



Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

September 5, 2024

Re: Review the use of artificial intelligence (AI) in health care.

Dear Chairman Oliverson and Members of the House Insurance Committee,

I am writing on behalf of the Texas Association of Health Plans (TAHP), representing the state's health insurers dedicated to providing Texans with affordable, high-quality health care coverage. As Artificial Intelligence (AI) becomes increasingly integrated into health care, it holds the power to transform the industry by improving efficiency, reducing costs, and enhancing patient care. However, it is crucial that any regulatory framework around AI supports innovation while safeguarding patients. We appreciate the opportunity to discuss how Texas can strike this balance, ensuring that AI can be used to its fullest potential without unnecessary barriers.

Understanding AI and Health Insurance

As the Texas Legislature considers how to regulate Artificial Intelligence (AI) and attempts to understand any interplay in the health insurance industry, it is important to recognize that AI offers significant benefits for patients, providers, employers, and insurers – including improved efficiency, reduced administrative costs, and enhanced patient care through faster processing and better decision-making. Without careful consideration, new regulations could inadvertently hinder innovation and disrupt the effective use of AI. Texas lawmakers have worked to protect patients and health care providers with extensive regulations that already extend to the adoption of AI tools.

The Potential AI Offers

Health plans are exploring how AI tools can speed real-time prior authorization approvals, with one plan reporting approvals 1,400 times faster than with previous methods. Estimates show up to 25% lower administrative costs and 11% lower medical costs, equating to lower premiums for Texas families and employers. AI tools can give patients real-time guidance on the most appropriate care options based on their unique medical histories and health needs.

By leveraging AI effectively, health plans can improve overall patient outcomes. It's essential that any new regulations support innovation and do not introduce unnecessary barriers that could



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disrupt these advancements. Clear guidelines and careful distinctions between AI and traditional algorithms will help ensure that health plans can continue to use AI to its fullest potential, benefiting both insurers and their members.

Established Patient Protections Already Extend to AI

Texas does not need additional AI protections for prior authorization. The Legislature has already established patient protections with strict “human-in-the-loop” requirements. Only a Texas doctor can determine if care is not medically necessary—not a computer, an algorithm, or AI. For example, before denying a prior authorization, an insurer must give a physician a chance to discuss the decision with a doctor in the same or similar specialty. A final appeal determination must be made by a physician and the ordering doctor can ask for a review by a physician in the same or similar specialty.

Insurers are also required to protect consumers against discriminatory bias. Federal law prohibits insurers from discriminating based on race, color, national origin, sex, age, or disability. State laws have similar protected classes. However, any new legislation aiming to address bias should ensure non-discriminatory biased tools can continue to be used, such as those that identify people at high risk of type 2 diabetes and other population health concerns.

AI v. Algorithms - Understanding the Difference and the Right Definitions

For decades, insurers and agencies in charge of public coverage programs—like the Office of Inspector General (OIG)—have used algorithms to manage care and identify fraud, waste, and abuse. Any legislation regulating AI should be careful not to disrupt these long-standing, cost-saving and outcome-improving practices.

AI is different from an algorithm, which the National Association of Insurance Commissioners (NAIC) defines as “a clearly specified mathematical process for computation; a set of rules that, if followed, will give a prescribed result.” The National Institute of Standards and Technology (NIST) defines AI as “a branch of computer science devoted to developing data processing systems that performs functions normally associated with human intelligence, such as reasoning, learning, and self-improvement.” Our plans support adopting 50-state, industry-wide, standardized definitions for AI that recognize this distinction. We discourage lawmakers from creating regulations and definitions that hold Texas back from the opportunities and advancements that AI offers.



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Recommendations:

- **Avoid Unnecessary AI-Specific Requirements That Could Undermine Efforts to Address Fraud, Waste, and Abuse:** Texas already has robust patient protections in place for prior authorization processes, including strict “human-in-the-loop” requirements. These protections ensure that only physicians can make final determinations, preventing misuse of AI. Additional AI-specific regulations in this area are unnecessary and could hinder the use of AI tools that expedite care.
- **Clearly Define AI vs. Traditional Algorithms:** Texas should establish clear definitions that distinguish AI from traditional algorithms to protect ongoing cost-saving practices. The National Institute of Standards and Technology (NIST) defines AI as systems capable of performing functions associated with human intelligence, such as reasoning, learning, and self-improvement. This distinction is crucial to prevent the disruption of long-standing, beneficial practices that use algorithms to manage care and reduce fraud, waste, and abuse.
- **Implement a Risk-Based Regulatory Framework:** Any regulation of AI in health care should be flexible and tailored to the specific use case, avoiding a one-size-fits-all approach. A risk-based framework that considers the degree of human involvement and the potential impact on patients in each case is essential for allowing innovation while ensuring patient safety.
- **Promote Transparency without Compromising Innovation:** Texas should encourage transparency in the use of AI. Insurers support providing clear information on how AI is used in decision-making processes, but transparency should not come at the cost of disclosing proprietary information or hindering advancements that benefit patients.

Sincerely,

A handwritten signature in black ink that reads "Jamie Dudensing". The signature is written in a cursive, flowing style.

Jamie Dudensing, RN
CEO
Texas Association of Health Plans