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Growing Pains and Growth Spurts: AI in Healthcare

BY PHIL KIM AND MICHAEL SUTTON

Developments in artificial intelligence (AI) continue to transform typical day-to-day activities, and the healthcare industry is no exception. AI in healthcare is expected to drive and maximize efficiencies in operations by supplementing professionals, and such enhancements can take many different forms. For example, AI can identify abnormalities or areas of concern in radiology reports, which a provider can then use as a reference. Similarly, AI also has tremendous potential in the remote monitoring space and can address provider burnout by automating certain clerical and administrative tasks to allow providers to focus on patient care.

Despite AI's promise, growth spurts always come with growing pains. This column highlights some prominent areas of concern in this new and exciting space.

Supervision

AI has a tendency to produce incorrect results or experience "hallucinations" which are, in effect, AI-generated outputs containing false information. It is critical that providers carefully review and verify the results of AI-generated outputs rather than solely relying on them. The significance of this corroboration is based on the fact that providers are ultimately responsible for the resulting fallout, such as malpractice claims, professional misconduct actions, or recoupments and penalties for inappropriate billings.

Professional Activities

Whether AI use could be interpreted as practicing a licensed healthcare profession remains a novel issue, but industry participants must remain mindful of applicable professional licensing limitations. Because AI technology cannot be independently licensed to render professional services, industry stakeholders must exercise caution to ensure that the use of AI does not infringe on professional licensing limitations. Similarly, there is an increasing possibility that state corporate practice of medicine restrictions could be interpreted to prohibit AI from being used for clinical decision-making activities, perhaps even where a provider is involved in supervision.

Fraud and Abuse

AI has great capacity to support billing and claims review activities. For example, AI tools can be used to review claims before their submission to identify not only potential errors in coding but also missed opportunities to seek reimbursement. As healthcare billing providers adopt AI tools in their billing and claims review processes, they should ensure that appropriate measures are in place to avoid the submission of incorrect claims, the use of incorrect billing codes, or over-utilization. Simply put, the buck stops with the provider.

Data Ownership/Use

AI is data hungry. Ordinarily, AI is trained on large pools of data to refine the AI to more closely mimic human behavior and decision-making patterns. Healthcare industry stakeholders will need to ensure they have the appropriate rights and licenses to leverage data, including patient data, which is derived from third parties. Some AI tools used by certain healthcare industry participants may use the processed data to train the underlying AI technology even without the healthcare provider's awareness. It is imperative that parties review terms of use, privacy policies, and other contractual provisions carefully to assess how data may be utilized.

Privacy

As noted above, AI is trained on data, which can include medical, consumer, and other personal information protected by a range of authorities, including HIPAA and state privacy laws. Participants in the healthcare industry will need to ensure that any use of data in correlation with AI conforms to applicable privacy laws. This is critical, as such laws often prohibit the commercialization of information or otherwise prohibit the use of information for product development without patient consent, notice, or some measure of anonymization. In fact, parties using the latest AI tools may not realize that those tools are using medical information for training purposes, which may trail into non-compliant commercialization.

Discrimination

The use of AI may contribute to bias and discrimination, given that AI involves certain machine learning technologies that make rules and predictions based on the data on which it was trained. Issues may arise where the data used to train the AI is not representative of the actual population (e.g., data centered on a single race or gender that excludes or otherwise limits other races or genders), which could result in inaccurate or non-representative outputs. To address this concern, it is important that healthcare industry stakeholders using AI ensure through reliable sources that a representative dataset was used to train a given AI tool to avoid contributing to discriminatory impacts.

It is inevitable that as AI's growth continues, additional pain points will continue to surface. The healthcare industry must remain vigilant as it increasingly integrates AI into health and wellness arenas in the future. **HN**

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