

AI in Health Insurance – What is the Impact of Losing the Human Element?

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The report was developed in partnership with the NAIC Consumer Representatives for Health

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The research was divided into three phases:

1. **Environmental Scan** – Review and summarize white and grey literature to examine the current landscape of AI in health insurance decision making processes, with a focus on prior authorization as a form of utilization management (UM), and preliminary efforts to regulate it.
2. **Key Informant Interviews** – Supplement the environmental scan to create a more holistic view on the industry’s current use and challenges of AI, including information that is not publicly known or published.
3. **Synthesis (White Paper Development)** – Combine the environmental scan and in-depth interview findings with policy recommendations.

Summary of Report Findings

- Use of AI is already a regular part of UM activities and continues to expand.
 - Proponents cite the potential value of reduced administrative burden and expedited approvals. However, there are significant risks of exacerbating biases, prioritization of misaligned incentives, and use of technologies outside their intended use case or design leading to unintended harm
- All stakeholders interviewed noted the opportunities with the use of AI, but also the need for the proper safeguards.
- While some states have begun to regulate the use of AI in health insurance, for the most part, they have not been able to keep pace with the rapid proliferation of AI use. This has created a challenging but essential problem to solve.

Key issues and concerns for consumers when AI is used for prior authorization

Limitations of AI for health care determinations

- One-size-fits-all does not work for everyone
- Human oversight of care denials helps
- Insurers using AI for utilization management need to provide an off-ramp for individualized care assessments
- People in health crisis need immediate access to needed care
 - Race against time
 - Insurers should defer to providers

Appeals and meaningful transparency

- Appealing care denials can be challenging
- Coverage decisions should be supported by up-to-date clinical standards
 - Criteria must be evidence-based, nonproprietary
 - “Ascertained standards” required under Medicaid due process. See Salazar v. District of Columbia, 596 F. Supp. 2d 67, 69 (D.D.C. 2009)



“Transparency must be meaningful and enable end users to trace a decision back to a specific actor to accurately determine decision rationale and hold actors accountable for potential adverse outcomes.”

– Provider Trade Group

“Denials for dollars”

- Dialing down/up prior authorization approvals
- Insurers accountable for the vendors/third parties with whom they contract
- Insurers cannot subcontract away their obligations under nondiscrimination and other laws

See Pro Publica [“Not Medically Necessary”: Inside the Company Helping America’s Biggest Health Insurers Deny Coverage for Care](#)

Good AI governance

- Pre-deployment testing for accuracy, bias
- Post-implementation testing and monitoring
 - ◆ data about the use of AI/ML needs to be publicly available to study potential disparate impact from systems that may appear facially neutral
- Periodic, independent auditing
 - ◆ insurer self-reporting of testing, performance monitoring, review, and corrective action is insufficient



'Good AI governance' not only requires companies to be aware of what they are doing and what models they are using, but they must also have a regular assessment to ensure models continue to behave appropriately."

– Health Plan Executive

State laws on AI in health insurance: Colorado

- **SB 21-169 - Protecting Consumers from Unfair Discrimination in Insurance Practices**: holds insurers accountable for testing their big data systems - including external consumer data and information sources, algorithms, and predictive models - to ensure they are not unfairly discriminating against consumers
- **SB 24-205 - Consumer Protections for Artificial Intelligence**: requires developers of “high-risk” artificial intelligence systems to use reasonable care to protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination, establishes disclosure requirements for developers to deployers, AG, public.

State laws on AI in health insurance: California

- **SB 1120 - The Physicians Make Decisions Act**: requires denial, delay, or modification of health care services based on medical necessity be made by a licensed physician or other health care provider competent to evaluate the specific clinical issues of the case.
 - California Attorney General's Legal Advisory on the Application of Existing California Laws to Artificial Intelligence
 - California Attorney General's Legal Advisory on the Application of Existing California Law to Artificial Intelligence in Healthcare

State laws on AI in health insurance: Utah

- **SB 226 Artificial Intelligence Consumer Protection Amendments**: requires certain disclosures when generative AI is used in consumer transactions and regulated services; establishes liability for violations of consumer protection laws involving artificial intelligence (amends/replaces portions of SB 149)
- **SB 149 Artificial Intelligence Policy Act**: establishes liability for use of AI that violates consumer protection laws if not properly disclosed; creates the Office of Artificial Intelligence Policy (office) and a regulatory AI analysis program.

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