

STATE OF NEW YORK

10241

IN SENATE

May 8, 2026

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

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

13 (A) perceive real and virtual environments;

14 (B) abstract such perceptions into models through analysis in an auto-
15 mated manner; and

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

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

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

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

24 (6) "Insurer" means an insurer authorized to write accident and health
25 insurance in this state, a corporation organized pursuant to article
26 forty-three of this chapter, and a health maintenance organization
27 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.

LBD15313-01-6

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

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

12 (2) If artificial intelligence-based algorithms are used in the utili-
13 zation review process, each insurer shall disclose to the insured's or
14 enrollee's health care provider, and, upon request, to the insured or
15 enrollee, the following information: the criteria governing such artifi-
16 cial intelligence-based algorithm, the data sets used to train such
17 artificial intelligence-based algorithm, the artificial intelligence-
18 based algorithm itself, and the outcomes produced by software that uses
19 the artificial intelligence-based algorithm.

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

27 (4) Any artificial intelligence-based algorithms used in the utiliza-
28 tion review process by an insurer shall not base an adverse determi-
29 nation solely on a group data set.

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

33 (6) Any artificial intelligence-based algorithms used in the utiliza-
34 tion review process by an insurer shall be open to inspection for audit
35 or compliance reviews by the superintendent in accordance with applica-
36 ble state and federal laws.

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

40 (c) Every insurer shall submit the artificial intelligence-based algo-
41 rithms and training data sets that are being used or will be used in the
42 utilization review process to the superintendent. Such submissions
43 shall include, at a minimum, a certification that such artificial intel-
44 ligence-based algorithms and training data sets:

45 (1) have minimized the risk of bias based on the covered person's
46 race, color, religious creed, ancestry, age, sex, gender, national
47 origin, handicap or disability, and are consistent with state and feder-
48 al antidiscrimination laws;

49 (2) adhere to evidence-based clinical guidelines;

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

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

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

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

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

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

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

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

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

43 (i) suspension or revocation of license;

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

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

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

50 Fines imposed pursuant to the provisions of this subparagraph on a
51 single insurer shall not exceed five hundred thousand dollars in aggre-
52 gate during a calendar year.

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

54 (i) suspension or revocation of license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) "Emergency condition" means a medical or behavioral condition[7]
23 that, regardless of the final diagnosis, manifests itself by acute symp-
24 toms of sufficient severity, including severe pain, such that a prudent
25 layperson, possessing an average knowledge of medicine and health, could
26 reasonably expect the absence of immediate medical attention to result
27 in (1) placing the health of the person afflicted with such condition in
28 serious jeopardy, or in the case of a behavioral condition placing the
29 health of such person or others in serious jeopardy; (2) serious impair-
30 ment to such person's bodily functions; (3) serious dysfunction of any
31 bodily organ or part of such person; (4) serious disfigurement of such
32 person; or (5) a condition described in clause (i), (ii) or (iii) of
33 section 1867(e)(1)(A) of the Social Security Act.

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

37 3. "Emergency condition" means a medical or behavioral condition[7]
38 that, regardless of the final diagnosis, manifests itself by acute symp-
39 toms of sufficient severity, including severe pain, such that a prudent
40 layperson, possessing an average knowledge of medicine and health, could
41 reasonably expect the absence of immediate medical attention to result
42 in (a) placing the health of the person afflicted with such condition in
43 serious jeopardy, or in the case of a behavioral condition, placing the
44 health of such person or others in serious jeopardy; (b) serious impair-
45 ment to such person's bodily functions; (c) serious dysfunction of any
46 bodily organ or part of such person; (d) serious disfigurement of such
47 person; or (e) a condition described in clause (i), (ii) or (iii) of
48 section 1867(e)(1)(A) of the Social Security Act.

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

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

54 (i) the reasons for the determination including the clinical ration-
55 ale, if any, and the specific coverage or clinical criteria that were
56 not satisfied, including explicit identification of the relevant

1 language contained in any clinical criteria relied upon to make the
2 adverse determination and a clear explanation of the rationale support-
3 ing the determination that such clinical criteria were deemed not satis-
4 fied;

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

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

15 (iv) for an adverse determination related to a step therapy protocol
16 override request, information that includes the clinical review criteria
17 relied upon to make such determination and any applicable alternative
18 prescription drugs subject to the step therapy protocol of the utiliza-
19 tion review agent[~~+~~];

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

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

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

25 (c) such clinical peer reviewer's credentials, including any board
26 certifications and areas of specialty expertise and training, as appli-
27 cable;

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

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

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

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

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

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

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

54 (i) the reasons for the determination including the clinical ration-
55 ale, if any, and the specific coverage or clinical criteria that were
56 not satisfied, including explicit identification of the relevant

1 language contained in any clinical criteria relied upon to make the
2 adverse determination and a clear explanation of the rationale support-
3 ing the determination that such clinical criteria were deemed not satis-
4 fied;

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

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

14 (iv) for an adverse determination related to a step therapy protocol
15 override request, information that includes the clinical review criteria
16 relied upon to make such determination and any applicable alternative
17 prescription drugs subject to the step therapy protocol of the utiliza-
18 tion review agent[];

19 (v) a statement signed by the physician who made the adverse determi-
20 nation containing the following information:

21 (A) the full printed name of such physician;

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

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

25 (D) the taxonomy code of such physician;

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

33 (F) documentation of the amount of time such physician spent evaluat-
34 ing the medical record or other information related to the review before
35 confirming the adverse determination;

36 (G) an indication of whether such physician reviewed a prepared summa-
37 ry of the patient's medical records or the patient's actual medical
38 records in making their adverse determination; and

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

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