

Can Insurance Companies Use My AI Health Data? Navigating the Legal and Ethical Maze

Rasit Dinc

Rasit Dinc Digital Health & AI Research

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Abstract

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The integration of Artificial Intelligence (AI) into healthcare has ushered in an era of unprecedented diagnostic and treatment capabilities. From wearable devices to sophisticated algorithms, a new category of **AI-generated health data** is rapidly accumulating. This data, which includes everything from predictive risk scores to algorithmically-derived insights, is immensely valuable. The question, however, is not just about its value, but about its ownership and control: **Can insurance companies legally and ethically use my AI health data?**

The short answer is complex, residing at the intersection of technology, established privacy laws, and significant ethical debate.

The Regulatory Landscape: HIPAA, GDPR, and the Gaps

In the United States, the primary legal shield for health information is the **Health Insurance Portability and Accountability Act (HIPAA)**. HIPAA protects **Protected Health Information (PHI)**, which is generally data created or received by a healthcare provider, health plan, or healthcare clearinghouse. When AI is used by a HIPAA-covered entity, the data it processes is typically protected. However, a significant gap exists for data collected outside this traditional healthcare ecosystem—such as from consumer-grade fitness trackers—which may not be covered by HIPAA.

The challenge intensifies when considering AI's role. AI models are often trained on vast, sometimes de-identified, datasets. While de-identification is a common compliance strategy, the re-identification risk is a growing concern. Furthermore, the *output* of an AI—a risk score or a prediction—may not be explicitly classified as PHI, creating a regulatory gray area.

Across the Atlantic, the European Union's **General Data Protection Regulation (GDPR)** offers a broader and more stringent framework. GDPR protects all **personal data**, including health data, and requires explicit

consent for processing, especially for "special categories" of data like health information. Crucially, GDPR includes provisions related to automated individual decision-making, giving individuals the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects. This directly challenges an insurer's ability to use an AI-generated risk profile to deny coverage or adjust premiums without human review and a clear explanation.

The Ethical Imperative: Bias, Fairness, and Accountability

Beyond the letter of the law, the use of AI health data by insurers raises profound ethical questions centered on fairness and equity.

Algorithmic Bias: AI models are only as unbiased as the data they are trained on. If training data disproportionately represents certain demographics, the resulting AI may generate biased risk predictions, potentially leading to discriminatory outcomes in underwriting and pricing. For instance, an AI trained primarily on data from one ethnic group may inaccurately assess the risk for another, inadvertently perpetuating health disparities [^1]. The ethical imperative is to ensure AI systems are designed and tested to avoid producing discriminatory outcomes, a principle increasingly codified in state-level regulations. **Transparency and Explainability:** The "black box" nature of many complex AI models makes it difficult to understand *why* a specific decision was made. If an insurer uses an AI-generated risk score to deny a claim or increase a premium, the consumer has a right to a clear, understandable explanation—a concept known as **explainable AI (XAI)**. Without XAI, due process concerns arise, as the decision is made by an opaque algorithm rather than a human analyst [^2]. **Accountability:** When an AI system makes a mistake that results in financial harm to a policyholder, who is accountable? Is it the insurer, the AI developer, or the data provider? Establishing a clear chain of responsibility is a critical, yet unresolved, challenge in the AI insurance landscape [^3].

The Future of AI Health Data and Insurance

The trend is clear: AI will become an increasingly integral part of the insurance industry, moving beyond simple claims processing to sophisticated risk assessment. Regulatory bodies are struggling to keep pace, leading to a patchwork of state and international laws. The focus is shifting from protecting data to regulating the *decisions* made by AI systems.

For professionals and the general public interested in digital health and AI, understanding these nuances is vital. The battle for control over AI health data is a battle for autonomy and fairness in the digital age.

For more in-depth analysis on the intersection of AI, data privacy, and the future of health technology, the resources at [www.rasitdinc.com] (<https://www.rasitdinc.com>) provide expert commentary and cutting-edge insights.

References

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