

Calif. Automation Rules Highlight Insurance AI Challenges

By **Abraham Gross**

Law360 (February 12, 2026, 8:39 PM EST) -- A new set of California consumer protection regulations governing automated decision-making is raising concerns among insurance and privacy professionals, who see an increasingly fragmented enforcement landscape even as insurers and policyholders grow more savvy with artificial intelligence.



The most stringent obligations fall on certain businesses that use automatic decision-making tools for decisions related to financial or lending services, education, employment, compensation, healthcare and housing. (iStock.com)

The regulation, which went into effect at the start of the year, imposes requirements on certain businesses that rely on automated decision-making technology for "significant decisions," raising the prospect of additional compliance costs and risks for policyholders and insurers alike.

The regulations issued under the California Consumer Privacy Act focus on technology that processes personal information to replace or substantially replace human decision-making, which would appear to encompass many technologies that are often grouped under the umbrella of AI.

The most stringent obligations fall on certain businesses that use ADMTs for decisions related to financial or lending services, education, employment, compensation, healthcare and housing. They would be required to provide consumers notice, an opt-out or appeal process and a right to access information on the technology.

Perhaps most significantly, the regulation obligates businesses to conduct risk assessments on these systems and to submit them to the California Privacy Protection Agency.

The reports must detail the personal information being processed; how data is collected, used, disclosed, and processed; cybersecurity safeguards; safeguards against unlawful discrimination; third-party access; and the underlying assumptions, limits, and uses of the outputs created by the automated system.

Several experts compared the California requirements to similar requirements under **the Colorado Artificial Intelligence Act**, which mandates impact assessments for "high-risk" uses, as well as New York City Local Law 144, which only allows employment decisions using AI systems if they have undergone a bias audit.

The common denominators of many of these laws often boil down to consumer disclosures and some form of risk assessment, said Anjali C. Das, co-chairs Wilson Elser's cybersecurity and data privacy practice, who advises insurers.

"The regulators are basically saying you need to do the risk assessment and, more importantly, you can't just do it: you need to document it in some level of detail," she told Law360.

Still, the reports and requirements under the distinct laws lack enough common ground that makes it challenging to find a one-size-fits-all approach, said Matthew Kohel of Saul Ewing, who counsels companies on their use of AI and compliance issues.

"You can't take the 'find the strictest standard and comply with it' approach, because each of these different obligations have different information requirements, essentially," he told Law360.

He cautioned that companies should also be aware of other existing statutes and regulations that could apply to AI systems, even those within the same state, such as ADMT and AI regulations approved in October under the California Fair Employment and Housing Act.

"You can look nationally and see there's definitely compliance challenges, but even within one state, it's possible to run into some compliance challenges and the obligation to do a lot of different things to do business in one state, under different frameworks within one state," Kohel added.

Insurers, too, may have to contend with potentially overlapping regulations. The ADMT rules state that an insurer shall comply with the CCPA to the extent personal information is not subject to the state's insurance codes, including information collected "for purposes not in connection with an insurance transaction."

Determining which obligations apply to insurers regarding their use of automated decision-making technologies may be a source of future disputes between policyholders and carriers, said policyholder attorney Karin Scherner Aldama of Gallagher & Kennedy.

"If significant decisions and arguably underwriting decisions or claims-handling decisions would fall under that rubric, are using ADMT in the decision-making process, then those regulations still apply, and that's pretty much regardless of coverage by the insurance code," she said.

The regulations appear to limit enforcement to regulatory audits and fines and don't include a private right of action, which is very significant for businesses and insurers alike, said carrier-attorney Judith Selby of Tittmann Weix.

Selby noted that the requirements set in privacy statutes lacking a private right of action, like HIPAA, still appear in private plaintiffs' complaints against businesses.

"When regulations start setting a standard of behavior, that standard of behavior sometimes becomes the default reasonableness standard in the marketplace, and so that can manifest in civil litigation," she said.

Because AI use can be deeply embedded in business practices, Selby said that claims related to AI use can touch on multiple coverage lines, including employment practices liability, professional liability, tech errors and omissions, and directors and officers insurance.

"Overlapping coverage, in theory, sounds good, but it can create some delay when a claim comes in if two policies cover the same thing, and there are ways you can deal with that at the outset like designating one as a primary, for example, if they're both implicated," she said.

Michael Levine, policyholder attorney for Hunton Andrews Kurth LLP, said that the regulation "goes hand

in hand" with the evolution of "agentic AI" — systems that can perform multistep processes with limited human input.

Still, he said that a variety of the definitions in the regulation are unclear and AI-specific guardrails can quickly become obsolete as the technology evolves.

"It's good in the sense that it attempts to offer protections. How that plays out in practice is going to be the challenge. I think the intent is in the right place," he added. "The goal of disclosure and transparency is well-intended, but what that translates to is, I think, going to be very, very murky at best."

Logan Payne of Lockton, who serves as the director of the broker's global technology risk practice, said he has largely seen clients who are well ahead of the CCPA requirements, and that insurers D&O and cybersecurity risk policies are comfortable.

"The frontier that we're pushing up against is when and how much are we going to see true AI tools making a decision without human oversight/human intervention in a way that would trigger existing policies and coverages," he told Law360.

Policyholders are less likely to start from scratch when asked by insurers about their AI systems and uses in their policy applications, Payne said, explaining that many businesses already have run an impact report or established AI governance.

The state-by-state variation in AI regulation doesn't necessarily impact the coverage or change organizational risk tolerance and the losses they want to insure, Payne added, while noting that companies had more options this year for seeking affirmative AI coverage.

"For example, if my AI tool underperforms against the benchmarks that I established, I've got recourse in the form of this insurance policy, putting aside that there's a patchwork of different regulations state by state and reporting on that same AI tool," he said.

Selby of Tittmann Weix said that while coverage issues could arise under the new regulations — fines may be difficult to insure because California prohibits coverage for willful acts — regulations may also benefit the insurance industry by prompting more transparency, disclosures and insight into a company's AI supply chain.

"These things, I think, have a way of surfacing issues sooner than they otherwise might surface, so all of those things can tend to minimize the risk, minimize the harm, which, of course, then would minimize the insurance claims," she said.

--Additional reporting by Allison Grande. Editing by Amy Rowe.

Correction: A previous version of this article misquoted California statute. The error has been corrected.