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Comments of the Center for Economic Justice

to the National Conference of Insurance Legislators

Legislative and Regulatory Oversight and Consumer Protections Related to Insurers' Use of Bi Data

February, 2016

Why is Insurers' Use of Big Data an Issue of Concern?

Insurers are rapidly increasing their use of large databases of non-insurance, personal consumer data for marketing, sales, pricing, claims, anti-fraud efforts and payment plan eligibility.

The regulatory framework established decades ago for insurance is that regulators had authority over and oversight of the information that goes into pricing and claims. Regulators enforce the requirements that rates not be unfairly discriminatory and that claims be settled fairly by stopping the use of information that would lead to violations for these requirements. For example, most states prohibit the use of race, religion, national origin. By reviewing rate manuals and underwriting guidelines, a regulator historically could have seen if any prohibited factor was used. If a company used a new risk classification in its rating plan, a regulator could ask for proof that the risk classification was related to risk of loss.

Regulators no longer have oversight of or even access to most of the new data used by insurers for all aspects of the insurers' business. And in most cases, insurers don't disclose the new data used to regulators, let alone to consumers. Market forces cannot discipline insurers and protect consumers without transparency.

For example, 14 years ago, you adopted the credit scoring model which brought credit data under the oversight of regulators and provided consumers with disclosures and rights to contest false data. Today, many types of data used with no disclosure and no accountability.

Carfax TransUnion Vehicle Score – tens of thousands of original data sources on vehicle registration, maintenance, repairs. Not subject to any of the consumer protections for credit information.

TransUnion Criminal History Score.

> *TransUnion recently evaluated the predictive power of court record violation data (including criminal and traffic violations)*
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> *While a court record violation is created during the initial citation, the state MVR is updated later and may be delayed depending on a consumer's response to the citation. For example, if someone pleads guilty and pays a ticket immediately, the state MVR will be updated in approximately two months. If the ticket is disputed in court, in contrast, the state MVR may not be updated for 6–19 months or longer.*
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> *Also, as court records are created when the initial citation is issued, they provide insight into violations beyond those that ultimately end up on the MVR—such as violation dismissals, violation downgrades, and pre-adjudicated or open tickets.*

Many states specifically prohibit insurers from penalizing consumers for certain violations if they consumer takes a driver safety course – with the goal of promoting driver safety. The TU score undermines this public policy.

More importantly, criminal history record scoring reflects and perpetuates historical discrimination in criminal justice.

Suppose that a state prohibited insurers from discriminating against state legislators – as Texas has done. Now suppose that an insurer developed a rating plan based on part time employment in the state capital. This would be a proxy for being a legislator and we hope states would not allow such a proxy. Yet, states are allowing proxies for race on a routine basis – such as the TU criminal history score.

E-scores are scores based on consumer personal data, used in real time when consumers shop via the internet. An aggregator site is a web site representing a number of sellers (like insurers) which gathers information from or about consumers and recommends or channels a consumer to a particular seller or sellers. As the consumer searches on the site, the site pulls an e-score – a rating based on data from a data broker, google or apple. Based on the e-score, the site channels the consumer to a particular vendor, perhaps based on compensation agreement between the vendor and aggregator and the characteristics of the consumer. A consumer could be channeled to a higher cost provider without disclosure of a lower-cost provider

The U.S. Public Interest Research Group found that in 2011, Bankrate.com "generated more than 24 million offer clicks to issuers. It also sold 18 million leads to 20,000 agents and 75 carriers. In addition to its own tracking and analysis of its online users' behavior, Bankrate.com works with major, but little known, online scoring companies TARGUSinfo and eBureau to identify leads more precisely for targeting."

While such big data applications have potential for greater inclusion, the applications also have the potential of reflecting and perpetuating historical discrimination – concerns raised in major Big Data reports by the Federal Trade Commission and the White House.

Another big data example is the Lexis Nexis LexisNexis Claims Tools:

> Example, insured calls in, rear-ended, all I got was license plate:
> Claims Data Fill takes that license plate, reach out to DMV to get vehicle registration to get VIN number, we have policy database and get the carrier and policy information, take the registered owner, go out to public records, pull back their address, date of birth, telephone number, social security, wrap that into a package and put it back into our system, 88% of the time done in less than 5 seconds.
> Take minimum information provided at first notice of loss, provide a fraud score at the initial notice of loss. Daily monitoring of claim every time new information comes in, able to run various scores: fraud scores, severity score.

Consumers have no knowledge of the use of these scoring tools and no opportunity to contest erroneous data or faulty algorithms. Regulators have little or no oversight over these models and currently collect no data to evaluate the impacts of these tools on different classes of consumers.

Other examples of big data abound, including use of social media for claims, fraud and pricing and telematics, which the IIABA will talk about in more detail.

We offer the following key points for policymakers

1. Market forces cannot and will not protect consumers;
2. So-called Innovation without some guardrails will lead to unfair outcomes
3. Regulators must be proactive to stop unfair and abusive practices or practices inconsistent with public policy.
4. Oversight and limited regulatory intervention can promote more competitive markets and faster adoption of innovative technologies that benefits consumers and fulfill public policy goals
5. There is potential for harming competition through exclusive agreements between data providers and large insurers. Consider if claims databases or credit information were only available to the ten largest insurers – other insurers would be put unnecessarily at a competitive disadvantage. If there are useful non-insurer data, there should be equal access by all insurers.

We ask you to consider a model law which does the following:

1. Require insurers to initially submit a list of all sources of data – internal and from sources outside the insurer – and the aspect of the business the data are used for – sales, marketing, pricing, claims, anti-fraud, payment plan eligibility;
2. Require insurers to update the list when new or changed data sources are used; and
3. Publish an annual report to the Legislature summarizing the types of data used and the sources with any recommendations for legislative activity. This would be a public document to enable members of the public to weigh in on data issues.

This is a critical first step for regulators, legislators and the public to gain some insight into the types of data used by insurers and the uses of these data.

The IIABA will be talking about telematics. We support their recommendations and suggest that these are precisely the type of regulatory interventions that protect consumers, promote competitive markets and foster adoption of transformational technologies.

Finally, Regulatory Big Data – big data has transformed the sale and delivery of insurance ad promises even greater transformation. Insurance regulation needs the same type of transformation to improve existing practices and develop new capabilities to become more pro-active, more effective at protecting consumers and more efficient and less burdensome to meaningful competition.