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What's Inside:

As Healthcare AI Expands, States Are Passing Laws to Protect Consumers

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In the last year, state activism in healthcare consumer protection has surged, with new laws that heighten oversight of for-profit investors' engagement with healthcare marketplaces[1] and scrutinize pharmaceutical pricing practices.[2] As part of this activism, several state legislatures have enacted laws regulating use of artificial intelligence (AI) in healthcare delivery.

Overview

States are beginning to regulate the use of AI as a patient care support tool, for both healthcare payers and providers. Several factors combine to make this state activism likely to be more prevalent in 2025, including:

- Technical progress and a favorable business climate for expanding AI in healthcare
- Uncertainty about federal policy efforts in this area
- Strong consumer interest in and concern about both application of AI in healthcare and perceived abuses by large health insurers

1 Anne Murphy, et al., "What Private Equity Investors and Real Estate Investment Trusts Need to Know About the Newly Enacted Massachusetts Health Oversight Law," ArentFox Schiff, January 9, 2025.

2 Anne Murphy, Stephanie Trunk, and Aida Al-Akhdar, "Massachusetts Enacts Drug Pricing Legislation: Introducing PBM Licensure, Mandatory Cost Reporting, and Consumer Cost-Sharing Limits," ArentFox Schiff, February 27, 2025.

At the same time, private class action litigation and state attorneys general are challenging AI practices in the healthcare sector. Understanding this recent consumer protection activism[3] is crucial for healthcare entities. In this climate, governing boards should ensure that these evolving state law developments are being monitored and, as applicable, adjustments to operations are made.

Uncertainty About Federal Policy

In 2023, President Biden issued Executive Order 14110 to ensure responsible AI development, focusing on safety, competition, non-discrimination, consumer protection, and data privacy.[4] However, President Trump revoked this order and issued Executive Order 14179, focusing on developing AI systems "free from ideological bias."[5] President Trump's order tasked departments with reviewing and potentially rescinding Biden's AI regulations, leaving federal AI guidance, particularly on non-discrimination in healthcare, uncertain. As a general matter, the current administration appears to be supportive of expanded use of AI across many sectors of the United States economy.

Recent Consumer Protection Litigation Challenging AI in Healthcare

Health Plans

Recent uses of AI tools by healthcare payers have prompted national class action lawsuits. In July 2023, plaintiffs filed a class action lawsuit against Cigna, alleging that the company wrongfully denied claims using an AI tool.[6] They claim the tool allowed for automatic claim rejections without proper review by doctors, violating the implied covenant of good faith and fair dealing and California's Unfair Competition Law and causing a breach of contract. The plaintiffs argue that Cigna's use of the tool led to over 300,000 payment denials with minimal review time and lacked disclosure about the AI's role in decision making.

In November and December 2023, two more groups of plaintiffs brought class action lawsuits against UnitedHealth Group and Humana, respectively.[7] Both lawsuits allege that the health plans improperly used an AI tool to deny patient services, resulting in breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and insurance bad faith. Plaintiffs argue that the AI model improperly replaced doctors' recommendations, failed to consider individual patient needs, and prematurely ceased care coverage.

UnitedHealth Group and Humana moved for dismissal, but to no avail, and Cigna's motion to dismiss is still pending; all three cases still sit on the courts' dockets.[8]

3 Michelle M. Mello, et al., "President Biden's Executive Order on Artificial Intelligence—Implications for Healthcare Organizations," *JAMA Network*, November 30, 2023 (explaining that Executive Order 14110, issued on October 30, 2023, addresses "concerns about unfair applications of AI tools in healthcare delivery and insurance coverage [and that] healthcare facilities and insurers could find themselves in the bullseye"); Angel West, "The Legal Landscape for AI-Enabled Decisions for Healthcare Claims and Coverage Continues to Evolve: From Litigation to Emerging Legislation", MaynardNexsen Newsroom, January 20, 2025 (explaining that President Biden issued Executive Order 14110 in "attempts to address AI standards and establish some guidance and guardrails in the healthcare industry").

4 Executive Order No. 14,110, 88 Fed. Reg. 75,191 (October 30, 2023).

5 Executive Order No. 14,179, 90 Fed. Reg. 8,741 (January 23, 2025).

6 *Kisting-Leung v. Cigna Corp.*, 2:23-cv-01477-DAD-CSK (E.D. Cal. July 24, 2023).

7 *Estate of Lokken v. UnitedHealth Group, Inc.*, 23-cv-03514-JRT-DTS (D. Minn. November 14, 2023); *Barrows v. Humana, Inc.*, 3:23-cv-654-CHB (W.D. Ky. December 12, 2023).

8 West, January 20, 2025.

AI Technology Used in Hospitals

In September 2024, Texas Attorney General Ken Paxton reached a settlement with Pieces Technologies, an AI healthcare company, over allegations of false claims about the accuracy and safety of its products as used in Texas hospitals.[9] The Texas Attorney General asserted that Pieces misrepresented its AI's accuracy, potentially misleading hospitals and risking patient privacy and safety.[10] As part of the settlement, Pieces must now disclose its products' accuracy and ensure hospital staff understand the appropriate reliance on its AI tools.[11]

State Legislatures Act to Protect Consumers from Wrongful Use of Healthcare AI

In the absence of clear guidance at the federal level, and possibly taking a page from recent litigation efforts, several states have enacted laws to regulate AI use in healthcare. As a general proposition, these laws are designed to:

- Prevent use of discriminatory AI models that lead to selection bias.[12]
- Require healthcare entities that use AI to disclose such use to patients.
- Require healthcare payers and providers to maintain final say over medical determinations rather than ceding this authority to AI tools.

Of the states passing such laws, California, Colorado, and Utah are worthy of special note.

Health and Disability Insurers

In California, healthcare service plans and disability insurers now must adhere to strict procedures for AI utilization review, ensuring that a licensed physician or healthcare professional maintain ultimate responsibility for making personalized medical necessity decisions for each member of a healthcare service plan or health insurer.[13] Health and disability insurers must maintain written policies for using AI that align with clinical decision-making guidelines, overseen by licensed medical directors.[14]

Meanwhile, Colorado lawmakers created a framework that requires health insurers to demonstrate that: 1) use of AI or algorithms to manage patient data is lawful under forthcoming insurance regulations and 2) AI programs or algorithms have been tested for unfair discrimination.[15] Colorado's Division of Insurance has proposed regulations that would require governing boards for health insurance companies to form cross-functional committees comprised of representatives from their legal, compliance, risk management, and product development teams to ensure compliance with AI regulations (e.g., data reporting requirements that indicate what AI systems the insurers deploy and any external

9 Petition for Approval and Entry of Assurance of Voluntary Compliance, *Texas v. Pieces Tech.'s, Inc.*, DC-24-13476 (September 21, 2024) (establishing a settlement agreement under the Texas Deceptive Trade Practices—Consumer Protection Act).

10 *Ibid.*

11 *Ibid.*

12 Malwina Anna Wójcik, "Algorithmic Discrimination in Healthcare: An EU Law Perspective," *Health and Human Rights Journal*, June 24, 2022 ("When big data on which the algorithm is trained are not representative of the target patient population, selection bias occurs. In this case, AI can produce unintended results, such as interpreting the lack of data as the lack of disease.").

13 California Health & Safety Code § 1367.01(k)(1) (effective January 1, 2025); California Insurance Code § 10123.135 (j)(1) (effective January 1, 2025).

14 California Insurance Code § 10123.135 (j)(1).

15 Colorado Revised Statutes Ann. § 10-3-1104.9 (most recent provisions going into effect on July 1, 2025).

consumer data the insurance providers use).[16] Additionally, under the pending regulations, these boards must create a risk management framework to ensure that AI, algorithms, and predictive models do not result in unfair discrimination of payees' claims.[17]

Healthcare Providers

Both California and Utah now require certain physicians and healthcare providers to disclose the use of generative AI to patients.[18] The Utah law impacts all Utah-licensed professionals, including physicians, and requires licensed professionals to verbally disclose at the start of oral interactions or electronically disclose before written interactions when AI is used in their service provision.[19] The California law applies to patient communications from health facilities, clinics, and physician offices; unless a human provider reviews AI-generated communications before the communications are sent, communications must include disclaimers indicating AI generation and provide contact information for human providers.[20]

An existing California law continues to require laboratory directors or authorized designees to establish criteria for auto-verifying clinical laboratory results, ensuring that humans make final determinations about diagnostic test results when using AI-assisted diagnostics.[21] Similarly, since 2024, Colorado healthcare providers who deploy AI to make "consequential decisions" about patient care or the cost of care have been required to: 1) implement risk management policies, 2) mitigate algorithmic discrimination, and 3) conduct impact assessments about the use of AI to deliver healthcare services.[22]

The California, Colorado, and Utah laws highlight a growing trend towards state regulation of AI in healthcare for the benefit of consumers, focusing on transparency, accountability, and the ethical use of technology.[23]

Recommendations

As hospitals and health systems increasingly integrate AI into their operations, compliance with state law is paramount. In California and Utah, certain healthcare providers must inform patients when generative AI is used in clinical communications; in California, AI disclosures must be accompanied by clear instructions on how patients can contact human providers. Additionally, AI should not improperly replace clinician involvement in medical decision making. Rather, California mandates that licensed professionals oversee AI-driven utilization reviews. For health systems with affiliated health plan operations, Colorado requires board-directed integrated compliance and risk management frameworks to prevent discriminatory outcomes.

16 *Ibid.*

17 3 Colorado Code Regulations. 702-10:10-1-1, Draft Proposed Amended Regulation 10-1-1 Governance and Risk Management Frameworks.

18 California Health & Safety Code § 1339.75 (effective January 1, 2025); Utah Code § 13-72-1 *et seq.* (effective May 1, 2024).

19 Utah Code § 13-72-1 *et seq.* (effective May 1, 2024).

20 California Health & Safety Code § 1339.75 (effective January 1, 2025).

21 California Business & Professions Code § 1209.1 (effective January 1, 2007).

22 Colorado Revised Statutes. Ann. § 6-1-1701 *et seq.* (effective May 17, 2024).

23 Additionally, Kentucky and Rhode Island have laws that regulate use of AI devices to perform eye exams. Kentucky Revised Statutes § 367.6802 (effective July 14, 2018); 23 Rhode Island General Laws § 23-97-1-7 (effective June 29, 2022). In Oklahoma, use of medical algorithms to generate treatment protocols is only appropriate if a physician reviews the protocol before the protocol is implemented. Oklahoma Statutes Title 63, § 1-290 *et seq.* (effective May 1, 2012). Lastly, Virginia law requires assisted living facilities and skilled nursing facilities to establish policies for the use of intelligent personal assistants provided by patients, ensuring compliance with HIPAA and protecting health information. Virginia Code § 32.1-127 (effective July 1, 2025).

In states where there are not currently laws directly governing the use of AI in healthcare delivery, boards may want to look to California, Colorado, and Utah, as these states provide valuable examples of comprehensive regulatory frameworks that other states may adopt in the future. In addition, boards should monitor national class action litigation and state attorney general actions challenging the use of AI in healthcare. These various efforts may directly or indirectly impact the manner by which hospitals, health systems, and health insurers should deploy AI, for example by developing disclosure policies when AI is integrated into patient care, taking steps to ensure healthcare professionals can be shown to retain ultimate decision-making authority when using AI as a patient care support tool, and implementing integrated compliance and risk management frameworks for AI. Regular audits and assessments of AI systems can help identify and address potential biases and security risks.

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Key Board Takeaways

Given emerging state activism to protect consumers in healthcare AI, boards should:

- Ensure the organization is closely monitoring and, as appropriate, modifying operations in response to a) state legislation regulating use of AI in the healthcare sector and, as applicable, implementing necessary consumer protections, and b) national class action litigation and state attorney general actions concerning AI in healthcare.
- Consider developing cross-functional governance committees comprised of representatives from legal, compliance, risk management, and product development to ensure integrated AI oversight.
- Taking cues from key themes in state AI oversight efforts, consider:
    1. Establishing policies mandating regular audits of AI systems to maintain transparency and accountability
    2. Ensuring AI disclosure policies are in place for patients
    3. Confirming healthcare professionals' ultimate decision-making authority when utilizing AI in clinical settings

Conclusion

As AI continues to reshape healthcare delivery, hospitals and health systems must take proactive steps to navigate the legal landscape. Increasingly, this will entail

monitoring class action litigation and state-initiated litigation and legislative efforts to protect consumers against AI abuses in healthcare delivery. Boards play a key role in assuring this vigilance, and in prioritizing integrated implementation of AI-focused compliance and risk management.

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Revitalizing the Profession of Medicine

By Todd Sagin, M.D., J.D., President and National Medical Director,
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The history of physicians is a journey spanning thousands of years, reflecting the evolution of medicine from mystical practice to scientific methods. In the United States, healers of all kinds were sought out in the early decades of the nation, and they fought for the right to treat patients. In the industrial era of the 19th century, doctors began to organize to obtain the privileges of a profession. They formed their first professional association—the American Medical Association—in 1847. The American Medical Association's founding aimed to improve medical education, establish uniform standards for medical ethics, and promote public health initiatives. By the end of the 19th century, physicians had successfully lobbied for licensing laws in all states that gave them control over medical treatment.

In the 20th century, as medical science advanced dramatically, so did medicine as a profession—gaining control over medical education, professional standards, medical ethics, and hospitals. As hospitals became too large and complex to be physician-run, doctors established the organized medical staff to protect their autonomy and influence. Physicians manifested all the key characteristics of a profession:

- Specialized knowledge and expertise gained through lengthy education and training
- Control over their workplace and work parameters
- Adherence to ethical standards
- Commitment to public service
- A distinct professional culture and identity for its members

In acknowledgement of these characteristics and because of the respect and trust they held with the public, physicians were granted professional prerogatives that included:

- Self-regulation: influence over entry into the profession through licensing boards, regulations, and specialty certifications
- Autonomy in clinical decision making
- Economic reward in the form of professional fees and high social standing
- Ability to establish ethical standards and exert control over disciplinary processes
- Exclusive access to specialized training

Unfortunately, most of these professional prerogatives have been diminished in the 21st century. It is no wonder that so many physicians feel burned out and discouraged about the future facing their chosen career. Only about a quarter of physicians belong

to the American Medical Association, making it difficult for the profession to speak with one voice or promote a common culture. The hospital organized medical staff is an anachronistic entity built for 20th-century hospitals, but mainly a regulatory burden in today's environment of consolidating health systems. A growing number of doctors are considering joining unions—a sure sign that they feel more like tradesmen than respected professionals.

Root Causes of the Profession's Erosion

There are many factors contributing to the diminishment of medical practice. The most significant is the loss of control over the parameters of work. In the 20th century, most physicians owned their own practices. But as medical costs skyrocketed, the government and business community have reacted to control medical expenses by imposing burdens that make private medical practice untenable. Today, most doctors are employed by hospitals, insurers, or private equity-financed companies. Work hours, compensation, scheduling, benefits, and other features of employment are all controlled by institutional or corporate administrators.

External parties increasingly infringe on doctors' clinical autonomy. This takes the form of insurance company pre-authorization requirements and denials, third-party mandated performance metrics, the imposition of clinical protocols, and payment linked to compliance with external standards. While the justification is cost-containment and improved quality, the result is reduced clinical autonomy for physicians.

Patient trust in doctors has diminished as the doctor–patient relationship has become ever more transient. Office visits are often short, rushed affairs subject to employer productivity demands and physicians' desire for a reasonable balance between family life and work. Continuity with an individual physician is rarer now that it is more challenging for patients to find a primary care doctor and care is parceled out among an expanding array of specialized practitioners and therapists. To make matters worse, aberrant physicians highlighted in both regular and social media raise questions in patients' minds about the profession's ethics and ability to monitor quality. For example, the too numerous stories of doctors crossing sexual boundaries or the publicity surrounding Dr. Duntsch, a sociopathic neurosurgeon publicly labeled, Dr. Death.

It is also increasingly difficult for physicians to manifest expertise at a time where medical knowledge is estimated to double every several months and the Internet and artificial intelligence level the playing field by allowing many patients to feel as knowledgeable as their doctor. Furthermore, Internet conspiracy theorists have facilitated a growing public skepticism of the value of science and "elite" education.

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Considerations for Health System Leadership

What does medicine's declining professional status mean for health systems? There are numerous implications that will impact how health systems do business in the future. One is the growing trend for doctors to unionize. Physician distrust of health system leadership, including the governing board, is at an all-time high. Large numbers of medical residents and fellows are already union members and will move into hospital employment used to having union leaders advocate for their needs. Rather than fighting this trend and further disaffecting their physician workforce, boards should encourage hospital management to avoid being reflexively dismissive of this movement.

There has been a salutary trend in health systems to put more doctors into high-level leadership roles. However, physician surveys show these individuals are quickly identified as aligned with the interests of management rather than serving as advocates for rank-and-file medical employees. At the same time, the organized medical staff and its leadership have become largely irrelevant when it comes to addressing the concerns of the physician workforce. Health systems should consider organizing employed doctors into multispecialty group structures similar to private practice with dedicated leadership generated from its members. Unlike medical staff leaders, these individuals would be empowered to address day-to-day workplace grievances giving doctors more control over their practice environment.

Health systems should also be more aggressive at addressing the ongoing debilitation of primary care in America. Building up the ranks of primary care doctors and allowing them more time and continuity with patients will improve physician and patient satisfaction and the quality of care. Co-locating primary care doctors in offices with specialists will make the latter readily available for curbside consultation and help offload unnecessary specialist visits to their primary care colleagues.

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Health systems should work to ensure the rapid growth of AI capabilities are used to support physicians rather than supplant them. AI bots may learn to do an excellent job interacting empathetically with patients, but they cannot replace the value of a face-to-face encounter between two human beings. This interaction has been at the heart of medical caregiving for millennia.

While the medical profession will not recapitulate its 20th-century heyday, health systems can help doctors regain satisfaction in their career choice. In doing so, they will improve their ability to recruit and retain physicians, enhance the quality of care, and recapture the confidence of patients.

Key Board Takeaways

- How can leadership build better relationships and develop trust with physicians?
- What education does the board need around unionization? For example, does the board have a good grasp on what is happening with regional and national labor union trends? Has the board discussed the impact unionization would have on the organization and patients?
- What processes and people are in place to ensure that physician workforce concerns are addressed? Do physicians have enough control over their workspace and working conditions?
- What role can AI play in supporting physicians (e.g., improving workflows, reducing administrative burdens, and increasing time with patients)?

TGI thanks Todd Sagin, M.D., J.D., President and National Medical Director of Sagin Healthcare Consulting and Governance Institute Advisor, for contributing this article. *He can be reached at tsagin@saginhealthcare.com.*

Addressing Disruptive Boardroom Behaviors with Curiosity and Courageous Leadership

By JoAnn McNutt, Ph.D., and Sara Finesilver, M.S., Organizational Psychologists and Board Consultants, *Board First Consulting*

Ideally in the boardroom, we expect constructive and respectful dialogue, data-driven discussions, and strategic decisions for the health system and its stakeholders. But all too often, unintentional disruptive behaviors can derail the meeting agenda, hinder progress, and negatively impact the board's culture, dynamics, and overall effectiveness. Addressing these challenges requires a balance of diplomacy, accountability, curiosity, and courageous leadership.

A common expectation is that the board chair (or committee chairs when in committee meetings) is responsible for managing these dynamics. Although relying solely on one individual—who is also in charge of overseeing the agenda and managing time—may not be the most effective approach. High-performing boards set the expectation that *all* board members are responsible for holding themselves *and* their peers accountable. When the board collectively shares this responsibility, it fosters a more collaborative environment and enhances the board's culture and dynamics, regardless of who is in the chair position.

This article offers strategies all board members can use to navigate and mitigate various types of disruptive boardroom behaviors effectively.

Clarify Intent

When conflict arises with a specific board member (e.g., there is a clear shift in tone or approach or they are speaking over others, becoming loud, interrupting, getting into management affairs, etc.), seek to understand their perspective with neutrality and curiosity. Questions board members can ask to help diffuse conflict may include:

- "It sounds like we are seeing this from different perspectives. Can you help me understand your point of view and key concerns?" *(Encourages active listening and de-escalation)*
- "Can you help me understand the main point you would like the group to focus on?" *(Encourages collaboration and resolution)*
- "Let's take a step back—what outcome would you like to see from this conversation?" *(Refocuses the conversation on shared goals)*
- "What additional data or insights would help us make a more informed decision?" *(Shifts the discussion to facts as opposed to emotions)*

Align Behavior with Boardroom Culture

Creating and maintaining a healthy board culture requires intention, practice, and continuity from all players on the team. If a board member's words, body language, or tone are misaligned with the culture the board aims to create or maintain, it must be addressed. Depending on the situation, it may be necessary to call out the behavior in the moment, as opposed to waiting for a private one-on-one discussion. Some effective questions to ask may include:

- "It sounds like there's some underlying concern here. What would be the most productive way for us to explore it?" *(Invites collaboration and acknowledges concerns)*
- "I appreciate your passion for this topic. How do you suggest we address this in a way that moves us forward?" *(Encourages expression of viewpoints while fostering problem-solving)*
- "Could you reframe your question differently? How can we challenge ideas constructively while maintaining mutual respect?" *(Frames disagreement as a positive force)*
- "Let's revisit our agreed-upon norms—are we staying aligned?" *(Redirects behavior without personalizing criticism)*

By reinforcing the desired culture in real time, board members can create a precedent for professional and effective board interactions.

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Hold One Another Accountable

Board members' tone, body language, words, and actions should reflect the core values the board wants to reinforce. Here are some practical ways board members can hold themselves and their peers to align with the desired board culture.

What to do:

- Model active listening by paraphrasing key points before responding.
- Reflect on whether your contributions align with board expectations.
- Avoid interrupting or dismissing viewpoints outright.
- Address issues with curiosity rather than defensiveness.
- Be open to feedback and commit to continuous learning.
- Be aware of your body language and facial expressions.

What to say:

- "I realize I interrupted you earlier—I apologize. Please continue."
- "In hindsight, I could have handled that differently. Here's how I would like to approach it moving forward."

- "I appreciate the feedback on my approach to this issue. I'll take that into account moving forward."
- "I understand your concern is [restate concern]. Let's explore how we can address it together."
- "I see this a bit differently, and I would like to understand your perspective better before I respond."

Self-awareness and statements such as these invite clarity while subtly encouraging the individual to separate personal emotion from the discussion at hand.

Final Thoughts

Managing disruptive behaviors in the boardroom requires a nuanced approach—one that seeks to understand, hold individuals accountable, and reinforce positive behaviors. By applying these strategies, directors can enhance their boardroom experience and ensure their contributions drive meaningful outcomes.

Managing Over-Talking or Dominating Behavior: Tips for the Board Chair

Suggestions for board chairs on addressing this behavior in the room:

- "I appreciate your insights. Let's also hear from others in the group to get a broader perspective."
- "That's a valuable point. I suggest we pause to see if others have thoughts on this as well."
- "I appreciate your thoughts on this matter. I would like to hear from those who haven't chimed in yet."
- "I would like to make sure we are balancing input from everyone. Let's go around and gather other perspectives."

TGI thanks JoAnn McNutt, Ph.D., and Sara Finesilver, M.S., Organizational Psychologists and Board Consultants at Board First Consulting, for contributing this article. *They can be reached at joann@boardfirstconsulting.com and sara@boardfirstconsulting.com.*