RESOLUTION

Subject: Protecting Physicians from Proprietary Clinical Artificial Intelligence Liability

Submitted by: Greater Louisville Medical Society

Referred to: Reference Committee

WHEREAS, the Kentucky General Assembly successfully enacted historic prior authorization reform through House Bill 176 during the 2026 Regular Session, establishing a critical statutory pathway for "Gold-Carding" exemptions based on a ninety-three percent (93%) clinical approval threshold over a rolling twelve-month evaluation period; and

WHEREAS, health benefit plans, managed care organizations, and proprietary software vendors are increasingly deploying clinical artificial intelligence (AI), machine-learning protocols, and predictive algorithms to dictate determinations of medical necessity, step-therapy, and prior authorization approvals; and

WHEREAS, conditioning vital administrative benefits, such as a physician's statutory HB 176 "Gold-Card" exemption status, upon strict adherence to an insurer's algorithmic metrics creates immense systemic coercion to conform to automated, cost-centric clinical pathways over individualized patient care; and

WHEREAS, under current medical professional liability and tort doctrines, the treating clinician remains the sole target of litigation if an algorithmic recommendation or insurance pathway is followed and results in an adverse patient outcome, while corporate payers shield themselves from accountability using contractual "hold harmless" and indemnification clauses; and

WHEREAS, high-quality, safe medical care requires that a physician's independent clinical judgment remain paramount, meaning physicians shall not be required to follow, nor be limited by, any automated or algorithmic clinical pathways when determining the best course of treatment for an individual patient; and

WHEREAS, the McCarran-Ferguson Act confirms the statutory authority of the Commonwealth of Kentucky to regulate the business of insurance, which inherently encompasses the power to establish consumer and provider protections against predatory, insurance-mandated liability shifts; now, therefore, be it

RESOLVED, that KMA advocate for legislation stating that if a commercial health benefit plan or third-party utilization review entity uses artificial intelligence (AI) or automated algorithms to dictate medical necessity or condition administrative benefits (including Gold-Carding status), the insurer and its software vendors shall share equal legal and medical malpractice liability for any resulting patient harm;

and be it further

RESOLVED, that KMA seek legislation to prohibit insurance contracts from forcing physicians to sign fine-print "hold harmless" clauses that shift 100% of the legal blame onto the clinician when following an insurer's mandatory algorithmic pathway; and be it further

RESOLVED, that KMA adopt a policy stating that when a commercial payor or third-party review company uses automated algorithms to steer, restrict, or override a licensed physician’s individualized medical judgment, that entity is actively making a clinical determination and must be held to the same medical standard of care and professional liability as a licensed physician.