1 State of Arkansas

2 95th General Assembly

A Bill

3 Regular Session, 2025

HOUSE BILL 1297

4

5 By: Representative L. Johnson

6 By: Senator Irvin

7

8 **For An Act To Be Entitled**

9 AN ACT CONCERNING ARTIFICIAL INTELLIGENCE,

10 ALGORITHMS, AND OTHER AUTOMATED TECHNOLOGIES; TO

11 REGULATE CERTAIN PRACTICES OF HEALTHCARE INSURERS;

12 AND FOR OTHER PURPOSES.

13

14

15 **Subtitle**

16 CONCERNING ARTIFICIAL INTELLIGENCE,

17 ALGORITHMS, AND OTHER AUTOMATED

18 TECHNOLOGIES; AND TO REGULATE CERTAIN

19 PRACTICES OF HEALTHCARE INSURERS.

20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22

23 SECTION 1. Arkansas Code Title 23, Chapter 63, is amended to add an

24 additional subchapter to read as follows:

25

26 Subchapter 21 — Artificial Intelligence, Algorithms, and Other Automated

27 Technologies

28

29 23-63-2101. Definitions.

30 As used in this subchapter:

31 (1) "Artificial intelligence" means a machine-based system that

32 for a given set of human-defined objectives, can make predictions,

33 recommendations, or decisions influencing real or virtual environments;

34 (2) "Enrollee" means an individual who is entitled to receive

35 healthcare services under the terms of a health benefit plan;

36 (3)(A) "Health benefit plan" means:

1   (i) An individual, blanket, or group plan, or a
2   policy or contract for healthcare services offered, issued, renewed,
3   delivered, or extended in this state by a healthcare insurer; and
4   (ii) A health benefit program receiving state or
5   federal appropriations from the State of Arkansas, including the Arkansas
6   Medicaid Program and the Arkansas Health and Opportunity for Me Program or
7   any successor program.
8   (B) "Health benefit plan" includes:
9   (i) Indemnity and managed care plans; and
10   (ii) Nonfederal governmental plans as defined in 29
11   U.S.C. § 1002(32), as it existed on January 1, 2025.
12   (C) "Health benefit plan" does not include:
13   (i) A plan that provides only dental benefits or eye
14   and vision care benefits;
15   (ii) A disability income plan;
16   (iii) A credit insurance plan;
17   (iv) Insurance coverage issued as a supplement to
18   liability insurance;
19   (v) A medical payment under an automobile or
20   homeowners insurance plan;
21   (vi) A health benefit plan provided under Arkansas
22   Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
23   seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;
24   (vii) A plan that provides only indemnity for
25   hospital confinement;
26   (viii) An accident-only plan;
27   (ix) A specified disease plan; or
28   (x) A long-term-care-only plan;
29   (4)(A) "Healthcare insurer" means an insurance company, hospital
30   and medical service corporation, or health maintenance organization that
31   issues or delivers health benefit plans in this state and is subject to:
32   (i) The insurance laws of this state;
33   (ii) Section 23-75-101 et seq., pertaining to
34   hospital and medical service corporations; or
35   (iii) Section 23-76-101 et seq., pertaining to
36   health maintenance organizations.

1   (B) "Healthcare insurer" does not include an entity that

2 provides only dental benefits or eye and vision care benefits;

3   (5) "Healthcare provider" means a type of provider that renders

4 healthcare services to patients for compensation, including a doctor of

5 medicine or another licensed healthcare professional acting within the

6 professional's licensed scope of practice; and

7   (6) "Managed care entity" means an insurance company, hospital

8 or medical service plan, healthcare provider network, physician hospital

9 organization, health maintenance organization, healthcare service

10 corporation, employer or employee organization, or managed care contractor.

11

12   23-63-2102. Disclosure of algorithm use — Privacy and data

13 accessibility.

14   (a)(1) On and after January 1, 2026, a healthcare insurer that offers,

15 issues, renews, delivers, or extends a health benefit plan in this state

16 shall disclose to the following through an applied model card the strengths

17 and limitations of artificial intelligence-based algorithms, including

18 without limitation known biases, performance variability, and populations

19 where artificial based-intelligence algorithms are more less effective, used

20 or to be used in the healthcare insurer's utilization review process:

21   (A) The Insurance Commissioner;

22   (B) A healthcare provider in the healthcare insurer's

23 network;

24   (C) An enrollee; and

25   (D) The general public on the healthcare insurer's

26 publicly accessible website.

27   (2) The disclosure under subdivision (a)(1) of this section

28 shall include:

29   (A) The algorithm criteria;

30   (B) Data sets used to train the algorithm, including

31 mitigation of any known bias;

32   (C) The algorithm itself;

33   (D) A description of how the algorithm is used in an

34 applied use case;

35   (E) The outcomes of the software or workflow in which the

36 algorithm is used; and

1   (F) Any results of independent third-party validation for

2   improved transparency and trustworthiness.

3   (b) A healthcare insurer shall ensure that:

4   (1) An algorithm should leverage federated data-sharing models

5   to minimize data centralization and protect enrollee privacy;

6   (2) An algorithm is compliant with national interoperability

7   standards, including Fast Healthcare Interoperability Resources and the

8   United States Core Data for Interoperability;

9   (3) Enrollee data that is used for training or validation of

10   artificial intelligence models are following privacy and security standards

11   that align with the Trusted Exchange Framework and Common Agreement; and

12   (4) Established mechanisms document and obtain explicit enrollee

13   consent for using health data in artificial development and validation.

14

15   23-63-2103. Explanation of artificial intelligence-based algorithm

16   recommendations.

17   (a) If artificial intelligence-based algorithms are used in the

18   utilization review process, the artificial intelligence-based algorithm

19   recommendations shall be supported by an explanation, understandable at all

20   literacy levels, of the rationale used by the healthcare insurer-operated

21   algorithm or system used in making a recommendation to deny, delay, or modify

22   healthcare services covered under a health benefit plan.

23   (b)(1) A healthcare insurer using an automated decision-making system

24   shall identify and cite peer-reviewed studies assessing the automated

25   decision-making system's accuracy measured against enrollee outcomes and the

26   validity of automated decision-making systems.

27   (2) The peer-reviewed studies under subdivision (b)(1) of this

28   section shall be concordant or based on easily accessible evidence-based

29   clinical guidelines, as opposed to proprietary healthcare insurer criteria.

30   (3) An enrollee shall be provided a process for contesting

31   enrollee outcomes.

32

33   23-63-2104. Clinician supervision of artificial intelligence.

34   (a) A healthcare insurer shall not make a decision regarding the care

35   of enrollees based solely on the results derived from the use or application

36   of artificial intelligence.

1   (b) A healthcare provider who participates in a utilization review

2   process for a healthcare insurer that initially uses artificial intelligence-

3   based algorithms for a utilization review determination shall:

4   (1) Ensure that a utilization review entity guarantees that an

5   initial adverse prior authorization determination or appeal of an adverse

6   prior authorization determination or precertification determination is

7   reviewed by a healthcare provider who:

8   (A) Possesses a current and valid nonrestricted license to

9   practice medicine in this state;

10   (B) Has experience treating patients with the medical

11   condition or disease for which the healthcare service or supply is being

12   requested under initial prior authorization determination or appeal;

13   (C) Is not employed by a utilization review entity, is not

14   under contract with a utilization review entity other than to participate in

15   one (1) or more of the utilization review entity's healthcare provider

16   networks or to perform reviews of appeals, and does not otherwise have a

17   financial interest in the outcome of the appeal;

18   (D) Has not been directly involved in making the adverse

19   determination; and

20   (E)(i) Has considered known clinical aspects of the

21   healthcare service under review, including without limitation:

22   (a) A review of pertinent medical records

23   provided to the utilization review entity by the enrollee's healthcare

24   provider;

25   (b) Relevant records provided to the

26   utilization review entity by a healthcare facility; and

27   (c) Medical literature provided to the

28   utilization review entity by the healthcare provider.

29   (ii) If the decision is an adverse determination,

30   the healthcare provider shall complete and sign the denial notice, providing

31   the required information described under this subdivision (b)(1); and

32   (2) Open and document the review of the individual clinical

33   records or data before the individualized documented decision of a denial.

34   (c) The healthcare insurer shall submit to the Insurance Commissioner,

35   in the form and manner as the commissioner may require, data on the amount of

36   time a human reviewer spends examining an adverse organizational

1 determination before signing off on each denial under subsection (b) of this

2 section.

3   (d) An artificial intelligence-based algorithm shall not be the sole

4 basis of a decision to deny, delay, or modify healthcare services based in

5 whole or in part on medical necessity.

6   (e) An adverse determination of medical necessity shall be made only

7 by a healthcare provider or a licensed healthcare professional competent to

8 evaluate the specific clinical issues involved in the healthcare services

9 requested by the healthcare provider as required under subdivision (b)(1) of

10 this section, by reviewing and considering the requesting healthcare

11 provider's recommendation, the enrollee's medical or other clinical history,

12 as applicable, and individual clinical circumstances.

13   (f) A healthcare insurer that uses clinical supervision of artificial

14 intelligence under this section shall provide ongoing education and

15 certification, if applicable, for a clinician reviewing artificial

16 intelligence determinations to ensure the clinician's ability to critically

17 assess artificial intelligence outputs.

18

19   23-63-2105. State audit automated utilization management system.

20   (a) The Insurance Commissioner may audit at any time a healthcare

21 insurer's automated utilization management system.

22   (b) The commissioner may contract with a third-party entity to perform

23 an audit under subsection (a) of this section.

24   (c) A healthcare insurer that uses an automated decision-making system

25 shall:

26   (1) Engage in a regular system audit to ensure use of the

27 automated decision-making system is not increasing overall or disparate

28 claims denials or coverage limitations or otherwise decreasing access to

29 care; and

30   (2) Publish statistics regarding the automated decision-making

31 systems' approval, denial, and appeal rates on the payor's website or another

32 publicly available website in a readily accessible format with enrollee

33 population demographics to report and contextualize equity implications of

34 automated decisions.

35

36   23-63-2106. Use of artificial intelligence to shift coverage

1   prohibited.

2   (a) A healthcare insurer shall:

3   (1) Reference publicly accessible internal coverage criteria

4   that are based on current evidence in widely used treatment guidelines or

5   clinical literature; or

6   (2) Use artificial intelligence-based algorithms solely to

7   implement internal coverage criteria that have been made public and adopted

8   in compliance with this subchapter.

9   (b) A healthcare insurer shall not use artificial intelligence-based

10   algorithms that:

11   (1) Rely on any information not in compliance with this section;

12   or

13   (2) Independently change or create coverage criteria.

14

15   23-63-2107. Quality assurance testing of artificial intelligence.

16   (a)(1) A healthcare insurer shall establish an ongoing, biannual

17   quality assurance testing process that meets requirements established by rule

18   by the Insurance Commissioner that specify defined parameters on safety and

19   efficacy of an artificial intelligence-based algorithm.

20   (2) The requirements under subdivision (a)(1) of this section

21   shall meet standardized benchmarks or definitions achieved by consensus-

22   building at a national level.

23   (b) A healthcare insurer shall ensure that the artificial

24   intelligence-based algorithms used in the quality assurance testing process

25   under subsection (a) of this section are consistent with state and federal

26   antidiscrimination laws and meet certain parameters of safety and fairness.

27   (c) A healthcare insurer shall submit the results of the quality

28   assurance testing under subsection (a) of this section to the commissioner at

29   the time and in the form and manner as the commissioner may specify, but not

30   less frequently than semiannually.

31   (d) The results submitted under subsection (c) of this section shall

32   be published on a public website within thirty (30) days of the submission of

33   the results to the commissioner.

34   (e) Any quality assurance testing shall include:

35   (1) Validation for generalizability as well as mechanisms to

36   support local site testing, where necessary, and on-site monitoring

1   applicability for artificial intelligence solutions to ensure safety,

2   robustness, adaptability, and fairness; and

3   (2)   Testing based on the risk level of the model's intended use,

4   with higher-risk applications requiring more rigorous evaluation and

5   monitoring.

6   (f)(1)   A healthcare insurer shall build capabilities for generating

7   and curating real-world evidence to ensure artificial intelligence-based

8   algorithms are tested for the highest standards for safety, accuracy, and

9   reliability to identify potential risks.

10   (2)   All artificial intelligence solutions shall undergo

11 benchmarking against standardized metrics approved by the commissioner,

12 including without limitation safety, efficacy, and reliability in

13 representative enrollee populations from Arkansas.

14   (g)   Quality assurance testing datasets under this section shall:

15   (1)   Be multi-institutional and representative of Arkansas's

16 demographic makeup;

17   (2)   Explain data provenance and origin;

18   (3)   Contain relevant characteristics pertaining to the

19 artificial intelligence being used; and

20   (4)   Be updated regularly to ensure the highest quality data is

21 used at all times.

22   (h)   The commissioner shall allocate resources to federally qualified

23 health centers, critical access hospitals, and rural clinics in this state to

24 enable participation in quality assurance testing.

25

26 23-63-2108.   Healthcare insurer requirements.

27   (a)   Except as provided in subsection (b) of this section, this

28 subchapter applies to a healthcare insurer offering a health benefit plan in

29 this state.

30   (b)   This subchapter does not apply to a managed care entity or

31 healthcare service contractor that is:

32   (1)   Majority-owned or controlled by a nonprofit hospital,

33 hospital system, or managed care entity; or

34   (2)   A nonprofit legal entity under 26 U.S.C. § 501(c) that

35 provides a majority of covered professional services in a specific geographic

36 area through employed healthcare providers or a single contracted medical

1 group.

2

3   23-63-2109. Enforcement — Penalties.

4   If the Insurance Commissioner determines that a healthcare insurer is

5 not in compliance with this subchapter, the commissioner may impose:

6   (1) A penalty, including without limitation:

7   (A) A civil money penalty of not more than twenty-five

8 thousand dollars ($25,000) for each determination of noncompliance;

9   (B) A civil money penalty of not more than ten thousand

10 dollars ($10,000) for each week beginning on and after the date on which a

11 civil money penalty under subdivision (a)(1)(A) of this section is imposed by

12 the commissioner during which the deficiency that is the basis of a

13 determination of noncompliance exists; and

14   (C) Suspension of enrollment of individuals in health

15 benefit plans offered by the healthcare insurer on and after the date the

16 commissioner notifies the healthcare insurer of a determination of

17 noncompliance and until the commissioner is satisfied that the basis for the

18 determination has been corrected and is not likely to recur;

19   (2) Administrative fees, including a fee charged or allocated

20 for collection activities conducted by the commissioner that will be passed

21 on to a health benefit plan on a pro-rata basis and added to a civil money

22 penalty under subdivision (a)(1) of this section collected from the health

23 benefit plan;

24   (3) If the commissioner determines that a healthcare provider or

25 enrollee was adversely affected by the noncompliance of the healthcare

26 insurer, an amount necessary to compensate the healthcare provider or

27 enrollee for the harm attributable to the noncompliance that is not otherwise

28 compensated and may require the healthcare insurer to pay the amount,

29 including appropriate interest, to the healthcare provider or enrollee in

30 addition to any other penalties under this section; or

31   (4) Any other remedy available to the commissioner under state

32 law.

33

34   23-63-2110. No waiver, modification, or nullification by contract.

35   (a) Except as provided in subsection (b) of this section, a writing or

36 other agreement shall not contain a provision that constitutes a waiver,

1 modification, or nullification of a requirement or remedy under this

2 subchapter.

3   (b) This section does not prohibit a writing or other agreement that

4 grants to a healthcare provider more protection or remedy than contained in

5 this subchapter or a waiver given in settlement of a dispute or action.

6

7   23-63-2111. Private right of action.

8   (a) The Attorney General may bring a civil action in an appropriate

9 court for declaratory or injunctive relief as is necessary to carry out this

10 subchapter.

11   (b) A person who is aggrieved by a violation of this subchapter may

12 provide written notice of the violation to the Insurance Commissioner.

13   (c) If the violation of this subchapter is not corrected within ninety

14 (90) days after receipt of a notice under subsection (b) of this section, the

15 aggrieved person may bring a civil action in an appropriate court for

16 declaratory or injunctive relief with respect to the violation.

17   (d) In a civil action under this section, the court may allow the

18 prevailing party, other than the state, reasonable attorney's fees, including

19 litigation expenses, and costs.

20

21   23-63-2112. Education artificial intelligence tools.

22   The Insurance Commissioner may:

23   (1) Collaborate with academic institutions and healthcare

24 organizations to establish training programs for ethical artificial

25 intelligence deployment; and

26   (2) Fund public-private partnerships to create education

27 initiatives for a healthcare provider to use artificial intelligence tools.

28

29   23-63-2113. Rules.

30   The Insurance Commissioner shall promulgate rules to:

31   (1) Strengthen oversight and enforcement of existing rules to

32 ensure health benefit plan compliance with applicable legal and contractual

33 requirements for coverage and appeals;

34   (2) Ensure compliance with quality and performance standards;

35   (3) Ensure that health benefit plan compliance with this

36 subchapter is not eroded by using artificial intelligence tools, including

1 auto-denial software;

2   (4) Include continuous post-deployment monitoring of artificial

3 intelligence to ensure models maintain efficacy and safety; and

4   (5) Establish a process for biannual reporting and public

5 disclosure of quality assurance outcomes.

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