

SENATE BILL No. 467

By Senator Holscher

2-3

1 AN ACT concerning accident and health insurance; relating to utilization
2 review; enacting the use of artificial intelligence in medical decisions
3 transparency act; establishing requirements for the use of artificial
4 intelligence by certain health insurers and utilization review entities;
5 requiring that all medical necessity determinations be made by a
6 competent licensed physician or healthcare professional.
7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. (a) (1) This section shall be known and may be cited as the
10 use of artificial intelligence in medical decisions transparency act.

11 (2) This act shall apply to every health insurer and utilization review
12 organization that uses an artificial intelligence, algorithm or other software
13 tool for the purpose of utilization review or utilization management
14 functions based in whole or in part on medical necessity or that contracts
15 with or otherwise works through an entity that uses an artificial
16 intelligence, algorithm or other software tool for the purpose of utilization
17 review or utilization management functions based in whole or in part on
18 medical necessity.

19 (b) As used in this act:

20 (1) "Act" means the use of artificial intelligence in medical decisions
21 transparency act.

22 (2) "Artificial intelligence" means an engineered or machine-based
23 system that varies in level of autonomy and can, for explicit or implicit
24 objectives, infer from the input that such system receives how to generate
25 outputs that can influence physical or virtual environments.

26 (3) "Department" means the Kansas department of insurance.

27 (4) "Health benefit plan" means the same as defined in K.S.A. 40-
28 4602, and amendments thereto.

29 (5) "Health insurer" means the same as defined in K.S.A. 40-4602,
30 and amendments thereto.

31 (6) "Healthcare provider" or "provider" means the same as defined in
32 K.S.A. 40-22a03, and amendments thereto.

33 (7) "Physician" means the same as defined in K.S.A. 65-5502, and
34 amendments thereto.

35 (8) "Utilization review" means the same as defined in K.S.A. 40-
36 22a03, and amendments thereto.

1 (9) "Utilization review organization" means the same as defined in
2 K.S.A. 40-22a03, and amendments thereto.

3 (c) (1) Each health insurer and utilization review organization shall
4 ensure that the artificial intelligence, algorithm or other software tool used
5 to review and approve, modify and delay or deny requests by providers:

6 (A) Makes a determination based on the following information, as
7 applicable:

8 (i) An enrollee's medical or other clinical history;

9 (ii) individual clinical circumstances as presented by the requesting
10 healthcare provider; and

11 (iii) other relevant clinical information contained in the enrollee's
12 medical or other clinical record;

13 (B) does not make a determination based solely on a group dataset;

14 (C) does not supplant healthcare provider decision-making;

15 (D) does not discriminate, directly or indirectly, against enrollees in
16 violation of state or federal law;

17 (E) is fairly and equitably applied, in accordance with any applicable
18 regulations or guidance issued by the United States department of health
19 and human services;

20 (F) is periodically reviewed and revised to maximize accuracy and
21 reliability;

22 (G) uses patient data in compliance with the health insurance
23 portability and accountability act of 1996, public law 104-191; and

24 (H) does not directly or indirectly cause harm to the enrollee.

25 (2) Notwithstanding the provisions of paragraph (1), the artificial
26 intelligence, algorithm or other software tool shall not deny, delay or
27 modify healthcare services based in whole or in part on medical necessity.
28 A determination of medical necessity shall be made only by a licensed
29 physician or a licensed healthcare professional who is competent to
30 evaluate the specific clinical issues involved in the healthcare services
31 requested by the healthcare provider by reviewing and considering such
32 healthcare provider's recommendation, the enrollee's medical or other
33 clinical history, as applicable, and individual clinical circumstances.

34 (d) No individual, other than a licensed physician or a licensed
35 healthcare professional who is competent to evaluate the specific clinical
36 issues involved in the healthcare services requested by the provider, shall
37 deny or modify requests for authorization of healthcare services for an
38 enrollee for reasons of medical necessity.

39 (e) Each health insurer subject to this act shall establish written
40 policies and procedures that:

41 (1) Describe the process by which the health benefit plan
42 prospectively, retrospectively or concurrently reviews and approves,
43 modifies and delays or denies requests, based in whole or in part on

1 medical necessity, by healthcare providers of healthcare services for health
2 benefit plan enrollees; and

3 (2) require decisions to be based on the medical necessity of proposed
4 healthcare services are consistent with criteria or guidelines that are
5 supported by clinical principles and processes.

6 (f) (1) Each health insurer subject to this act shall file with the
7 department such health insurer's policies and procedures establishing the
8 process by which such health insurer prospectively, retrospectively or
9 concurrently reviews and approves, modifies and delays or denies
10 requests, based in whole or in part on medical necessity, by providers of
11 healthcare services for health benefit plan enrollees.

12 (2) Pursuant to paragraph (1), such policies and procedures shall
13 ensure that healthcare decisions based on the medical necessity of
14 proposed healthcare services are consistent with criteria or guidelines that
15 are supported by clinical principles and processes.

16 (3) Each health insurer shall disclose such policies and procedures to
17 insureds, healthcare providers and the public upon request.

18 Sec. 2. This act shall take effect and be in force from and after its
19 publication in the statute book.