STATE OF NEW YORK

8556

2025-2026 Regular Sessions

IN ASSEMBLY

May 20, 2025

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

AN ACT to amend the public health law and the insurance law, in relation to the use of an artificial intelligence, algorithm, or other software tool for the purpose of utilization review

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

Section 1. The public health law is amended by adding a new section 4905-a to read as follows:

§ 4905-a. Use of artificial intelligence, algorithm, or other software tool for the purpose of utilization review. 1. A utilization review agent that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review, based in whole or in part on medical necessity, or that contracts with or otherwise works through an entity that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review, based in whole or in part on medical necessity, shall comply with this section and shall ensure all of the following:

(a) The artificial intelligence, algorithm, or other software tool bases its determination on the following information, as applicable:

(i) an enrollee's medical or other clinical history;

(ii) individual clinical circumstances as presented by the requesting provider; and

(iii) other relevant clinical information contained in the enrollee's medical or other clinical record.

(b) The artificial intelligence, algorithm, or other software tool does not base its determination solely on a group dataset.

(c) The artificial intelligence, algorithm, or other software tool's criteria and guidelines complies with this article, including, but not limited to any other applicable state and federal law.

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

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(d) The artificial intelligence, algorithm, or other software tool does not supplant health care provider decision-making.

(e) The use of the artificial intelligence, algorithm, or other software tool does not discriminate, directly or indirectly, against enrollees in violation of state or federal law.

(f) The artificial intelligence, algorithm, or other software tool is fairly and equitably applied, including in accordance with any applicable regulations and guidance issued by the federal department of health and human services.

(g) The artificial intelligence, algorithm, or other software tool is open to inspection for audit or compliance reviews by the department.

(h) Disclosures pertaining to the use and oversight of the artificial intelligence, algorithm, or other software tool are contained in the written policies and procedures, as required by section forty-nine hundred two of this title.

(i) The artificial intelligence, algorithm, or other software tool's performance, use, and outcomes are periodically reviewed and revised to maximize accuracy and reliability.

(j) Patient data is not used beyond its intended and stated purpose, consistent with this section and the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), as applicable.

(k) The artificial intelligence, algorithm, or other software tool does not directly or indirectly cause harm to the enrollee.

2. Notwithstanding subdivision one of this section, the artificial intelligence, algorithm, or other software tool shall not deny, delay, or modify health care services based, in whole or in part, on medical necessity. A determination of medical necessity shall be made only by a licensed physician or a licensed health care professional competent to evaluate the specific clinical issues involved in the health care services requested by the provider, as provided in this title, by reviewing and considering the requesting provider's recommendation, the enrollee's medical or other clinical history, as applicable, and individual clinical circumstances.

3. For purposes of this section, "artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

4. This section shall apply to utilization reviews that prospectively, retrospectively, or concurrently review requests for covered health care services.

5. A health care service plan subject to this section shall comply with applicable federal rules and guidance issued by the federal department of health and human services regarding the use of artificial intelligence, algorithm, or other software tools. The department may issue guidance to implement this section within one year of the adoption of federal rules or the issuance of guidance by the federal department of health and human services regarding the use of artificial intelligence, algorithm, or other software tools. Such guidance shall not be subject to the state administrative procedure act.

6. For purposes of implementing this section, the department may enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis. Contracts entered into or amended pursuant to this subdivision shall be exempt from articles nine and eleven of the state finance law, and shall not be subject to review or approval of any other state agency or entity.

7. This section applies only to the extent that the department obtains any necessary federal approvals, and federal financial participation is not otherwise jeopardized.

§ 2. The insurance law is amended by adding a new section 4905-a to read as follows:

§ 4905-a. Use of artificial intelligence, algorithm, or other software tool for the purpose of utilization review. 1. A disability insurer, including a specialized health insurer that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review or utilization management functions, based in whole or in part on medical necessity, or that contracts with or otherwise works through an entity that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review or utilization management functions, based in whole or in part on medical necessity, shall comply with this section and shall ensure all of the following:

(a) The artificial intelligence, algorithm, or other software tool bases its determination on the following information, as applicable:

(i) An insured's medical or other clinical history;

(ii) Individual clinical circumstances as presented by the requesting provider; and

(iii) Other relevant clinical information contained in the insured's medical or other clinical record.

(b) The artificial intelligence, algorithm, or other software tool does not base its determination solely on a group dataset.

(c) The artificial intelligence, algorithm, or other software tool's criteria and guidelines complies with this chapter and applicable state and federal law.

(d) The artificial intelligence, algorithm, or other software tool does not supplant health care provider decision-making.

(e) The use of the artificial intelligence, algorithm, or other software tool does not discriminate, directly or indirectly, against insureds in violation of state or federal law.

(f) The artificial intelligence, algorithm, or other software tool is fairly and equitably applied, including in accordance with any applicable regulations and guidance issued by the federal department of health and human services.

(g) The artificial intelligence, algorithm, or other software tool is open to inspection for audit or compliance reviews by the department pursuant to applicable state and federal law.

(h) Disclosures pertaining to the use and oversight of the artificial intelligence, algorithm, or other software tool are contained in the written policies and procedures, as required by section forty-nine hundred two of this title.

(i) The artificial intelligence, algorithm, or other software tool's performance, use, and outcomes are periodically reviewed and revised to maximize accuracy and reliability.

(j) Patient data is not used beyond its intended and stated purpose, consistent with state law and the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), as applicable.

(k) The artificial intelligence, algorithm, or other software tool does not directly or indirectly cause harm to the insured.

2. Notwithstanding subsection one of this section, the artificial intelligence, algorithm, or other software tool shall not deny, delay, or modify health care services based, in whole or in part, on medical necessity. A determination of medical necessity shall be made only by a

licensed physician or licensed health care professional competent to evaluate the specific clinical issues involved in the health care services requested by the provider, as provided in this title, by reviewing and considering the requesting provider's recommendation, the insured's medical or other clinical history, as applicable, and individual clinical circumstances.

3. For purposes of this section, "artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

4. This section shall apply to utilization review or utilization management functions that prospectively, retrospectively, or concurrently review requests for covered health care services.

5. An insurer subject to this section shall comply with applicable federal rules and guidance issued by the federal department of health and human services regarding the use of artificial intelligence, algorithm, or other software tools. The department may issue guidance to implement this paragraph within one year of the adoption of federal rules or the issuance of guidance by the federal department of health and human services regarding the use of artificial intelligence, algorithm, or other software tools. Such guidance shall not be subject to the state administrative procedure act.

6. For purposes of implementing this section, the department may enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis. Contracts entered into or amended pursuant to this subdivision shall be exempt from articles nine and eleven of the state finance law, and shall not be subject to review or approval of any other state agency or entity.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law.