

# *New Frontier in Electronic Health Record Procurement*

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*What is AI and what does it do?*



AI is technology that enables computers and machines to simulate human learning, comprehension, problem solving, decision making, creativity and autonomy.

AI is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings.

AI refers to computer systems that can perform complex tasks normally done by human-reasoning, decision-making, etc.



**AI processes  
massive  
amounts of  
data, predicts  
trends and  
automates  
tasks**

## *Reasons AI use is attractive to the health care industry*

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- Streamlines operations
- Improves decision making
- Improves cost efficiency
- Enhances patient experience

## *AI use is integrated into care*

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Mental  
Health  
Treatments

ER & Surgery

Imaging

Diagnostics

Drug  
Development

Apps

Info Systems

Virtual  
Assistants

Medical  
Research

Clinical-grade  
Wearables

# Key AI applications in healthcare



Comprehensive  
image analysis



Shorter  
diagnostics times



Fewer errors  
and oversights



Detailed treatment  
recommendations



Personalized  
treatment plans



Enhanced  
patient support



Improved patient  
interactions



Accurate patient  
records and billing



Advanced fraud  
detection



Secure patient  
data protection

- Virtual assistant access 24/7
- Voice note assistance
- Automated EHR processing and claims
- Prior authorization AI bots
- Personalized care plans
- Patient monitoring
- Medication reminders
- Automated appointment scheduling

- Streamlines operations
  - Virtual scribe reduces repetitive charting
  - Schedule optimization
  - Minimizes coding errors
- Remote monitoring
  - Detects early warning signs
- Protects provider well-being and enhances patient experience

- Data quality and accessibility issues
- Algorithmic bias and fairness
- Privacy and data security
- HIPAA and other regulatory compliance
- Lack of technical experience and skills gap
- Integration with existing workflows
- Patient acceptance and trust
- Implementation costs

## AMA calls for regulatory crackdown on chatbots, wellness AI

By Mario Aguilar | April 23, 2026

AMA CEO John Whyte MD urged lawmakers to pursue safeguards around the use of chatbots in mental health care. He urges Congress to direct the Food and Drug Administration to clarify its stance on what kinds of health AIs count as general wellness products versus medical devices. More specifically, AMA wants to close the loophole that allows companies to dodge regulators by claiming their product is not intended for medical uses.

The AMA's recommendations include requiring chatbots to clearly disclose that users are interacting with AI, prohibiting them from presenting themselves as licensed clinicians, banning them from diagnosing or treating mental health conditions without regulatory due diligence, clarifying when AI solutions qualify as medical devices, and mandating strict data protection standards.



# Privacy Regulations and Guidance

## *Challenges and considerations*

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- Regulatory compliance is evolving
  - Federal government
    - January 2025 Executive Order 14179 revoked certain existing AI policies and directives that “act as barriers” to AI innovation
    - HIPAA Privacy Rule
    - 42 C.F.R. Part 2
    - Health Breach Notification Rule
    - Children’s Online Privacy and Protection Rule



U.S. Department of  
**Health and Human Services**

Enhancing the health and well-being of all Americans

- Issued Notice of Proposed Rulemaking in January 2025
- No definitive rules on the use of AI and machine learning
- Clarifies that ePHI in AI training data, prediction models, and algorithm data is protected by HIPAA
- Must include risks of AI tools and uses in risk analysis and risk management activities

## *Challenges and considerations*

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### State specific laws and regulations

- Virginia Consumer Data Protection Act
- California's AI Transparency Act
- California Consumer Privacy Act

## *Challenges of applying health info privacy laws to AI tools*

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- Define truly “necessary” data
- Is deidentified information feasible?
  - HIPAA deidentification does not necessarily constitute deidentification under the California Consumer Privacy Act or GDPR
- Activity should qualify as treatment, payment or operation (TPO) purpose only or authorization needed

## *Challenges of applying health info privacy laws to AI tools*

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- Is a BAA sufficient?
- Clause banning reidentification?
  - Exclusions may exist for quality, safety, effectiveness or research purposes
- Is notice, consent or opt-out legally required or even advisable?

## *Liability with respect to claims by patients*

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- Dinerstein v. Google, LLC
  - Patient brought class action against University of Chicago Medical Center and Google for breach of contract and breach of duty of confidentiality
- Some states recognize common law tort for breach of duty of confidentiality by provider

## *Vendor selection considerations when AI is involved*

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- Ethics and reputation
- HIPAA certified vendor with a HIPAA compliance plan
- Provides safeguards



# **Contract Considerations**

## *Address nature of the services*

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- Familiarity with the technology
  - General disclosure obligation
  - Customer's right to information upon request
- Audits and automated controls
  - Vendor complies with all applicable regulatory and contractual requirements
  - Who retains strategic control over the data

## *Service and service standards*

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- Measurable indicators
- Consequences for failures
- Issue notification
  - Negotiate definition of “issue”
- Support, maintenance and training

- Indemnification
  - Address IP infringement, data and confidentiality breaches
  - Cyber liability insurance (covers defense and legal expenses)
- Limitation of liability
- Insurance
- IP ownership

## *Data protection and management*

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- Deidentify PHI

- With laws and regulations
  - Global
  - Federal
  - State specific

## *Representations and warranties*

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- Should be AI specific
- Privacy and security
- No infringement on patent claims
- Performance

## *Sample wording*

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... [F]or avoidance of doubt, the Parties to this Agreement agree the Protected Health Information shared by Customer with Vendor A shall not become Vendor A intellectual property and Customer shall not grant Vendor A a license to use Customer Data or Protected Health Information for any purpose other than to fulfill its obligations to Customer under this Agreement, and specifically does not grant Vendor A a license to use Customer Data or Protected Health Information for purposes of machines learning and autonomous decision making by Vendor A's artificial intelligence software and algorithms.

## *Sample wording*

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... Customer grants a non-exclusive, royalty free worldwide terms-based license to use any data (including personally identifiable information) provided by Customer during the Term as mentioned in the Order Form for the purposes of machine learning and autonomous decision making by the Software.



**Next Steps**

- Understand privacy and data protection legal framework
- Redraft policies and statements to include
  - Use and purpose of AI systems
  - The logic behind AI-powered automated decisions
  - User risks
  - By employees
- Organizational measures
  - Create an AI governance committee



# Thank You

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