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Role of the States in the Future of AI Regulation

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A political battle erupted between the US federal government and states in the spring over whether states should regulate artificial intelligence (AI). The Trump administration has signaled that it will focus on promoting AI innovation, provoking questions about who will ensure safe, responsible use of AI.[1] State lawmakers have answered the call, raising the question: Should the states regulate AI?

Congressional Actions on State Regulation

Responding to lobbying from major technology companies, federal lawmakers attempted to pass a decade-long moratorium on AI regulation by the states. Industry leaders argued that a patchwork of state laws would stifle innovation, enabling Chinese companies to outpace their US counterparts. House staff members slipped the proposed ban into the One Big Beautiful Bill Act prior to the House vote in May 2025. The change went largely unnoticed until reaching the Senate, where members rejected it in a rare showing of unanimity.

This episode made 2 things clear. First, avoiding heterogeneous state regulation of AI is a priority for technology companies. Second, pushing states out of this space is tricky legally. Critics argued that the moratorium violated the anti-commandeering principle. According to the US Supreme Court, "Congress cannot issue direct orders to state legislatures," including prohibiting them from enacting legislation.[2] Insofar as the proposed ban "dictate[d] what a state legislature may and may not do,"[2] it arguably violated this principle. Although an amended version attempted to address this issue by making the moratorium a condition of receiving some federal funds, the Senate nonetheless struck it.

Unless Congress adopts its own legislative scheme for AI, which could preempt conflicting state laws, the individual states can fill the AI regulatory gap within their borders without federal interference. Although a patchwork of regulations for AI is far from ideal,[3,4] state experimentation has already proved useful in surfacing good ideas and flushing out unworkable or anemic ones.

State Initiatives

States have been vigorously crafting health care AI policies.[3] Our systematic search of the LegiScan database for state legislation on health AI from January 2023 to June 2025 (methods and data available at https://purl.stanford.edu/fn948ns4599) revealed 99 bills introduced (79 within the first 6 months of 2025) and 16 enacted.

The most popular regulation target by the states was insurers' use of AI in prior authorization and other medical necessity reviews (31 bills introduced and 4 enacted). Maryland, Massachusetts, New York, Tennessee, and Texas introduced AI legislation requiring that any algorithms used in reviews of patient medical use (1) base their determinations on relevant clinical information about the individual patient, (2) not supplant reviews by qualified medical professionals, and (3) not harm or discriminate against patients. More limited legislation in California, New York, and Texas primarily focused on discrimination, whereas other states went farther (eg, a Minnesota bill proposed to ban using AI in prior authorization altogether).

Many states simply sought to require insurers to tell enrollees when they use AI and how to appeal determinations. State insurance regulators also have expressed interest in using existing legal

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authority to go after unfair, deceptive, and discriminatory practices among state-regulated insurance plans, supplementing proposed AI legislation.

States were also quite active in proposing conditions on the use of AI by health professionals (21 bills introduced and 5 enacted). Around half of these bills targeted mental health professionals. Provisions requiring disclosure of AI use by practitioners to patients predominated; Texas now requires practitioners to tell patients when they use AI for diagnostic purposes and Utah requires disclosure when providers enable patients to interact with generative AI for medical advice. A few bills constrained how health professionals may use AI, including the following:

- Bills in Massachusetts, Rhode Island, and Texas proposed that mental health professionals obtain approval from their licensing board or another agency before using AI and remain involved in monitoring care.
- Bills adopted in Illinois and Nevada limit what AI tools may do without a mental health professional's involvement.
- An Illinois bill proposes to prohibit using AI and related technologies to substitute for a registered nurse's judgment and bars penalizing nurses for overriding algorithmic recommendations.
- North Carolina legislation proposes that health care practitioners and organizations obtain a chatbot license to use chatbots that interact with health information. The process would, among other things, require applicants to prove the chatbot's effectiveness through "peer-reviewed, controlled trials" and real-world validation studies along with imposing requirements on security, monitoring, and disclosure.

Our search of LegiScan suggested that state legislators have looked to their peers and other regulators for policy ideas. Legislators in 13 states introduced bills similar to Colorado's much-publicized SB 205, which is a broad regulation that imposes extensive monitoring and information disclosure requirements on AI deployers and developers to detect and mitigate algorithmic discrimination.[5] Proposals modeled on Colorado's approach remained pending in California, Illinois, Massachusetts, and New York as of July 2025. Frameworks such as the EU Artificial Intelligence Act and the Biden administration's Blueprint for an AI Bill of Rights also appear to have influenced some states.

State lawmakers may have modest AI expertise compared with AI regulators on national and transnational scales, making emulation of current frameworks and bills from other states appealing. The tendency to imitate underscores the importance of ensuring that early policy ideas are sound ones. Some state bills miss the mark. For example, banning all AI use in insurance review processes ignores the benefits of speeding up approvals; prohibiting use of AI that is not cleared by the US Food and Drug Administration (FDA) cuts deep because the FDA lacks authority to review many AI tools.

The principal focus of state legislation—insurer practices, discrimination, and disclosure—all fit neatly within a comfort zone for states to protect consumers against unfair and deceptive business practices. States have long leaned on transparency requirements to prevent consumer deception. The consumer protection orientation is readily, and in some cases usefully, extendable to the AI realm; however, it may divert attention from safety assurance, which is an area where states could regulate effectively.

Recommendations for States

Strikingly, few state bills have taken strong steps to minimize the risk of physical harm to patients because of AI use. To be sure, antidiscrimination provisions, patient notification requirements,[6] and insurance regulation can avoid harms. However, bills that require health care organizations to vet AI tools and monitor performance are rare. In the states with legislation that required governance or a risk management process, the requirement was usually only to prevent discrimination; only 8 bills described broader safety aspirations. Many of these bills thrust vetting responsibilities onto bodies that lack AI expertise (such as boards of professional licensing or departments of health).

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To promote AI safety, states should require health care organizations and insurers to adopt an AI governance process. This task is appropriate for states because of their traditional roles in the licensing of health care facilities, in regulating quality of care, and in regulating some insurance plans.[1] The AI governance processes should include the following:

- Confirm that an AI tool performs well in testing, including in subgroups.
- Ensure that the plan for integrating the AI tool into a workflow is practical, minimizes risks, and maximizes potential benefits.
- Decide whether patients should be told about the AI tool.
- Identify and mitigate potential ethical concerns.
- Confirm that the plan to monitor the AI tool is robust and adequately resourced.

A number of health systems provide useful models for AI governance,[7,8] but adoption is uneven[9] because the law does not require it. A 2025 Oklahoma bill— though unsuccessful—exemplifies how states could help. It would have required health care organizations to implement a quality assurance program for AI devices, establish an AI governance group to review and select AI tools, and conduct ongoing performance evaluations, including assessment of the effects on patient care.

Given the national reach of AI, state regulation is the second-best solution. A sensible federal scheme would better balance the goals of protecting innovation and promoting responsible use of AI.[1,4] But until Congress acts, state experimentation is a welcome intervention.

ARTICLE INFORMATION

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