

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE USE OF ARTIFICIAL
5 INTELLIGENCE IN INSURANCE; APPLYING RESTRICTIONS TO THE USE OF ARTIFICIAL INTELLIGENCE
6 IN RELATION TO HEALTH INSURANCE ISSUERS; PROVIDING A DEFINITION; AND AMENDING SECTION
7 33-18-201, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. **Section 1. Artificial intelligence -- restrictions.** (1) A health insurance issuer as
12 defined in 33-22-140 that uses artificial intelligence, an algorithm, or other software tool for the purpose of
13 utilization review or utilization management functions, based in whole or in part on medical necessity, shall
14 comply with this section and shall ensure all of the following:

- 15 (a) the artificial intelligence, algorithm, or other software tool bases its determination on the
16 following information, as applicable:
 - 17 (i) a covered person's medical or other clinical history;
 - 18 (ii) individual clinical circumstances as presented by the requesting provider; and
 - 19 (iii) other relevant clinical information contained in the covered person's medical or other clinical
20 record;
- 21 (b) the artificial intelligence, algorithm, or other software tool does not base its determination solely
22 on a group dataset;
- 23 (c) the artificial intelligence, algorithm, or other software tool's criteria and guidelines complies with
24 this title and applicable federal law;
- 25 (d) the artificial intelligence, algorithm, or other software tool does not supplant health care
26 provider decisionmaking;
- 27 (e) the use of the artificial intelligence, algorithm, or other software tool does not discriminate,
28 directly or indirectly, against enrollees in violation of state or federal law, including 49-2-309;

1 (f) the artificial intelligence, algorithm, or other software tool is fairly and equitably applied,
2 including in accordance with any applicable regulations and guidance issued by the federal department of
3 health and human services;

4 (g) the artificial intelligence, algorithm, or other software tool is open to inspection for audit or
5 compliance reviews by the department pursuant to applicable state and federal law;

6 (h) disclosures pertaining to the use and oversight of the artificial intelligence, algorithm, or other
7 software tool are contained in the written policies and procedures, as required by this section;

8 (i) the artificial intelligence, algorithm, or other software tool's performance, use, and outcomes
9 are periodically reviewed and revised to maximize accuracy and reliability;

10 (j) patient data is not used beyond its intended and stated purpose, consistent with the federal
11 Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and this title, as applicable;
12 and

13 (k) the artificial intelligence, algorithm, or other software tool does not directly or indirectly cause
14 harm to the enrollee.

15 (2) Notwithstanding subsection (1), the artificial intelligence, algorithm, or other software tool may
16 not deny, delay, or modify health care services based, in whole or in part, on medical necessity. A
17 determination of medical necessity must be made only by a licensed physician or a licensed health care
18 professional competent to evaluate the specific clinical issues involved in the health care services requested by
19 the provider, as provided in subsection (1)(a)(ii), by reviewing and considering the requesting provider's
20 recommendation, the enrollee's medical or other clinical history, as applicable, and individual clinical
21 circumstances.

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

24 (4) A health insurance issuer subject to this section shall comply with applicable federal rules and
25 guidance issued by the federal department of health and human services regarding the use of artificial
26 intelligence, an algorithm, or other software tools. The department in consultation with the Montana department
27 of public health and human services may issue guidance to implement this section within 1 year of the adoption
28 of federal rules or the issuance of guidance by the federal department of health and human services regarding

1 the use of artificial intelligence, an algorithm, or other software tools.

2 (5) A health insurance issuer who fails to comply with this section is subject to penalties imposed
3 by the commissioner, including but not limited to Title 33, chapter 18.

4 (6) For the purposes of this section, the term "artificial intelligence" means an engineered or
5 machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer
6 from the input it receives how to generate outputs that can influence physical or virtual environments.

7

8 **Section 2.** Section 33-18-201, MCA, is amended to read:

9 **"33-18-201. Unfair claim settlement practices prohibited.** A person may not, with such frequency
10 as to indicate a general business practice, do any of the following:

11 (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

12 (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims
13 arising under insurance policies;

14 (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising
15 under insurance policies;

16 (4) refuse to pay claims without conducting a reasonable investigation based upon all available
17 information;

18 (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements
19 have been completed;

20 (6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in
21 which liability has become reasonably clear;

22 (7) compel insureds to institute litigation to recover amounts due under an insurance policy by
23 offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

24 (8) attempt to settle a claim for less than the amount to which a reasonable person would have
25 believed the person was entitled by reference to written or printed advertising material accompanying or made
26 part of an application;

27 (9) attempt to settle claims on the basis of an application that was altered without notice to or
28 knowledge or consent of the insured;

1 (10) make claims payments to insureds or beneficiaries not accompanied by statements setting
2 forth the coverage under which the payments are being made;

3 (11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of
4 insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the
5 amount awarded in arbitration;

6 (12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of
7 either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss
8 forms, both of which submissions contain substantially the same information;

9 (13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the
10 insurance policy coverage in order to influence settlements under other portions of the insurance policy
11 coverage; or

12 (14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation
13 to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

14 (15) use artificial intelligence in a way that is not prescribed under [section 1] relating to claims
15 under a policy."

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17 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
18 integral part of Title 33, chapter 32, and the provisions of Title 33, chapter 32, apply to [section 1].

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