



**Public Testimony**

**House Bill 1663**

**Artificial Intelligence Utilization Review (AURA) Act**

**House Insurance Committee**

**October 1, 2024**

## What is Artificial Intelligence?

Independence Blue Cross (IBX) thanks Chairwoman Kim, Chairwoman Pickett and members and staff of the House Insurance Committee for the opportunity to offer comment on House Bill 1663, legislation that would require insurers to disclose whether artificial intelligence (AI) is used in the insurer's utilization review process and to submit algorithms and data sets to the Insurance Department for certification.

Artificial Intelligence (AI) is a multidisciplinary field involving computer science, mathematics, psychology, linguistics, robotics, and other technologies intended to streamline and automate repeatable functions that can make predictions, recommendations, or develop content to inform decisions. AI applications range from simple tasks like identifying spam email to more complex uses like chatbots, industrial robots, and self-driving cars. AI potentially holds great promise across industries, harnessing and filtering vast amounts of information to drive efficiencies and improve customers outcomes or experiences.

AI has the capability to dramatically influence the delivery and payment of health care services, and it's important to become familiar with the terms and usage of AI technologies across the health care system. Responsible use, reliability, effectiveness and potential for cost efficiency and improved patient care must be top of mind. AI provides health insurers opportunities to improve operations, the member experience, and health outcomes. For these reasons IBX believes this is a well-timed and important discussion.

## House Bill 1663

House Bill 1663 would require an insurer to disclose whether AI is used in the insurer's utilization review process – defined, in part, in Act 146 of 2022 as techniques used to “evaluate the medical necessity, appropriateness, efficacy or efficiency of health care services, procedures or settings, *including prior authorization*, second opinion, certification, concurrent review, case management, discharge planning or retrospective review...”.

Under existing Pennsylvania law, insurers are required to conduct a human review of *prior authorization*-related decisions – including clinician oversight of adverse benefit determinations and involvement in peer-to-peer consultations.

IBX believes the disclosure requirements in House Bill 1663 reach beyond its use as part of insurers' prior authorization processes and may require disclosures related to the use – or lack thereof – of AI in a broader context across the business, including case management. IBX, and other insurers, deploys various forms of AI technologies across our business to support a more streamlined, personalized, and connected approach that we can use to interact with our members, customers, and providers, which includes identification of high risk or at-risk members as part of our case management and care coordination efforts. There is a concern that instances where AI is being used today, and in some cases has been used for decades, without controversy, complaint, or compliance violations, may soon be deemed to be unfair or deceptive acts or practices carrying significant penalties.

In addition, the bill's requirement to submit algorithms and data sets to the Insurance Department used to develop, test, and deploy AI models is problematic. Data sets may contain hundreds of millions of rows of data, with potentially thousands of models for each algorithm depending on the intended use. Making each insurers' use of AI contingent upon Insurance Department approval of algorithms and data sets could prevent and delay insurers from quickly deploying the latest AI advancements and solutions in a timely and appropriate manner, and calls into question the practicality of such a process.

## **IBX AI Use Cases**

It is important to note that while the form of AI known as "generative AI" has recently captured attention, other forms of AI such as machine learning have been in use in the health care industry for decades and have enabled, for example, streamlined patient scheduling and billing practices and predictive models identifying high-risk patients for proactive interventions and personalized medicine.

AI allows IBX to provide members the information and resources they need to more quickly identify better methods of care. AI is used to identify members who are at risk of developing chronic conditions, such as diabetes or heart disease, members at risk for an acute, unplanned hospitalization or readmission, and at risk for adverse pregnancy outcomes.

Use of AI technology allows IBX to deliver better results for our members by:

- Reviewing members' health data, predicting complications, and reducing emergency room visits and admissions.
- Analyzing member data and assessing health needs and risks to identify interventions, identifying physical or behavioral health interventions for at-risk members.
- Supporting administrative actions such as testing, drafting emails, and presentations.

As a specific example of AI use, IBX's hospitalization model with care management interventions resulted in prevented ER stays, reducing by 38% unnecessary visits, a 43% reduction in hospital admissions, and increased cost efficiencies of \$716 per member (over 6 months) among members with congestive heart failure.

Other examples of how AI may be used across the health care industry include enhancing care management by simplifying note taking and summarizing care plans, providing language translation services - narrowing gaps in health disparities – and, optimizing customer service functions, connecting individuals with personalized information faster.

## **Commitment to Responsible AI Use**

Responsible use of AI is a critical focus of IBX, other industry thought leaders and government regulators. IBX follows industry best practices for responsible use of AI guided by six principles – accountability, compliance, privacy, equity, reliability, and safety and security - reflecting our mission to lead with integrity and in alignment with national guidelines to ensure our processes keep consumers informed and safe. IBX is a signatory of the White House Healthcare AI Commitments alongside 35 other leading health care organizations, dedicated to driving health care change with the responsible use of AI, focused on providing best-in-class service for our members and provider partners.

## Existing State, Federal and Industry Controls in Place

While there may not be laws addressing AI use specifically, it is important to note that existing state and federal insurance, data privacy, and security laws and regulations already address data collection and use such that the responsible use and advancement of AI by health insurers is already largely addressed. The following are examples of how insurers including IBX are already regulated in this space and continuously seeking to improve and expand upon its uses:

- Longstanding state and federal legal standards include the Unfair Insurance Practices Act, the Health Insurance Portability and Accountability Act (HIPAA), and anti-discrimination laws to ensure the privacy and safety of individuals.
- The Pennsylvania Insurance Department (“Department”) issued Notice 2024-04, *Use of Artificial Intelligence Systems by Insurers*, 54 Pa.B. 1910 (April 6, 2024), setting forth the Department’s expectations as to how insurers will govern the development, acquisition, and use of certain AI technologies, and advises insurers that the Department may request specific data related to AI technologies and systems as part of an investigation or market examination.
- Best practice models include the NAIC Model on the Use of AI Systems by Insurers, which creates a comprehensive framework for state oversight and avoids a state-by-state patchwork of laws and regulations, and those issued by the National Institute of Standards and Technology (NIST), to inform and implement the work of IBX.
- The NAIC is in fact currently working to refine and finalize its Pilot Survey on AI for insurers to help inform future AI regulatory oversight models. IBX had the recent opportunity to review the survey and help to inform the work of the NAIC.
- National partners like America’s Health Insurance Plans and Blue Cross Blue Shield Association connect AI experts and industry peers to help insurers to learn about best practices and opportunities to improve systems.

In addition, at IBX specifically it is worth noting that we:

- Have led the conversation on responsible AI, calling for all health insurers to address the potential for bias in machine learning.
- Rely on a cross departmental group to implement and monitor AI innovation and responsible use. This governance follows defined guidelines to test AI functions and ensure effective, responsible implementation.
- Test innovative technology in an isolated testing environment, allowing for operational and security testing to understand outcomes and changes before and after implementation.

## Conclusion

The use of AI will not replace our people or the personalized services they deliver to our members, nor will it affect our commitment to compliance with laws and the requirements of state and federal regulators. IBX will continue to evaluate and refine the ways we use AI, striving to ensure that our members are getting the highest quality care available. The future of AI is not yet defined, but there are many exciting ways it will impact the care our members receive. Insurers – along with our partners across the health care system - are taking an educated and informed approach as to how to best use the technology, and caution against implementing stringent rules and requirements that may ultimately stifle the promise and positive impact AI may offer.

IBX appreciates the House Insurance Committee’s timely discussion and offers the following in conclusion:

- There are existing laws and regulations protecting the privacy and use of member health information which should be viewed as a platform for any future change. Before enacting new and possibly conflicting laws or regulations, we should seek to better understand any gaps in existing consumer protections.
- A state-by-state approach to regulating AI use by health insurers will not only prove confusing for insurers but will also not protect consumers in a uniform manner. We suggest looking to the ongoing work of the NAIC and other national groups before engaging in any state-level legislation.
- House Bill 1663 presents concerns, in particular the broad definition of “utilization review” and the requirement of Insurance Department pre-approval of algorithms and data sets.
- Health insurers are but one component of the health care system. Providers across the health care system are looking to leverage AI to improve efficiency and patient care. AI legislation should not be focused solely on health insurers.