activity levels
- Enforcement action triggers
- Market conduct data uses and trends

Market Conduct Compliance - A Look at Recent Issues and Trends

National

- States Building Out Artificial Intelligence Skills and Knowledge Base
 - Have conducted surveys on Auto, Home, Life and Health
 - Annuity Suitability focus on Best Interest Standard, now adopted in 49 Jurisdictions

Local

- Supervision of Producers, from all points of view
 - Two issues on the Auto side where unlicensed producers were paid
 - Multiple instances where Life Companies were outsourcing sales supervision
 - Failure to Notify Department when Appointment/Termination

Regional Look

Connecticut

- Failure to pay for loss of use
- Settling bodily injury liability claims within 15 days of loss
- Failure to report total constructive vehicle losses to the NICB

Maine

- Discontinued homeowners business without an approved withdrawal plan
- Issued improper nonrenewal notice
- Award letters failed to state policy language under which benefit was paid, any elimination period, offset, or reduction
- Failure to recognize the existence and applicability of Rule 530

Regional Look

Massachusetts

- Failure to conduct DOR intercept checks for tax, child support, or health claim balances
- Failure to issue >\$1,000 property damage letters to municipal authorities
- Failure to provide comp claim notices to MRB
- Failure to provide compliant "Notice of At-fault Accident Determination" to at-fault operators
- Failure to audit TPAs

New Hampshire

- Failure to timely affirm coverage of a claim after receiving notification from NH DES that insured was strictly liable for the spill
- Failure to provide a rental for at least 5 business days after it made an offer consistent with NH law
- Asserted that the stated value of the total loss was “not negotiable”

Regional Look

Rhode Island

- Failure to notify the DOI of termination for cause
- Failure to keep official contact information up-to-date with the DOI
- Failure to honor rental car direction to pay to rental car companies requests
- Internally replaced contracts utilized standard language detailing a 2-year suicide and incontestability

Vermont

- Lack of appropriate controls over the maintenance of the complaint logs
- Listed a claims free discount that did not exist on declaration pages
- Failure to advise of the possible excess exposure beyond the PPA policy limits
- Failure to pursue restitution from the known parties
- Inappropriate application of cost share to covered services

Other “Regional” Issues

California

- Applied depreciation to overhead and profit
- Failure to have a procedure to identify claimants who owed past-due child support/report claimants to CCSS
- Applied a duplicate Elimination Period which had been previously exhausted
- Failure to cover services with OON provider at the in-network rate when no qualified in network provider was available

Illinois

- Failure to send Exhibit A in auto total losses
- Failure to include the Notice of Availability of the DOI in denials
- Failure to display the company name in a minimum of 8 point upper case type
- Failure to display the insurance card disclaimer as prescribed by regulation
- Failure to specifically include coverage for child restraint systems for any coverage except PD UM

Other “Regional” Issues

Missouri

- Failure to include language in its policies concerning limitations of coverage provided by MO Property and Casualty Guaranty Association
- Reduced claim payments for UM coverage due to setoffs with claim payments issued under MP coverage
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Virginia

- Failure to use forms in the precise language of standard forms previously filed
- Using broadenings of standard forms without obtaining approval prior to use
- EOB that was modified beyond the variability permitted in the approved filing
- Used unfiled/unapproved EOB

Other “Regional” Issues

New York

- Failure to timely report certain insured vehicle information to the DMV through IIES
- Failure to timely respond to DMV initiated mandatory verification notices
- Failure to comply with the 2% limitation for non-renewals in the calendar year
- Failure to use effective controls to protect against unauthorized access to NPI
- Failure to ensure the proper implementation of cybersecurity policies
- Failure to include required statement in the Narrative Summary Section of basic illustrations

Categorically Speaking

Claims

- Adhering to timeframes
- Processing total loss claims properly
- Not providing required compliant disclosures
- Improper/incomplete documentation of claim files
- Failure to use annuitants' SSN in cross-checking
- Failure to demonstrate that QTLs with respect to MH/SUD benefits are in parity with Med/Surg benefits
- Failure to demonstrate proper oversight to ensure in-network claims are processed as in-network

Categorically Speaking

Marketing and Sales

- Failure to collect required suitability information
- Rules for producers/internal procedures failed to prevent sale and issuance of unsuitable replacements
- Failure to produce suitability report on the effectiveness of the supervision system
- Failure to properly label revised life insurance illustration
- Failure to adhere to replacement timeframes
- Failure to substantiate the use of the phrase “low cost” to describe the cost of its life insurance and annuity products being advertised

Categorically Speaking

Underwriting & Rating

- Used bankruptcies older than 7 years when calculating an insurance scores
- Improperly cancelling or non-renewing policies
- Improper/incomplete documentation of files
- Using noncompliant disclosures

Grievance Procedures

- Failure to adhere to grievance timeframes
- Failure to adequately consider and rectify enrollee grievance

Categorically Speaking

Network Adequacy

- Failure to timely update network directory
- Failure to periodically network directory for accuracy or contact providers listed in the network directory
- Failure to provide adequate instructions for providers to update information
- Failure to meet services and waiting time standards

Provider credentialing

- Failure to comply with provider credentialing timeframes
- Failure to demonstrate effective oversight to ensure its administrator is compliant in its credentialing process

More on Current Issues & Future Concerns

- Producer issues
- Policyholder service issues
- Annual statements, premium refunds
- Cybersecurity
- Artificial intelligence use

Using the Issues & Trends Information

- Market conduct exam activity provides insight into compliance review priorities
- Feeding outcomes of compliance reviews into compliance risk assessments
- Incorporating own experience and others into training material
- Potentially improves exam experiences
- Detailed corrective action plans provide “compliance checklists”
- Charts for “compliance corrections”

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Questions?

Market Conduct Compliance - A Look at Recent Issues and Trends

Thank You!

Massachusetts Regional Compliance Summit

Keynote Speaker:
Peter Kochenburger



Peter Kochenburger

Visiting Professor at Southern University Law Center, Associate Clinical Professor of Law, Emeritus at UConn Law School, and a 2025 NAIC Funded Consumer Representative



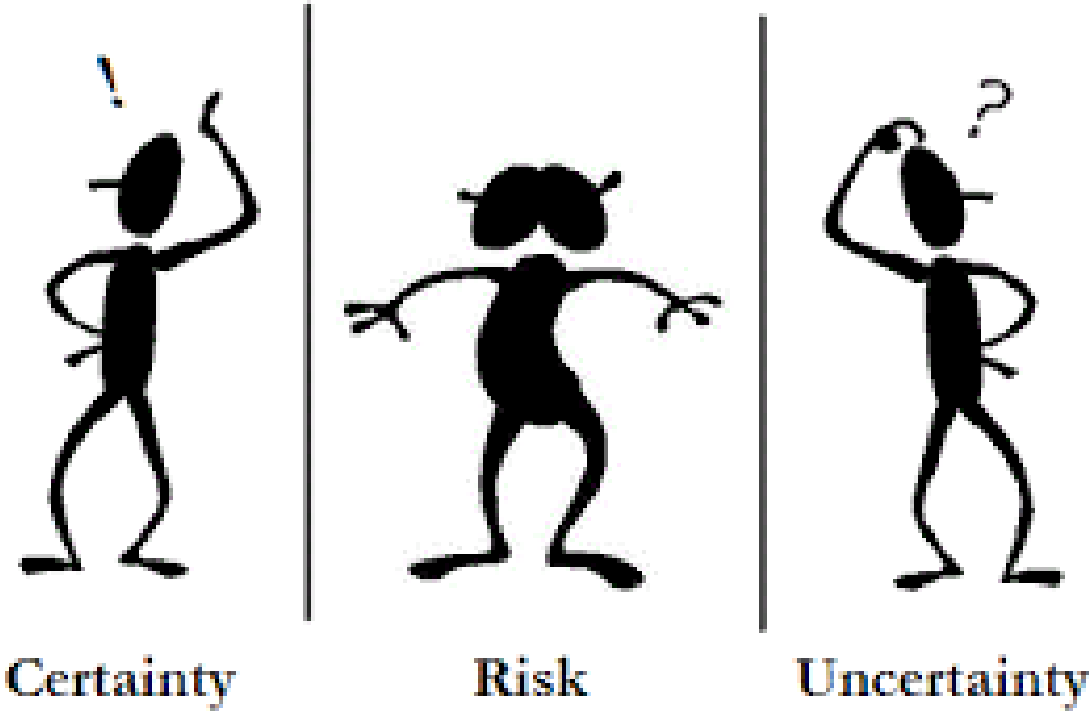
Peter Kochenburger is a Visiting Professor of Law at Southern University Law Center with a joint appointment with the Southern's College of Business. Prior to coming to SULC, he was the Executive Director of the Insurance Law Center and Associate Clinical Professor of Law (now emeritus) at the University of Connecticut School of Law. Along with Torts, he has taught Principles of Insurance, Liability Insurance, Insurance Regulation, and Comparative Insurance Regulation, which involved students and faculty from China, Europe, and the United States. He has published in the areas of Liability Insurance and Gun Violence, Climate Change and Insurance, International Insurance Regulation, and Big Data, Insurance and Consumer Protection. He is a funded Consumer Representative to the National Association of Insurance Commissioners, appointed to the Treasury Department's Federal Advisory Committee on Insurance in January 2020, and to the Federal Reserve Board's Insurance Policy Advisory Committee through January 2027. He serves on the New York DFS Consumer Protection Advisory Council and is a consumer stakeholder with the International Association of Insurance Supervisors. He was appointed an Honorary Fellow in the American College of Coverage Counsel in 2022. Professor Kochenburger was elected to the American Law Institute in 2013 and is a graduate of Yale University and Harvard Law School.

Insurance Regulation and the NAIC Regulatory Uncertainty, Opportunities & Risks

Association of Insurance Compliance Professionals
Massachusetts Regional Compliance Summit
June 10, 2025

Peter Kochenburger
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Executive Director, (Emeritus), UConn Law ILC
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We live in interesting times



[From: Addendum on Existential Risk and Existential Uncertainty | Grand Strategy: The View from Oregon](#)

Trust and the Promise of Insurance

Insurance is money for a promise

- Policyholder claims come in (long) after premiums are paid
- Policyholders have little recourse if a claim is not paid
- Typical Breach/K remedy – return amount paid (premiums)- is of little value if a claim denial is incorrect
- For insurance markets to function, insurance consumers must trust that insurers will treat them fairly, including careful and secure use of their data, to pay covered claims to value, and consumer-fronting processes reasonably transparent.
- Effective government regulation and oversight to ensure that these promises continue to be kept, including regulatory transparency and sufficient regulatory expertise.
- Insurer transparency and effective regulation encourage trust and are necessary elements for insurance markets to thrive.

NAIC 2025

- AI, Machine Learning, and Predictive Analytics
 - NAIC Model Bulletin on Use of AI Systems by Insurers
- Privacy of consumer information
- Climate Change [Resilience, Risk, etc.]
and the related focus on
- Access and Affordability of Property Insurance – especially homeowners – and Auto

Privacy of Consumer Information

Privacy Protections Working Group

- Privacy Working Group established in 2019 under D Committee (Market Conduct); later moved to the new H Committee.
- In 2023 drafted a new privacy model law; divided views within the NAIC and strongly opposed by industry.
- That work was shelved and in 2024 the WG's focus shifted to proposed modifications to existing NAIC privacy model 672, the Privacy of Consumer Financial and Health Information Regulation.
- Since then, the WG has proceeded deliberately (and slowly) but has drafted and exposed several sections over the last year, with Consumer Rights now under consideration.

Biggest issue – “Opt-In” or “Opt-Out,” and for which sections

- Final draft should be ready for WG and Committee vote by first Q 2026.

Climate and Access & Affordability of Insurance

Estimated Insured Property Losses, U.S. Natural Catastrophes, 2015-2024 (1)

(\$ billions)

Hurricane Katrina, \$65 B, \$104, (2024) 471 B

For 2025, [on trend to \\$145 Billion](#)

Year	In dollars when occurred	In 2024 dollars (2)
2015	\$23.0	\$30.7
2016	31.9	41.9
2017	131.0	168.1
2018	60.9	76.4
2019	39.2	48.5
2020	81.5	99.3
2021	93.3	108.7
2022	109.6	116.9
2023	80.0	82.9
2024	112.8	112.8

[Insurance Information Institute Fact + Statistics](#)

- Vulnerable states may be 1-2 major Cat event(s) away from a potentially unsustainable insurance market – little competition, high rates, less coverage for the most significant risks.
- Disproportionate impact on people of color and low-income communities.
- Through 2024, increased attention on a partial federal solution, perhaps like the Terrorism Risk Insurance Plan – this would socialize the cost of natural disasters throughout the country. An unlikely option in 2025 – 2028.



AI, Machine Learning, and Predictive Analytics

From a 2017 AICP Presentation: Big Data, Consumer Protection & Insurance Regulation

Potential for Major Consumer Benefits – and Harm

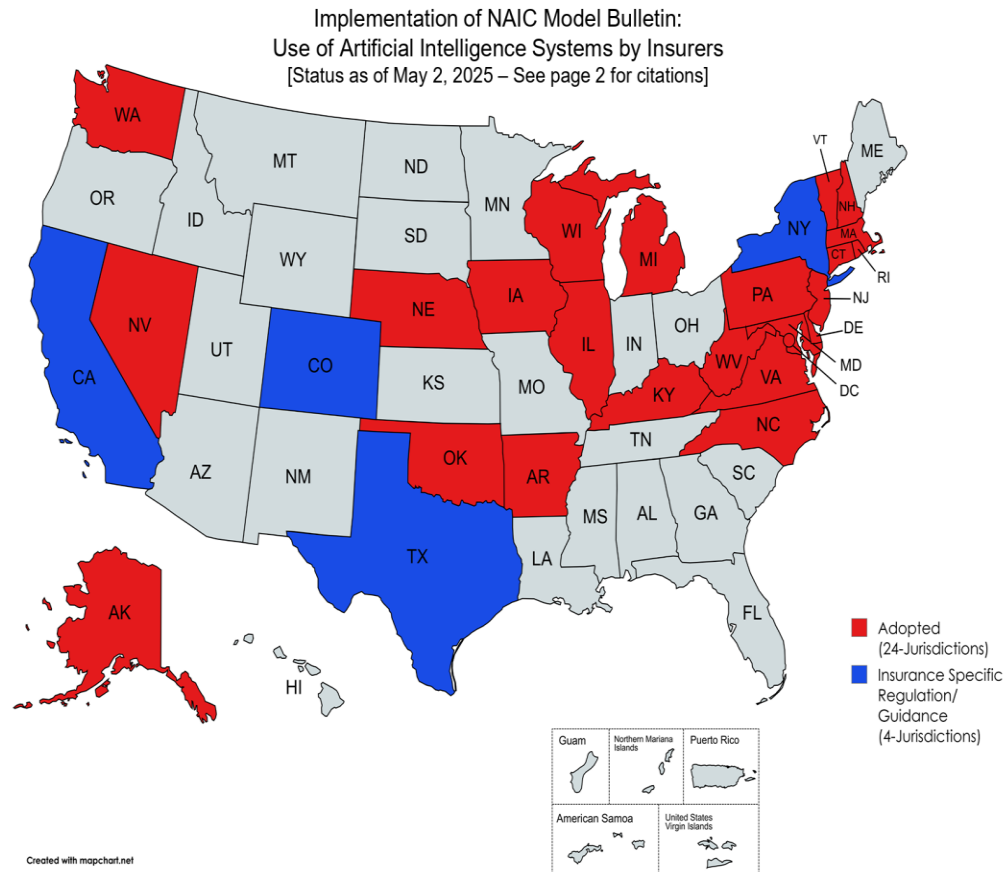
- Complexity of Underwriting Models and mismatch in information and expertise between insurer and regulator
- Use of 1,000+ rating factors and associated modeling potentially makes de facto “discrimination” difficult to detect
- Lack of consumer transparency on what information is collected and how it is used
- Possibility of “Claim Optimization”

Big Data, Consumer Protection & Insurance Regulation (NAIC)

Summer 2025

- Advances
 - Principles of Artificial Intelligence, August 2020
 - Creation of multiple working groups and H Committee – [Innovation, Cybersecurity and Technology](#) and surveys of insurers use of AI and Machine Learning in all three lines
 - Creation of rate model review [team]
 - Various white papers and guidance documents – accelerated underwriting, review of predictive models
 - Model **Bulletin**: Use of Artificial Intelligence Systems by Insurers (Dec. 2023, 24 states have adopted as of May 2025)

Model Bulletin: Use of Artificial Intelligence Systems by Insurers



This map represents state action or pending state action addressing the topic of the model. This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of the model or whether a state meets any applicable accreditation standards. See the reference list on the next page.

- *This bulletin sets forth the Department's expectations as to how insurers will govern the development/acquisition of and use of Certain AI technologies ... and documents and records the Department may request in examinations*

Testing models strongly suggested but not required. AI Plans must be in writing.

- Regulatory Guidance and Expectations
- Governance and Risk Management
- Regulatory Oversight and Examination Considerations,
- Third-Party AI Systems and Data

Big Data, Consumer Protection & Insurance Regulation (NAIC)

Summer 2025

- Delay, Defer, and Opportunities Lost [from a consumer perspective]
 - A plethora of “high level guidance” documents, with little to no implementation of the AI Principles and other recommendations
 - The failure to advance equity interests championed from 2020 - 2024 in the Model Bulletin, including the elimination of references to proxy discrimination in the model
 - The Model Bulletin is just that – regulatory guidance, not a law or regulation and (theoretically) creates no new regulatory requirements
with the result that
 - Not a single new consumer right yet provided, despite the acknowledged AI revolution in insurance and insurance practices.

Opportunities – Individual State AI Regulation

Examples:

- [Connecticut's Bulletin MC-24](#) (Feb. 2024) and [Massachusetts Bulletin 2024-10](#), which added the requirement that insurance rates may not “discriminate based on protected classes,” a provision not in the NAIC Model (despite consumer representatives’ efforts)
- New York Department of Financial [Services July 2024 Circular No. 7](#), which added a full section on avoiding and testing for proxy discrimination (disparate impact analysis as used in federal regulation of other financial products).

Uncertainty: State Regulation of Artificial Intelligence

H.R. 1 (One Big Beautiful Bill) includes a 10-year moratorium on current and future state regulation of AI.

[NAIC June 4, 2025 letter](#) to Senate Leadership:

We write on behalf of state insurance regulators and the National Association of Insurance Commissioners (NAIC)—which represents the chief insurance regulators in the 50 states, the District of Columbia, and the 5 U.S. territories—to express our concerns with the House-passed reconciliation bill that would impose a 10-year moratorium on state legislative and regulatory authority over artificial intelligence (AI) systems.

Trust: AI, & Consumer Protection

Underwriting, Pricing, and Claim Management

For Example, from 2017: Claim Optimization - when does quicker and more efficient also equal a smaller claim payment than the claim is actually worth?

- Similar to Price Optimization, predictive models can measure individual policyholders' "settlement elasticity" when providing and negotiating claim payouts.
- Can insurers incorporate data about the policyholder's willingness to settle and for what amount in determining the claim's reasonable value?
- *Are they doing so now?* Claim optimization, as defined, would violate State UCSPA and other common law and statutory requirements.

2025: Claim Optimization - Still Not Reviewed by Regulators?

Trust: AI, Insurance and Consumer Protection

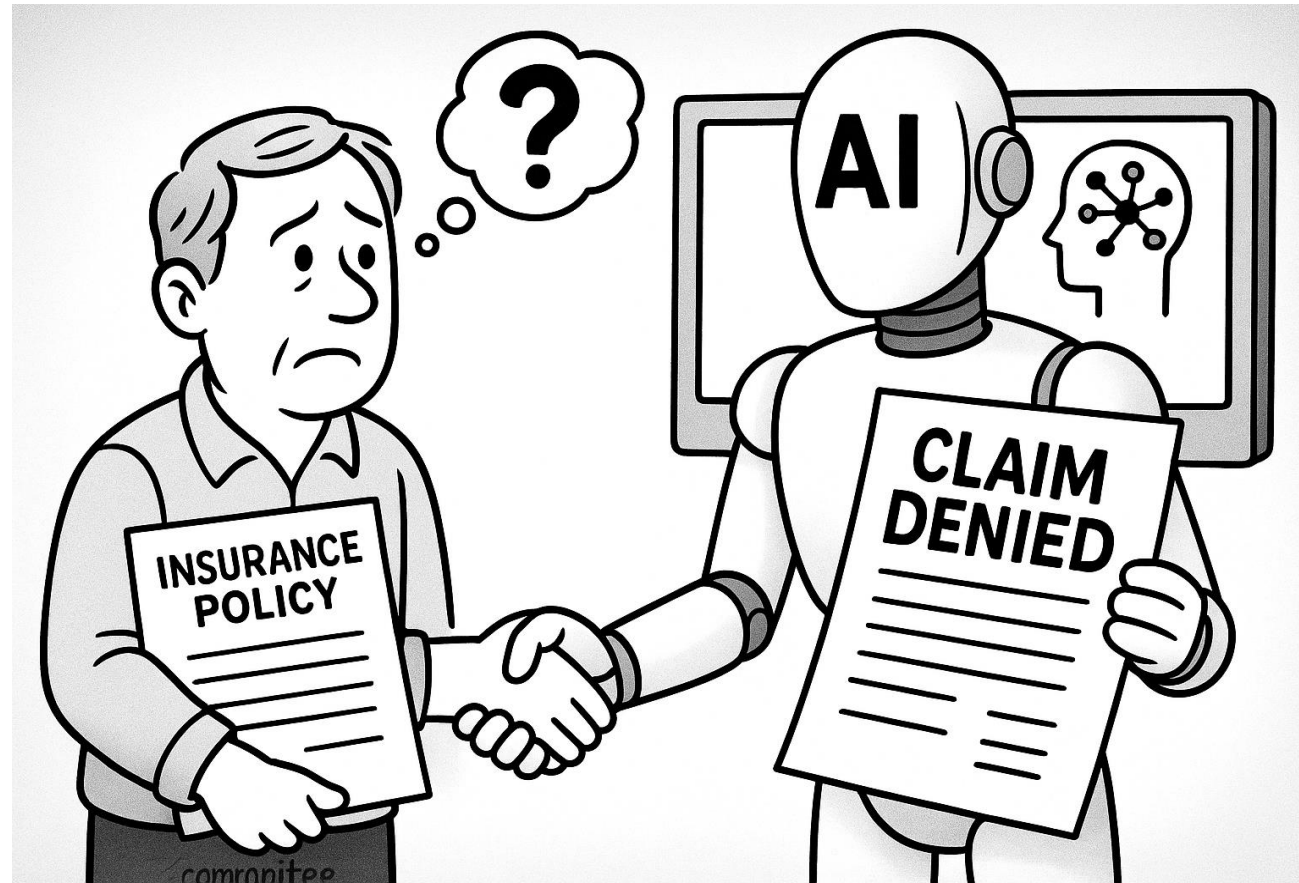
Insurance is money for a promise

The ongoing revolution in data, artificial intelligence and machine learning, and predictive analytics can not only provide better insurer-policyholder satisfaction, but could also significantly enhance transparency, credibility, and the insurance consumers' trust in insurance. As used and regulated now, it is fair to say there is less transparency, fewer rights for consumers to know what data has been collected on them, how it was used, and to correct their own consumer information:

“The findings reveal declining confidence in AI across key areas, emphasizing the critical need for insurers to address these concerns through transparency, education, and tangible benefits.” [Insurity, 2025 AI in Insurance Report, February 20, 2025](#)

This shouldn't be the future. Effective Consumer Protection enables Trust and enhances Insurance and Insurance Markets.

Created by ChatGPT on
4/25/2025



Thank you!



UConn Law School Library



The Mississippi River from the Southern Univ. Bluff

AI Compliance

Moderator:

Jon Brynga

Panelists:

George Bradner

Matthew Gendron

David Snyder





AI Developments for AICP

June 10, 2025

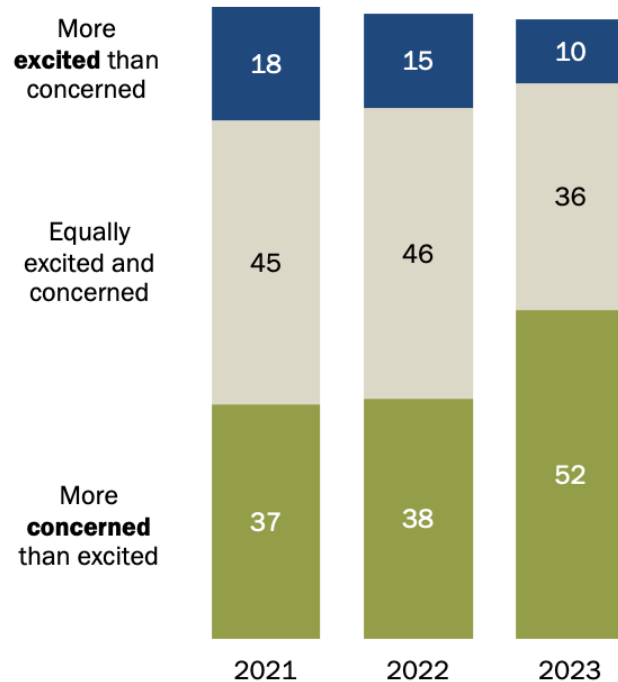
Dave Snyder,

Vice President and Counsel, Policy Development and Research



Concern about artificial intelligence in daily life far outweighs excitement

% of U.S. adults who say the increased use of artificial intelligence in daily life makes them feel ...



Note: Respondents who did not give an answer are not shown.

Source: Survey conducted July 31-Aug. 6, 2023.

PEW RESEARCH CENTER

Public Perceptions of AI

AI Impacts People Value:

- Boost economy
- Promote innovation
- Perform unpleasant tasks
- Raise living standards

AI Impacts People Fear:

- Hacking
- Jobs impact
- Social isolation
- Societal breakdown

*Human-Computer Interaction Center, RWTH Aachen University,
Aachen, Germany (2023)*



Why It Matters

"[AI] technologies have significant potential to transform society and people's lives – from commerce and health to transportation and cybersecurity to the environment and our planet."

National Institute of Standards and Technology (NIST)

"Mitigating the risk of extinction from AI should be a global priority alongside other societal-scale risks, such as pandemics and nuclear war."

***Statement of more than 350 executives and others working on A.I.
New York Times***

AI poses risks to
"human dignity,
justice and labor."

--Pope Leo XIV

"The industry is on the verge of a seismic, tech-driven shift...insurance will shift from its current state of detect and repair to predict and prevent, transforming every aspect of the industry in the process."

Insurance 2030—The impact of AI on the future of insurance, McKinsey & Co.

"AI has the potential to impact and add value to the entire insurance value chain and bring significant benefits to customers."

Swiss Re



How Insurers are Using AI

Insurance AI Use (Source: NAIC Surveys of Homeowners & Auto Insurers)	Homeowners (2022)	Auto (2021)
Underwriting	62%	31%
Claims	61%	80%
Fraud Detection	55%	58%
Marketing	53%	54%
Rating	46%	40%
Loss Prevention	17%	15%



Broader Impacts of AI on Insurance

- Cyber warfare (offense/defense)
- Potential AI Liabilities:
 - Copyright infringement
 - Defamation
 - Negligence
 - E&O
 - D&O
 - Discrimination
- Insurance coverage opportunities





Polymaker Concerns

- AI benefits recognized:
 - Innovation, efficiency, effectiveness, and safety
- Strong concerns:
 - Disinformation, fraud, cybersecurity, national security
 - Discrimination, fairness, and reliability
 - Transparency and explainability
 - Privacy and intellectual property
 - Competition
 - Jobs/unemployment



International AI Regulatory Activity

- EU AI Act effective 2024
 - Focused on protecting individual privacy
 - Applies extraterritorially (if products used in EU)
 - Classifies health/life insurance as a “high risk” AI use with strict regulation requiring risk mitigation, human oversight, etc.
 - Home/auto/business insurance (P&C) = mostly “limited risk” - primarily transparency and governance
 - 2025--International insurance regulators issue a prescriptive guidance paper with many of the same features with a few paragraphs on benefits and dozens of pages on problems and recommendations for strict regulation of AI use by insurers



Federal AI Regulation

Biden Administration AI Executive Order (Oct. 2023)

- Includes promoting competition, innovation, and US AI leadership
- Much focus on anti-discrimination, privacy, and safety
 - AI models may perpetuate biases leading to civil rights violations
 - Calls for global AI standards
 - Builds on EEOC May 2023 AI standards examining whether AI use may have an “adverse” or “disparate impact”



Federal AI Regulation

- **Trump Administration: Removing Barriers to American Leadership in Artificial Intelligence (Jan. 2025)**
 - Focus on national security and U.S. dominance – expedite AI
 - Revokes Biden Administration AI Executive Order and directs all federal agencies to immediately review any connected actions and rescind them if inconsistent with the 2025 Executive Order
- Part of Administration's effort to "end Federal implementation of unlawful and radical DEI ideology"
- But recent OMB guidance for federal agencies resembles Biden Admin guidance
- Congressional interest in federal moratorium on state AI regulation—effect on insurers and insurance regulation



State AI Regulation

- NAIC (state insurance regulators) adopted an AI Model Bulletin (Dec. 2023) that has now been implemented by 24 states
- Requires insurers to establish governance and risk management for all uses of AI
 - Insurers are supposed to mitigate the risk of “adverse consumer outcomes”
 - Including due diligence on 3rd party vendors (APCIA working on vendor certification and/or an auditing program)
- Hundreds of new AI legislative proposals – with many giving state Attorney Generals broad new powers
- NAIC focused on third party vendor issues and potentially interested in developing model legislation



APCIA Activities

- APCIA Board of Directors has issued high level principles on AI engagement and governance—recognizes legitimate concerns
- Based on those principles, APCIA is engaged with policymakers at all levels of government and in the media—federal, state and international—generally supporting regulation via the NAIC AI Model Bulletin and opposing regulation by State Attorneys General
- APCIA recently provided state regulators with a draft self-audit questionnaire that would provide some national regulatory uniformity yet flexible to allow for different company capabilities
- APCIA seeking member guidance on the potential for new AI model law and third-party vendor issues



Conclusion

- Important for industry to demonstrate value of our use of AI while recognizing legitimate public concerns
- International, federal and state policymaker and regulatory interest in AI is not abating and constant engagement is essential
- NAIC/state insurance regulators took the lead and have provided a good foundation for regulation based on existing laws and standards
- Additional state regulatory guidance may be helpful but not necessarily a new model law
- Important that state insurance regulators maintain exclusive regulatory authority consistent with existing laws and standards

AI Compliance: A Panel Discussion

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