



AI Will Continue to Improve Healthcare and Should Not Be Over-Regulated

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Artificial intelligence (AI) describes a wide variety of computational technological tools that can be applied to perform cognitive activities that are typically associated with humans, such as perception, reason, deep learning, adaptation, engagement, problem-solving, sensory understanding, and creativity. AI tools have

been applied to a range of fields and offer particular promise for aiding state government operations and healthcare.¹

In healthcare, AI efforts over the last seventy years include computer-aided programs by which physicians make diagnoses and scientists employ combinatorial chemistry and electronic lab notebooks. These

efforts have significantly accelerated in recent years due to the growing amounts of digital data and vastly enhanced computing powers. AI technologies can now analyze and report on truly big data and assist in a variety of fields, including clinical, diagnostic, rehabilitative, surgical, and predictive practices. A recent systematic review identifies 288 peer-reviewed articles published in leading health and technology journals on artificial intelligence applications to health.² For example, studies indicate that AI can diagnose skin malignancies, identify cardiac rhythm, interpret radiological scans and pathology slides, and diagnose a spectrum of ophthalmologic conditions on par with physicians in these areas.³

Despite AI's long history in improving healthcare, the federal government and state governments are attempting to initiate regulation that would significantly constrain the very innovation that AI can bring to doctors and patients. President Biden's Executive Order 14110 in October 2023 noted that "Responsible AI use has the potential to help solve urgent challenges while making our world more prosperous, productive, innovative, and secure. At the same time, irresponsible use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security."⁴ Biden's Executive Order requires that every federal agency, including those overseeing health, determine new rules and regulations around any AI technology, thereby exacerbating the current trend of passing on the rulemaking to unelected agency bureaucrats⁵. Critics have suggested that Biden's order reflects a "push

for greater federal algorithmic control" without Congressional oversight, which, in turn, risks bottling up "algorithmic innovations rather than helping to advance them."⁶

Around the country in the 2024 legislative session, 45 states, Puerto Rico, the Virgin Islands, and Washington, D.C. introduced AI bills, and 31 states, Puerto Rico, and the Virgin Islands adopted some legislation.⁷ For example, Delaware House Bill 333 (2024) creates the *Delaware Artificial Intelligence Commission* and tasks this commission "with making recommendations to the General Assembly and Department of Technology and Information on AI utilization and safety within the State of Delaware. The Commission shall additionally conduct an inventory of all Generative AI usage within Delaware's executive, legislative, and judicial agencies and identify high-risk areas for the implementation of Generative AI."

These big government regulations on AI at the federal and state levels are detrimental to healthcare for a number of reasons. First, many regulations are motivated by the misconception that AI will replace healthcare providers. Since the earliest applications and especially recently, AI has enhanced the work of doctors, nurses, and other healthcare providers, significantly reducing their bureaucratic workload. For example, an analysis of over 25,000 physicians found that physicians who spent more after-hours time charting were more likely to experience burnout,⁸ suggesting that AI innovations in electronic health records can help improve workloads.

Second, through these innovations in workload, AI has already demonstrated

the ability to make healthcare more efficient in cost and time. Nationwide healthcare spending has reached 17.3% of the U.S. Gross Domestic Product (GDP) and is on track to grow about 5.6% every year through 2032 to reach 20% of GDP.⁹ This is particularly important in Florida, which has the highest Medicare spending by beneficiary at \$13,652 in 2020.¹⁰ Following AI implementation, 44% of healthcare organizations report cost savings.¹¹ AI is a key solution to reduce these costs and financial burdens on consumers. Moreover, AI can lead to lower error rates, quicker diagnoses, tailored treatment options, and medical discoveries, all saving time and lives.¹²

Third, patients are open to AI. As noted by a recent James Madison Institute survey, “49% of Florida voters believe that AI will positively impact the healthcare system, while 23% fear the technology will harm healthcare.”¹³

Finally, despite many policies to augment the human capital to meet the ever-growing demand for healthcare, there is an insufficient supply of physicians, physician assistants, nurse practitioners, nurses, healthcare technicians, and medical support. This lack of supply can lead to missed diagnoses and premature deaths. AI supplements healthcare workers and can be a part of all trajectories in the healthcare journey.

AI's positive contributions should lead state policymakers to adopt policies, as outlined by Hederman and Kolas (2023). First, in contrast to the top-down approaches by federal and some state governments, state lawmakers should utilize ‘soft law’ to guide AI policy and enhance industry behavior and results, in lieu of ‘hard’ law interference. These policies have been effectively implemented by the FDA. There are already many soft law AI standards from the National Institute for Standards and Technology (NIST) and the International Organization of Standardization (IOS). States can also develop a “regulatory sandbox” for AI development in order to observe AI innovations, discover actual harms, and regulate accordingly. By aligning these sandboxes with federal sandboxes, state commissions can learn from the AI research and recommend changes. Finally, states can also harmonize AI-related regulations and data privacy laws across states, thereby reducing costs for data collectors and developers. These policies would align with soft laws in other states and might include a voluntary, multi-state compact around data privacy and AI regulations.

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ENDNOTES

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- 6 Adam Thierer, "The Biden Administration's Plan to Regulate AI without Waiting for Congress," *Medium*, May 4, 2023. Available Online:<https://medium.com/@AdamThierer/the-biden-administrations-plan-to-regulate-ai-without-waiting-for-congress-9a397298db86>; Adam Thierer, "Getting AI Innovation Culture Right." *R-Street Institute*, R-Street Policy Study No. 281, March 2023. Available Online: <https://www.rstreet.org/wp-content/uploads/2023/03/Final-Study-No.-281.pdf>.
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