March 8, 2024

State Rep. Giovanni Capriglione
Texas House of Representatives, District 98
P.O. Box 2910
Austin, TX 78768

Sent via email to: giovanni.capriglione@house.texas.gov

RE: Artificial Intelligence Regulation | AI Stakeholder Feedback

Dear Representative Capriglione:

On behalf of the Texas Medical Association (TMA) and our more than 57,000 physician and medical student members, we appreciate the opportunity to provide feedback related to your Request for Proposals/Information on Artificial Intelligence, Machine Learning, Data, and Privacy.

TMA is a private, voluntary non-profit association and is the largest state medical society in the nation. It was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, its vision is "improving the health of all Texans."

TMA understands the importance of proceeding carefully related to how artificial intelligence (AI) is developed, implemented, and used across the spectrum, specifically in health care.

TMA distinguishes between the terms "augmented intelligence" and "artificial intelligence." We agree with the industry view that artificial intelligence replaces human function and intelligence such as a self-driving car or a computer-generated chatbot on a website. Augmented intelligence provides prompts and information to support human decision-making rather than replace it. We believe that is an important distinction.

TMA adopted the following policy in 2022 supporting augmented rather than artificial intelligence:

> **Augmented Intelligence in Health Care**
>
> The Texas Medical Association supports the use of augmented intelligence (AI) when used appropriately to support physician decision-making, enhance patient care, and

improve public health. Augmented intelligence should also be used in ways that reduce physician burden and increase professional satisfaction. Sufficient safeguards should be in place to assign appropriate liability inherent in augmented intelligence to the software developers and not to those with no control over the software content and integrity, such as physicians and other users.

The Texas Medical Association adopts the following principles for augmented intelligence in health care:

1. Augmented Intelligence should be the preferred healthcare term over artificial intelligence as it should be used to augment care by providing information for consideration. Augmented intelligence, whether assistive or fully autonomous, is intended to co-exist with human decision-making and should not be used to replace physician reasoning and knowledge.
2. Physicians should not be mandated to use augmented intelligence.
3. Augmented intelligence must not replace or diminish the patient-physician relationship.
4. Algorithms developed to augment user intelligence must be designed for the benefit, safety, and privacy of the patient.
5. Sellers and distributors of augmented intelligence should disclose that it has met all legal and regulatory compliance with regulations such as, but not limited to, those of HIPAA, the U.S. Department of Health and Human Services, and the U.S. Food and Drug Administration.
6. Use of augmented intelligence, machine learning, and clinical decision support has inherent known risks. These risks should be recognized and shared among developers, distributors, and users with each entity owning responsibility for its respective role in the development, dissemination, and use of products used in clinical care.
7. Users should have clear guidelines for how and where to report any identified anomalies. Additionally, as with all technology, there should be a national database for reporting errors that holds developers accountable for correcting identified issues.
8. Before using augmented intelligence, physicians and all users should receive adequate training and have educational materials available for reference, especially in instances where the technology is not intuitive and there are periods of nonuse.
9. Physicians should inquire about whether the AI used is a "continuously learning system" versus a "locked system." A locked system is more appropriate for clinical care, although a hybrid system may be appropriate as long as the clinical output is based on locked training sets.
10. Algorithms and other information used to derive the information presented as augmented intelligence to physicians and other clinicians should:
    a. Be developed transparently in a way that is accessible, explainable, and understandable to clinicians and patients and details the benefits and limitations of the clinical decision support, and/or augmented intelligence;
    b. Have reproducible and explainable outputs;

c. Function in a way that promotes health equities while eliminating potential biases that exacerbate health disparities;
　　　d. Use best practices for user-centered design that allows for efficient and satisfactory use of the technology;
　　　e. Safeguard patient information by employing privacy and security standards that comply with HIPAA and state privacy regulations; and
　　　f. Have a feedback loop that allows users who identify potential safety hazards to easily report problems and malfunctions as well as opportunities to report methods for improvements.
11. Medical students need to learn about the opportunities and limitations of augmented intelligence as they are prepared for future medical practice.
12. Recognizing the rapid pace of change in augmented intelligence, it is important to continually assess and update TMA's principles at regular intervals.

TMA developed this policy recognizing that when augmented intelligence is used for patient care, transparency in how it is developed and used are of paramount importance. Augmented intelligence should not exacerbate health disparities or inequities and should be used to support public health and improve health outcomes. While innovation should not be stifled, it should be adopted with a risk-based approach and implemented and used with great caution and extensive testing and training. There may be risk levels associated with various AI uses that could range from low-risk algorithms used for shopping to high-risk algorithms when used for patient care. Algorithms should never be used discriminatorily to control health care utilization through care delays or denials. The outputs should always be explainable, understandable, and reproducible.

Augmented intelligence has shown the most promise in health care when used to reduce burden by helping to:

- Summarize journal articles,
- Assist with the preparation of patient education materials,
- Summarize a patient's medical record,
- Generate letters for prior authorizations or other patient benefits, and
- Prepare lectures and presentations.

In the near future, we expect that augmented intelligence could assist with:

- Capturing the essence of clinical visits to prepare notes and structured medical record entries (e.g., updating a medication, allergy, immunization, or problem list) for review by physicians and other clinicians, thereby reducing documentation burden;
- Analysis of images and videos of patients for identification of possible disease, to be confirmed by physicians;
- Training of physicians, residents, medical students, nurses, and other clinicians; and
- Aiding patients with capture of home-monitoring data and alerting a clinician when these data are outside expected normal ranges.

The current federal administration indicated an interest in advancing AI in an Oct. 30, 2023,

executive order. It is prudent to keep an eye on federal initiatives and regulations with a goal of not creating contradicting AI regulations.

Note that while we specify medical students need to learn about opportunities and limitations of augmented intelligence, TMA also supports education of patients regarding the promises and perils of both augmented intelligence and artificial intelligence.

TMA appreciates the opportunity to provide feedback to your request for information as you consider state legislation related to AI, machine learning, data, and privacy. TMA looks forward to continued conversations with you and your staff. Any questions may be directed to Matt Dowling, director of public affairs, by emailing matt.dowling@texmed.org or calling (512) 370-1360.

Sincerely,

Richard W. "Rick" Snyder, II, MD
President
Texas Medical Association