STATE OF NEW YORK

9149

IN ASSEMBLY

February 8, 2024

Introduced by M. of A. HUNTER -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the use of artificial intelligence for utilization review

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new section 338 to read as follows:

§ 338. Notification regarding the use of artificial intelligence for utilization review. (a) As used in this section, the following terms shall have the following meanings:

(1) "Adverse determination" shall have the same meaning as such term is defined in section four thousand nine hundred of the public health law.

(2) "Artificial intelligence-based algorithm" means any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight or that can learn from experience and improve performance when exposed to data sets.

(3) "Clinical peer reviewer" shall have the same meaning as such term is defined in section four thousand nine hundred of the public health law.

(4) "Utilization review" shall have the same meaning as such term is defined in section forty-nine hundred of the public health law.

(b) The superintendent shall require all insurers authorized to write accident and health insurance in this state, corporations organized pursuant to article forty-three of this chapter, and a health maintenance organization certified pursuant to article forty-four of the public health law to notify insureds and enrollees about the use or lack of use of artificial intelligence-based algorithms in the utilization review process on the accessible Internet website of such insurer authorized to write accident and health insurance in this state, corporation organized pursuant to article forty-three of this chapter, or health maintenance organization certified pursuant to article forty-four of the public health law.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD14269-01-4

(c) Every insurer authorized to write accident and health insurance in this state, corporation organized pursuant to article forty-three of this chapter, and health maintenance organization certified pursuant to article forty-four of the public health law shall submit the artificial intelligence-based algorithms and training data sets that are being used or will be used in the utilization review process to the department. The department shall implement a process that allows the department to certify that these artificial intelligence-based algorithms and training data sets have minimized the risk of bias based on the covered person's race, color, religious creed, ancestry, age, sex, gender, national origin, handicap or disability and adhere to evidence-based clinical guidelines.

(d) A clinical peer reviewer who participates in a utilization review process for an insurer authorized to write accident and health insurance in this state, a corporation organized pursuant to article forty-three of this chapter, and a health maintenance organization certified pursuant to article forty-four of the public health law that initially uses artificial intelligence-based algorithms for a utilization review shall open and document the utilization review of the individual clinical records or data prior to issuing an adverse determination.

(e) (1) A violation of the provisions of this section shall be subject to one or more of the following penalties at the discretion of the superintendent, in consultation with the commissioner of health and the commissioner of education as applicable:

(i) Where a violation is made by an insurer authorized to write accident and health insurance in this state, a corporation organized pursuant to article forty-three of this chapter, or a health maintenance organization certified pursuant to article forty-four of the public health law:

(A) Suspension or revocation of license;

(B) Refusal, for a period not to exceed one year, to issue a new license;

(C) A fine of not more than $5,000 for each violation of this section; or

(D) A fine of not more than $10,000 for each willful violation of this section.

Fines imposed pursuant to the provisions of this subparagraph on a single insurer authorized to write accident and health insurance in this state, a corporation organized pursuant to article forty-three of this chapter, or a health maintenance organization certified pursuant to article forty-four of the public health law shall not exceed five hundred thousand dollars in aggregate during a calendar year.

(ii) Where a violation is made by a clinical peer reviewer:

(A) Suspension or revocation of license;

(B) Refusal, for a period not to exceed one year, to issue a new license;

(C) A fine of not more than $5,000 for each violation of this section; or

(D) A fine of not more than $10,000 for each willful violation of this section.

Fines imposed pursuant to the provisions of this subparagraph on a single clinical peer reviewer shall not exceed one hundred thousand dollars in aggregate during a calendar year.

(2) Penalties pursuant to the provisions of this subsection shall be in addition to any other remedies or penalties that may be imposed under any other applicable law.

(f) The superintendent shall promulgate all rules and regulations necessary for the implementation of this section.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.