

Date of Hearing: April 21, 2026

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 1979 (Bonta) – As Amended April 9, 2026

PROPOSED AMENDMENTS

SUBJECT: Health care services: artificial intelligence

SYNOPSIS

The rapid advancement of generative artificial intelligence (GenAI) over the past few years has proven transformative for a wide variety of industries, including health care. These tools hold enormous promise: they can help doctors and nurses sort through vast medical literatures, support earlier and more accurate diagnoses, lessen administrative burdens, and expand access to care in remote or underserved areas through digital interfaces. At the same time, the known limitations of AI can prove especially consequential in high-risk clinical settings. GenAI systems can “hallucinate,” producing confidently-presented but incorrect information – if a health care AI tool hallucinates, it can lead to misdiagnosis, inappropriate treatment, or delayed care. AI systems trained on incomplete or unrepresentative data may produce biased outputs, perpetuating existing disparities in health outcomes. Many health professionals argue – including in opposition letters submitted in response to this measure – that AI is best utilized as a tool to augment and support licensed health care professionals.

The recent proliferation of consumer-facing health care “chatbots” further complicates this picture. While these apps may serve to broaden access to basic health information, they often lack clinical oversight, raising concerns about the accuracy of their outputs and the privacy of highly sensitive health data.

This bill would clarify that health care chatbot information is protected under the Confidentiality of Medical Information Act (CMIA), would prohibit the use of AI in medical settings to replace the judgement of licensed professionals, and would prohibit the use of AI to enable an unlicensed individual to do work requiring a professional license. Committee amendments described in Comment #4 would strengthen the CMIA-related provisions of the bill and recast the prohibition on AI “replacement” to instead require medical facilities to ensure that no clinical decision is based solely on the output of clinical decision support system, as defined.

The bill is sponsored by the California Nurses Association and supported by Labor Federation, Consumer Watchdog, and California Peer Watch. It is opposed by a coalition of associations representing physicians, hospitals and health systems, health plans, and other health care stakeholders, including the California Medical Association, California Chamber of Commerce, and TechNet. The Advanced Medical Technology Association and California Hospital Association take an “opposed unless amended” position. The bill was previously passed out of Assembly Health Committee in a 12-3 vote.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that all people are free and independent by nature and have inalienable rights. Among these is the fundamental right to privacy. (Cal. Const. art. I, § 1.)
- 2) Establishes under federal law, the Health Information Portability and Accountability Act of 1996 (HIPAA), which sets standards for the privacy of individually identifiable health information and security standards for the protection of electronic protected health information, including, through regulations, that a HIPAA-covered entity may not condition the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except under specified circumstances. Provides that if HIPAA's provisions conflict with state law, the provision that is most protective of patient privacy prevails. (42 U.S.C. § 1320d, et seq.; 45 Code Fed. Regs. Part 164.)
- 3) Prohibits, under the state Confidentiality of Medical Information Act (CMIA), a health care provider, a health care service plan, a contractor, a corporation and its subsidiaries and affiliates, or any business that offers software or hardware to consumers, including a mobile application or other related device, as defined, from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. States that a violation of these provisions that results in economic loss or personal injury to a patient is a crime. (Civ. Code § 56, et. seq.)
- 4) Defines, for purposes of the CMIA, "medical information" to mean any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental health application information, reproductive or sexual health application information, mental or physical condition, or treatment. (Civ. Code § 56.05(j).)
- 5) Deems any business organized for the purpose of maintaining medical information in order to make the information available to an individual or to a provider of health care at the request of the individual or the provider of health care, for purposes of allowing the individual to manage their information, or for the diagnosis and treatment of the individual, to be a health care provider subject to the requirements of the CMIA. (Civ. Code § 56.06(a).)
- 6) Requires that a provider of health care, health care service plan, pharmaceutical company, contractor, or employer shall not knowingly disclose, transmit, transfer, share, or grant access to medical information in an electronic health records system or through a health information exchange that would identify an individual and that is related to an individual seeking, obtaining, providing, supporting, or aiding in the performance of an abortion that is lawful under the laws of this state to any individual or entity from another state, unless the disclosure, transmittal, transfer, sharing, or granting of access is lawfully authorized in accordance with California Law. (Civ. Code § 56.110(a).)
- 7) Provides for the licensure and regulation of clinics and health facilities by the State Department of Public Health. (Health & Saf. Code § 1200 *et seq.*, Health & Saf. Code § 1250 *et seq.*)

- 8) Establishes “healing arts” boards for the licensure and regulation of various healing arts professions and vocations by boards established within the Department of Consumer Affairs, and establishes the standards for licensure or certification of health professionals. Existing law makes certain violations of specified provisions relating to healing arts by a licensee or registrant a crime. (Bus. & Prof. Code § 500 *et seq.*)
- 9) Defines the following terms:
 - a. “Artificial intelligence” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments. (Health & Saf. Code § 1339.75.)
 - b. “Automated decision system” means a computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is used to assist or replace human discretionary decisionmaking and materially impacts natural persons.

“Automated decision system” does not include a spam email filter, firewall, antivirus software, identity and access management tools, calculator, database, dataset, or other compilation of data. (Gov. Code § 11546.45.5.)
 - c. “Generative artificial intelligence” means artificial intelligence that can generate derived synthetic content, including images, videos, audio, text, and other digital content. (Health & Saf. Code § 1339.75.)
 - d. “Health care provider” means a person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code. (Health & Saf. Code § 1339.75.)
 - e. “Physician’s office” means an office of a physician in solo practice. (Health & Saf. Code § 1339.75.)
 - f. “Office of a group practice” means an office or offices in which two or more physicians are legally organized as a partnership, professional corporation, or licensed not-for-profit corporation. (Health & Saf. Code § 1339.75.)
- 10) Provides various types of facilities, places, or buildings that fall under the definition of “health facility.” (Health & Saf. Code § 1250.)
- 11) Requires a health facility, clinic, physician’s office, or office of a group practice that uses generative artificial intelligence (GenAI) to generate written or verbal patient communications pertaining to patient clinical information, as defined, to ensure that those communications include both a disclaimer that indicates to the patient that a communication was generated by generative artificial intelligence, as specified, and clear instructions describing how a patient may contact a human health care provider, employee, or other appropriate person. (Health & Saf. Code § 1339.75.)

- 12) Establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons under the Medical Practice Act. (Bus. & Prof. Code § 2000 *et seq.*)
- 13) Provides that, with certain exceptions, anyone who willfully or repeatedly violates any rule or regulation of health facilities is guilty of a misdemeanor and upon conviction will be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in county jail for a period not to exceed 180 days, or by both the fine and imprisonment. (Health & Saf. Code § 1290.)
- 14) Provides that any person any person who violates any of the provisions of clinic licensing law or who willfully or repeatedly violates any rule or regulation promulgated regarding clinical licensure is guilty of a misdemeanor, and upon conviction will be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both such fine and imprisonment. (Health & Saf. Code § 1235.)
- 15) Establishes the Unfair Competition Law, which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 *et seq.*)

THIS BILL:

- 1) Defines the following terms:
 - a. “Artificial intelligence” has the same meaning as that term is defined in Section 1339.75 of the Health and Safety Code.
 - b. “Clinic” has the same meaning as defined in Section 1200 of the Health and Safety Code.
 - c. “Health care provider” means a person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.
 - d. “Health facility” has the same meaning as defined in Section 1250 of the Health and Safety Code.
 - e. “Office of a group practice” has the same meaning as defined in Section 1339.75 of the Health and Safety Code.
 - f. “Physician’s office” has the same meaning as defined in Section 1339.75 of the Health and Safety Code.
- 2) For a business that offers software or hardware to consumers, including a mobile application or other related device that is designed to maintain medical information in order to make the information available to an individual or a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the individual to ***manage the individual’s information***, or for the diagnosis, treatment, or management of a medical condition of the individual, specifies that “***manage the individual’s information***” includes the ability to query their medical history, summarize doctor’s notes, or organize lab results. Specifies that this change is intended to clarify existing law.

- 3) Prohibits a health facility, clinic, physician's office, or office of a group practice from using or deploying a tool, system, or device that includes artificial intelligence to replace the use of professional judgment by a licensed health care professional in carrying out their duties. Specifies that these duties include, but are not limited to, assessment of patient condition, educating patients and their families concerning the patient's health care problems, including postdischarge care, communication between licensed health care professionals relating to the handoff of responsibility for a patient, and other documentation and communication that requires applying professional expertise to an individual patient's health.
- 4) Prohibits a health facility, clinic, physician's office, or office of a group practice from using or deploying a tool, system, or device that includes artificial intelligence to direct, guide, supervise, or instruct unlicensed personnel in performing any function that requires a professional license.
- 5) Clarifies that nothing in (3) or (4) above prohibits the use of artificial intelligence for documentation and communication that does not involve the application of professional judgment, including, but not limited to, automated messages to inform patients of updates to their health records.
- 6) Specifies enforcement mechanisms for health facilities, clinics, physician's offices, or offices of a group practice.

COMMENTS:

- 1) **Author's statement.** According to the author:

AI is rapidly integrating into our health care system and reshaping our own personal experience with health care. While this technology can hold a lot of promise, there is no question that without careful consideration of the potential perpetuation of biases, risks to patient safety, and challenges of clinical workers knowing what to question and what to trust, the deployment of AI in health care can do more harm than good. A 2023 study found that, while carefully crafted AI could slightly improve diagnostic accuracy for certain disorders, in cases where clinicians were provided AI support using a systematically biased model, diagnostic accuracy dropped substantially to 62% (from 73%). This also demonstrates that having a human-in-the-loop is not a panacea for all the challenges that AI can present. Providing health care requires compassion, empathy, and real-world judgment that cannot be captured in patterns and algorithms. Technology should assist human clinicians, not replace them. As AI deploys into health care settings it is also reaching consumers directly through applications like Copilot and ChatGPT offering to connect directly to personal medical records. Voluntary commitments to protect this sensitive information are not enough, we must ensure any entity accessing medical records for managing health is abiding by the law.

- 2) **Background.** This bill relates to an AI tool's ability to participate in the clinical decision-making process. Given the central role of AI in this discussion, it is appropriate to briefly examine how these systems work, and the role they play in health care spaces.

AI and GenAI. "Artificial intelligence" refers to the mimicking of human intelligence by artificial systems, such as computers. AI uses algorithms – sets of rules – to transform inputs into outputs. Inputs and outputs can be anything a computer can process, including numbers, text, audio,

video, or other data.¹ “Generative artificial intelligence” (GenAI) is a subset of AI that produces outputs closely resembling human-created content.²

Compared to conventional computer programs, which act according to pre-programmed rules, GenAI models “learn” from examples such as books, articles, photos, film, or music. This learning occurs within “neural networks” – massive systems of nodes linked by adjustable connections – that encode statistical patterns gleaned from data. During training, data is broken into fundamental units known as “tokens” – groups of syllables, pixels, or musical notes, for example – that can be represented numerically. A naïve neural network is exposed to an incomplete sequence of tokens and prompted to predict the next token in the sequence. If the prediction is incorrect, the network adjusts the strengths of its connections in order to minimize error and improve its next prediction. This process continues iteratively until the neural network can reliably emulate the human-created content it was trained on. A trained neural network embedded in a GenAI system is known as a “model,” and the strengths of its connections are known as its “model weights.”³

LLMs do not fundamentally understand the text they produce. They calculate one token at a time – if they predict that the next word or symbol in an outputted sentence should be a period, then the sentence ends. Otherwise, the sentence continues. It is a testament to the ingenious architecture of the deep neural nets powering these systems that their outputs are remotely coherent. But while the text these systems produce is cogent, it is not always correct. According to Melanie Mitchell, an AI researcher at the Santa Fe Institute, ““These systems live in a world of language. . . . That world gives them some clues about what is true and what is not true, but the language they learn from is not grounded in reality. They do not necessarily know if what they are generating is true or false.””⁴

There is a famous saying in computer science: “garbage in, garbage out.” The performance of an AI is directly impacted by the quality, quantity, and relevance of the data used to train it.⁵ If the data used to train the AI is biased, the tool’s outputs will be similarly biased. In their work on mitigating bias in artificial intelligence, the Berkeley Haas Center for Equity, Gender and Leadership (Center) tracks publicly available instances of bias in AI systems using machine learning. In their analysis of around 133 biased systems across industries from 1988 to the present day, the Center found that 44% (59 systems) demonstrate gender bias, with 26% (34 systems) exhibiting both gender and racial bias.⁶

AI in health care. AI in health care is not new; AI algorithms, machine learning, and predictive

¹ AB 2885 (Bauer-Kahan & Umberg; Ch. 843, Stats. 2024) defined AI as “an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.”

² AB 2013 (Irwin, Ch. 817, Stats. 2024) defined GenAI as “artificial intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence’s training data.”

³ IBM, What is generative AI?, <https://www.ibm.com/think/topics/generative-ai>; IBM, What is machine learning?, www.ibm.com/topics/machine-learning.

⁴ Cade Metz, “What Makes A.I. Chatbots Go Wrong?,” *New York Times*, March 29, 2023, www.nytimes.com/2023/03/29/technology/ai-chatbots-hallucinations.html.

⁵ Rohit Sehgal, “AI Needs Data More Than Data Needs AI,” *Forbes*, Oct. 5, 2023, <https://www.forbes.com/sites/forbestechcouncil/2023/10/05/ai-needs-data-more-than-data-needs-ai/>.

⁶ Smith, G., & Rustagi, I. (2021). When Good Algorithms Go Sexist: Why and How to Advance AI Gender Equity. *Stanford Social Innovation Review*. <https://doi.org/10.48558/A179-B138>.

AI models of varying degrees of sophistication have been developed and deployed for decades. INTERNIST-1, which used a search algorithm to arrive at clinical diagnoses based on patients' symptoms, was created in 1971.⁷ ELIZA, a rules-based mental health therapy chatbot program, was developed even earlier.⁸ With the recent advancement of GenAI, particularly in natural language processing, interest in, use of, and hype over AI has grown rapidly and health care applications have proliferated. According to the National Academy of Medicine (NAM), GenAI has the potential to transform health and medicine as we know it: improving health care delivery, advancing medical research, and augmenting the capacity of clinicians to provide personalized care at an unprecedented scale. However, NAM also notes that the potential for both breakthrough innovation and unintended consequences demands careful consideration.⁹

When automated decision systems are deployed in health care, biased historical data can lead to patients being recommended substandard care on the basis of race or ethnicity. In 2007, an automated decision system was developed to help doctors estimate whether it was safe for people who had delivered previous children through cesarean section to deliver subsequent children vaginally – a risky procedure under any circumstances. The system considered relevant factors as it made its decision, such as the woman's age, her reason for the previous cesarean, and how long ago the cesarean had been performed. However, a 2017 study found that the system was biased; it predicted Black and Latino people were less likely to have a successful vaginal birth after a cesarean than similar non-Hispanic white women. As a result, doctors performed more cesareans on Black and Latino people than on white people.¹⁰

Similarly, in 2019, a study discovered harmful racial bias in an AI tool developed by the health care company Optum – a subsidiary of UnitedHealth Group – and used by providers across the country to offer care management services. The tool assigned Black patients lower likelihoods of adverse health outcomes than equally at-risk white patients. The authors found that this happened because the tool was designed to predict health care costs instead of needs. Because the health care system has historically spent less on care for Black patients than white patients for the same health conditions, the tool was, in essence, issuing a prediction that mirrored and perpetuated past discrimination.¹¹

The University of California San Francisco reported bias in an algorithm used to identify potential appointment no-shows to facilitate double-booking for that appointment. The program was confirmed to result in low-resourced and marginalized populations being double-booked more often than others, reflecting underlying structural inequalities and highlighting how these

⁷ Hirani, R., Noruzi, K., et al. (2024). Artificial Intelligence and Healthcare: A Journey through History, Present Innovations, and Future Possibilities. *Life* (Basel, Switzerland), 14(5), 557. <https://doi.org/10.3390/life14050557>

⁸ Weizenbaum, J. (1966, January 1). ELIZA—A computer program for the study of natural language communication between man and machine. *Communications of the ACM*, 9(1), 36–45. <https://doi.org/10.1145/365153.365168>

⁹ National Academy of Medicine. (2020, April 30). Artificial Intelligence in Health Care: The Hope, the Hype, the Promise, the Peril. <https://nam.edu/publications/artificial-intelligence-in-health-care-the-hope-the-hype-the-promise-the-peril/>.

¹⁰ Caleb J Colón-Rodríguez, “Shedding Light on Healthcare Algorithmic and Artificial Intelligence Bias,” US Department of Health & Human Services Office of Minority Health, (Jul. 12, 2023). <https://pmc.ncbi.nlm.nih.gov/articles/PMC6875681/>.

¹¹ Obermeyer, Z., Powers, B., et al. (2019). Dissecting racial bias in an algorithm used to manage the health of populations. *Science* (New York, N.Y.), 366(6464), 447–453. <https://doi.org/10.1126/science.aax2342>

tools, if not studied and corrected for bias, can create feedback loops that worsen discrimination.¹²

In some cases, an AI model's accurate predictions may nevertheless lead to bad decisions. In one example, a hospital trained AI models on a dataset of 15,000 pneumonia patients to identify which pneumonia patients were at the greatest risk, in order to triage new patients. During testing, it was discovered that one of the most accurate models recommended outpatient status for asthmatics. This life-threateningly dangerous error was based on an accurate statistical correlation: asthmatics are, in fact, less likely to die from pneumonia than the general population precisely *because* asthma is such a serious risk factor that asthmatics automatically receive elevated care.¹³

Health care and wellness chatbots. Many people are turning to AI-powered chatbots to seek medical information or help. In January 2026, ChatGPT creator OpenAI announced the introduction of ChatGPT Health:

Health is already one of the most common ways people use ChatGPT, with hundreds of millions of people asking health and wellness questions each week. ChatGPT Health builds on the strong privacy, security, and data controls across ChatGPT with additional, layered protections designed specifically for health—including purpose-built encryption and isolation to keep health conversations protected and compartmentalized. You can securely connect medical records and wellness apps to ground conversations in your own health information, so responses are more relevant and useful to you. Designed in close collaboration with physicians, ChatGPT Health helps people take a more active role in understanding and managing their health and wellness—while supporting, not replacing, care from clinicians.¹⁴

GenAI systems like ChatGPT do not hold degrees, credentials, or any form of professional accountability, and they do not have to comply with HIPAA or the CMIA. Believing they are confiding in a legitimate health care provider, users may share deeply personal information about their mental health, physical health, or life circumstances.

3) What this bill would do. This bill would clarify that “software or hardware” covered under CMIA includes software or hardware with the ability to query consumers’ medical history, summarize doctor’s notes, or organize lab results. The bill would additionally prohibit a health facility, clinic, physician’s office, or office of a group practice from deploying an AI tool, system or device to (1) replace the use of professional judgement by a licensed health care professional, or (2) direct, guide, supervise, or instruct unlicensed personnel in performing any function that requires a professional license. The bill provides enforcement mechanisms for each of the various entities listed in the bill. The bill does not prohibit the use of AI for documentation and communication not involving the application of professional judgement.

¹² University of California Presidential Working Group on Artificial Intelligence. (2021, October). Responsible AI: Recommendations to Guide the University of California’s Artificial Intelligence Strategy.

<https://www.ucop.edu/ethics-compliance-audit-services/compliance/uc-ai-working-group-final-report.pdf>

¹³ Christian, B. (2020). The Alignment Problem: Machine Learning and Human Values. Norton, pp. 82-84.

¹⁴ OpenAI, “Introducing ChatGPT Health,” (Jan. 7, 2026), <https://openai.com/index/introducing-chatgpt-health/>

Health care privacy. This bill seeks to clarify that health and wellness chatbots like ChatGPT Health are subject to California’s Confidentiality of Medical Information Act (CMIA). When a consumer willingly provides their medical information to a private, non-medical company, that information is not always protected under CMIA, as described in this Committee’s analysis of AB 2089 (Bauer-Kahan, 2022):

Unfortunately, the data collected and generated as consumers use mental health [applications] are not necessarily treated confidentially by app developers and generally classified as consumer information under the law, rather than medical information . . . In short, medical privacy laws like HIPAA and California’s CMIA do not protect data simply because it is related to an individual’s health. Those laws only apply to information collected and held by “covered entities,” such as insurance companies, health care providers, and the “business associates” that provide them with services such as billing.¹⁵

The issue of consumer-facing medical products being excluded from CMIA is rooted in the definition of “medical information” under that law:

“Medical information” means any individually identifiable information, in electronic or physical form, **in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor** regarding a patient’s medical history, mental health application information, reproductive or sexual health application information, mental or physical condition, or treatment. “Individually identifiable” means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the identity of the individual.¹⁶

Before AB 2089 was signed into law, mental health applications were not covered under CMIA because the businesses providing these products were not considered to be providers of health care, health care service plans, pharmaceutical companies, or contractors. Nor were they deriving medical information from those entities – in most cases, information about consumers’ health was provided by the consumers themselves. AB 2089 closed this loophole for mental health apps by explicitly designating “*any business that offers a mental health digital service to a consumer for the purpose of allowing the individual to manage the individual’s information*” to be a provider of health care under CMIA. The next year, AB 254 (Bauer-Kahan) did the same with respect to reproductive or sexual health digital services.

Rather than utilizing the direct approach pioneered by the previous two bills, the author of this bill argues that health care chatbots are already covered under CMIA due to an existing provision related to businesses offering software and hardware to consumers:

Any business that offers software or hardware to consumers, including a mobile application or other related device that is designed to maintain medical information in order to make the information available to an individual or a provider of health care at the request of the

¹⁵ Assembly Privacy and Consumer Protection analysis of AB 2089 (Bauer-Kahan, 2022), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2089#

¹⁶ Civ. Code § 56.05.

individual or a provider of health care, for purposes of allowing the individual to manage the individual's information, or for the diagnosis, treatment, or management of a medical condition of the individual, shall be deemed to be a provider of health care subject to the requirements of this part...¹⁷

The author argues that a health care chatbot is (1) software that is offered to a consumer, and (2) designed to maintain medical information in order to make the information available to an individual, for the purpose of allowing the individual to manage the individual's information – and that as a result, health care chatbots are covered under CMIA. However, as described above, CMIA protections are not tied to the intended purpose of an application, but rather to the definition of “medical information.” If a business offering a health care chatbot to a consumer is not a provider of health care, health service plan, pharmaceutical company, or contractor, then the information it receives from a consumer is not considered to be “medical information,” and non-medical information is not covered under CMIA. To avoid any uncertainty, Committee amendments described in Comment #4 below explicitly designate health care chatbots as “providers of health care” under CMIA.

Opposition concerns. A coalition representing physicians, hospitals and health systems, health plans, and other stakeholders writes that the first prohibition described above is broad to the point of being uninterpretable:

Recent amendments taken as an attempt to narrow down the scope of AB 1979 would still impose sweeping prohibitions on the use of AI-enabled technologies and tools used in health care. It would prohibit a health care facility, clinic, physician's office, or office of a group practice from using AI to “replace the use of professional judgment,” is vague and open to interpretation, which would lead to an effective ban on the use of AI in health care.

According to the coalition, they agree with the author that AI used in health care should “augment provider expertise” but that the bill would effectively prohibit health care entities from using AI. The California Medical Association agrees, writing the following in opposition to the bill:

This bill would effectively prohibit AI-assisted technologies in core clinical activities such as patient assessment, care coordination, patient education, and clinical documentation, even when these tools are used under the direct supervision of a physician and do not replace physician judgment. In current practice, many AI-enabled tools are embedded in electronic health records and clinical workflows to improve accuracy, reduce administrative burden, and enhance patient outcomes. These include clinical decision support systems, predictive analytics for early detection of deterioration, and tools that assist in summarizing complex medical information. Prohibiting their use in any context involving professional judgment would effectively eliminate their utility in clinical settings.

- 4) **Committee amendments.** To address these various concerns, proposed Committee amendments would change the bill in the following ways:

¹⁷ Civ. Code § 56.06.

- a. In Section 1, recast CMIA-related provisions in the style of AB 2089 (Bauer-Kahan, 2022) and AB 254 (Bauer-Kahan, 2023) by explicitly designating any business that offers a health care chatbot to a consumer to be a provider of health care.
- b. In subdivision (a) of Section 2, replace the phrase “*tool, system, or device that includes artificial intelligence*” with the term “*clinical decision support system*”, defined to mean “*an automated decision system or generative artificial intelligence system whose outputs are used to inform clinical decisionmaking with respect to the provision, timing, or course of patient care.*” **This definition will be shared with AB 2575 (Ortega)**, which will be heard in this Committee in the same hearing as this bill. Insert definitions for “*automated decision system*” and “*generative artificial intelligence system*” accordingly.
- c. In Section 2, replace the prohibition on a health facility’s use of an AI tool to “*replace the use of professional judgement by a licensed health care professional*” with a requirement for a health facility to “*ensure that no clinical decision is based solely on the output of a clinical decision support system.*”
- d. In Section 2, require a health facility to “*ensure that a licensed health care professional exercises independent professional judgement when reviewing and approving a clinical decision that is based on the output of a clinical decision support system.*”
- e. Make minor technical and conforming changes throughout.

The full text of the bill as proposed to be amended follows:

SECTION 1. ~~Section~~**Sections 56.05 and 56.06** of the Civil Code ~~is~~**are** amended to read:

56.05. For purposes of this part:

(x) “Artificial intelligence” has the same meaning as that term is defined in Section 1339.75 of the Health and Safety Code.

(a) “Authorization” means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.

(b) “Authorized recipient” means a person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) “Confidential communications request” means a request by a subscriber or enrollee that health care service plan communications containing medical information be communicated to them at a specific mail or email address or specific telephone number, as designated by the subscriber or enrollee.

(d) “Contractor” means a person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. “Contractor” does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox-Keene Health Care Service

Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) “Enrollee” has the same meaning as that term is defined in Section 1345 of the Health and Safety Code.

(f) “Expiration date or event” means a specified date or an occurrence relating to the individual to whom the medical information pertains or the purpose of the use or disclosure, after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(x) “Generative artificial intelligence” has the same meaning as that term is defined in Section 1339.75 of the Health and Safety Code.

(x) “Health care chatbot information” means information related to a consumer’s physical or mental health or wellness that is provided to, inferred by, or generated by a health care chatbot.

(x) “Health care chatbot” means a generative artificial intelligence system with a natural language interface that provides adaptive, human-like responses to user inputs, collects health care chatbot information from a consumer, is marketed as facilitating mental or physical health services to a consumer, and uses the information to facilitate mental or physical health services to a consumer.

(g) “Health care service plan” means an entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(h) “Licensed health care professional” means a person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(i) “Marketing” means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

“Marketing” does not include any of the following:

(1) Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication.

(2) Communications made to current enrollees solely for the purpose of describing a provider’s participation in an existing health care provider network or health plan network of a Knox-Keene licensed health plan to which the enrollees already subscribe; communications made to current enrollees solely for the purpose of describing if, and the extent to which, a product or service, or payment for a product or service, is provided by a provider, contractor, or plan or included in a plan of benefits of a Knox-Keene licensed health plan to which the

enrollees already subscribe; or communications made to plan enrollees describing the availability of more cost-effective pharmaceuticals.

(3) Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about treatment options, and otherwise maintain the individual's adherence to a prescribed course of medical treatment, as provided in Section 1399.901 of the Health and Safety Code, for a chronic and seriously debilitating or life-threatening condition as defined in subdivisions (d) and (e) of Section 1367.21 of the Health and Safety Code, if the health care provider, contractor, or health plan receives direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication, if all of the following apply:

(A) The individual receiving the communication is notified in the communication in typeface no smaller than 14-point type of the fact that the provider, contractor, or health plan has been remunerated and the source of the remuneration.

(B) The individual is provided the opportunity to opt out of receiving future remunerated communications.

(C) The communication contains instructions in typeface no smaller than 14-point type describing how the individual can opt out of receiving further communications by calling a toll-free number of the health care provider, contractor, or health plan making the remunerated communications. Further communication shall not be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt-out request.

(j) (1) "Medical information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental health application information, reproductive or sexual health application information, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the identity of the individual.

(2) If individually identifying information regarding immigration status, including current and prior immigration status, or place of birth, is known or collected in electronic or physical form by a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, it shall be treated as medical information, as defined in paragraph (1).

(k) "Mental health application information" means information related to a consumer's inferred or diagnosed mental health or substance use disorder, as defined in Section 1374.72 of the Health and Safety Code, collected by a mental health digital service.

- (l) “Mental health digital service” means a mobile-based application or internet website that collects mental health application information from a consumer, markets itself as facilitating mental health services to a consumer, and uses the information to facilitate mental health services to a consumer.
- (m) “Patient” means a natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains.
- (n) “Pharmaceutical company” means a company or business, or an agent or representative thereof, that manufactures, sells, or distributes pharmaceuticals, medications, or prescription drugs. “Pharmaceutical company” does not include a pharmaceutical benefits manager, as included in subdivision (c), or a provider of health care.
- (o) “Protected individual” means any adult covered by the subscriber’s health care service plan or a minor who can consent to a health care service without the consent of a parent or legal guardian, pursuant to state or federal law. “Protected individual” does not include an individual that lacks the capacity to give informed consent for health care pursuant to Section 813 of the Probate Code.
- (p) “Provider of health care” means a person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; a person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; or a clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. “Provider of health care” does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.
- (q) “Reproductive or sexual health application information” means information about a consumer’s reproductive health, menstrual cycle, fertility, pregnancy, pregnancy outcome, plans to conceive, or type of sexual activity collected by a reproductive or sexual health digital service, including, but not limited to, information from which one can infer someone’s pregnancy status, menstrual cycle, fertility, hormone levels, birth control use, sexual activity, or gender identity.
- (r) “Reproductive or sexual health digital service” means a mobile-based application or internet website that collects reproductive or sexual health application information from a consumer, markets itself as facilitating reproductive or sexual health services to a consumer, and uses the information to facilitate reproductive or sexual health services to a consumer.
- (s) “Sensitive services” means all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender-affirming care, and intimate partner violence, and includes services described in Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service specified in the section.

(t) “Subscriber” has the same meaning as that term is defined in Section 1345 of the Health and Safety Code.

(u) “Immigration enforcement” means any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry or reentry to, or employment in, the United States.

56.06. (a) Any business organized for the purpose of maintaining medical information in order to make the information available to an individual or to a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the individual to manage the individual’s information, or for the diagnosis and treatment of the individual, shall be deemed to be a provider of health care subject to the requirements of this part. However, this section shall not be construed to make a business specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

(b) ~~(1)~~ Any business that offers software or hardware to consumers, including a mobile application or other related device that is designed to maintain medical information in order to make the information available to an individual or a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the individual to manage the individual’s information, or for the diagnosis, treatment, or management of a medical condition of the individual, shall be deemed to be a provider of health care subject to the requirements of this part. However, this section shall not be construed to make a business specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

~~(2) For the purpose of this subdivision, “manage the individual’s information” includes the ability to query their medical history, summarize doctor’s notes, or organize lab results. The amendments made to this subdivision by the act adding this subparagraph are intended to clarify existing law.~~

(c) Any business that is licensed pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code that is authorized to receive or receives identification cards issued pursuant to Section 11362.71 of the Health and Safety Code or information contained in a physician’s recommendation issued in accordance with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code shall be deemed to be a provider of health care subject to the requirements of this part. However, this section shall not be construed to make a business specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

(d) Any business that offers a mental health digital service to a consumer for the purpose of allowing the individual to manage the individual’s information, or for the diagnosis,

treatment, or management of a medical condition of the individual, shall be deemed to be a provider of health care subject to the requirements of this part. However, this section shall not be construed to make a business specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

(e) Any business that offers a reproductive or sexual health digital service to a consumer for the purpose of allowing the individual to manage the individual's information, or for the diagnosis, treatment, or management of a medical condition of the individual, shall be deemed to be a provider of health care subject to the requirements of this part. However, this section shall not be construed to make a business specified in this subdivision a provider of health care for purposes of any law other than this part, including, but not limited to, laws that specifically incorporate by reference the definitions of this part.

(x) Any business that offers a health care chatbot to a consumer for the purpose of allowing the individual to manage the individual's information, or for the diagnosis, treatment, or management of a medical condition of the individual, shall be deemed to be a provider of health care subject to the requirements of this part. However, this section shall not be construed to make a business specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

(f) Any business described in this section shall maintain the same standards of confidentiality required of a provider of health care with respect to medical information disclosed to the business.

(g) Any business described in this section is subject to the penalties for improper use and disclosure of medical information prescribed in this part.

SEC. 2. Section 1339.77 is added to the Health and Safety Code, to read:

1339.77. (a) ***(1)*** A health facility, clinic, physician's office, or office of a group practice shall ~~not use or deploy a tool, system, or device that includes artificial intelligence to replace the use of professional judgment by a licensed health care professional in carrying out their duties, including, but not limited to,~~ ***ensure that no clinical decision is based solely on the output of a clinical decision support system.***

(2) A health facility, clinic, physician's office, or office of a group practice shall ensure that a licensed health care professional exercises independent professional judgement when reviewing and approving a clinical decision that is based on the output of a clinical decision support system.

(3) For purposes of this subdivision, "clinical decision" includes, but is not limited to, assessment of patient condition, ~~educating patients and their families~~ ***education of a patient or their family*** concerning the patient's health care problems, including postdischarge care,

communication between licensed health care professionals relating to the handoff of responsibility for a patient, and other documentation and communication that requires ~~applying~~ **the application of a licensed health care professional's** professional expertise to an individual patient's health.

(b) A health facility, clinic, physician's office, or office of a group practice shall not use or deploy a tool, system, or device that includes artificial intelligence to direct, guide, supervise, or instruct unlicensed personnel in performing any function that requires a professional license.

(c) (1) A violation of this section by a licensed health facility is subject to the enforcement mechanisms described in Article 4 (commencing with Section 1290) of Chapter 2.

(2) A violation of this section by a licensed clinic is subject to the enforcement mechanisms described in Article 4 (commencing with Section 1235) of Chapter 1.

(3) A violation of this section constitutes "unfair competition" as defined in Section 17200 of the Business and Professions Code and is punishable as prescribed in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(4) To the extent that a violation of this section constitutes the practice of a health care profession without a license, the appropriate health care professional licensing board may pursue an injunction or restraining order to enforce this section, as authorized by Section 125.5 of the Business and Professions Code.

(5) Nothing in this section limits the authority for a health care professional licensing board or enforcement agency to pursue any remedy otherwise authorized under the law.

(d) This section does not prohibit the use of artificial intelligence for documentation and communication that does not involve the application of professional judgment, including, but not limited to, automated messages to inform patients of updates to their health records.

(e) For purposes of this section, the following definitions apply:

(1) "Artificial intelligence" has the same meaning as defined in Section 1339.75.

(x) (1) "Automated decision system" means a computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is used to assist or replace human discretionary decisionmaking and materially impacts natural persons.

(2) "Automated decision system" does not include a spam email filter, firewall, antivirus software, identity and access management tools, calculator, database, dataset, or other compilation of data.

(2) "Clinic" has the same meaning as defined in Section 1200.

(x) “Clinical decision support system” means an automated decision system or generative artificial intelligence system whose outputs are used to inform clinical decisionmaking with respect to the provision, timing, or course of patient care.

(x) “Generative artificial intelligence” has the same meaning as that term is defined in Section 1339.75.

(3) “Health care provider” means a person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(4) “Health facility” has the same meaning as defined in Section 1250.

(5) “Office of a group practice” has the same meaning as defined in Section 1339.75.

(6) “Physician’s office” has the same meaning as defined in Section 1339.75.

ARGUMENTS IN SUPPORT:

California Nurses Association, the sponsor of the bill, writes in support:

Health care employers and technology companies are increasingly introducing AI tools into clinical settings in ways that treat licensed human practice in health care as if it can be easily replicated by software and that expand the collection and use of patient health data. Replacing human judgment and accountability with untested and unaccountable technology is a dangerous approach to patient care. AI systems do not hold professional licenses, do not owe duties to patients, do not exercise human judgment, and cannot be disciplined by a licensing board when they make mistakes. When AI is used to perform or direct work that the law reserves for licensed professionals and when algorithms circumvent safeguards on patients’ sensitive health data, serious gaps in accountability emerge and patients are placed at risk.

The California Federation of Labor Unions writes in support:

Health care employers and tech companies are increasingly introducing AI tools into clinical settings in ways that treat licensed human practice in health care as if it can be easily replicated by. Replacing human judgment and accountability with untested and unaccountable technology is a dangerous approach to patient care. AI systems do not hold professional licenses, do not owe duties to patients, do not exercise human judgment, and cannot be disciplined by a licensing board when they make mistakes. When AI is used to perform or direct work that current law reserves for licensed professionals and when algorithms circumvent safeguards on patients’ sensitive health data, serious gaps in accountability emerge and patients are placed at risk.

ARGUMENTS IN OPPOSITION:

A coalition representing physicians, hospitals and health systems, health plans, and other health care stakeholders, including Epic and Kaiser Permanente, writes in opposition:

We agree that AI used in health care should be safe and effective and that it should

augment provider expertise. However, AB 1979 goes far beyond these goals and instead would completely prohibit health care entities from using AI, including many beneficial tools that are already in use today. This will increase administrative burden for providers and reduce patient access to high-quality, affordable care, including access to innovative therapies and treatments. This is particularly troubling for vulnerable and medically complex populations that rely on advancements in health technology.

The California Medical Association writes in opposition:

We share the author's commitment to protecting patient safety and preserving the integrity of clinical decision-making. CMA supports the section of the bill requiring businesses to adhere to strict confidentiality standards regarding the use of medical information. However, CMA believes a blanket ban on the ability of clinicians to utilize AI in their clinical decision-making process will not result in the best outcomes for patients.

The California Chamber of Commerce writes in opposition:

CalChamber strongly believes that AI should support — not replace — licensed health care professionals, who retain full decision-making authority at all times. Unfortunately, AB 1979 fails to distinguish between AI that informs clinical decisions and AI that replaces them and would impose sweeping prohibitions on not just AI systems, but also a wide range of patient-centered technologies.

California Hospital Association takes an “oppose unless amended” position, writing:

The California Hospital Association (CHA), on behalf of nearly 400 hospitals and health systems, respectfully opposes AB 1979 unless it is amended to remove Section 2, which would prohibit the use of AI and other technological tools in a health care setting.

The Advanced Medical Technology Association takes an “oppose unless amended” position, writing:

While we appreciate the intent of AB 1979, as currently drafted, the bill raises several significant concerns for FDA-regulated medical technologies. Without clarification, the bill could unintentionally capture a wide range of medical devices, like AI-enabled imaging tools that flag potential abnormalities or surgical technologies that incorporate AI-driven feedback to enhance accuracy and patient outcomes. These devices are already subject to rigorous oversight by the FDA and safely used in clinical settings today. In particular, the bill's restrictions in Section 2 could create conflict with federal requirements that support the integration of AI into medical devices.

REGISTERED SUPPORT / OPPOSITION:

Support

California Nurses Association (Sponsor)
California Labor Federation, Afl-cio
California Peer Watch
Consumer Watchdog

Opposition

Adventist Health
America's Physician Groups
American Telemedicine Association, Ata Action
California Association of Health Plans
California Chamber of Commerce
California Medical Association (CMA)
California Radiological Society
Civil Justice Association of California (CJAC)
Connected Health Initiative
Epic
Kaiser Permanente
Lake Elsinore Chamber of Commerce
Menifee Valley Chamber of Commerce
Murietta/Wildomar Chamber of Commerce
Southwest California Legislative Council
TechNet
Temecula Chamber of Commerce

Oppose Unless Amended

Advanced Medical Technology Association (ADVAMED)
Biocom California
California Hospital Association

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