SENATE BILL 1261

By Yarbro

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 27; Title 56 and Title 71, relative to health insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, Part 7, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Artificial intelligence":

(A) Means a machine-based system that:

(i) Can, for a given set of human-defined objectives, make predictions, recommendations, or decisions; influence real and virtual environments without significant human oversight; or that can learn from experience in an automated manner and improve such performance when exposed to data sets; or

(ii) Is developed in any context, including software or physical hardware, and solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action;

(2) "Department" means the department of commerce and insurance; and

(3) "Health insurance issuer":

(A) Means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner of commerce and

insurance, that contracts or offers to contract to provide health insurance coverage, including an insurance company, a health maintenance organization, a nonprofit hospital and medical service corporation, or a pharmacy benefits manager, third-party administrator, or an entity described in § 56-2-121; and

      (B) Includes the TennCare program or a successor medicaid program provided for in title 71, chapter 5; the CoverKids Act of 2006, compiled in title 71, chapter 3, part 11; the Access Tennessee Act of 2006, compiled in title 56, chapter 7, part 29; another plan managed by the health care finance and administration division of the department of finance and administration or a successor division or department; or the group insurance plans offered under title 8, chapter 27.

  (b) A health insurance issuer that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review or utilization management functions, based in whole or in part on medical necessity, or that contracts with or otherwise works through an entity that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review or utilization management functions, based in whole or in part on medical necessity, shall ensure that the artificial intelligence, algorithm, or other software tool:

      (1) Bases its determination on the following information, as applicable:

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

         (B) Individual clinical circumstances as presented by the requesting provider; and

         (C) Other relevant clinical information contained in the enrollee's medical or other clinical record;

(2) Does not base its determination solely on a group dataset;

(3) Uses criteria and guidelines that comply with this chapter and applicable state and federal law;

(4) Does not supplant healthcare provider decision-making;

(5) Does not discriminate, or is not used to discriminate, directly or indirectly, against an enrollee in violation of state or federal law, and is otherwise fairly and equitably applied, including in accordance with regulations and guidance issued by the federal department of health and human services; and

(6) Does not directly or indirectly cause harm to an enrollee.

(c) A health insurance issuer shall include disclosures pertaining to the use and oversight of the artificial intelligence, algorithm, or other software tool in the health insurance issuer's written policies and procedures.

(d) The health insurance issuer shall periodically review its use of the artificial intelligence, algorithm, or other software tool, as well as the artificial intelligence, algorithm, or other software tool's performance and outcomes, and revise the uses, performance, and outcomes to maximize accuracy and reliability.

(e) A health insurance issuer that uses an artificial intelligence, algorithm, or other software tool for the purpose of utilization review or utilization management functions shall ensure that patient data is not used beyond its intended and stated purpose, consistent with the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as applicable.

(f) Notwithstanding subsections (a)-(e), the artificial intelligence, algorithm, or other software tool shall not deny, delay, or modify healthcare services based, in whole or in part, on medical necessity. A determination of medical necessity must be made only by a licensed physician or a licensed healthcare professional competent to evaluate

the specific clinical issues involved in the healthcare services requested by the provider by reviewing and considering the requesting provider's recommendation, the enrollee's medical or other clinical history, as applicable, and individual clinical circumstances.

(g) This section applies to utilization review or utilization management functions that prospectively, retrospectively, or concurrently review requests for covered health care services.

(h) A health insurance issuer subject to this section shall comply with applicable federal rules and guidance issued by the federal department of health and human services regarding the use of artificial intelligence, algorithms, or other software tools.

(i) If compliance with this section by a health insurance issuer would result in the loss of federal funding, then this section does not apply to the extent that the compliance would result in the loss of federal funding.

(j)

(1) A violation of this section is an unfair claims practice, punishable as provided under chapter 8, part 1, of this title.

(2) In addition to the remedy provided under subdivision (j)(1), an individual aggrieved by a violation of this section may bring a private cause of action in a court of competent jurisdiction. If the court finds that a health insurance issuer violated this section, then the court shall award to the plaintiff:

(A) Actual damages;

(B) Punitive damages; and

(C) Reasonable court costs and attorneys' fees.

(k) The department may promulgate rules to effectuate this section. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2025, the public welfare requiring it, and applies to conduct occurring on or after that date.