STATE OF NEW YORK

11048

IN ASSEMBLY

April 24, 2026

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

AN ACT to amend the insurance law and the public health 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 by section forty-nine hundred of this chapter.

(2) "Artificial intelligence-based algorithm" means any algorithm-based system that can, for a given set of human-defined objectives, make predictions, recommendations and/or decisions influencing real or virtual environments. An artificial intelligence-based algorithm uses machine and human-based inputs to:

(A) perceive real and virtual environments;

(B) abstract such perceptions into models through analysis in an automated manner; and

(C) use model inference to formulate options for information or action.

(3) "Clinical peer reviewer" shall have the same meaning as such term is defined by section forty-nine hundred of this chapter.

(4) "Emergency condition" shall have the same meaning as such term is defined by section forty-nine hundred of this chapter.

(5) "Health care provider" shall have the same meaning as such term is defined by section thirty-two hundred twenty-four-a of this chapter.

(6) "Insurer" means 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.

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

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(7) "Utilization review" shall have the same meaning as such term is defined by section forty-nine hundred of this chapter.

(b)(1) The superintendent shall require all insurers to provide written notice to insureds, enrollees, and health care providers about the use of artificial intelligence-based algorithms in their utilization review process. Such written notice shall be sent when the artificial intelligence-based algorithm is first adopted by the insurer and once during each subsequent policy period. In addition, such insurers shall provide a clear and conspicuous notice on their websites about their use of artificial intelligence-based algorithms in the utilization review process.

(2) If artificial intelligence-based algorithms are used in the utilization review process, each insurer shall disclose to the insured's or enrollee's health care provider, and, upon request, to the insured or enrollee, the following information: the criteria governing such artificial intelligence-based algorithm, the data sets used to train such artificial intelligence-based algorithm, the artificial intelligence-based algorithm itself, and the outcomes produced by software that uses the artificial intelligence-based algorithm.

(3) An insurer's use of artificial intelligence-based algorithms in the utilization review process shall be disclosed to the insured or enrollee and to the insured's or enrollee's health care provider in the notice of an adverse determination made by clinical peer reviewers pursuant to subsection (e) of section forty-nine hundred three of this chapter and subdivision five of section forty-nine hundred three of the public health law.

(4) Any artificial intelligence-based algorithms used in the utilization review process by an insurer shall not base an adverse determination solely on a group data set.

(5) Any artificial intelligence-based algorithms used in the utilization review process by an insurer shall not directly or indirectly cause harm to the insured or enrollee.

(6) Any artificial intelligence-based algorithms used in the utilization review process by an insurer shall be open to inspection for audit or compliance reviews by the superintendent in accordance with applicable state and federal laws.

(7) Insured and enrollee data shall not be used beyond its intended and stated purpose, consistent with the federal Health Insurance Portability and Accountability Act of 1996, as applicable.

(c) Every insurer 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 superintendent. Such submissions shall include, at a minimum, a certification that such artificial intelligence-based algorithms and training data sets:

(1) 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 are consistent with state and federal antidiscrimination laws;

(2) adhere to evidence-based clinical guidelines;

(3) do not rely on information that is not in compliance with the requirements for utilization review pursuant to section forty-nine hundred three of this chapter and section forty-nine hundred three of the public health law; and

(4) do not independently create or change clinical standards or other coverage criteria.

(d)(1) An insurer with a utilization review process that initially uses artificial intelligence-based algorithms, shall ensure that adverse determinations are made only by clinical peer reviewers. A clinical peer reviewer who participates in a utilization review process for an insurer that initially uses artificial intelligence-based algorithms for a utilization review shall, prior to issuing an adverse determination: consider the requesting health provider's recommendation, the insured's or enrollee's medical or other clinical history, as applicable, and individual clinical circumstances; open and document the utilization review of the individual clinical records and data; and comply with all requirements of article forty-nine of this chapter and article forty-nine of the public health law regarding utilization review. In addition, a utilization review determination with respect to an emergency condition shall require application of a prudent layperson standard to the patient's presenting symptoms, without regard to final diagnosis.

(2) Every insurer shall submit to the superintendent, in such form and manner as the superintendent may require, data on the amount of time a clinical peer reviewer spends examining an adverse determination prior to signing off on each adverse determination.

(3) An artificial intelligence-based algorithm shall not be the sole basis of an insurer's decision to deny, delay, or modify health care services based, in whole or in part, on medical necessity.

(4) Every clinical peer reviewer that participates in a utilization review process for an insurer issuing adverse determinations shall issue a signed statement in accordance with paragraph one of subsection (e) of section forty-nine hundred three of this chapter or paragraph (a) of subdivision five of section forty-nine hundred three of the public health law.

(e) Every insurer shall establish an ongoing quality assurance testing process that meets any requirements that the superintendent may specify with defined parameters on safety and efficacy of all artificial intelligence-based algorithms, and shall submit the results of such quality assurance testing process to the superintendent at such time and in such form and manner as the superintendent may specify, but not less frequently than semiannually. The results of such quality assurance testing process shall be published on a public website within thirty days of the submission of such results to the superintendent.

(f) (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:

(A) Where a violation is made by an insurer:

(i) suspension or revocation of license;

(ii) refusal, for a period not to exceed one year, to issue a new license;

(iii) a fine of not more than five thousand dollars for each violation of this section; or

(iv) a fine of not more than ten thousand dollars for each willful violation of this section.

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

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

(i) suspension or revocation of license;

(ii) refusal, for a period not to exceed one year, to issue a new license;

(iii) a fine of not more than five thousand dollars for each violation of this section; or

(iv) a fine of not more than ten thousand dollars 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.

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

§ 2. Subparagraph (C) of paragraph 9 of subsection (i) of section 3216 of the insurance law, as amended by chapter 219 of the laws of 2011, is amended to read as follows:

(C) For purposes of this paragraph, an "emergency condition" means a medical or behavioral condition that, regardless of the final diagnosis, manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (i) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such person or others in serious jeopardy; (ii) serious impairment to such person's bodily functions; (iii) serious dysfunction of any bodily organ or part of such person; (iv) serious disfigurement of such person; or (v) a condition described in clause (i), (ii) or (iii) of section 1867(e)(1)(A) of the Social Security Act.

§ 3. Item (ii) of subparagraph (E) of paragraph 24 of subsection (i) of section 3216 of the insurance law, as amended by chapter 219 of the laws of 2011, is amended to read as follows:

(ii) "Emergency condition" means a medical or behavioral condition that, regardless of final diagnosis, manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (I) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such person or others in serious jeopardy; (II) serious impairment to such person's bodily functions; (III) serious dysfunction of any bodily organ or part of such person; (IV) serious disfigurement of such person; or (V) a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act.

§ 4. Subparagraph (C) of paragraph 4 of subsection (k) of section 3221 of the insurance law, as amended by chapter 219 of the laws of 2011, is amended to read as follows:

(C) In this paragraph, an "emergency condition" means a medical or behavioral condition that, regardless of the final diagnosis, manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (i) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such person or others in serious jeopardy; (ii) serious impairment to such person's bodily functions; (iii) serious dysfunction of any bodily organ or part of such

person; (iv) serious disfigurement of such person; or (v) a condition described in clause (i), (ii) or (iii) of section 1867(e)(1)(A) of the Social Security Act.

§ 5. Subparagraph (C) of paragraph 2 of subsection (a) of section 4303 of the insurance law, as amended by chapter 219 of the laws of 2011, is amended to read as follows:

(C) For the purpose of this provision, "emergency condition" means a medical or behavioral condition that**, regardless of the final diagnosis,** manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (i) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such person or others in serious jeopardy; (ii) serious impairment to such person's bodily functions; (iii) serious dysfunction of any bodily organ or part of such person; (iv) serious disfigurement of such person; or (v) a condition described in clause (i), (ii) or (iii) of section 1867(e)(1)(A) of the Social Security Act.

§ 6. Subsection (c) of section 4900 of the insurance law, as amended by chapter 219 of the laws of 2011, is amended to read as follows:

(c) "Emergency condition" means a medical or behavioral condition[~~,~~] that**, regardless of the final diagnosis,** manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (1) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such person or others in serious jeopardy; (2) serious impairment to such person's bodily functions; (3) serious dysfunction of any bodily organ or part of such person; (4) serious disfigurement of such person; or (5) a condition described in clause (i), (ii) or (iii) of section 1867(e)(1)(A) of the Social Security Act.

§ 7. Subdivision 3 of section 4900 of the public health law, as amended by chapter 219 of the laws of 2011, is amended to read as follows:

3. "Emergency condition" means a medical or behavioral condition[~~,~~] that**, regardless of the final diagnosis,** manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (a) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition, placing the health of such person or others in serious jeopardy; (b) serious impairment to such person's bodily functions; (c) serious dysfunction of any bodily organ or part of such person; (d) serious disfigurement of such person; or (e) a condition described in clause (i), (ii) or (iii) of section 1867(e)(1)(A) of the Social Security Act.

§ 8. Paragraph 1 of subsection (e) of section 4903 of the insurance law, as amended by chapter 28 of the laws of 2024, is amended to read as follows:

(1) Notice of an adverse determination made by a utilization review agent shall be in writing and must include:

(i) the reasons for the determination including the clinical rationale, if any**, and the specific coverage or clinical criteria that were not satisfied, including explicit identification of the relevant**

language contained in any clinical criteria relied upon to make the adverse determination and a clear explanation of the rationale supporting the determination that such clinical criteria were deemed not satisfied;

(ii) instructions on how to initiate standard appeals and expedited appeals pursuant to section four thousand nine hundred four and an external appeal pursuant to section four thousand nine hundred fourteen of this article;

(iii) notice of the availability, upon request of the insured, or the insured's designee, of the clinical review criteria relied upon to make such determination. Such notice shall also specify what, if any, additional necessary information must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal; [~~and~~]

(iv) for an adverse determination related to a step therapy protocol override request, information that includes the clinical review criteria relied upon to make such determination and any applicable alternative prescription drugs subject to the step therapy protocol of the utilization review agent[~~.~~];

(v) a statement signed by the clinical peer reviewer that made the adverse determination containing the following information:

(a) the full printed name of such clinical peer reviewer;

(b) such clinical peer reviewer's national provider identification number;

(c) such clinical peer reviewer's credentials, including any board certifications and areas of specialty expertise and training, as applicable;

(d) the taxonomy code of such clinical peer reviewer;

(e) an attestation by such clinical peer reviewer that they have the appropriate training and expertise in the field of medicine that is sufficient to make an informed decision regarding the medical necessity of the health care service or supply being requested on behalf of the insured and that they have no conflicts of interest that would interfere with their ability to make an impartial determination based on the merits of the specific patient case;

(f) documentation of the amount of time such clinical peer reviewer spent evaluating the medical record or other information related to the review before confirming the adverse determination;

(g) an indication of whether such clinical peer reviewer reviewed a prepared summary of the patient's medical records or the patient's actual medical records in making their adverse determination; and

(vi) a statement as to whether an artificial intelligence-based algorithm, as such term is defined by section three hundred thirty-eight of this chapter, was used in the utilization review process, and a plain language explanation as to how such artificial intelligence-based algorithm was employed and where the insured and health care provider can find more information about the specific usage of such artificial intelligence-based algorithm.

§ 9. Paragraph (a) of subdivision 5 of section 4903 of the public health law, as amended by chapter 28 of the laws of 2024, is amended to read as follows:

(a) Notice of an adverse determination made by a utilization review agent shall be in writing and must include:

(i) the reasons for the determination including the clinical rationale, if any, and the specific coverage or clinical criteria that were not satisfied, including explicit identification of the relevant

language contained in any clinical criteria relied upon to make the adverse determination and a clear explanation of the rationale supporting the determination that such clinical criteria were deemed not satisfied;

(ii) instructions on how to initiate standard and expedited appeals pursuant to section forty-nine hundred four and an external appeal pursuant to section forty-nine hundred fourteen of this article;

(iii) notice of the availability, upon request of the enrollee, or the enrollee's designee, of the clinical review criteria relied upon to make such determination. Such notice shall also specify what, if any, additional necessary information must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal; [~~and~~]

(iv) for an adverse determination related to a step therapy protocol override request, information that includes the clinical review criteria relied upon to make such determination and any applicable alternative prescription drugs subject to the step therapy protocol of the utilization review agent[~~.~~];

(v) a statement signed by the physician who made the adverse determination containing the following information:

(A) the full printed name of such physician;

(B) such physician's national provider identification number;

(C) such physician's credentials, including any board certifications and areas of specialty expertise and training, as applicable;

(D) the taxonomy code of such physician;

(E) an attestation by such physician that they have the appropriate training and expertise in the field of medicine that is sufficient to make an informed decision regarding the medical necessity of the health care service or supply being requested on behalf of the insured and that they have no conflicts of interest that would interfere with their ability to make an impartial determination based on the merits of the specific patient case;

(F) documentation of the amount of time such physician spent evaluating the medical record or other information related to the review before confirming the adverse determination;

(G) an indication of whether such physician reviewed a prepared summary of the patient's medical records or the patient's actual medical records in making their adverse determination; and

(vi) a statement as to whether an artificial intelligence-based algorithm, as such term is defined by section three hundred thirty-eight of this chapter, was used in the utilization review process, and a plain language explanation as to how such artificial intelligence-based algorithm was employed and where the insured and health care provider can find more information about the specific usage of such artificial intelligence-based algorithm.

§ 10. 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.