

# House AI & Emerging Technologies

## Interim Hearing

10-1-24



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### Key Takeaways from the Day:

- Hospitals, clinicians, insurers, and researchers agree—AI has many helpful uses and should not be stifled. However, safety, transparency, and privacy need to be considered, particularly in industries like healthcare.
- Innovative uses for AI include speeding up claim approvals, automating research, analyzing imaging, easing scheduling, detecting FWA, and flagging potential diagnoses early.
- AI is only as good as the data that trains it. This data can be applicable in one situation but not another. It's crucial to test model accuracy on a case-by-case basis. It may be necessary to adjust the model before using it in a different community or with a different patient population.
- Legislation may consider risk levels by use case, create protections in addition to HIPAA, construct a Digital Bill of Rights, or contemplate unacceptable use cases.

### *Impact of AI and Emerging Technologies on Healthcare*

#### **Nicole Lusardi, Associate General Counsel, Texas Hospital Association**

- THA membership includes hospitals that can purchase advanced tools and hospitals that struggle to afford basic technology.
- AI use varies widely between hospitals in THA's membership. They are concerned that increased reliance on technology will cause smaller and more rural hospitals to be left behind. If these hospitals could access and afford the technology, AI could help provide care to patients in these settings.
- AI can be a useful tool for prior authorization and other administrative burdens. However, companies such as UnitedHealthcare have negatively impacted patients by using AI for prior authorizations, and Change Healthcare recently experienced a data breach. We need to minimize risk and prioritize patient safety and privacy.
- "AI will never replace physicians or other healthcare workers."
- Hospitals are using AI for administrative burden, such as scheduling and claim tracking and management. Academic medical centers are using AI for researching

and identifying drugs that could potentially be more effective for certain types of patients, and other similar tasks.

**Dr. Ezequiel “Zeke” Silva III, Interventional Radiologist (testifying on behalf of the Texas Medical Association)**

- Physicians vary in their ability to use technology. TMA states their “accountability and responsibility” to ensure that every physician can successfully use AI.
- A product called Aidoc continuously runs during clinical care and performs tasks such as analyzing imaging, pulling relevant data from medical records, and more. It alerts relevant clinicians of potential diagnoses, enabling communication and better outcomes.
- The FDA approved about 950 machine learning AI algorithms in August 2024. 90 percent are related to imaging. AI can detect more than the human eye.
- Silva, a radiologist, and other radiologists regularly test AI data to ensure that it fits their population and integrates with their imaging and information systems.
- TMA strongly believes that AI oversight should be handled by clinical experts. Silva notes that humans and AI do better together than either do alone.
- Silva believes that liability should be shared between physicians and the technology used. Silva also brings up an interesting question: “if we, for whatever reason, choose not to use the application, is there liability in that setting” for underdiagnosis?
- Rep. Leach asked about HIPAA concerns due to the aggregation of patient data. Are patients allowed to be “off the grid” if they want to be?
  - Silva personally believes that information should not be used for “any secondary purpose” without patient consent. However, he is not aware of any formal opt-in or opt-out process for the algorithms described.
- Rep. Leach supports many of TMA’s previous points about scope encroachment. He stated that physicians should not be overtaken by technology.

**Jamie Dudensing, Chief Executive Officer, Texas Association of Health Plans**

- AI can reduce the immense administrative burden created by prior authorization requests and the lack of widespread electronic prior authorization adoption. AI can allow for immediate approvals for physicians or treatments with high success rates. Further, automated approvals are already taking place through gold carding.
- Insurers cannot deny coverage without a physician being involved. A peer-to-peer meeting or phone call has to take place.

- Call centers can also benefit from AI. Calls to some health plans are forwarded to more or less experienced operators depending on the characteristics of the caller.
- AI can detect customer concerns—such as issues with specific systems or benefits—as well as fraud, waste, and abuse.
- Health insurers are being quite cautious with AI.
- Health insurance is heavily regulated by both state and federal law. Any AI used would fall under the regulations that already exist, HIPAA or otherwise. Insurers want to avoid conflicting or additional regulations.
- Rep. Capriglione asked if customized insurance plans were being offered. Dudensing was not aware of any cases of this.
- Rep. Capriglione asked if anyone was expressing concerns about using AI to detect FWA. Dudensing replied that this is true, but that there are many entities that oppose insurance’s efforts to combat FWA in general.
- Rep. Capriglione asked if social scoring is affecting insurance coverage. Dudensing explained that if this is happening, it would be illegal.

**Dr. Peter McCaffrey, Chief AI Officer, University of Texas Medical Branch at Galveston**

- AI can help fill the demand created by physician shortages. It can also allow physicians to have more face-to-face time with patients.
- Patient charts are unwieldy for research purposes. AI can conduct “automated science”, through which AI can plan, organize, and execute studies alongside the researcher. For example, AI can conduct “digital twin” studies to allow researchers to compare the effects of different treatments and medications.
- AI can analyze imaging and genomic data in ways that humans cannot.
- We need measurement, use and experience to understand this technology, as well as an infrastructure around how that should be conducted and shared with others.
- New research on remote medical operations. In one study, surgeons in Switzerland performed an endoscopy on a pig in Hong Kong with Playstation controllers.
- AI could potentially be unequally distributed between hospitals or lead to discrimination against people who do not have access to high-speed internet.
- Data should be treated with privacy and respect, especially if it’s being used for training purposes.

**Dr. Caroline Chung, Vice President and Chief Data Officer, University of Texas MD Anderson Cancer Center**

- MD Anderson had over 12,500 AI projects that were brought to publication from 2005 to 2020. The amount of research in this area has only skyrocketed since.
- “There continues to be a chasm between the emergence of this technology and actually using this technology.”
- Models should be assessed for case-by-case accuracy. For example, MD Anderson tested an AI model’s ability to predict sepsis, which was constructed with data from patients with normal immune systems. The data was not accurate for their population of cancer patients.
- Models should also be tested for cross-functionality. One AI model that was meant to diagnose COVID in adults’ lungs was inaccurate when used on children’s lungs. Many researchers are looking for diversity within their study population but not considering applicability to other populations.
- MD Anderson is building a data literacy course for the workforce. Without education, AI can complicate workflow instead of streamlining it.
- “As the data flows change, the model’s performance may change.” We need systems that can monitor models’ performance over time.
- Our current data was made for human consumption. Our systems can contain human errors and duplicates. We need to make sure that AI training data is accurate. “Garbage in, garbage out.”

***Formulating Recommendations for Legislative, Policy, Regulatory, and Remedial Actions***  
**Hon., Zach Whiting, Policy Director and Senior Fellow, Better Tech for Tomorrow, Texas Public Policy Foundation**

- Upcoming 150-page research paper written by Whiting and David Dunmoyer covers AI history, technology, regulations, and policy recommendations.
- Human dignity must be the cornerstone of this conversation. Technology should serve humanity, instead of surpassing, replacing, or defeating humanity.
- Data privacy and cybersecurity should be considered for every bill related to AI. Additional protections for sensitive information beyond HIPAA could also be beneficial.
- A Digital Bill of Rights, which would be similar to the Texas Data Privacy Security Act, could be considered.
- Users and patients should be made aware that they are interacting with AI.
- The goal of legislation should be to streamline compliance and promote accountability in AI development and usage.

- AI developers, deployers, and end users may need to be subject to different obligations.
- Colorado and the EU place more requirements on “high-risk” AI, which “makes a consequential decision about the provision of educational, employment, financial, government, health care, housing, insurance, or legal services”.
- The EU model also contemplates unacceptable use cases, such as manipulating human behavior, social credit, and emotional recognition, which Texas should consider.
- Liability may need to be case-by-case, similar to the judicial system.
- California’s SB 1047, which would have mandated safety testing of large AI models before their release to the public, was vetoed over the weekend.
- The patchwork of laws around AI means that other states can follow Texas’ lead.