Georgia Bills Target AI in Healthcare

February 1, 2024

Dale C. Van Demark | Purnima Boominathan | Jayda Greco | Reuben Bank

SUMMARY

Within the last year, many states have presented or passed bills regulating artificial intelligence (AI), and Georgia is no exception.

Georgia has drafted two pieces of legislation focused on the intersection of healthcare and AI. Most recently, proposed House Bill 887 (HB 887) introduces restrictions on the use of AI in the delivery of healthcare. It follows the recently enacted HB 203, a first-of-its-kind state law expressly permitting the use of AI tools in clinical settings. In contrast to HB 203, HB 887 cuts across care settings to address the general use of AI in a variety of healthcare settings in Georgia. If HB 887 becomes law, it has potential broad implications for any healthcare provider in Georgia. HB 887 also proposes similar restrictions on the use of AI in automated decision-making tools in public assistance and insurance coverage.

IN DEPTH

BACKGROUND: HB 887

HB 887, introduced by Representative Mandisha Ann-Marie Thomas, proposes to add a new Section 16 to the Georgia rules applicable to healthcare professionals: Chapter 1, Title 43, Section 34 (applicable to Physicians, Acupuncture, Physician Assistants, Cancer and Glaucoma Treatment, Respiratory Care, Clinical Perfusionists, and Orthotics and Prosthetics Practice). The proposed legislation uses a definition for "artificial intelligence" that is extremely broad and establishes a new definition for the term "automated decision tool."

HB 887 defines "artificial intelligence" as a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing a real or virtual environment. It defines an "automated decision tool" as a system or service that uses AI and has been specifically developed and marketed, or specifically modified, to make (or to be a controlling factor in making) consequential decisions.

Notably, HB 887 prohibits clinicians from enacting healthcare decisions *solely* on results produced from AI or

automated decision tools. In addition, HB 887 requires any healthcare decision-making process that results from the use or application of AI or automated decision tools to be meaningfully reviewed in accordance with the procedures established by the Georgia Composite Medical Board (the Board). HB 887 requires the Board to adopt and promulgate rules and regulations governing and establishing the standards necessary to implement the requirements in this section, including (but not limited to) disciplining any clinician who fails to comply with the restrictions on AI.

BACKGROUND: HB 203

HB 887 is the second piece of Georgia legislation focused on the intersection of healthcare and AI. HB 203, which received overwhelming support from both the Georgia House and Senate, went into effect on July 1, 2023. It permits a prescriber to use an "assessment mechanism," including AI devices, to conduct an eye assessment or generate a prescription for contact lenses or spectacles under certain circumstances. Similar to the proposed language in HB 887, HB 203 requires the following:

- The data obtained from the assessment mechanism cannot be the *sole* basis for issuing the prescription.
- The assessment mechanism alone cannot be used to generate an initial prescription or the first renewal of the initial prescription.
- The assessment mechanism can only be used if the patient has had a traditional eye examination in the past two years.

KEY TAKEAWAYS

By requiring the Board to promulgate rules to implement HB 887 and HB 203, the Georgia legislature acknowledges state medical boards' critical role in implementing legislation involving AI in the healthcare delivery space. Perhaps recognizing that a medical board is better positioned to address the unique dynamics of a care delivery setting, the Georgia legislature does not attempt to craft how care is delivered in either bill (beyond establishing a basic prohibition against clinicians delegating their care responsibilities entirely to technology powered by AI).

The Board is now tasked with the difficult job of articulating the "meaningful review" standards for HB 887. If put together poorly, these standards could paralyze utilization and further innovation. Accordingly, the Board will need to articulate appropriate standards that are sufficiently nuanced to balance the many concerns that arise with any innovative approach to care delivery.

HB 887 may be drafted so broadly as to create problems. The proposed legislation creates a new definition for "artificial intelligence," which – as currently drafted – is extremely broad and effectively restricts the utilization of *any* AI tool that functions without a human review component. As such, HB 887 appears to ignore existing review

processes for artificial intelligence tools, such as those enumerated by the US Food and Drug Administration, that qualify the use of technology in a clinical setting. This potential problem with HB 887 – which could be described as a legislative overreaction – should not be surprising given the complexity of the subject matter and the anxiety that AI seems to be causing. Finding a balance is not always easy.

Our cross-practice team continues to closely monitor developments in AI. Reach out to one of the authors or your regular McDermott lawyer to discuss the potential legal implications for your business.

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Dale C. Van Demark
View Profile

Purnima Boominathan
View Profile

Jayda Greco
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Reuben Bank
View Profile