Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H2/27/25*
95th General Assembly

A Bill

Regular Session, 2025 HOUSE BILL 1297

By: Representative L. Johnson
By: Senator Irvin

For An Act To Be Entitled

AN ACT CONCERNING ARTIFICIAL INTELLIGENCE, ALGORITHMS, AND OTHER AUTOMATED TECHNOLOGIES; TO REGULATE CERTAIN PRACTICES OF HEALTHCARE INSURERS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING ARTIFICIAL INTELLIGENCE, ALGORITHMS, AND OTHER AUTOMATED TECHNOLOGIES; AND TO REGULATE CERTAIN PRACTICES OF HEALTHCARE INSURERS.

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

SECTION 1. Arkansas Code Title 23, Chapter 63, is amended to add an additional subchapter to read as follows:

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

23-63-2101. Definitions.

As used in this subchapter:

(1) "Artificial intelligence" means a machine-based system that for a given set of human-defined objectives, can make predictions, recommendations, or decisions influencing real or virtual environments;

(2) "Enrollee" means an individual who is entitled to receive healthcare services under the terms of a health benefit plan;

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

(i) An individual, blanket, or group plan, or a policy or contract for healthcare services offered, issued, renewed, delivered, or extended in this state by a healthcare insurer; and

(ii) A health benefit program receiving state or federal appropriations from the State of Arkansas, including the Arkansas Medicaid Program and the Arkansas Health and Opportunity for Me Program or any successor program.

(B) "Health benefit plan" includes indemnity and managed care plans.

(C) "Health benefit plan" does not include:

(i) A plan that provides only dental benefits or eye and vision care benefits;

(ii) A disability income plan;

(iii) A credit insurance plan;

(iv) Insurance coverage issued as a supplement to liability insurance;

(v) A medical payment under an automobile or homeowners insurance plan;

(vi) A health benefit plan provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(vii) A plan that provides only indemnity for hospital confinement;

(viii) An accident-only plan;

(ix) A specified disease plan;

(x) A long-term-care-only plan; or

(xi) A nonfederal governmental plan as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2025;

(4)(A) "Healthcare insurer" means an insurance company, hospital and medical service corporation, or health maintenance organization that issues or delivers health benefit plans in this state and is subject to:

(i) The insurance laws of this state;

(ii) Section 23-75-101 et seq., pertaining to hospital and medical service corporations; or

(iii) Section 23-76-101 et seq., pertaining to health maintenance organizations.

(B) "Healthcare insurer" does not include an entity that provides only dental benefits or eye and vision care benefits;

(5) "Healthcare provider" means a type of provider that renders healthcare services to patients for compensation, including a doctor of medicine or another licensed healthcare professional acting within the professional's licensed scope of practice; and

(6) "Managed care entity" means an insurance company, hospital or medical service plan, healthcare provider network, physician hospital organization, health maintenance organization, healthcare service corporation, employer or employee organization, or managed care contractor.

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

(a)(1) On and after January 1, 2026, a healthcare insurer that offers, issues, renews, delivers, or extends a health benefit plan in this state shall disclose to the following through an applied model card the strengths and limitations of artificial intelligence-based algorithms, including without limitation known biases, performance variability, and populations where artificial based-intelligence algorithms are more less effective, used or to be used in the healthcare insurer's utilization review process:

(A) The Insurance Commissioner;

(B) A healthcare provider in the healthcare insurer's network;

(C) An enrollee; and

(D) The general public on the healthcare insurer's publicly accessible website.

(2) The disclosure under subdivision (a)(1) of this section shall include:

(A) The algorithm criteria;

(B) Data sets used to train the algorithm, including mitigation of any known bias;

(C) The algorithm itself;

(D) A description of how the algorithm is used in an applied use case;

(E) The outcomes of the software or workflow in which the algorithm is used; and

(F) Any results of independent third-party validation for improved transparency and trustworthiness.

(b) A healthcare insurer shall ensure that:

(1) An algorithm should leverage federated data-sharing models to minimize data centralization and protect enrollee privacy;

(2) An algorithm is compliant with national interoperability standards, including Fast Healthcare Interoperability Resources and the United States Core Data for Interoperability;

(3) Enrollee data that is used for training or validation of artificial intelligence models are following privacy and security standards that align with the Trusted Exchange Framework and Common Agreement; and

(4) Established mechanisms document and obtain explicit enrollee consent for using health data in artificial development and validation.

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

(a) If artificial intelligence-based algorithms are used in the utilization review process, the artificial intelligence-based algorithm recommendations shall be supported by an explanation, understandable at all literacy levels, of the rationale used by the healthcare insurer-operated algorithm or system used in making a recommendation to deny, delay, or modify healthcare services covered under a health benefit plan.

(b)(1) A healthcare insurer using an automated decision-making system shall identify and cite peer-reviewed studies assessing the automated decision-making system's accuracy measured against enrollee outcomes and the validity of automated decision-making systems.

(2) The peer-reviewed studies under subdivision (b)(1) of this section shall be concordant or based on easily accessible evidence-based clinical guidelines, as opposed to proprietary healthcare insurer criteria.

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

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

(a) A healthcare insurer shall not make a decision regarding the care of enrollees based solely on the results derived from the use or application of artificial intelligence.

(b) A healthcare provider who participates in a utilization review process for a healthcare insurer that initially uses artificial intelligence-based algorithms for a utilization review determination shall:

(1) Ensure that a utilization review entity guarantees that an initial adverse prior authorization determination or appeal of an adverse prior authorization determination or precertification determination is reviewed by a healthcare provider who:

(A) Possesses a current and valid nonrestricted license to practice medicine in this state;

(B) Has experience treating patients with the medical condition or disease for which the healthcare service or supply is being requested under initial prior authorization determination or appeal;

(C) Is not employed by a utilization review entity, is not under contract with a utilization review entity other than to participate in one (1) or more of the utilization review entity's healthcare provider networks or to perform reviews of appeals, and does not otherwise have a financial interest in the outcome of the appeal;

(D) Has not been directly involved in making the adverse determination; and

(E)(i) Has considered known clinical aspects of the healthcare service under review, including without limitation:

(a) A review of pertinent medical records provided to the utilization review entity by the enrollee's healthcare provider;

(b) Relevant records provided to the utilization review entity by a healthcare facility; and

(c) Medical literature provided to the utilization review entity by the healthcare provider.

(ii) If the decision is an adverse determination, the healthcare provider shall complete and sign the denial notice, providing the required information described under this subdivision (b)(1); and

(2) Open and document the review of the individual clinical records or data before the individualized documented decision of a denial.

(c) The healthcare insurer shall submit to the Insurance Commissioner, in the form and manner as the commissioner may require, data on the amount of time a human reviewer spends examining an adverse organizational

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

(d) An artificial intelligence-based algorithm shall not be the sole basis of a decision to deny, delay, or modify healthcare services based in whole or in part on medical necessity.

(e) An adverse determination of medical necessity shall be made only by a healthcare provider or a licensed healthcare professional competent to evaluate the specific clinical issues involved in the healthcare services requested by the healthcare provider as required under subdivision (b)(1) of this section, by reviewing and considering the requesting healthcare provider's recommendation, the enrollee's medical or other clinical history, as applicable, and individual clinical circumstances.

(f) A healthcare insurer that uses clinical supervision of artificial intelligence under this section shall provide ongoing education and certification, if applicable, for a clinician reviewing artificial intelligence determinations to ensure the clinician's ability to critically assess artificial intelligence outputs.

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

(a) The Insurance Commissioner may audit at any time a healthcare insurer's automated utilization management system.

(b) The commissioner may contract with a third-party entity to perform an audit under subsection (a) of this section.

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

(1) Engage in a regular system audit to ensure use of the automated decision-making system is not increasing overall or disparate claims denials or coverage limitations or otherwise decreasing access to care; and

(2) Publish statistics regarding the automated decision-making systems' approval, denial, and appeal rates on the payor's website or another publicly available website in a readily accessible format with enrollee population demographics to report and contextualize equity implications of automated decisions.

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

prohibited.

(a) A healthcare insurer shall:

(1) Reference publicly accessible internal coverage criteria that are based on current evidence in widely used treatment guidelines or clinical literature; or

(2) Use artificial intelligence-based algorithms solely to implement internal coverage criteria that have been made public and adopted in compliance with this subchapter.

(b) A healthcare insurer shall not use artificial intelligence-based algorithms that:

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

(2) Independently change or create coverage criteria.

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

(a)(1) A healthcare insurer shall establish an ongoing, biannual quality assurance testing process that meets requirements established by rule by the Insurance Commissioner that specify defined parameters on safety and efficacy of an artificial intelligence-based algorithm.

(2) The requirements under subdivision (a)(1) of this section shall meet standardized benchmarks or definitions achieved by consensus-building at a national level.

(b) A healthcare insurer shall ensure that the artificial intelligence-based algorithms used in the quality assurance testing process under subsection (a) of this section are consistent with state and federal antidiscrimination laws and meet certain parameters of safety and fairness.

(c) A healthcare insurer shall submit the results of the quality assurance testing under subsection (a) of this section to the commissioner at the time and in the form and manner as the commissioner may specify, but not less frequently than semiannually.

(d) The results submitted under subsection (c) of this section shall be published on a public website within thirty (30) days of the submission of the results to the commissioner.

(e) Any quality assurance testing shall include:

(1) Validation for generalizability as well as mechanisms to support local site testing, where necessary, and on-site monitoring

applicability for artificial intelligence solutions to ensure safety, robustness, adaptability, and fairness; and

(2) Testing based on the risk level of the model's intended use, with higher-risk applications requiring more rigorous evaluation and monitoring.

(f)(1) A healthcare insurer shall build capabilities for generating and curating real-world evidence to ensure artificial intelligence-based algorithms are tested for the highest standards for safety, accuracy, and reliability to identify potential risks.

(2) All artificial intelligence solutions shall undergo benchmarking against standardized metrics approved by the commissioner, including without limitation safety, efficacy, and reliability in representative enrollee populations from Arkansas.

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

(1) Be multi-institutional and representative of Arkansas's demographic makeup;

(2) Explain data provenance and origin;

(3) Contain relevant characteristics pertaining to the artificial intelligence being used; and

(4) Be updated regularly to ensure the highest quality data is used at all times.

(h) The commissioner shall allocate resources to federally qualified health centers, critical access hospitals, and rural clinics in this state to enable participation in quality assurance testing.

23-63-2108. Healthcare insurer requirements.

(a) Except as provided in subsection (b) of this section, this subchapter applies to a healthcare insurer offering a health benefit plan in this state.

(b) This subchapter does not apply to a managed care entity or healthcare service contractor that is:

(1) Majority-owned or controlled by a nonprofit hospital, hospital system, or managed care entity; or

(2) A nonprofit legal entity under 26 U.S.C. § 501(c) that provides a majority of covered professional services in a specific geographic area through employed healthcare providers or a single contracted medical

group.

23-63-2109. Enforcement — Penalties.

If the Insurance Commissioner determines that a healthcare insurer is not in compliance with this subchapter, the commissioner may impose:

(1) A penalty, including without limitation:

(A) A civil money penalty of not more than twenty-five thousand dollars ($25,000) for each determination of noncompliance;

(B) A civil money penalty of not more than ten thousand dollars ($10,000) for each week beginning on and after the date on which a civil money penalty under subdivision (a)(1)(A) of this section is imposed by the commissioner during which the deficiency that is the basis of a determination of noncompliance exists; and

(C) Suspension of enrollment of individuals in health benefit plans offered by the healthcare insurer on and after the date the commissioner notifies the healthcare insurer of a determination of noncompliance and until the commissioner is satisfied that the basis for the determination has been corrected and is not likely to recur;

(2) Administrative fees, including a fee charged or allocated for collection activities conducted by the commissioner that will be passed on to a health benefit plan on a pro-rata basis and added to a civil money penalty under subdivision (a)(1) of this section collected from the health benefit plan;

(3) If the commissioner determines that a healthcare provider or enrollee was adversely affected by the noncompliance of the healthcare insurer, an amount necessary to compensate the healthcare provider or enrollee for the harm attributable to the noncompliance that is not otherwise compensated and may require the healthcare insurer to pay the amount, including appropriate interest, to the healthcare provider or enrollee in addition to any other penalties under this section; or

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

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

(a) Except as provided in subsection (b) of this section, a writing or other agreement shall not contain a provision that constitutes a waiver,

modification, or nullification of a requirement or remedy under this subchapter.

(b) This section does not prohibit a writing or other agreement that grants to a healthcare provider more protection or remedy than contained in this subchapter or a waiver given in settlement of a dispute or action.

23-63-2111. Private right of action.

(a) The Attorney General may bring a civil action in an appropriate court for declaratory or injunctive relief as is necessary to carry out this subchapter.

(b) A person who is aggrieved by a violation of this subchapter may provide written notice of the violation to the Insurance Commissioner.

(c) If the violation of this subchapter is not corrected within ninety (90) days after receipt of a notice under subsection (b) of this section, the aggrieved person may bring a civil action in an appropriate court for declaratory or injunctive relief with respect to the violation.

(d) In a civil action under this section, the court may allow the prevailing party, other than the state, reasonable attorney's fees, including litigation expenses, and costs.

23-63-2112. Education artificial intelligence tools.

The Insurance Commissioner may:

(1) Collaborate with academic institutions and healthcare organizations to establish training programs for ethical artificial intelligence deployment; and

(2) Fund public-private partnerships to create education initiatives for a healthcare provider to use artificial intelligence tools.

23-63-2113. Rules.

The Insurance Commissioner shall promulgate rules to:

(1) Strengthen oversight and enforcement of existing rules to ensure health benefit plan compliance with applicable legal and contractual requirements for coverage and appeals;

(2) Ensure compliance with quality and performance standards;

(3) Ensure that health benefit plan compliance with this subchapter is not eroded by using artificial intelligence tools, including

auto-denial software;

(4) Include continuous post-deployment monitoring of artificial intelligence to ensure models maintain efficacy and safety; and

(5) Establish a process for biannual reporting and public disclosure of quality assurance outcomes.

/s/L. Johnson