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INNOVATION ECONOMY

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February 25, 2025

The Honorable Pam Beidle
Chair
Senate Finance Committee
Maryland Senate
3 East Miller Senate Office Building
11 Bladen Street, Annapolis, MD 21401

*RE: SB 987 (Lam) - Artificial Intelligence - Health Software and Health Insurance
Decision Making – Unfavorable*

Dear Chair Beidle and Members of the Committee,

On behalf of TechNet, I'm writing to share our comments on SB 987.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, Tallahassee, and Washington, D.C.

Artificial intelligence (AI), machine learning (ML), and the algorithms that often support artificial intelligence have generated policymaker interest. We acknowledge that as technological advances emerge, policymakers' understanding of how these technologies work is vital for responsible policymaking. Our member companies are committed to responsible AI development and use. TechNet works to ensure that the proper balance is struck between consumer protection and business innovation. As such, we're concerned about SB 987 as currently drafted.

We recognize and respect that the Maryland Health Care Commission (MHCC) has a role to play with respect to technology in care delivery. However, we are concerned about the bill's broad mandate that all AI health software, to be distributed or operated in the state, must register with the MHCC, or else face steep fines of up to \$10,000 per day.

SB 987 fails to define “artificial intelligence health software” and instead gives discretion to the MHCC to determine what software would need to be registered. Business success depends on certainty and our members are concerned that the lack of definition to comment on now will lead to uncertainty down the road as the MHCC potentially addresses how to define this software. Further, we believe that SB 987 gives wide latitude to the MHCC about what information should be collected for the registry, while at the same time lacking specifics on what might need to be included in this proposed registry, such as impact assessments, documentation, or testing. We are also concerned about the lack of protection for trade secrets, information that could create a security risk, or other confidential or proprietary information protected under state or federal law.

Additionally, the bill’s requirements could apply not only to AI applications in clinical care, but also healthcare AI applications used for things such as patient scheduling, patient billing, notetaking, patient appointment reminders, or other routine operational tasks. Practically speaking, this means that a single healthcare entity or individual provider could be required to register multiple AI applications annually.

Of note, the bill provides no exceptions for existing review and registration frameworks for AI in healthcare, such as those from the FDA, that qualify the use of technology in a clinical setting. Moreover, the bill provides no exception for important fraud detection use cases in clinical healthcare settings. Given the broad term “artificial intelligence health software”, a clear carveout for AI systems designed to mitigate fraud, found in other prominent AI regulations like the EU AI Act, is warranted.

We also note that the bill places restrictions on the use of AI by insurers. We are concerned that the scope of the prohibition is overly broad and harmful to consumers. As a preliminary matter, carriers do not make health care decisions. They make coverage decisions. Some of those decisions are contractually based in whether a health care service is covered or not. In other cases, coverage depends on an assessment of medical necessity or a similar analysis which under existing Maryland law requires that the analysis and decision be made by the appropriate medical professional. As drafted, SB 987 would potentially eliminate the use of AI even in simple rules-based automated systems. While it may be appropriate for the legislature to address the extent to which AI can appropriately play a role in connection with the performance of utilization review functions, the bill as currently drafted is overly broad.

In conclusion, TechNet is concerned that without changes, this bill’s broad registration framework, coupled with the potential for high fines, could hinder AI healthcare software and restrict innovation in Maryland. We hope to work with the sponsor on changes to narrow the bill’s application and set further parameters as to how the registration process would operate. Thank you for allowing TechNet the opportunity to comment and please don’t hesitate to reach out with any questions.

Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic