

Impact of **Artificial Intelligence** on Occupational and Employee Health

As the use of Artificial Intelligence (AI) systems becomes increasingly commonplace, employers that manage workforce health and wellness are eager to implement AI to improve efficiency, streamline operations, protect workers and provide more resources to occupational health providers. However, the use of AI is not without risk, and careful consideration and diligence must be undertaken prior to implementation.

This resource document outlines some of the many ways AI is being utilized in occupational and employee health and, more importantly, the governance structure that corporations and occupational health providers should have in place prior to implementing AI. The AI governance structure should be a formal policy that is used on a daily basis with buy-in from key decision makers and stakeholders. Suggested components of the AI governance structure are included below, but should be tailored to fit each organization — evaluating their businesses from a commercial perspective, risk profile, and intended use of AI to provide occupational and employee health services. Although the legal landscape and AI capabilities are constantly changing, a helpful summary of AI resources is also included, which should be reviewed prior to the creation and implementation of any AI governance structure.



Potential use cases for AI in occupational and employee health

AI is a powerful, rapidly evolving technology that is positively disrupting the practice of medicine. A partial list of potential use cases for AI in occupational health includes:

- Record, transcribe and transform conversations between clinicians and patients (employees)
- Streamline encounter documentation, including generation of SOAP notes and population of visit templates
- Rapidly generate referral letters, work status reports and visit summaries
- Summarize dense medical records to create pre-visit review notes
- Ingest and transform paper documents, extracting discrete data for medical record population
- Simplify interfaces with medical devices, labs and other data sources
- Build and generate reports
- Automate the development of medical surveillance panels
- Harness clinical decision support functionality
- Assess worker health risks
- Aid in diagnosing chronic and acute conditions
- Utilize for evaluating return to work
- Assess workplace injury risks and prevention
- Identify exposure risks, unsafe acts and unsafe conditions
- Gather data to detect trends and patterns to promote healthier and safer workplace environment
- Reduce clinician burnout

Key components of AI governance program for occupational and employee health

General governance structure

- Statement on use, purpose and intent of AI systems
- Establishment of an AI governance committee that includes a multi-disciplinary team including legal, compliance, IT, HR, medical, environmental health and safety and security and privacy professionals
- Confidential reporting structure for concerns related to AI use or instances of AI functioning improperly
- Communication of AI governance program to all employees
- Mandatory AI training on AI governance program and employee acknowledgement
- Disciplinary policy for violation of AI governance program
- Annual review and updates of AI governance program

Legal framework

- Identification of governing governmental agencies
- Legal framework of applicable laws and regulations
- Consents and notices needed for employees for utilization of AI

Rules and ethics governing use of AI

- Rules for ethical, fair and safe use of AI and health data
- List of prohibited uses of AI
- Protections to guard against bias, health inequities and discrimination
- Safeguards and testing to ensure quality of data input and output by AI

Privacy and security

- Processing of employee health data (protected health information (PHI) /personally identifiable information (PII)) by AI
- Privacy and security framework for processing of PHI and PII by AI

Intellectual property and trade secrets

- Guidelines for restricting or prohibiting input of proprietary information including trade secrets into AI tools to prevent accidental public disclosure
- Protocols for securing intellectual property rights that protect innovative AI algorithms, AI models and AI processing methods created internally
- Guidelines for the acquisition, generation, and use of data and data sets, including artificially created data and data sets, for training and testing of AI or machine learning models and tools

Third party vendors

- AI due diligence checklist for AI vendors
- Relationship management for AI vendors
- Approval policy for use of AI tools and list of approved AI tools
- Business associate agreements and data processing agreements with AI vendors

Occupational and employee health issues

- Practitioners must use independent medical judgment based on individual circumstances
- AI is not a replacement for prevention, diagnosis, or treatment of disease or condition
- Practitioners must verify all input and output of all data from AI
- Practitioners must verify all studies, research, or medical journals referred to by AI
- Risk mitigation plan for patient care decision support tools that utilize AI if factors of race, color, national origin, sex, age or disability are utilized

- Determination of if patient notices or consents must be utilized when using AI
- AI is not to be used for clinical research unless approved by an institutional review board
- Third-party payor requirements should be reviewed for compliance when utilizing AI
- AI should not be used as the basis for decisions affecting the terms of work-related relationships, such as the promotion or termination of work-related contracts or employment agreements

Fundamental questions to determine if the AI governance program is effective based on the U.S. Department of Justice Evaluation of Corporate Compliance programs

- Is the AI governance program well designed?
- Is the AI governance program being applied in good faith? In other words, is the program adequately resourced and empowered to function effectively?
- Does the AI governance program work in practice?

Resources for use of AI in occupational and employee health

Joint agency statements

- [Joint Statement on Enforcement of Civil Rights, Fair Competition, Consumer Protection, and Equal Opportunity Laws in Automated Systems](#)
- [U.S. Cybersecurity and Infrastructure Agency \(CISA\) and UK National Cyber Security Centre \(NCSC\) Guidelines for Secure AI System Development](#)

U.S. Department of Justice

- [U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs](#)
- [DOJ Civil Rights Division: Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring](#)

U.S. Equal Employment Opportunity Commission

- [EEOC: Initiative on Artificial Intelligence and Algorithmic Fairness](#)

U.S. Federal Trade Commission

- [FTC: AI Companies: Uphold Your Privacy and Confidentiality Commitment](#)

U.S. Food and Drug Administration

- [Software as a Medical Service \(SaMD\)](#)
- [Artificial Intelligence and Machine Learning in Software as a Medical Device](#)
- [Clinical Decision Support Software](#)

U.S. Health and Human Services

- OCR: [42 C.F.R. 92.210, Nondiscrimination in the use of patient care decision support tools](#)
- ONC: [Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing, 89 Fed. Reg. 1192 \(Jan. 9, 2024\)](#)
- ASTP: [Clinical Decision Support](#)

U.S. Department of Commerce National Institute of Standards and Technology

- [AI Risk Management Framework](#)

U.S. Patent and Trademark Office

- [Artificial Intelligence Initiative](#)

Example state laws:

- California:
 - [California AI Transparency Act](#)
 - [Artificial Intelligence in Health Care Services](#)
- Maryland: [Md. Code Ann., Labor & Employment § 3-717](#)
- Illinois: [Artificial Intelligence Video Interview Act \[820 ILCS 42/1\]](#)
- New York: [New York City Automated Employment Decision Tools \[Local Law No. 144\]](#)

Example international laws:

- [EU General Data Protection Regulation](#)
- [EU Artificial Intelligence Act](#)

Scholarly articles and other resources

- [AMA: Augmented Intelligence Development, Deployment, and Use in Health Care](#)
- [Artificial Intelligence and Occupational Health and Safety, Benefits and Drawbacks](#)
- [Occupational Safety and Health Equity Impacts of Artificial Intelligence: A Scoping Review](#)



For more information about the use of AI within occupational and employee health or AI Governance Frameworks for occupational health programs please contact:

Stephanie Eckerle — seckerle@kdlegal.com / 317-238-6373 (direct dial)

Jeff Donnell — jdonnell@enterprisehealth.com / 317-313-9544 (direct dial)

For educational use only. Does not constitute legal advice.