# Impact Health Policy Roundup: Artificial Intelligence

## I.       Overview

Over the past several weeks, AI policy discussions have gained significant momentum in both the Senate and the House of Representatives, indicating growing bipartisan interest in regulating and shaping AI technology. This analysis provides a thorough examination of recent congressional activities including committee-specific actions, legislative frameworks, and stakeholder perspectives, as well as actions by the Biden-Harris Administration. Furthermore, it delves into the potential impact of these developments on the future of AI policy and regulation, shedding light on key issues, debates, and emerging priorities in the field of AI within the United States.

## II.       Congressional Activity

Recent Congressional hearings indicate members are still trying to understand how AI is used, particularly across federal agencies. Various AI policy frameworks and legislation proposals are emerging, with common themes including auditing of AI, requirements for data transparency and safety standards, improving federal use, transparency, and education regarding AI technologies. There are also efforts to address deceptive AI in political ads. Some frameworks differ drastically in their approach to AI regulation, either proposing top-down licensing and oversight or implementing a flexible sector-by-sector approach. While no single Committee has jurisdiction over AI, each Committee can influence AI-related policies and regulations that impact their respective oversight areas. Below we highlight recent activity by Committees and members and provide an outlook on where this activity will lead.

### Senate

#### 1.  *Homeland Security and Governmental Affairs Committee*

The Senate Homeland Security and Governmental Affairs Committee oversees government agencies and their operations, including those related to technology and data. AI has become increasingly important in government operations, from improving efficiency in public services to handling large datasets for decision-making. As such, the committee plays a key role in ensuring that AI is used responsibly and effectively in government. The committee's focus, as indicated by its most recent hearing on AI, is on governing AI through federal procurement and acquisitions.

The hearing underscored the importance of updating federal procurement and acquisition policies to ensure the responsible and effective adoption of AI systems within the government. Committee Chairman

Gary Peters (D-MI) emphasized the need for federal agencies to be prepared to address issues such as privacy concerns, data usage, and bias mitigation when purchasing and deploying AI tools. Sen. Peters highlighted the significance of ongoing oversight throughout the AI procurement process, including evaluating AI systems to ensure the security and protection of data used for testing. Peters also suggested the government should leverage its acquisition and procurement processes to set transparent and responsible standards that could serve as a model for the private sector.

The hearing discussed various legislative initiatives aimed at supporting American development of AI. Senator Peters has introduced bipartisan legislation to designate Chief AI Officers at federal agencies, create an AI training program for federal supervisors and management officials, and provide training for federal employees responsible for purchasing and managing AI technologies. These initiatives aim to coordinate responsible AI adoption, enhance understanding of AI capabilities and risks, and ensure taxpayer money is spent effectively on AI technologies. Specifically, Peters has advanced the following bipartisan bills through the Committee:

- **AI LEAD Act (S.2293)**: The bill would establish a Chief AI Officer at every federal agency and create an interagency council;
- **AI Leadership Training Act (S.1564)**: The bill would require the Director of the Office of Personnel Management (OPM) to provide and regularly update an AI training program for federal government supervisors and management officials; and
- **Transparent Automated Governance Act (S.1865)**: The bill requires the Director of Office of Management and Budget to issue guidance to agencies to implement transparency practices relating to the use of AI and other automated systems, and would also require agencies to notify individuals when a critical decision is made about them using an augmented decision process.

## 2. Judiciary Committee

In addition to its critical role in providing oversight of the Department of Justice and the agencies under the Department's jurisdiction, the committee is responsible for overseeing various legal and justice-related matters. The Senate Judiciary Subcommittee on Privacy, Technology and the Law has jurisdiction over legal issues pertaining to technology and social media platforms, including online privacy and civil rights as well as the impacts of new or emerging technologies such as AI, and has been actively involved in exploring AI regulation this year. Ahead of the Subcommittee's third hearing on the oversight of AI, Subcommittee Chair Richard Blumenthal (D-CT) and Ranking Member Josh Hawley (R-MO) unveiled their legislative framework for AI regulation. The bipartisan framework proposes the creation of an independent oversight body, denies Section 230 protection to AI which would allow legal liability for AI-related harms, mandates disclosure when users interact with AI models or deepfakes, and requires implementing safeguards for consumers and children.

Microsoft President Brad Smith praised the AI regulatory framework, emphasizing the importance of transparency and due diligence in AI development and deployment, and the need for a risk-based approach to regulate AI. Testifying at the Subcommittee's latest oversight hearing, Smith suggested that the National Institute of Standards and Technology (NIST) AI Risk Management Framework (RMF) could enhance cybersecurity in procurement. He proposed that federal procurement rules require contractors to self-attest their compliance with AI RMF standards, especially for critical decision systems. Smith also called for licensing cloud infrastructure providers to ensure responsible and secure AI model development and deployment. He emphasized the need for cybersecurity, physical security, and safety architecture standards in obtaining such licenses.

### 3. Commerce, Science, and Transportation Committee

The Senate Commerce, Science, and Transportation Committee holds authority over the NIST, which plays a pivotal role in shaping AI policy. NIST's AI RMF, which has been well-received by businesses and various stakeholders, might serve as a basis for legislative proposals within the Commerce Committee. Additionally, the committee has the potential to formalize elements of a forthcoming executive order on AI from the Biden administration (discussed later), which may establish requirements for federal agencies.

Sen. John Hickenlooper (D-CO), Chair of the Subcommittee on Consumer Protection, Product Safety and Data Security, discussed enhancing transparency in AI products and services during a recent Subcommittee on Consumer Protection, Product Safety and Data Security hearing. Hickenlooper emphasized the need for Congress to set "reasonable rules" to support innovation while addressing AI-related risks, including cyberattacks and fraud. Subcommittee Ranking Member Marsha Blackburn (R-TN) called for federal privacy legislation and stressed the importance of the U.S. leading in AI amid global competition. Witnesses included industry and academic experts who emphasized the necessity of a strong national AI law, focusing on high-risk AI uses and requiring companies to conduct impact assessments and publicly certify their adherence to requirements. They urged Congress not to wait and highlighted the importance of building trust and addressing risks while promoting innovation in AI. Full Committee Chair Maria Cantwell (D-WA) announced plans to introduce legislation to combat "deepfakes," which involve AI-powered manipulations of audio and visuals to spread disinformation or carry out scams. While specific details of the bill have not been released, Cantwell's move reflects growing concerns about the national security and consumer risks posed by deepfake technology.

Sen. Hickenlooper also emphasized the importance of regulation in building trust in AI technology at the Chamber of Commerce's Global AI Forum, where the Chamber announced a new campaign to educate policymakers and key decisionmakers on the benefits and uses of AI, and advocate for a responsible

federal policy framework. However, the Senator cautioned against over-regulation, stating that it could stifle innovation and hinder the U.S. from maintaining its global leadership in AI.

## 4. Intelligence Committee

Senate Intelligence Chairman Mark Warner (D-VA) expressed his security concerns regarding AI during a public hearing, focusing on election disruptions and disruptions in public markets. Sen. Warner noted that the Committee oversees agencies that have been working with language models and advanced AI systems long before the recent public interest in AI. Ranking Member Marco Rubio (R-FL) raised concerns about the feasibility of regulating AI given its transnational nature. The hearing explored the national security implications of AI, highlighting issues such as foreign influence through AI-generated content and the challenges of navigating a complex media environment. Witnesses emphasized the need for a balanced approach to AI regulation, acknowledging both its benefits and potential threats.

Sen. Warner has been actively engaged in addressing the challenges and opportunities posed by rapidly advancing AI technology. Recent actions include letters to President Biden urging the Administration to bolster the federal government's tech workforce and to keep working with AI companies to expand the scope of voluntary commitments.

## 5. Health, Education, Labor, and Pensions Committee

The Senate Health, Education, Labor, and Pensions (HELP) Committee has jurisdiction over AI primarily in the context of how AI intersects with health, education, labor, and workforce-related matters. For example, the HELP Committee can oversee how AI is used in health care, including AI applications in diagnosis, treatment, patient data management, and drug discovery. It may consider regulations related to the safe and ethical use of AI in health care, as well as how to protect patient privacy. Regarding education, the committee can examine the role of AI in educational technology (EdTech), online learning platforms, and personalized learning. The committee can also assess the impact of AI on the labor market, including discussions on automation.

As the Senate begins to consider legislation to address AI, Ranking Member Bill Cassidy (R-LA), released a white paper emphasizing that a one-size-fits-all approach to regulating AI will not work and will stifle innovation. Sen. Cassidy asked for stakeholder feedback on potential AI legislation and regulation across the health care, education, and workforce sectors (Impact Health Policy Summary) by September 22. Sen. Cassidy also issued a request for information (RFI) on improving health data privacy protections, including updates to the Health Insurance Portability and Accountability Act (HIPAA), and the AI privacy challenges

and benefits that the use of AI pose for entities that collect or disclose health care data (Impact Health Policy Summary). Comments on that RFI are due September 28.

## 6. SAFE AI Framework and AI Working Group

Senate Majority Leader Chuck Schumer (D-NY) announced in June a comprehensive blueprint for AI regulation, the "Securities, Accountability, Foundations, Explain and Innovation Framework" (SAFE Innovation Framework). The Framework builds on the White House's Blueprint for an AI Bill of Rights and is informed by the European Union AI Act, but Schumer is committed to developing a bipartisan "American proposal" for comprehensive legislation on AI. The goal is to create an omnibus legislative package on AI in a relatively short period of time through a series of bipartisan AI Insight Forums, which will include discussions with AI experts to be hosted by an AI Working Group beginning in September covering topics such as innovation, IP, national security, and privacy. The bipartisan AI working group includes Sens. Schumer, Mike Rounds (R-SD), Martin Heinrich (D-NM), and Tedd Young (R-IN).

Ahead of the first insight forum Sen. Michael Bennet (D-CO) outlined key elements he believes should be part of a robust AI regulatory framework in a letter to Senate Majority Leader Charles Schumer. Bennet emphasized the need for a value-based framework, public risk assessments, content indicators, AI audits, and data transparency as critical components of AI legislation.

The first Senate AI Insight Forum was held on September 13 and hosted tech leaders, and representatives from labor and civil rights advocacy groups in a closed-door gathering to serve as the foundation of Schumer's efforts to craft bipartisan legislation. Following the forum, Schumer recognized that the process might not move as fast as he originally envisioned, although he emphasized the need for regulation ahead of the 2024 general election, particularly around deep fakes, which might move quicker than other pieces. During the forum, some called for Congress to create a new AI agency, while others expressed interest in leveraging existing authorities, like NIST, to regulate the emerging technology.

There were bipartisan criticisms regarding the forum. Sen. Elizabeth Warren (D-MA) and Sen. Hawley questioned the closed-door approach and asked for increased transparency, while Senate Minority Whip John Thune (R-SD) expressed frustration with the forum's format, which did not allow for Senators to ask questions. Sen. Blumenthal expressed support for the forum and said Schumer is "supportive" of his framework introduced with Sen. Hawley, noting that both efforts "are very much in tandem and closely aligned." Sen. Bennet also stressed the importance of regular public risk assessments, transparency, disclosure obligations, and third-party audits for higher-risk AI systems.

Sen. Young offered a glimpse at what the working group's process might look like at the Chamber of Commerce's Global AI Forum, noting that the remaining insight forums scheduled for later this year will

precede a regular order legislative process through the committees. Sen. Young advocated for a cautious, incremental approach to AI policy through discrete pieces of legislation, rather than a comprehensive bill. He also opposed the creation of a new agency focused solely on technology regulation and suggested concentrating on AI's use while leveraging existing resources.

## House

### 1. Oversight and Accountability Committee

The House Oversight cyber and information technology panel held a hearing to discuss federal agency adoption of AI. Key officials, including Arati Prabhakar from the White House Office of Science and Technology Policy, Craig Martell from the Department of Defense, and Eric Hysen from the Department of Homeland Security, testified about the importance of AI and its role in government responsibilities, national security, and public well-being. The hearing highlighted the need for AI regulation and oversight, transparency, and responsible usage to address potential risks and societal consequences. Some republican members of the subcommittee criticized the Biden Administration for delays in complying with laws and regulations designed to facilitate the appropriate use of AI by federal agencies, in particular a two-year delay from the Office of Management and Budget to issue guidance for federal agencies on the acquisition and use of AI. Members of the Subcommittee also raised concerns about criminals potentially using AI for nefarious purposes, and a commitment was made to work towards transparent use cases and harnessing AI to combat crimes. Members from both parties expressed their commitment to scrutinizing AI adoption in federal agencies and developing legislation to ensure safe, transparent, and effective AI use within the government.

### 2. Energy and Commerce Committee

The House Energy and Commerce Committee has been primarily focused on other pressing issues such as transparency, pharmacy benefit managers, and addressing drug shortages in recent hearings. However, earlier this summer, the Committee expressed concerns about the use of AI in prior authorizations. Despite the absence of action on a national privacy legislation, this could potentially signal the areas of interest the Committee may prioritize in the coming year.

Notably, the Committee advanced the AI Accountability Act (H.R. 3369). This bipartisan legislation introduced by Rep. Josh Harde (D-CA) and sponsored by Rep. Jay Obernolte (R-CA) directs the National Telecommunications and Information Administration (NTIA) to undertake a study examining accountability measures for artificial intelligence systems. The study's primary objectives include the reduction of cybersecurity risks and the clarification of the term "trustworthy" concerning AI. To gather insights for the study, NTIA will conduct public meetings and is required to finalize the report within 18

months of the bill's enactment. The bill's overarching goal is to enhance the trustworthiness and transparency of AI systems utilized by individuals, communities, and businesses, with a specific focus on risk reduction and increased accountability.

## Legislative Outlook

The recent flurry of congressional activity surrounding AI and emerging technology has illuminated a complex landscape of differing opinions and priorities. In the wake of the first Senate AI Insight Forum, senators find themselves embroiled in a contentious debate over whether a new regulatory agency should be established to address AI and emerging tech challenges. While Sen. Young advocated for a piecemeal approach with discrete legislation pieces, dismissing the idea of a new agency, Sen. Warner shared his reservations, citing limited support for such an agency in the House. However, other senators, including Sens. Blumenthal, Hawley, Michael Bennet (D-CO), Peter Welch (D-VT), Warren, and Lindsey Graham (R-SC), are championing bills aimed at creating a new regulatory body to oversee advanced technology and set standards.

Sen. Amy Klobuchar (D-MN) and Sen. Schumer have voiced concerns regarding protecting federal elections from deceptive AI and Sen. Klobuchar is pushing for her bipartisan bill to move quickly as part of broader, must-pass legislation. The bill (S.2770), co-sponsored by Sen. Hawley, seeks to ban the use of fraudulent AI-generated content in political ads to ensure transparency and prevent voter deception. A similar bill (H.R.5586) has been introduced in the House by Rep. Yvette Clarke (D-NY), however it lacks Republican support. Sens. Ron Wyden (D-OR) and Cory Booker (D-NJ) also reintroduced with Rep. Clarke the Algorithmic Accountability Act of 2023 (S.2892, H.R.5628), which would require that companies conduct impact assessments for effectiveness, bias, and other factors, when using AI to make critical decisions, and requires reporting certain impact-assessment documentation to the Federal Trade Commission (FTC). The bills have no Republican support in either chamber. Democrats might need to compromise on what to include in an end-of-year package, which seems the most likely outcome, but even then, given current House proceedings it is uncertain how likely any of these provisions are to advance through Congress.

As the House grapples with budget and impeachment matters, the Senate has assumed a leadership role in AI policy. Most recently, Rep. Gregory Murphy (R-NC) said at a Connected Health Initiative AI discussion that federal agencies should not "take over" AI and machine learning technologies and that these should be initially controlled at the state level, which might tee up additional conversations with those in the Senate seeking a comprehensive federal approach. Majority Leader Schumer is planning additional forums and committee actions dedicated to AI. However, it is unlikely comprehensive AI legislation will pass in the near term.

Less comprehensive AI regulation may advance as part of must-pass legislation. Both the House and Senate have passed their respective versions of the National Defense Authorization Act (NDAA) for fiscal year 2024, with significant AI-related provisions. These provisions aim to promote responsible AI use and adjust procurement authorities. Notable differences between the two versions include the House's focus on responsible AI development and the Senate's emphasis on technology to detect generative AI products. Reconciling these discrepancies will be a key challenge in the negotiation process. The House passed its NDAA along mostly partisan lines on July 14, while the Senate garnered strong bipartisan support for its version on July 27.

Uncertainties loom over the timing and process for finalizing the NDAA, given potential government shutdown concerns, disagreements over federal funding between Democrats and Republicans, and divisions within the House GOP regarding Pentagon spending. Nevertheless, the NDAA has become a key legislative vehicle for shaping AI policy.

## III.   The Biden-Harris Administration

The administration is also making AI a priority. In July, the White House announced voluntary commitments from seven leading AI companies, namely Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI. The commitments aim to promote safe, secure, and transparent development of AI technology before being introduced to the public. The companies have agreed to adhere to three fundamental principles for responsible AI: safety, security, and trust. In August, the White House announced that eight more companies had signed onto the White House AI commitments.

Senior White House officials announced at the Chamber of Commerce's Global AI Forum that an executive order on AI will be released this fall as part of the federal government's three significant efforts on AI policy. The executive order aims to consolidate: 1) President Biden's existing authorities on AI and address various AI-related issues; 2) voluntary commitments from the private sector to ensure safe AI deployment; and 3) congressional efforts to develop a bipartisan approach to AI policy. Elements of the Blueprint for an AI Bill of Rights and AI RMF are likely to be reflected in the AI executive order. President Biden said at a meeting of the President's Council of Advisors on Science and Technology that he plans to use the executive action to collaborate with bipartisan leaders to expand access to AI and ML health care technologies, particularly in underserved areas. President Biden highlighted their significance not only in improving health care access but also in training community members as health care professionals.