



2026 South Dakota Legislature

Senate Bill 169

Introduced by: **Senator Larson**

1 **An Act to place requirements on the use of artificial intelligence systems by health**
 2 **carriers in making determinations about the provision of health care services.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to chapter 58-17H:**

5 Any health carrier that makes determinations or provides advice about third-party
 6 payment for any health care services using an artificial intelligence, algorithm, or other
 7 software tool, for the purpose of utilization review and any health carrier that contracts
 8 with or otherwise works through an entity that uses an artificial intelligence, algorithm, or
 9 other software tool, for the purpose of utilization review, shall ensure the following:

10 (1) The artificial intelligence, algorithm, or other software tool bases its determination
 11 on the following information, as applicable:

12 (a) A patient's medical or other clinical history;

13 (b) Individual clinical circumstances, as presented by the requesting provider;
 14 and

15 (c) Other relevant clinical information contained in the patient's medical or
 16 other clinical record;

17 (2) The artificial intelligence, algorithm, or other software tool does not base its
 18 determination solely on a group dataset;

19 (3) The artificial intelligence, algorithm, or other software tool is applied equally for all
 20 patients, including in accordance with any applicable regulations and guidance
 21 issued by the United States Department of Health and Human Services; and

22 (4) The artificial intelligence, algorithm, or other software tool is configured and
 23 applied in a standard consistent manner for all subscriber groups and individuals
 24 covered by a health benefit plan, as defined in § 58-17-66, so that the resulting
 25 decisions are the same for all patients with similar clinical presentations and
 26 considerations.

1 **Section 2. That a NEW SECTION be added to chapter 58-17H:**

2 An artificial intelligence, algorithm, or other software tool used for the purpose of
3 utilization review pursuant to section 1 of this Act may not deny, delay, or modify a
4 determination to provide health care services. Any adverse determination may be made
5 only by a licensed physician or a licensed healthcare professional competent to evaluate
6 the specific clinical issues involved in the requested services, and only after reviewing and
7 considering the requesting provider's recommendation, the patient's medical or other
8 clinical history as applicable, and individual clinical circumstances.

9 **Section 3. That a NEW SECTION be added to chapter 58-17H:**

10 Any health carrier that makes determinations or provides advice about third-party
11 payment for any health care services using an artificial intelligence, algorithm, or other
12 software tool for the purpose of utilization review or that contracts with or otherwise works
13 through an entity that uses an artificial intelligence, algorithm, or other software tool for
14 the purpose of utilization review shall compile an annual report detailing how, during the
15 preceding fiscal year, the artificial intelligence, algorithm, or other software tool was used
16 in the utilization review process and the nature and degree of human review and oversight
17 that was used to affirm or negate any determinations.

18 The report must be forwarded to the Executive Board of the Legislative Research
19 Council on or before December first of each year.

20 **Section 4. That a NEW SECTION be added to chapter 58-17H:**

21 The Division of Insurance may, at any time, inspect a health carrier's automated
22 system to ensure that the health carrier's use of artificial intelligence, algorithms, or other
23 software tools is in compliance with sections 1 and 2 of this Act.

24 If the division determines that the automated system is not in compliance, the
25 division shall notify the attorney general who may direct the health carrier to cease and
26 desist from engaging in further noncompliant activities.